



RCRA Permit Policy Compendium

Volume 9

9490.1980 - 9521.1990

Standards for Managing Specific Hazardous Wastes (Part 266)

- **Recyclable Materials**
- **Waste Burned for Energy Recovery**

Permitting Policies

- **Priorities**
- **Corrective Action**
- **Special Permitting**
- **Compliance & Enforcement**
- **Public Participation**

Permitting Procedures (Parts 124 & 270)

- **General**

DISCLAIMER

The compilation of documents in this Compendium, as well as the policies, procedures and interpretations outlined in the documents themselves, is intended solely for the guidance of employees of the U.S. Environmental Protection Agency. This compilation may not include all documents discussing Agency views on particular subjects. In addition, these documents are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The views expressed in these documents do not necessarily reflect the current position of the Agency, and EPA reserves the right to act at variance with these views or to change them at any time without public notice.

Standards For Managing Specific Hazardous Wastes And Specific Types Of Facilities (Part 266)

**9490 – STANDARDS FOR
MANAGING SPECIFIC
HAZARDOUS WASTES AND
SPECIFIC TYPES OF FACILITIES**

Part 266

**9493 – RECYCLABLE MATERIALS
USED IN A MANNER
CONSTITUTING DISPOSAL**

Part 266 Subpart C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9493.00-1A

MAY 31 1986

Mr. Bill Ross
Commissioner
Alaska Department of
Environmental Conservation
Pouch "O"
Juneau, Alaska 99811

Dear Mr. Ross:

Thank you for your correspondence of May 7, 1985. As I understand the matter, you are concerned that the dust suppression regulations Alaska has promulgated may conflict with the Hazardous and Solid Waste Amendments (HSWA) of 1984. I do not think there is a conflict. The HSWA prohibits the use of hazardous waste as a dust suppressant. EPA's regulations in 40 CFR Part 261 define what materials are solid and hazardous wastes. Alaska is free to impose its own regulations on dust suppressants that are not hazardous wastes. With respect to used oil, probably the most common dust suppressant, the HSWA prohibition only applies to those used oils that are themselves hazardous waste or mixed with other hazardous waste identified or listed under the current Part 261 definition.

In response to the four specific questions you asked:

(1) Federal law does not presently set a maximum lead level for used oils, waste oils, or any other dust suppressant. As described above, the HSWA prohibits the use of hazardous waste as a dust suppressant. One way that a solid waste may be identified as a hazardous waste is if it exhibits the characteristic of FP toxicity, defined by §261.24 (and Appendix II of Part 261). When the extract from a solid waste, obtained through the FP toxicity procedure, contains lead at a concentration greater than 5 ppm, it then is a hazardous waste and therefore is subject to the HSWA prohibition. Used oil, because of its often viscous nature, does not always exhibit FP toxicity even if relatively high concentrations of lead are present.

(2) If a question arises as to whether a person is violating the HSWA prohibition, analyzing the extract from a sample of the road oil using the FP toxicity procedure would be necessary to determine compliance with federal law. However, neither EPA regulations nor the HSWA require a State to set up an analysis program for road oilers.

(3) EPA need not issue any formal rules to enact the HSWA prohibition; it became effective when the President signed the HSWA (November 8, 1984). EPA will, in the very near future, issue rules codifying and explaining certain HSWA requirements, including the dust suppressant ban.

(4) With respect to "guidance and expertise," EPA is planning to regulate used oil management under special standards to be proposed later this year.

Later this year, EPA will also propose to list all used oils as hazardous waste. A final listing determination will not be promulgated until the fall of 1986. If you need more information on the status of the proposals, contact David Sussman (202-382-7927) of my office. EPA Region X can, of course assist you if necessary in interpreting current EPA regulations.

Sincerely,

John H. Skinner
Director
Office of Solid Waste (WH-562)

cc: Lisa Friedman, Associate General Counsel, EPA
Kenneth Peigner, EPA Region X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9493.00-1A
Attachment

MAR 20 1985

WASTE

MEMORANDUM

SUBJECT: Interpretation of Section 3004(1), the
Dust Suppression Prohibition

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Kenneth D. Feigner, Chief
Waste Management Branch (M/S 530)
Region X

The following is OSW's position on the dust suppression ban mandated by Section 3004(1) of RCRA, as amended.

(1) Used oil (or any other material) that has been mixed with a listed hazardous waste, including wastes generated by small quantity generators, must not be used as a dust suppressant. However, the mere presence of hazardous constituents (for example, trichloroethylene or toluene) is not sufficient proof that the material has been mixed with hazardous waste. EPA bears the burden of proof to show that mixing has occurred.¹

(2) Used oil that exhibits a characteristic (other than ignitability) must not be used as a dust suppressant.² You should know that although OGC feels this is a strong position, it is not a direct reading of Section 3004(1) (which speaks of "mixtures"). In the soon-to-be-proposed Federal Register notice codifying parts of the Hazardous and Solid Waste Amendments of 1984, EPA will propose the interpretation that the prohibition applies to all hazardous waste (except those hazardous only due to ignitability), not just mixtures.

¹ As a point of information, we have proposed [50 FR 1691-1692, January 11, 1985] that for used oil used as fuel, a total chlorine content exceeding 4000 ppm is presumptive evidence of mixing with hazardous waste.

² This does not necessarily conflict with Alaska's 300 ppm lead limit. Due to the properties of used oil, a given quantity of used oil may be high in lead, and yet not exhibit EP toxicity.

(3) The prohibition does not apply to mixtures of characteristic hazardous waste and non-hazardous materials where the resultant mixture no longer exhibits a characteristic. This interpretation is based on the following logic:

- Section 3004 applies only to hazardous waste; and
- Paragraphs (c) and (d) of 40 CFR §261.3 provide that a mixture of characteristic waste and other material is hazardous waste only if the resultant mixture exhibits a characteristic.

Finally, you should be aware that OSW is working on a proposal to list used oil as a hazardous waste. That rulemaking, following the logic that the prohibition is meant to apply to all hazardous wastes, would also propose to prohibit the use of used oil as a dust suppressant. When the EPA rule is promulgated, any rule by Alaska allowing up to 300 ppm lead in used oil used as road oil would be superseded by the Federal prohibition. However, Alaska could still regulate other "waste oils" besides used oil using a lead limit.

cc: Mark Greenwood, OGC
Regional Hazardous Waste Division
Directors, Regions I-X

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

9493.00-1A
Attachment



MAR 1 1985

REPLY TO
ATTN OF: M/S 530

MEMORANDUM

SUBJECT: Interpretation of Waste Oil Regulations

FROM: Kenneth D. Feigner, Chief
Waste Management Branch (M/S 533)

TO: John H. Skinner, Director
Office of Solid Waste (WH-562)

Currently, the Alaska Department of Environmental Conservation is proposing to amend their regulations to prohibit the use of oil for surface oiling or as a dust suppressant if that oil contains lead in concentrations of 300ppm by weight or greater.

The state has requested EPA comments, particularly regarding whether their proposal is consistent with existing or emerging Federal requirements, including the new statutory provision regarding dust suppressants. A copy of their letter and proposal is attached.

Section 3004 (1), the ban on dust suppression states:

"The use of waste or used oil or other material which is contaminated or mixed with any other hazardous waste identified or listed under Section 3001 (other than waste identified solely on ignitability), for dust suppression or road treatment is prohibited".

We are interpreting this to mean that the 40 CFR 261.3 mixture rule does not apply in this case. That is, a waste oil which has been mixed with a characteristic waste is prohibited for use as a dust suppressant regardless of whether or not the resultant mixture exhibits a characteristic. Also, the use of a waste oil as a dust suppressant is prohibited if it exhibits a characteristic but has not been mixed with other hazardous waste. And furthermore, it is prohibited if it contains listed hazardous waste constituents (e.g., chlorinated solvents), unless the owner/operator can demonstrate that the source of the constituents did not come from hazardous waste.

We are requesting OSW's position on the application of this provision and ask for your response as soon as possible given that the comment period on the state's proposal closes March 1.

Attachment

cc: Michael Petruska (WH565A)
Keith Kelton, ADEC

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907)

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

9493.00-1A
Attachment

May 7, 1985

Mr. John H. Skinner, Director
Office of Solid Waste
WH-562, Room M2804
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Skinner:

As you know, the new road oiling regulations of the Alaska Department of Environmental Conservation (ADEC) became effective on May 2, 1985. These regulations allow waste oil to be used as a dust suppressant if it contains lead concentrations less than 300 ppm. The State does not require the EP toxicity method of testing in the required waste oil analysis.

In your March 20 memorandum to EPA, Region X, you stated several propositions which left us uncertain about how to proceed with the implementation of our regulations. You referenced the 1984 amendments to the Resource Conservation and Recovery Act as the basis for your positions. However, you went on to say that this did not mean ADEC's new regulations were inconsistent with the amendments. Hence, I am having trouble interpreting your memorandum.

Since we received your memo on April 24, EPA has given ADEC differing and conflicting verbal positions on the applicability of the 1984 amendments to Alaska's road oiling permit program and the methods of analysis for determining lead content in waste oil. I would like clarification on several issues:

Does federal law prohibit the use of waste oil on roads as a dust suppressant if it contains lead levels equal to or greater than 5 ppm?

If so, is it mandatory that the State use the EP toxicity testing method to determine if a liquid road oil meets the federal 5 ppm lead standard?

Also, if the 1984 Amendments do indeed prohibit the use of waste oil with lead concentrations of greater than 5 ppm, does EPA need to promulgate formal rulemaking in order to implement this prohibition?

If waste oil cannot be used on the roads as a dust suppressant and the majority of states allow road oiling, what guidance and expertise will EPA offer the States to manage this new potential hazardous waste management problem?

I would appreciate receiving your response to these questions as soon as possible. I want to resolve these differences quickly so that we can determine if the State or road oilers are potentially liable under federal law for damages resulting from road oiling operations in the State conducted after this date. Please contact me if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Ross", written over the typed name.

Bill Ross
Commissioner

BR:PO:mt

cc: Lisa Friedman, Associate General Counsel, EPA,
Kenneth Feigner, EPA, Region X
Ronald Kreizenbeck, EPA, Alaska Operations Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

9493.00-1A
Attachment

JUL 12 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Prohibition on Use of Hazardous Waste for Dust
Suppression or Road Treatment (Your memo dated 6-25-85)

FROM: John H. Skinner, Director *Michael Blok*
Office of Solid Waste (WH-562)

TO: Charles E. Findley, Director
Hazardous Waste Division (M/S 529)
Region X

Based on the legislative history to Section 3004(1), and on the structure of the statute and EPA's current regulatory policy, we believe that the ban in Section 3004(1) applies only to materials that are themselves hazardous wastes. The provision will be codified in Part 266, a subpart reserved for hazardous waste uses constituting disposal.

The language of Section 3004(1) does not specify whether the mixture of used oil and hazardous waste must, itself, be a hazardous waste in order for the ban to apply. However, the conference report to the Hazardous and Solid Waste Amendments of 1984 explains that Congress intended for the ban to apply to the use of "dioxin contaminated wastes or any other hazardous waste as a dust suppressant" (H.R. Rep. No. 1133, 98th Cong., 2d Sess. 88 (1984)). [Emphasis added.]

In addition, Congress placed the prohibition on dust suppression in Section 3004 of RCRA, where regulatory jurisdiction is generally limited to hazardous wastes identified or listed under Section 3001. Congress, if so inclined, could have expressly extended the prohibition to used oils or other materials that are not hazardous wastes. For example, the prohibition could have been placed in Section 3014(a) of RCRA, which applies to all used oils that are recycled, whether or not the used oils are hazardous waste.

In Section 3001 of RCRA, Congress gave EPA the authority to define in regulations the hazardous wastes subject to regulation under Subtitle C. Section 261.3(a)(2)(iii) provides that if a mixture of a solid waste and a characteristic waste no longer exhibits any of the characteristics, it is not a hazardous waste and is no longer subject to Section 3004. This is not an exemption but rather is part of EPA's definition of hazardous waste. Absent a clear indication in the statutory language or legislative history that Congress intended to override EPA's current regulatory policy relating to the definition of hazardous wastes, we believe that the policy should apply in this case.

Based on the above rationale, our position remains as stated in the June 6 memorandum.

cc: Waste Management Division Directors, Regions I - IX
Mark Greenwood, OGC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9493.00-1A
Attachment

JUN 6 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Prohibition on Use of Hazardous Waste for
Dust Suppression or Road Treatment

FROM: John H. Skinner, Director *John H. Skinner*
Office of Solid Waste (WH-562)

TO: Waste Management Division Directors
Regions I - X

The Hazardous and Solid Waste Amendments of 1984 (HSWA) ban the use of hazardous waste and materials mixed with hazardous waste as a dust suppressant. This memorandum explains how EPA interprets the new provision.

THE HSWA

Section 213(1) of the HSWA amended Section 3004 of RCRA by adding a new paragraph (1) to read as follows:

"(1) Ban on dust suppression. The use of waste or used oil or other material which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under Section 3001 (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited."

EPA recently amended (in the Codification Rule, signed by the Administrator April 20, to be published in the next two weeks) §266.23, the standards for persons using hazardous waste in a manner constituting disposal, to include verbatim the prohibition. In addition, §261.33 (setting out requirements for discarded commercial chemical products) has been amended to provide that the materials and items listed in §261.33 are hazardous wastes when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment. In effect, this conforming change provides that the requirements of Section 3004(1) will apply to any §261.33 product that is mixed with waste oil or used oil or other material and used for dust suppression or road treatment.

STATUTORY INTERPRETATIONS

Several questions may arise as you implement this prohibition. EPA interprets Section 3004(1) to impose the following requirements:

- Any material used as a dust suppressant is at least potentially subject to the prohibition. Although "used" or "waste" oil is the most common material used for dust suppression, the Act's language includes the term "...or other material..."
- The prohibition applies when a material is mixed with any listed hazardous waste including a waste listed for ignitability.¹ This means a mixture containing hazardous waste from small quantity generators, otherwise exempt under §261.5, is subject to the prohibition nonetheless.²
- The Agency interprets the prohibition to apply to hazardous waste (whether or not it is part of a mixture). Under this interpretation used oil exhibiting EP toxicity, for example, must not be used as a dust suppressant.³
- For the prohibition to apply, the material being used for dust suppression must actually be a hazardous waste. For example, a characteristic waste that is blended with petroleum so that the resultant mixture no longer exhibits any of the characteristics would not be subject to the prohibition.

-
- 1/ The statutory language makes it clear that the provision exempts from the prohibition any material that is mixed with a waste hazardous solely because it exhibits the ignitability characteristic. Materials mixed with any listed wastes are subject to the ban.
- 2/ The mere presence of constituents identified in Appendix VIII of Part 261 is not alone sufficient proof that any mixing has occurred. EPA continues to bear the burden of proof in any individual case to show that mixing has occurred. As a point of information, EPA proposed on January 11, 1985, that used oil used as fuel with a chlorine content exceeding 4000 ppm total chlorine would be presumed to be mixed with hazardous waste. [See 50 FR 1691-1692.]
- 3/ In contrast, used oil that contains hazardous constituents but has not been mixed with hazardous waste and does not exhibit a characteristic may be used as a dust suppressant. This is because used oil is not presently listed as a hazardous waste.

Because the ban applies to hazardous waste and materials mixed with hazardous waste, a mixture containing dioxin is subject to the prohibition only when the dioxin comes from a hazardous waste or when the material is otherwise a hazardous waste. [As stated in footnote 2, the presence of a hazardous constituent is not alone sufficient proof that mixing has occurred.]

USED OIL LISTING

The HSWA requires EPA to propose a listing determination for used car and truck crankcase oil by November 8, 1985, and to make a final listing determination on all used oils by November 8, 1986. [Section 3014(b) of the amended RCRA.] Under the interpretations discussed above, any used oils eventually listed as hazardous waste would be prohibited from use as a dust suppressant.

cc: Mark Greenwood, OGC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

Seattle, Washington 98101

9493.00-1A

Attachment

REPLY TO
ATTN OF:

M/S 533

JUN 25 1985

MEMORANDUM

SUBJECT: Prohibition on Use of Hazardous Waste for
Dust Suppression or Road Treatment

FROM: Charles E. Findley, Director
Hazardous Waste Division (M/S 529)

TO: John H. Skinner, Director
Office of Solid Waste (WH-562)

Attached One of the interpretations in your June 6, 1985, subject memorandum is of concern. Specifically, the concern is that the interpretation may encourage the mixing of characteristic hazardous waste to be "disposed" through use as a dust suppressant. We fail to understand the basis for the interpretation listed as the fourth bullet on page 2 of the subject memorandum. The statutory language clearly states that any waste, used oil, or other material which is contaminated or mixed with any hazardous waste identified or listed under Section 3001 cannot be used for dust suppression or road treatment.

Any solid waste exhibiting a characteristic is a hazardous waste under Section 3001. If waste, used oil, or any other material is contaminated (i.e. contains) or is mixed with such characteristic hazardous waste (unless the only characteristic exhibited is ignitability) then that waste, used oil, or material cannot be used for dust suppression or road treatment--irrespective of whether it exhibits the characteristic. We fail to understand how any other interpretation of the statutory language can be made.

in The interpretation in your memo, in fact, would tend to encourage mixing of characteristic hazardous waste with waste, used oil, or other material and hence avoid regulation if the resulting mixture no longer exhibits the characteristic. The mixture rule under §261.3 allows such an "exemption" with respect to the Subtitle C regulations. The statutory amendment does not provide such an exemption for such mixtures with respect to the ban as a dust suppressant.

The interpretation (fourth bullet) in your memo concludes that "...the material being used for dust suppression must actually be a hazardous waste." That conclusion appears to be contradictory to the statutory language. We assume the interpretation in your memo is based on first applying the mixture rule of §261.3, then determining if the resultant mixture is a hazardous waste. The statutory language would not appear to allow the regulatory mixture rule to be applied as a means to avoid the ban.

We strongly urge reconsideration of the interpretation.

cc: Waste Management Division Directors, Regions 1-9
Mark Greenwood, CGC

JUL 12 1985

MEMORANDUM

SUBJECT: Prohibition on Use of Hazardous Waste for Dust
Suppression or Road Treatment (Your memo dated 6-25-85)

FROM: John R. Skinner, Director
Office of Solid Waste (WH-562)

TO: Charles E. Findley, Director
Hazardous Waste Division (M/S 529)
Region I

Based on the legislative history to Section 3004(1), and on the structure of the statute and EPA's current regulatory policy, we believe that the ban in Section 3004(1) applies only to materials that are themselves hazardous wastes. The provision will be codified in Part 266, a subpart reserved for hazardous waste uses constituting disposal.

The language of Section 3004(1) does not specify whether the mixture of used oil and hazardous waste must, itself, be a hazardous waste in order for the ban to apply. However, the conference report to the Hazardous and Solid Waste Amendments of 1984 explains that Congress intended for the ban to apply to the use of "dioxin contaminated wastes or any other hazardous waste as a dust suppressant" (H.R. Rep. No. 1133, 98th Cong., 2d Sess. 88 (1984)). [Emphasis added.]

In addition, Congress placed the prohibition on dust suppression in Section 3004 of RCRA, where regulatory jurisdiction is generally limited to hazardous wastes identified or listed under Section 3001. Congress, if so inclined, could have expressly extended the prohibition to used oils or other materials that are not hazardous wastes. For example, the prohibition could have been placed in Section 3014(a) of RCRA, which applies to all used oils that are recycled, whether or not the used oils are hazardous waste.

OSW-114/Written by M. Petruska & D. Sussman/R. Key Controls Only 118K #1
WH-565A/OSW-WTB-WMED/Room 2811/phone: 382-7917/plk/7-11-85

In Section 3001 of RCRA, Congress gave EPA the authority to define in regulations the hazardous wastes subject to regulation under Subtitle C. Section 261.3(a)(2)(iii) provides that if a mixture of a solid waste and a characteristic waste no longer exhibits any of the characteristics, it is not a hazardous waste and is no longer subject to Section 3004. This is not an exemption but rather is part of EPA's definition of hazardous waste. Absent a clear indication in the statutory language or legislative history that Congress intended to override EPA's current regulatory policy relating to the definition of hazardous wastes, we believe that the policy should apply in this case.

Based on the above rationale, our position remains as stated in the June 6 memorandum.

cc: Waste Management Division Directors, Regions I - IX
Mark Greenwood, OGC

NOV 14 1985

Everette Wyatt
Wire Division Engineer
Leggett & Platt, Inc.
P.O. Box 695
No. 1 - Leggett Road
Carthage, Missouri 64836

Dear Mr. Wyatt:

Our office has received your letter dated July 29, 1985, requesting a decision from the Agency in regard to the proper classification of the liquid micronutrient fertilizer ("Ferrous Green") produced by Leggett & Platt from your spent sulfuric acid pickle liquors. Based on the Agency's recent amendment to the definition of solid waste published in the Federal Register on January 4, 1985, the fertilizer produced from your pickle liquor is not presently subject to regulation (although the material is still a solid and hazardous waste).

The raw material for the fertilizer production, waste pickle liquor, is both a solid waste (since it is a spent material; see the Federal Register, January 4, 1985 - §261.2) and a hazardous waste (EPA Hazardous Waste No. K062). If a fertilizer is produced from this waste, the fertilizer (if hazardous) is normally regulated under Subpart C of Part 266 (see 50 FR 666, January 4, 1985). If the fertilizer is produced for use by the general public, however, this product is exempt from regulation (see §266.20(b)).

As you know, Leggett & Platt originally received a temporary exclusion for their spent pickle liquor on December 16, 1981. This exclusion was for treated K062 waste, and was based on the Agency's proposal to change the EP toxicity characteristic from total chromium to hexavalent chromium. This proposal has not been made final by the Agency, nor do we expect to make that proposal final. After treatment, the pickle liquor has pH values ranging from 2.5-3.5, and hexavalent chromium levels are low (<0.005 mg/l). The treated liquor, however, contains 16-19 mg/l total chromium, which exceeds the EP toxicity limit for chromium (5 mg/l). Leggett & Platt's treated pickle liquor is, therefore, classified as hazardous due to the characteristic of EP toxicity, and so it cannot be delisted under §§260.20 and 260.22 of the RCRA regulations.

The chromium levels in the untreated liquor (28-63 mg/l) also exceed the EP toxicity limit for chromium. Due to its exceptionally low pH level (0.3-1.7), the untreated liquor is also classified as a corrosive waste. Such a characteristically corrosive and EP toxic waste is likewise not delistable under §§260.20 and 260.22. Leggett & Platt's untreated pickle liquor is also considered a hazardous waste, and must be handled and stored in accordance with 40 CFR Parts 262 to 265 and the permitting requirements of 40 CFR Part 270; that is, the spent pickle liquor is subject to regulation before it is used to produce a fertilizer. Since the pickle liquor, when treated, becomes a commercially available fertilizer product, the treated pickle liquor is exempted from regulation, although the treated liquor is still a hazardous waste. Should any portion of Leggett & Platt's pickle liquor not be handled in this manner, that portion would be subject to regulation under RCRA.

As mentioned above, the Agency has not acted on the proposal to alter the EP toxicity characteristic from total chromium to hexavalent chromium, and your treated waste is, therefore, not delistable due to the high levels of total chromium. Due to this finding, the Agency will recommend to the Assistant Administrator for Solid Waste and Emergency Response that the temporary exclusion granted for your treated waste on December 16, 1981 be withdrawn and that your petition be denied. This action does not have any bearing on the regulatory status of your fertilizer product, but indicates that because of the characteristics that the treated waste exhibits, the waste is not eligible to be removed from the Agency's list of hazardous wastes (§261.32).

At this time, we would like to close our files. The Agency is required to publish all delisting decisions in the Federal Register, so our office will recommend to the Assistant Administrator that a denial notice be published in the near future. We, however, have been offering petitioners the option of withdrawing their petitions rather than having the Agency publish a denial in the Federal Register. If you would like to exercise this option, we require that a letter be sent to us retracting your petition and stating that the waste is hazardous and will be managed appropriately. We would appreciate that if such a letter is sent, it be forwarded to our office within one month from the date of today's correspondence.

As indicated above, the Agency is not currently regulating commercial, hazardous waste-derived fertilizers. As more information becomes available about these products, the Agency may propose to regulate their use. We will keep you advised of any further developments in this area.

If you have any questions, please contact Scott Maid, of my staff, at (202) 382-4783.

