

K103/K104 WASTE STREAMS - RELATIONSHIP OF CWA BAT, LAND  
DISPOSAL RESTRICTIONS, BDAT, AND DELISTING CRITERIA

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR -2 1987

Ms. Julia L. Phillips  
Counsel, Environmental Division  
E.I. du Pont de Nemours & Company  
Wilmington, DE 19898

Dear Ms. Phillips:

The Agency is still in the process of reviewing E.I. du Pont's request for reconsideration of our denial decision regarding the K103/K104 waste streams. I apologize for the delay in responding; however as explained in your meeting with my staff on February 19, 1987, several questions involve resolution of cross-cutting policy issues at the Agency. Therefore, this is only a partial response. The remaining issues, such as the impact on future management and closure requirements, of the date of your initial delisting and the effect of terminating input of listed wastes into the impoundment prior to the effective date of the denial on future management and closure requirements, will be resolved as soon as practicable and addressed in a separate response.

While the K103/K104 waste streams may meet the best available technology (BAT) effluent limitations established under the Clean Water Act, it is not within our regulatory purview or policy directives to consider this compliance as a basis for delisting decisions. The statutory authorities and objectives of the Clean Water Act and the Resource Conservation and Recovery Act are different and were not designed as integrated directives from Congress. Hence, the levels of concern developed under BAT and the VHS model have been derived differently with different assumptions and goals.

In your letter you also point out that your treatment

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methods for the K103/K104 wastes are included in the BDAT treatment technologies identified in the November 7, 1986 land disposal ban rule. Again, this is not considered in the delisting  
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process. BDAT treatment will assure that the waste can be land disposed, but not necessarily delisted from the hazardous waste management system.

You requested that EPA reconsider its denial decision if E.I. du Pont could demonstrate that (a) the lagoon does not have the potential to leach K103/K104 constituents into potable water, and (b) the waste streams will never be transported to another location for disposal where a usable aquifer might be affected. Our current policy is not to consider site-specific factors (such as local hydrogeology and aquifer potability) in the

application of the Agency's vertical and horizontal spread (VHS) model. Specifically, the VHS model analysis does not take into account the potability of the aquifer beneath a petitioner's facility, i.e., it is limited to waste-specific rather than site-specific evaluations. We also will not limit our analysis to K103/K104 waste constituents. Due to both the HSWA requirements and the mixture rule (40 CFR 261.3 (a)(2)(iii)) the waste must be evaluated for all hazardous Appendix VIII constituents likely to be present in the mixture, regardless of their origin. In addition, EPA has made a policy decision not to grant exclusions which are based on the future management conditions of a waste. Again, this is due to the fact that delisting decisions are based on the characterization of the waste rather than on management conditions.

E.I. du Pont requested confirmation that if it can be demonstrated that the K103/K104 wastes do not contribute to lagoon sludge generation, EPA will not consider the lagoon sludge to be hazardous. Theoretically, we believe that this may be possible and the suggested filtration and waste mixing experiments may show that the wastes, as currently generated, do not add to the lagoon sludge. Practically, however, we do not believe that this demonstration is possible. For example, you would need to demonstrate that the wastes have historically never contributed to the sludge. Because you have implemented a number of process and treatment changes over the past five

years, we are skeptical that such a demonstration can be made.

If the impoundment continue to receive hazardous waste four years after the date of promulgation of the petition denial, HSWA \_3005(j)(6) requires that the impoundment be retrofitted to meet minimum technology requirements. Accordingly, the deadline

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for installing a double liner and leachate collection system is November 18, 1990, if the unit continues to receive hazardous waste after that date.

We realize that several key questions regarding applicable requirements for continued management after the effective date have not been answered. The Agency's policy is presently being prepared and will be forwarded to you in the near future. If you have any questions regarding either the issues addressed above or our progress on resolving any outstanding issues, please call Mr. Steven Hirsch of our Office of General Counsel at (202) 382-7706.

Sincerely,

Original Document signed

Marcia E. Williams  
Director  
Office of Solid Waste

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