

August 4, 2009

Health Profile Rulemaking

There were four responses received from stakeholders on the proposed regulation: two from consulting firms and two from facilities.

COMMENT #1: A consulting firm offered an evaluation regarding the potential risk to human health from an on-going composting operation. The conclusion was “that the potential for exposure of constituents from the ... composting operation to the offsite community is negligible...”

Along a similar line of thought another commenter stated “It seems to me that a new manufacturing facility in the State of Missouri that generates hazardous waste in containers, tanks, or containment buildings or for that matter storing commercial chemical products in an environmentally sound manner has the same risk profile for chronic exposure and exposure pathway(s). ...I believe that if one were to "total" the actual emissions (ground water, surface water, air, etc.) to the environment from most HW facilities, they would be relatively insignificant when compared with other sectors of the economy.”

RESPONSE #1: The statute requires all hazardous waste treatment and disposal facilities submitting a permit application to conduct a profile of the environmental characteristics (i.e. Health Profile). Since the composting operation would be considered a Subpart X Miscellaneous Unit conducting treatment and will be permitted as such, a Health Profile will be required. The workgroup has tried to revise the proposed regulation to allow for such a risk based approach as outlined in your letter. The workgroup plans to draft a guidance document to outline the specific steps that would be required, including Subpart X Miscellaneous Units. Our goal is to provide approaches that more accurately assess the potential for impact to the environment, rather than the rule being a “one size fits all” approach. Please contact us if you would like to be a part of the guidance document preparations. No changes to the proposed regulation were made.

COMMENT #2: One commenter expressed concerns that “...if one of the technologies (incineration, combustion, miscellaneous units) were employed as part of the corrective action program, upon permit renewal (assumably on a 10-year cycle) then a health profile for the entire facility would be required, which would potentially have a stifling effect on a corrective action program.”

The same commenter then suggested an approach to developing health data against which illness and disease rates in the area surrounding a facility subject to the statute would be compared. The commenter noted, “I imagine most facilities have a first line of information source which could come from data from the on-site workers at hazardous waste management facilities.” adding that “...there could be some type of a tiered process where a Owner\Operator could be given a choice to voluntarily disclose the medical monitoring (to DHSS or DNR) of on-site haz.waste workers (with their consent) prior to having to go down the step of an initial health profile and\or risk assessment\health assessment.” This health information would be combined with a Job Safety Analysis to evaluate whether a health risk is present. If a health risk is identified, then a more stringent health profile process would be followed.

RESPONSE #2: Regarding the first portion of the comment, as stated in response to comment 1, all permitted treatment and/or disposal units are required to have a Health Profile, currently and after the proposed revision. That has not and will not obligate the whole site to have a Health Profile. If a facility is conducting remediation under corrective action and that remediation activity does not include a regulated treatment or disposal unit, then no Health Profile is required for those activities.

Regarding the second part, there are potentially multiple problems in incorporating this approach. While intriguing, the proposal raises issues regarding the use and possible public availability of personal health information, the appearance of using workers as test subjects, the impact of turnover of facility personnel, and the difficulty translating the results of work-site exposures of a typically small workforce onto a much larger community in the area of the facility. These and other concerns all combine to lead the department to conclude this is a rather impractical approach; therefore, no changes to the proposed regulation were made.

COMMENT #3: A commenter noted that, “10 CSR 25-7.264 (2) (P) 1. B. of the proposed regulation for other treatment units proposes only two options for what may constitute a health profile. An additional option should be included which follows the information required by 40 CFR 270.10(j) or 40 CFR 270.10(l). This additional option should be included in the proposed regulation to provide clear direction in the guidance document.”

RESPONSE #3: 40 CFR 270.10(l) is designed for and specific to assessing risk from combustion units, and its applicability to ‘other treatment units’ could be difficult. Likewise, 40 CFR 270.10(j) is more generic in its requirements, but the Federal regulation specifically applies these criteria to only surface impoundments and landfills. The requirement for ‘other treatment units’ under the proposed (2)(B)1, in general terms, could include an evaluation using the information such as under 40 CFR 270.10(j) or (l). The department thinks that, rather than describing in the proposed regulation how the criteria under 40 CFR 270.10(j) or (l) could be included in a health profile for ‘other treatment units’, the guidance document being planned for assisting facilities with ‘other treatment units’ to comply with the proposed regulation should discuss using the criteria of, or similar to 40 CFR 270.10(j) or (l) in fulfilling the requirement for an evaluation under (2)(P)1.B.1. Therefore, no changes to the proposed regulation were made.

COMMENT #4: Another commenter said, “...Paragraph (2)(A) in the proposal is vague (e.g. "may increase") and could be interpreted that nearly any permit modification/change would require an updated health profile or at least a determination that an updated health profile is or isn't required. The term "treatment" is also broadly defined by regulation and could require almost any change at a TSD to trigger such requirements. I am also assuming that modification of a unit pertains to an engineered structure as opposed to a procedural change such as a change in the waste analysis plan or contingency plan.”

RESPONSE #4: The multitude of possible changes that may take place at a treatment or disposal facility makes the listing of specific changes triggering a requirement for an updated health profile impractical. Some changes, such as to a waste analysis plan, might or might not increase the potential for human exposures. The department believes this potential resulting from changes

to the facility will have to be individually addressed with each change at a permitted facility or outlined in the guidance document. The focus of the guidance document is to describe how to apply the Health Profile provisions in a manner that takes into account the potential for environment first. No changes to the proposed regulation were made.

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