

# 3 DAYS ONLY

EPA/530-SW-91-093L  
PB92-131 368

## MONTHLY HOTLINE REPORT

December 1991

RCRA/SF/OUST and  
Emergency Planning and Community Right-to-Know

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### Hotline Questions and Answers

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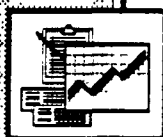
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RCRA/SF/OUST Hotline  
National Toll Free No.: 800-424-9346

Emergency Planning and Community  
Right-to-Know Hotline  
National Toll Free No.: 800-535-0202

This report is prepared and submitted in support of Contract No. 68-W0-0039.

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Washington, DC 20460

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Recycled Paper



## HOTLINE QUESTIONS AND ANSWERS

### RCRA

#### 1. Reclaimed Spent Wood Preservative Exclusion in 40 CFR Section 261.4(a)(9)

*In the December 6, 1990, Federal Register (55 FR 50450), EPA promulgated hazardous waste listings for three wastes generated from wood preserving processes: F032, F034, and F035. These listings include spent wood preserving solutions which are often collected on drip pads, reclaimed (usually by means of filtration or oil/water separation), and reused again in wood preserving processes. If a wood preserving facility uses reclaimed spent preservative (F032, F034, or F035) to treat wood products which are subsequently placed on the land, would the reclaimed spent preservative be regulated as a hazardous waste under the derived-from rule (40 CFR §261.3(c)(2)) since it is derived from the treatment (reclamation) of a listed waste?*

No. Although in the general case, materials reclaimed from hazardous wastes that are used in a manner constituting disposal continue to be regulated as solid and, if hazardous, hazardous wastes, an exclusion from regulation as solid and, thus, as hazardous wastes was promulgated with the new listings for reclaimed spent wood preserving solutions that are reused for their intended purpose.

Generally, the derived-from rule in 40 CFR §261.3(c)(2) classifies any solid waste derived from the treatment, storage, or disposal of a listed hazardous waste as that hazardous waste. There is an exception to this rule. In §261.3(c)(2)(i), a

material that is reclaimed from a hazardous waste and used beneficially, e.g., used as a product, is no longer considered a solid waste, and thus is not a hazardous waste. This exception does not apply, however, when a reclaimed material is used, burned for energy recovery, or used in a manner constituting disposal. Because in this case the wood products treated with the reclaimed wood preserving solutions are placed on the land (used in a manner constituting disposal), the §261.3(c)(2)(i) exclusion would not apply to the reclaimed preservatives or to the treated wood products. Thus, the preservatives and the wood products would be regulated as derived-from listed hazardous wastes. In the December 6, 1990, final rule, however, the Agency stated that "regulating reclaimed spent preservative and products made with reclaimed spent preservative was not and is not EPA's intent." To implement this intent, an exclusion from the definition of solid waste was promulgated under §261.4(a)(9), which excludes from the definition of solid waste those spent wood preserving solutions and waste waters that have been reclaimed and will be reused for their original intended purpose. Thus, under 40 CFR §261.4(a)(9), once spent wood preserving solutions are reclaimed and have been returned to the process (i.e., the work tank), the reclaimed solutions used for their intended purpose (wood preserving) are not solid wastes and thus not hazardous wastes. Note that this exclusion does not apply to the recycling process (the recycling unit would be exempt from permitting under §261.6(c)), or to any prior management of the spent preservative. Also, note that the wording of the §261.4(a)(9) exemption was corrected in the July 1, 1991, Federal Register notice. (56 FR 30192).

## 2. SW-846 Test Methods

*Are the test methods published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," known as SW-846, required to show compliance with 40 CFR Part 268 land disposal restrictions (LDR) in situations where the treatment standard is expressed as a concentration? Are SW-846 methods required to show compliance with Part 261, Subpart C hazardous waste characteristics?*

Generally, the test methods found in SW-846 are not required but are intended to serve as guidance. EPA recommends these methods for evaluating solid waste and the Agency will use the recommended methods in enforcement situations. There are a handful of exceptions to this rule where specific test methods are required.

Compliance with LDR for wastes that have a treatment standard expressed as constituent concentrations in wastes (CCW, §268.43) can be shown using any appropriate method. This section does not specifically require the use of SW-846 methods. If the waste treatment standard is expressed as constituent concentrations in waste extracts (CCWE, §268.41), then the Toxicity Characteristic Leaching Procedure (TCLP), which is specifically referenced in §268.41(a), must be performed. Following that, however, any appropriate method may be used to determine concentrations of hazardous constituents in the extract and to show compliance with LDR.

Similarly, in identifying Part 261, Subpart C characteristics, §262.11 provides that a generator has the option of applying knowledge of the hazardous characteristics of the waste in light of the materials or the processes used, or testing the material to determine whether or not it is a hazardous waste. If the generator chooses to test, he must use the method prescribed in Subpart C of 40 CFR Part 261. The toxicity characteristic, for example, references method 1311, the TCLP, which

must be used to obtain an extract of the waste. Following that, as with LDR, any appropriate method may be used to analyze the extract for hazardous constituents. In determining the characteristic of ignitability, the regulations reference two specific test methods, the Pensky-Martens (method 1010) and the Setaflash (method 1020), either of which must be employed when testing. The characteristic of corrosivity also references a specific test method. If the generator chooses to test the pH of a given waste stream, method 9040 must be used.

