



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Phosphogypsum/Phosphoric Acid Production Wastewater: Center for Biological Diversity Petition to U.S. Environmental Protection Agency for Rulemaking Pursuant to Resource Conservation and Recovery Act/Toxic Substances Control Act

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The Center for Biological Diversity (“CBD”) and a number of other environmental organizations submitted a February 8th document to the United States Environmental Protection Agency (“EPA”) titled:

Petition for Rulemaking Pursuant to Section 7004(A) of the Resource Conservation and Recovery Act; Section 21 of the Toxic Substances Control Act; and Section 553 of the Administrative Procedure Act Concerning the Regulation of Phosphogypsum and Process Wastewater from Phosphoric Acid Production (“Petition”)

Phosphogypsum is described by the Petition as radioactive, toxic waste created during wet-process phosphoric acid production. The rate of production is stated to be 5.2 tons for every ton of phosphoric produced.

Phosphoric acid is described as the intermediate feedstock of granular and liquid ammonium phosphate fertilizers. It is stated to be produced from phosphate rock mined from mineral deposits.

Also described is the process wastewater that is stated to be potentially generated during some activities when the phosphate ore is processed in sulfuric acid at fertilizer plants.

The *Petition* requests that EPA promulgate rules that:

1. reverse the Environmental Protection Agency’s (EPA) 1991 Bevill regulatory determination excluding phosphogypsum and phosphoric acid production process wastewater (“process wastewater”) from the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations;
2. govern the safe treatment, storage and disposal of phosphogypsum and process wastewater as hazardous wastes under RCRA Subtitle C;

3. initiate the prioritization process for designating phosphogypsum and process wastewater as high priority substances for risk evaluation under the Toxic Substances Control Act (TSCA) §6(b)(1)(B)(i);
4. require manufacturers to conduct testing on phosphogypsum and process wastewater under TSCA §4(a)1(A)(ii); and
5. determine under TSCA §5(a) that the use of phosphogypsum in road construction is a significant new use.

The *Petition* discusses and/or argues:

- Resource Conservation and Recovery Act Overview
- Discussion of the Bevill Amendment
- Discussion of the Simpson Amendment
- Toxic Substances Control Act as Amended by the Lautenberg Chemical Safety Act of the 21st Century
- Prioritization Under § 6
- Testing Rules Under § 4
- Significant New Use Rules Under § 5(a)
- Regulatory History of Phosphogypsum Stacks
- EPA's 1991 Bevill Determination is Reversible
- Phosphogypsum and Process Wastewater are Hazardous Wastes Under RCRA Subtitle C Regulation
- Phosphogypsum satisfies RCRA's criteria for listing as a Toxic Waste
- Process Wastewater is a Characteristic Hazardous Waste
- The RCRA Simpson Amendment Affords EPA Flexibility in Subtitle C Regulation of Mineral Processing Wastes, Including Phosphogypsum and Process Wastewater
- EPA Must Initiate Prioritization for Phosphogypsum and Process Wastewater as High priority Chemical Substances for Risk Evaluation Under TSCA § 6
- Information Necessary to Prioritize Phosphogypsum and Process Wastewater is Reasonably Available
- A TSCA § 4 Testing Rule Is Necessary to Fill Gaps in Current Science and to Better Inform a Future Risk Evaluation
- EPA's Approval of the Use of Phosphogypsum in Road Construction is a Significant New Use
- Other Federal Regulatory Programs Are Inadequate to manage the Risk of Injury to Human Health and the Environment Posed by Phosphogypsum and Process Wastewater
- Feasible Alternatives to Current Phosphogypsum and Process Wastewater Management Are Available

A copy of the *Petition* can be downloaded [here](#).