

January 23, 1998

Ms. Carol M. Browner  
Administrator  
United States Environmental Protection Agency  
401 M Street, S.W.  
Washington, DC 20460

Dear Administrator Browner:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel convened for EPA's planned proposed rulemaking entitled "Effluent Limitations Guidelines and Pretreatment Standards for the Centralized Waste Treatment Industry." These regulations are being developed by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) Sections 304 and 307. They will control the direct discharge of pollutants to surface waters of the United States, as well as the indirect discharge of pollutants to publicly owned treatment works (POTWs), by establishing, for the first time, effluent limitations guidelines and pretreatment standards for centralized waste treatment facilities.

The Panel was convened on November 6, 1997, by EPA's Small Business Advocacy Chairperson, Thomas E. Kelly, under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The other members of the Panel are Sally Katzen, Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB); Jere W. Glover, Chief Counsel for Advocacy of the Small Business Administration (SBA); and Sheila E. Frace, Acting Director of the Engineering and Analysis Division in EPA's Office of Water.

It is important to note that the Panel's findings and discussion are necessarily based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the rule, and additional information may be developed or obtained during this process and from public comment on the proposed rule. The options the Panel identified for reducing the rule's regulatory impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Clean Water Act.

#### Summary of Small Entity Outreach

The planned proposal would apply to facilities that treat or treat and recover material from waste, wastewater, and/or used material received from off-site generators. The materials result from industrial activities and may be classified as hazardous or non-hazardous under the Resource Conservation and Recovery Act (RCRA). Some CWTs treat off-site waste exclusively while others treat on-site generated waste as well.

EPA has actively involved stakeholders in the development of the proposed rule in order to ensure the quality of information, identify and understand potential implementation and compliance issues, and explore regulatory alternatives. EPA performed 41 site visits to CWT facilities and has participated in numerous meetings, seminars, and workshops that included substantial small business representation. In addition, EPA published two Federal Register Notices presenting information and requesting input on various issues related to the CWT effluent guideline, including a proposed rule published on January 27, 1995. EPA received over 200 written comments on these notices. A more complete summary of EPA's outreach activities is contained in the enclosed Panel Report.

In May 1997, EPA decided to convene a Small Business Advocacy Review Panel for this proposal. In consultation with the SBA Chief Counsel for Advocacy, the Agency selected a group of three Small Entity Representatives (SERs) to participate in this process. The full Panel report lists the materials provided to them and summarizes their comments. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

### Panel Findings and Discussion

Under the RFA as amended by SBREFA, the Panel must collect the advice and recommendations of the SERs on issues related to: (1) the type and number of small entities to which a proposed rule would apply; (2) record keeping, reporting and other compliance requirements applicable to those small entities; (3) the proposed rule's interaction with other Federal rules; and (4) regulatory alternatives to the proposal that would minimize the impact on small entities consistent with the stated objectives of the statute authorizing the rule. The Panel's findings and discussion with respect to each of these issues are summarized below.

### Type and Number of Affected Small Entities

Based on a survey of the industry and comment responses, EPA estimates that 208 centralized waste treatment facilities may be affected by this planned proposal. Of these, 53 facilities are owned by firms with \$6 million or less in annual revenues.<sup>1</sup> The Panel discussed a concern raised by two of the SERs that EPA's estimate of the number of CWT facilities may not include the entire universe of CWTs. The Panel recommends that EPA again solicit names and addresses of CWTs in the preamble to the proposed rule.

### Record keeping, Reporting and other Compliance Requirements

The proposed rule will not contain specific monitoring, record keeping or reporting requirements. Such requirements are already contained in regulations for the existing NPDES and

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<sup>1</sup> EPA based its analysis of small business impacts on the SBA definition of "small business" for the SIC code most reported by CWTs (4953).

national pretreatment programs, which grant substantial discretion to local permitting authorities to determine appropriate site-specific monitoring regimes. However, in developing industry-specific effluent guidelines and pretreatment standards, EPA bases the regulatory limits, as well as the estimated costs and impacts of the rule, on an assumed monitoring regime. This is one factor considered by permitting authorities in setting site-specific requirements. The Panel noted that the assumed monitoring costs represent a significant share of compliance costs for the rule, and thus devoted considerable time to discussing various options for reducing them. Two of the SERs suggested that one way to do this would be to identify an indicator parameter for a large number of organic pollutants and base regulatory limits on this parameter alone. The Panel is aware that EPA is already exploring this option and strongly endorses this approach. If a suitable indicator parameter can be found, this could result in significant monitoring cost reductions for all facilities.

The Panel also discussed the possibility of basing the regulatory limits for small businesses on a reduced-frequency monitoring regime, in the event that a suitable indicator parameter cannot be identified or that monitoring costs remain high even with the use of an indicator parameter. This could be combined with guidance to permitting authorities on appropriate monitoring frequencies for small businesses. EPA analyzed a less frequent monitoring regime that would reduce monitoring costs for a typical facility by about 80-90 percent. For small businesses, such savings would be especially significant. All of the SERs supported a reduction in monitoring for small businesses. If a reduced monitoring approach can be adopted without significantly undermining the environmental benefits of the rule, the Panel strongly recommends that EPA do so in the proposed rule, at least for small businesses.