Several other regulatory sections also require the use of SW-846 test methods. For example, in completing a petition to delist a waste from a specific facility, SW-846 methods must be used in accordance with §260.22.

## CERCLA

### 3. Differences Between Class I and Class II CERCLA Section 109 Penalties

*CERCLA §109 authorizes administrative assessment of two types of civil penalties: Class I and Class II. What are the differences between these two types of penalties and how do they differ from judicial assessments?*

Class I and Class II penalties under §109 of CERCLA differ from each other with respect to the amount of penalty collected and the procedure for assessing the penalty. EPA may assess Class I penalties at not more than \$25,000 per violation of certain CERCLA requirements listed in §109(a). Class II violations may be assessed at not more than \$25,000 per day per violation of certain CERCLA requirements listed in §109(b). Further, the Agency can assess a Class II penalty of up to \$75,000 per day for subsequent or second violations.

OSWER Directive 9841.1 discusses the administrative penalty assessment procedures for each type of violation. Both Class I and Class II violators have the opportunity for an administrative hearing concerning the penalty assessment. Only Class II hearings, however, are required to use the formal adjudicatory procedures contained in §554 of the Administrative Procedures Act. The statute also provides an opportunity for judicial review of both Class I and II administrative penalties assessed. Class I parties may seek review before the U.S. District Court, while Class II parties may petition the appropriate U.S. Court of Appeals.

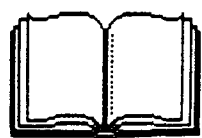
While administrative penalties are assessed by EPA, a judicial assessment may be sought by the Agency through the Department of Justice in a U.S. District Court. The list of CERCLA requirements subject to judicial assessment under this section is provided in §109(c). The court can assess a penalty of not more than \$25,000 per day of the violation for the first violation and not more than \$75,000 per day for a second or subsequent violation. Judicial assessment of other civil penalties under CERCLA is also addressed in other sections of the statute (e.g., §104(e)).

## EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

### 4. Section 313: Supplier Notification Requirements

*The regulations at 40 CFR Section 372.45(c)(1) state that "[t]he person shall provide the written notice described in paragraph (b) of this section to each recipient of the mixture or trade name product with at least the first shipment of each mixture or trade name product to each recipient in each calendar year beginning January 1, 1989." Is the supplier required to notify customers if a §313 toxic chemical that is present in the mixture is later delisted by EPA, since the chemical is no longer a §313 toxic chemical?*

As stated in 40 CFR §372.45(c)(1), the supplier is only required to notify recipients if the mixture or trade name product contains a listed toxic chemical. The supplier is not responsible for providing modified notice as an immediate result of the Agency's delisting activity. If the mixture contains other §313 toxic chemicals, then the supplier would simply delete the delisted chemical from the next year's notification.



## NEW PUBLICATIONS

### HOW TO ORDER ...

**NTIS Publications** are available by calling (703) 487-4650, or writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Be sure to include the NTIS Order Number listed under the document.

**Hotline Publications** are available through the RCRA/Superfund/OUST Hotline by calling a Document Specialist at 1-800-424-9346. Be sure to include the EPA Order Number (if any) listed under the document.

#### RCRA

**TITLE:** "EPA Proposed Treatment Standards for 20 Newly Listed Hazardous Wastes and Construction Debris"

**AVAILABILITY:** Hotline

**EPA ORDER NO.:** EPA/530-SW-91-081

Proposal for Land Disposal Restrictions treatment standards for 20 newly listed wastes that are based on identified best demonstrated available technologies for the treatment of these wastes.

**TITLE:** "Risk Assessment Guidance for Superfund: Volume 1 - Human Health Evaluation Manual (Part B)"

**AVAILABILITY:** NTIS

**NTIS ORDER NO.:** PB92-963 333

Part B of a three-part series. Part A addresses the baseline risk assessment. Part B provides guidance on using U.S. EPA toxicity values and exposure information to derive risk-based preliminary remedial goals for a CERCLA site. Part C addresses human health risk evaluations of remedial alternatives.

#### CERCLA

**TITLE:** "ECO Update; Ecological Assessment of Superfund Sites: An Overview"

**AVAILABILITY:** NTIS

**NTIS ORDER NO.:** PB92-963 335

Updates framework for ecological studies and assessment in the Superfund remedial process. The document offers a description of ecological assessment components and a discussion of how they fit into the Remedial Investigation and Feasibility Study process.

**TITLE:** "Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part C)"

**AVAILABILITY:** NTIS

**NTIS ORDER NO.:** PB92-963 334

Part C of a three-part series. Part A addresses the baseline risk assessment. Part B addresses the development of risk-based preliminary remediation goals. Part C provides guidance on the human health risk evaluations of remedial alternatives that are conducted during the feasibility study, during selection and documentation of a remedy, and during and after remedy implementation.

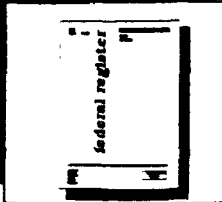
**CERCLA**

**TITLE:** "Revision of Policy Regarding Superfund Project Assignment Between Alternative Remedial Contracting Strategy Contractors and the U.S. Army Corps of Engineers"

**AVAILABILITY:** NTIS

**NTIS ORDER NO.:** PB92-963 327

Revises the policy for assigning Superfund remedial work to EPA Alternatives Remedial Contracting Strategy contractors and the U.S. Army Corps of Engineers.



