

Georgia Department of Natural Resources

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February 25, 1994

MEMORANDUM

TO: ALL PERSONS WHO SUBMITTED COMMENTS ON RULEMAKING

FROM: Tim Cash, Manager, Hazardous Site Response Program 

SUBJECT: Final proposal of Rules for Hazardous Site Response, § 391-3-19-.02, .04, and .05 (the Release Reporting Rules)

EPD wishes to take this opportunity to thank all those who invested the time and effort to study the release reporting rules and to comment on them. As you may already know, the version of the release reporting rules that was placed on public notice on December 15, 1993 was adopted by the Board of Natural Resources on January 26, 1994 and became effective on February 20, 1994. The only changes between the proposed and final versions were corrections of simple typographical errors. A copy of the current Rules for Hazardous Site Response is enclosed; it includes rules both for fee collection and for release reporting, and is essentially identical to the form that will be published by the Secretary of State in the near future.

Public participation on the release reporting rulemaking included three 30-day public comment periods, each of which was advertised through newspaper notices and mailouts to interested parties on EPD's mailing list and each of which included a public hearing. The first period began July 7, 1993. The second began September 30, 1993. All who commented on the July 7 proposed rules were sent a copy of the September 30 version, along with a lengthy letter detailing EPD's response to those comments. EPD was persuaded by the comments on the September 30 version to undertake major revisions. EPD's response to this second set of comments took the form of a mailout on November 8, 1993 of a significantly modified form of the proposed rules. Comments were solicited on the November 8 version and many were received. As a result of the comments, further significant revisions were made before the proposed rules were placed on a third 30-day public comment period starting December 15, 1993. Because of the revisions, many of the comments made on the earlier versions of the proposed rules have become moot. Therefore, the remainder of this letter will address only those comments received in response to the December 15 public notice.

With the exception of Rhone-Poulenc's January 10 letter, EPD's receipt of comments began at the public hearing which was held on January 14, 1994. Due to delays associated with the January 17 holiday, comments were accepted up to January 24 if postmarked by January 18. Comments were received from the following parties:

Della A. Ridley, Safety-Kleen
Steven M. Manzo, Chemical Manufacturers Association (CMA)
Joseph V. LeBlanc, Union Camp
Robert J. Scanlon, Kemira, Inc.
Raymond L. Osborne, Douglas & Lomason Company
June R. Jansen, Consulting Engineers Council of Georgia, Inc.
Tom W. Lehman, Engelhard Kaolin Corporation
Larry Bradbury, Georgia Industry Environmental Coalition (GIEC)
Catherine D. Little, Hunton & Williams for:
 Stone Container Corporation
 Colonial Pipeline Company
Carol M. Wood, King & Spalding
Donna M. Post, Oglethorpe Power Corporation
Mark J. Rawlings, Southeast Paper Manufacturing Company
Paul R. D-Andries, Forstmann & Co., Inc.
Millard O. Eting, Dow Chemical Company
Dr. Mildred MacClain, citizen, Chatham County
Andrew J. Smith, Legal Environmental Assistance Foundation (LEAF)
James L. Burson, Merck & Company
Mitchell B. Ferguson, Rhone-Poulenc, Inc.
C. M. Hobson, Georgia Power Company
Jack C. Dozier, Georgia Water & Pollution Control Association

In accordance with O.C.G.A. 50-13-3(2) of the Georgia Administrative Procedure Act, this document serves as EPD's response to all commenters who requested a written response from EPD regarding the consideration of their comments. However, we have not limited our response only to the latter commenters, but are responding to all comments we received. Comments have been consolidated and rephrased to keep this document to a reasonable length.

SCOPE, LEGISLATIVE INTENT, AND ECONOMIC IMPACT

COMMENT 1: Several commenters expressed concern that, even after addition of the screening process called RQSM, the criteria for notification, reporting, and listing remain overly broad, and "will result in the reporting and listing of hundreds of sites that represent little or no threat to human health or the environment."

RESPONSE: EPD made significant changes (the most prominent was the addition of the RQSM) to the proposed rule to insure that trivial sites will not end up on the Hazardous Site Inventory (HSI). EPD will further address this concern in the upcoming rules relating to Corrective Actions.

COMMENT 2: Union-Camp noted that an economic impact study has not been done.

RESPONSE: It is true that an econometric analysis of the release reporting rules has not been conducted for EPD by a recognized expert. Our state law does not mandate such a requirement nor does EPD rely on economic factors in deciding what action must be taken to protect human health and the environment. EPD has nevertheless been sensitive about economic impact from the beginning of the rulemaking process and the final release reporting rules reflect the efforts made to minimize the economic impact and still meet the requirements of the legislation.