Sincerely yours,

Eileen Claussen
Director
Characterization and Assessment
Division (WH-562B)

cc: Joe Davis, Missouri DNR
Chet McLaughlin, EPA Region VII

NOV 25 1985

Ms. G. Mahoney
Environmental Engineer
Bridgeport Brass Corporation
P.O. Box 51519
Indianapolis, Indiana 46251

Dear Ms. Mahoney:

This letter is in response to your request for an interpretation of the January 4, 1985 hazardous waste regulations, concerning the regulatory status of two characteristically hazardous sludges that are recycled. (The specific examples you are interested in are described in your letter dated August 14, 1985, and in our telephone conversation.) In your letter, you indicate that both of these materials are recycled in such a manner that you believe they are not solid wastes and therefore not subject to the hazardous waste regulations under RCRA. However, based on the January 4 rules, one of the materials--the zinc oxide dust--would be defined as a solid waste and would be regulated under the hazardous waste regulations. The remainder of the letter will describe how these materials are covered under these rules.

First, I would like to apologize to you for my delay in getting back to you. My schedule has been very busy and hope my delay has not caused you any problems. With respect to your specific examples:

- A zinc oxide dust (a characteristic hazardous sludge) is sold to a facility where it is processed into zinc sulfate; the resulting zinc sulfate is then sold to bulk fertilizer blenders who use the zinc sulfate as an ingredient in fertilizers. The fertilizer is then sold to smaller distributors.

Under the example, the zinc oxide is processed to produce zinc sulfate (as this is described in the attachment to your letter). Under the rules, such activities do not normally constitute solid waste management. However, when the material (that is, the zinc oxide dust) is to be incorporated into a product that is placed on the land, we would define the entire recycling activity as "use constituting disposal."

Under the January 4 rules, all sludges that are hazardous (whether or not they are listed) are defined as wastes if they are placed directly on the land for beneficial use or incorporated into a product that is placed on the land for beneficial use. (See 40 CFR Part 261.2(c)(1) and Part 266 Subpart C; see also preamble discussion at 50 FR 627 and 646.) Therefore, the zinc oxide dust is subject to the hazardous waste regulations (i.e., the generator of the zinc oxide dust is subject to the requirements of Part 262, transporters of this dust are subject to the requirements of Part 263, and the facility that processes the zinc sulfate would be subject to the storage requirements of Parts 264 and 265). You should also be aware that if the zinc sulfate is hazardous (i.e., exhibits any of the characteristics of hazardous waste), it would also be subject to the hazardous waste regulations.

- A characteristic hazardous sludge is generated from an air pollution control device. This sludge can be reclaimed to recover its copper content; in addition, any lead recovered can be produced into a low grade lead solder.

Under this scenario, the hazardous sludge would not be defined as a waste (and thus not be subject to the hazardous waste rules) as you have correctly indicated in your letter. In particular, under the January 4 rules, sludges that are reclaimed are only defined as solid and hazardous wastes if they are specifically listed; since the sludge is not listed (but is hazardous solely because it exhibits the characteristic of EP toxicity), the material is not defined as a solid waste. See 40 CFR Part 261.2(c)(3); see also preamble discussion at 50 FR 633. (This material may still be subject to regulation if it is accumulated speculatively.)

I hope this letter responds to your request. Please feel free to give me a call if you have any questions or comments. My telephone number is (202) 475-8551.

Sincerely yours,

Matthew A. Straus, Chief
Waste Identification Branch

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 85

3. Use Constituting Disposal

The January 4, 1985 (50 FR 614) redefinition of Solid Waste brought into regulation certain hazardous waste management activities that were previously exempt from regulation because these activities were deemed to be beneficial use, reuse, or reclamation under §261.6(a)(1). On this date, EPA added a new section (Part 266 Subpart C) which outlines the regulations on the use of hazardous waste in a manner constituting disposal. This section now regulates beneficial use or reuse of hazardous wastes via placement or application of the hazardous waste (recyclable material) on the land.

For training purposes, a fire department sprays virgin diesel fuel on the ground. The fuel is set ablaze and then extinguished. The resultant residues are collected and properly disposed of as RCRA hazardous wastes.

Does the act of spraying the virgin diesel fuel meet the use constituting disposal classification?

No; spraying virgin fuel on the ground for firefighting practice does not meet the use constituting disposal classification. In this case, the fuel is a primary material and not a waste. Had the fuel been spent or a secondary material, such usage could be considered use constituting disposal.

Source: Steve Silverman (202) 382-7706
Matt Straus (202) 475-8551

DEC 13 1985

Mr. Michael D. Boruch
P.O. Box 236
East Setauket, New York 11733

Dear Mr. Boruch:

This letter is in response to your inquiry of October 25, 1985, regarding the de-characterization and disposal of hazardous wastes that have undergone chemical solidification. Per our discussion, the waste treatment scenario you have described would result in a waste which the Agency classifies as a "recycled material to be used in a manner that constitutes disposal." The latest regulations addressing such a waste product can be found, in full, in 50 FR 614-668, dated January 4, 1985 and 40 CFR, Part 266, revised date of July 1, 1985. To briefly summarize, the Agency's jurisdiction over waste products extends to all hazardous secondary materials, when they are applied to land or used in water as fill or support material. This jurisdiction extends to all such material, whether or not the waste has been mixed with other materials or chemically altered before disposal. The type of processing or treatment of the waste may be relevant in determining what regulatory scheme to adopt for the waste or in deciding if the derived product is still hazardous, however, the act of processing, in and of itself, does not deprive the Agency of RCRA Subtitle C jurisdiction when the waste containing product will be disposed of. Thus, such products as fertilizers, asphalt, and building foundation materials that use hazardous wastes as ingredients are subject to RCRA jurisdiction.

In essence, the Agency maintains that if a waste product is fully or partially composed of a hazardous material, then it is under RCRA jurisdiction and must be managed accordingly unless and until an exclusion is petitioned for and granted pursuant to 40 CFR §§260.20 and 260.22. It should be noted however, that the Agency, while having jurisdiction over these wastes, has decided not to regulate these materials when they are formulated into fertilizers that we sold to the general public. (See §266.20(b))

I hope this letter and the referenced regulations will provide you more insight into the Agency's responsibilities for hazardous waste management, and in particular, for wastes that have been chemically treated. Should you have any further questions regarding this, or any other subject, please do not hesitate to contact me.

Sincerely,

James A. Poppiti
Manager
Waste Identification Branch

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY
DECEMBER 85

Used Oil as Dust Suppressant

5. Can EP-toxic waste oil which has not been mixed with hazardous waste be used for dust suppression purposes?

Yes; 261.6(a)(3)(iii) currently exempts waste oil exhibiting a characteristic from regulation under Parts 262-266, 124, and 270 when the used oil is being recycled. Therefore, waste oil which exhibits a characteristic and which has not been mixed with hazardous waste can be used as a dust suppressant.

This ban, mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and codified in §266.23(b), prohibits used or waste oil which has been mixed with dioxins or other hazardous wastes from being used as a dust suppressant. Discussion in the preamble of the codification rule (50 FR 28718) indicate that this ban would also apply to unmixed hazardous waste. Therefore, in the future when EPA lists waste oil as a hazardous waste, road oiling and other dust suppression methods involving used oil would be prohibited.

Source: Matt Straus (202) 475-8551

JAN 22 1986

Mr. Randall F. Andrews
Industrial and Agricultural Chemicals, Inc.
Route 2
Box 521-C
Red Springs, N.C. 28377

Dear Mr. Andrews:

This is in response to your letter of December 27, 1985, concerning the regulatory status of the copper plating solution that you receive at your plant site. As I understand your situation, you obtain from a copper plating operation a copper sulfate bath (which exhibits the characteristic of corrosivity) at your plant site and react it with a chelating agent to produce a material that is registered with the North Carolina Department of Agriculture as a commercial fertilizer. This material no longer exhibits the corrosivity characteristic. This material is then sold to farmers for use as a fertilizer or is sold to fertilizer companies for inclusion into fertilizer for resale.

Under this scenario, the copper sulfate bath that you receive at your plant site is a solid and hazardous waste and is subject to the transportation and storage requirements under the hazardous waste regulations. The material that is produced at your plant site (i.e., the commercial fertilizer), however, is no longer subject to regulation under the hazardous waste rules and may be managed as such. The basis for this decision is as follows: On January 4, 1985, EPA promulgated its final rules which deal with the question of which materials are solid and hazardous wastes when they are recycled. Among other things, these rules state that all hazardous secondary materials that are placed on the land for beneficial use or incorporated into products (referred to as waste-derived products) that are placed on the land for beneficial use are solid and hazardous wastes. (See enclosed copy of regulations.) In the Agency's view, these practices are virtually the equivalent of unsupervised land disposal, a situation RCRA is designed to prevent. The many damage incidents resulting from wastes being placed on the land for beneficial use bear out the Agency's concern. This type of recycling activity has also

been a particular concern of Congress. In particular, in a number of Congressional reports, they describe various damage incidents involving wastes that are placed on the land for beneficial use. These reports reflect not only Congress' concern but its intent that EPA regulate this type of activity. Therefore, we believe that this type of recycling activity constitutes waste management and need be subject to regulatory control.

By asserting jurisdiction over waste-derived products that are placed on the land, we are also asserting jurisdiction (and regulating) the materials that go into these products, provided these materials are hazardous (i.e., exhibit one or more of the hazardous waste characteristics or are specifically listed). Therefore, since the copper plating solution is corrosive, it is subject to regulation. More specifically, the generator and transporter of this material is subject to the appropriate generator and transporter standards, including the hazardous waste manifest, while you (being the recycler) would be subject to the appropriate storage standards. (See 40 CFR 261.6(b) and (c) for specific regulatory requirements.) As indicated earlier, however, the material that is produced at your facility -- the commercial fertilizer -- is no longer subject to regulation since this material is no longer defined as hazardous.

Since this regulation has gone through formal rulemaking, your only alternative (at this time) is to submit a rulemaking petition under 40 CFR Part 260.20 (See enclosure for specific information requirements). Please feel free to give me a call if I can be of any further assistance; my telephone number is (202) 475-8551.

Sincerely yours,

Matthew A. Straus
Chief
Waste Identification Branch (WH-562B)

What guidelines or regulations have been issued under RCRA
Procurement of recovered materials?

The "Federal Procurement" provision in Section 6002 of the Resource Conservation and Recovery Act is one of the few provisions of the statute that directly mandates resource recovery. In establishing this provision, Congress recognized that the Federal Government is an enormous consumer of certain materials. Hence, procurement practices of Federal agencies can encourage the development of private sector companies which use recovered materials to manufacture products for both the Federal and private sectors.

The provisions of §6002 apply to procuring agencies that purchase designated items when the price of such designated item exceeds \$10,000 or when the cost of such an item purchased during the preceding year exceeded \$10,000. The statute incorporates two mechanisms to accomplish the goal of establishing Federal recycling practices. First, §6002(d) states that all Federal procuring agencies responsible for drafting or reviewing specifications must review and revise their specifications in order to eliminate any unfair discrimination against the use of recovered materials. Second, §6002(e) requires the EPA to designate items that are or can be produced with recovered materials and to set forth recommended procurement practices for such items ("procurement guidelines"). Section 6002(c) requires all procuring agencies which use appropriated Federal funds to procure designated items containing the highest percentage of recovered materials, practicable, provided that reasonable levels of competition, cost, availability and technical performance are maintained. Section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that designated items containing recovered materials are purchased to the maximum extent practicable.

EPA finalized guidelines for cement and concrete containing fly ash on January 28, 1983 (48 FR 4230). Paper and paper products guidelines were proposed on April 9, 1985 (50 FR 14076). Guidelines for Federal procurement of asphalt materials containing ground tire rubber for construction and rehabilitation of paved surfaces were proposed on February 20, 1986 (51 FR 6202). The EPA has established criteria for selecting additional items for which procurement guidelines will be prepared (48 FR 4231). The criteria are:

- 1) The waste material must constitute a significant solid waste management problem due to volume, degree of hazard or difficulties in disposal;
- 2) Economic methods of separation and recovery must exist;
- 3) The material must have technically proven uses; and
- 4) Federal purchasing power for the final product must be substantial.

Source: William Sanjour (202) 382-4502
Research: Kevin Weiss

Mr. Gary D. Meyers
The Fertilizer Institute
1015 18th Street, N.W.
Washington, D.C. 20036

AUG 21 1986

Dear Mr. Meyers:

This is in response to your letter of May 9, 1986, regarding the regulatory status of commercial fertilizers that contain emission control dust/sludge from the primary production of steel in electric furnaces (EPA Hazardous Waste No. K061) under the Federal hazardous waste rules. In your letter, you question an interpretation I have taken regarding the applicability of the hazardous waste rules to fertilizers produced using zinc flue dust as an ingredient. In particular, you disagree with my statement that such fertilizers are not exempt from regulation pursuant to 40 CFR §266.20(b) until they are in the physical form in which they were sold to the ultimate consumer. Rather, you believe that once the zinc flue dust has been incorporated into the product and has been properly processed, the material, while subject to our authority, is currently exempt from regulation because it is a "commercial fertilizer."^{1/} (We both agree that the transportation and storage of zinc flue dust prior to its use in the production of fertilizer is regulated.)

^{1/} You also believe that the zinc flue dust would not be regulated after it is reacted with sulfuric acid, the first step in producing zinc micronutrient fertilizers, since it has undergone a chemical reaction making it inseparable from the product by physical means (see §266.20(b)). This would only be true if the material can be used as a fertilizer (and such fertilizer is produced for the general public's use) after the zinc flue dust is reacted with sulfuric acid. As you state in your letter, however, the zinc flue dust does not become a commercial fertilizer (i.e., a fertilizer that can be used by the general public) until it is reacted with sulfuric acid, granulated, and sized. I, therefore, believe this provision is not appropriate in this case.

In reviewing your letter as well as the information enclosed, I have reconsidered my interpretation and believe that your reading of the rules is correct; that is, once a zinc micronutrient commercial fertilizer is produced, it is exempt from regulation, provided it is being produced for the general public's use. Therefore, zinc flue dust that has been reacted with sulfuric acid, granulated, and sized^{2/} would be exempt from regulation, except as described below, whether it is sold directly to the public for their use or to a third party who blends the zinc micronutrient fertilizer with other nutrients prior to their being sold to the general public.

The only exception to this is if the material is not handled in a manner commensurate with the management of zinc micronutrient fertilizers. In particular, in your letter you state "...the fertilizer is stored in bags or in bulk, awaiting shipment to customers. Because excessive moisture must not be allowed to contact the fertilizer until it is applied, the fertilizer is stored indoors and transported in covered (hard top or tarpaulin) trucks" (see page 4 of your letter). Therefore, if a person were to handle the "zinc fertilizer" in open piles outside of buildings or in ways that would not be typical for managing commercial fertilizers and such management is causing this material to escape into the environment, we believe the material would not be a commercial fertilizer and that the operation could be viewed as a sham situation where recycling is not in fact occurring.

^{2/} As stated in your letter, zinc micronutrient fertilizers do not become commercial fertilizers until they are reacted with sulfuric acid, granulated, and sized. Therefore, if a person were to just react the zinc flue dust with sulfuric acid or perform this step and the granulation step and then ship the material off-site to be granulated and sized or just sized, the material would be subject to the transportation and storage standards since the material is not yet a "commercial fertilizer" produced for the general public's use. In addition, any wastes from the fertilizer production process--such as filter cake left after reacting the waste flue dust--would be RCRA wastes, and would automatically be deemed to be listed wastes if they derive from treating a listed waste (such as waste K061).

Please feel free to give me a call if you have any further questions; my telephone number is (202) 475-8551.

Sincerely,

Matthew A. Straus
Chief
Waste Characterization Branch

cc: Regional Branch Chiefs (Regions I-X)
Karl Johnson, TFI
Carl E. Schauble, Frit Industries
Michael Steffensmeier, Neb. Dept. of Environmental Control



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9493.1986(04)

SEP 3 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulatory Requirements for Agricultural Use
of Spent Acids

FROM: Matthew A. Straus, Chief *MAS*
Waste Characterization Branch (WH-562B)

TO: Bill Taylor, Chief
Enforcement Section (6H-CE)
Region VI

I am writing in response to your memo of August 14, 1987. The term "commercial fertilizer," as used in §266.20, has the same meaning as normally used in agriculture, i.e., a material added to soil to supply certain elements essential to the growth of plants.

Materials added to soil to alter soil properties, i.e., pH adjustment, are called soil amendments, not fertilizers. Further, the exemption in §266.20(b) is meant to include fertilizer products that contain hazardous waste, not hazardous waste placed directly on the ground. On both counts, the spent acids you describe fail to meet the conditions of §266.20(b), and therefore are subject to §§266.21-266.23.

SEP 11 1986

Mr. Carl E. Schauble
Executive Vice-President
Frit Industries, Inc.
P.O. Box 850 363/0
Ozark, Alabama 363-0850


Dear Mr. Schauble:

Thank you for your letter of May 12, 1986, regarding the regulatory status of commercial fertilizers that contain emission control dust/sludge from the primary production of steel in electric furnaces (EPA Hazardous Waste No. K0661) under the Federal hazardous waste rules.

As you are aware, the Agency received a similar request from The Fertilizer Institute (TFI). In response to that request, a letter was sent to Mr. Gary Meyer (a copy of which is enclosed) which indicates that zinc micronutrient fertilizers (i.e., those in which the zinc flue dust has been reacted with sulfuric acid, granulated, and sized) are exempt from regulation under the Federal hazardous waste provided they are being produced for the general public's use and provided this material is handled in a manner commensurate with the management of zinc fertilizers (see enclosure for specifics). Therefore, if the fertilizer you produce is reacted with the sulfuric acid, granulated, and sized, and if it is produced for the general public's use, it is exempt from the federal hazardous waste regulations.

Please feel free to call Matt Straus, or my staff, if you have any further questions; Mr. Straus can be reached at (202) 475-8551.

Sincerely,


Marcia E. Williams
Director
Office of Solid Waste



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 8 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Frank Dixon
President
Thermal Waste Management
237 Royal Street
New Orleans, Louisiana 70130

Dear Mr. Dixon:

This letter responds to your August 9, 1990, letter to Mr. Bob Holloway, as well as to phone conversations between Mr. George Lane of Thermal Waste Management (TWM) and Mr. Mitch Kidwell, of my staff. Your principal intent in writing to EPA is to seek confirmation of your assessment that the fuels TWM produces are exempt from hazardous waste labeling requirements. You also ask for clarification of the regulatory provisions that govern the production of fuels from oily hazardous petroleum refinery wastes (i.e., 40 CFR 261.6(a)(3)) and the impact of various court opinions on these regulations.

As I understand your letter, TWM has a process that produces marketable liquid and solid fossil fuel products from oily hazardous petroleum refinery wastes. The liquid portion is reinserted into the petroleum refining process and the solid portion is marketed as a fuel. You assert that the TWM process is unique because it leaves no residues that would require subsequent treatment or disposal (aside from the wastewater, which is further managed in the refinery's wastewater treatment system) and use this as a basis for drawing a "significant difference" between the TWM process and typical oil reclamation processes that recover a liquid component, yet leave a solid residue requiring disposal.

Regulatory determinations such as the one you seek (i.e., specific to your process or products) are made by the appropriate State regulatory agency or EPA Regional Offices. I am able to respond to your questions regarding which Federal regulations may be applicable, clarifying the intent and meaning of various terms used in the regulations, and provide some of the pertinent factors to consider in determining the regulatory status of the TWM process and the fuels produced; however, the determination must be made on a case-specific basis by the regulating agency.

Under the Federal regulations, there is no regulatory basis to draw a distinction between secondary materials processed by an oil recovery process that does not generate a residue and secondary materials processed by an oil recovery process that

does generate a residue. The emphasis you apply to the phrase "no element of discard" as it describes the TWM process suggests a misunderstanding of the Agency's use of the phrase in its January 8, 1988 proposal (see 53 FR 525) on the definition of solid waste. (This definition is used to determine whether a secondary material is subject to hazardous waste regulations promulgated under the Resource Conservation and Recovery Act (RCRA).)

In the January 8, 1988 preamble discussion, the phrase "no element of discard" is used to indicate that where there is an element of discard evidenced in the management of a hazardous petroleum secondary material (e.g., placement in a surface impoundment) prior to reinsertion into the petroleum refining process, the very element of discard indicates that the secondary material is a solid waste subject to RCRA regulation. Conversely, if a secondary material is managed prior to reinsertion into the petroleum refinery process that generated it such that there is no element of discard (e.g., by managing the materials solely in tanks), the secondary material is considered to be part of an ongoing continuous production process, and thus, outside the scope of RCRA regulation. Whether or not the processing of the secondary material (in this example, by reinsertion into the petroleum refining process) results in a residue that must be disposed of is irrelevant to determining whether the secondary material, prior to reinsertion, is a solid waste subject to regulation.

The January 8, 1988 preamble discussion, as well as the exclusion proposed for oil-bearing hazardous secondary materials that are reinserted into the petroleum refinery process (proposed 40 CFR 261.4(a)(10)), is neither relevant nor applicable to such materials that are inserted into an oil recovery process other than the petroleum refinery process that generated the secondary material (regardless of whether the recovery process generates a residue). Rather, fuel that is produced (and oil that is reclaimed and used as a fuel) from hazardous wastes resulting from normal petroleum refining, production, and transportation by processes other than normal petroleum refining operations are eligible for an exemption from hazardous waste regulation under 40 CFR 261.6(a)(3)(viii).

Your first four questions indicate a concern regarding whether the ownership of the unit, the operator of the unit, the characterization of the unit's operation as intermittent (i.e., batch) rather than continuous, or the unit's characterization as mobile rather than stationary has an impact on whether the products produced are exempt from regulation. In general, under Federal regulations such aspects of a process have little impact on the regulatory status of the products produced or the residues generated.

The applicable regulatory provisions (40 CFR 261.6(a)(3)) explicitly state the conditions which must be met for fuels produced from hazardous secondary materials from petroleum refining to be exempt from regulation. (For example, in 261.6(a)(3)(v), "refining of oil-bearing hazardous wastes along with normal process streams"; and in 261.6(a)(3)(viii)(A), "reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specifications under § 266.40(e).")

In another question, you refer to the proposed 40 CFR 261.4(a)(10) (53 FR 529, January 8, 1988) which excludes:

"Oil-bearing hazardous secondary materials from petroleum refining that are generated onsite and reinserted into the petroleum refining process along with normal process streams, provided that the materials are not stored in a manner involving placement on the land, or accumulated speculatively, before being so recycled. (Fuels produced from such recycling activities are not solid wastes.)"

You ask for EPA's concurrence that TWM fuels are not solid wastes, since the feed materials meet all of the above requirements. Such an evaluation would need to be made on a case-specific basis by the regulating agency.

It should be clear from the January 8, 1988 proposal preamble discussion regarding RCRA jurisdiction that the exclusion applies only to those secondary materials that are reinserted into the petroleum refining process (rather than being "inserted" into an onsite "recovery" process), thereby being part of an ongoing, continuous production process. (This language is taken from the statutory provision in section 3004(r).) Materials that are processed by processes other than "the petroleum refining process" would not be excluded under this proposed provision (although, as stated above, there is an existing rule that exempts fuels produced by such other processes, provided the fuels meet the used oil specifications). Please keep in mind that the Agency has not finalized the 1988 proposal, nor has any State, to our knowledge, adopted such a provision in a final regulation. Conditions for meeting the exclusion could change at promulgation.

A number of your questions refer to the January 8, 1988 preamble discussion and make an assumption that the TWM process is a "petroleum refining process." EPA described what it means by a petroleum refinery process (i.e., petroleum refining facility) in a November 29, 1985 rulemaking that promulgated the exemptions for fuels derived from petroleum refinery wastes (see 50 FR 49169). (This description was reiterated in the January 8, 1988 proposal preamble discussion, and is consistent with the statutory language in section 3004(r).) As Footnote No. 11 in the November 29, 1985 FEDERAL REGISTER notice states, the Agency

does not consider used oil-based processes that produce fuel to be refining operations "(in spite of the use of distillation) because they do not produce fuels from crude oil." This footnote further explains that if such processes use ". . . oilbearing petroleum refining hazardous waste as a feed material, the resulting fuels would be exempt if they meet the used oil specification . . ." (emphasis added). By requiring that such fuels meet the used oil specifications of 266.40(e) to be exempt from regulation as a hazardous waste fuel (assuming that the fuels are derived from listed hazardous wastes or exhibit a hazardous characteristic), the Agency clearly did not intend for used oil distillation processes (and, by extension, other oil recovery processes) to be considered petroleum refining processes, even when oil-bearing petroleum refining hazardous wastes are used as a feedstock in the used oil distillation process.

