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EPA REGULATION OF MINING WASTES

UNDER RCRA AND CERCLA

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EPA REGULATION OF MINING WASTES UNDER RCRA AND CERCLA

EPA policies on mining wastes under RCRA and CERCLA are in a period of transition. The transition involves moving from an individual program, single media perspective based on limited information on the mining industry; to a integrated program, multi-media approach recognizing the specific character of mining wastes.

Background - The Region VIII Approach

- I. When discussing mining waste from a multi-program perspective, mining waste must be defined because each program has its own definition. For my purposes mining waste has been defined as the wastes from the following industry segments.

Mining

Milling

Smelting

Refining

Oil Shale Production

Coal based synthetic fuels

II. Mining Wastes have been historically a high priority in Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming).

The majority of our major NPDES industrial dischargers are from these industries.

Fifty percent (50%) of the region's Superfund sites involve mining wastes.

III. Superfund Mining Waste Sites:

From the beginning of the Superfund Program, mining waste sites in Region VIII have been an important factor.

Of the 850 sites proposed and final on the National Priorities List (NPL) as of September, 1985, 39 involve mining waste and 17 of those are in Region VIII.

Region VIII had always interpreted CERCLA to include jurisdiction over mining wastes, due to the presence of "hazardous substances" in these wastes.

EPA's ability to address mining wastes under CERCLA was upheld in April 1985. See Eagle-Picher Industries, Inc., v. EPA, 22 ERC 1657 (D.C. Cir. 1985).

IV. Region VIII's Mining Waste Team (MWT)

In order to be more responsive to mining waste issues the Region VIII MWT was formed in March 1983. The team has representatives from the Air, NPDES, RCRA, UIC and Superfund programs.

The team's expertise includes liquid, solid and hazardous waste management; wastewater treatment, groundwater protection, air emission control, governmental relations, and legal services.

The team has been able to provide a mining waste focal point in Region VIII.

The team has been used to input EPA Headquarters on national policy for mining wastes, including RCRA and Superfund, and it was used as the prototype for the national efforts.

The Agency-wide Mining Waste Work Group

- I. On December 24, 1985, at the direction of EPA's Administrator, Lee Thomas, an Agency-wide Mining Waste Work (MWWG) Group was formed. The MWWG reports directly to EPA headquarters senior management.

II. The Mining Waste Work Group serves as a focal point for mining waste issues throughout the Agency. The group will use a long-term perspective to evaluate regulatory needs for mining waste, recognizing the existing interrelated authorities which exist under the Clean Air Act, the Clean Water Act, UIC, RCRA, CERCLA, and the Ground Water Strategy. The group will develop a mining waste strategy which will include policy and regulatory options for effectively dealing with identified problem areas. The group will also serve as a point of contact for interests outside of the Agency on mining waste issues. This may include other federal agencies, states, industry, and environmental groups. The Mining Waste Work Group will coordinate among other subgroups which are formed to address specific issues such as RCRA mining waste regulations.

III. On January 15, 1986, the MWWG and John Welles, Regional Administrator, Region VIII, hosted a Mining Waste Forum attended by representatives of the mining industry, environmental groups, states and other selected agencies.

The emphasis of the forum was that the MWWG would be used to facilitate information exchange both inside and outside the Agency.

A broad perspective would be utilized for future EPA mining waste decision-making.

IV. Currently the largest portion of the MWWG's activities involves the RCRA mining waste regulatory determination.

The RCRA mining waste activities consist of two parts, with the first being the Bevil Amendment reinterpretation which was proposed in the October 2, 1985 Federal Register.

1. The reinterpretation proposed to bring some of the wastes from smelting and refining out of the Bevil amendment exclusion for wastes from "the extraction, beneficiation, and processing of ores and minerals" and into the traditional RCRA program.
2. EPA is under a court-ordered deadline to promulgate the final reinterpretation by September 1986.

The second part is the RCRA mining waste regulatory determination in response to the Report to Congress issued December 31, 1985. ("Wastes from the Extraction and Beneficiation of metallic ores, phosphate rock, asbestos, overburden from Uranium Mining, and Oil Shale", EPA/530-SW-85-033). Based on this report and the comments it has received, EPA will make a determination by June 30, 1986, whether or not to regulate mining wastes under Subtitle C of RCRA. If EPA does decide to proceed with regulatory development, the Bevil amendment exclusion will remain in place until final regulations are promulgated.

The Mining Waste Forum held on January 15, 1986, was the start of EPA's attempt to get better information from outside the Agency to improve the basis for mining waste decision-making.

A followup meeting held February 19 and 20, 1986, has established Dave Crouch of Homestake Mining Company, AMC Solid Waste Subcommittee Chairman, as the industry focal point and Ken Alkema, Director of Environmental Health, State of Utah, as State focal point for interacting with the MWWG. A focal point for environmental groups will also be established.

V. Mining Waste Superfund Sites - The MWWG Perspective

Using the group's definition, there are 39 mining waste sites.

The hazardous constituents of concern at these sites include toxic metals, radionuclides, asbestos and cyanide.

The MWWG will be coordinating information that is generated on these sites and inputting future actions including, continued site work, additional mining site listings, and policy changes as a result of Superfund reauthorization.

Currently Superfund information is being collected for the RCRA mining waste regulatory investigation.

Members of the group have provided comments on the Baucus amendment to Senate Bill 51 which would provide special treatment for mining wastes under CERCLA.

The primary focus of these new mining waste efforts will be to concentrate on defining the problems and solutions associated with mining wastes.

We want to draw information from within the Agency and reach out as well, with the overall goal of informed decision-making.

Results of the New Perspective

- I. The "Report to Congress on Mining Wastes" was a product of the traditional approach to mining wastes.
- II. As the process moves forward, utilizing the new perspective, the policy and regulatory decisions will serve as benchmarks for the new approach.

These decisions will be based on better utilization of existing information, multi-program analysis, and more input from outside interests.

The RCRA regulatory determination in June and Superfund mining site activity after reauthorization will reflect the new emphasis on mining waste.

III. The final form of EPA policies on mining wastes under RCRA and CERCLA remain to be seen because the decisions have not been made.

Hopefully, the MWWG will result in more and better information reaching EPA decision makers.

The long term goal of this effort is to recognize mining wastes for what they are and they are not, and to develop policies and a regulatory framework which protects human health and the environment from identified threats.