COMMENT 3: Kemira and Rhone-Poulenc commented that the rulemaking was "driven by statutory deadlines rather than well thought-out risk assessments", and they volunteered their assistance in seeking legislative relief from the July 1, 1994 deadline for publication of the HSI.

RESPONSE: EPD has been working on the release reporting rules since the fall of 1992. Extending the statutory deadline would not necessarily ensure that a consensus could be reached on this rule. Extending the deadline would mean that EPD would be seriously delayed in making progress towards implementing this important program; consequently, the disadvantages of postponing this rulemaking outweighed the benefits that would be gained. EPD plans to present the remaining corrective action rules to the Board for adoption in June 1994.

COMMENT 4: GIEC, CMA, and King & Spalding suggested that only those sites that should be designated as needing corrective action need be put on the HSI, since a stigma attaches at the mere listing of a site on the HSI.

RESPONSE: It is not the intent of the rules to place on the HSI sites which clearly do not pose a threat to human health and the environment. When the HSI is published, the document will include an explanation of how sites come to be listed and how they come to be designated as needing "corrective action". These explanations should provide definitive statements about the threats posed by a site and thus lessen any potential stigma for sites that are *not* designated as needing corrective action.

COMMENT 5: CMA and Rhone-Poulenc expressed concern that:

"the listing of contaminated properties on the HSI will discourage the purchase and redevelopment of vacant commercial and industrial sites. Instead, companies would be encouraged to locate their facilities on undeveloped 'greenfield' sites, leaving the vacant commercial and industrial sites to remain idle."

RESPONSE: We understand this concern. We are expediting our process to issue rules on sites needing correction actions. This will lead to the identification of sites which do not need further attention and remove the discouragement toward purchase of these properties.

COMMENT 6: Several commenters insisted that the development of release reporting rules should be concurrent with development of corrective action rules, and that both should be promulgated as a single package (see also comment 3).

RESPONSE: The statutory deadline for establishing and publishing the HSI is July 1, 1994. Therefore, EPD could not delay promulgation of the release reporting rules. However, we are expediting the preparation of the corrective action rules.

COMMENT 7: Several commenters asked that a flow chart be a part of the rulemaking package and that the flowchart indicate what happens to a site once it is listed on the HSI.

RESPONSE: EPD agreed that a flow chart would be a useful device for identifying the decision-points in the regulatory process defined by the rulemaking. Such a flow chart was distributed with the November 8 mailout.

COMMENT 8: Several commenters stated that the inclusion of, and specific nature of, the Reportable Quantities Screening Method (RQSM) "frustrates public access to information and is inconsistent with the intent of the legislature."

RESPONSE: EPD included RQSM in the final proposal not to block people's access to information but to try to distinguish those instances of contamination about which people need to be alerted from those that are of less immediate concern to the public. Use of the RQSM will not limit the public's access to information submitted to EPD.

COMMENT 9: Several commenters encouraged EPD to find some means by which to involve the community stakeholders in decision-making concerning contaminated sites.

RESPONSE: EPD is committed to improving public involvement in its regulatory programs and encourages interested parties to become students of the regulatory process. The release reporting rules are not biased against certain categories of stakeholders. Anyone can inform EPD of a contaminated site. The RQSM is neutral to the socioeconomic condition of the neighborhood in which a contaminated site is found. If stakeholders convince the Director that a site may pose a danger to human health or the environment even if it does not exceed a RQSM threshold score, the Director has the discretionary authority to place that site on the HSI.

COMMENT 10: Those commenters who raised comments 8 and 9 also requested that EPD's rules include criteria for "looking at low income communities or communities of color".

RESPONSE: EPD believes that the health and welfare of all persons must be considered in rule promulgation. The adopted rules do this.

NOTIFICATION REQUIREMENTS -- GENERAL

COMMENT 11: Several corporate commenters advanced the idea that if a site does not exceed a RQSM threshold, then the owner should not have to notify.

RESPONSE: Arguing against the suggestion are the following:

- Not every property owner--nor even every consultant--will have the specialized information that EPD has. EPD will have access to expertise and resources needed to make determinations about likely threats to human health and the environment.
- Notifications about what at first appears to be trivial groundwater contamination may have a collective or cumulative value. A notification from one property could lead EPD, upon examination of site data, to discover on another property a serious threat to a drinking water supply in time to prevent the loss of that supply.
- RQSM emphasizes direct human exposure and is not designed to assess whether a release poses a threat to agriculture, structures, or the natural environment. If EPD is not informed about contamination through a broad-based notification requirement, we won't have the opportunity to evaluate the environmental (as opposed to direct human health) impacts.