## FEDERAL REGISTERS

### FINAL RULES

#### RCRA

**"Interim Status Standards for Downgradient Ground-Water Monitoring Wells "**  
December 23, 1991 (56 FR 66365)

EPA is revising its policy with respect to the deletion of sites from the National Priorities List (NPL). Agency policy had linked deletion from the NPL with the five-year reviews conducted pursuant to Section 121(c) of CERCLA. The Agency has now determined that the two processes should be managed separately.

**"Final Amendment to Exclusion"**  
December 27, 1991 (56 FR 66997)

EPA finalized a proposed amendment to an exclusion previously granted to the EPA Mobile Incineration System. In amending the exclusion, the Agency is transferring the exclusion to wastes to be generated by a different incinerator that is owned and operated by Aptus Incorporated.

**"EPA Grants an Exclusion to Reynolds Metals Company"**  
December 30, 1991 (56 FR 67198)

EPA granted a final exclusion from the lists of hazardous waste generated at Reynolds Metals Company, in response to a petition submitted under 40 CFR Section 260.20.

#### OUST

**"UST Financial Responsibility Extended Compliance Date"**  
December 23, 1991 (56 FR 66369)

The final rule modifies the compliance dates under the 40 CFR Section 280.91(d) by extending the compliance deadline for petroleum marketing firms owning one to 12 USTs at more than one facility, or fewer than 100 USTs at a single facility, and nonmarketers with a net worth of less than \$20 million from October 26, 1991, to December 31, 1993.

*Copies of RCRA Federal Registers are available through the Hotline by calling a Document Specialist at 1-800-424-9346.*

**PROPOSED RULES****RCRA****"Modified Wood Preserving Standards"  
December 5, 1991 (56 FR 63848)**

EPA is proposing to amend the RCRA regulations by modifying Subpart W standards for drip pads and modifying the listings of F032, F034 and F035. Final action on these issues will result in the removal of the wood preserving administrative stay (56 FR 27332).

**SUPERFUND****"Proposed De Minimis Settlement with  
I. Jones Recycling"  
December 4, 1991 (56 FR 63514)**

EPA announces a proposed settlement under Section 122(g) of CERCLA to resolve the liabilities of four de minimis parties for response costs at the I. Jones Recycling, Clinton Street facility, in Fort Wayne, Indiana.

**NOTICES****RCRA****"Cancellation of Mining Waste Meeting"  
December 4, 1991 (56 FR 63513)**

EPA announces the cancellation of FACA Committee Meeting on the Policy Dialogue Committee on Mining Waste.

**SUPERFUND****"Notice of Proposed Settlement"  
December 16, 1991 (56 FR 65254)**

EPA gives notice of a proposed administrative cost recovery settlement with

Eager Beaver Lumber Company, in Townville, Pennsylvania. Comments will be received for a period of 30 days.

**"Intention to Delete Westline Site from  
NPL"  
December 17, 1991 (56 FR 65462)**

EPA announces its intention to delete the Westline Site from the National Priorities List, and requests comments on this action. Comments must be submitted on or before January 16, 1992.

**"Proposed Cost Recovery Settlement"  
December 20, 1991 (56 FR 66034)**

EPA gives notice of a proposed administrative cost recovery settlement to resolve a claim under Section 107 of CERCLA against the Southern Pacific Transportation Company. Comments are requested.

**"De-linking Policy"  
December 24, 1991 (56 FR 66601)**

EPA is revising its policy with respect to deletion of sites from the National Priorities List (NPL) under CERCLA. Former Agency policy linked deletion from NPL with the five-year reviews. EPA has now determined that the two processes should be managed separately.

**OUST****"Advisory Committee Meeting"  
December 26, 1991 (56 FR 66865)**

The Class II Underground Injection Advisory Committee announces a meeting on Tuesday and Wednesday, January 21 and 22, in Alexandria, Virginia, to continue work on construction and areas of review for Class II Injection Wells.

**NOTICES****EMERGENCY PLANNING AND  
COMMUNITY RIGHT-TO-KNOW****"Notice of Final Cancellation Orders"  
December 2, 1991 (56 FR 61248)**

On September 4, 1991, EPA announced receipt of requests for voluntary cancellation of registrations for products containing 2-ethyl-1,3-hexanediol. Final orders of cancellation have been issued, and distribution, sale or use of existing stocks is prohibited as of October 4, 1991.

**"Notice of Issuance of Intent to  
Suspend Pesticide Registration"  
December 11, 1991 (56 FR 61248)**

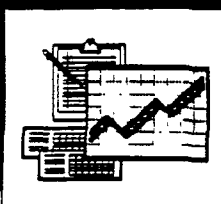
EPA has issued notices of intent to suspend pesticide registrations pursuant to Section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The notices were issued following issuance of data call-in notices by the Agency and the failure of registrants subject to the data call-in notices to take appropriate steps to secure the data required to be submitted to the Agency.

**"Notice of Voluntary Cancellation of****Pesticide Products Containing  
Ethylparathion"  
December 13, 1991 (56 FR 65061)**

This notice, pursuant to Section 4(i)(5)(D) of the FIFRA, announces EPA's intent to cancel certain parathion registrations due to requests for voluntary cancellation, and registrants failure to pay the maintenance fee due on March 1, 1991. After publication of this notice, distribution and sale of canceled parathion products will only be permitted if such sale, distribution, or use is consistent with the terms of the Cancellation Order.

