

**APPLICABILITY OF THE TSCA EXCEPTION REPORTING REQUIREMENTS TO
THE DOE GENERATOR/STORAGE SITES AND THE WIPP**

C. Zvonar
Department of Energy - Carlsbad Field Office

R. Steger
Portage Environmental, Inc.

E. Ward
BWXT – Pantex
formerly with Portage Environmental, Inc.

M. Gerle
Washington Regulatory and Environmental Services

ABSTRACT

On August 23, 2001, the Department of Energy (**DOE**) Carlsbad Field Office (**CBFO**) met with the Environmental Protection Agency (**EPA**) Region VI to address questions that arose during the drafting of the Waste Isolation Pilot Plant (**WIPP**) Initial Report for polychlorinated biphenyl (**PCB**) Disposal Authorization. At this meeting, the One-year Storage for Disposal Exception Reporting requirements under 40 CFR §761.215 (c), (d), (e), and (f) were identified as a potential issue.

In April 2002, the CBFO sent a position paper to the EPA supporting the position that the waste intended for disposal at WIPP meets the exemption requirements from the One-year Storage for Disposal Exception Reporting and that the exemption would not expire with the receipt of disposal authorization at WIPP. The EPA Region VI responded on August 14, 2002 with a letter supporting the premise that the waste was exempt due to the lack of waste disposal capacity. However, the EPA Region VI indicated that the WIPP disposal authorization would provide adequate disposal capacity, which would end the exemption. The CBFO held discussions with the EPA and on April 22, 2003, the EPA issued a clarification that supported the original CBFO position that the waste destined for the WIPP is exempt from the One-year Storage for Disposal requirements under 40 CFR § 761.65(a)(1) including Exception Reporting.

INTRODUCTION

The EPA requires PCB waste to be disposed within 1-year from the date it was determined to be PCB waste and the decision was made to dispose of it (40 CFR § 761.65(a)(1)). Radioactive waste containing PCBs is specifically exempt from this requirement if a "written record documenting all continuing attempts to secure disposal is maintained until the waste is disposed of"ⁱ and the "waste is managed in accordance with all other applicable Federal, State, and local laws and regulations for the management of radioactive material."ⁱⁱⁱ

In addition, the EPA requires the submittal of Exception Reports in accordance with 40 CFR § 761.215(c), (d), and (e), if the One-year Storage for Disposal requirement is not met. However, "PCB/radioactive waste that is exempt from the 1-year storage for disposal time limit is also exempt from the exception reporting requirements under 40 CFR § 761.215(c), (d), and (e)."ⁱⁱⁱⁱ

SUMMARY OF WORK CONDUCTED

In April 2002, the Department of Energy (DOE) Carlsbad Field Office (CBFO) sent a position paper to the Environmental Protection Agency Region VI that presented DOE's position that the DOE generator/storage sites and the Waste Isolation Pilot Plant (WIPP) are exempt from the One-year Exception Reporting requirements at 40 CFR §761.215 (c), (d), and (e). It was the DOE's position that the One-year Exception Reporting requirements at 40 CFR §761.215 (c), and (d) and (e) would not apply to the waste sent to WIPP because most of the PCB/TRU waste had already been in storage for much longer than one year. It was also the DOE's position that the exemption *would not end* once the DOE received a TSCA authorization from the EPA Region VI for the WIPP. The position paper acknowledged the DOE's responsibility to comply with the Exception Reporting requirements at 40 CFR 761.215 (a) and (b), which pertain to manifesting requirements. Subsequent discussions ensued between the CBFO and EPA/HQ to resolve this issue prior to EPA Region VI making a final decision on the issue on August 14, 2002. (The EPA decision is discussed in the next section.)

The issue of whether the 40 CFR §761.215(f) exemption from Exception Reporting requirements ceases once the DOE secures a disposal path for its PCB/Transuranic (TRU) waste arose during an August 23, 2001, meeting in Dallas between DOE-Carlsbad Field Office (CBFO) and EPA. During this meeting, EPA suggested that the DOE and EPA may need to negotiate a national agreement that would alleviate the burdensome flow of One-year Exception Reports from the various DOE sites and WIPP to their respective EPA Regional Offices. It was DOE's position that a national agreement would not be necessary because both the TSCA regulations and the Preamble to the TSCA Final Rule support the rationale that DOE's PCB/TRU waste is exempt from the One-year Exception Reporting requirements *until the waste is disposed of*.

The issue hinged on whether EPA's intent, when it amended the TSCA regulations, was for the exemption in 40 CFR §761.215(f) to be perpetual, or whether the intent was for the exemption to end once a disposal path for the PCB waste in question was secured. In determining this, it is important to look at the language in the TSCA regulations and the Preamble to the 1998 TSCA Final Rule. 40 CFR §761.65(a)(1) specifies that PCB/radioactive waste removed from service for disposal is excluded from the One-year Storage for Disposal requirement provided that continuing attempts to dispose of the waste are documented *until the waste is disposed of* and the waste is managed in accordance with all applicable Federal, State, and local laws and regulations for the management of radioactive material. In conjunction, the regulations also provide that PCB/radioactive; waste that is exempt from the One-year Storage for Disposal time limit at 40 CFR §761.65(a)(1) is also exempt from the One-year Exception Reporting requirements at 40 CFR 761.215 (c), (d), and (e) (see 40 CFR §761.215(f)). Accordingly, the TSCA regulations do not specify a time frame for the exemption to end. The exemption is, however, contingent upon the facility maintaining a written record documenting all continued attempts to secure disposal of its PCB waste until the waste is disposed of completely.