COMMENT 12: GIEC requested that the notification criteria for groundwater releases be linked with distance to drinking water wells, that the notification criteria for soil distinguish between subsoils and surface soils, and that the latter distinguish among certain site use categories.

RESPONSE: EPD agrees that these locational factors are relevant to the issue of whether or not a site is actually posing a threat to human health or the environment, and the magnitude of the threat. The RQSM explicitly addresses this issue and subsequent rulemaking on prioritization for corrective action will further address it. EPD intentionally developed the notification aspects of the rules to remove all ambiguity as to those releases of which EPD should be notified. The response to comment 11 is equally relevant here.

COMMENT 13: Several commenters repeated their previous comments that the triggers for notification (and final reporting) should be the federal Reportable Quantities (RQs) under CERCLA.

RESPONSE: HSRA is not a spill reporting statute. The release reporting rules proposed under HSRA are principally designed to address current environmental contamination from historical releases. It is very difficult with most historical releases to estimate with certainty whether a federal RQ is involved, a fact which has in the past led the cautious property owner or responsible party to report *any* discovery of contamination. In Georgia, the spill reporting

statute is the Georgia Oil or Hazardous Material Spills or Releases Act, O.C.G.A. §12-14-1, which references the federal RQs at 40 CFR 302. Many spills that would be reportable under the spill statute may not be subject to notification requirements under HSRA.

COMMENT 14: Englehard suggested that de minimis releases be excluded from notification and that such releases be defined as those that involve less than either the federal RQ or one-half the RQ.

RESPONSE: The previous response is appropriate here, in that the ability of the discoverer to readily quantify a historical release is usually poor. Again, RQs are most appropriate for recent spills. The release reporting rules have several features which defuse the de minimis spill issue. One is the responsible party's ability to clean up the spill before notification is due. Another are the quantity thresholds in the screening method (RQSM) that EPD uses to evaluate releases that it has been notified of. If the released quantity is below a RQSM quantity factor threshold, then the release is for all practical purposes handled as a de minimis release and the site will not be placed on the HSI. The RQSM quantity factor threshold is the most applicable of the following quantity expressions: 1 pound, 50 gallons, 130 square feet, or 10 cubic yards. The 1 pound threshold corresponds to the federal RQ that applies to many of the releases that EPD is aware of.

COMMENT 15: Colonial Pipeline and Oglethorpe Power Corporation suggested that EPD clarify that the term "property owner" refers to the person who possesses title to real property since only said person could place a notation on property instruments, such as deeds.

RESPONSE: A similar comment was received during the first comment period and responded to on September 30. EPD has been advised that the terms "possession of title" and "property owner" have the potential for being similarly ambiguous, and that attempts to further define "property owner" must be approached cautiously. Consequently, a change in response to this comment was determined to be unwarranted.

COMMENT 16: CMA commented on the proposed rules saying "they require sampling and analysis for each minor release to determine whether the release is reportable" and implied that over 1900 substances would have to be sampled for.

RESPONSE: The rules include an explicit statement at Rule 391-3-19-.04(1) which explains that there is no duty to sample prior to notification. Neither HSRA nor the release reporting rules specify the process by which releases are discovered -- or that they must be discovered. The release reporting rules reflect the fact that people do discover (and in some cases are required to by certain other laws and regulations), but it only creates requirements for actions that logically come *after discovery*. The discovery process has not been materially affected by the passage of HSRA or by the adoption of the release reporting rules.

COMMENT 17: Union Camp urged the establishment of uniform sampling protocols.

RESPONSE: Strict sampling protocols may be stipulated for those site investigations that are required *after* contamination is discovered, but the discovery process itself is not in EPD's purview. In general, EPD would choose not to constrain the application of reasonable methods by site assessment professionals.

NOTIFICATION REQUIREMENTS -- GROUNDWATER

COMMENT 18: Merck and CMA "believe that groundwater should be managed based on its current or potential future use, not on the philosophy that all ground water should be protected and managed as drinking water" and they charge that RQSM does not take into account the type of groundwater use.

RESPONSE: HSRA does not direct EPD to establish groundwater use classifications for Georgia. RQSM does, however, take groundwater use into account because it typically screens out sites where contaminated groundwater is not *currently used for drinking water*. Also, RQSM does not equate agricultural or industrial use of groundwater as drinking water use, nor does it speculate about future use of an aquifer.

COMMENT 19: Several commenters suggested that the notification thresholds for groundwater should be MCLs and/or U.S.EPA's Health Advisories (HAs).

