

TO: Internet Address: www.a-and-r-docket@epa.gov

RE: **RCRA Docket #: A-2000-47**

National Environmental Performance Track Program

DATE: November 13, 2002

DOCKET:

Please find enclosed the Ohio Environmental Protection Agency's comments on U.S. EPA's proposal to modify CWA, CAA and RCRA rules to provide incentives for the members of the National Environmental Performance Track Program. This proposal was issued August 13, 2002, in the *Federal Register* (Vol. 67, No. 156, pg. 52674).

Ohio EPA requests that these comments be made an official part of the record. If you have any questions or need additional clarification regarding the enclosed comments, please do not hesitate to contact Karen Hale, Division of Hazardous Waste Management, at (614) 644-2917 or karen.hale@epa.state.oh.us.

Sincerely,

Christopher Jones
Director

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cc: Michael A. Savage, Chief, DHWM
Lisa Morris, Chief, DSW
Ed Tormey, Legal
Greg Smith, Legal
Mohammed Islam, DSW
Karen Hale, DHWM

Section (II)(B): Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track

1. General Comment: Ohio EPA supports the ideals of the national environmental performance track program that would provide certain incentives for top performing approved pretreatment programs. Ohio EPA agrees that successful implementation of environmental management systems (EMS) coupled with incentives would allow these top performing POTWs to better manage resources and work on issues and outcomes that result in measurable environmental benefit. However, Ohio EPA suggests that these high performing POTWs have targets and goals defined in their EMS that, at a minimum, contribute to the improvement of water quality.

Ohio EPA agrees that the role of incentives is crucial to participation in the program. However, incentives as proposed may not spur substantial interest among POTWs for participation. Ohio EPA suggests that EPA negotiate with the states to come up with these incentives on a case-by-case basis (e.g., reduced oversight of approved programs by approval authorities, reduced monitoring frequencies in permits, etc.). Also, Ohio EPA feels that EMS is not a regulatory compliance standard, so one of the criteria for membership should be continued compliance with regulatory requirements.

2. Public Notice Significant Non-compliance (SNC) on Web Instead of in Newspaper: Ohio EPA supports the concept and thinks that the publication of SNCs on the web may have a stronger deterrent effect on the industries than publication in newspapers. Also, Ohio EPA feels that there should be some mechanism to convey the website information to the interested parties and the public (e.g., through utility bill inserts, direct e-mail, etc.). Ohio EPA thinks that using the web for publication is a nice idea but could be resource intensive for some POTWs who may lack technical expertise in this area.
3. Considering Certain Categorical Industries as "Non-Significant" Based on No Potential for Pass-through/Interference to POTWs: Ohio EPA opposes the proposal of considering categorical industries to be "non-significant" when the categorical industries do not have any potential to cause pass-through or interference to the receiving POTW. Ohio EPA believes that this incentive will reduce the minimum regulatory oversight of these facilities and may over time result in process wastewater discharges that may corrode sewers or cause interference to the POTW (e.g., plating wastes). So, a minimum level of oversight is important for these facilities. However, if U.S. EPA decides on a "deminimis" definition for non-significant categorical industries (as was proposed in the pretreatment streamlining regulations), Ohio EPA suggests that a minimum sampling/inspection of once every two years be conducted at these facilities.

4. Web Posting of POTW Pretreatment Annual Reports: Ohio EPA feels that web posting is a nice idea but could be resource intensive for some POTWs who lack technical expertise in this area.

Section (II)(C): 180 Day Accumulation Time for Performance Track Hazardous Waste Generators

5. Time Limits: Ohio EPA supports the proposed extended hazardous waste accumulation time limit of 180 days (but no more than 270 days for hazardous waste transported to an appropriate facility more than 200 miles away) for generators who are members of U.S. EPA's National Environmental Performance Track (NEPT) program. We think that the extended accumulation period may be an appropriate incentive for some of these large quantity generators.

We do not believe any adverse environmental impacts are imminent from allowing this extended hazardous waste accumulation period. Hazardous waste management units, such as containers and tank systems, do not spontaneously fail and release material after a certain number of days. It is the management and maintenance performed by the generator that impacts the unit's integrity and operational condition. The current hazardous waste rules applicable to the operation and maintenance of hazardous waste management units still apply to NEPT generators. The NEPT generator must complete inspections of the accumulation areas and units, perform maintenance of the units and clean up releases. It is in performing these activities that protection of the environment is achieved; not the length of time of the accumulation period.

