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Report to the Senate Appropriations Committee

Executive Summary

Regulation of Wood Preserving Wastes

SM-X1

EXECUTIVE SUMMARY

On November 15, 1990, the United States Environmental Protection Agency (EPA) issued a final rule designating three categories of wastes from wood preserving operations as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This rule was promulgated under a court-ordered deadline to complete a listing determination for these wood preserving wastes by November 15, 1990. The Agency determined that the subject wastes met the criteria for listing set forth in Section 3001(a) of RCRA.

Earlier, in September 1990, the Senate Committee on Appropriations had directed the Agency to submit by March 15, 1991, a Report regarding the potential advantages, costs, and risks associated with a multistatute approach to regulation of wastes from wood preserving operations. As EPA regards the multistatute approach, which was proposed by the wood preserving industry during development of the final rule, the approach would employ three statutory authorities to control wood preserving wastes in the following manner:

1) Clean Water Act (CWA) - regulation of wastewaters and stormwaters;

2) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) - regulation of treated wood drippage and the establishment of drip pad management standards;

3) Resource Conservation and Recovery Act (RCRA) - regulation of process residuals.

This Report is in response to the Committee's directive to look at the advantages, costs, and risks of the multistatute approach. To do so, the elements of the multistatute approach are examined qualitatively in Section One. As part of this examination, a comparison of the multistatute elements to analogous RCRA elements is included at various points. In Section Two of the Report, the costs and risks of the multistatute approach are examined, including a comparison to those of the RCRA Subtitle C approach.

As one of the fundamental elements of the multistatute approach, the Report examines the use of CWA authority for regulation of wastewaters from wood preserving operations. Use of effluent guidelines and standards, pretreatment standards, best management practices, and stormwater management regulations is considered. Although these CWA authorities can provide substantial protection, the Report identifies two limitations in use of the CWA: 1) a lack of specific groundwater protection, and 2) the fact that while the timber products processing industry is among the categories under consideration for future revision, the promulgation of revised effluent guidelines for discharges from wood preserving facilities would not likely occur for several years. Finally, the Report examines the permit application requirements for storm water discharges from industrial activities such as wood preserving facilities that were established under CWA authority in a November 16, 1990, rule.

The Report also considers the use of FIFRA authority to regulate drippage from wood preserving operations. Specifically, label changes and new regulations are considered. Major issues surrounding the use of FIFRA include the ability to obtain 100% participation of wood preserving facilities in a voluntary label change and the time required to implement mandatory label changes or to promulgate new regulations to achieve the necessary levels of protection. The number of enforcement options, type of enforcement actions, and penalties under FIFRA authority are examined, as well as comparable provisions under RCRA authority.

Finally, because RCRA would be used to regulate process residuals under the multistatute approach, the Report analyzes this element. The wood preserving industry suggested listing of these wastes under RCRA Subtitle C, which was done in the final wood preserving rule.

The Report then discusses the RCRA-based framework for the management and tracking of hazardous wastes from generation through treatment and disposal. Several provisions of the regulations under RCRA addressing comprehensive protection of groundwater are noted, including corrective action, contingency plans, waste management standards, and closure requirements. A brief discussion of the final rule provisions is presented, including: 1) the management and clean-up standards for both existing and new drip pads (the major waste management units of concern); 2) the staggered phase-in period provided to wood preservers for the upgrading of existing drip pads to new drip

pad standards to account for a wide variability in the ages and conditions of existing drip pads and to allow for reasonable upgrade schedules; and 3) the 90-day generator provision for those who utilize drip pads. A comparison of the RCRA-based approach to the multistatute approach must necessarily factor in these provisions, which bear directly on the scope of RCRA requirements that any particular wood preserving facility may have to meet.

In examining the potential costs and benefits of a multistatute approach, the comparative analysis looks at a "less stringent" multistatute approach and a "more stringent" multistatute approach, as compared to the requirements promulgated in the final rule of November 15, 1990. Both costs and benefits under the "less stringent" multistatute scenario would be less than those under the wood preserving final rule primarily due to differences in three areas of requirements: 1) liners and leak detection for drip pads; 2) no drippage off drip pads; and 3) soil cleanup. Costs and benefits under the "more stringent" multistatute scenario would be less than those under the final rule primarily due to differences in requirements for soil cleanup. Either type of the multistatute approach therefore provides different levels of protection (especially of groundwater) than the final rule promulgated under RCRA authority.

In summary, the EPA has evaluated the multistatute approach to regulation of wood preserving wastes and compared it to the

RCRA-based approach. A major element of the evaluation was whether adequate protection of human health and the environment was achieved, particularly in regards to groundwater protection. Areas of concern related to groundwater protection include remediation of leaks and spills, closure of waste management units such as drip pads, and control of wastes through a comprehensive management and tracking system. Although the multistatute approach to regulation of wood preserving wastes could have provided some environmental protection at a lower cost than the RCRA-based approach, the Agency believes that the multistatute approach would not protect human health and the environment as well as the RCRA-based approach in this case.

It should not be construed that the RCRA-based approach in this instance signals a precedent against future regulation under a multistatute approach. Nor should it be construed that the EPA will use a multistatute approach where a RCRA-based approach is warranted under statutory obligations. The EPA has no objection to use of the multistatute approach when the environmental protection provided is consistent with statutory mandates. In this regard, the Agency has instituted a "cluster" approach to regulation of industries in which regulations written under the various statutes are coordinated to most efficiently achieve multi-media environmental regulation.