RESPONSE: The proposed rules were structured such that the confirmation of an above-threshold concentration in a single well would trigger notification to EPD. Without additional information, sample data from a single well cannot be assumed to be representative of the highest concentrations in a plume. The detection of trace concentrations may be a warning that a serious problem is about to develop at the same well or that a serious problem has already developed at some distance. At the notification stage, comparing sample results to toxicological benchmark values is inappropriate. MCLs were brought into play within RQSM. HAs were not used in RQSM because some of the MCLs and HAs are inconsistent. EPD intends to address this issue by considering the use of HAs in developing cleanup standards. These cleanup standards are likely to have considerable relevance to the criteria for removing a site from the HSI.

COMMENT 20: GIEC urged EPD to establish a clear policy on filtering of groundwater samples, on the premise that without such policy the rules will require unfiltered samples.

RESPONSE: Filtering can be and is often done to determine whether the contamination in a sample is attributable to the contaminant actually being in the groundwater versus it being the result of sampling error or deficiencies in well construction. Filtering is warranted in such cases. The decision to proceed with filtering rests with the property owner and is typically based upon professional advice. The discretion to use filtered versus unfiltered results provides a great deal of flexibility.

NOTIFICATION REQUIREMENTS -- SOIL THRESHOLDS

COMMENT 21: Several commenters stated that the soil concentrations (soil NCs) in Appendix I of the Rules "greatly overstate the true potential for groundwater contamination".

RESPONSE: Where the water table is deep, the overlying materials have a high absorptive capacity, and the recharge rate is low, the above statement is certainly true. EPD would not agree, however, that it is true for all sites, and certainly not for the most vulnerable parcels of groundwater. Not everyone who collects a grab sample of soil "to see if it is contaminated" is going to know whether the hydrogeological setting is vulnerable, nor can they be counted on to anticipate whether someone might choose to install a drinking water well there in the near future.

COMMENT 22: Several commenters further stated that "many" soil NCs are based on groundwater reference values that are "more stringent than would be suitable for continuous lifetime consumption as a drinking water supply".

RESPONSE: EPD is not aware that any groundwater reference value, except for xylene's, is lower than the substance's MCL, the MCL being that level that U.S. EPA's drinking water program considers to present an acceptable risk for continuous lifetime consumption of drinking water. The MCL for xylene is 10 mg/L and the groundwater reference value used was 2 mg/L. The MCL for xylene is so high that few people would find drinking water with that level to be acceptable from taste and odor considerations.

COMMENT 23: The same commenters as in Comment 21 recommended that soil NCs should have a dilution-attenuation factor (DAF) built in and that the DAF should at least equal 100. GIEC linked this suggestion with the concentrations given in the DAF=100 column in a table in the U.S. EPA document entitled "Draft Soil Screening Level Guidance".

RESPONSE: The leaching model used by EPD to derive some of the soil NCs has an explicit DAF of 1; however, since our choices for inputs (groundwater reference values and partition coefficients) did not parallel the extreme conservatism of the U.S. EPA inputs, the soil NCs compare very favorably to the DAF=100 numbers generated by U.S. EPA. Compared to U.S. EPA's numbers, 30% of EPD's soil NCs have DAF-equivalents greater than 100; 97% have DAFs greater than 1. In the U.S. EPA document, the statement is made that soil screening "levels are not necessarily protective of all known human exposure pathways, reasonable land uses, or ecological threats"; it goes on to recommend that a DAF of 1 be used "when sites are located in areas of unusually shallow water table".

COMMENT 24: GIEC and Douglas & Lomason suggested that those soil NCs that are established on the basis of direct contact or ingestion by humans are not appropriately applied to soils that are not "surficial".

RESPONSE: Intuitively, EPD agrees. However, subsurface soils may become surface soils. If EPD ignores ("deregulates") soil contamination that is discovered below the surface which is less concentrated than a leaching-based soil NC but more concentrated than an ingestion-based soil NC, then the discovery of that subsurface contamination will not have to be made public. Since all future earthmoving operations are not expected to be preceded by contamination assessments, then an earlier discovery has little chance of preventing the emergence of the soil in a cut or fill operation. It is for these reasons that EPD determined that there should be only a single concentration that triggers notification. EPD found opportunity to address this issue in the on-site exposure pathway of RQSM. Our response to this issue will be further expressed in procedures by which sites are determined to need corrective action and corrective actions are deemed acceptable.

COMMENT 25: Kemira stated that pH notification triggers are "fundamentally incompatible with soil analysis" because pH is a measure of the aqueous leachate.

