



Attention: Docket ID Number EPA-HQ-RCRA 2003-0012
Submitted via E-Docket

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OSWER Docket
EPA Docket Center Mailcode: 5305T
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Environmental Protection Agency,

The American Council on Education (ACE), the National Association of College and University Business Officers (NACUBO) and the undersigned associations submit the following comments on EPA's Proposed Rule: Subpart K - Standards Applicable to Academic Laboratories (71 *Federal Register* 29712). ACE serves as the coordinating body for the higher education community. Its approximately 1,800 members include accredited, degree-granting colleges and universities from all sectors of higher education and other education organizations. NACUBO is a nonprofit association representing chief administrative and financial officers at more than 2,200 colleges and universities across the country.

ACE and NACUBO have advocated for appropriate changes to the regulations under the Resource Conservation and Recovery Act (RCRA) for more than 20 years and we applaud the Agency for proposing new performance-based alternatives to assist colleges and universities in ensuring that their laboratories and other activities remain leaders in environmental stewardship. In addition to advocacy efforts, the associations have partnered with the EPA Sector Strategies Program in recent years to improve the environmental performance of the college and university sector.

These comments will highlight several broad issues focusing on the nature of the performance-based approach and the applicability of the Subpart K regulations to various types of institutions and facilities. We fully support the more comprehensive and technical comments submitted by the Campus Safety, Health and Environmental Management Association (CSHEMA).

Higher education is one of the nation's most valuable assets. America's 4,100 colleges and universities range from very small institutions with a few hundred students to

complex research universities with 50,000 students. In 2000, institutions of higher education employed almost three million people and educated more than 15 million students.

University campuses are very different from the industrial sectors regulated by EPA. For example, our unique teaching and research laboratories typically work with thousands of chemicals in very small volumes, often on a cyclical basis tied to the academic year. Application of standards designed for handling the larger concerns inherent when large volumes of hazardous substances are present creates confusion and unnecessary obligations in the noncommercial, academic setting. As a result, RCRA regulations are often applied inconsistently in higher education by EPA regions, inspectors, and state agencies. In addition, overlapping rules between EPA, OSHA, and other health and safety requirements, create confusion on our campuses. We strongly believe that the performance-based approach proposed in Subpart K will allow our diverse academic laboratories to use the most effective and efficient methods to achieve maximum environmental performance, and we thank the EPA for your effort to understand the unique nature of hazardous waste management at colleges and universities.

Performance-Based Standards and the Laboratory Management Plan

ACE and NACUBO strongly believe that the adoption of performance-based standards will enhance environmental management on college and university campuses. We commend EPA for taking this approach, and urge you to “stay the course” and resist the temptation to fall back on prescriptive regulations. Sprinkled throughout the preamble to the NPRM, EPA questions its performance-orientation and offers a more prescriptive alternative (on container management at p. 29729, on labeling at p. 29730, and on training at p. 29732). In all of these instances, ACE and NACUBO support the more flexible, performance-based approach taken in the proposed regulations. Institutions that prefer a more prescriptive alternative may decide not to participate in Subpart K.

In the preamble, EPA requests comment on whether the final rule should require institutions to develop a Laboratory Management Plan (LMP). We believe that an LMP should be required. Not only is an institution-generated LMP practical, it is the embodiment of the performance-based standard. The LMP requires that the institution clearly identify which laboratories and other spaces are covered, and think through its policies and procedures for managing waste. This approach has worked well in the laboratory environment for almost fifteen years under OSHA-mandated chemical hygiene plans, and should be even more beneficial when these two plans can be coordinated or merged.

EPA proposes two options with respect to the enforceability of a LMP on campus and seeks comments on which approach is preferred. In §242.214 (a), under Option 1, the institution would be required to develop and implement a LMP that describes how it will meet the performance standards in nine areas. Compliance would be evaluated on achievement and actual performance in relation to the EPA standards. This comports with our understanding of a performance-based standard, and ACE and NACUBO support this option. This option creates an opportunity for colleges and universities to

achieve the highest possible environmental performance standards by minimizing the threat of enforcement for administrative issues.

Option 2 would require strict observance to the “specific provisions contained in its Laboratory Management Plan.” The emphasis on enforcement of the written LMP would result in colleges and universities documenting the bare minimum required for compliance and would discourage innovation aimed at improving environmental stewardship. If the ultimate goal of the performance-based approach as stated in the preamble is to “allow colleges and universities greater flexibility and ensure better environmental results,” (p. 29715) colleges and universities should be encouraged to reach for the highest environmental performance standards when designing their LMP (Option 1), instead of ensuring the lowest common denominator of environmental performance through a strictly enforceable LMP (Option 2).

CSHEMA outlines many other reasons why the adoption of Option 2 would inhibit, and perhaps even reverse, environmental improvements on campus, and ACE and NACUBO support their comments.

§262.200 Definition of College or University

In the preamble, EPA asks if the proposed definition of “college/university” captures and excludes appropriate types of institutions, and if it would be appropriate to extend participation in these new alternative regulations to institutions that grant certificates, rather than degrees. Questions were also raised about using accreditation as a standard.

