May 5, 2008

Thomas UyBarreta
Mailcode 3WC21
RCRA State Programs Branch
U.S. EPA Region III
1650 Arch Street,
Philadelphia, PA 19103-2029

RE: Docket Number EPA-R03-RCRA-2008-0256

Dear Mr. UyBarreta:

Please accept my comments opposing EPA's authorization of revisions to Virginia's hazardous waste regulations, specifically those rules that were promulgated and adopted under non-HSWA authority. This includes, but is not limited to, the RCRA Burden Reduction Initiative (Revision Checklist 213). Under federal statute, none of the states are allowed to adopt "requirements less stringent" than those that had been adopted "upon the effective date of regulations under this subchapter."[1] Creating the language found at 42 USC 6929, Congress assured that the standards set under the Resource Conservation and Recovery Act of 1976, as amended by HSWA, would be the "minimum standard" adopted by the states, and that subsequent regulations at the state level would not fall below this standard. It would seem logical that if Congress did not intend for states to adopt standards less stringent than these original rules -- and has in fact barred states from doing so -- that Congress did not intend, and therefore has also barred, EPA from promulgating them.

Many of the rules adopted by Virginia are less stringent than those they replace; a fact that does not appear to be supported by federal statute.

It is clear from the 1984 Hazardous and Solid Waste Amendments to 42 USC 6929 that Congress was concerned that EPA might undermine the RCRA and HSWA through regulation, specifically with regard to manifest notification[2]. The RCRA Burden Reduction Initiative – all of which is promulgated pursuant to non-HSWA authority – removes the (manifest) requirement (40 CFR 268.7(b)(6)) that notification be sent to the state with each shipment of waste-derived

[1] 42 USC 6929 "Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations… Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations."

[2] 1984—Pub. L. 98–616 inserted "Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that state.

product shipped into and within a state. Not only can the rule be "construed (as) to prohibit a State from requiring that the State be provided with a copy of each manifest", it does prohibit a State from requiring a manifest when adopted – an act clearly prohibited.

Virginia is seeking authorization for nine RCRA clusters which include several non-HSWA rules. Some of the Revision Checklists erroneously suggest that the Attorney General may not need to conduct a detailed review of the proposed rules against state statute for authority prior to final authorization. However, under the requirements of 40 CFR 271.7 the Attorney General "shall" submit a statement and that statement "shall" include the following:

> "…citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority."

I am concerned that there may not have been an in-depth Attorney General review as required, and as a result Virginia may have adopted rules which are not statutorily supported on the state or federal level.

Thank you for considering my concerns.

Sincerely,

Patricia Anne Martin
Safe Food and Fertilizer
617 H St. SW
Quincy, WA 98848
(509) 787-4275