RESPONSE: Since a standard procedure for determining soil pH does exist (Method 9045A in SW-846) and since it is understood that the direction of the method's errors at extremely high and low pH levels is such that borderline cases will not trigger notification, EPD sees no reason to revise the pH trigger.

COMMENT 26: GIEC resubmitted its comments on the September 30, 1993 version of the EPD document "Derivation of Reportable Soil Concentrations".

RESPONSE: A revised version of the document was produced by and dated December 15, 1993. Many of GIEC's comments are made moot by the revisions.

NOTIFICATION REQUIREMENTS -- EXCLUSIONS

COMMENT 27: Several commenters recommended that the exclusion at 391-3-19-.04(2)(a) allow more than 30 days for discovered releases to be cleaned up before notification; suggested duration was either 60 or 90 days.

RESPONSE: The rules are consistent with the legislative intent that the State be informed of releases within 30 days of discovery. The deadline for notification is not an absolute deadline for establishing those site conditions that will determine EPD's response. That is, the final determination by EPD to list a site on the HSI will come only after (1) EPD has carried out the RQSM evaluation and verified that a reportable quantity is involved, (2) the owner has been notified of EPD's intent to list the site, and (3) a 45 day response period has passed. Therefore, if EPD has zero turnaround time for processing, the owner has at least 75 days after discovery to generate evidence that a reportable quantity no longer exists at the site. EPD acknowledges that even simple soil removal projects take more than 30 days to complete, given the waiting time for lab analyses and acceptance of the waste by a commercial TSD facility. It does not however take more than 30 days to procure a container in which excavated soil can be placed; once the soil is containerized, the soil is no longer

"soil" and a notifiable condition no longer exists. In conclusion, it is feasible to discover certain types of notifiable conditions and, by prompt action, to either (1) eliminate that condition before having to notify, or, failing that, (2) to prevent the release from causing the site to be listed on the HSI.

COMMENT 28: GIEC suggested that the exclusions from notification at 391-3-19-.04(2) should apply equally to reporting.

RESPONSE: To exclude releases from reporting is to exclude them from application of RQSM and possible listing on the HSI. EPD intends to apply RQSM to those releases that are referred to the Hazardous Site Response Program from other EPD programs (see the exclusion at 391-3-19-.04(2)(i)). It is EPD's intent to list some SWMUs at permitted hazardous waste facilities on the HSI.

COMMENT 29: Several commenters requested that the petroleum exclusion at 391-3-19-.04(2)(h) should include all categories included in CERCLA's "petroleum exclusion".

RESPONSE: This comment was responded to on September 30 but will be repeated here: "The purpose of [exclusion (h)] is to exclude a narrow, well-defined, but large-volume set of ubiquitous commercial products from [notification] requirements under HSRA. The so-called petroleum exclusion in CERCLA is merely an exclusion from the definition of hazardous substance and has limited relevance to rules promulgated under HSRA. The phrase 'crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance' potentially includes a wide range of poorly known materials which EPD does not wish to exclude from [notification] requirements."

COMMENT 30: GIEC suggested that the petroleum exclusion should include biomass-based fuels such as ethanol fuels made from corn.

RESPONSE: Ethanol is not a regulated substance under HSRA; therefore, the release reporting rules are blind to the presence of ethanol.

COMMENT 31: Several commenters asked that the point source exclusion at 391-3-19-.04(2)(e) be expanded to clearly apply to all NPDES-permitted discharges, sediments in permitted wastewater treatment systems, and sludges generated in permitted wastewater treatment systems.

RESPONSE: The release reporting rules have no language that would cause the aboverferenced items to be subject to notification requirements under HSRA. The exclusion that produces the commenters' desired effect is at 391-3-19-.04(2)(i). Furthermore, since the rules do not include any specific criteria for notification of releases to surface water, no releases to surface water are subject to notification requirements. Regardless whether stormwater runoff is a point or non-point discharge, it is not subject to notification under HSRA.

COMMENT 32: LEAF and the Sierra Club urged the reinstatement of notification criteria for surface water releases as proposed in the July 7 and September 30 public comment drafts, and urged that the petroleum and surface mining exclusions be dropped.

RESPONSE: EPD dropped the surface water criteria when it became clear that there was no regulatory gap concerning surface water that needed closing through HSRA rulemaking. When in-stream or in-lake quality is being affected by a fixed, land-based source that may not currently be regulated under the Georgia Water Quality Control Act, that source can be "captured" under the notification criteria for either groundwater, soil, or discarded waste. EPD has already explained to LEAF the rationale for excluding petroleum. The exclusion for a limited set of activities at mines permitted under the Surface Mining Act was added to avoid interference with legitimate mining operations. The exclusion's language does not extend to the spilling or discarding of regulated substances that are not naturally-occurring and thus not intrinsic to the mining operation, nor does it refer to releases that may arise from off-site transportation of ores or minerals or from the beneficiation of same.

