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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
ENVIRONMENT AND ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

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Good morning, Mr. Chairman and members of the Subcommittee. I am Suzanne Rudzinski, Director of EPA's Office of Resource Conservation and Recovery. I am pleased to be here today to discuss the tracking of hazardous waste shipments under the Resource Conservation and Recovery Act (RCRA). In particular, I will focus my remarks on the efforts necessary to establish a national electronic manifest system, or e-Manifest, to track hazardous waste shipments more effectively and efficiently.

I will summarize EPA's current authority to track hazardous waste shipments under RCRA, and the paper-based manifest system that EPA and the Department of Transportation (DOT) established nearly 30 years ago. In addition, I will describe EPA's efforts to revise and modernize the manifest system, within the scope of our current authority. Finally, I will discuss the new statutory authorities that EPA will need in order to establish a national e-Manifest system that will enable transition of the manifest system from one that is very paper-intensive and burdensome to a system that will rely on information technology to track waste shipments.

The Agency looks forward to working with the Congress as an e-Manifest bill moves through the legislative process.

HAZARDOUS WASTE CONTROL AND THE RCRA MANIFEST SYSTEM

Subtitle C of the Resource Conservation and Recovery Act establishes the statutory framework for the regulation of hazardous wastes. Consistent with the statute, EPA has developed a comprehensive regulatory system prescribing “cradle-to-grave” controls on the generation, transportation, storage, and disposal of hazardous waste. As a threshold level of protection, Subtitle C of RCRA requires that EPA establish a manifest system to ensure that hazardous wastes are designated for, and indeed arrive safely at, designated hazardous waste management facilities. The manifest requirement was the Congress’s answer to frequent episodes of “midnight dumping” in the hazardous waste transportation and management industries.

The manifest implements the very important function in our “cradle-to-grave” waste management system of documenting that the hazardous waste shipments that originate at a specific “cradle” or generator site arrive intact at the selected “grave” or waste management facility. The manifest collects information about the quantity, composition, origin, and destination of all hazardous waste shipments. The manifest also documents the actual chain of custody for a waste shipment, by recording in turn the signatures of the generator, the transporters, and the receiving facility responsible for handling the waste.

Under Section 3003(b) of RCRA, EPA is required to coordinate our waste transportation regulations with the Department of Transportation (DOT). This requirement exists to minimize duplication and ensure consistency between RCRA’s hazardous waste transportation requirements and DOT’s hazardous materials regulations. EPA’s manifest requirements have been coordinated with DOT, with the result that

completing a hazardous waste manifest also assures compliance with DOT's requirements for completing a hazardous materials shipping paper.

The manifest requirements, which were jointly developed by EPA and DOT in 1984 and then revised in 2005, require the use of the Uniform Manifest for the tracking of all hazardous waste shipments that are transported over public highways to an off-site destination facility for management. The Uniform Manifest is a multi-copy form that generators of hazardous waste must first complete before hazardous wastes can be delivered to a transporter for shipment off-site. The generator is responsible for entering information that describes its hazardous wastes and identifies the transporters and the waste management facility that will receive such waste.

The manifest form is then physically carried with the waste shipment, and with each change of custody that occurs during transportation, a signature is obtained from the waste handler receiving custody. Each waste handler that signs the manifest must also retain a signed copy of the form among its company records to document its compliance. Finally, when the hazardous waste arrives at the designated waste management facility, that facility must sign the manifest and either verify that all the hazardous waste types and quantities were received, or identify any discrepancies. This final copy verifying receipts must then be sent back to the generator by mail, so that the generator receives confirmation of receipt by the designated facility.

Since the states are the primary implementers of the hazardous waste program, a number of authorized states also require the submission of one or more manifest copies so that the data may be entered into these states' tracking systems. There are currently 24 states that collect manifest copies, and use manifest data for program management,

revenue collection, and enforcement purposes. The states that collect manifest copies generally must enter the data manually into their tracking systems.

All of the manual processing steps described above add up to a very significant paperwork burden. We estimate that each year, hazardous waste generators prepare about 2 to 5 million manifest forms, and that the completion and processing of all these forms results in an annual paperwork burden that exceeds \$200 million.¹

BENEFITS of an E-MANIFEST SYSTEM

The Administration believes there are very significant benefits of an e-manifest system -- both in cost savings and program efficiencies for the regulated community and regulators. One benefit of moving to an e-Manifest system is the cost savings that will result to manifest users and to the state agencies that collect manifests and process their data. When EPA began analyzing the business case for the e-Manifest several years ago, we projected that an e-Manifest system that handled 75% of the current manifest traffic electronically could result in annual net savings that exceeds \$75 million to users and to State agencies.² The savings would be expected to be higher if updated to account for today's costs. These substantial cost savings result primarily from eliminating most of the manual processing steps that are necessary to support the completion, carrying, signing, filing, and mailing of paper manifests and data.

However, a variety of other significant benefits also would be realized that are equally important, if not more important, to the hazardous waste program. An e-manifest system would improve the overall effectiveness of the national hazardous waste tracking

¹ U.S. EPA E-Manifest alternatives analysis document, version 4.0, November 11, 2009.

² U.S. EPA E-Manifest alternatives analysis document, version 4.0, November 11, 2009.

system and thus, provide increased protection to human health and the environment. I would like to highlight a few of these benefits.

First, we would expect that the e-Manifest would produce better quality data and more timely information on waste shipments. The e-Manifest could be developed with automatic quality checks that would identify data entry errors, and we would likely avoid many of the data interpretation errors that result currently from illegible handwritten entries or from illegible copies.

Second, the e-Manifest system would make it possible to have nearly real-time tracking capabilities for waste shipments. Users could check the status of shipments as needed, and would no longer need to wait 30 days or more for paper copies to be mailed and processed before they could determine if their hazardous waste shipments have been delivered. This electronic tracking capability would also provide much more rapid notification of any discrepancies, delays, or other problems connected with a particular shipment.

