ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA 530-Z95-003; FRL-5149-6] RIN 2050-AD99

Regulatory Determination on Cement Kiln Dust

AGENCY: Environmental Protection Agency.

ACTION: Regulatory determination.

SUMMARY: Today's action presents the Environmental Protection Agency's (EPA) regulatory determination on cement kiln dust (CKD) waste. This action is required by the Resource Conservation and Recovery Act (RCRA). EPA has concluded that additional control of CKD is warranted in order to protect the public from human health risks and to prevent environmental damage resulting from current disposal of this waste. The primary environmental concerns to be addressed through additional controls are documented damages to ground water and potable water supplies, and potential human health risks from inhalation of airborne CKD and ingestion via food chain pathways. The Agency has decided to take a common sense approach in imposing such controls. In order to avoid duplication among regulatory programs, the Agency will use, as appropriate, its various authorities under the Clean Air Act, Clean Water Act, and RCRA to address the relevant pathways of potential contaminant releases from CKD.

Under Subtitle C of RCRA, the Agency will develop a tailored set of standards for CKD that controls releases to ground water. The tailored standards will protect human health and the environment, while imposing a minimal burden on the regulated community. Until the tailored regulations are published by the Agency, CKD will retain the Bevill exemption and the status of CKD under RCRA Subtitle C will remain unchanged. Those cement manufacturing facilities that burn RCRA hazardous waste in their kilns will still be required to test their CKD to see that it remains unaffected by the combustion of hazardous waste.

EPA has not included an evaluation of clinker or other products or by-products of cement production in this regulatory determination. In the absence of the CKD regulatory exemption, under certain regulatory scenarios clinker produced from re-introduced CKD could be considered a hazardous waste. However, as part of the regulations that

EPA will promulgate as a result of today's determination, EPA intends to exclude clinker from regulation as a derived-from hazardous waste when CKD is re-introduced. At this time, EPA has no indication that such clinker poses an unacceptable threat to human health or the environment.

ADDRESSES: Copies of this regulatory determination and the supporting record docket are available for public inspection and copying at the RCRA docket, 401 M Street, SW., Washington, DC, Room M2616, 2nd floor, Waterside Mall. The docket number for this action is F–94–RCKD–FFFFF. The docket is open from 9 to 4 p.m., Monday through Friday, except federal holidays. In order to access the docket, please call (202) 260–9327 to make an appointment. Copies are free up to 100 pages and thereafter cost \$0.15/page.

This document and the Response to Public Comments document are also available on the EPA's Clean-up Information Bulletin Board (CLU-IN). To access CLU-IN with a modem of up to 28,800 baud, dial (301) 589-8366. First-time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "CKD6.ZIP" to download this notice. Input the file names "CKD7.ZIP" and "CKD8.ZIP" to download the two files that contain the two response to public comments documents. Follow the online instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this bulletin type "B 104" from the main menu. For additional help with these instructions, telephone the CLU-IN help line at (301) 589-8368.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810; for technical information contact Bill Schoenborn, U.S. Environmental Protection Agency (5302W), 401 M Street SW., Washington, DC 20460, at (703) 308–8483.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
 - A. Statutory Authority
 - B. Public Comment Process
- C. Stakeholder Comments
- II. Major Findings of the RTC and NODA
 - A. Sources and Volumes of Waste
 - B. Current and Alternative CKD Management Practices
 - C. Existing Regulatory Controls
- D. Waste Characteristics
- E. Documented Evidence of Damage

- F. Potential Risks to Human Health and the Environment
- G. Environmental Justice
- H. Potential Costs and Impacts of Subtitle C Regulation
- I. Regulatory Options
- III. Applying the Decision Rationale in Making the Regulatory Determination
 - A. Step 1: Does Management of CKD Pose Human Health and Environmental Problems? Might Current Practices Cause Problems in the Future?
 - B. Step 2: Is More Stringent Regulation Necessary and Desirable?
 - C. Step 3: What Would be the Operational and Economic Consequences of a Decision to Regulate Under Subtitle C?
- IV. Regulatory Determination for Cement Kiln Dust
- V. Next Steps
- VI. Regulatory Flexibility Analysis
- VII. Executive Order 12866
- VIII. Regulatory Determination Docket

I. Background

A. Statutory Authority

EPA is issuing today's notice under the authority of section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA), as amended. This section requires that, after completing the Report to Congress (RTC) mandated by section 8002(o) of RCRA, the EPA Administrator must determine whether Subtitle C regulation of CKD waste is warranted. The RTC documents EPA's study of CKD. It was signed by the Administrator on December 30, 1993.

B. Public Comment Process

After submitting the RTC to Congress, EPA provided the public with an opportunity to comment on the report and the appropriateness of regulating CKD under RCRA Subtitle C (59 FR 709, 1/6/94). The public comment period lasted until February 22, 1994 (59 FR 709, 1/6/94). Due to numerous requests to lengthen the comment period, EPA extended the comment period to March 8, 1994 (59 FR 6640, 2/11/94). To ensure that all interested parties had an opportunity to present their views, EPA not only held a public hearing in Washington, DC, but also held a series of public meetings with representatives of the cement industry, the hazardous waste treatment industry, regional and state environmental authorities, and citizen groups.

EPA received approximately 1,100 written comments, 18 videotapes, and a number of photographs prior to the close of the RTC comment period. All individual comments and a transcript from the public hearing are available for public inspection in the RTC docket (Docket No. F–94–RCKA–FFFFF). The docket also contains a summary of all the comments presented at the public