COMMENT 33: GIEC, Oglethorpe Power, and Georgia Power requested that an exclusion be made for releases regulated under TSCA and also requested that the soil NC for PCBs be deleted.

RESPONSE: EPD continues to conclude, as stated in our September 30 response to earlier comments, that the release reporting rules will not lead to "an inconsistent and inefficient response to releases of PCBs". The primary reason why EPD chooses not to eliminate the PCB soil NC is the fact that PCB may be found at mixed waste sites where the PCB is a minor but still significant component of the problem. If all PCB releases came from transformer ruptures, EPD would surely have included a TSCA exclusion. EPD does not wish to imply that current authorities are insufficient to address PCB spills or other releases where PCBs predominate, and certainly does not intend to interfere with PCB cleanups conducted under authority of TSCA. However, in those cases where PCB contamination is not the result of a "typical spill situation" and the Regional Administrator of U.S. EPA will have to determine whether corrective action is needed and what form the corrective action should take, rules established under HSRA can promote consistency between EPA and EPD actions. The release reporting rules do not require, and EPD does not expect to receive, notifications from electric utilities for PCB transformer and capacitor releases that are detected and cleaned up promptly (as most inevitably are). Furthermore, EPD intends to maintain the status quo with regard to PCB releases, with the one exception of listing on the HSI any site where PCB releases may pose a threat to human health or the environment. Finally, it is not accurate that the Hazardous Waste Trust Fund Advisory Committee "generated" a draft TSCA exclusion at its February 16, 1993 meeting. What actually happened was that EPD brought up the subject at said meeting, and due to the number of other issues discussed and general time constraints, a sense of the meeting was not concluded on this particular subject. EPD had not completely studied the issue before bringing it up at the meeting, and upon further study determined that the exclusion was neither needed nor warranted.

COMMENT 34: GIEC recommended addition of the term "collection" to "treatment or disposal" in the exclusion at 391-3-19-.04(2)(i) and stated that the intent of HSRA was not to regulate units "used for the collection of wastewater in public or private sewers".

RESPONSE: Exclusion (i) is designed merely to eliminate redundancies in reporting. It should be noted that the text following "provided that" limits the applicability of exclusion (i) to those releases that have reporting standards and are accordingly reported. EPD is not aware of any state or federal law or regulation that clearly requires a property owner who discovers a release of a regulated substance from a chemical sewer to notify any program, other than EPD's Hazardous Site Response Program, of the release. Regulations concerning monitoring are clear, on the other hand, for permitted disposal and treatment facilities.

COMMENT 35: GIEC suggested the deletion of "by a private individual" from the commercial product exclusion at 391-3-19-.04(2)(j).

RESPONSE: The deletion would be consistent with the common interpretation that EPD intends to follow in enforcing this provision; however, EPD must be concerned about judicial interpretations. The retention of "by a private individual" helps convey an implicit standard of quantity and circumstance, and will help prevent abuses of the exclusion.

COMMENT 36: Safety-Kleen recommended that "consumer" be defined.

RESPONSE: This comment perhaps was triggered by earlier versions of the release reporting rules. The term "consumer" does not appear in the final rules, so there is no need for a definition.

REPORTABLE QUANTITIES SCREENING METHOD (RQSM)

COMMENT 37: Several commenters detected a typographical error in Appendix II (on-site pathway threshold score should be "20").

RESPONSE: The error was corrected as commenters suggested.

COMMENT 38: GIEC asked that the distance to well or spring be clarified as applying only to those used for human drinking water.

RESPONSE: The worksheets in Appendix II necessarily use shorthand language, therefore, the suggested revision was not made. It is clear in the guidance manual however that the reference is to "a well or spring that is used as a drinking water supply".

COMMENT 39: GIEC questions EPD's authority "to regulate suspected releases [under the on-site exposure pathway] unless information is available to confirm that a release has occurred to soil."

RESPONSE: If confirmatory data was in hand, then the release would be "known", not "suspect". HSRA clearly intended suspected sites to be listed on the HSI (see OCGA 12-8-97(a)). As stated in the December 15 version of the guidance manual:

"EPD may determine that a release is suspected if there is strong visual evidence such as stained soil, visible substances, or stressed vegetation, combined with sufficient other evidence, such as knowledge of the chemicals handled at the site or facility. A determination that a release is suspected can also be based on strong historical evidence in the absence of current visual or sampling evidence."