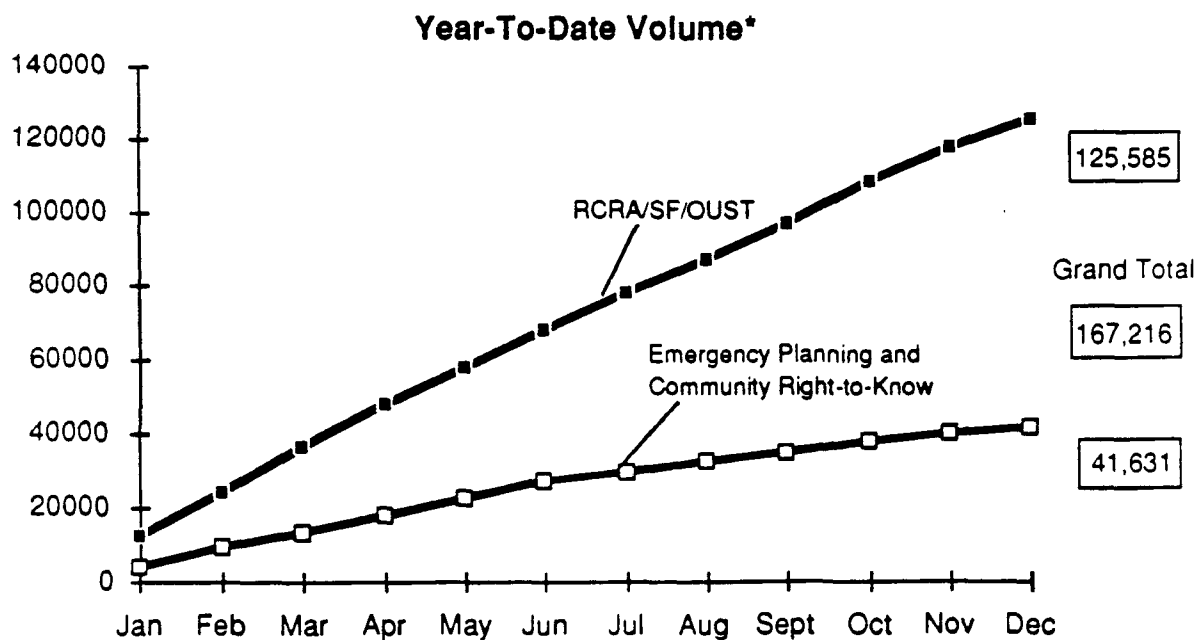
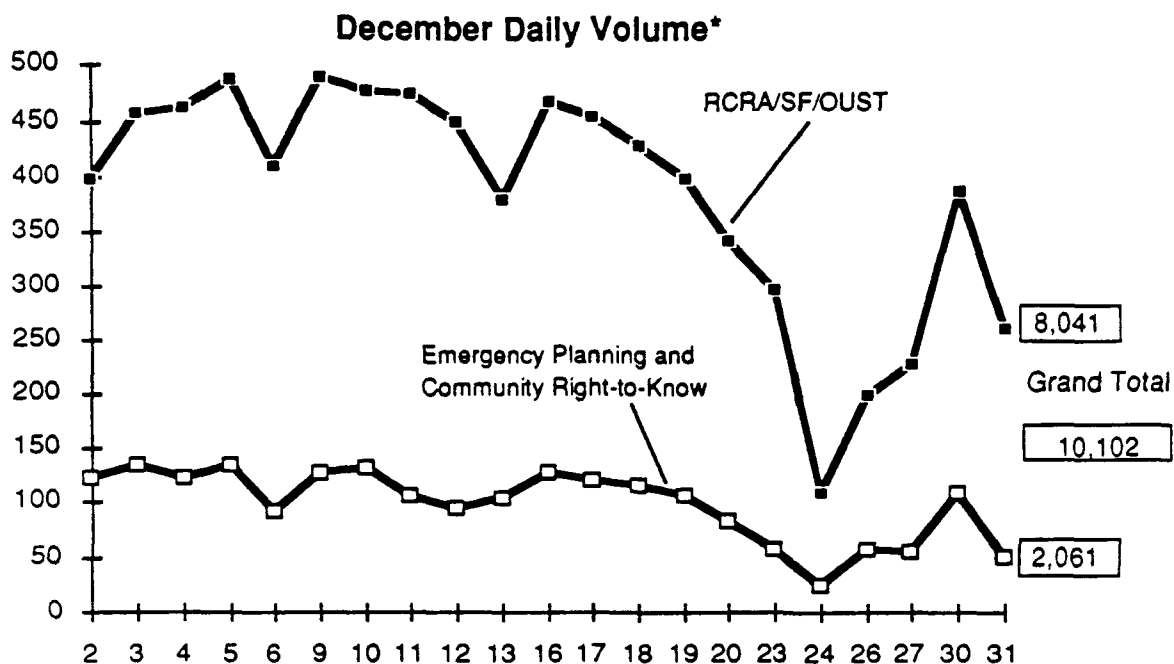
**GENERAL****"Fifth Update of the Compliance Docket"  
December 12, 1991 (56 FR 64898)**

EPA gives notice of the fifth update of the Federal Agency Hazardous Waste Compliance Docket. This notice also includes a section comprising revisions to the previous Docket list.