The TWM process does not appear to meet the Agency's definition of a petroleum refining operation because it: 1) does not use crude oil as a feedstock, 2) recovers a liquid fraction that must be rerefined in the petroleum refining process (and therefore, is not itself a refined hydrocarbon product), and 3) exhibits no evidence that the solid fuel produced is a typical petroleum refining product rather than a hazardous waste fuel (i.e., if there is no removal of contaminants in the processing - as would be the assumption if such fuel meets the used oil specifications found at 40 CFR 266.40(e) -- then there is no basis on which to conclude that such fuel is a refined petroleum product rather than a petroleum refining waste recovery residue with recoverable energy (BTU) value, or rather, a hazardous waste fuel). Since it does not appear that the TWM process is a petroleum refining operation, many of your questions are moot or are otherwise unanswerable because there is insufficient information on which to base a response.

In two questions you ask whether the January 8, 1988 proposal has been finalized and whether the Agency has considered recent court opinions regarding the jurisdiction of RCRA in responding to your questions regarding the status of the fuels produced by the TWM process. EPA has not yet finalized the January 8, 1988 proposal; however, insofar as the proposal and relevant court opinions address the scope of RCRA, particularly in relation to secondary materials that are part of an ongoing continuous petroleum refining processes, these considerations were taken into account in responding to your questions.

In another question, you cite the Standard Industrial Classification (SIC) 2911 for petroleum refining and ask whether the TWM process is the "redistillation of unfinished petroleum derivatives." While the TWM process does appear to be the redistillation of an "unfinished petroleum derivative," the main focus of the SIC classification seems to be the actual production of petroleum products. Because the SIC description includes the

phrase "other processes," the emphasis does not appear to be on the type of process involved, but rather on the feed materials and the products produced. The TWM process is best characterized as a recovery process that processes hazardous petroleum refining wastes to recover a liquid component which is reinserted into the petroleum recovery and a solid component which, assuming it meets the used oil specifications of 266.40(e), is a hazardous waste fuel that is exempt from regulation. If the solid fuel produced by the TWM process does not meet the used oil specifications at 266.40(e), it is subject to regulation as a hazardous waste fuel.

In describing a petroleum refining process, EPA sought to distinguish between actual petroleum production processes and ancillary recovery processes. However, exemptions were also promulgated to address fuels produced by recovery operations where the contaminants were removed from the fuels, thus ensuring that the use of the fuels would not pose an increase in risk to human health and the environment over the use of normal petroleum refining fuel products. You have provided no data indicating whether the solid fuel produced by the TWM process meets the 266.40(e) used oil specifications; therefore we are unable to determine the regulatory status of the solid fuel.

You specifically asked whether the Agency agrees that the TWM process is a refining process. For the purpose of the regulatory exemptions found at 40 CFR 261.6(a)(3), the TWM process does not appear to be a refining process in the same way that a used oil distillation process is not a refining process. Rather, the TWM process appears to be a recovery process.

In summary, I reiterate that EPA Headquarters is not the appropriate entity to make a determination on the regulatory status of the TWM process as it operates at a particular facility or on the products it produces. There is no basis on which to conclude that the TWM process is a petroleum refining process, and no information was supplied to make a regulatory determination on the status of either the liquid or solid portions recovered (i.e., no data on whether the fossil products meet the used oil specifications). If the liquid portion is sold for direct use as a fuel, the fuel would be exempt from regulation as a hazardous waste fuel only if it meets the used oil specifications of 40 CFR 266.40(e). If the liquid portion (i.e., oil) is reinserted into the petroleum refining process along with normal process streams, it would be exempt from hazardous waste regulation under 261.6(a)(3)(vi). If the solid portion is marketed as a fuel, or further used to produce a fuel, it would likewise not be regulated as a hazardous waste fuel only provided that it meets the used oil specifications (assuming that it meets other relevant criteria for a hazardous waste fuel). If the recovered portions that are marketed as fuel do not meet the used oil specifications, such fuels are hazardous waste fuels (assuming that they are derived from listed hazardous petroleum

wastes or are themselves hazardous by exhibiting a characteristic of a hazardous waste).

If you have further generic questions regarding the regulatory status of recovery processes or fuel products derived from hazardous petroleum wastes, you should contact Mr. Mitch Kidwell, of my staff, at (202) 475-8551. For specific questions regarding the application of RCRA regulation to the TWM process or TWM fuel products, you should contact the appropriate State regulatory agency or EPA Regional Office.

Sincerely,



David Bussard
Director
Characterization and Assessment
Division

bcc: Allyn Davis, Director
Waste Management Division, Region VI

Bob Holloway, Chief
Combustion Section



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 20 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulatory Determination Regarding the Use of
Petroleum-Contaminated Soils as an Ingredient in
Asphalt Batching

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Merrill S. Honman, Director
Waste Management Division
Region I

This responds to your March 11, 1991, memorandum requesting a regulatory interpretation regarding the use of petroleum-contaminated soils as an ingredient in asphalt batching. This use of petroleum-contaminated soils has become an issue because the recently promulgated Toxicity Characteristic (TC) rule may result in such soils being hazardous wastes subject to regulation, while the majority of such asphalt batching operations have failed to apply for interim status. Thus, the two main issues are: (1) determining the regulatory status of the asphalt batching processes, and (2) the appropriate enforcement approach to address those regulated facilities that failed to apply for interim status, or were late in applying. For the latter issue, I refer you to the April 10, 1991, memorandum from Bruce Diamond.

In determining the regulatory status of the asphalt batching operation, there are four different points of consideration:

1) whether the petroleum-contaminated soils are hazardous solid wastes when used as an ingredient in a product used in a manner constituting disposal, 2) whether the batching process itself is legitimate recycling or treatment, 3) whether the asphalt product meets the waste-derived product exemption found at 40 CFR 266.20(b), and 4) whether the storage of petroleum-contaminated soils is subject to regulation.

1. Determining whether petroleum contaminated soils are solid wastes.

In determining whether the contaminated soils are hazardous wastes when used as ingredients in asphalt, the term "petroleum-contaminated" may be too generic to enable a definitive regulatory determination because this term could encompass too

broad a variation of contaminants. A more case-specific approach may be necessary because certain "petroleum-contaminated" soils may be subject to RCRA regulation while others may not.

In general, a hazardous secondary material (and soils contaminated with a hazardous secondary material) used to produce a product used in a manner constituting disposal is a solid waste, unless it is a commercial chemical product that is normally used in this manner, such as a petroleum product normally used as an ingredient in asphalt batching (see 40 CFR 261.2(c)(1)(ii) -- although the commercial product may not be listed in section 261.33, the same regulatory approach applies). The regulatory status of soils contaminated with crude oil would be determined by using the same approach. The crude oil, while not a secondary material, would be a solid waste because it is being discarded by use in a manner constituting disposal, unless crude oil is a normal ingredient in asphalt batching. We expect that most petroleum-contaminated soils are not contaminated with the petroleum product that normally is used in asphalt production and would, therefore, be solid wastes. (For example, if gasoline is not normally used in asphalt production, then gasoline-contaminated soil is a solid waste when used in asphalt production.) However, there may be specific cases where the soil is contaminated with a petroleum product normally used to make asphalt, in which case the contaminated soil would not be a solid waste when used in asphalt batching.

Also, you should note that any media (including soil) or debris resulting from remediation of an underground storage tank cleanup under Part 280 is excluded from regulation as hazardous waste (for the D018-D043 constituents) regardless of the intended disposition, so these soils could be used in asphalt production. (You should also note that we are presently reviewing a petition from New York State that requests that the Agency exclude all petroleum contaminated media and debris from regulation under the TC. A rulemaking may be initiated to address issues raised by this petition, but the remainder of this memo is based on the current rules.)

In summary, with the exceptions of soils contaminated with petroleum materials normally used in asphalt production and soils resulting from underground storage tank cleanups, soils contaminated with petroleum materials that are listed waste or exhibit one of the characteristics would be hazardous and solid waste. The remainder of this memo discusses the issues relevant for these soils.

2. Determining whether asphalt batching is legitimate recycling.

The act of mixing petroleum contaminated soils into the asphalt production process may be a form of treatment, subject to permitting under Part 270, or may instead be recycling,

exempt from permitting under section 261.6(c). The main question is whether the batching is "legitimate" recycling, as opposed to treatment in the guise of recycling ("sham" recycling).

In determining whether the asphalt batching is legitimate recycling, the Agency compares the contaminated soil with the analogous raw materials normally used in asphalt batching. To the extent that the contaminated soils contain hazardous constituents not found in the analogous raw materials, or contain hazardous constituents in significantly higher concentrations than in the analogous raw materials, the batching process would be considered "sham" recycling, unless such hazardous constituents can be demonstrated to be useful in the production of the product or in the product itself. Another factor indicating whether the batching process is sham recycling is whether the contaminated soils are legitimately replacing a raw material or ingredient normally used in the process. For example, if the contaminated soils are being used in excess of the amount of raw materials that would otherwise be used, sham recycling would be indicated. Where sham recycling is indicated (i.e., where contaminants in the soils are actually being treated or disposed of by incorporation into a product), a treatment permit may be required.

3. Determining the status of the asphalt product.

Whether the batching process is considered legitimate recycling or not, the resulting waste-derived asphalt product is a solid waste because it is placed on the land. Assuming that the resulting product is a legitimate asphalt product, the applicable regulations are found at 40 CFR 266 Subpart C. Doubts regarding the legitimacy of the waste-derived product are resolved by a comparison of the constituents found in the waste-derived product to the constituents found in an analogous product that is not produced using contaminated soils as an ingredient.

If the asphalt product is produced using soils contaminated with a listed hazardous waste (e.g., K048-52), it would be subject to hazardous waste regulations as a waste-derived product. If the product meets the conditions of the exemption found at 40 CFR 266.20(b), which include meeting the applicable Land Disposal Restriction (LDR) treatment standard(s), the asphalt product is exempt from further regulation as a hazardous waste. If the product does not meet the terms of that exemption, then it remains subject to regulation as hazardous waste, which would amount to a de facto ban on the product's use. Also, if the asphalt product does not meet the conditions of the exemption until further processing, then the asphalt is subject to regulation as a hazardous waste until the conditions have been met.

If the asphalt product is produced using soil contaminated

with waste hazardous only because it exhibits a characteristic (e.g., the TC), then the above discussion applies for as long as the material continues to exhibit the characteristic. Further, there are currently no LDR treatment standards for TC waste.

You should note that over the next 1-2 years we will be developing regulations that will address various issues associated with waste-derived products. We expect those regulations to further clarify the distinction between legitimate and "sham" recycling.

4. Determining the status of stored materials.

With the exception of the materials described above in number 1 (i.e., soils contaminated with petroleum normally used in asphalt production or from underground storage tank remediations), -- and the exception discussed below -- the storage of contaminated soil that either contains a listed waste or exhibits a characteristic is regulated under Parts 262, 264, 265, 268, and is potentially subject to permitting under Part 270.

In the case of asphalt product that meets the conditions of section 266.20(b), no storage requirements apply once the conditions are met.

I hope this has helped to resolve your issues. If you have any questions regarding the late notifier guidance document sent to you earlier by the Office of Waste Programs Enforcement, your staff should contact Hugh Davis at FTS 475-9867. If you have any questions regarding the regulatory status of recycling processes, your staff should contact Mitch Kidwell at FTS 475-8551. For information regarding the New York petition, your staff should contact Denise Keehner at FTS 382-4740.

Attachment

cc: Waste Management Division Directors
EPA Regions II-X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 21 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Kevin Young, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, New York 12660

Dear Mr. Young:

This letter responds to your letters of June 19, 1990 and December 21, 1990 to Mr. Randolph Hill of EPA's Office of General Counsel regarding the RCRA regulatory status of air pollution control dusts (i.e., baghouse dusts) generated at facilities owned by Norlite. These facilities burn hazardous waste fuels and the baghouse dust will either be recycled to produce the aggregate product or be directly used as aggregate. Specifically, you have asked for a determination that the baghouse dust, when recycled, meets the exemption from RCRA regulation for waste-derived products used in a manner constituting disposal found at 40 CFR 266.20(b). You have also requested a determination that baghouse dust used as an ingredient in the manufacture of concrete masonry is not solid waste under 40 CFR 261.2(e)(1)(i).

There appear to be four different scenarios for recycling the baghouse dust that you outline in your letters, two in which the material is used directly as a product, and two in which the material is used as an ingredient to produce a product. More specifically, the scenarios are when the baghouse dust is used: 1) as a product used in a manner constituting disposal (e.g., when used as an aggregate material for asphalt production), 2) as a product not used in a manner constituting disposal, 3) as an ingredient in a process that produces a product used in a manner constituting disposal, and 4) as an ingredient in a process that produces a product that is not used in a manner constituting disposal (e.g., when used as an ingredient of "block mix" for the manufacture of concrete masonry that is not, in turn, used in a manner constituting disposal). Although the uses of the baghouse dust presented in these four scenarios may seem very similar, the regulatory determinations differ based on the ultimate destination of the baghouse dusts or products into which they are incorporated. We have considered two issues raised by your request: 1) whether the process or activity involving the baghouse dust is legitimate recycling (i.e., not treatment or disposal), and 2) whether the baghouse dust itself is a solid waste or is excluded from being a solid waste because it is a legitimate substitute for a commercial product or raw ingredient.

We should note at the outset that a final determination on these questions must be made by the authorized State regulatory agency or appropriate EPA Regional office. As we understand it, your request relates to the Norlite facility in New York; thus, the regulatory determination must be made by the State of New York. We provide below a discussion of the factors that EPA would use to evaluate whether the recycling of the baghouse dust generated by the burning of listed hazardous waste fuels is legitimate under Federal regulations; however, this discussion does not constitute a site-specific regulatory determination for the Norlite facility.

Scenario 1 -- Use as a product in a manner constituting disposal

The baghouse dust would be considered a waste-derived product and, when used in a manner constituting disposal, subject to the conditions placed on such products in the exemption provided at 40 CFR 266.20(b). It appears from the data you supplied that the baghouse dust meets the applicable treatment standards. Thus the waste-derived product would be exempt from further regulation, assuming it is otherwise determined to be a legitimate product, which we discuss further in Scenario 2.

In section E of your letter, you suggest that the "contained in" rule is not applicable to the baghouse dust, and thus that the baghouse dust is not derived from the listed wastes burned as fuel in the aggregate kiln and thus is not a listed waste. You cite the Land Disposal Restrictions for First Third Wastes final rule preamble discussion that presented the Agency's position regarding the regulatory status of products produced using hazardous waste fuels. The Agency stated that such products are not deemed to be used in a manner constituting disposal because hazardous wastes were not used as ingredients to produce them. The hazardous waste burned as fuel does not contribute to the product as an ingredient, but rather fires the production process. 53 FR 31198. This preamble discussion is clearly not applicable to the baghouse dust itself. The baghouse dust is the residue from burning the hazardous waste fuel; it is not the product. Thus, the baghouse dust itself would be a "derived-from" waste. However, since the dust itself appears to meet the section 266.20(b) waste-derived product exemption, this rule would not affect the status of the dust used as a product.

In section D of your letter you also raise the issue of how the Bevill rule affects "derived-from" wastes from mineral processing. As you note, EPA has stated that mineral processing wastes removed from the Bevill exemption are considered "newly identified" for the purposes of the land disposal restrictions. While the preamble discussion states that characteristic wastes from mineral processing which were removed from the Bevill exclusion are not subject to treatment standards pending further

rulemaking, it is silent on how and whether listed wastes used in the process, either as a fuel or as an ingredient, affect the wastes newly removed from the exclusion, including residues derived from listed wastes. We wish to clarify that the aggregate kiln generates a residue, the baghouse dust, from the treatment of listed hazardous wastes -- wastes that are not newly identified and for which treatment standards are applicable. So, the baghouse dust is subject to the land disposal restrictions treatment standards applicable to the listed wastes burned in the aggregate kiln. Nonetheless, since the data indicate that the treatment standards are met, this issue is also moot.

Scenario 2 -- Use as a product in a manner that does not constitute disposal

The baghouse dust would be considered a waste-derived product, although there are no regulatory requirements for use in a manner that does not constitute disposal (e.g., the land disposal restrictions treatment standards do not apply). We believe that the State of New York should, however, evaluate the baghouse dust to determine whether it is a legitimate product by comparison with the aggregate that would normally be used. Based on your letter, we assume the "normal aggregate" would be the multiclone dust (i.e., the typical fines product). The data you submitted indicate that the lead and cadmium concentrations in the baghouse dust are double the concentrations found in the multiclone dust. The State should determine whether this is a significant difference and, therefore, determine whether the baghouse dust is not a legitimate product.

Scenario 3 -- Use as an ingredient to make a product used in a manner constituting disposal

Use as an ingredient to make a product that is used in a manner constituting disposal would not exclude the baghouse dust from the definition of solid waste (see 40 CFR 261.2(e)(2)(i)). The aggregate (as a product that is to be placed on the ground) continues to be a derived-from waste and would be required to meet the treatment standard. Further, an evaluation of the actual processing would be in order, i.e., a determination as to whether the process would be considered legitimate exempt recycling vs. fully regulated treatment or disposal by incorporating the hazardous constituents into the product. To the extent that there are hazardous constituents found in the baghouse dust that are not found in the analogous raw material, or that are found in the baghouse dust in significantly greater concentrations, the process would be determined to be treatment, unless a demonstration is made that the hazardous constituents are necessary or beneficial to the process or product. In other words, the hazardous constituents are being treated rather than being used as ingredients, unless demonstrated otherwise using the criteria mentioned above. We should note that EPA would

generally use a total concentration analysis rather than a leachate analysis to make this determination since we are comparing the waste against the raw material rather than their respective leachates. A demonstration of legitimate recycling would also need to show that the baghouse dust actually replaces a raw material (e.g., for every ton of baghouse dust used, there is a roughly equivalent reduction of shale or other raw materials). We note that your letter asserts that the baghouse dust would be used as a direct substitute for additional raw material consumption.

In section F, you cite EPA's "indigenous principle" to suggest that the baghouse dust may not be a hazardous waste when returned to the kiln. However, absent such a policy EPA evaluates the baghouse dust as it would any secondary material being used as an ingredient. The "indigenous principle" most closely captured in the current regulatory language at 40 CFR 261.2(e)(1)(iii) (the closed-loop exclusion) is not applicable in any instance where the product is to be used in a manner constituting disposal (see 40 CFR 261.2(e)(2)(i)).

Scenario 4 -- Use as an ingredient to make a product not used in a manner constituting disposal

As in Scenario 2 above, there are no regulatory requirements for a waste-derived product that is not used in a manner that constitutes disposal (or burned for energy recovery). If the baghouse dust will be legitimately used as an ingredient to produce a product that is not used in a manner constituting disposal, it would be excluded from the definition of solid waste. The determining consideration, however, is whether the baghouse dust is a legitimate substitute for a raw material (as discussed in Scenario 3). If the baghouse dust is determined to not be a legitimate substitute, the production process would be considered treatment, and thus would subject the aggregate kiln to RCRA regulation as a treatment process for the hazardous waste burned as an ingredient.

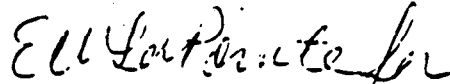
Under Federal regulations, regardless of the scenario, since the baghouse dust appears to meet the applicable treatment standards, it could be used as a waste-derived product or ingredient, assuming that it is marketed commercially and is a legitimate product. When the baghouse dust is used as an ingredient in the manufacturing process, the State of New York must determine: 1) whether the baghouse dust is a solid waste (i.e., whether the product will be used in a manner constituting disposal) and 2) whether the process is legitimate recycling (i.e., whether the baghouse dust is a legitimate substitute).

We must again emphasize that the New York Department of Environmental Conservation must make the determinations regarding the status of baghouse dust under each of these scenarios for the

facilities operating in New York. The role of EPA Headquarters is to provide technical and policy support to the Regional offices (or to the States through the Regional offices). We have provided you the factors that we would use to evaluate whether the recycling of the derived-from baghouse dust is legitimate under Federal regulations. The key considerations are whether the lead and cadmium concentrations are considered to be significantly greater in the baghouse dust than in the raw material and whether the process that uses the baghouse dust as an ingredient would be considered treatment.

If you have any further questions regarding the factors to consider in evaluating the regulatory status of a secondary material when recycled, please contact Mitch Kidwell at (202) 475-8551. For a specific determination regarding the regulatory status of the baghouse dust when recycled at Norlite's New York facility, you must contact the State regulatory agency.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Bussard", with a stylized flourish at the end.

David Bussard, Director
Characterization and
Assessment Division

OCT 11 1991

David Wisch
RCRA Unit Supervisor
Hazardous Waste Section
Land Quality Division
Department of Environmental Control
State of Nebraska
301 Centennial Mall South
P.O. Box 98922
Lincoln, Nebraska 68509-8922

Dear Mr. Wisch:

Thank you for your letter of June 26, 1991 commenting on a May 3, 1991 letter we received from Mike Bates of the State of Arkansas requesting clarification of the federal Resource Conservation and Recovery Act (RCRA) Subtitle C regulations governing the management of certain materials used as ingredients in the production of fertilizers.

Mr. Bates's letter requested clarification of how materials and activities would be regulated under the federal regulations in a situation involving the facts listed below. In addition, you request clarification on how such materials and activities would be regulated if lead values were recovered from the baghouse dust prior to its use as an ingredient in fertilizer production.

- A generator in your state generates a baghouse dust that is not a listed waste identified in 40 CFR 261.32 or 261.33 (or, we assume, 40 CFR 261.31);
- The baghouse dust, which has a high concentration of zinc, fails the Toxicity Characteristic for lead;
- The dust is a "sludge," as defined in 40 CFR 260.10 because it is generated in an air pollution control facility; and
- The generator would like to send the baghouse dust to a producer that could use the dust as an ingredient in fertilizer for the zinc content.

~~To determine how the federal hazardous waste regulations apply to management of any material the first determination that must be made is whether the material in question is a solid~~

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

waste, since by definition a hazardous waste must first be a solid waste (40 CFR 261.3). For materials that are recycled, 40 CFR 261.2(c) defines those materials that are solid wastes. If the material is both a solid waste and a hazardous waste, the waste management activities must then be evaluated to identify applicable requirements.


In the situation described by Mr. Bates, the baghouse dust would be a solid waste because it is a sludge exhibiting a characteristic of hazardous waste which is to be used to produce a product that is applied to or placed on the land (i.e., used in a manner constituting disposal). (See 40 CFR 261.2(c)(1)(i)(B).) Since the dust exhibits the Toxicity Characteristic, it is also a hazardous waste (40 CFR 261.3(a)(2(i))).

Similarly, if the baghouse dust were sent to a facility at which lead was recovered from the dust prior to shipment to the fertilizer producer, the baghouse dust would also be a solid waste under 40 CFR 261.2(c)(1)(i)(B) because it continues to be a characteristic sludge which is to be used to produce a fertilizer. The regulatory determination does not change because some portion of the dust is to be used in a manner constituting disposal, even though another portion (the recovered lead) will not. In other words, the solid waste determination for a recycled material is made at the point of generation of the waste, and takes into account the entire waste recycling process, not just the first step in a waste recycling train. Any step which involves use in a manner constituting disposal (or burning for energy recovery) causes the waste to be a solid waste from the point of generation on. Any portions of the waste that are separated from the waste and recycled in ways that do not involve use constituting disposal (or burning for energy recovery) may no longer be solid wastes (depending on applicable regulations).

For completeness it should also be noted that the regulatory status of the dust after the lead recovery step would depend on whether the dust exhibited any hazardous waste characteristics. Thus, if the dust exhibited a characteristic it would continue to be a solid and hazardous waste, again because it would be a characteristic sludge to be used in a manner constituting disposal. On the other hand, if the dust did not exhibit any characteristics after the lead recovery step, it would not be a hazardous waste at that point.

Once the regulatory status of a recycled material is determined, the applicable management requirements are specified in 40 CFR 261.6. For the characteristic sludge which is to be used in a manner constituting disposal, the generator and any transporters would be subject to the applicable requirements of 40 CFR Parts 262, 263, and 268 (including use of the manifest), and the recycling facility (storer) to the applicable requirements of Subparts A through L of 40 CFR Parts 264 and 265

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

268, 270, and 124. (See 40 CFR §§ 261.6(a)(2)(i), 266.21, and 266.22.) The recycling process itself (lead recovery and/or fertilizer production), assuming it is legitimate, would not be subject to Subtitle C regulation. *recycling* 

Once the fertilizer is produced, if it meets the conditions of 40 CFR 266.20(b) (i.e., is produced for the general public's use and meets the applicable land disposal restrictions treatment standards in 40 CFR Part 268, Subpart D), the fertilizer is not presently subject to regulation (although under 40 CFR 261.2(c)(1)(i)(B) the fertilizer remains a solid waste, and 40 CFR 268.7(b)(7) recordkeeping requirements would be applicable). If the fertilizer did not meet the conditions of 40 CFR 266.20(b), use of the product would be subject to 40 CFR 266.23 (i.e., full Subtitle C regulation).