COMMENT 40: GIEC objected to certain adjustments in the "distance to nearest resident" factor under the on-site exposure pathway.

RESPONSE: A value of "1" was used instead of "0" for the most distant case to keep the site score from collapsing to zero for those sites that happen to be more than a mile from a house, etc.

COMMENT 41: Several commenters suggested revisions to, additions to, or clarifications of the RQSM guidance manual that was distributed along with the December 15 proposed rules.

RESPONSE: Opportunities abound for improving the RQSM manual and EPD intends to let the manual grow as the need arises. EPD wishes to assure all commenters that resistance to codification of the manual was based on our wish to allow such growth, not on an intent to capriciously set policy on major issues. EPD will not reverse any policy that may be clearly stated in the (corrected) December 15 version, without first informing the public of the proposed change and giving it opportunity for comment.

COMMENT 42: The CMA stated that RQSM will be difficult to implement at non-industrial sites.

RESPONSE: EPD disagrees, since RQSM was designed to be equally appropriate for industrial and non-industrial sites.

COMMENT 43: The CMA further commented that RQSM will do little to screen out non-hazardous sites.

RESPONSE: EPD further disagrees. RQSM (together with the pathway threshold scores of 10 and 20) eliminates from further consideration a large percentage of the sites that will be subject to release notification. EPD set up RQSM specifically to define a "reportable quantity" and indirectly to define those sites that may pose a threat to human health and the environment.

COMMENT 44: Several commenters recommended that the RQSM threshold score for the groundwater pathway be raised from 10 to 25.

RESPONSE: EPD assumes that the value of 25 was suggested by its use in NCAPS (National Corrective Action Priority System) as a breaking point between low priority and medium priority sites. As our response to the next comment points out, scores generated by RQSM and NCAPS are not comparable. Although the threshold of 10 may capture some sites that may not appear to be causing a significant problem, raising the threshold to 25 would screen out many sites that clearly need to be looked at more closely.

COMMENT 45: Merck and Kemira suggested that RQSM be replaced by NCAPS in its unmodified form.

RESPONSE: While it is true that RQSM evolved out of NCAPS, there are some significant distinctions other than the site scores generated by them.

RQSM

Determines whether sites should go on the Hazardous Site Inventory

Binding on agency

Uses a threshold score for "off-on" decision. If site score is less than threshold, a reportable quantity is not involved. If site score is greater than threshold, corrective action may still not be required.

Considers only two exposure pathways: groundwater and on-site

Quantity factor well-defined in guidance; used both for groundwater and on-site pathways.

Soil contamination has to be above levels in Appendix I to be a "known release".

Use of groundwater for any purpose other than drinking water implicitly weighted at no more than 16% of the weight given to drinking water.

Possible future groundwater use for drinking water implicitly weighted no more than 16% as high as current use.

NCAPS

Suggests to the agency how urgent is the need for a cleanup order at RCRA treatment and storage facilities

Not binding on agency

Ranks all sites from highest to lowest priority. Those sites with scores less than 25 tend to be considered to be low priority for immediate corrective action.

Considers four exposure pathways: groundwater, surface water, air, and on-site

Quantity factor ambiguous for groundwater pathway and not used for on-site pathway.

Any soil contamination greater than background levels is an "observed release".

Use of groundwater for industrial/agricultural purposes explicitly weighted at 36% of weight given to drinking water.

Possible future groundwater use for drinking water weighted 64% as high as current use.

"Suspected" release to groundwater generates a factor subscore of 10, and "potential future" release gets subscore of only 5.

On-site pathway considers abandoned waste, as well as contaminated soil.

"Possible" release to groundwater generates a factor subscore of 10, which drives site score upward for sites with no monitoring data.

On-site pathway considers only contaminated soil, since NCAPS assumes site is an operating facility.

Despite the numerous differences cited above, RQSM strongly resembles NCAPS in its general structure and in its mathematical algorithm for combining the factor subscores into an overall site score. One cannot however assume that a score generated by NCAPS will have any particular relationship to the site's RQSM score.

COMMENT 46: Several commenters asked for assurances that RQSM would not be used to determine a site's need for corrective action.

RESPONSE: RQSM clearly will have an effect on which sites are designated as needing corrective action, because only those sites that are on the HSI can be designated on the HSI as needing corrective action. EPD is now studying the means by which objective, defensible decisions can be made concerning the corrective action designation. We do not intend to propose that all sites on the HSI shall be designated as needing corrective action.