Third, users could rely on the national e-Manifest system as their single point of contact for both their federal and state-required manifest data reporting. Since all states would be linked to the e-Manifest network, the submission of one e-Manifest to the national system also would supply necessary copies to those state programs that collect the manifest. Thus, there would be one-stop reporting of manifest data. Regulatory program management also would benefit by having access to manifest data that can be imported easily into a federal or state agency's tracking system, without having to re-enter data from paper forms.

Fourth, the e-Manifest system, with its ability to provide a single point of contact for transmitting and storing manifests, also would support enhanced inspection and enforcement capabilities. Federal or state regulators conceivably could inspect a facility's manifests and shipment data quite readily without having to go on-site for a labor intensive inspection of paper records.

Finally, the full implementation of e-Manifest could foster new data management possibilities, such as simplification or consolidation of existing requirements and systems for biennial reporting of hazardous waste data, for reporting of hazardous waste export and import data, and possible consolidation or streamlining of duplicative federal and state tracking systems.

A FEE-FUNDED E-MANIFEST SYSTEM

The Administration supports the development of a fee-based, centralized e-Manifest system. Since manifest users would receive the greater part of the benefits and cost savings that would result from using the e-Manifest, it seems fitting to the Agency and to the users themselves that the manifest users should fund the development and operation of the system.

In early 2005, EPA sought to fund the development of the e-Manifest system under the Electronic Government Act of 2002 which authorized, on a pilot basis, a new contracting approach for federal information technology (IT) projects known as "share-in-savings." The General Services Administration (GSA) was authorized to manage the program, and we worked closely with GSA to formulate a project plan and a procurement action for developing e-Manifest as a share-in-savings project. EPA was not able to

complete the e-manifest procurement activity before the expiration of the share-in-savings pilot authority in September 2005.

STATUTORY AUTHORITY

EPA's efforts in 2005 to initiate an e-Manifest procurement under the share-in-savings program did help us to understand better what authorities might be needed to pursue such an approach. First, legislation would need to authorize EPA to collect user fees for system-related activities and to deposit those fees in a special Treasury account from which funds could be expended only for system-related activities, including the development, operation, support, management, and future upgrade or enhancement of the e-Manifest system. This authorization could explicitly provide that the monies collected as user fees will be available to EPA to use for the payment of e-Manifest system costs. EPA believes that the manifest user community, and states support a dedicated funding source to support an e-Manifest system.

Second, it may be necessary for e-Manifest legislation to clarify any requirements for the use of unique or unconventional contracting arrangements for e-Manifest. EPA has developed a number of information technology systems under conventional Federal procurement arrangements specified in the Federal Acquisition Regulations (FAR). So, if the e-Manifest legislation and related appropriation bills were to authorize and appropriate funds to EPA for the e-Manifest system build, as suggested in the Administration's proposal, EPA would likely procure the development of the system using conventional Federal Acquisition procedures and rely on user fees to cover system operations and maintenance costs. However, if Congress authorizes use of a different contracting approach for the system build, such as the "Share-in-Savings" type of

performance based contract that was authorized in the Electronic Government Act of 2002, then the contents and requirements for such a contract may need to be addressed in the legislation.

Third, legislation should include provisions that will ensure that the e-Manifest system and the authorizing regulations developed by EPA will be effective in all states and effective on the same date. The e-Manifest can be successful as a cost savings project for users and a profitable venture for vendors only if it is assured that the e-Manifest will be implemented consistently in the states. The e-Manifest will not be successful if some states choose not to recognize the validity of electronic manifests, or if some states require a full paper manifest to be completed in addition to an e-manifest. Similarly, EPA believes that the e-Manifest should be effective in all states as a federal requirement on the effective date designated in EPA's authorizing regulations. Thereafter, as authorized state programs revise their regulations to adopt the e-Manifest system and become authorized for this program modification, the e-Manifest would become effective as well under state law. However, to avoid confusion for users of an e-Manifest system, we need to be sure that e-Manifest will be effective as a federal requirement on the same date in all the states.

E-MANIFEST IS CONSISTENT WITH COMMONSENSE REGULATION

On January 18, 2011, President Obama signed Executive Order 13563, which reaffirmed the principles, structures, and definitions governing regulatory review that was established in Executive Order 12866. As stated in the Executive Order, "each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs

are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity).

The Executive Order also contained a specific provision entitled, “Retrospective Analysis of Existing Rules,” which requires agencies to “look back” at its existing “rules that may be outmoded, ineffective, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” The e-Manifest system is one example of such regulatory revision that should be undertaken, and in fact, EPA included it as a burden reduction effort in the Agency’s Final Plan for Retrospective Reviews for Existing Regulations.

Finally, we would note that as part of the President’s FY 2012 and FY 2013 Budgets, the Administration supported the development of an electronic hazardous waste manifest system. On May 23, 2011, EPA transmitted to the House and Senate an e-Manifest legislative proposal. The Administration proposal is similar in many respects to S.710 insofar as establishing a national e-Manifest system funded through user fees. The proposal differs by incorporating an annual appropriation provision into the user fee funding approach, and relies upon conventional contracting arrangements for the initial system build.

CONCLUSION

The Administration supports the enactment of legislation that would authorize EPA to establish a national e-Manifest system funded by user fees. We believe that such an electronic system can produce better tracking services for our citizens, better data for informed policy decisions and program management, greater accountability for how hazardous wastes are transported and managed, and provide significant cost savings to both the e-Manifest users and regulators, consistent with Executive Order 13563. I look forward to working with Congress to enact legislation to provide for the development of an efficient, effective e-Manifest system.