



Department of Energy
Washington, DC 20585
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U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics (OPPT)
Document Control Office (7407), Rm. G-099
401 M Street, S.W.
Washington, D.C. 20460

Document Control Number OPPTS-42187A; FRL-4869-1

Dear Sir or Madam:

Re: 61 FR 33178, "Proposed Test Rule for Hazardous Air Pollutants"

On June 26, 1996, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) requiring the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This test rule is being proposed under the authority of section 4(a) of the Toxic Substances Control Act (TSCA).

The Department of Energy (DOE) appreciates the opportunity to provide input in response to the "*Proposed Test Rule for Hazardous Air Pollutants*". The enclosed comments are presented for the Agency's consideration in promulgating a final rule. In general (based on the information provided in the NPRM), the Department believes EPA's justification for determining that existing data are insufficient to ascertain the effects of the HAPs on human health are reasonable. The Department recognizes the integral role that the data proposed to be collected under this rule will play in implementing several provisions under section 112 of the Clean Air Act (CAA), as well as the secondary uses of the data.

In general, DOE supports EPA's proposed test rule efforts, the enclosed comments highlight a two-fold issue of particular concern to the Department; however, this concern focuses on combustion chamber emissions from the incineration of DOE's legacy waste and the Department's belief that these emissions can be viewed as either an impurity or a byproduct. DOE believes that hydrochloric acid (and other emissions from the combustion chamber) meet the definition of impurity, as defined in 40 CFR 790.3. Notwithstanding, DOE's waste management facilities may be perceived by some as byproduct manufacturers because they inadvertently "manufacture" the subject chemicals as byproducts of waste treatment. The Department's comments also focus on the fiscal impacts the test rule poses to DOE's environmental restoration and waste management budgets.

Regarding the format of the enclosed comments, those under the heading “Specific Comments” are directly related to and presented using the same numbering convention as the proposed rule. For clarity, each specific comment is preceded by a reference to the section of the proposed rule to which it applies and a brief description in bold-face type of the issue within that section to which DOE’s comment is directed.

Sincerely,

Raymond F. Pelletier
Director
Office of Environmental Policy and Assistance

Enclosure

cc: C. Auer, EPA, OPPT (7405)
G. Timm, EPA, OPPT (7405)



UNITED STATES DEPARTMENT OF ENERGY

Comments on
PROPOSED TEST RULE FOR HAZARDOUS AIR POLLUTANTS
Notice of Proposed Rulemaking
(61 FR 33178; June 26, 1996)

UNITED STATES DEPARTMENT OF ENERGY
COMMENTS ON PROPOSED TEST RULE FOR HAZARDOUS AIR POLLUTANTS;
PROPOSED RULE
(61 FR 33178; June 26, 1996)

SUMMARY

The U.S. Environmental Protection Agency (EPA) is issuing the *Proposed Test Rule for Hazardous Air Pollutants* under the authority of section 4(a) of the Toxic Substances Control Act (TSCA). EPA proposes to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. EPA is also soliciting proposals for enforceable consent decrees (ECDs) regarding the performance of pharmacokinetics studies.

SPECIFIC COMMENTS

IV.C. Test Guidelines

EPA proposes specific testing and reporting requirements for each of the 21 HAPs. In discussing the test guidelines that are proposed for use in testing HAPs under this rule, EPA explains it is considering three alternative procedures for handling the test guideline. (61 FR 33187)

Of the three alternative procedures, DOE prefers the second alternative. The second alternative appears to offer the regulated community reasonable flexibility while affording EPA the opportunity to pre-approve protocol(s) as it deems necessary.

IV.F. Persons Required To Test

EPA proposes that persons who manufacture one or more of the 21 HAPs, other than as an impurity,¹ be subject to the testing requirements in the proposed rule. EPA also proposes that persons who manufacture these substances as byproducts² be subject to the proposed testing requirements. EPA proposes that the total amount of these chemical substances produced, including the amount produced as a byproduct, will be used in determining reimbursement shares. (61 FR 33189)

As a result of the environmental legacy of nuclear weapons production and related activities, DOE faces the challenge of treating, storing, and disposing of its waste inventories, both hazardous and radioactive, that have resulted from its past nuclear energy and weapons research/production, as well as waste that may be generated in the future. Accordingly, two of DOE's primary missions include environmental restoration and proper management of the Department's wastes, many of which can not be managed outside of the DOE complex because of the presence of radioactive contamination.

¹ Under 40 CFR 790.3, EPA defines impurity as a chemical substance unintentionally present with another chemical substance or mixture.

² Under 40 CFR 791.3(c), EPA defines byproduct as a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture.

Incineration, which EPA typically considers the best demonstrated available technology (BDAT) for organic waste, is one of the methods currently used by DOE for treating and disposing of organic hazardous waste and polychlorinated biphenyls (PCBs). These types of waste treatment activities may result in the unintentional "manufacture" of some of the 21 hazardous air pollutants covered under this rule. As an example, the Department's K-25 Site Toxic Substances Control Act incinerator in Oak Ridge, Tennessee, produces large quantities of hydrochloric acid (HCl) as a result of chlorine in the hazardous wastes and PCBs. This and other emissions from the combustion chamber are effectively treated in pollution abatement features of the permitted incinerator, resulting in minor amounts of HCl being released into the environment via fugitive and stack emissions (e.g., 79 lbs/yr in 1993; 81 lbs/yr in 1994).

Relative to this rulemaking, the Department believes that HCl (and other emissions from the combustion chamber) may meet the definition of impurity, as defined in 40 CFR 790.3. EPA has proposed to exempt those manufacturers and processors that produce the 21 HAPs only as an impurity. (61 FR 33189, col. 3) The Department supports this exemption. As EPA states, it would be difficult and prohibitively expensive to identify with complete assurance all chemical substances that contain the 21 HAPs solely as an impurity. (61 FR 33189, col. 3)

If, after evaluating the available information and comments, EPA determines that HCl is present as a byproduct rather than as an impurity, DOE offers the following discussion for EPA's consideration. EPA has stated that unintentional producers of byproducts should share in the cost of test rules such as this and not be excluded. EPA's justification, as offered in the June notice, is that "...the production and disposal of the byproduct are a result of a production process by which the company does derive economic benefit (an indirect benefit). (53 FR 22300, 22305, June 15, 1988)" (61 FR 33190) Unlike manufacturers that treat their inadvertently manufactured byproducts or the commercial waste treatment industry, the Department derives no direct or indirect economic benefit from meeting its environmental restoration and waste management obligations. Rather than derive economic benefit, the cost of additional testing will increase DOE's (and U.S. taxpayers') costs for environmental restoration and waste management activities which already have a strained and shrinking budget. Also, many companies are already involved in direct manufacture or processing of these 21 chemical substances such that unintentional producers of waste management byproducts should not have to be drawn into participation in the respective test rule activities.

In summary, DOE believes that difficult questions exist regarding the definition of "impurity" and its application to gases produced within incinerator combustion chambers. Furthermore, the Department views the proposal as overly broad relative to inadvertent waste byproduct manufacturers that do not derive any economic benefit from the destruction of legacy wastes. Moreover, participation by such "manufacturers" is not necessary to achieve the objectives of this test rule. Accordingly, DOE requests that EPA consider excluding environmental restoration and waste management activities from the scope of this and similar proposed test rules.