Furthermore, by virtue of being a member of the NEPT program, these generators have demonstrated to you that they are conscientious of their facilities' impact on the environment and are striving to reduce that impact. They take their obligations under the hazardous waste rules and all environmental programs seriously, and they have their sights set on being good environmental partners. In theory, these facilities are worthy of this proposed incentive and will implement it in a responsible manner.

6. Initial Notice: Ohio EPA supports the inclusion of the initial notice condition where a NEPT generator provides prior notification to the overseeing agency of its intent to accumulate hazardous waste for greater than 90 days. In general, this notification is needed so the overseeing agency is aware the NEPT generator plans to implement the extended accumulation period and can properly prepare for an inspection - if the overseeing agency chooses to inspect.

However, we do not believe all of the proposed components of the initial notice are necessary. The information required in the notice requirements should be a balance between the needs of the overseeing agency and the reporting burden on the NEPT generator. It must be meaningful to the overseeing agency in preparing for inspections and not just information that is nice to have.

With that being said, we suggest that the following components of the notification be removed from the rule.

- Remove §262.34(j)(2)(iii) - This is the statement the generator provides indicating that it has made all changes to its procedures, operations, and equipment that are necessary in order to accommodate the extended accumulation period of hazardous waste. This component only serves as a reminder to the NEPT generator; it is not information that is substantive for the purposes of the overseeing agency. Such a statement does not inform the overseeing agency about the types of changes to procedures, plans and equipment the generator made. The most appropriate way for the overseeing agency to learn about and evaluate these changes is by reviewing the documents and inspecting the units.

Furthermore, according to proposed §262.34(j)(7), a NEPT generator must develop contingency and emergency response plans, and employee training programs. We believe that this requirement is sufficient to remind generators to change their plans, equipment and procedures to accommodate the additional volume of hazardous waste that will be accumulated.

- Remove §262.34(j)(2)(iv) - Generator certification that an appropriate facility is not located within 200 miles of the generator - see comments below.

7. *Initial Notice:* U. S. EPA requests comment as to whether the 270 day limit should be available under the Performance Track only when the additional accumulation time allows the generator to achieve some specific environmental objective (e.g., increased recycling rates), or whether other types of restrictions or limits should be placed on its availability to Performance Track members. Also, U.S. EPA asks if a definition for “appropriate facility” should be developed.

It is Ohio EPA's position that the proposed 270 day accumulation period should be available to NEPT generators who ship their hazardous wastes to appropriate recycling, treatment or disposal facilities that are farther than 200 miles away. No additional limits or restrictions should be placed on the availability of this provision to the NEPT generators and no definition for “appropriate facility” should be developed.

We do not believe that this provision will be abused by NEPT generators. We have not encountered small quantity generators abusing a similar extended accumulation provision available under the current hazardous waste rules. In fact, we know of very few generators who use the provision. Possibly generators do not use the provision because it is actually more costly to implement as compared to the savings gained in transportation costs.

It is likely that factors other than reduced transportation costs must be considered by a generator who wants to accumulate hazardous waste for 270 days. These factors may make the extended accumulation period unattractive and may include:

- The availability of facility space to accommodate the additional volume of hazardous waste;
- The cost of additional equipment or units for the accumulation of additional volumes of hazardous waste;
- Increased liability;
- Increased insurance premiums; and/or
- Public perception.

Finally, with regard to developing a definition for “appropriate facility,” Ohio EPA does not think it is necessary to develop such a definition. As mentioned above, it is unlikely many generators will use the 270 day extended accumulation period option. Also, the cost of implementing such a definition would be burdensome on the overseeing agency. The overseeing agency would need to evaluate the reasons why a generator chose a particular facility, located more than 200 miles away, against the criteria of a definition for “appropriate facility.” We do not believe that this type of evaluation is a worthwhile use of the overseeing agency’s time, effort and resources since the results of such an evaluation do nothing to further protect human health and the environment.

