



**United States
General Accounting Office
Washington, D.C. 20548**

Office of the General Counsel

B-281216

October 19, 1998

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency, entitled "Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities" (RIN: 2050-AD88). We received the rule on July 17, 1998. It was published in the Federal Register as a final rule on August 6, 1998. 63 Fed. Reg. 42110.

The final rule, among other actions, amends the EPA's regulations for hazardous waste management under the Resource Conservation and Recovery Act by listing as hazardous four wastes generated during petroleum refining. It also contains EPA's decision not to list ten other petroleum refining wastes.

Following a review of the rule by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), EPA initially submitted it to our Office on July 17, 1998, as a non-major rule under the Congressional Review Act. The rule had been designated as a "significant regulatory action" under Executive Order 12866. OIRA completed its review of the rule on June 29, and did not indicate to EPA that it considered the rule to be major.

Subsequently, on July 24, 1998, after submission of the rule to Congress, our Office, and the Federal Register, OIRA advised EPA that it considered the rule to be a major rule based on new cost information submitted by a company in mid-June while the rule was being reviewed by OIRA.

Since portions of the rule (published in the Federal Register on August 6) had an effective date of less than the required 60-day delay for major rules under the Congressional Review Act, 5 U.S.C. § 801 (a)(3), EPA, on October 9, has published in the Federal Register a correction to the effective date and explains the circumstances leading to the change. 63 Fed. Reg. 54356.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"HAZARDOUS WASTE MANAGEMENT SYSTEM; IDENTIFICATION AND LISTING
OF HAZARDOUS WASTE; PETROLEUM REFINING PROCESS WASTES; LAND
DISPOSAL RESTRICTIONS FOR NEWLY IDENTIFIED WASTES; AND CERCLA
HAZARDOUS SUBSTANCE DESIGNATION AND REPORTABLE QUANTITIES"
(RIN: 2050-AD88)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule. It concluded that listing the four refinery wastes will cause the annualized compliance costs to be between \$20 and \$40 million with an expected value of about \$30 million.

On August 6, 1998, at the time EPA published the final rule, it also published a request for comments and a notice of data availability, 63 Fed. Reg. 42190, to evaluate the impact of the recently received cost data from a company in the industry. In the correction of the effective date notice resulting from the change in the rule's classification, EPA notes that at this time it is not altering any of its cost analysis estimates since it currently has no basis to judge the accuracy of the recently submitted data.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Administrator of EPA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain an intergovernmental or private sector mandate of over \$100 million annually as defined by the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. On November 20, 1995, EPA published a notice of proposed rulemaking, 60 Fed. Reg. 57748.

In the preamble to the final rule, EPA discusses the most significant comments it received and the modifications it made to the listing determinations and definition of solid waste exclusions based on those comments. Other comments received are addressed in the rulemaking docket which is available to the public.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain a new or modified information collection which requires the review and approval of the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority of section 2002(a) and 3001(a), (b), and (e)(2), 3004(g) and (m) of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6912 (a), and 6921(b) and (e)(2), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602(a)

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and initially found to be a "significant regulatory action" under the Order and approved. Subsequently, OMB changed this designation to "economically significant regulatory action."