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Description Notes

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Establishment by the EPA Administrator
of a Resource Conservation and
Recovery Act Science Advisory Committee

Amendments to establish an independent science peer review committee to evaluate scientific data and risk assessments involving important scientific uses have been proposed to RCRA, the Clean Water Act, and the Safe Drinking Water Act. (See attached memo). These proposals are consistent with the position taken by the Administrator on science policy and would institutionalize the National Academy of Sciences recommendations^{1/} endorsed by the Administrator. Because of the tight legislative schedule and other time considerations the Administrator indicated that it would be preferable to establish the science panels by administrative action.

This memorandum outlines the authority and procedures under which the Administrator could establish science advisory committees to strengthen the scientific component of the regulatory process within EPA.

Recommended Procedure

The establishment of science advisory committees to provide an institutional mechanism for peer review of

^{1/} The recommendations were published by the Committee on the Institutional Means for Assessment of Risks to Public Health of the National Academy of Sciences in a report entitled "Risk Assessment in the Federal Government: Managing the Process" (March 1983).

scientific studies and risk assessments is directly related to EPA's risk management responsibilities under those statutes. Given the current priority in Congress of the Resource Conservation and Recovery Act ("RCRA") and the status of its reauthorization, this memorandum focuses on the establishment of a RCRA Science Advisory Committee. (The same procedures, however, would be applicable to establish science advisory committees under other Acts.)

1. The Federal Advisory Committee Act. The RCRA Science Advisory Committee must be established in accordance with the requirements of the Federal Advisory Committee Act ("FACA") (5 U.S.C. (App. 1) § 1 et seq.). Section 9 of FACA requires that prior to the establishment of an advisory committee, the Administrator must consult with the Director of the Office of Management and Budget and determine as a matter of formal record with timely notice in the Federal Register that the advisory committee is in the public interest "in connection with the performance of duties imposed on that agency by law." (5 U.S.C. (App. 1) § 9(a).) In addition, an advisory committee charter that meets the requirements of Section 9(c) of FACA must be filed with the Administrator and the House and Senate committees that have legislative jurisdiction of EPA. (5 U.S.C. (App. 1) § 9(c).)

2. The Administrative Procedure Act. To demonstrate that the RCRA Science Advisory Committee is in the

public interest in connection with EPA's functions under the law, the Administrator should make clear that the Committee will as a matter of law be part of the regulatory procedure and should utilize the notice and comment provisions of the Administrative Procedure Act ("APA") (5 U.S.C. § 553) in establishing the Committee. EPA has authority to adopt procedural rules by notice and comment under APA. In the Notice of Proposed Rulemaking, it should be stressed that EPA deems peer review of risk assessments and other science matters under RCRA to be an essential component to good risk management decisions under the Act; that rules involving significant scientific matters should be promulgated only after such peer review to ensure a sound science base for regulatory actions; and that EPA recognizes the regulation establishing the RCRA Science Advisory Committee as a final rule.

The proposed rule would provide that the RCRA Science Advisory Committee is an integral part of the regulatory process to evaluate risk assessments and scientific data that involve a significant science issue under Sections 3001, 3002, 3003, and 3004 of RCRA. Those risk assessments and scientific data that meet the criteria could be referred to the Committee by the Administrator, upon the Committee's own initiative, or upon petition by private parties.

3. Assurance of Expertise and Independence. The proposed amendments provide for nomination of scientists solely

on the basis of scientific expertise. To assure independence, a list of nominees from which the Administrator would choose members, would be prepared by the National Academy of Sciences. To achieve the same objective the Notice of Proposed Rulemaking could state an intention to request the NAS to perform the nomination functions under contract.

4. Relationship to the Science Advisory Board. In order to provide coordination with the Science Advisory Board, it is proposed that the Chairman of the RCRA Committee be made a member ex officio of the SAB Executive Committee.

5. Compensation. Compensation for the members of the RCRA Committee should be resolved at the same time as the issue is resolved for the SAB.

6. Detailed Provisions. Except as outlined above, the functions, evaluation process, and membership of the Committee would be similar to those contained in the legislative proposals submitted to the Administrator on August 22, 1983.

7. Publication. The final rule should be published in the Code of Federal Regulations. The Office of the Federal Register, which publishes the Code, considers the determination of whether a regulation should be published in the Code to be a matter of discretion of the head of the agency; therefore it would be published upon request by the Administrator.

Conclusion

Establishing the RCRA Science Advisory Committee by utilizing authority under both RCRA and the APA and by having the rule published in the Code of Federal Regulations would stress the importance of the peer review function and its institutional character as an integral part of the regulatory procedure.