COMMENT 47: GIEC and Dow recommended that U.S. EPA's Health Advisories (HAs) be used along with MCLs in RQSM's groundwater pathway.

RESPONSE: MCLs are clear and direct and do not trigger a debate. Health Advisories are not as straightforward, and that is why HAs were not given the same deference as given to MCLs. A single chemical has potentially four different HAs for adults and three more for children, ranging over several orders of magnitude. HAs are not promulgated standards. There are no clear criteria for which advisory level is most appropriate in a certain context. (See also responses to Comments 20 and 22.)

COMMENT 48: GIEC suggested that the phrase "if the Director", used twice in 391-3-19-.05(2), be changed to "when the Director".

RESPONSE: "If" implies that alternatives exist (whether to place a site on the HSI or not). "When" suggests that the alternatives consist merely of timing differences. EPD is not sure that the commenter's goal would be accomplished by the suggested change. Perhaps the commenter assumed that 391-3-19-.05(2) referred only to sites for which EPD had received notifications and for which a final HSI determination is obligatory.

OTHER COMMENTS

COMMENT 49: LEAF commented that the rules fail to establish a timetable for required agency actions, specifically those discretionary requests by the Director for additional information (see 391-3-19-.04(1) and .04(4)) and the determination by the Director that a reportable quantity has been exceeded (391-3-19-.05(1)).

RESPONSE: Some clarification is warranted here to make sure the commenter understands the reason why certain requests for information at Rule .04 are discretionary. At .04(1), the sentence at issue is an attempt to clarify that the Director always has the authority to request that a party sample or otherwise generate information if deemed reasonable and necessary. The second sentence of .04(4) serves the same purpose. EPD is confident that the release reporting rules clearly state that one has a duty to provide the information requested at 391-3-19-.04(4)(a)-(h) within 30 days of discovering a release and that this obligation is not contingent on the Director requesting such information. Concerning Rule .05(1), EPD acknowledges the reasonableness of LEAF's concern that EPD will not move in a timely fashion to verify conditions at all sites. EPD has worked hard to develop a program and a set of rules that promotes rapid turnaround of required submissions. Some sites and some responsible parties will not be "resolved" quickly, no matter how hard EPD works, but for the majority of sites, the decision whether or not to list on the HSI should be easily made within the 90 days the commenter suggested as a deadline.

COMMENT 50: Colonial Pipeline poses the question "as to whether EPD can provide a date certain for listing of sites on the [HSI] or provide an expansion of the statutory appeal process."

RESPONSE: The first part of the question was hopefully addressed in the response to the previous comment. The second part deserves elaboration. There never was a statutory appeal opportunity that lapsed a certain number of days after the discovery of a release or after the notification to EPD of the release. When the legislature passed HSRA in 1992, an opportunity was specifically provided at OCGA 12-8-97(f) to stay the provisions of OCGA 12-8-97(b) and (c), which concerned notices to property records, by filing a petition within 30 days of a site's listing on the HSI. That "appeal" provision would help to assure that due process is followed before the state requires the property owner to blemish the title to his land through a deed notice. When the legislature amended HSRA in 1993, the appeal provision was kept in its original position relative to deed notices, but the trigger for the deed notice requirement was shifted from the listing of a site on the HSI to the point where the Director designates a site on the HSI as involving a known release for which correction is needed. EPD considers the corrective action designation to be a consequential action and acknowledges that the due process protection provided by an appeal is warranted. EPD however is comfortable with the amended HSRA's silence concerning an appeal process that might be triggered by the mere listing of a site on the HSI. The rules provide the owner, at 391-3-19-.05(2), up to 45 days after the owner is duly notified of the Director's "intent to list" in which he can not only submit a required report but can submit additional information that may lead the Director to reverse his decision.

Response to Comments -- Release Reporting Rules

February 25, 1994

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COMMENT 51: Several commenters suggested that the release reporting rules should include site-specific, risk-based cleanup criteria.

RESPONSE: This comment properly applies to future rulemaking on corrective action requirements. It should be noted, however, that RQSM can be characterized as "site-specific" and "risk-based".

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Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 15th inst.

in relation to the above mentioned matter. I am sorry that I cannot give you a more definite answer at this time, but the matter is still under consideration.

I will be glad to advise you again as soon as a final decision has been reached.

Very respectfully,
Yours truly,
[Signature]

[Name]
[Title]

[Address]

[City, State, and Zip]

[Phone Number]

[Fax Number]

[E-mail Address]

[Business Hours]

[Additional Information]

[Closing Remarks]

[Final Signatures]

[Final Contact Information]

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