

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

George E. Parris, PhD.
Director of Environmental and Regulatory Affairs
American Wood Preservers Institute
2750 Prosperity Avenue, Suite 550
Fairfax, Virginia 22031-4312

Dear Dr. Parris:

I am writing to respond to your concerns about the 1997 Biennial Report System (BRS). I understand that a great deal of confusion has been caused in this area. I apologize for not clarifying this situation sooner. We support the sound recycling of wood preserving wastewaters, and have devoted considerable resources to developing a conditional exclusion from the definition of solid waste, currently undergoing review as part of the upcoming "Phase IV Land Disposal Restrictions" rulemaking. To avoid any possible misunderstanding, I would note that while we expect to promulgate that exclusion shortly, the Agency has not completed the rulemaking procedure, and the Administrator has not signed the rule. Until the Administrator has signed the rule, the exclusion is not in effect. If the rule is promulgated as expected, it will not take effect in authorized States until they make comparable changes in their State regulations. We have valued your participation in this effort, and hope that you will not allow this misunderstanding about the BRS to affect your participation in future cooperative efforts with the Agency.

As you noted, in a July 1996 meeting with my staff, EPA had indicated that it expected to eliminate the requirement for generators to report wastewaters going to certain units in the 1997 BRS report. We considered dropping the reporting of wastewaters, and all other wastes going to RCRA-exempt units at that time as a means to achieve reductions in recordkeeping and reporting burden. Subsequent to that meeting, however, EPA reconsidered its position. EPA heard from a variety of external parties and internal data users, on this issue. Based upon concerns raised by States and Agency personnel who use this data for planning and regulatory purposes, EPA reversed that decision and chose not to change the existing requirement that wastewaters and hazardous wastes going to RCRA-exempt units be reported. EPA did, however, change the System Type Code to be used in reporting wastewaters managed onsite in units subject to the Clean Water Act or Safe Drinking Water Act. We trust that this change streamlined the reporting of these wastewaters.

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As you know, while EPA generates "federal" forms, some authorized states choose to amend our form or use completely different forms. In some instances, the states also choose to alter the reporting requirement. In complying with 1997 reporting requirements, we recognize that your members may have followed guidance from their individual states regarding which form they should fill out, or what information should be provided.

Given the confusion caused by EPA's proposed change to the wastewater reporting requirements and the on-going rulemaking to exclude the recycled wastewaters, it may be that some states or EPA Regions have given guidance that reporting of wood preserving wastewaters was not required for 1997. Thus, some wood preservers may have not reported for 1997. This is understandable, and we can see no reason at this point to overrule such guidance where it has been given.

For 1999, the reporting requirements for most wood preservers will likely change if they are covered by the conditional exclusion we are contemplating for the Phase IV rulemaking and they are either in an unauthorized State or in a State that has made a comparable change in their State regulations. If individual generators follow specific conditions set out by that exclusion, then specific wastes would be excluded from being solid waste under the federal definition. Since the Biennial Report only requires "hazardous waste" to be reported, excluded waste would not have to be reported. However, this conditional exclusion option would depend on EPA issuing its rulemaking and it would only apply in states that adopt the federal change; it will not apply to generators located in states which do not adopt the conditional exclusion.

Also, as we begin the development of the 1999 Biennial Report, we will be reconsidering the whole issue of the reporting of wastewaters. Whether wastewaters should be reported is also part of a larger effort the Office of Solid Waste is undertaking to reexamine the recordkeeping and reporting burden placed on States and the regulated community. For this effort, we plan to publish an Advanced Notice of Proposed Rulemaking later this year which presents burden reduction ideas. Some of the ideas and suggestions may be of benefit to the wood preserving industry. We hope that you will provide comments on them.

I hope this letter clarifies Biennial Reporting requirements for 1997 and the likely implications of a conditional exclusion for reporting in 1999. If you have additional questions, please feel free to contact Sara Rasmussen, Branch Chief of the Analysis and Information Branch at 703-308-8440.