The above discussion addresses the federal regulatory requirements applicable to the use of characteristic sludges as ingredients in fertilizers. For your information, several past letters and other material addressing this issue are enclosed. However, individual state requirements may be different and may vary from state to state.

In addition, there are several follow-up points that I would like to make. First, I believe that some background on the development of the use constituting disposal regulations will shed some light on the reason the regulations are structured as they are. When these regulations were promulgated on January 4, 1985 (50 FR 614), the preamble explained that RCRA Subtitle C jurisdiction unquestionably encompasses wastes that are placed on the land (used in a manner constituting disposal) because this type of recycling is so similar to normal forms of waste management (i.e., land disposal). In fact, placement on the land is one of the activities that Congress most clearly intended to control under RCRA. As with any other waste that is to be managed in a manner that is analogous to disposal, generation, transportation, and storage of any wastes that are (even in part) to be used to produce waste-derived products are regulated (in addition to those that are to be used directly on the land).

Second, there was a discussion in the January 4, 1985 Federal Register notice explaining that in the future, the Agency envisioned developing a more tailored regulatory system for waste-derived products recycled by placement on the land. Such a system would take into account the safety of the product (e.g., levels of hazardous constituents in the wastes, likely routes of exposure, etc.). We will shortly be proposing a rule that will allow producers of waste-derived products placed on the land to make such a demonstration.

Third, as you may know, this proposal is part of a larger effort that we are currently undertaking to reevaluate our

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

overall approach to regulation of hazardous waste recycling activities and to make changes to ensure that the regulations encourage environmentally beneficial recycling while at the same time ensuring protection of human health and the environment. I understand your concern that the hazardous waste regulations may, as in the case discussed, discourage recycling activities. We expect to publish an Advanced Notice of Proposed Rulemaking in the Federal Register soon which ^{discusses} ~~lays out~~ our current thinking on this issue and solicits comment on a number of possible approaches. I strongly encourage you to review this notice and give us your thoughts on the issues discussed. The reactions and ideas of state agencies implementing the RCRA program will be very important to the success of this project.

Thank you for bringing this issue to my attention. Should you require any further information or have any additional questions, please call Mike Petruska, Chief of the Regulatory Development Branch, at (202) 260-8551.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Hazardous Waste Management Division Directors; Regions I-X

OCT 11 1991

N.G. Kaul, P.E.
Director
Division of Hazardous Substance Regulation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Dear Mr. Kaul:

Thank you for your letter of June 21, 1991, responding to a May 3, 1991 letter we received from Mike Bates of the State of Arkansas. Mr. Bates' letter requested clarification of the federal Resource Conservation and Recovery Act (RCRA) Subtitle C regulations governing the management of certain materials used as ingredients in the production of fertilizers. Your letter discussed application of the federal regulations to this situation and raised several additional issues as well.

Specifically,
Mr. Bates' letter requested clarification of how materials and activities would be regulated under the federal regulations in a situation involving the following facts:

- A generator generates a baghouse dust that is not a listed waste identified in 40 CFR 261.32 or 261.33 (or, we assume, 40 CFR 261.31);
- The baghouse dust, which has a high concentration of zinc, fails the Toxicity Characteristic for lead;
- The dust is a "sludge," as defined in 40 CFR 260.10 because it is generated in an air pollution control facility; and
- The generator would like to send the baghouse dust to a producer that could use the dust as an ingredient in fertilizer for the zinc content.

We will also address the case raised by other states in which lead is first recovered from the dust prior to its use as an ingredient in fertilizer production process.

To determine how the federal hazardous waste regulations apply to management of any material the first determination that must be made is whether the material in question is a solid waste, since by definition a hazardous waste must first be a

2
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

solid waste (40 CFR 261.3). For materials that are recycled, 40 CFR 261.2(c) defines those materials that are solid wastes. If the material is both a solid waste and a hazardous waste, the waste management activities must then be evaluated to identify applicable requirements.

In the situation described by Mr. Bates, the baghouse dust would be a solid waste because it is a sludge exhibiting a characteristic of hazardous waste which is to be used to produce a product that is applied to or placed on the land (i.e., used in a manner constituting disposal). (See 40 CFR 261.2(c)(1)(i)(B).) Since the dust exhibits the Toxicity Characteristic, it is also a hazardous waste (40 CFR 261.3(a)(2(i))).

Similarly, if the baghouse dust were sent to a facility at which lead was recovered from the dust prior to shipment to the fertilizer producer, the baghouse dust would also be a solid waste under 40 CFR 261.2(c)(1)(i)(B) because it continues to be a characteristic sludge which is to be used to produce a fertilizer. This is the case because some portion of the dust is to be used in a manner constituting disposal, even though another portion (the recovered lead) will not be used in such a way. In other words, the solid waste determination for a recycled material is made at the point of generation of the waste, and takes into account the entire waste recycling process, not just the first step in a waste recycling train.

For completeness it should also be noted that the regulatory status of the dust after the lead recovery step would depend on whether the dust exhibited any hazardous waste characteristics. Thus, if the dust exhibited a characteristic it would continue to be a solid and hazardous waste, again because it would be a characteristic sludge to be used in a manner constituting disposal. On the other hand, if the dust did not exhibit any characteristics after the lead recovery step, it would not be a hazardous waste at that point.

Once the regulatory status of a recycled material is determined, the applicable management requirements are specified in 40 CFR 261.6. For the characteristic sludge which is to be used in a manner constituting disposal, the generator and any transporters would be subject to the applicable requirements of 40 CFR Parts 262, 263, and 268 (including use of the manifest), and the recycling facility (storer) to the applicable requirements of Subparts A through L of 40 CFR Parts 264 and 265 268, 270, and 124. (See 40 CFR §§ 261.6(a)(2)(i), 266.21, and 266.22.) The recycling process itself (lead recovery and/or fertilizer production), assuming it is legitimate, would not be subject to Subtitle C regulation. C

Once the fertilizer is produced, if it meets the conditions of 40 CFR 266.20(b) (i.e., is produced for the general public's *marketing*

3
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

use and meets the applicable land disposal restrictions treatment standards in 40 CFR Part 268, Subpart D), the fertilizer is not presently subject to regulation (although under 40 CFR 261.2(c)(1)(i)(B) the fertilizer remains a solid waste, and 40 CFR 268.7(b)(7) recordkeeping requirements would be applicable). If the fertilizer did not meet the conditions of 40 CFR 266.20(b), use of the product would be subject to 40 CFR 266.23 (i.e., full Subtitle C regulation).

Please note that fertilizers produced using solid wastes are solid wastes under 40 CFR 261.2(c)(1)(i)(B). Although, as you noted in your letter, 40 CFR 261.2(c)(ii) does include both commercial chemical products that are listed and those that exhibit characteristics, this provision applies only to non-waste-derived products. Fertilizers that are produced using solid wastes continue to be solid wastes under 40 CFR 261.2(c)(1)(i)(B).

There are several additional points that I would like to make on this topic. First, I believe that some background on the development of the use constituting disposal regulations will shed some light on the reason the regulations are structured as they are. When these regulations were promulgated on January 4, 1985 (50 FR 614), the preamble explained that RCRA Subtitle C jurisdiction unquestionably encompasses wastes that are placed on the land (used in a manner constituting disposal) because this type of recycling is so similar to normal forms of waste management (i.e., land disposal). In fact, placement on the land is one of the activities that Congress most clearly intended to control under RCRA. As with any other waste that is to be managed in a manner that is analogous to disposal, generation, transportation, and storage of any wastes that are (even in part) to be used to produce waste-derived products are regulated (as are those that are used directly on the land).

Second, there was a discussion in the January 4, 1985 Federal Register notice explaining that in the future, the Agency envisioned developing a more tailored regulatory system for waste-derived products recycled by placement on the land. Such a system would take into account the safety of the product (e.g., levels of hazardous constituents in the wastes, likely routes of exposure, etc.). We will shortly be proposing a rule that will allow producers of waste-derived products placed on the land to make such a demonstration.

In your letter you also raised the issue of how the use (or fate) of hazardous constituents in a recycling process should be viewed when evaluating the legitimacy of the process. We agree with you that this is an important consideration in determining whether a recycling process is legitimate, and thus whether recycling exemptions are applicable (e.g., 40 CFR §§ 261.2(c)(3), 261.2(c)(4), 261.2(e), 261.4(a)(8), and 261.6). We have

4
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

addressed this issue in the past in several preambles (see the January 4, 1985 Federal Register (50 FR 638, 648-9) and the January 8, 1988 Federal Register (53 FR 526-7)) and in guidance to the Regional Offices (see the enclosed April 26, 1989 memorandum from Sylvia Lowrance to EPA's Hazardous Waste Management Division Directors in Regions I-X). For example, criteria to be used to evaluate the legitimacy of recycling include the following:

- Does the waste contain Appendix VIII constituents not found in the analogous raw material/product (or at higher levels)?
- Does the waste exhibit hazardous characteristics that the analogous raw materials/product would not?
- Are the toxic constituents actually necessary (or of sufficient use) to the product or are they not necessary for the product?

Further, as you may know, we are currently undertaking a larger effort to reevaluate the overall approach to regulation of hazardous waste recycling activities and to make changes to ensure that the regulations encourage environmentally beneficial recycling. We expect to publish an Advanced Notice of Proposed Rulemaking in the Federal Register soon which ~~lays out~~ ^{discusses} our current thinking on this topic and solicits comment on a number of possible approaches. ~~One of the issues to be discussed in the notice is ways to improve implementation of the hazardous waste regulations by more clearly defining sham recycling and/or by requiring persons claiming recycling exemptions to notify the implementing agency of their activities.~~ I strongly encourage you to review this notice and give us your thoughts on the broad issues discussed as well as on the sham recycling issue. The input of state agencies implementing the RCRA program will be very important to the success of this project.

Thank you for bringing these issues to my attention. Should you require any further information or have any additional questions, please call Mike Petruska, Chief of the Regulatory Development Branch, at (202) 260-8551.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

Enclosure

9494 – HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

Part 266 Subpart D

OCT 1 1985

9494.1985(01)

Mr. Thomas A. Waite
Senior Attorney
Boeing Computer Services
P.O. Box Box 24346
Seattle, WA 98124

Dear Mr. Waite:

This letter is in response to your letter dated August 30, 1985, and is a follow-up to our previous telephone conversations regarding the regulatory status of a mixture of lubricating oil and two jet airplane fuels which are sent to a refinery where the fuel mixture is processed to produce petroleum products. In particular, you indicate that in performing repairs on F-4 type airplanes, the fuel contained in the fuel cells (JP-4-type fuel) is first drained. To remove the remaining fuel from the fuel cells, a mixture of JP-5 type airplane fuel and lubricating oil is then injected into the fuel cells to decrease the volatility of any JP-4 type fuel remaining in the fuel cells; put another way, the JP-5/lubricating oil mixture is used to remove any JP-4 that remains in the fuel cells. This JP-5/lubricating oil mixture is used until the flashpoint of the mixture is lowered to approximately 120° F. At this point, the material is pumped to a tanker truck and sent to a nearby refinery where the fuel mixture is placed in the refinery process to produce petroleum products.

You believe this mixture (when sent to the refinery) is an off-specification, non-listed, commercial product and as such would not be subject to regulation when sent for reclamation. (Your letter lays out your basis for making this argument.) I cannot agree with you. As we discussed previously, the JP-5/lubricating oil mixture is used like a solvent to remove the remaining JP-4 from the fuel cells; as such, the contaminated JP-5/lubricating oil is a spent material--a material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.1/ Spent materials that are hazardous2/

-
- 1/ Even if you are correct that the JP-5/lubricating oil mixture is not a solvent, this mixture would still be defined as a spent material.
- 2/ As you indicate in your letter, this mixture (when sent to the refinery) has a flash point about 120°F and thus, would exhibit the ignitability characteristic.

(whether or not they are listed) are defined as solid wastes when they are used to produce a fuel. Therefore, this material is subject to EPA's authority under the hazardous waste rules.^{3/}

However, based on your letter and my re-evaluation of the facts, this material is currently exempt from regulation. In particular, secondary materials that are used to produce a fuel are only subject to regulation if the material is either listed or a sludge. See §266.36. Since this material is a spent material that is hazardous only because it exhibits a characteristic, the material is currently exempt from regulation.^{4/} Thus, the material can go from your maintenance facility to the refinery without a manifest and the refinery need not get a storage permit, at this time.^{5/} You should be aware, however, that this exemption is only temporary; the Agency expects to make final its rulemaking regarding burning and blending (proposed on January 11, 1985) which is likely to remove this exemption. At that time, the transport of this material and the storage of it at the refinery may subject it to regulation.

I hope this answers your questions; please feel free to give me a call if I can be any further assistance.

Sincerely yours,

Matthew A. Straus, Chief
Waste Identification Branch

cc: Dennis Murphy, Kansas Department of Health and the Environment
M. Sanderson, EPA Region VII

-
- ^{3/} As you are aware, this interpretation is under the Federal hazardous waste rules; the States' regulations may not reflect this interpretation until they adopt the January 4 rulemaking.
 - ^{4/} Since this material contains approximately 80 percent JP-5 type airplane fuel and only 20 percent lubricating oil, this material is not a used oil. Thus, this material would not come under the used oil exemption in §261.6(a)(3)(iii).
 - ^{5/} In discussions with both State and Regional personnel, I have learned that this material is no longer being sent to a petroleum refinery. If this material is not being used as a fuel or used to produce a fuel, the interpretation given is no longer correct. You would need to consult the January 4 rules to determine the regulatory status of the JP-5/lubricating oil mixture.

RCRA/SUPERFUND HOTLINE MONTHLY REPORT

JULY 1985

ON-SITE REUSE OF API SEPARATOR SLUDGE TO PRODUCE NEW PETROLEUM

K051 and HSWA

1. Section 3004(q)(2)(A) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) states that the provisions regulating hazardous waste used as fuel "shall not apply to petroleum wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated...unless the coke product exhibits a characteristic of hazardous waste." Does this mean that K051 (API Separator Sludge) could be reused on-site to produce new petroleum coke?

Yes; petroleum coke produced from the on-site reuse of K051 (or any other listed petroleum refinery waste) is exempt from the labeling provisions of §3004(r) and any standards applicable to hazardous waste fuel, unless the coke product exhibits a characteristic of hazardous waste.

Source: Bob Holloway (202) 382-7936

OCT 1 1985

Dr. John P. Chadbourne
Director of Environmental Services
General Portland, Inc.
P.O. Box 324
Dallas, Texas 75221

Dear Dr. Chadbourne:

It was a pleasure meeting with you and Art Helmstetter last week. As we discussed, you requested an interpretation of the hazardous waste rules regarding the regulatory status of waste-derived fuels (that are produced by waste fuel blenders and processors) that are burned in a cement kiln for energy recovery. As I understand, the following are the facts you described to me:

- Waste-derived fuels will be used to replace coal which is currently burned in a cement kiln (cement kilns are defined as industrial furnaces);
- These waste-derived fuels will be received only from intermediate waste fuel blenders and processors;
- The waste-derived fuels have a heat content greater than 10,000 BTU's/lb.; in addition, each waste stream used to prepare these waste-derived fuels have a heat content greater than 6,000 BTU's/lb.;^{1/} and
- Varying amounts of "Appendix VIII hazardous constituents" are expected to be present in the waste-derived fuels.

In addition, General Portland plans to build a 150,000 gallon tank to store the waste-derived fuel prior to its use as a fuel.

^{1/} Under the Statement of Enforcement Policy issued on January 18, 1983 (printed at 48 FR 11157; March 16, 1983 and guidance provided to EPA Region IV on February 28 and July 3, 1984 (attached), if it can be shown that each hazardous waste that is blended into the fuel has a substantial heat value as generated, the waste is a legitimate fuel regardless of

Under these circumstances, the waste-derived fuels to be received by General Portland are currently exempt from regulation.^{2/} In particular, under the January 4, 1985 recycle/reuse regulations, we decided, as an interim measure, to retain the distinction that existed in the May 19, 1980, hazardous waste regulations between listed wastes and sludges and unlisted hazardous waste fuels with only the former being regulated. The January 4 rules also exempts from regulation all waste-derived fuels that are produced by a person other than the wastes generator or burner. Thus, hazardous waste fuels leaving intermediate waste fuel blenders and processors are exempt from regulation at this time. See 40 CFR §266.30 and 266.36; see also 50 FR 632, January 4, 1985. Consequently, the waste-derived fuels to be sent to your proposed site in Demopolis, Alabama would not need to be manifested; in addition, the 150,000 gallon storage tank that will be used to store the waste-derived fuel does not need to be permitted under RCRA.^{3/}

As you are aware, however, these exemptions are temporary. On January 11, 1985, EPA proposed to modify its regulations with regard to waste and waste-derived fuels that are used as a fuel or used to produce a fuel. See 50 FR 1684. This proposal is expected to be finalized this fall; once it is, these waste-derived fuels may be subject to some regulation.

footnote 1 cont.

the concentration of low energy constituents (i.e., halogenated compounds like chlorinated solvents) in each waste or in the blended fuel. To determine which hazardous wastes have a substantial heat value, EPA will use as a benchmark: those wastes with a heating value greater than low energy commercial fuels such as wood (5,000 to 8,000 BTU/lb) or low grade subbituminous coal (8,300 BTU/lb).

- ^{2/} Although these waste-derived fuels are currently exempt from regulation, these waste-derived fuels are solid and hazardous wastes (if they themselves are hazardous) and potentially subject to EPA's control.
- ^{3/} Although these wastes are currently exempt under the Federal hazardous waste rules, the State of Alabama is free to establish policies and write regulations which are more stringent than the federal requirements.

Please feel free to give me a call if I can be of any further assistance; my telephone number is (202) 475-8551.

Sincerely yours,

Matthew A. Straus, Chief
Waste Identification Branch

cc: Beverly Spagy (EPA Region IV)
Joseph Broadwater (ADEM)
Bernard Cox, Jr. (ADEM)
David Sussman

Attachment

9 FEB 86

Mr. L. Larson, Esq.
Attorney
LTV Steel Company
LTV Steel Building
25 West Prospect Avenue
Cleveland, Ohio 44115

Dear Mr. Lawson:

This is in response to your January 9, 1986, letter requesting answers to several questions pertaining to provisions of our November 29, 1985, final rule concerning the burning of hazardous waste fuels.

As I indicated in our January 15 phone conversation, our response to your questions is as follows:

Questions 1 and 2 (paraphrased). Can LTV Steel notify EPA of its burning activities without requesting, or being deemed to have requested, interim status for subsequent use or storage of Cadence Product 312? If yes, would storage of Product 312 after January 29 subject LTV Steel to any substantive obligations under the RCRA hazardous waste storage facility standards, including recordkeeping, reporting, or closure requirements?

Response. The notification regarding waste-as-fuel activities required of persons who are marketing or burning hazardous waste fuel (like Product 312) on January 29, 1986, in no way implies that a person is requesting, or intends to request, interim status for subsequent storage of the fuel. The hazardous waste fuel storage standards become effective on May 29, 1986, for newly regulated facilities such as those storing waste-derived fuels like Product 312. Existing burners who store such hazardous waste-derived fuels after May 29 must comply with the interim status storage standards. (New facilities must obtain a storage facility permit prior to initiating storage after May 29.) If LTV Steel terminates Product 312 storage activities prior to May 29, LTV Steel would not be subject to any RCRA standards for such storage.

Question 3 (paraphrased). Can LTV Steel store Product 312 after March 31, 1986, without requesting, or being deemed to have requested, interim status, and without incurring any obligations under the RCRA storage facility standards. This question is

asked in light of the fact that the RCRA transportation requirements become effective for newly regulated hazardous waste-derived fuels like Product 312 on March 31, and the RCRA manifest system requirements specify that shipments must be sent to designated facilities that are permitted to handle the waste (i.e., in interim status or have a RCRA permit).

Response. You are correct in noting that for the two month period between March 31 and May 29, some hazardous waste fuels, like Product 312 in your situation, will be transported under the manifest system to facilities that are not permitted to store the hazardous waste fuel. In our efforts to implement the manifest system as soon as EPA identification numbers could be assigned subsequent to notification, we inadvertently omitted regulatory language in the November 29 rule that would, during the two month period, explicitly: (1) allow hazardous waste fuels to be shipped to facilities that have notified EPA regarding their waste-as-fuel activities but that are not yet subject to the interim status or permit standards; and (2) require such receiving facilities to sign and keep copies of the manifest.

EPA has set a precedent for allowing hazardous waste subject to the manifest requirements to be sent to designated facilities that are not subject to interim status or permit standards. See 50 FR 652 (January 4, 1985) and §260.10 (amended definition of "designated facility") regarding transport of recycled materials to recycling facilities that introduce the waste directly into the recycling process without prior storage, and that are otherwise not subject to RCRA treatment, storage, or disposal facility interim status or permit standards. Similarly, EPA intends that, during the two month period in question, owners and operators of facilities not yet subject to the hazardous waste fuel storage standards, like LTV's Product 312 storage facilities, notify EPA regarding their waste-as-fuel activities and sign and retain copies of manifests. If LTV Steel continues storing Product 312 after March 31 but ceases prior to May 29, LTV Steel is not subject to RCRA storage standards with respect to such storage.

I hope that this addresses your concerns.

Sincerely,

Robert Holloway
Environmental Engineer

cc: Ted Reese
J. Winston Porter
Marcia Williams
Michael Stoll, Esq.
Steven Silverman, Esq.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MAR 19 1986

MEMORANDUM

SUBJECT: Implementation of the Waste-As-Fuel Rules at DoD Facilities

FROM: Marcia E. Williams *Marcia Williams*
Director
Office of Solid Waste (WH-562)

TO: Hazardous Waste Division Directors, Regions I-X

The Department of Defense (DoD) has developed what we think is an effective and efficient approach to implement the November 29, 1985, waste-as-fuel final rules applicable to used oils and hazardous wastes generated at military bases. DoD asked that we pass on to you an explanation of their approach (copy attached). If you have questions or comments, please contact Bob Holloway of my office at 382-7917, or Joe Kaminski, Office of the Secretary of Defense, at (202) 653-1273.

The waste-as-fuel rules regulate marketers and burners of hazardous waste and off-specification used oil fuels. Military bases typically generate used oils, and sometimes generate hazardous wastes, either of which may be sent off site for ultimate use as fuel, or burned on site. When used oil or hazardous waste is shipped off site for use as fuel, the marketing transactions are typically handled by a DoD unit called the Defense Reutilization and Marketing Service (DRMS) or one of its four regional offices referred to as DRMR's. The DRMS or DRMR's take responsibility for the waste fuel, including, for example, responsibility in case of a spill.

The essence of the attached explanation of DoD's implementation approach is that the DRMS or DRMR's will comply with the marketer requirements. The military bases are ordinary generators not subject to the marketer requirements. The DRMS or DRMR's will use their business address as "location" on the notification form. Invoices for off-specification used oil and manifests for

hazardous waste fuels will, however, indicate the address of the shipping facility -- the military base generating the waste -- according to our rules.

DoD notes that when a military base burns waste fuels, the base will notify as a burner and comply with the burner requirements.

DoD's approach is acceptable because the DRMS or DRMR's act as independent brokers that take responsibility for the waste fuel, and, thus, are subject to regulation as marketers. The military base is an ordinary generator, not a marketer. This situation is analogous to situations in the private sector where a person is subject to regulation as a marketer if he takes title to the waste fuel. (Except, however, generators and initial transporters who do not market directly to burners are exempt from the marketer requirements.) Thus, brokers, transporters, and others who take title to used oil or hazardous waste fuels are regulated marketers. Transporters who take physical possession but not title to the waste fuel, however, are agents to a regulated marketer (e.g., a generator, processor, or burner) and are not themselves marketers.

Attachment

cc: Carl Schafer, Jr., DoD
Gene Lucero, OWPE



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20315

ACQUISITION AND
LOGISTICS

Ms. Marcia E. Williams, Director
Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

Dear Ms. Williams:

On January 30, 1986, a meeting was held between Mr. Robert Holloway of the Waste Management and Economics Division of the Office of Solid Waste and Mr. Joseph Kaminski of the Defense Environmental Leadership Project, Environmental Policy Directorate, Office of the Assistant Secretary of Defense to determine the application of the terms "generator," "burner," and "marketer" of used oil and hazardous waste fuel to the Department of Defense (DoD). The enclosed explanation confirms the outcome of the meeting and describes actions to be taken by DoD to comply with the reporting requirements of 40 CFR 266.

