***CKRC Privileged and Confidential***

***Confiscated Drug Volunteer Initiative Survey***

***Summary***

9/19/18 DRAFT

***Summary***

Multiple member companies expressed interest in this volunteer Confiscated Drug Initiative (CDI) effort. A couple of member companies were on the fence and expressed a need for additional information or were skeptical about being involved in the initiative due to significant regulatory and public perception barriers. However, almost all survey participants expressed a willingness to engage in further discussions regarding this request before committing to participate or rejecting the CDI.

Almost all of the companies that fully responded to the survey HAVE provided similar services to law enforcement agencies in the past. Multiple companies said they would consider providing regional capacity. With respect to incentives, most companies stated that Good Will from federal, state and local government, Regulatory Flexibility, and help with Public Perception are important. One company emphasized that Supplemental Environmental Projects (SEPs) in enforcement settings would be its single most important incentive.

A couple of companies are unwilling at this time to participate due to concerns/questions about safety, unknowns, public scrutiny and recent MSHA attention on member facilities. This category of respondents also noted that since the CISWI rule, they have ceased accepting any such material. Citing cost/expense, Insurance, Employee health concerns (both short and long term), Permitting concerns, Material handling system limitations, Equipment limitations depending on the material are all underlying reasons they no longer take this type of material.

It is also important to note that members completed this survey prior to receiving the recent EPA memorandum (dated September 11, 2018) regarding Pharmaceutical Take-Backs (attached). It affirms the desire of EPA to move forward on pharmaceuticals disposal.  This new memo shows the Acting Administrator's commitment to diverting these pharmaceuticals to **safe combustion**.  While this is just a first step on providing a clear regulatory path for these wastes when generated by take-back days and direct from the consumer returns, it gives a strong sense of how a second EPA-partner step addressing confiscated drugs by law enforcement would fit in, and be welcomed and lauded. This memo makes clear that disposal by any non-consumer, other than a consumer or a law enforcement agency operating a twice annual community take-back under the DEA authority, should seek hazardous waste combustor capacity.

***Questions Posed By Survey Participants***

1. Any guestimate how much volume a month?  1 or 2 – 5 gallon buckets????
2. If we are volunteering to safely combust this waste, will we be able to take pictures to share our volunteering?
3. Cement industry addressed aspects of this issue in comments on the CISWI rule. Has EPA reviewed those comments for implementation options?
4. Will hazardous waste codes be applied to the materials? What if a facility cannot accept those codes?
5. How will the material be segregated – by type (e.g., alcohols, marijuana, opioids)? By state (e.g., liquids, solids?) Or will there be no segregation at all (e.g., a truck with a “hodge podge” of materials)?
6. Does “dangerous drugs” also include the associated paraphernalia (storage/manufacturing equipment) that may have been confiscated along with the drugs?
7. Will a facility be subject to its WAP when a truck of dangerous materials arrives? What if the sample indicates that the material does not meet the WAP/fingerprint requirements? Will it be rejected? If the materials arrive as a “hodge podge,” it is unclear how the facility would comply with its WAP without some kind of exemption for this material.
8. Do the dangerous drugs/materials include sharps? This will be a non-starter.
9. What level of oversight will be required for this material – on-site observance of destruction? Required video surveillance of storage areas? Will this present more scrutiny to the facility operations beyond the storage and burning of the dangerous drugs?
10. Is the expectation that these materials will be processed via a solids handling process, i.e., shredded inside a containment building or introduced through a bucket program? Or will there be a process that may introduce the materials via a liquids program, i.e., liquids consolidation?
11. Internal concern - Will additional security be required at the facility once it is publicly known that dangerous materials are received at the plant – both for the public and internal security.

***Regulatory/Legal Barriers Mentioned, Comments, and Other Possible Incentives Suggested***

* Non-EEE kilns would need assistance to ensure the material meets/exempt from NHSM, most likely the discard criteria may be difficult and sufficient processing, particularly if the material is bulk packaged with little more in terms of ‘processing’. We would need to verify with the state entities that permit us that it is acceptable for us to participate and the criteria. We would also need to understand the materials we are taking and make sure that we won’t have any negative impacts to our process.
* Past experience has demonstrated that there is not much of a regulatory issue. Legal issues are that they never leave the control of the agency/police. It will be a public perception issue.
* To pull a sample of the waste is an issue (how do we otherwise demonstrate the status of the material?). Issues arise with proper packaging, labeling, transporting or addressing incidents in onsite management. Other problems come if damage occurs to the unit or harm comes to people onsite, this is an important issue. Anything from a chemical reaction to an injury, is an issue with insurance.
* No one wants to go to jail because they tried to help destroy these confiscated drugs and something went wrong. There almost needs to be a scientifically based “Good Samaritan” recognition to stop civil cases.
* An important incentive would be more clarity with easy-to-implement tasks to carry out a permit change or favorable status under 40 CFR 266.100(c), 261.4, and/or 261.6 to let the work occur at PC kilns, and to allow a deminimus use of company generated on and off-site waste to get consumed, and even some commercial waste below the de min quantity may create an incentive.

***Other Issues***

* It is our opinion that the public would not necessarily react positively to the activity. While public perception can be influenced by how this activity may be portrayed in the local newspaper/publication, and an effective PR campaign may also bring positive results, combustion of this material may be considered incineration versus recycling or energy recovery, which we expect may be viewed adversely by the community. There are also potential employee perception concerns (e.g., union position).
* The real issues will come with the details and the individual plants. Volume, packaging to ensure safe feeding with existing equipment, timing, etc.
* Informing our employees would be our primary focus, perhaps the trade association and EPA could develop a consistent message to share with employees and the public.
* There should be a capacity restriction on size, volume and frequency.
* A manifest seems appropriate for tracking the shipment and receiving of the pharmaceuticals.
* Establishing a container size would help us mange the feed to the system.