

EXEMPTION PROPOSAL – PRESENTED TO EXEMPTION SUBGROUP AUGUST 28, 2017

Burn As A Fuel – Remove exemption for inorganic byproducts, and issue guidance consistent with other EPA programs regarding burning of mixtures primarily composed of organic byproducts<sup>1</sup>

- Inorganic byproducts have no value as a fuel, and thus addressing this issue is appropriately within the scope of the reg neg
- Burning of inorganic byproducts is a condition of use with exposures of interest to EPA for risk prioritization and risk evaluation
- Guidance regarding sham burning of mixtures can be adopted from other programs (i.e., minimum heating value, prohibition against sham blending), and is needed given there is no previous guidance regarding sham burning under CDR

Subgroup member responses:

1. State subgroup members were supportive of proposal since EPA needs to consider releases of inorganics from fuel combustion during risk prioritization/evaluation processes. States noted data from Part 3 subgroup indicates inorganics are burned as a fuel, and in any case, if the exemption is not appropriate it should be removed to avoid confusion.
2. Industry pointed out need for further definition of “inorganics” or “principally inorganics” in regulations or guidance to clarify further the exemption boundaries for mixtures of organics/inorganics.
3. Industry members would prefer to clarify the exemption scope through guidance only, but EPA is unsure guidance alone can be used for this purpose, and will consult OGC.
4. EPA subgroup member doubts that anyone is burning inorganics as a fuel. If they are burning a mixture and the organics are being burnt off for energy value and the inorganics are reused in the process, they lose the exemption right now so no change is needed (where is it stated they lose the exemption?) EPA is not comfortable with providing guidance on burning as a fuel within the TSCA context, because there already is much guidance on this in the CAA and RCRA. Furthermore, inorganics would never meet a BTU value so since that is all that we are talking about here, it doesn’t make sense to provide guidance that would primarily impact organics.

Disposal As Waste for Commercial Purposes – Issue guidance clarifying forms of disposal for a commercial purpose, retain exemption for disposal in landfill (as cover), but limit exclusion for “enriching soil” so that inorganic byproducts on the 2014 work-plan and EPA identified PBTs used for soil enrichment are reported under CDR. In addition, EPA would agree to develop one-time CDR reporting for other inorganic byproducts used for soil amendment, targeting inorganic byproducts of concern to be identified by EPA (after reg neg is completed)

- Use as a soil amendment can contribute to significant environmental releases, and is a condition of use which should be evaluated by EPA as part of prioritization and risk evaluation for work-plan inorganic byproducts

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<sup>1</sup> Throughout this proposal, it is envisioned companies which have already provided the required information under TRI could indicate this on their CDR reporting form, to avoid duplicative reporting. We understand this opportunity currently exists, but the option may be made more explicit on the form itself.

*DISCUSSION DRAFT – Chemical Data Reporting (CDR) Inorganic Byproducts Negotiated Rulemaking Committee*

- One-time reporting for other priority inorganic byproducts (to be identified by EPA after the reg neg is completed) will enable EPA to determine how to address the exemption in the future

Subgroup member responses:

1. State subgroup members were supportive of proposal since EPA needs to consider releases of inorganics from land application risk prioritization/evaluation processes, and suggested PBTs identified through the Great Lakes restoration activities as suitable candidates for EPA consideration under this proposal. Some PBTs are inorganics, as identified in the Great Lakes protection initiatives.
2. Industry members expressed concern removal of the exemption would add to the reporting burden, not reduce it.
3. EPA questioned whether any identified PBTs are inorganics. EPA believes when removing the exemption for inorganics on the 2014 workplan, reporting should be required when the inorganic byproducts are part of a mixture and the organics in the mixture retain the exemption.

Component Extraction – Remove the exemption

- For risk prioritization purposes, distinction in reporting based upon presence of a chemical reaction is not relevant to use of CDR as a screening tool – namely the identification of exposure scenarios and vulnerable populations forming the basis for screening analyses
- Current exemption based on distinction requires byproduct manufacturer to know how recycler will extract usable chemicals, placing it in legal jeopardy if wrong or recycler changes method. There is a significant burden associated with making this (irrelevant) determination.

Subgroup member responses:

1. Industry members expressed concern removal of the exemption would add to the reporting burden, not reduce it. In addition, the exemption may more often apply to organics, and thus removing it only for inorganics may cause confusion.
2. EPA doesn't know who is taking advantage of this exemption, and is therefore concerned about its retention. EPA does not have any data now to determine the significance of the exemption for risk prioritization/evaluation impacts. Accordingly, EPA proposes to find out who is invoking the exemption through one-time reporting, as part of the CDR Reg Neg rulemaking (covering both organics and inorganics?).
3. States do not believe this exemption can be justified under the revised TSCA, because the extraction method is immaterial for identifying conditions of use and exposure scenarios.