The procedure is consistent with protection of human health and the environment, identifies specific responsible persons and minimizes administrative overhead. Your assistance in advising the EPA Regions of the DoD procedure would be helpful in effecting timely and accurate notification. EPA cooperation in this matter is greatly appreciated.

Sincerely,

Carl J. Schafer Jr.
Director, Environmental Policy

Enclosure

cc: EPA Office of Federal Activities (A-104)

Explanation of Notification Procedure that
the Department of Defense (DoD) Will Use
to Comply With 40 CFR 266

The Defense Reutilization and Marketing Service (DRMS), headquartered at Battle Creek, MI is a primary level field activity of the Defense Logistics Agency (DLA). DRMS is responsible under the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, for disposal of excess DoD "personal property" including used oil. DRMS therefore assumes primary responsibility within DoD for marketing used oil fuel and hazardous waste fuel as required by 40 CFR 266. DRMS conducts business through four regional offices within the purview of 40 CFR 266. These Defense Reutilization and Marketing Regions (DRMR) are located at Memphis, TN, Columbus, OH, Ogden UT, and Camp H. M. Smith, HI.

Used oil generators at Military Bases turn administrative control and sometimes physical custody of their used oil over to DRMS on a standard form, DD 1348-1. Acting similar to civilian "brokers," the DRMR's or DRMS headquarters execute contracts for transfer of used oil to users of used oil or hazardous waste fuel. Authority to enter into and documentation of transfers currently exists at DRMS or its DRMR's. Therefore, DRMS and its DRMR's will notify as "other marketers" on EPA form 8700-12, using their business address as "location." DRMS headquarters or DRMR's will add to their recordkeeping applicable user notifications, proofs of used oil fuel quality, copies of manifests or invoices and will comply with all other marketer requirements of 40 CFR 266.

On occasion, DRMR's delegate authority to market used oil to field level agents at Defense Reutilization and Marketing Offices (DRMO) located on Military Bases. In addition, used oil is often transferred, under the FPASA, from a DRMO to other federal agencies and state governments through the General Services Administration (GSA) acting as a subsequent marketer. If used oil fuel or hazardous waste fuel marketing is done from an individual DRMO which maintains the documentation required by 40 CFR 266, then the DRMO will separately identify as "other marketer." The DRMO will use the address of the Military Base as location and the Base's EPA "Identification of Hazardous Waste Activity" number if previously assigned. The appropriate official of the DRMS will sign the form.

DoD Military Bases are generators of used oil or hazardous waste fuel and will not notify as marketers unless they transfer used oil fuel or hazardous waste fuel outside of DoD without going through DRMS. DoD Military Bases that claim the exemption for using used oil fuel that meets 40 CFR 266 specification or burn off-specification used oil fuel or hazardous waste fuel will notify as "burners" on EPA form 8700-12 and assure that they meet all other applicable criteria of 40 CFR 266. The Base's "Identification of Hazardous Waste Activity" number will be used if previously assigned and an appropriate official of the Base or its Command will sign the form.

The procedure described herein applies only to the provisions in 40 CFR 266 on marketing and burning of used oil and hazardous waste fuel. Any management activity such as generation, storage, transportation and disposal of used oil that is hazardous waste regulated under 40 CFR 261-265 and 270 or 271 shall be adhered to by the DoD Component to which the regulation applies.

This procedure must be reviewed by EPA and DoD and re-established or revised, or it is automatically cancelled on the effective date of 40 CFR 266 revisions promulgating "Recycled Used Oil Standards" or 40 CFR 261 revisions "Listing" used oil as hazardous waste, which were proposed on November 29, 1985.

This is an administrative procedure only and in no way relieves or alters the requirement for the Department of Defense to comply with all applicable regulations implemented in accordance with the Federal Solid Waste Disposal Act as amended, 42 USC 6901 et seq.

An iron blast furnace is used to smelt iron ores to produce (pig iron) suitable for use in making steel. The blast furnace with both virgin fuel oil and a fuel produced from listed hazardous spent solvents. The hazardous waste derived fuel is produced by a processor who neither generates nor burns the fuel. How would the hazardous waste derived fuel be regulated under the final rule on burning and blending of hazardous waste which was promulgated in the Federal Register on November 29, 1985 (50 FR 49164)?

The final burning and blending rule of November 29, 1985 (50 FR 49164) removed an exemption in §266.30(a) that was applicable to this situation which was promulgated on January 4, 1985 (50 FR 614). Formerly, §266.30(a) exempted from regulation "fuels produced from hazardous waste by blending or other treatment by a person who neither generated the waste nor burns the fuel" provided that the fuel was "burned for energy recovery in any boiler or industrial furnace that is not regulated" as a hazardous waste incinerator, with some specific exceptions. The November 29, 1985 final rule (50 FR 49164) removed the §266.30(a) exemption and specifies in amended §266.30(a) that Subpart D of Part 266 applies to "hazardous waste fuel" burned for energy recovery in any boiler or industrial furnace that is not regulated as a hazardous waste incinerator. "Hazardous waste fuel" is defined in amended §266.30(a) to include both hazardous waste and "fuel produced from hazardous waste by processing, blending, or other treatment" which is burned for energy recovery in the above specified units.

In this example, the unit used for burning hazardous waste fuel for energy recovery is a blast furnace. Section 260.10 (50 FR 614) defines the term industrial furnace to include blast furnaces. Thus, the hazardous waste produced fuel has been excluded from regulation in the past due to the former §266.30(a) exemption for fuels produced from hazardous waste by a third party processor which are burned for energy recovery in any boiler or industrial furnace.

Since the November 29, 1985 final rule (50 FR 49164) removed the former §266.30(a) exemption for fuels produced from hazardous waste and amended §266.30(a) to include "hazardous waste fuels" in the group of wastes regulated by RCRA, all previously exempted hazardous waste fuels are now subject to regulation.

The hazardous waste fuel in this case becomes subject to the regulations of Subpart D of Part 266 as of the appropriate effective date of the November 29, 1985 final rule (50 FR 49164). The owner of the blast furnace is a burner of hazardous waste fuel and will be subject to the §266.35 standards applicable to burners of hazardous waste fuel. This section includes prohibitions on burning hazardous waste fuel in other than specified units, notification requirements, required notices, recordkeeping requirements, and storage controls. The storage controls, found in §266.35(c), require that a facility have interim status or a final permit for the storage of hazardous waste fuels, and subject the facility to the applicable provisions of Parts 265 or 264, 270, and 124. The applicable effective dates include notification by January 29, 1986; use of manifests, certifications, and recordkeeping by March 31, 1986; and submission of Part A permit applications or amended Part A permit applications by May 29, 1986.

Source: Bob Holloway (202) 382-7936
Research: Charlotte Mooney

APR 11 1986

Guinn Doyle
Chief, Hazardous Waste Management Branch
Division of Land Pollution Control
Indiana State Board of Health
P. O. Box 1964
Indianapolis, IN 46206-1964

Dear Guinn:

This is in response to your March 27, 1986, letter regarding the regulatory status of the hazardous waste fuel, Cadence Product 312, prior to the effective dates of the November 29, 1985, marketer and burner rules, and the January 4, 1985, redefinition of solid waste.

Your understanding of the applicability of these rules to Cadence Product 312 is correct. Prior to the January 4, 1985, redefinition of solid wastes, listed wastes and sludges used directly as fuel were subject to RCRA storage and transportation standards. Hazardous waste-derived fuels produced by processing, blending, or other treatment of listed wastes or sludges, were, however, exempt from regulation. This exemption was considered temporary and was provided because we had not evaluated the hazards posed by such recycling and appropriate regulatory alternatives. Thus, waste-derived fuels were considered to be recycled (and exempt) once they were processed or blended.

The Environmental Protection Agency (EPA) had intended for this (temporary) exemption to apply to waste-derived fuels produced by third-party marketers -- off-site facilities where wastes collected from multiple generators were processed before shipment to a burner. It became clear, however, that many generators who burned their waste on site or who shipped their wastes directly to a burner were claiming the exemption even if the only blending they did occurred as a result of piping multiple wastes to a single storage tank prior to shipment or use as a fuel on site. To close this loophole, the January 4, 1985, redefinition limited the exemption of waste-derived fuels produced from listed wastes and sludges to those waste-derived fuels produced by a person who neither generates nor burns the waste. Thus, generators and burners could no longer engage in incidental treatment and claim they produced a waste-derived fuel exempt from regulation.

We understand that Cadence Product 312 is produced by blending listed solvent recovery still bottoms generated at the Product 312 production facility with wastes received from other generators. Thus, persons who stored and transported Product 312 prior to July 5, 1985 (the effective date of the solid waste redefinition), could have claimed the exemption for waste-derived fuels. After July 5, 1985, however, Product 312 has been subject to RCRA storage and transportation standards under federal regulations, although not in authorized states (except by virtue of state law, if applicable).

The November 29, 1985, marketer and burner administrative controls eliminated the remaining exemptions for the storage and transportation of hazardous waste fuels. That rule subjects (for the first time) nonsludge characteristic waste fuels and waste-derived fuels produced by third-party marketers to storage and transportation controls. Thus, once the November 29, 1985, rule is effective, the storage and transportation of any hazardous waste used as a fuel or used to produce a fuel, and any fuel produced from any hazardous waste, is regulated. The transportation controls for the newly regulated fuels became effective March 31, 1986, and the storage controls become effective May 29, 1986.

I am sure you are aware that producers of Product 312 may not have considered the material to be a hazardous waste fuel prior to November 29, 1985. Cadence has argued with EPA since late 1984 that Product 312 is a material used as an effective substitute for coke without providing significant energy to a blast furnace. Cadence therefore argued that Product 312 is not a solid waste and, thus, is not subject to RCRA rules. (See §261.2(e).) As you know, EPA explained in the preamble to the November 29, 1985, rule why we disagree with that interpretation and conclude that Product 312 is subject to regulation as hazardous waste fuel. Nonetheless, persons who store and transport Cadence Product 312 had no absolute way of knowing whether EPA would agree with their position. Once they learned of our interpretation, however, they should have taken action to comply with the storage and transportation standards as quickly as possible.

I hope this addresses your concerns. If you have further questions, please give me a call at 202-382-7917.

Sincerely,

Robert Holloway
Acting Manager
Waste Combustion Program

cc: Mr. William E. Muno, Region V
Steven Silverman, Esq.

cc: Richard Stoll, Esq.
Bob Bellinger
Jack Lanman

APR 11 1986

Arthur J. Helmstetter, P.E.
General Manager
Systech Corporation
245 North Valley Road
Xenia, Ohio 45385

Dear Art:

This is to confirm that your understanding (reference your March 21, 1985 letter) is correct regarding the applicability of the November 29, 1985, administrative controls for marketers and burners of hazardous waste and used oil fuels to Systech's situation.

You are correct that:

- Systech is a marketer of hazardous waste fuel because you take title to hazardous waste that you collect from generators and deliver to cement kilns.
- As a marketer, Systech must:
 - Notify regarding your hazardous waste fuel marketing activities. You should use your corporate office name and location on the notification form.
 - Ensure that the manifest system, pre-transport, and recordkeeping and reporting requirements are complied with. The generator's and cement company's EPA Identification Numbers should be used on the manifest because they are the shipping and receiving facility, respectively. Systech's Identification Number should not be used on the manifest. Systech should keep copies of manifests.
- If Systech does not own or operate hazardous waste fuel storage facilities, you are not subject to RCRA hazardous waste facility storage standards. If Systech operates but does not own such facilities (for example, if Systech operates a storage facility under contract to the cement company), Systech, along

with the owner, is subject to RCRA storage facility standards. This is because the standards apply to owners and operators of such facilities. Either the owner or operator may choose to comply with the standards. In the event of noncompliance, however, both the owner and the operator are liable.

I hope this addresses your concerns. If you have further questions, give me a call.

Sincerely,

Robert Holloway
Acting Manager
Waste Combustion Program

cc: (w/incoming)
Steve Silverman
Y. J. Kim, Region V

JUN 30 1986

Mr. Andy C. Ricci
President
Ricky's Oil Service, Inc.
6330 West 16th Avenue
Hialeah, Florida 33012

Dear Mr. Ricci:

This is in response to your May 27, 1986, letter regarding regulations applicable to used oil fuels. You indicate that your fuel burning customers will stop accepting used oil fuel after May 29 when the lead specification becomes effective.

There appears to be serious misunderstandings of the requirements of the November 29, 1985, rules. You, and many others as well, apparently believe the rule precludes the burning of off-specification used oil fuel. As explained in the enclosed information bulletin we recently developed, off-specification used oil fuel may be burned in industrial burners; only the burning of off-specification used oil in nonindustrial boilers is prohibited. In order to burn off-specification used oil fuel, industrial burners need only notify the Environmental Protection Agency (EPA) and comply with two other minor paperwork requirements. Off-specification used oil fuel is not a hazardous waste and is not subject to storage standards. Although EPA proposed to list used oil as a hazardous waste and to apply storage standards to off-specification used oil fuel on November 29, 1985, we are still evaluating public comments on the proposals. We expect to make final decisions this fall and the final rules will be effective six months after publication.

I hope this clears up any misunderstandings you may have had. If you have other comments or questions, please contact Mike Petruska of my staff (202-382-7936).

Sincerely,

Marcia E. Williams
Marcia E. Williams
Director
Office of Solid Waste (WH-562)

Enclosure

bcc: Karen Walker
Eric Males
Mike Petruska

NOT 14 1986

Mr. Dennis Stefani
Chemical Processor Inc.
5501 Airport Way South
Seattle, Washington 98108

Dear Mr. Stefani:

This is in response to your request of October 10, 1986, for a clarification of the March 16, 1983, Enforcement Policy (48 FR 11157) and the rules applying to waste burned for energy recovery.

Your problem concerns the interpretation of when in the process is the criteria of 5000 Btu/hr applied so as to allow waste to be burned for energy recovery in a cement kiln.

EPA's interpretation is that the waste, as generated, should have an average Btu value of 5000 Btu/lb or greater to be considered a bona fide fuel. Waste with an as generated heating value lower than 5,000 Btu/lb is considered to be incinerated when burned in a boiler or industrial furnace and is, thus, subject to the incinerator standards of Subpart O of 40 CFR Parts 264 or 265. Such low heating value waste is considered to be incinerated even if it is mixed with other waste or fuel such that the mixture has a heating value higher than 5,000 Btu/lb.

The intent of the policy is not to apply the Btu criterion to each individual chemical or hazardous constituent of the waste, but to apply it to the aggregate waste, as generated (i.e., before mixing). Therefore the presence of low Btu value constituents would not preclude the waste from being considered a bona fide fuel that is burned for energy recovery.

Please feel free to have any concerned party at the Washington Department of Ecology call me at (202) 382-7934 for any further clarification.

Sincerely,

Marc Turgeon
Environmental Scientist
Waste Combustion Section

APR 15 1987

Mr. Richard C. Fortuna
Executive Director
Hazardous Waste Treatment Council
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.c. 20006

Dear Mr. Fortuna:

In your letters of January 6, and March 27, 1987, you raised a number of issues regarding the Marine Shale facility. Region VI has already responded to some of your concerns. We will respond to some of the other questions raised in your letters. However, other questions relate to current enforcement deliberations and, therefore, cannot be addressed without jeopardizing potential actions.

First, with regard to past enforcement actions, the Louisiana Department of Environmental Quality (LDEQ) has issued a number of enforcement actions against Marine Shale, the most recent of which was issued July 29, 1986. I believe Region VI has already furnished you a copy of the order entered in that proceeding.

- ° Question 3 - Has Louisiana been delegated authority to administer the definition of solid waste regulations or the Phase I burning regulations?

As you know, under Section 3006 of the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) may authorize qualified States to administer and enforce their State hazardous waste management program in lieu of the Agency operating the Federal program in those States. Final authorization was granted to the State of Louisiana on February 7, 1985 [50 Fed. Reg. 3348 (January 24, 1985)]. However, the rules relating to the definition of solid waste that were promulgated under 50 Fed. Reg. 614 (January 4, 1985), were not part of the authorized program. Therefore, these rules do not apply until the State revises its program to include controls for hazardous wastes that are equivalent to, or more stringent than, EPA's regulations (i.e., regulations concerning the new definition of solid waste do not become effective until an authorized State, until that State amends its regulations and EPA authorizes the amended State program).

In contrast, the Hazardous and Solid Waste Amendments of 1984 (HSWA), which amended RCRA, provide new requirements and prohibitions in authorized States, such as Louisiana, until the State is delegated authority to do so. The hazardous waste fuel regulations [50 Fed. Reg. 49164 (November 29, 1985)] were promulgated pursuant to HSWA. Therefore, these rules are effective and Federally-enforceable in Louisiana, although they have not yet been adopted by Louisiana and authorized by EPA.

It should be noted that if the Marine Shale facility is engaged in sham recycling and is in reality operating to destroy hazardous wastes by controlled thermal combustion, it is incinerating the wastes and is subject to the Subpart O standards for incinerators. The issue of sham recycling is a question of fact, turning on the contribution of the materials burned to the output of the device. The facility's operating practices (for instance, degree to which wastes are scrutinized for beneficial properties, revenues derived from burning wastes versus processing raw materials) are also relevant. The Agency is investigating these questions. We also are intending to propose in the near future regulations of air emissions from boilers and industrial furnaces that legitimately recycle hazardous waste.

- Question 4 - How is the State (or Region VI) implementing the overaccumulation restrictions of 40 CFR Part 261.2 (c)(4) throughout the State, not merely at MSP?

As already indicated, the new definition of solid waste regulations are not a part of Louisiana's authorized hazardous waste program. Therefore, the overaccumulation provision which is part of the new definition of solid waste is not being implemented in Louisiana. Nevertheless, the speculative accumulation provision would be irrelevant at MSP. In particular, the facility already is deemed to be accepting hazardous wastes, and requires a storage facility.

- Question 5 - The use constituting disposal regulations under Part 261.2(c)(1)(A) and (13) specifically contain a requirement that wastes placed on the ground must be bound or chemically fixed in a manner that prevents migration. What is the policy regarding the level of chemical reaction that must occur to satisfy this requirement? Are residues of aggregate kiln furnaces generally considered to satisfy those requirements?

EPA regulations, including 40 CFR 261.2(c)(1), which you cited, do not require that wastes be bound or chemically fixed in a manner that prevents migration before they can be placed on the ground. Rather, Sections 266.20(a)(2)(b) of the regulations state that recyclable materials that have undergone a chemical reaction, so as to become inseparable by physical

means, are exempted from the regulations under Subtitle C of RCRA. Therefore, those wastes that are not chemically reacted can still be applied to the land for beneficial use if the hazardous waste disposer complies with the appropriate management standards.

As to the level of chemical reaction that must occur before a waste that is applied to the land is exempt from regulation, the Agency has not developed specific guidance. We believe, however, that the preamble discussion provides general guidance to the regulated community in this area (50 CFR 6463, January 4, 1985). Specifically, we believe materials would fall under this exemption if the hazardous waste was chemically transformed. In addition, the hazardous waste would have to be an effective substitute for some commercial material. In the preamble, we also included several examples of materials that would or would not fit the chemical reaction standard.

It is important not to confuse this standard with the "no migration" standard under the Land Disposal Restrictions requirements. According to §266.20(a)(2)(b) standard, if a chemical reaction occurs and the hazardous waste is an effective substitute for a commercial material, the material would be exempt from regulation whether or not any migration has occurred.

Regarding the residues of aggregate kiln furnace, as a general matter, if the hazardous waste has undergone a chemical reaction in the aggregate kiln and if the hazardous waste is an effective substitute in producing aggregate, then residues would be exempt from regulation. The particular facts at MSP would have to be evaluated to determine its regulatory status.

- ° Question 11 - Is it Agency policy to extend the scope of the RCRA mining exclusion to industrial furnaces and their residues and thereby exempt them from the "derived-from-rule."

The mining waste exclusion applies to the residuals, not to the industrial furnace itself. The mining waste exclusion applies to devices that process ores or minerals. The relevant inquiry thus is first to the nature of the device, namely is it being used to process ores or minerals, and second, to the types of materials burned in the device, i.e., are they largely ores and minerals or some other type of materials?

Thus, if an industrial furnace is operating to destroy wastes, it is not processing ores or minerals, and its residues would not be excluded. The sham burning policy you mention is a possible example (assuming the device is not also processing ores and minerals).

If an industrial furnace burns hazardous waste for the purpose of destruction, the furnace is subject to the incinerator standards, as already indicated. The sham burning policy you reference indicates that waste with an as-generated heating value of less than 5,000 BTU/lb may sometimes not be considered a bona fide fuel. When such wastes, whether mixed with higher heating value wastes or fuels, are burned in an industrial furnace (or boiler), such burning is considered incineration.

Even if the furnace is being used to recycle wastes, it might not be considered to be processing ores or minerals if the majority of the feed to the device was a non-ore or mineral. The Agency has always maintained, for example, that secondary smelting furnaces are not covered by the mining waste exclusion even though some of these furnaces burn small percentages of ores and minerals.

We should note that the Agency plans to solicit comment on these issues in its upcoming rules on burning in boilers and furnaces. Also, we repeat that the mining waste exclusion does not affect the regulatory status of control of emissions from burning in industrial furnaces, nor the storage which precedes burning.

Sincerely,

J. Winston Porter
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 31 1987

OFFICE OF
GENERAL COUNSEL

Mr. Neil Gingold
General Counsel
Envirosure
333 Ganson Street
Buffalo, NY 14203

Dear Mr. Gingold:

This is in response to your letter of June 12, 1987, in which you requested clarification regarding waste tracking and classification. First, I would like to apologize for taking so long in responding to your letter; I hope my delay hasn't caused you any problems. The answers to your questions are as follows:

1. EPA's current policy on mixing low and high Btu wastes is summarized in an enforcement guidance memo published in the Federal Register of March 16, 1983. (Enclosure 1.) As the guidance memo explains, a determination of what constitutes "sham burning" depends on a number of factors presented by the circumstances of a particular case; the energy value of the wastes being blended or burned is likely to be of primary significance in most cases. Blending a low Btu waste (i.e., less than 5000 Btu/lb.) with a higher Btu waste would not normally change the "sham" character of the subsequent burning.

You should note that, as the guidance memo points out, other factors are considered in distinguishing sham from legitimate burning, and that EPA will set a priority on sham burning in non-industrial settings. Also, as you correctly point out, EPA has proposed a new fuels policy in the form of revisions to the hazardous waste burning regulations. On May 6, 1987, EPA proposed standards for boilers and furnaces burning hazardous waste. (See Enclosure 2.) The proposed standards would apply to boilers and furnaces burning hazardous waste regardless of whether the purpose was energy recovery or destruction, so the "sham recycling" distinction would no longer be relevant. (Id. at 16989.) EPA has accepted public comments on the May 6 proposal and we will be making decisions regarding the final rule within the next year. Until this regulation is made final, the enforcement policy will remain in effect.

As a final point on burning of wastes, you should note that the U.S. Court of Appeals for the District of Columbia reached a decision on July 31, 1987, that calls into question EPA's authority to regulate certain waste recycling activities. EPA is studying the opinion to determine its scope. Because the Court has not yet issued its mandate, the regulations currently in the Code of Federal Regulations defining what is "solid waste," and establishing regulations for recycled hazardous waste, remain in effect.

2. Listed wastes never "lose their identity." Wastes are tracked on the manifest by waste code under U.S. Department of Transportation (DOT) regulations at 49 CFR Parts 171 and 172.^{1/} For mixtures, you must enter each waste code in the mixture on the manifest. Further, you should note that facilities in interim status must specify on their "Part A" permit application the hazardous waste they will be receiving (see 40 CFR §270.13(j)) and must amend the Part A to receive new wastes (§270.72(a)). Also, a RCRA permit granted to a treatment, storage, or disposal facility may specify the specific hazardous wastes the facility is authorized to accept. Finally, a treatment, storage, or disposal facility must keep an operating record with very specific information on each hazardous waste at the facility. (See §§264.73 and 265.73.)
3. All of the requirements referenced in answer number 2, above, require tracking of individual wastes by shipment (and if necessary, by container).
4. The proper classification of waste treatment residuals (the filter cake in your case) depends on the wastes entering your treatment system. Under 40 CFR §261.3(c)(2)(i), any waste derived-from treating a hazardous waste is itself a hazardous waste. Such "derived-from" wastes

^{1/} Please note a couple of points regarding waste shipment tracking. First, the DOT rules referred to above do not require the EPA waste code for "U" and "P" listed wastes. This is because U and P chemicals must already be described by their specific chemical names under 49 CFR Part 171. You should also note that although EPA does not require the EPA waste codes to be placed on the hazardous waste manifest, some States do require EPA's (or their own) codes to be entered on the manifest in addition to the DOT requirements.