## CALL ANALYSES

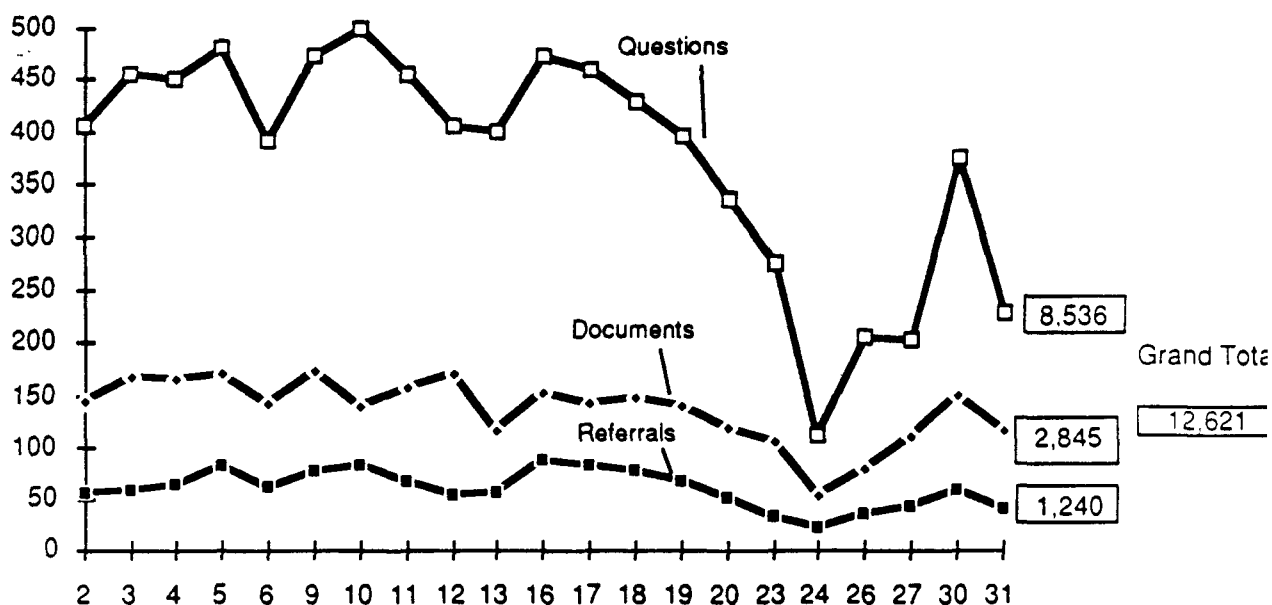
### CALLS ANSWERED BY HOTLINE



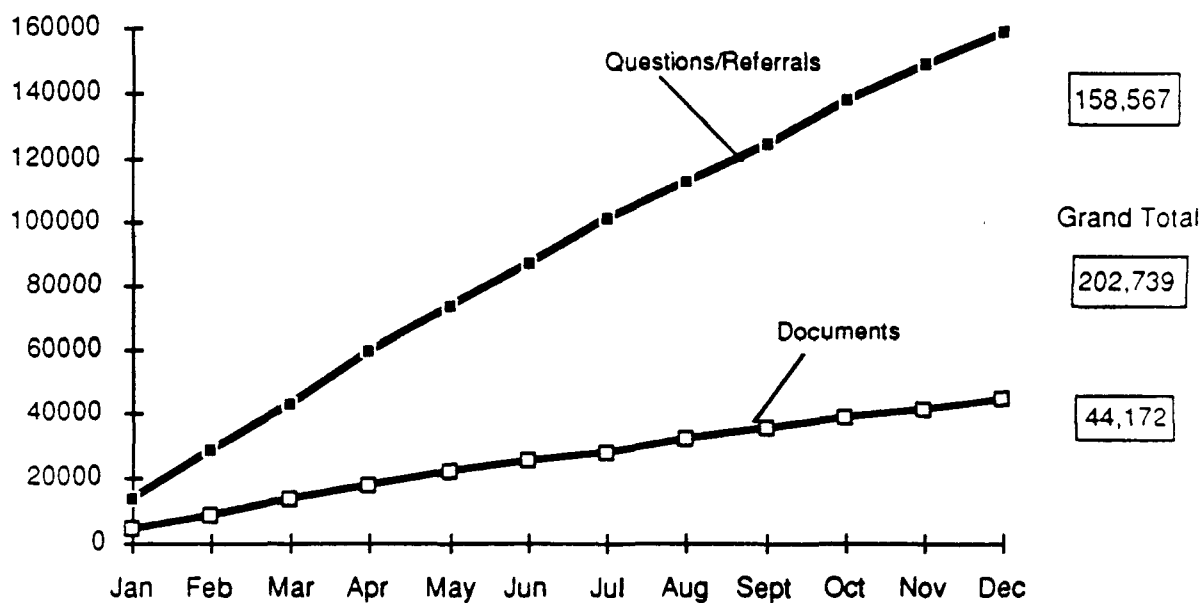
\* All calls answered by the Call Management System