#### Interaction with Other Federal Rules

The Panel identified no other federal rules which duplicate or interfere with the requirements that would be imposed by the proposed effluent guidelines and pretreatment standards. However, two of the SER commenters noted that CWT facilities are already heavily regulated under a variety of environmental statutes and programs. While the Panel did not find that these requirements interfere with the planned proposed rule, the Panel agrees with commenters that these requirements provide an important context in which to consider the impact of additional regulation on small CWT facilities. The Panel also notes that all direct CWT dischargers are already subject to wastewater permits and all indirect dischargers are subject to local limits and/or the general pretreatment provisions.

#### Regulatory Alternatives

The Panel discussed the nature of the centralized waste treatment industry as part of its consideration of regulatory alternatives. Some stakeholders have suggested that the absence of categorical standards for CWTs has been a major “loophole” in the effluent guidelines program, allowing wastes to be treated off-site less effectively than would be required of the same wastes if treated on-site. Others have suggested that the existence of CWTs is an important “safety valve” which provides an affordable and effective treatment alternative for industrial facilities that would otherwise find it prohibitively expensive to comply with industry-specific categorical treatment requirements. Both views were represented on the Panel.

EPA data indicate that indirect dischargers in the oils subcategory represent the majority of small businesses in the CWT industry. Although the Panel invested considerable effort in attempting to develop specific recommendations for providing regulatory relief to small businesses in this group that would not jeopardize the rule's environmental benefits, it was not able to reach consensus. The Panel supports further consideration of small business regulatory relief provisions for the proposed rule.

SBA strongly favors an exclusion of all indirect discharging facilities owned by small firms in the oils subcategory because it believes the total amount of lost pollutant removals would not be environmentally significant. EPA is reluctant to provide an exclusion, because of the high variability of the wastes treated by this industry and the concern that excluded facilities, even though small, might discharge significant amounts of pollutants. Small entity commenters were divided on the issue of excluding small businesses. One commenter believes it is appropriate to exclude all indirect dischargers in the oils subcategory, and that this is especially appropriate for those treating only non-hazardous wastes, based on his belief that pollutant discharges from this group are small. The other commenters opposed such an approach. They believe an exclusion would adversely impact the image of the industry and are concerned that it would give excluded facilities a competitive advantage over non-excluded facilities. One of these commenters suggested that small businesses might be granted additional time to comply with the new standards instead.

SBA also recommended that EPA consider emulsion breaking and secondary gravity separation as a less costly technological alternative for small businesses. SBA questioned whether going beyond this level of treatment would provide significant additional environmental benefits. Two SER commenters also supported this approach. EPA was concerned about the limited data available on this technology, but agreed to look into it.

The Panel recommends that EPA include a full and balanced discussion of possible small business relief measures in the preamble to the proposed rule and consider some form of regulatory relief for the final rule if its analyses continue to show significant economic impact on a substantial number of small businesses.

The Panel also discussed EPA's preferred treatment option for new sources in the metals subcategory, which is much more expensive than the preferred option for existing sources. Based on the analysis of existing sources, additional pollutant removals from the more expensive treatment appear to be minimal. EPA noted its requirement under the Clean Water Act to base regulatory limits for new sources on the Best Available Demonstrated Technology. The other Panel members urged EPA to reconsider how much flexibility there might be under the Act to select a reasonable, cost-effective alternative, especially in light of the requirements of the Regulatory Flexibility Act and EO 12866.

Based on SER comments, the Panel also discussed several methodological issues related to the manner in which EPA has calculated pollutant loadings, pollutant removals, and facility closures. Some Panel members were concerned that the estimates of loadings and removals may be high, and the estimate of small business closures may be low. EPA believes that its current methodology is

reasonable and appropriate, but is reviewing the methodological issues that were raised. A full discussion appears in the report.

In conclusion, the Panel recommends that EPA again solicit names and addresses of CWTs in the preamble to the proposed rule. The Panel strongly recommends that EPA continue its efforts to find a suitable indicator parameter that could result in significant monitoring cost reductions for all facilities. If a suitable indicator parameter is not found, but a reduced monitoring approach can be adopted without significantly undermining the environmental benefits of the rule, the Panel strongly recommends that EPA do so in the proposed rule, at least for small businesses. Finally, the Panel recommends that EPA include a full and balanced discussion of possible small business relief measures in the preamble to the proposed rule and consider some form of regulatory relief for the final rule if its analyses continue to show significant economic impact on a substantial number of small businesses.

Sincerely,

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Jere W. Glover  
Chief Counsel for Advocacy  
U.S. Small Business Administration

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Sally Katzen, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

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Sheila E. Frace, Acting Director  
Engineering and Analysis Division  
Office of Water  
U.S. Environmental Protection Agency

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Thomas E. Kelly, Chair  
Small Business Advocacy  
U.S. Environmental Protection Agency