CBFO's position paper stressed the fact that since the above requirements were promulgated in 1998, it is DOE's position that it has met the aforementioned requirements because it has been diligent in its progress toward securing a disposal option for PCB/TRU waste. For example, the DOE-CBFO submitted to EPA its Compliance Certification Application (CCA) in October 1996, with subsequent EPA certification of WIPP in May 1998 (63 FR 27354-27406, May 18, 1998). The DOE-CBFO received a Hazardous Waste Facility Permit from the New Mexico Environment Department on October 27, 1999. The DOE-CBFO also submitted a TSCA Chemical Waste Landfill authorization application to the EPA on March 22, 2002 (after DOE decided not to build a thermal treatment facility at the Idaho National Engineering and Environmental Laboratory that would have had the capability to treat waste to destroy PCBs).

The paper also emphasized that it was clear from the language in the Preamble that "inadequate disposal capacity" was the primary reason that the EPA exempted PCB/radioactive waste from both the One-year Storage for Disposal and the One-year Exception Reporting requirements. For PCB/TRU waste, the problem of "inadequate disposal capacity" can only be resolved by disposal at the WIPP because the WIPP is the only facility congressionally mandated for the disposal of TRU waste. (See the WIPP Land Withdrawal Act, Public Law 102-579, as amended by the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104-201.)

EPA RESPONSE

The EPA issued a letter to the DOE on August 14, 2002, which clarified their position on the application of the exception reporting requirements to the DOE. Essentially, EPA Region VI agreed that the DOE generator/storage sites and the WIPP are exempt from the One-year Exception Reporting Requirements at 40 CFR§761.215(c),(d), and (e) for **existing non-liquid** PCB/TRU waste that is stored and exceeds the one-year storage for disposal time frame on the issued date of any WIPP TSCA PCB landfill approval. This decision will alleviate the burdensome flow of One-year Exception Reports from the various DOE sites and WIPP to their respective EPA Regional Offices that would have resulted had the DOE not been exempted.

EPA Region VI also agreed with the CBFO that "inadequate disposal capacity" was the primary reason that PCB/radioactive was exempt from both the One-year Storage for Disposal and the One-year Exception Reporting requirements. However, once adequate disposal capacity becomes available, the issue of PCB/radioactive waste being exempt from both the One-year Storage for Disposal and the One-year Exception Reporting requirements is nullified. Therefore, the One-year Storage for Disposal (40 CFR §761.65(a)) and the One-year Exception Reporting (40 CFR §761.215(c), (d), and (e)) requirements will be applicable for any non-liquid PCB/TRU waste stored and not disposed of within the one-year storage for disposal time frame after any WIPP TSCA PCB landfill approval date.

The response from the EPA caused some confusion and discussions. Would non-liquid PCB/TRU need to be disposed within one-year of a disposal authorization for the WIPP? Or, would only newly generated waste require disposal within one-year from the date removed from service? As a result, the CBFO requested clarification from the EPA. The EPA issued a clarification on April 22, 2003. In this clarification, the EPA stated that "40 CFR § 761.215(c), (d), and (e) do not apply to DOE's PCB/radioactive waste." This clarification upholds the

original position of the CBFO that TRU waste containing PCBs is not subject to the One-year Storage for Disposal Exception Reporting requirements.

CONCLUSION

PCB/TRU waste destined for disposal at the WIPP is exempt from the one-year storage for disposal restrictions as stated by the DOE CBFO. Although the regulator for EPA Region VI was initially reluctant to accept this position, persistence and patience finally convinced them that this waste will be disposed as the DOE complex is cleaned-up and that DOE cannot be expected to remove PCB/TRU waste with higher priority than other TRU waste.

REFERENCES

- 1 *Chemical Waste Landfills (40 CFR § 761.75)*, Washington DC, U.S. Government Printing Office, Environmental Protection Agency, July 2001.
- 2 *Criteria for Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the Disposal Regulations*, Final Rule 40 CFR 194, 63 FR 27354-27406, Washington DC, U.S. Government Printing Office, Environmental Protection Agency Office of Radiation and Indoor Air, May 1998.
- 3 *Department of Energy's Position Paper on the Applicability of Exception Reporting to PCB/TRU Waste Destined for Disposal at the Waste Isolation Pilot Plant, Carlsbad, NM, Department of Energy Carlsbad Field Office, April 2002.*
- 4 *Disposal of Polychlorinated Biphenyls (PCBs)*, Final Rule 40 CFR 761, 63 FR 35384-35474, Washington DC, U.S. Government Printing Office, Environmental Protection Agency Office of Radiation and Indoor Air, June 1998.
- 5 *Exception Report (40 CFR § 761.215)*, Washington DC, U.S. Government Printing Office, Environmental Protection Agency, July 2001.
- 6 *Storage for Disposal (40 CFR § 761.65)*, Washington DC, U.S. Government Printing Office, Environmental Protection Agency, July 2001.
- 7 *Waste Isolation Pilot Plant Initial Report for PCB Disposal Authorization (40 CFR § 761.75[c])*, Carlsbad, NM, Department of Energy Carlsbad Field Office, March 2002.
- 8 *Waste Isolation Pilot Plant Land Withdrawal Act*, Public Law 102-579, 1992 As amended by Public Law 104-201 (H.R. 3230, 104th Congress--1996).

FOOTNOTES

ⁱ 40 CFR § 761.65(a)(2)(ii)

ⁱⁱ 40 CFR § 761.65(a)(1)

ⁱⁱⁱ 40 CFR § 761.215(f)