# CALLS ANSWERED BY TYPE

## December Daily Volume\*



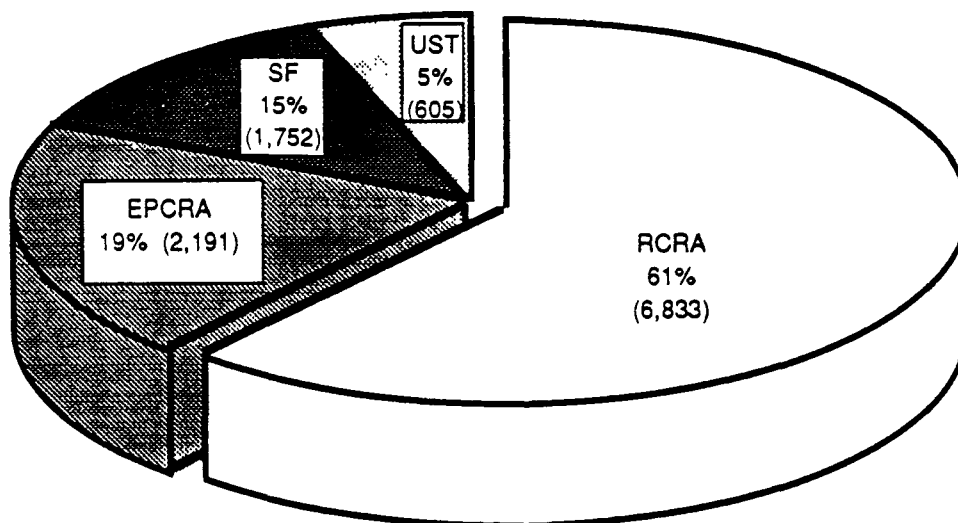
## Year-to-Date Volume\*



\* All calls answered by the Call Management System. A single call may result in multiple questions combined with document requests and referrals.

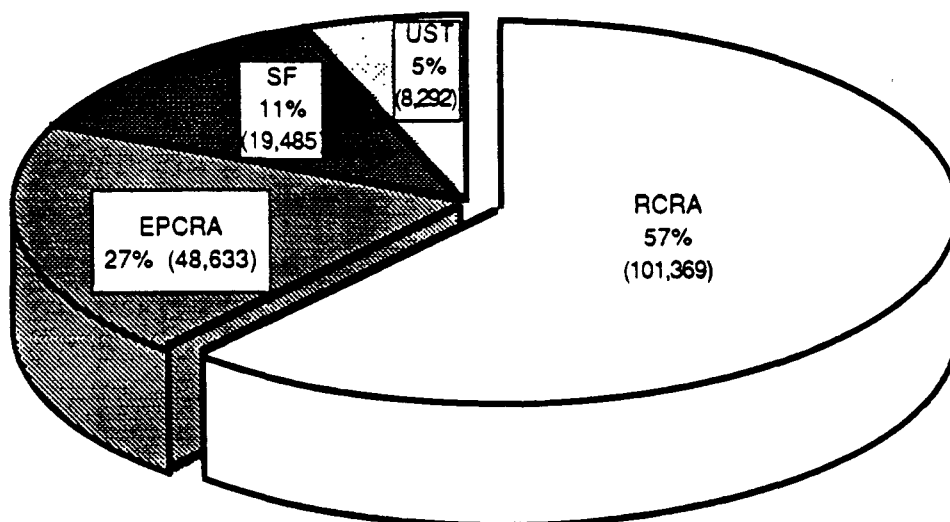
## CALLS ANSWERED BY PROGRAM AREA

December 1991\*



\* Based on 11,381 questions posed and excludes 1,240 referrals made from both Hotlines