ACE and NACUBO support the definition as written and believe that it sets appropriate parameters for determining which academic institutions should be eligible for coverage under Subpart K. While the definition is quite broad, encompassing over 4,000 institutions, many of those are quite small with few laboratories and are unlikely to elect to be covered under the new rules. Similarly, broadening the definition to include institutions that offer certificates but not degrees probably would not have an appreciable impact because such institutions do not typically engage in research or have a significant number of teaching laboratories.

Accreditation is a widely accepted measure of legitimacy and quality for colleges and universities in the United States. In addition to reviewing academic programs, accrediting agencies seek to ensure that institutions have sufficient resources and administrative capacity to manage their operations soundly. Using the list of accrediting agencies approved by the U.S. Department of Education (ED) is a sensible approach, as ED already has a process in place for vetting the accrediting bodies.

We are very concerned, however, by the discussion in the preamble of the NPRM (p. 29723) excluding laboratories in hospitals affiliated with universities from the definition. Teaching hospitals are often an integral part of medical school and university campuses, housing academic and research facilities in addition to providing clinical care. Consider for example, that the National Institutes of Health sponsors nearly \$1.6 billion annually for research and related activities directly to hospitals in addition to funding directed

through medical schools and other academic institutions. Personnel, including students, faculty, and researchers routinely move between the teaching hospital and other academic facilities in the course of their work. Further, waste streams at teaching hospitals are often quite diverse and not unlike those from other research endeavors. The NPRM's presumption that hospital laboratories are categorically distinct from other academic laboratories is not accurate, and we believe that in many instances the similarities in hazardous waste generation between other academic labs and those in university hospitals outweigh the differences.

The university should have the option to include hospital labs under its Laboratory Management Plan if it wishes to do so. This will avoid the confusion inherent in having a different set of standards for similar facilities in different campus buildings, and lend more coherence to the institution's hazardous waste management program.

§262.200 Definition of a Laboratory

ACE and NACUBO urge EPA to take a slightly broader view of a laboratory for the purposes of these regulations. We greatly appreciate your acknowledgement that art studios should be included as labs, recognizing that their hazardous waste generation patterns have much in common with other types of labs. We concur with CSHEMA's suggestions to allow institutions to include several other types of facilities, such as chemical stockrooms, photo labs, and research support facilities, under their Laboratory Management Plan. While we understand EPA's decision not to extend Subpart K to those university functions such as facilities maintenance and power plants, we believe that the performance-based approach will be more successful and have greater impact if colleges and universities are encouraged to develop comprehensive LMPs and consistent hazardous waste management practices to the extent practicable. Arbitrary exclusion of ancillary facilities that are often in close proximity and utilized by the same personnel as covered labs will make it harder for institutions to manage waste consistently.

EPA also asks whether research laboratories at other types of facilities should be afforded the opportunity to elect coverage under Subpart K. ACE and NACUBO have no objection to broader coverage, but will leave it to those entities to make the case for inclusion. Such operations have much in common with academic labs, although they do not face some of the challenges posed by the teaching function and the academic calendar.

§262.201 Applicability of This Subpart

EPA asks in the preamble whether institutions that are conditionally exempt small quantity generators under RCRA should be able to opt to be covered under Subpart K. While we agree that many CESQGs would be reluctant to adopt the alternative because a number of standards are more stringent than current rules, ACE and NACUBO urge EPA not to proscribe their participation. We believe that smaller colleges could benefit from the rational, performance-based approach that allows them to more closely tailor their hazardous waste management program to their needs and unique situation.

Further, it is important to remember that many institutions have more than one RCRA generator ID number and may have multiple CESQG sites. We believe, and hope, that many such institutions will prefer to have all of their laboratories follow the same regulatory scheme and will want to include labs that, by location, fall into a different generator status included in a comprehensive LMP. As EPA recognizes in requiring that an institution electing to follow Subpart K for all labs within a single generator ID, a regulatory scheme that places similar facilities under different rules will be confusing and hard to manage.

ACE and NACUBO also support the idea of allowing CESQGs to participate in the laboratory clean out provisions in §262.213 without opting for full coverage under Subpart K. This would eliminate some of the current disincentives for regular clean outs for CESQGs who may worry that temporarily increased waste volume will push them into a different generator status.

ACE and NACUBO commend EPA for its hard work in crafting a ground-breaking proposal that will go far in responding to the unique challenges of laboratories. Thank you for the opportunity to comment. Please contact Anne Gross, vice president, regulatory affairs at NACUBO at 202-861-2544 or anne.gross@nacubo.org with questions about our comments.

Sincerely,



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Vice President and General Counsel
American Council on Education



John Walda
President
National Association of College and
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The undersigned associations join in these comments:

American Association of Medical Colleges
American Association of State Colleges and Universities
Association of American Universities
National Association of State Universities and Land-Grant Colleges