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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 18, 1995

M.L. Mullins, Vice President
Regulatory Affairs
Chemical Manufacturing Association (CMA)
2501 M St., NW
Washington, DC 20037

Dear Mr. Mullins:

This letter is in response to your letter of August 22, 1995 in which you expressed CMA's concern regarding the Agency's plans to "disallow continued use of the corrective action management unit (CAMU) provision" that was promulgated on February 16, 1993 (55 FR 8658).

As I believe you know, the CAMU rule was the Agency's initial attempt at resolving many of the problems that have been encountered by EPA State remediation programs in applying the prevention-oriented Subtitle C regulations to the management of remedial wastes. The Agency continues to support the need for flexibility in this area; however, some parties have argued that the CAMU rule allows regulators too much discretion in determining appropriate, site-specific management requirements for remediation wastes. In recognition of this view, the Agency agreed to evaluate whether the CAMU regulations should be modified or replaced with a different regulatory approach. As an outcome of this process, the Agency agreed the CAMU regulation should be replaced with the Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media). The Agency is currently planning to propose the HWIR-media rule in December of this year and issue final regulations in March 1997.

The Agency believes that much of the site-specific flexibility provided in the CAMU will be preserved based on the current version of the draft HWIR-media regulation, especially for less contaminated media. Furthermore, the Agency intends to include a provision in the proposed HWIR-media rule that would in effect "grandfather" CAMUs that were approved before the

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HWIR-media rule is issued final. However, no new CAMUs could be approved after the that date. The Agency believes that this "grandfathering" provision, if finalized, would will result in minimal disruptions to cleanups involving CAMUs that are planned or underway. It should be noted, however, that the Agency plans to ask for comment in the proposal as to whether grandfathering" of CAMUs is appropriate, and, in particular, whether the Agency should set a date upon which approval of "grandfathered" CAMUs would expire.

In the interim, our recommendation to both the regulators and the regulated community is to use a CAMU if it truly provides the best alternative for a site (and the AOC concept, which is a concept independent of the CAMU rule, cannot be used). Of course, the most conservative course of action would be to use a CAMU only if it can be completed prior to publication of the final HWIR-media rule.

I hope that this letter helps to clarify the basis for our current plans. If you have any questions regarding the HWIR-media rule and its impact on the CAMU rule, please call Carolyn Hoskinson at 703/308-8626. Questions regarding the AOC concept should be directed either to Hugh Davis at 703/308-8633 or Elizabeth McManus at 703/308-8657.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

Attachment

CHEMICAL MANUFACTURERS ASSOCIATION

August 22, 1995

Mr. Michael H. Shapiro, Director
Office of Solid Waste (5301)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

Re: Corrective Action Management Unit

Dear Mr. Shapiro:

The Chemical Manufacturers Association (CMA) is concerned by reports that EPA, in the context of the upcoming HWIR contaminated media proposal, plans to disallow continued use of the corrective action management unit (CAMU) provision that was promulgated on February 16, 1993 (58 FR 8658).

EPA has recognized that "remediation of existing contamination problems is inherently different from the management of as-generated industrial waste " (58 FR 8660) and that "the existing regulatory structure of RCRA Subtitle C, when applied to the management of hazardous waste for remedial purposes, can often seriously hamper the ability of decision makers to select and implement effective, protective, and cost effective remedies" (58 FR 8659). The Agency promulgated the CAMU provision to provide remedial decision makers with an added measure of flexibility in order to expedite and improve remedial decisions. Many CMA member companies have found the CAMU provision to be highly successful in that regard. It has afforded valuable and much needed flexibility and has significantly expedited remediation efforts by removing many of the impediments that existed under Subtitle C.

In her statement before the U.S. House of Representatives Committee on Science on January 6, 1995, Administrator Browner said:

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"All of us are committed to protect public health and our air, land, and water. At EPA, we want to implement these commitments in the most cost effective way possible. But to do this, we must move beyond a "one size fits all" regulatory approach towards a more common sense approach - an approach that uses flexibility, creativity, and innovation in reaching these goals."

CMA believes that the CAMU provision is an excellent example of focused regulation that provides considerable flexibility, fosters creativity - and enables expedited clean-up of contaminated hazardous waste sites in a more cost effective manner. To disallow this sensible and valuable provision would be totally inconsistent with the many on-going EPA regulatory reform initiatives. If EPA is to be successful in achieving meaningful regulatory reform, it must stand behind the good progress it has made with the CAMU provision and continue to work to identify additional opportunities to better focus regulations to achieve environmental goals in a more flexible cost effective manner. To disallow the CAMU provision would be a giant step backward.

CMA recognizes that some parties have challenged the legal and policy basis of the CAMU and temporary unit (T.U.) rules. CMA urges the Agency to vigorously defend these rules. They received broad support when they were promulgated and have been widely accepted and implemented by affected stakeholders, states, and regional offices. Regulatory agencies have devoted significant energies toward the constructive use of CAMUs to facilitate cleanups. A large number of CMA member companies have invested significant money and effort incorporating CAMUs into their remedial plans, and many have been approved and are presently in use, while others are nearing final approval. EPA has provided no justification for disrupting the protective practices that have been initiated under the CAMU provision. At a minimum, EPA must grandfather existing CAMUs to protect the investment that facilities have made in planning, obtaining approval, and implementing remedial actions based upon the CAMU provision.

If you should have any questions concerning this issue, or desire additional information, please contact Chip Vitarelli, of my staff, at (202) 887-6936.

Sincerely,

M.L. Mullins
Vice President - Regulatory Affairs

cc: Matthew Hale, Jr., Director
Permits and State Programs Division
Office of Solid Waste

Robert Hall, Chief
Corrective Action Programs Branch
Permits and States Programs Division
Office of Solid Waste