Year-at-a-Glance\*

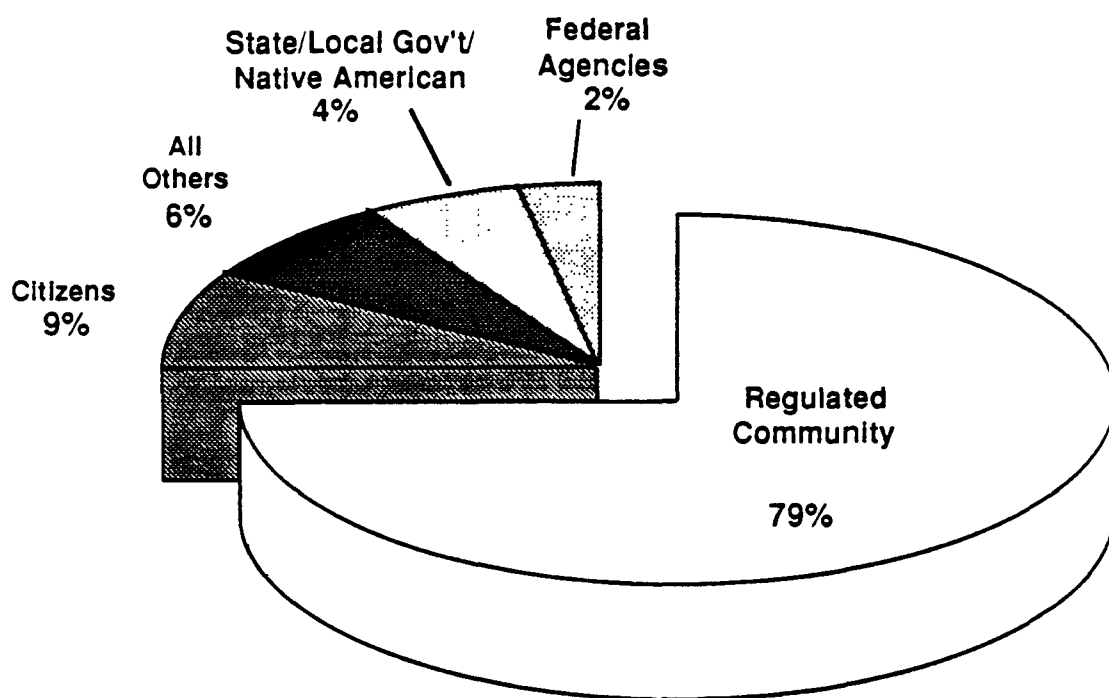


\* 1991

Based on 177,779 questions posed and excludes 23,635 referrals made from both Hotlines

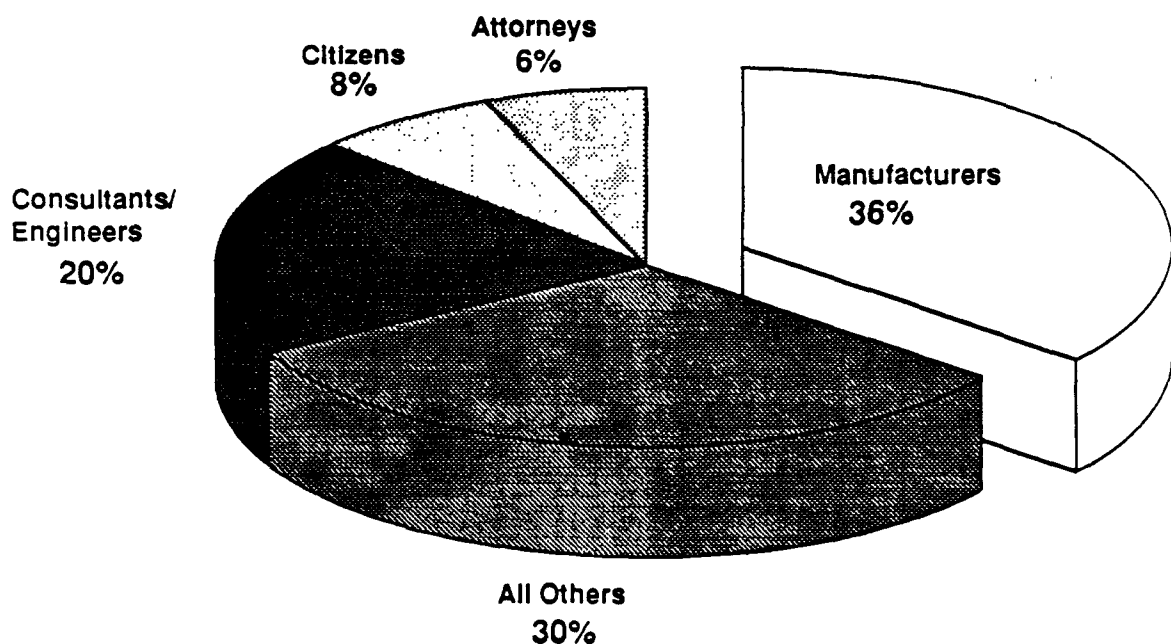
**CALLER PROFILE****RCRA/SF/OUST Hotline**

Regulated Community	6,271
Citizens	703
State & Local Gov't./Native American	357
Federal Agencies	189
Educational Institutions	136
EPA	121
Other	94
Media	30
Interest Groups	97
Congress	0
Referrals	1,006
Internationals	15
<b>TOTAL</b>	<b>9,019</b>



### Emergency Planning and Community Right-to-Know Hotline

Manufacturer		Consultants/Engineers	374
Food/Tobacco	50	Attorneys	110
Textiles	11	Citizens	157
Apparel	2	All Others	
Lumber & Wood	10	Trade Associations	13
Furniture	5	Public Interest Groups	29
Paper	19	Universities/Academia	78
Printing & Publishing	33	Insurance Companies	0
Chemicals	206	Hospitals	12
Petroleum & Coal	43	State Agencies/SERC	84
Rubber and Plastics	14	Fire Departments	17
Leather	5	EPA	56
Stone, Clay & Glass	9	Local Officials	45
Primary Metals	42	LEPC	*37
Fabricated Metals	57	Farmers	0
Machinery (Excluding Electrical)	25	Federal Agencies	*30
Electrical&Electronic Equipment	39	Media/Press	12
Transportation Equipment	20	Union/Labor	0
Instruments	6	Distributors	10
Misc. Manufacturing	18	Indians	0
Not Able to Determine	46	Laboratories	16
		Misc.	113
		Referrals	234
		Internationals	3
		<b>TOTAL</b>	<b>2,090</b>