Sincerely yours,

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Elizabeth A. Cotsworth, Acting Director
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February 12, 1998

Karen V. Brown
Small Business Ombudsman
U.S. Environmental Protection Agency
Office of the Administrator
401 M Street, S.W. (1230C)
Washington, D.C. 20460

Subject: RCRA Reporting

RE: Unexpected Changes by the U.S. EPA

Dear Ms. Brown:

Obviously, we are working towards a higher level of trust and cooperation between the American Wood Preservers Institute and the U.S. EPA. There may be times when my industry does not live up to the expectations of the EPA; and if that happens, I hope to hear about it. In this case, I am writing to let you know that events within your agency have transpired to undermine our faith in agreements made there. The facts are very simple:

The EPA has listed drippage from the wood preservation process as a hazardous waste and required that it be collected on a "drip pad." Moreover, rainwater that is also collected on the pad has been identified as listed hazardous waste. Although we recognize the importance of the drip pad and it is reasonable to call the drippage a hazardous waste, the AWPI has for years argued that *rainwater* collected on the RCRA subpart W drip pad should not be counted as hazardous *waste when it is recycled*. Nonetheless, EPA rules required that this recycled water be reported and the industry appeared to the public to be one of the largest generators of hazardous waste. State taxes were also levied on our members based upon the RCRA waste generation, although it was almost all rainwater and all of it was recycled. Thus, we have spent many, many hours and much of our budget to bring the EPA to promulgate a conditional wastewater exclusion from RCRA (40 CFR 261.4(b)(9)(iii)) which we are told will be published as final about April 15, 1998.

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In this context, we were pleased when the U.S. EPA published a proposal (*Fed. Reg.* 61(129) 34809-10, July 3, 1996) to exclude these recycled waters from its RCRA reporting. We met with the EPA-OSW personnel involved with both our proposed wastewater exclusion rulemaking and the RCRA reporting rule on July 24, 1996 for clarification. We were assured that the policy would be reflected in the current (1998) RCRA reporting and it was implied that this was part of a new data collection policy of the EPA (it had been proposed to the OMB in information Collection Request (ICR) NO. 0976.08 OMB Control No. 2050-0024, and approved *Fed. Reg.* 61(185) 49770), which would make our reporting burden less in the future (implying for all future reports). The EPA personnel in charge of the RCRA exclusion rulemaking even argued that in light of this reporting change, the exclusion we sought was no longer needed. At the risk of appearing to be skeptical and uncompromising, we insisted that the exclusion rulemaking proceed. Nonetheless, we informed our association members that the EPA had made this change in RCRA reporting and expressed our appreciation to the EPA in a letter sent to OPPE Regulatory Information Division on July 29, 1996.

To our surprise and disappointment, when RCRA reporting forms were received by our members early in 1998, they requested much of the same information that we had been required to report previously! Many of our members thought it was simply a mistake; a loss of communication between the policy-makers and the printers. When I called the EPA OSW on February 9, 1998 to express my concern about the confusion, *I was informed that the printing was correct; it was the policy that had changed.* Reporting from our industry will likely be erratic because of the unannounced and unexplained, unilateral change in policy.

We are startled and confused by this because we were not informed of any policy change and we left the meeting of July 24, 1996 believing that the EPA had made a firm decision on the matter. Moreover, given that the process required comment to OMB on the Information Collection Request (ICR), we believed that EPA could not have made this change without publishing a change in the ICR.

It is not clear to us whether the change in reporting policy (without notice and comment) as explained to us on July 24, 1996 was an accident; whether it was a change in policy in which the need to inform industry was overlooked; or whether the EPA was not serious to begin with. Regardless, it does not encourage us to lower our defenses when negotiating with the U.S. EPA.

On behalf of our members, the AWPI requests a review and explanation of this episode. We sincerely wish to work with the U.S. EPA to improve environmental health and safety and eliminate inefficient and unnecessary rules.

Sincerely,

American Wood Preservers Institute

George E. Parris, Ph.D.
Director of Environmental and Regulatory
Affairs

CC: AWPI Executive Committee
Office of Management and Budget
Elizabeth Cotsworth/Office of Solid Waste