-3-

are assigned the waste code(s) of the incoming (i.e., treated) wastes. Thus, if more than one listed waste was treated, the treated residue would be identified by all the listed wastes treated.

If you have further questions in this area, please contact Mike Petruska of my staff at (202) 475-6676.

Sincerely,

Sylvia K. Lowrance, Acting Director
Characterization and Assessment
Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20450

FEB 4 1991

THE ADMINISTRATOR

Honorable Robert W. Kasten, Jr.
United States Senate
Washington, D.C. 20510

Dear Bob:

Thank you for your letter of December 4, 1990, expressing your concern about the burning of hazardous waste in boilers and industrial furnaces (BIFs).

I share your concerns about the need to ensure safe management of hazardous waste in the United States. In your letter you posed a number of questions regarding the BIF regulations we issued on December 31, 1990. I am pleased to provide the following answers to those questions.

Q: Are the new standards as stringent as those required of other waste incinerators?

A: Yes. The performance standards for boilers and industrial furnaces burning hazardous wastes are essentially equivalent to the proposed incineration amendments, and are more stringent than the current incineration standards. As in the incinerator regulations, the BIF regulations include performance standards for Destruction and Removal Efficiency (DRE) of organic constituents, hydrogen chloride emissions, and particulate emissions. The BIF regulations also include limits on emissions of products of incomplete combustion (through limits on carbon monoxide and/or hydrocarbons), hazardous metals, and free chlorine.

The BIF regulations impose substantive requirements on existing facilities pending permit issuance or denial. According to the Resource Conservation and Recovery Act (RCRA), any BIF facilities in existence before these regulations became effective are granted interim status. BIF facilities wishing to continue burning hazardous waste under interim status will have to submit data, under specific time frames, verifying compliance with limits on emissions of carbon monoxide and/or hydrocarbons, hazardous metals, chlorine/hydrogen chloride, and particulates.

- Q: Is there a strict certification process for new facilities that is similar to the review other facilities must complete?
- A: Yes. The regulations for boilers and industrial furnaces subject these devices to the full RCRA permitting process. Implementation of these regulations through the permitting process will require the involvement throughout the Environmental Protection Agency (EPA), or the authorized state, prior to any permit decision. This involvement includes a detailed review of the permit applications and the solicitation of and response to public comments. In addition, as discussed above, BIFs will be required to submit "certification" data demonstrating compliance with the interim-status standards in order to continue burning hazardous waste before that permit decision.
- Q: Do the regulations provide for the safe management of the residue?
- A: Yes, in general, residues are subject to the full panoply of RCRA Subtitle C requirements (i.e., our most stringent hazardous waste management standards). One exception would be residues subject to the "Bevill Amendment." In Section 3001(b)(3)(A) of RCRA, Congress excluded from Subtitle C restrictions any residues from boilers burning primarily coal or other fossil fuels, industrial furnaces processing primarily ores or minerals, or cement kilns processing primarily raw materials. These wastes were deemed by Congress to be "high volume/low hazard" in character. This exclusion will be effective until special studies are conducted to determine how these devices should be regulated. EPA's position reflected in the BIF regulations is that so long as, on a case-by-case basis, the processing of hazardous waste does not significantly affect the character of the waste residues as high volume/low hazard, then those wastes may remain excluded under the Bevill amendment. Any residues that do not meet these criteria would be subject to Subtitle C requirements.
- Q: Do the new regulations establish a definitive timetable for closing this loophole in our hazardous materials law that ensures the protection of the public's health and safety?
- A: The rule will require facilities wishing to continue burning hazardous wastes to demonstrate compliance with the interim-status standards within specified time frames. Thus, facilities subject to these rules will be under a substantial level of control from the interim-status compliance deadlines until permit issuance or denial.

Permit applications will be "called in" and reviewed by the EPA regions or authorized states, based on a system of environmental priorities. This reflects one of the conclusions of our RCRA Implementation Study, which was that EPA (along with the states) should develop a system that ensures that the most environmentally significant facilities in a particular state or region are addressed first.

I hope that these responses give you a clearer understanding of how we plan to regulate boilers and industrial furnaces burning hazardous wastes. I also want to reiterate my own concern about the significance of this rulemaking and its role in ensuring that hazardous waste is managed safely and effectively. If you have any further questions or comments, please have your staff contact Russ Wyer, Director of EPA's Waste Management Division in the Office of Solid Waste and Emergency Response, at (703) 308-8414.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Bill", written in a cursive style.

William K. Reilly

MAR 29 1991

Mr. Robert M. Scalliet, President
Scalliet Technologies Inc.
87 Oates Rd., Bldg. 1
Houston, TX 77013

Dear Mr. Scalliet,

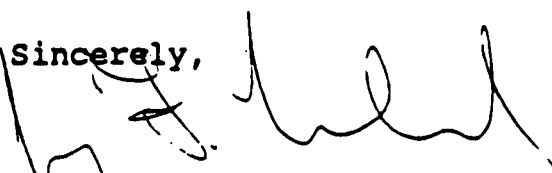
I am writing in response to your February 21, 1991, letter in which you brought up several issues related to sham incineration and treatment of K048-K052 wastes in cement kilns and industrial furnaces. I have fully discussed these issues with Bob Holloway, Chief of the Combustion Section of the Waste Treatment Branch in the Office of Solid Waste, and, based on this discussion, am providing you the following response to the issues raised.

For industrial furnaces, including cement kilns, if a K048-K052 waste is treated to separate oil and water, and the cake obtained has a heat content below the sham incineration threshold, then oil cannot be added to the cake to satisfy the threshold requirement unless the oil was originally part of the K048-K052 waste and was removed during the treatment process. This requirement applies regardless of whether or not the combustion ash is recycled in the industrial furnace.

Additionally, all residues generated from the treatment of a listed hazardous waste, namely K048-K052 wastes in this instance, are subject to the Land Disposal Restrictions (LDRs) except for certain residues (e.g., cement kiln dust and primary smelter slag) that may be excluded from regulation under the Bevill Amendment. The February 21, 1991, Federal Register contains the Boiler and Industrial Furnace Rule which outlines a test for when the Bevill exclusion applies. If a residue is exempt under the Bevill exclusion, then the LDRs do not apply to the residue. You should note, however, that the Agency is considering a rulemaking to require that Bevill-excluded residues nonetheless comply with the LDRs. Because of this, we understand that some cement facilities are voluntarily complying with the LDRs. We encourage you to do the same for any Bevill excluded residuals that you generate.

If you have any questions regarding this response, please call me at (703)308-8469 to further discuss these issues.

Sincerely,



Jerry F. Vorbach, P.E.
Waste Treatment Branch
Office of Solid Waste



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 23 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Chris L. Gansel
Test Engineer
Robert Sun Company
240 Great Circle Road, #344
Nashville, TN 37228

Dear Mr. Gansel:

This is in response to your letter of March 21, 1990 to Denise Wright concerning the burning of compressor oil with ammonia in space heaters. You asked whether there are any regulations prohibiting the burning of such oil.

There are no federal hazardous waste regulations specifically restricting the burning of ammonia contaminated used oils in space heaters. Our regulations under 40 CFR 266.41 governing used oil burning allow off-specification used oil to be burned in space heaters provided three conditions are met:

- (1) The heater burns only used oil that is generated by the owner/operator of the space heater or used oil from do-it-yourself oil changers who generate the used oil as a household waste;
- (2) The heater has a maximum design capacity of no more than 0.5 million BTU per hour; and
- (3) The heater's combustion gases are vented to the ambient air.

Thus, if your space heater model Sun 2 meets these design and use criteria, it may be used for the burning of off-specification used oils, including those that may be contaminated with ammonia, according to the federal regulations. Some States, however, have different regulations governing used oil and we recommend your checking with the respective States.

Sincerely yours, -

David Bussard, Director
Characterization and Assessment Division



Printed on Recycled Paper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 23 1991

Mr. Gary Anderson
Safety/Environmental Officer
ARA Leisure Services
P.O. Box 1926
Page, Arizona 86040

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Dear Mr. Anderson:

This is in response to your letter of March 25, 1991 concerning the management and burning of used oil generated by private boat owners. You asked whether there are any applicable standards for acceptance, storage, testing, or burning, of such oil in on-site waste oil furnaces.

Under our regulations in 40 CFR 266.41 for used oil burned for energy recovery, you may burn off-specification used oil in oil-fired space heaters provided three conditions are met:

- (1) The heater burns only used oil generated by the owner/operator or received from do-it-yourself oil changes;
- (2) The heater has a maximum design capacity of no more than 0.5 million BTU per hour; and
- (3) The combustion gases are vented to the ambient air.

In the case you described, the oil generated by the owners of private boats would be considered oil from do-it-yourself oil changers. If your furnaces meet the design and operating requirements listed above, no federal hazardous waste regulations apply. Thus, there are no additional standards for the acceptance, storage, or burning, or testing of used oil generated by either your business or do-it-yourself boat owner oil changes. Please note that your State may have additional restrictions. Thus, you should check with your State to see if there are any applicable restrictions.

Should you have any further requirements, please contact Denise Wright at (202) 245-3519.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sylvia K. Lowrance".

Sylvia K. Lowrance, Director
Office of Solid Waste



9495 – USED OIL BURNED FOR ENERGY RECOVERY

Part 266 Subpart E

DEC 12 1985

Honorable Harry Meshel
Ohio Senate
Columbus, Ohio 43266-0601

Dear Mr. Meshel:

Thank you for your letter of October 16, 1985, concerning the Environmental Protection Agency's (EPA) proposed standards for the burning and blending of hazardous waste and used oil fuels, and the potential status of Cadence Product 312 under these rules.

Cadence has represented to us that the rule will be detrimental to their ability to market Product 312 to current users. While we do not dispute this claim, I should nevertheless emphasize that our rulemaking will not prohibit the sale of Product 312 to steel makers, industrial boiler operators, cement kiln operators, or other industrial users of waste-derived fuels. The rule requires only that these waste-derived fuels be stored and transported under controls already applicable to other hazardous wastes, including hazardous wastes used directly as fuel without the blending that Cadence uses to produce their Product 312. The transportation controls require that hazardous waste fuels be identified as such in a manifest presented to the transporter, and ultimately to the burner, as a means of implementing the prohibition on burning these fuels in relatively inefficient nonindustrial boilers like those in apartment and office buildings. Burning in these devices can expose large numbers of persons in urban areas to toxic emissions.

I should also note that we plan a future rulemaking that would provide permit standards to control emissions from industrial boilers and industrial furnaces burning hazardous waste fuels. EPA-sponsored testing of a number of boilers and industrial furnaces, including a blast furnace burning Product 312, indicates that many of these devices can be operated to burn many hazardous waste fuels safely. Thus, those planned standards will not preclude burning of hazardous waste fuels in industrial boilers and industrial furnaces in most cases.

As you know, we believe waste reduction and waste recycling are the preferred options to manage our growing waste disposal problem. This, however, does not necessarily mean that a recycled waste material should be exempt from regulation if improper handling, treatment, or disposal could result in damage to human health or the environment. Our rulemaking attempts to balance the objectives of fostering recycling and providing adequate protection of human health and the environment. If a waste material is hazardous, the relevant policy concern is whether burning the waste needs to be regulated to protect human health or the environment.

We have completed the process of finalizing these regulations. I signed the final rule on Friday, November 8 and it was promulgated in the Federal Register on November 29, 1985. During the public comment period, we received several letters asking us to exempt Cadence Product 312 in the final rules. We reviewed those comments, as well as all of the other comments we received pertaining to the proposed rules.

In making a final decision, we have balanced all of the issues raised by the public, including those comments you had made; the Congressional mandate in the 1984 Hazardous and Solid Waste Amendments; and our desire to both protect human health and promote waste recycling. This is not an easy task. The Office of Solid Waste has worked diligently to write equitable and protective final regulations concerning burning and blending of hazardous waste and used oil fuels. I can assure you that your concerns regarding Cadence Product 312 were considered in this decision-making process.

Again, thank you for sharing your concerns on this matter. Please contact me if you have any questions.

Sincerely,

Lee M. Thomas

Lee M. Thomas

Enclosure

SECRET

Mr. William F. O'Keefe
Vice President
American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005

Dear Mr. O'Keefe:

This is in response to your January 24, 1986, letter regarding applicability of our November 29, 1985, "burning and blending" regulations to petroleum refinery fuel products derived from recycled used oil.

As Bob Holloway explained to you on January 28, the exemption we provided for hazardous waste-derived refinery fuel products -- based on data you provided us -- also exempts refinery products when both hazardous waste and used oil are introduced into the process. Had we been aware that crude oil petroleum refineries typically recycle used oil as well as their hazardous wastes, we would have explicitly addressed the issue in the preamble.

When both oil-bearing hazardous wastes and used oil are introduced into the crude oil refining process, the fuel products are exempt from the November 29 rule. This is because mixtures of used oil and hazardous waste are subject to regulation as hazardous waste, and hazardous waste-derived refinery fuel products are exempt from the rule.

Although we understand that virtually all refineries reintroduce their process-generated, oil-bearing hazardous waste into the refining process, if a refinery were to recycle used oil but not its hazardous waste, the November 29 rule would not explicitly exempt the refinery fuel products from regulation as used oil fuel. As you note, however, EPA did not intend for used oil-derived refinery products to be subject to regulation as used oil fuel. If in fact there are refineries that recycle used oil but not hazardous waste, please let me know so that we can take

whatever action is necessary to ensure that their products are not subject to regulation.

I hope this addresses your concerns.

Sincerely,

On behalf of
Marcia E. Williams

Marcia Williams
Director
Office of Solid Waste

FEB 13 1986

Mr. Don Ilgenfritz
Sales Administrator and
Special Projects
Paul's Heating/Construction Company
P.O. Box 1455
Fairbanks, Alaska 99707

Dear Mr. Ilgenfritz:

Karen Brown, the Environmental Protection Agency's (EPA's) Small Business Ombudsman, asked me to respond to your January 15, 1986 letter on used oil regulations. The answers to your questions are based on the rules issued on November 29, 1985 (40 CFR Part 266, Subpart E):

First, Service stations, repair shops, etc., are allowed to burn used oil they generate on-site (or which they accept from household, "do-it-yourselfer" oil changers) in used oil space heaters without analysis of the oil. To answer your second question, however, when used oil from other businesses is accepted (i.e., not from household "do-it-yourselfers") from off-site, it cannot be burned in a space heater unless it meets the EPA Fuel Specification, and analysis would be required.

Finally, the North Star Borough can burn the used oil produced at their site (or accepted from "do-it-yourselfers") in either a used oil space heater or an industrial boiler without analysis. If the Borough plans to simply burn the used oil in its normal heating boilers, however, the used oil must meet the EPA Fuel Specification and analysis would be required. For your information, I have enclosed a copy of the EPA Used Oil Fuel Specification. Please be advised that used oil mixed with hazardous waste, such as spent cleaning solvent, is subject to the hazardous waste rules and those rules do not allow burning in space heaters at all.

For further information, call me at (202) 382-7917.

Sincerely,

Michael Petruska
Environmental Protection Specialist
Waste Combustion Program

Enclosure

cc: Karen Brown (A-149C)
Steve Silverman (LE-132S)

bcc: Karen Walker

EPA Used Oil Fuel Specification

| <u>Constituent/property</u> | <u>Allowable level</u> |
|-----------------------------|------------------------|
| Arsenic..... | 5 ppm maximum. |
| Cadmium..... | 2 ppm maximum. |
| Chromium..... | 10 ppm maximum. |
| Lead..... | 100 ppm maximum. |
| Flash Point..... | 100 °F minimum. |
| Total Halogens..... | 4,000 ppm maximum. |

28 FEB 86

Mr. J. R. Spence
Engineering Corporation
P.O. Box 1010
Detroit, Michigan 48201

Dear Mr. Spence:

Bob Holloway asked me to respond to your January 21, 1986 letter, requesting confirmation of your understanding of some of the provisions of the November 29, 1985, final rule for the burning and blending of hazardous waste and used oil fuels.

Your interpretation that the presumption of mixing of hazardous waste with used oil is applicable only to used oil that will be burned for energy recovery is correct. As you also stated correctly, the presumption does not establish a new hazardous waste characteristic under Part 261, Subpart C, nor does it mean that halogen levels in used oil destined for uses other than energy recovery must be monitored. You should note, however, that we have proposed standards for recycled oil that would apply the presumption of mixing to all recycled oils, not just those destined for use as a fuel (see 50 FR at 49217 (November 29, 1985)).

Your interpretation that the "significant concentration" of hazardous halogenated constituents that would indicate mixing of hazardous waste with used oil is more than 100 ppm is not valid in all cases. The "significant concentration" which would indicate that mixing has taken place depends on the type of halogenated compound found, and the circumstances surrounding the generation and collection of the used oil. For example, as we stated in the preamble to the rules (50 FR at 49176), we believe that the owner of used oil containing less than 100 ppm of any individual hazardous halogenated spent solvents (i.e., F001 and F002) could successfully rebut the presumption of mixing for the following reasons: (1) both used oil and hazardous halogenated solvents are frequently generated at the same facility, making incidental contamination a real possibility, and (2) deliberate mixing of used oil and such solvents would very probably yield concentrations of total halogens of greater than 100 ppm. However, mixing of used oil with other hazardous halogenated waste could be indicated by concentrations of Appendix

VIII halogenated compounds at levels lower than 100 ppm, especially if the hazardous halogenated waste is not generated at the same site as the used oil or would not be expected to be formed during use of the oil. The example we used in the preamble (also at 50 FR at 49176) was mixing of chlorinated pesticides with used oil.

In analyzing used oil fuel to prepare a rebuttal, the analyst should check for those Appendix VIII compounds used at the facility and those which could reasonably be expected to enter the used oil waste stream.

I hope this addresses your concerns and clarifies your understanding of these regulations. If you have any further questions, I can be contacted at (202)382-7937.

Sincerely,

Karen A. Walker
Environmental Scientist
Waste Combustion Program

MAR 5 1986

Mr. Anthony L. Tripi
Argitus, Incorporated
60 Lemon Street
St. Augustine, Florida 32084

Dear Mr. Tripi:

Bob Holloway asked me to respond to your letter of February 14, 1986, in which you asked how the regulations for burning of hazardous waste and used oil fuels (50 FR at 49164 (November 29, 1985)) apply to the burning of off-specification used oil fuel in greenhouses. *of*

When we defined an "industrial boiler" as one which produces electric power, steam or heated or cooled air, or other gases or fluids for use in a manufacturing process, we were not trying to exclude agricultural operations. We were trying to distinguish between those boilers used for space heating of residences and commercial buildings versus those used in production processes.

Our primary concern in the case of used oil is the emission of toxic metals. The distinction between industrial and non-industrial boilers in the rule immediately restricted the burning of used oil contaminated with metals in densely populated urban areas. Although we did not specifically consider agricultural processes, we believe that, because of their typical location, exposures to metal emissions from boilers used for agricultural operations are more similar to the exposures resulting from manufacturing or utility boilers rather than the exposures resulting from typical residential or commercial boilers.

Since you supply off-specification used oil to a nursery for use in an industrial boiler, you are a used oil marketer, subject to 40 CFR 266.43. The nursery is subject to the controls for burners of off-specification used oil fuel under 40 CFR 266.44.

As a final note, the distinction between industrial and nonindustrial boilers is not intended to be a final technical determination concerning the suitability of boilers for burning contaminated oil. We recognize that many industrial and utility boilers burning contaminated used oil do not have air pollution control equipment and are located in populated areas, thereby most likely posing hazards to nearby residents. Later this year we will be proposing emissions control standards for these boilers and for industrial furnaces burning contaminated used oils.

If you have any further questions, please call me at (202) 382-7937.

Sincerely,

Karen Walker, Environmental Scientist
Waste Combustion Program
Waste Treatment Branch (WH-565A)

bcc: Region IV

April 8, 1986

A. R. Tarrer, P.E.
Professor and Director, AWORL
Auburn University
College of Engineering
Auburn University, Alabama 36849-3501

Dear Mr. Tarrer:

Thank you for your March 18, 1986, letter concerning the possibility of separating chlorides from used oil. As explained in more detail below, you may strip used oil to reduce its halogen content, but any fuel produced by treating a listed hazardous waste is still considered a hazardous waste.

Used oil used as fuel (or to produce fuel) that contains over 1000 ppm total halogens is presumed to be mixed with halogenated hazardous wastes listed in 40 CFR Part 261, Subpart D. (See 40 CFR 266.40(c).) Such used oil is thus also a listed hazardous waste. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR Part 261, Appendix VIII). Absent such a showing, the used oil is regulated as hazardous waste fuel under 40 CFR Part 266, Subpart D, not the used oil fuel rules of Part 266, Subpart E. You could treat such used oil with steam or air stripping to reduce the halogen content. You would need a RCRA hazardous waste permit to do so. Under 40 CFR 261.3(c)(2)(i), any fuel produced by treating hazardous waste is still considered hazardous waste. (In contrast, if a lubricant is produced, the lubricant is not a hazardous waste because under 40 CFR 261.2 it is not a solid waste.) To market the fuel as an exempt material, you would have to obtain a "delisting" decision under the petition process under 40 CFR 260.20 and 260.22 by showing that the resultant fuel is not hazardous.

Commenters on EPA's November 29, 1985, proposal to extend the 1000 ppm halogen limit beyond used oil fuels to include all used oils being recycled (see 50 FR 40217-49218) have indicated that, for a variety of reasons, the 1000 ppm limit is too restrictive. They have suggested that it be raised to 2500, 3000, or 4000 ppm. We are considering these comments, and, in

This has been retyped from the original document.

fact, are presently conducting studies to determine if some unmixed used crankcase oils may contain over 1000 ppm halogens. Although EPA may raise the limit as a result of those studies, the rule described above applies in the interim.

I suggest you contact the generators who have been sending you used oil with over 1000 ppm halogens either to obtain documentation that they are not mixing hazardous waste with the used oil or to make sure they properly manifest their shipment. It is possible that some of these generators may previously have been exempt from hazardous waste regulations as "small quantity generators" under 40 CFR 261.5. EPA recently lowered the exemption limit from 1000 to 100 kilograms per month, however, and these generators will be required to comply with the hazardous waste rules by September 22, 1986 (51 FR 10146). We would be very interested in learning what you find out about the waste management practices of each of the generators from whom you receive used oil.

If you have further questions on our used oil rules, please contact Mike Petruska of my office at (202) 382-7917.

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste (WH-562)

bcc: Mark Greenwood
Steve Silverman
Tom Devine, Region IV
Hazardous Waste Division Director

APR 21 1986

Mr. Gordon D. Hall
Lake Carriers Association
614 Superior Avenue, N.W.
915 Rockefeller Building
Cleveland, Ohio 44113-1306

Dear Mr. Hall:

Bob Holloway asked me to respond to your letter of March 17, 1986, in which you requested clarification of the application of the November 29, 1985, final rules for the burning of hazardous waste and used oil fuels to the marine industry.

As we stated in the preamble to the rules (50 FR at 49193), burning used oil in marine engines is not covered by these regulations because we have not fully considered whether marine engines meet the definition of a boiler. Burning used oil in a shipboard steam boiler for heating purposes, however, is regulated. Although we did not consider in the development of the rule whether shipboard boilers should be classified as industrial or nonindustrial boilers, we believe that, because of their location relative to population centers, exposures resulting from emissions of shipboard boilers would be more similar to the exposures resulting from manufacturing and utility boilers rather than the exposures resulting from typical residential and commercial boilers. Thus, shipboard boilers should be considered industrial rather than nonindustrial boilers for regulatory purposes in this situation. As such, burning of off-specification oil is allowed. Although the owner or operator would not need to perform analyses of the used oil, he must notify EPA of his burning activities (see §266.44). Note that notification is not required for burners of used oil that meets the specification, but such burners must analyze the used oil or otherwise obtain data to document that the used oil fuel meets the specification.

You are correct in your assumption that used oil generators are not required to notify unless they market directly to a burner. Ships generating used oil that is then burned on board in a boiler are considered to be burners, and are required to notify as burners if they burn off-specification used oil fuel.

No notification of generator status is necessary. In the case where used oil generated on board a ship is generated and transferred to a transporter, the transporter, not the ship, may be subject to regulation as a marketer.