8. Standards for Accumulation Units: The proposed rule requires NEPT generators who accumulate hazardous waste in containers to have secondary containment for the accumulation area. Ohio EPA does not support this requirement.

Under the current hazardous waste program, no hazardous waste generator is required to have secondary containment for its container accumulation area. NEPT generators are being held to a higher standard. These facilities have already demonstrated that they can achieve a higher standard by being accepted as a member of the NEPT program. They demonstrated to you their compliance with environmental regulations, accomplishments in going beyond compliance, and their commitment to reducing their facilities’ impact on the environment. The secondary

containment provision does not appear to be a reward or incentive, and in fact is a disincentive, for a NEPT generator who has achieved membership in the NEPT program. We believe that these NEPT generators are responsible and capable of managing container accumulation areas in compliance with the current standards and in a manner that is protective of the environment without requiring the installation of secondary containment.

9. Volume Limit: Ohio EPA does not agree that NEPT generators should be limited regarding the amount of hazardous waste they may manage at any one time under the extended accumulation period provision. The proposed limit is 30,000 kg. We believe this condition works against the incentive component of the extended accumulation period provision.

Under the current hazardous waste program, large quantity generators are not limited to the amount of hazardous waste they can accumulate on-site at any one time. Limiting the amount of hazardous waste a NEPT generator can accumulate on-site is a more stringent standard than what applies to large quantity generators who accumulate their hazardous waste for 90 days. As stated in our comment regarding secondary containment for accumulation areas, NEPT facilities have already demonstrated to you their compliance with environmental regulations, accomplishments in going beyond compliance, and their commitment to reducing their facilities' impact on the environment. These generators are responsible and capable of managing the hazardous waste they produce. They should not be burdened with more stringent requirements as compared to generators who accumulate hazardous waste for 90 days.

Furthermore, generators of large quantities of hazardous waste do not maintain their hazardous waste on-site for the entire accumulation period just because the rules allow it. It is our experience that these generators ship their hazardous waste off-site to an appropriate facility when they have full shipments. It is likely that certain factors come in to play that cause generators to move their waste off-site. These may include: limited accumulation space, restrictions imposed through insurance policies, safety concerns, increased liability and public perception.

10. Recordkeeping: The proposed recordkeeping requirements are overly burdensome, duplicative, and unnecessary. Ohio EPA suggests that these recordkeeping requirements be removed from the rule. They neither increase protection of the environment nor provide the overseeing agency with information that is not already available from other sources.

Ohio EPA routinely gathers much of the information requested in the proposed rule from reports, documents, and records already required to be maintained by the

generator under the recordkeeping requirements of the current hazardous waste rules. In addition, we gather detailed information regarding the process generating the waste, waste generation rates, and management practices from the generator during the inspection entrance interview.

Also, §262.34(j)(5)(ii) requires the generator to maintain documentation that the accumulation unit is emptied at least once each 180 days. This requirement is more stringent and in conflict with §262.34(j)(1) which allows NEPT generators to store their hazardous waste for up to 180 days. The extended accumulation period attaches to the waste at the time it is generated and applies to only the waste. It has no connection to the amount of waste in the accumulation unit at any one time.

Since the accumulation period attaches to the waste and not to the unit, Ohio EPA understands that hazardous waste will likely be continuously present in the unit while the generator still maintains compliance with the extended accumulation period provision. The appropriate information the overseeing agency should use to evaluate a generator's compliance with the accumulation period is to evaluate the waste generation rate against the volume of waste manifested off-site.

11. NEPT Program Annual Report: There is no need for the NEPT generator to send the annual NEPT report to the State. The report should only be sent to U.S. EPA. Much of the information contained in the report is only useful in the context of evaluating the NEPT program and the effectiveness of incentives. Ohio EPA has no role in administering the NEPT program or making this evaluation. Other information in the report is duplicative to information we already receive in the generator annual hazardous waste reports (which is equivalent in content to U.S. EPA's biennial reports) and spill reports. If we want to review a NEPT generator's NEPT annual report, we can request it from the generator or U.S. EPA. We understand that U.S. EPA will place the NEPT annual reports of all members on the Performance Track website once the report format problems are worked out.

