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indoor research and development purposes not consistent with the limitations set forth in this section shall be construed as unauthorized distribution of phosphogypsum.

(1) Each quantity of phosphogypsum purchased by a facility for a particular research and development activity shall be accompanied by certification documents which conform to the requirements of § 61.208.

(2) No facility shall purchase or possess more than 3182 kg (7,000 lb) of phosphogypsum for a particular indoor research and development activity. The total quantity of all phosphogypsum at a facility, as determined by summing the individual quantities purchased or possessed for each individual research and development activity conducted by that facility, may exceed 3182 kg (7,000 lb), provided that no single room in which research and development activities are conducted shall contain more than 3182 kg (7,000 lb).

(3) Containers of phosphogypsum used in indoor research and development activities shall be labeled with the following warning: Caution: Phosphogypsum Contains Elevated Levels of Naturally Occurring Radioactivity.

(4) For each indoor research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(5) Indoor research and development activities must be performed in a controlled laboratory setting which the general public cannot enter except on an infrequent basis for tours of the facility. Uses of phosphogypsum for outdoor agricultural research and development and agricultural field use must comply with § 61.204.

(c) Phosphogypsum not intended for distribution in commerce may be lawfully removed from a stack by an owner or operator to perform laboratory analyses required by this subpart or any other quality control or quality assurance analyses associated with wet acid phosphorus production.

[57 FR 23317, June 3, 1992, as amended at 64 FR 5579, Feb. 3, 1999; 64 FR 53213, Oct. 1, 1999; 65 FR 62158, Oct. 17, 2000]

§ 61.206 Distribution and use of phosphogypsum for other purposes.

(a) Phosphogypsum may not be lawfully removed from a stack and distributed or used for any purpose not expressly specified in § 61.204 or § 61.205 without prior EPA approval.

(b) A request that EPA approve distribution and/or use of phosphogypsum for any other purpose must be submitted in writing and must contain the following information:

(1) The name and address of the person(s) making the request.

(2) A description of the proposed use, including any handling and processing that the phosphogypsum will undergo.

(3) The location of each facility, including suite and/or building number, street, city, county, state, and zip code, where any use, handling, or processing of the phosphogypsum will take place.

(4) The mailing address of each facility where any use, handling, or processing of the phosphogypsum will take place, if different from paragraph (b)(3) of this section.

(5) The quantity of phosphogypsum to be used by each facility.

(6) The average concentration of radium-226 in the phosphogypsum to be used.

(7) A description of any measures which will be taken to prevent the uncontrolled release of phosphogypsum into the environment.

(8) An estimate of the maximum individual risk, risk distribution, and incidence associated with the proposed use, including the ultimate disposition of the phosphogypsum or any product in which the phosphogypsum is incorporated.

(9) A description of the intended disposition of any unused phosphogypsum.

(10) Each request shall be signed and dated by a corporate officer or public official in charge of the facility.

(c) The Assistant Administrator for Air and Radiation may decide to grant a request that EPA approve distribution and/or use of phosphogypsum if he determines that the proposed distribution and/or use is at lease as protective of public health, in both the short term and the long term, as disposal of phosphogypsum in a stack or a mine.

(d) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, each of the following requirements shall be satisfied:

(1) The owner or operator of the stack from which the phosphogypsum is removed shall determine annually the average radium-226 concentration at the location in the stack from which the phosphogypsum will be removed, as provided by § 61.207.

(2) All phosphogypsum distributed in commerce by the owner or operator of a phosphogypsum stack, or by a distributor, retailer, or reseller, or purchased by the end-user, shall be accompanied at all times by certification documents which conform to the requirements § 61.208.

(3) The end-user of the phosphogypsum shall maintain records which conform to the requirements of § 61.209(c).

(e) If the Assistant Administrator for Air and Radiation decides to grant a request that EPA approve distribution and/or use of phosphogypsum for a specified purpose, the Assistant Administrator may decide to impose additional terms or conditions governing such distribution or use. In appropriate circumstances, the Assistant Administrator may also decide to waive or modify the recordkeeping requirements established by § 61.209(c).

§ 61.207 Radium-226 sampling and measurement procedures.

(a) Before removing phosphogypsum from a stack for distribution in commerce pursuant to § 61.204, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the initial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(1) A minimum of 30 phosphogypsum samples shall be taken at regularly spaced intervals across the surface of the location on the stack from which the phosphogypsum will be removed. Let n_1 represent the number of samples taken.

(2) Measure the radium-226 concentration of each of the n_1 samples in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(3) Calculate the mean, $\bar{x}_1$, and the standard deviation, s_1, of the n_1 radium-226 concentrations:

$$\bar{x}_1 = \frac{\sum_{i=1}^{n_1} x_i}{n_1},$$

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} \left(x_i - \bar{x}_1\right)^2}{n_1 - 1}},$$

Where $\bar{x}_1$ and s_1 are expressed in pCi/g.

(4) Calculate the 95th percentile for the distribution, $\bar{x}^*$, using the following equation:

$$\bar{x}^* = \bar{x}_1 + 1.64\left(\frac{s_1}{\sqrt{n_1}}\right),$$

Where $\bar{x}^*$ is expressed in pCi/g.

(5) If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.206, the owner or operator of a phosphogypsum stack shall report the mean, standard deviation, 95th percentile and sample size. If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.204, the additional sampling procedures set forth in paragraphs (b) and (c) of this section shall apply.

(b) Based on the values for $\bar{x}_1$ and $\bar{x}^*$ calculated in paragraphs paragraphs (a)(3) and (4) of this section, determine which of the following conditions will be met:

(1) If $\bar{x}_1 < 10$ pCi/g and $\bar{x}^* \leq 10$ pCi/g; phosphogypsum may be removed from this area of the stack for distribution in commerce pursuant to § 61.204.