I hope this answers your questions. If you need further clarification or assistance, please call me at (202) 475-6128.

Sincerely,

Karen A. Walker
Environmental Scientist
Waste Combustion Program (WH-565A)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 27 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulation of Hazardous Waste and Used
Oil Fuels (November 29, 1985)

FROM: Karen Walker, Environmental Scientist *K Walker*
Waste Management and Economics Division

TO: Michael Sanderson, Chief
RCRA Branch, Region VII

This is in response to your memo of May 2, 1986, requesting clarification of whether the November 29, 1985, rules for burning of hazardous waste and used oil fuels apply to used oil that is burned in incinerators. I also discuss two other issues your staff has raised: whether the November 29 rules apply to the open burning of used oil and whether the hazardous waste fuel storage standards apply to burner facilities that pump hazardous waste fuel directly from tank trucks into a boiler.

Incineration of Used Oil

As I indicated in telephone conversations with Jack Coakley and Chet McLaughlin of your staff, the regulations specifically apply to the burning for energy recovery of hazardous waste and used oil fuel in boilers and industrial furnaces. Therefore, burning of used oil in incinerators is currently unregulated and the used oil fuel specification does not apply to such oil. If used oil exhibits a characteristic of hazardous waste and is burned in an incinerator, it is presently regulated under Subpart O. This position is not an extrapolation of the marine and diesel engine discussion in the preamble (which was included primarily due to public comment and inquiries prior to promulgation of the rules), nor does it stem from an "interpretation" of the rule. The rule simply and clearly applies to only that used oil

that is burned in boilers or industrial furnaces (see §266.40(a)).

We agree that it is somewhat inconsistent to regulate the burning of used oil in boilers and industrial furnaces but not the burning of used oil as auxiliary fuel in incinerators. We did not extend coverage of the November 29 rule to incinerators because burning of any waste in an incinerator has been considered for regulatory purposes to be burning for the purpose of destruction and not for energy recovery. We have taken this position irrespective of the heating value of the waste and whether the waste is actually used as auxiliary fuel because, to do otherwise, would potentially open up the energy recovery exemption to any waste with significant heating value when burned in an incinerator. Thus, without the policy that any waste burned in an incinerator is burned for destruction, owners and operators of hazardous waste incinerators could argue that their high heating value wastes were burned for energy recovery and therefore exempt from Subpart O. If high heating value hazardous wastes were coincinerated with non-hazardous waste, the owner or operator could argue that the incinerator is exempt from Subpart O because the hazardous waste is burned for its energy value. This is an outcome we wanted to avoid.

You should note that, if used oil is listed as hazardous waste, incineration of used oil would be subject to Subpart O unless the rule said otherwise. This outcome will be considered as we determine whether to list used oil as hazardous waste. (Whether or not used oil is listed, standards for "incinerating" used oil are more likely to resemble the controls being developed for boilers and industrial furnaces burning off-specification used oil fuel than the Subpart O standards.)

The May 2, 1986 letter from Chet McLaughlin to Dr. Paul Hipps of the Washington University School of Medicine incorrectly indicates that the November 29 rule applies to used oil burned in a pathological incinerator. As I stated above, if used oil is burned in an incinerator, the November 29 rule does not apply and a permit is not required at the present time.

Open Burning of Used Oil

Your staff also forwarded to us an April 17, 1986 letter from Chet McLaughlin to fire marshals in Missouri. This letter indicated that fire departments would not be allowed to burn off-specification used oil in training exercises. I discussed this with Jack Coakley, who stated that the used oil is burned in open pits. For the same reasons outlined above, such burning of used oil is not covered by the November 29, 1985, rules. We have received similar inquiries from fire departments and have advised them that burning used oil in pits, drums, or containers constitutes disposal and is currently unregulated unless the used oil exhibits a characteristic of hazardous waste, in which case such burning would be other thermal treatment of hazardous waste. If the used

Mr. Jed Mandel
Jenner & Block
One IBM Plaza
Chicago, IL 60611

AUG 22 1986

Dear Mr. Mandel:

I am writing in response to your letter requesting an interpretation of EPA's proposed listing of used oil as a hazardous waste that was published in the Federal Register on November 29, 1985. In particular, you ask whether the hydraulic devices that your client manufactures would be considered as hazardous waste by the mixture rule when these devices become contaminated with oil during quality control testing conducted prior to their sale and distribution.

As described in 40 CFR §261.3, the mixture rule applies only to mixtures of solid waste and hazardous waste. These hydraulic devices do not meet the definition of a solid waste (see 40 CFR §261.2) because they are products that are manufactured for sale and are not discarded or intended to be discarded. Thus, if used oil were to be listed as a hazardous waste and subsequently "mixed" with these hydraulic devices, the resulting mixture would not be a hazardous waste according to the mixture rule.

It must be noted that used oil drained from these hydraulic devices would be a hazardous waste if the oil exhibits a hazardous characteristic as described in 40 CFR §§261.21 - 261.24, or if used oil is listed as a hazardous waste as proposed in the November 29 notice, unless this used oil is reused for its original purpose (i.e., in testing hydraulic devices).

If you have any additional questions regarding the proposed rules, you may contact me at (202) 475-8551.

Sincerely,

Matthew Straus
Chief

15 SEP 86

Mr. Fred Hurban
Cottman Transmissions
240 New York Drive
Fort Washington, Pennsylvania 19034

Dear Mr. Hurban:

Per your telephone request of August 15, 1986, I am providing written confirmation of the status of used oil-fired space heaters under the November 29, 1985, regulations for the burning of hazardous waste and used oil fuel.

We sent a letter to Tom Kagi on February 4, 1986, (copy enclosed) explaining the application of these rules to space heaters. This application is the same regardless of the geographic location of the facility or space heater. In that letter we indicate that used oil could be burned in a space heater without testing for toxic materials under the following conditions:

1. The used oil is oil that you generate by servicing vehicles, or that you accept from "do-it-yourself" oil changers (you may not burn oil that you receive from another shop or from a used oil collector);
2. You have not mixed wastes such as solvents, with the used oil;
3. The heater is designed to have a maximum capacity of less than 0.5 million Btu per hour (rating is on heater nameplate); and
4. The flue gases are vented to the outdoors (e.g., through a chimney).

I hope this addresses your concerns. Please call me at (202) 475-6128 if you have any questions.

Sincerely,

Karen Walker
Environmental Scientist
Waste Combustion Section

15 SEP 86

Mr. Paul McFadden
1045 Archer Lane
Lansdale, Pennsylvania 19446

Dear Mr. McFadden:

I received your August 7 letter only late last week. Let me summarize your largely correct interpretations of the current Federal requirements for industrial burners of used oil.

Hazardous waste (solvent) mixing - Mixing any amount of a listed hazardous waste (such as the spent solvents you name) into a used oil creates a mixture that must be managed as a hazardous waste. The 1000 ppm halogen standard is simply the level at which EPA will presume (until rebutted) that used oils with ~~greater than 1000 ppm halogens~~ have been mixed with halogenated hazardous waste. The presumption could be rebutted by demonstrating, for example, that all halogens are inorganic. (If you are burning oils on-site, it should be easy for you to prevent solvent contamination.)

Burning hazardous waste mixtures - Hazardous waste combustion is more stringently regulated than used oil combustion (under the November 29 final rules). Facilities burning hazardous waste for energy recovery, however, are not regulated as incinerators. Hazardous wastes (including mixtures) can be burned only in industrial boilers and furnaces. An on-site burner is subject to Part 262 requirements for hazardous waste generators. The on-site burner is also subject to notification (§266.35(a)), and storage (§266.35(b)/§262.34) requirements. There may well be additional requirements in the future; however, these rules have not yet even been proposed.

Burning used oils (on-specification) - For used oils not mixed with hazardous waste, the regulations (§266.40(e)) define two types of used oil fuels: on-specification and off-specification. The combustion of on-spec used oil is unregulated, however, there are a few requirements for on-site burners to meet the exemption. (I admit these may be a bit unclear from a reading of the actual regulatory language.) First, the on-site burner must notify as "an on-site burners who first claims the oil meets specification." Second, the burner must be able to demonstrate that the oil (as burned) meets the specification. Lab analyses are certainly a good way of making such a demonstration. Note that the combustion itself is entirely unregulated by the used oil rules, that is, the oil may be burned in any type of device. There are no plans to regulate on-spec burning with future used oil rules.

Burning used oils (off-specification) - Burning off-specification used oil is regulated more stringently (§266.44) than on-spec. Most importantly, off-spec used oil may be burned only in industrial devices, and only by facilities that have notified as "an off-spec used oil burner." In the future, there may be additional requirements to meet, such as, the use of air pollution control, or perhaps storage requirements. These additional regulations, however, have not yet been proposed.

I hope you have by now received my August 4 letter on testing procedures and labs. If you have any other questions, please contact me.

Sincerely,

Eric Males
Office of Solid Waste

ATTACHMENT I

Question 1: Why, when the "Banking of Lead Rights" was promulgated on April 2, 1985, (21 days after the public comment period closed for 40 CFR Parts 260, etc.) was there no mention, reference, or acknowledgement of its existence 8 months later in the November 29, 1985 Federal Register?

Response: Staff working on the final regulations published on November 29, 1985, were totally unaware of the lead credits program included in the April 2, 1985, "Banking of Lead Rights" final regulation. During development of the November 29, 1985 regulations, our staff was working to resolve all of the issues raised in public comments on the January 11, 1985, proposed regulations on the burning of hazardous waste fuel and used oil in boilers and industrial furnaces. Unfortunately they were not knowledgeable in the matter of the lead credits program first proposed in January 4, 1985 (50 FR 718). No commenters on our proposed rules raised the issue of the effect of the lead credits program on lead levels in used oil fuels. Thus, certain projections made by staff and published in the preamble to the November 29, 1985 final rules have proven to be inaccurate.

Question 2: Why was Table 4 and the entire dissertation surrounding it published in the November 29, 1985 Federal Register when the EPA Staff knew that it was inaccurate and misleading?

Response: Table 4, which projects how much used oil will meet various lead limits by May 1986, was derived without taking into account the lead credits. As explained above, the inaccurate projections were due to a lack of knowledge by the staff writing that document of the lead credit provisions, and was certainly not a deliberate attempt to mislead the public. As shown in Table 5, on the same Federal Register page as Table 4, EPA also made projections of how much used oil would meet the entire used oil fuel specification, not just the lead specification. We projected that by May 1986, only 46% of all used oil would meet the used oil fuel specification without blending with virgin fuel oil. This is because we expected other elements of the specification, i.e., the limits for Arsenic, Cadmium, and Chromium of 5, 2, and 10 ppm, respectively, to cause significant amounts of used oil to be off-specification. The purpose of the specification is to identify used oil fuel with high levels of toxic contaminants compared to virgin fuel oil and to restrict the use of such contaminated fuel to industrial burners. We never intimated that any set percentage of used oil fuel must meet the specification; in fact, as discussed above, we expected that most used oil fuel would not meet the specification unless blended with virgin fuel oil.

Question 3: Why, when EPA readily admits in 49 CFR Part 80 that "--- the Agency estimates that about 9.1 billion grams would be banked" and that "--- the Agency does not expect that these regulations will have a significant adverse impact, if any, on the public health or the environment", does the small percentage of that lead (2.65%) flowing through the oil recycling industry pose a health risk?

Response: The amounts of lead allowed in gasoline cannot be directly compared to the amounts contained in used oil. First, the Agency's regulations of 49 CFR Part 80 are designed to reduce and perhaps eliminate the use of lead as a motor fuel additive (50 FR 9386; March 7, 1985). EPA indicated that a national health problem exists with regard to lead and that "... all reasonable efforts should be taken to reduce lead exposure to the population as rapidly as possible." (Id.) The Agency at first concluded that the refining industry as a whole could achieve a 0.1 grams per gallon limit by January 1, 1986 without the allowance of lead credits. EPA became convinced, however, that a more flexible but equally protective approach would be to impose a limit less stringent than 0.1 grams per gallon prior to January 1, 1986 (i.e., 0.5 grams per gallon on July 1, 1985), to impose the 0.1 limit on January 1, 1986, and then allow lead credits through 1987. The Agency reasoned that this accelerated schedule could be combined with a lead credits program and achieve the same lead reduction in 1985-1987 as imposing the 0.1 gram per gallon limit on January 1, 1986, with no lead credits (50 FR 718-719; January 4, 1985). Therefore, EPA did not simply conclude, as your letter suggests, that 9.1 billion grams of lead entering the environment would pose no problem. Rather, the Agency concluded that we could achieve the most rapid reduction through an accelerated phasedown schedule combined with a lead credits program.

The used oil fuel regulations serve a dual purpose. First, EPA concluded that under certain conditions the burning of used oil in boilers could cause violations of the National Ambient Air Quality Standard (NAAQS) for lead; the 100 ppm lead limit prevents these occurrences (50 FR 49184-49185; November 29, 1985). Further, EPA considered whether the used oil fuel regulations should be used as a supplement to the gasoline lead phasedown described above to reduce overall lead exposures, i.e., to go beyond what is necessary to prevent violations of the NAAQS and set an even lower lead limit. (Id.) As the Agency indicated, due to new health effects data on lead that may lead to a lowering of the NAAQS and the latter consideration, we are considering whether the 100 ppm limit should be lowered. (Id.) An important factor in this determination will be the likely impacts of a lower limit on the used oil recycling industry. Impacts on recycling will not, however, take precedence over health-based considerations.

Question 4: Why, when the National Ambient Quality Standard for lead at a 75% emission rate is currently 300+ ppm, has a 100 ppm specification been imposed upon the oil recycling industry?

Response: The enclosures to your letter (Exhibits IV, V, and VI) cite air modeling work performed for EPA in about 1980. The results indicate that under some conditions an individual burner can burn a fuel with over 100 ppm lead without exceeding at groundlevel the lead NAAQS of 1.5 micrograms per cubic meter. As EPA explained when it proposed and promulgated the 100 ppm limit, however, a number of factors must be considered besides single burner air modeling. (This is discussed in detail at 50 FR 1698; January 11, 1985, and 50 FR 49184, November 29, 1985.)

- ° Used oil sources can be clustered, i.e., multiple sources can be located near one another, leading to increased ambient pollutant levels;
- ° In urban areas, it is not unusual to have exposed individuals at elevated locations (e.g., in apartment houses) where pollutant levels may be higher;
- ° Many areas already have lead in the air so used oil burners, while emitting only a fraction of the NAAQS, could add to the ambient levels and cause an exceedence of the NAAQS; and
- ° The current NAAQS is under review by EPA. New health effects data indicate that lead is even more toxic than earlier studies indicated; and the NAAQS may therefore be lowered from the current 1.5 micrograms per cubic meter.

In summary, the 100 ppm lead limit for used oil is necessary to prevent violations of the NAAQS. In fact, the original study performed for EPA in 1980 recommended a lead specification for used oil of 50 ppm. Used Oil Burned as a Fuel, Volume I, Recon Systems, Inc. and ETA Engineering, Inc., 1980 (p. 1-8).

Question 5: Why has EPA so clearly discriminated against the oil recycling industry (as opposed to the major producers and importers of leaded gasoline) to the obvious detriment of the environment?

Response: EPA has not discriminated against used oil recyclers while favoring producers and importers of leaded gasoline. EPA has moved swiftly to reduce lead in gasoline and we may in the future prohibit lead as a gasoline additive. Used oil recyclers may market used oil containing any amount of lead to any industrial burner. We have imposed only minimal requirements

on the marketing and burning of used oil high in lead content to track the movement of a fuel which is substantially different from virgin fuel oil (e.g., virgin fuel oil rarely contains more than 1 ppm of lead), and which may pose a hazard when not burned in the proper device. This is entirely consistent with RCRA Section 3014, which requires EPA to regulate used oil recycling practices that potentially could harm human health or the environment.

NOV 12 1986

Honorable Charles W. Stenholm
House of Representatives
Washington, D.C. 20515

Dear Mr. Stenholm:

Thank you for your October 14, 1986, letter regarding the 100 ppm lead specification. This specification was developed to protect human health and the environment. The fact that we did not consider lead banking had no effect on our decision. The only effect of lead banking is to modestly increase our estimates of the amount of used oil that would be off-specification.

With regard to your three suggestions, the Environmental Protection Agency (EPA) is drafting a proposed response to the petitions and expects to publish it in the Federal Register before the end of the year. (EPA procedural rules require the Agency to propose action on a petition for rulemaking before taking final action. 40 C.F.R. §260.20(c).)

Second, you suggest that EPA defer implementation of the 100 ppm lead specification but at the same time retain the prohibition on burning off-specification used oil in non-industrial boilers. This is virtually what the present regulations provide. All burners but non-industrial sources may burn off-specification oil provided they notify EPA and their supplier that they are an industrial source. You may be asking that EPA repeal these administrative requirements. Our present thinking is that these administrative provisions are needed if EPA is to be able to enforce the prohibition against burning contaminated used oil in non-industrial boilers, since some means are needed to verify independently that processors are not selling contaminated oil to prohibited sources. Further, these requirements have no other legal significance. We have taken, and are continuing to take active steps to inform the public of the minimal legal significance of this one-time notification.

Finally, with regard to your last point as stated above, the
pecification is, and must be, based on human health and the
environment.

I appreciate your continued interest in this area and will
continue to inform you of our activities.

Sincerely,

J. Winston Porter
Assistant Administrator

NOV 24 1986

Ms. Kathryn O'Connor Gunkel
Director of Environmental
and Safety Operations
P.O. Box 517
Riverdale, Maryland 20737-9981

Dear Ms. Gunkel:

Thank you for your October 10, 1986, letter regarding the relationship between "permit-by-rule" and the proposed used oil special management standards for burners.

The major point you raised in your letter is the implication of filing the burner notification form 8700-12. Our final standards will apply only to facilities burning off-specification used oil as of the effective date of the final rule (which is usually six months after the final rule is published in the Federal Register). Filing the notification form now would not subject your members to that final standard. Filing also will not subject your members to the corrective action requirements in Section 3004(u). Form 8700-12 is not a Resource Conservation and Recovery Act (RCRA) permit application or the equivalent, and again it does not trigger compliance with Section 3004(u). You specifically asked if used oil recyclers will need permits, and if so how would they apply for such permits. We have not yet resolved this issue.

You also asked why, when we generally avoid permit-by-rule in the RCRA program, did we propose a permit-by-rule for used oil recyclers? The used oil permit was established by Congress for recycled oil identified as a listed or hazardous waste in RCRA Section 3014(d). The permitting is a statutory requirement.

We are also considering what types of regulations should apply to recycled oil burners. For example, we are currently debating whether used oil burners should be regulated like other recyclers or if we should apply special, less stringent, requirements. Our current thinking is that it may be appropriate to have different standards for processors and re-refiners.

Let me assure you that EPA believes that off-specification used oil can be burned safely. When emissions are properly controlled, burning is an environmentally desirable method of recycling used oil. We will consider the issues you raised when developing our final rule. I would be pleased to meet with you on these and any other concerns you may have.

I have addressed the seven specific questions you asked in the enclosure. If I can be of any further assistance, please let me know.

Sincerely,

/s/ Jack W. McGraw

fw
J. Winston Porter
Assistant Administrator

Enclosure

Answers to Questions 1-7

1. Under the November 29, 1985 proposal, facilities burning off-specification used oil fuel on the effective date of the final rule would be eligible for a permit-by-rule. Submission of the notification form 8700-12 would not trigger issuance of a permit. Under the proposed used oil management standards, facilities in compliance with all of the applicable requirements would be deemed, without any action on their part, to have a RCRA permit. [See 50 FR 49240] Submitting notification information is only one requirement; compliance with proposed 40 CFR 266.43, 266.44, and 270.60(d)(2) would be necessary to obtain the permit-by-rule. This approach to permitting used-oil recyclers is actually specified in RCRA Section 3014(d); Congress instituted such a system to encourage facility permitting. (See H.R. Rep. No. 98-198, 98th Cong., 1st Session, at 69 (1983).] Under this system, there is no written permit per se. In fact, EPA would not be granting a permit at all. Congress specified in RCRA Section 3014(d) that a used-oil recycler who complies with all applicable requirements receives a permit.

With respect to the relationship in the proposed rule between the permit-by-rule and corrective action, you should note that in the November 29, 1985, Federal Register, we proposed that used oil recyclers who qualified for the permit-by-rule were not subject to the corrective action requirements in Section 3004(u) unless EPA revoked the permit-by-rule based on specified criteria. [See 50 FR 49241]

We have not determined what management standards will apply for used oil burners. We have concluded that the full set of requirements proposed on November 29, 1985, is probably too stringent. We will consider whether a reduced set of standards might be adequate for burners. We also have decided not to list recycled oil as a hazardous waste. This may render the permit-by-rule provisions of the November 29, 1985, proposal moot because facilities managing nonhazardous waste have not in the past been subject to EPA permitting. It should be noted, however, that EPA can require permitting for used-oil recyclers even without a hazardous waste listing. [See H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 69 (1983).] Whether we do require some form of permitting will depend upon the extent of Agency oversight needed to implement the management standards issued for burners. These decisions are still several months away.

2. You are correct in stating that under the proposal, a facility is deemed to have a RCRA permit if it complies with all applicable requirements. It is the responsibility of the owner or operator of the facility to comply with the requirements. EPA can, of course, conduct facility inspections to ensure compliance.

Submittal of form number 8700-12 has little to do with the facility permitting. Submittal of notification information is one requirement that a facility would have to meet whether or not a permit is required by the final rule. EPA form 8700-12 is not a permit application. This issue was discussed in the November 29, 1985, proposal [See 50 FR 49243]. Under the proposal, those owners or operators who were not in compliance with applicable requirements, or who were not sure whether they were in compliance, would have been required to submit a special notice, separate from the notification, to EPA indicating their desire to obtain interim status. Those owners and operators who were sure of their compliance would not have to submit an application.

Let me clarify one point which may be confusing. In the proposed rule we stated that a notifying facility is afforded the option of indicating that the information submitted on form 8700-12 could be used to fulfill the permit application requirements of RCRA Section 3005(e)(i)(c). A facility might have wished to take this course because eligibility for the proposed permit-by-rule turned on a facility being in compliance on the rule's effective date with applicable regulations. A facility not in compliance or unsure whether it was in compliance was thus afforded the opportunity to have legal authorization to operate [See 50 FR 49240]. Facilities electing to take this action were not thereby subject to Section 3004(u) corrective action [See 50 FR 40241].

The "two year" inspection schedule applies to facilities permitted by EPA under RCRA Section 3005. Since, under the proposed rule, most used oil recyclers would be permitted under RCRA Section 3014(d), the schedule would not apply.

3. As discussed in response #1, under the proposal, facilities who were eligible for the permit-by-rule would not have been subject to RCRA Section 3004(u). [See 50 FR 49240.] The only case where such a facility would have been required to take corrective action measures is when EPA revoked the permit-by-rule. [see 50 FR 49241.] See proposed §270.60(d)(3) for the criteria under which a permit-by-rule could be revoked. EPA has not determined whether these, or similar, requirements will ultimately be applied to used oil burners.

4. As explained above, the used oil recycling permit would not actually be issued by EPA. Rather, the permit is a special authorization granted by Congress in RCRA Section 3014(d) for used oil recyclers to be exempt from normal RCRA permitting procedures, provided they comply with all applicable requirements.

5. As explained above, submittal of EPA form number 8700-12 has nothing to do with corrective action requirements. Further, the timing of the notification was set by Congress in RCRA Section 3010(a); notification was required by February 1986.

6. As explained above, the burner notification requirement is just that, nothing more. It simply does not expose burners to the types of consequences suggested in your questions.

7. At present, burners of off-specification used oil, except for the notification and recordkeeping provisions of 40 CFR §266.44, are subject to the same requirements as burners of virgin fuel oil. The time that management standards are issued in final form for used oil burners is appropriate time for each facility owner or operator to make his own decision on whether or not to continue burning used oil fuel. As a general matter, RCRA regulations become effective six months following promulgation, so burners will have time to assess any new requirements.

20 JAN 87

Mr. Joseph P. Chu, Assistant Director
Plant Environment
Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
30400 Mound Road
Warren, Michigan 48090-9015

Dear Mr. Chu:

This is in response to your letter of December 19, 1986, concerning the used oil notification requirements of 40 CFR Part 266, Subpart E. You are correct in pointing out that the regulations themselves do not require burners of specification used oil fuel to notify EPA. This is, however, the result of a drafting oversight. Question VI.7. on the notification form (EPA Form 8700-12) is meant to apply to all persons who first claim that their used oil fuel meets the specification, including generators who burn their own used oil on-site. See the preamble of the November 29, 1985, Federal Register (50 FR 49195), which states:

The following persons must notify either EPA .
or an authorized state to identify their
waste-as-fuel activities ... (3) marketers
(or burners) who first claim used oil fuel
meets the specification and so is exempt
from subsequent regulation. [Emphasis added.]

