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Materials Recovery and Waste Management Division
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Environmental Protection Agency
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RE: Comments on the Proposed Rule “Internet Posting of and Confidentiality Determinations for Hazardous Waste Export and Import Documents” (81 FR 85459, November 28, 2016, Docket ID: EPA–HQ–OLEM–2016–0492)

Dear Ms. Coughlan,

The American Fuel & Petrochemical Manufacturers (“AFPM”) appreciates the opportunity to provide comments on the United States Environmental Protection Agency’s (“EPA” or the “Agency”) proposal to revise the hazardous waste import and export regulations to require exporters of hazardous waste to maintain a publicly accessible website (“Export/Import Website”) for document posting. AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. Many AFPM members occasionally export hazardous waste and as such would be impacted by this Proposal.

I. Summary

The Proposal would require all individual exporters and importers of hazardous waste to develop and maintain a publicly-accessible website and to post import or export Confirmations of Receipt and Confirmations of Recovery or Disposal of hazardous waste export and import shipments. The individual companies would be required to bear the cost and effort of developing and maintaining these dispersed websites (estimated by the Proposal to range from \$99,309 to \$333,993)¹ until EPA fully develops a centralized repository (EPA’s Waste Import Export Tracking System, or “WIETS”).

The stated goals of the Proposal are “to improve protection of public health with respect to hazardous wastes by ensuring public accessibility and transparency of export and import documentation,” and to “enable interested members of the community and the government to benefit from the provision of publicly accessible data to better monitor proper compliance with EPA’s hazardous waste regulations and help ensure that hazardous waste import and export shipments are properly received and managed.”² For the reasons outlined below, AFPM believes EPA should not implement this rule until the Agency fully develops the WIETS.

¹ 81 FR at 85468.

² 81 FR 85459-85460.



II. Comments

1) It Would Be Far More Cost Effective for EPA to Develop and Implement the WIETS

If finalized, the Proposal would require significant time and unnecessary costs for each individual facility to build and maintain a website to post the required documentation (estimated by EPA to range from \$99,309 to \$333,993, depending on whether the WIETS enhancements are complete in 2018 or 2022). The *Federal Register* notice for the Hazardous Waste Export-Import Proposed Rule estimates that EPA's one-time development costs for enhancements to the existing WIETS system would cost between \$230,000 and \$380,000. Assuming EPA began work on the WIETS enhancements around the time of the Export-Import Rule revisions proposed rule (October 2015) or the final rule (November 2016), it is reasonable to expect the enhancements to be completed within a few years (likely late 2018 or early 2019). If this Proposal is finalized in 2017 and the WIETS system enhancements are completed in late 2018 or early 2019, this Proposal will require individual companies to invest significant time and expense setting up a website to post one year's worth of data (for 2017 documentation) that will need to be maintained and accessible for three years. The Proposal does not state how many companies will be required to set up these public websites, but assuming 50 to 100 companies will be affected, the estimated cost to companies is approximately \$4.9 to \$9.9 million (assuming the WIETS enhancements are complete in 2018), which is significantly higher than EPA's cost to prepare the WIETS system for use. Based on the estimated high costs and significant resources businesses will spend and use to develop a temporary system, AFPM sees little benefit of making this information publicly available in fragments for a short period.

Requiring individual facilities to post export and import documentation falls short of the stated goals due to EPA's assumptions about the public's knowledge and resources. Rather than put the burden on the public to locate and track down all the information, the public would be better and more efficiently served by being able to access one website owned and operated by EPA. Whether waste is imported or exported has no bearing on public health. EPA already has regulatory programs that require the reporting of chemical quantities on site such as the Emergency Planning and Community Right to Know Act ("EPCRA"). AFPM questions how public notice of waste export/import receipts alter the risk profile in a manner necessary to inform the public.

Requiring facilities to post their information without Agency oversight potentially diminishes the credibility of the posted information (compared to if it was posted by the regulating Agency) and hinders accessibility to the information by fragmenting and dispersing it through a significant number of websites rather than storing it in one place.

2) If the Intent of the Regulation is to Ensure Compliance, it Would Be More Effective to Require Submittal of Import/Export Documentation to EPA

For hazardous waste exports, the recently revised RCRA regulations³ require foreign destination facilities to send copies of the Confirmations of Receipt and Confirmation of Recovery or Disposal to the exporter and competent authorities of the countries of import and transit.⁴ However, the regulations have delayed requiring the submission of copies to EPA until "the electronic import-export reporting compliance date" (the date when WIETS is available).⁵ An approach that provides better consistency for the regulated community, and greater

³ Hazardous Waste Export-Import Revisions Final Rule, 81 FR 85696 (November 28, 2016).

⁴ 40 CFR 262.83(d)(xv).

⁵ 81 FR 85705-06, Nov. 22, 2016, Hazardous Waste Export-Import Revisions Final Rule.



assurance of compliance, is to require sending copies of import-export documentation to EPA when they are sent to the countries of import and transit.

3) Timing of the Posting Requirements Would Cause Confusion and a Perception of Mismanagement by the Public

If the Proposal for internet posting of documents is finalized in 2017, the first required public posting for copies of documents received in 2017 would be due by March 1, 2018.⁶ While the Confirmations of Receipt must be sent within three days of waste receipt, the Confirmations of Recovery or Disposal are required “no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste.”⁷ Accordingly, although the Confirmations of Receipt could be posted in one year, the Confirmations of Recovery or Disposal would not be posted until the following year. Therefore, the public may incorrectly conclude that a company’s waste is not being properly managed due to its website listing the Confirmation of Receipt without an accompanying Confirmation of Recovery or Disposal. Again, EPA is in a better position to review this information and is the Agency tasked with determining compliance.

AFPM respectfully requests that EPA reconsider the value of this Proposal and delay the information posting until WEITS is available. AFPM appreciates the opportunity to submit these comments. If you have any questions, please call me at (202) 457-0480.

Respectfully submitted,

David Friedman
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American Fuel & Petrochemical Manufacturers

⁶ “Each document posted to the Export/ Import Web site must be publicly accessible on the Web site by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility during the previous calendar year.”

⁷ 40 CFR 262.83(f)(5).