## HOTLINE TOPICS

### RCRA

<b>General/Misc.</b>	<b>630*</b>
Special Wastes	
Ash	0
Bevill	21
Medical	147
Oil and Gas	1
Subtitle C Wastes	
Hazardous Waste	
<b>Identification General</b>	<b>1206*</b>
Toxicity Characteristic	190
Wood Preserving	41
Used Oil	113
Fluff	0
Mixed Waste	17
Delisting & Petitions	43
Hazardous Waste Recycling	164
<b>Generators</b>	<b>414*</b>
Small Quantity Generators	136
Transporters	98
Treatment, Storage & Disposal	
Facilities	
General Facility Standards	167
Siting	3
Capacity	0
Treatment	137
Burning	93
Storage	79
Disposal	74
<b>Land Disposal Restrictions</b>	<b>341*</b>
Permits & Interim Status	110
Corrective Action	139
Financial Assurance	0
Liability/Enforcement	63
Test Methods	108
Health Effects	0
Pollution Prevention/Waste Min.	30
State Programs	54
Hazardous Waste Data	4
Subtitle D Wastes	
Household Hazardous Waste	74
Subtitle D Facilities	
General Facility Standards	129
Siting	5
Combustion	1
Industrial Wastes	0
Composting	8
Source Reduction	0
Grants & Financing	0
Procurement	
General	0

Building Insulation	0
Cement & Products with Fly Ash	0
Paper & Paper Products	2
Re-refined Lubricating Oil	0
Retread Tires	1
Solid Waste Recycling	
General	173
Aluminum	3
Batteries	7
Glass	3
Paper	6
Plastics	13
Tires	9
Used Oil	145
Markets	
General	43
Aluminum	3
Batteries	3
Compost	6
Glass	3
Paper	3
Plastics	2
Tires	8
Used Oil	7
Document Requests	1,663
<b>TOTAL</b>	<b>6,943</b>

### SUPERFUND

General/Misc.	78
Access & Information Gathering	33
Administrative Record	2
Allocations from Fund	7
ARARs	41
<b>CERCLIS</b>	<b>103*</b>
Citizen Suits	5
Clean-Up Costs	5
Clean-Up Standards	16
Community Relations	16
Contract Lab Program (CLP)	16
Contractor Indemnification	4
Contracts	9
Definitions	9
Emergency Response	9
Enforcement	36
Exposure Assess./Risk Assess.	23
Federal Facilities	12
Fund Balancing	4
Grants	2

\* Hot topics for this reporting period

14 ■ Topics are calculated as the summation of all questions received by the Hotline. A single call may result in multiple questions.

Hazardous Substances	71
Health/Toxics	13
HRS	30
Liability	50
Mandatory Schedules	0
Natural Resource Damages	3
NBARs	2
NCP	53
Notification	49
<b>NPL</b>	<b>101*</b>
Off Site Policy	9
On Site Policy	8
OSHA	4
PA/SI	9
PRPs	14
Public Participation	10
RCRA Interface	3
RD/RA	21
Remedial	18
Removal	17
Response	14
RI/FS	19
ROD	28
<b>RQ</b>	<b>119*</b>
SARA Interface	17
Settlements	8
SITE Program	22
State Participation	4
State Program	5
Taxes	13
Title III/Right-to-Know	34
Document Requests	443
<b>TOTAL</b>	<b>1,641</b>
<b>OUST</b>	
General/Misc.	82
Applicability/Definitions	61
Regulated Substances	13
Standards for New Tank Systems	13
Tank Standards and Upgrading	13
Operating Requirements	12
Release Detection	35
Release Reporting & Investigation	0
Corrective Action for USTs	13
Out-of-Service/Closure	36
<b>Financial Responsibility</b>	<b>189*</b>
State Programs	14
Liability/Enforcement	9
LUST Trust Fund	4
Document Requests	111
<b>TOTAL</b>	<b>605</b>

## EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

Title III General	74
§301-3 Emergency Planning	
General	80
SERCs/LEPC	18
Notification	4
Mixtures	7
<b>Extremely Hazardous Substances</b>	<b>44*</b>
Delisting EHS	6
Exemptions	12
§304:	
General	64
Notification Requirements	18
Reportable Quantities	33
RQs vs. TPQs	11
Transportation	7
Exemptions	11
§311/312:	
<b>General</b>	<b>112*</b>
MSDS Reporting Requirements	38
Tier I/II Regulations	80
Thresholds	53
OSHA Expansion	14
Hazard Categories	11
Mixtures	18
Exemptions	35
§313:	
<b>Form R</b>	<b>381*</b>
Thresholds	37
Phase I	32
Phase II	11
Phase III	2
<b>Workshop (Training)</b>	<b>119*</b>
Petitions	23
Health Effects	4
Database	44
Exemptions	43
Training:	
General	5
§305 Training Grants	0
§305 Emergency Systems Review	0
§126 (SARA) Training Regulations	0

\* Hot topics for this reporting period

■ Topics are calculated as the summation of all questions received by the Hotline. A single call may result in multiple questions.

# Call Analyses

December 1991

## General:

CEPP Interim Guide	0
Chemical Profile	1
NRT-1	2
Hazard Analysis	0
Risk Communication	0
Title III Workshops	0
Information Management	0
Prevention ARIP	0
Other	95

Trade Secrets	5
Enforcement	8
Liability	2
Document Requests	628
<b>TOTAL</b>	<b>2,192</b>

<b>TOTAL HOTLINE QUESTIONS, DOCUMENT REQUESTS AND REFERRALS:</b>	<b>12,621</b>
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\* Hot topics for this reporting period

■ Topics are calculated as the summation of all questions received by the Hotline. A single call may result in multiple questions.