We recognize that the rules themselves should be clarified on this point. In the future, we will be issuing a correction notice in the Federal Register to clarify this and certain other ambiguities in the rules issued on November 29, 1985.

Finally, the last point you raised was that EPA Form 8700-12 is not appropriate for used oil because it is not necessarily a hazardous waste. EPA never limited the notification requirement to used oil that is hazardous waste, so the requirement does apply. If you wish, however, you may notify EPA on the enclosed form that we have recently developed for used oil handlers. (It makes no mention of "hazardous waste.") Either the enclosed form, EPA Form 8700-12, or a letter with all required information would be equally acceptable ways for you to notify.

Sincerely,

/s/
Marcia E. Williams
Director
Office of Solid Waste

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 6 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Hazardous Waste Status of Automotive Fluids

FROM: Marcia E. Williams
Director, OSW

TO: Michael J. Sanderson
Chief, RCRA Branch
EPA Region VII

This is to provide guidance on the questions raised in your February 19, 1987 memo. First, no automotive fluids have been listed as hazardous under Subtitle C of RCRA; therefore, the question of whether these fluids are subject to the hazardous waste regulations depends on whether the fluid in question exhibits one or more of the RCRA hazardous waste characteristics. Although we do not have studies in this area, we have been informed that some brake fluids and automatic transmission fluids are ignitable under 40 CFR §261.21. Used crankcase oils may also be ignitable (because small amounts of gasoline are added during or after use), and may exhibit E.P. toxicity for lead.

However, for those automotive fluids that are used oils and are recycled, the hazardous waste regulations would not currently apply, even if the fluid exhibits a characteristic; rather all used oils that are recycled are subject to 40 CFR Part 266, Subpart E (See 40 CFR §261.6 (a)(2)(iii).) Currently, Part 266, Subpart E only regulates the recycling of used oil as fuel. All other recycling methods are exempt from regulation. Those automotive fluids that are either not a used oil, or are used oil that is disposed of, are subject to the hazardous waste regulations if they exhibit one or more of the characteristics. Currently, we define "used oil" in §266.40(b) very broadly. Brake fluid, power steering fluid, and automatic transmission fluid would all be considered used oils. On the other hand, antifreeze and windshield washer fluid, because they are not "oils" as the term is commonly used, would not be used oils.

As a practical matter, our understanding is that brake, steering, and transmission fluids are typically mixed with crank-case oils and recycled. Therefore, the hazardous waste characteristics are not relevant and Part 266, Subpart E applies if the oils are recycled as fuel. Used anti-freeze is not a used oil and is not likely to exhibit any of the hazardous waste characteristics; consequently, it may be disposed of as a solid waste in Subtitle D facilities. Similarly, windshield washer fluid is not used oil, and is not likely to exhibit a characteristic; thus, it may also be disposed of as solid waste.

Please feel free to call Mr. Mike Petruska at 8-382-7737 if you have any further questions.

cc: Regional Branch Chiefs (EPA Regions I-IV and VII-X)

MAR 26 1987

Mr. Joseph P. Chu
Assistant Director
Plant Environment
Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
30400 Mound Road
Warren, Michigan 48090-9015

Dear Mr. Chu:

Thank you for your response to our January 20, 1987, letter with regard to the notification requirement for specification used oil burners (40 CFR Part 266, Subpart E). Your most recent letter of February 12, 1987, has prompted us to reconsider our position and the regulatory notification requirement.

You had previously written us on December 19, 1986, in reference to the above subject. Our response at that time emphasized the November 29, 1985, Federal Register preamble (50 FR 49195). The preamble stated that burners who first claimed that used oil fuel meets the specification which allows it to be exempt from regulation must provide EPA a one-time notification of their use of such oil. However, burners who receive used oil from a marketer who claims the oil meets the specification (and who has notified EPA as marketers), are not subject to the notification requirement.

In your particular situation, your facilities generate and burn on-site their own used oil that they claim meets the specification. Since no marketer is involved, and your facilities burn used oil directly, the preamble identified a requirement for you to provide notification. In our previous letter to you, we advised that you should provide notification, and that a technical corrections notice to this regulation was being prepared to clarify this and other issues raised since the November 29, 1985, Federal Register publication.

You correctly noted, in your most recent letter, that our January 26, 1987, Federal Register notice (52 FR 2695, 2698) provided comments referencing the 11/29/85 Federal Register, which exempted burners of specification used oil from the notification requirements. This exemption was provided in the context that the marketer who distributed the used oil (to the burner) had already first claimed (via the required notification for marketers) that their used oil met the burning specification.

We recognize that you have raised a valid concern with respect to on-site specification used oil generators who are also burners. This circumstance was not specifically addressed in the original regulations. Upon further evaluation, we now want to clarify that the notification requirement is not appropriate for generators who burn their own specification used oil on-site. The only intent of the (burner) notification requirement is to allow blenders who receive off-specification used oil from marketers to provide notice that they only burn on-specification used oil.

The previously mentioned technical correction notice, to be published soon in the Federal Register (hopefully, mid-April), will clarify this matter. We thank you for bringing this circumstance to our attention. The Agency supports the use of specification used oil for burning as if it were virgin oil. Thus, we will not require notification from generators who burn specification used oil on-site.

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste

APR 17 1987

Mr. R. F. Gebhardt, Manager
Environmental and Manufacture
Services
Lehigh Portland Cement Company
71d Hamilton Mall
Allentown, PA 18105-1882

Dear Mr. Gebhardt:

Thank you for your March 30, 1987, letter regarding used oil recycling. In your letter, you implied that, on November 18, 1986, the Environmental Protection Agency (EPA) announced that it would not issue regulations for used oil destined for recycling and stated that such a decision was a poor one. Let me assure you that this is not the case.

EPA's November 18, 1986, decision (51 FR 41900) was that recycled oil would not be listed as a hazardous waste. It did not constitute a decision that used oil would not be regulated. Rather, as explained in that notice, EPA under authority of Section 3014 of the Resource Conservation and Recovery Act (RCRA) will issue recycled used oil management standards and combustion controls. The schedule for these activities was included in the Federal Register notice (enclosed).

In our strategy to control used oil (Section V, 51 FR 41900), EPA recognizes as you have expressed in your letter that "improper recycling of used oil can pose substantial environmental hazard." However, we believe it is necessary to conduct additional studies before issuing the recycled oil management and burning standards. We must ensure that the standards do not have the unintended effect of causing improper disposal of used oil to increase, thus negating the positive benefits of the standards.

Please note that the Agency is currently regulating used oil recycling and disposal under certain conditions. For instance, used oil recycling becomes subject to regulation when used oil is mixed with hazardous waste or PCBs. Such mixtures must be managed according to regulations for hazardous waste and/or PCB-containing substances. Additionally, EPA regulations (50 FR 49064, November 29, 1985) require restricted burning environments (Industrial boilers and burners for off-specification used oil).

Thank you very much for your interest in the used oil regulations. If you have any questions regarding our progress, please contact Robert Dellinger of my staff at (202) 382-7917, who will be happy to discuss this matter more fully. We are working very hard at developing regulations that protect human health and the environment while encouraging the recycling of used oil. As explained above, both recycled used oil and used oil bound for disposal will be addressed in future rulemaking activities.

Sincerely,

J. Winston Porter
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 22 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Kathleen M. Blair, Director
Consumer Information Center
2402 Daniels Street
Madison, Wisconsin 53704

Dear Ms. Blair:

Thank you for your August 23, 1988, letter inviting the Environmental Protection Agency (EPA) to review "Specification No. PFS-983 Test, Inspection and Certification Criteria for Atomizer Multi-Oil Fueled Heaters."

In 1985, EPA issued a final rule that established a specification for used oil fuel. Used oil that meets this fuel specification can be burned for energy recovery without EPA restrictions, in any device. This rule restricted the burning of "off-spec" used oil fuel to certain devices (see 40 CFR §266.41(b)). One of these devices is a space heater (1) that burns only used oil that the owner or operator generates or used oil received from do-it-yourself oil changers who generate used oil as household waste; (2) that is designed to have a maximum capacity of 0.5 million BTUs per hour; and (3) that vents combustion gases to the outdoor air.

Although EPA has not developed more specific standards for space heaters, we are concerned about the risks posed by improperly maintained or operated space heaters (and other devices burning off-spec used oil fuel). We also recognize that certain types of space heaters may pose greater risks than others. This final rule was intended to address the greatest risks posed by uncontrolled burning of used oil fuel.

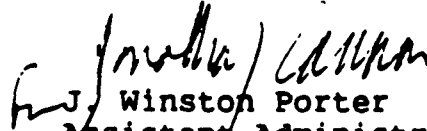
We plan to develop technical standards for burners of off-spec used oil fuel sometime in the future. At that time, we will further evaluate regulatory options to address risks posed by space heaters. When we do propose a rulemaking on this subject, it will appear in the Federal Register and will allow for public comment.

-2-

With regard to your suggested technical specifications for used oil-fired, automation type, space heaters, we prefer not to comment on the document for two reasons: (1) we do not have the resources to comment on documents prepared by independent firms, and (2) we do not wish to imply any endorsement of one type of space heater (i.e., atomization type) over another.

If you have any questions, or would like to discuss the used oil regulations in more detail, please contact David Tomten of my staff at (202) 382-2550.

Sincerely,


Winston Porter
Assistant Administrator

MAY 15 1989

MEMORANDUM

SUBJECT: Interpretation of Subpart E -- Used Oil
Burned for Energy Recovery (§266.40(c))

FROM: Sylvia K. Lowrance
Director
Office of Solid Waste (OS-300)

TO: Lloyd Guerri, Acting Director
Hazardous Waste Management Division
Region 8

This is in response to Robert Duprey's April 12, 1989, memorandum requesting an interpretation of rules pertaining to used oil that is to be burned for energy recovery and the application of the Agency's enforcement mechanism -- the rebuttable presumption -- to determine when mixing with hazardous waste has occurred. Your memorandum discusses the practice by coal companies in Region 8 of spraying coal with used oil to suppress coal dust and to increase BTU value. The coal is then marketed to a burner by the coal company or through another marketer.

You asked whether any person other than the generator of the used oil is eligible to rebut the presumption that the oil was mixed with hazardous waste when the used oil contains in excess of 1000 ppm total halogens. The rebuttal test is not limited to the generator of the used oil. Any person in possession of used oil containing more than 1000 ppm total halogens must be able to provide documentation to support a rebuttal if the oil is not managed as hazardous waste.

You also asked if the rebuttable presumption was applicable in the situation you described since the used oil was being applied to the coal and was not itself being marketed directly as a fuel. The used oil fuel and hazardous waste fuel regulations apply to used oil and hazardous waste that is burned in boilers or industrial furnaces. The regulations apply irrespective of

whether the used oil or hazardous waste is mixed with other fuels or waste before use as a fuel. If used oil containing more than 1000 ppm total halogens is mixed with coal and the presumption of mixing with hazardous waste cannot be rebutted, then the coal/used oil mixture is hazardous waste fuel and is subject to the hazardous waste fuel regulations under 40 CFR Part 266, Subpart D.

Finally, you mentioned in your memorandum that RCRA Hotline personnel told you that if the used oil is sufficiently diluted after it is sprayed on the coal, such that a representative sample would test under the 1000 ppm halogens level, the "oil-treated coal" could then be burned in any industrial boiler or furnace. This answer is partly correct -- the oil-treated coal may be burned in an industrial (or utility) boiler or an industrial furnace. However, the oil-treated coal would be subject to regulation as hazardous waste fuel even if the mixture contains less than 1000 ppm total halogens. This is because the 1000 ppm halogen test for used oil identifies used oil that is presumed to be mixed with spent halogenated solvents listed as hazardous waste numbers F001 and F002. Thus, used oil containing more than 1000 ppm halogens is subject to regulation under the mixture rule as those listed spent solvents. When this used oil is mixed with coal, the mixture also is subject to regulation as those listed solvents.

The mixtures, like any hazardous waste, may be burned in industrial or utility boilers and industrial furnaces under the regulations in Subpart D of 40 CFR Part 266 (e.g., transportation and storage is fully regulated, and standards for burners are under development). Part of the logic for this position is that the 1000 ppm halogen limit is not a health-based concentration "characteristic." Rather, it is based on data that indicated that used oil was mixed with significant levels of halogenated solvents when halogen levels exceeded 1000 ppm. Thus, used oil with more than 1000 ppm halogens cannot be diluted by mixing with other materials to make the mixture nonhazardous. Used oil with more than 1000 ppm halogens is subject to regulation like any other listed hazardous waste.

If you have any further questions on this issue, you may call Angela Wilkes (382-7934) of my staff.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 17 1989

Mr. James A. Stevens
1016 Brook Street
Kingsport, Tennessee 37660

Dear Mr. Stevens:

Thank you for your letter from August 1989 concerning used or waste oil.

The Environmental Protection Agency (EPA) does not require a burner of used oil to obtain a permit for this activity. There are, however, some restrictions regarding the burning of used oil.

The federal regulations, specifically 40 CFR Part 266, Subpart E, state that off-specification used oil may be burned in industrial furnaces and boilers, including used oil-fired space heaters. If off-specification used oil is burned in space heaters, however, it must be from household do-it-yourself oil changers or be generated by the burner of used oil itself. Also, the space heater must be designated to have a maximum capacity of 0.5 million BTU per hour or less and the gases/emissions generated must be vented to the outside air. If an individual has a supply of on-specification used oil, there are no restrictions on the type of unit in which it is burned. However, the burner of on-specification used oil must analyze or use other information to show that the oil meets the specifications, and must comply with recordkeeping requirements.

The definitions of on-specification used oil and off-specification used oil are found in 40 CFR Section 266.40(e). Both "on-specification" and "off-specification" used oils can be burned in space heaters; however, you must follow the requirements for the design of the space heater when burning "off-specification" used oil.

For more information on federal regulations concerning used oil (under RCRA, the Resource Conservation and Recovery Act) you may contact the RCRA/Superfund Hotline at 1-800-424-9346.

**9497 – SPENT
LEAD-ACID
BATTERIES BEING
RECLAIMED**

Part 266 Subpart G



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9497.1986(01)

FEB 6 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Michael L. Sappington
Lake Engineering and Development, Inc.
6000 Lake Forrest Drive
Suite 350
Atlanta, Georgia 30328

Dear Mr. Sappington:

The Administrator has asked that I respond to your letter dated January 3, 1986, regarding your concern with the Agency's recycle/reuse regulations and its impact on the recycling of spent lead-acid batteries. You state in your letter that the Agency's January 4, 1985, recycling rules will make it very difficult to legally reclaim these batteries. Part of your concern is the unavailability of environmental impairment liability insurance. The end result, you believe, will be the disposal of 50 million gallons of highly corrosive acid and 1.3 billion pounds of lead. Thus, you are requesting that EPA reconsider its position (i.e., whether to regulate the battery components generated from breaking and separation operations) and will be submitting a petition to address this matter.

We are very sympathetic to your problem. We agree with you that secondary lead smelters do provide a valuable environmental service. However, the Agency's recycle/reuse rules were promulgated to ensure that any storage (or transportation) of the battery components is conducted in an environmentally sound manner. As you state in your letter, the management of these materials has created problems in the past. Thus, all we wish is to ensure that the management of these materials (in the future) will be conducted in a proper manner. Therefore, it will be important that your petition address all the criteria in §260.31(c) as completely as possible; in particular, it will be necessary for you to address the manner that these battery components are handled (in order to minimize loss of the toxic contaminants) since this has been a particular concern of several of our Regional offices. To this end, I plan to circulate your petition to our Regions for their comment. We look forward to receiving your petition.

EPA recognizes that, during the past year, the insurance industry has substantially curtailed the writing of new environmental liability policies. The Agency worked with the House of Representatives, at their request, on H.R. 3917. This Bill provided some relief for land disposal facilities subject to the Resource Conservation and Recovery Act (RCRA) from the requirement to certify compliance with liability requirements by November 8, 1985, if the facility was in compliance with ground water monitoring requirements and had submitted a Part B permit application by that date. The Agency worked with the Senate staff on their review of the H.R. 3917 but the Senate has not yet taken any action on that or any other similar legislation.

With regard to your concern of the unavailability of liability insurance, I have enclosed a list of insurance companies who may be willing to write environmental impairment liability insurance. The Agency contacted all insurance companies known to have been involved in this market. The list includes those who were willing to be on a list of potential suppliers of environmental impairment liability coverage.

Please feel free to write me if you have any further questions.

Sincerely,

J. Winston Porter
Assistant Administrator

Enclosure

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MAY 86

5. Hazardous Waste Export Rule

A generator of spent lead-acid batteries will send the batteries to Taiwan for reclamation. The batteries exhibit the characteristic of EP toxicity, as defined in §261.24 for lead contamination. What RCRA regulations pertaining to export notification and/or record-keeping is the generator subject to currently? What regulations would the generator be subject to under the hazardous waste export regulations as proposed in the March 13, 1986 Federal Register (51 FR 8744)?

Section 266.80 of the current RCRA regulations (applicable to reclaimed spent lead-acid batteries) states that "[p]ersons who generate, transport, or collect spent batteries...but do not reclaim them are not subject to regulation under Parts 262 through 266..." Export notification requirements are presently found in §262.50 and generator recordkeeping requirements are in §262.40. Since this generator is exempt from Part 262, he is then not subject to the export notification or recordkeeping requirements.

The hazardous waste export regulations, as proposed, would not alter the current exemption in §266.80. However, EPA anticipates making a final regulatory determination on this issue and all other hazardous waste export regulations in late July 1986.

Source: Carolyn Barley (202) 382-2217
Wendy Grieder (202) 382-4888
Research: Margaret Kneller



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9497.1986(02)

JUL 11 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable David O'B. Martin
House of Representatives
Washington, D.C. 20515

Dear Mr. Martin:

Thank you for your June 16, 1986, letter on behalf of your constituent, Mr. Roland A. Clement. Mr. Clement expressed concern about the disposal of lead-acid batteries.

The Environmental Protection Agency (EPA) shares Mr. Clement's concerns regarding the improper disposal of spent lead-acid batteries. These batteries are a hazardous waste, therefore, their disposal is controlled under Federal law. The only exception to this is the direct disposal of batteries by an individual consumer. Federal law specifically exempts such household waste from hazardous waste regulations.

The Agency does regulate the storage of batteries prior to being reclaimed, i.e., battery crackers, smelting and/or refining operators. However, the Agency does not regulate the storage, generation or transportation of recycled batteries by any other persons. We have adopted this regulatory approach in order to provide a balance between protecting human health and the environment and encouraging the recycling of these batteries.

The EPA has not imposed a requirement that recycled or used batteries be collected at established points and a fee paid for their management. If this requirement has been imposed, it is either a State or local rule and you, therefore, should contact the State Department of Environmental Conservation (DEC) for details on this particular requirement.

We have developed a regulatory program to encourage the recycling of lead-acid batteries by generators. Please feel free to write me if I can be of any further assistance.

Sincerely,

/s/ Jack W. McGraw

J. Winston Porter
J. Winston Porter
Assistant Administrator

FEB 12 1987

Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

Dear Senator Helms:

Thank you for your January 13, 1987, letter regarding Mr. W. R. Helms' concern about the regulations the Environmental Protection Agency (EPA) has issued regarding the reprocessing of batteries and the transportation and the export of these batteries.

I want to assure you that EPA carefully considered its approach before regulating industries such as spent batteries recycling. We are convinced that regulation of these recycled materials is necessary to adequately protect human health and the environment. Waste destined for recycling can present the same potential for harm as wastes destined for treatment and disposal; that is, the risks associated with transporting and storing wastes is unlikely to vary depending on whether they are ultimately recycled, treated, or disposed. In the past, facilities' recycled hazardous wastes have caused serious health and environmental problems. In fact, recycling operations, including a number of battery reclaimers, account for some of the most serious environmental damage incidents.

The Agency has developed special standards for spent lead acid batteries that are reclaimed to minimize the regulations' impact. In particular, only the person who reclaims the battery is subject to regulation and only the storage activity prior to recycling is regulated. Therefore, even though we regulate these materials, we have designed our regulations to have the least adverse impact on the regulated community while still meeting our statutory mandate of protecting human health and the environment.

EPA also has recently promulgated regulations for the export of hazardous waste. (See enclosed August 8, 1986, FR.) These regulations were required by Section 3017 of ~~the Hazardous and Solid Waste Amendments (HSWA) of 1984.~~

That provision mandated that EPA finalize regulations prohibiting hazardous waste exports, unless: (1) the person exporting the waste has provided notification to the Administrator of EPA; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the waste shipment; and (4) the shipment conforms to the terms of the foreign country's consent.

In developing the export rules, EPA determined that a hazardous waste which poses risks domestically would pose equivalent threats in international shipments (this includes spent lead acid batteries).

Although EPA recommends that exporters notify the Agency at least 60 days in advance of an intended shipment, we anticipate that the processing of notifications and written consents can be accomplished in less time. Thus, we expect that exporters will not typically be subject to the requirements under 40 CFR Part 262 which require generators who store for more than 90 days on-site to obtain a storage permit.

If I can be of any further assistance, please let me know.

Sincerely,

/s/ J. Winston Porter
Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9497.1987(02)

FEB 19 1987

Honorable Ron Marlenee
House of Representatives
Washington, D.C. 20515

Dear Mr. Marlenee:

Thank you for your January 23, 1987, letter regarding the regulations the Environmental Protection Agency (EPA) has issued regarding the reprocessing of batteries.

I want to assure you that EPA carefully considered its approach before regulating industries such as spent batteries recycling. We are convinced that regulation of these recycled materials is necessary to adequately protect human health and the environment. Waste destined for recycling can present the same potential for harm as wastes destined for treatment and disposal; that is, the risks associated with transporting and storing wastes is unlikely to vary depending on whether they are ultimately recycled, treated, or disposed. In the past, facilities' recycled hazardous wastes have caused serious health and environmental problems. In fact, recycling operations, including a number of battery reclaimers, account for some of the most serious environmental damage incidents.

The Agency has developed special standards for spent lead acid batteries that are reclaimed to minimize the regulations' impact. In particular, only the person who reclaims the battery is subject to regulation and only the storage activity prior to recycling is regulated. Therefore, even though we regulate these materials, we have designed our regulations to have the least adverse impact on the regulated community while still meeting our statutory mandate of protecting human health and the environment.

As is also correctly noted in your constituent's letter, EPA also has recently promulgated regulations for the export of hazardous waste. (See enclosed August 8, 1986, FR.) These regulations were required by Section 3017 of the

provision mandated that EPA finalize regulations prohibiting hazardous waste exports, unless: (1) the person exporting the waste has provided notification to the Administrator of EPA; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the waste shipment; and (4) the shipment conforms to the terms of the foreign country's consent.

In developing the export rules, EPA determined that a hazardous waste which poses risks domestically would pose equivalent threats in international shipments (this includes spent lead acid batteries).

If I can be of any further assistance, please let me know.

Sincerely,

/s/ J. Winston Porter
Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9497.1987(03)

APR 17 1987

Honorable Joseph M. Gaydos
House of Representatives
Washington, D.C. 20515

Dear Mr. Gaydos:

Thank you for your March 17, 1987, letter regarding your constituent's, Mr. George W. Burrows, concerns about the reprocessing of batteries.

First, I want you to know that the Environmental Protection Agency (EPA) agrees with you that the improper management of spent lead-acid batteries can present a hazard. Thus, as part of its hazardous waste regulation, the Agency regulates the materials when disposed of and when sent for recycling. In particular, we agree that regulation of these recycled materials is necessary to adequately protect human health and the environment. Waste destined for recycling can present the same potential for harm as wastes destined for treatment and disposal; that is, the risks associated with transporting and storing wastes is unlikely to vary depending on whether they are ultimately recycled, treated, or disposed. In the past, facilities recycling hazardous wastes have caused serious health and environmental problems. In fact, recycling operations, including a number of battery reclaimers, account for some of the most serious environmental damage incidents.

Because of this potential hazard, the Agency has developed special standards for spent lead acid batteries that are reclaimed. In particular, the person who reclaims the battery is subject to regulation and the storage activity prior to recycling is regulated. In addition, any spent lead-acid batteries that are disposed of are subject to the general hazardous waste rules. Thus, we believe we have rules in place that meet our statutory mandate of protecting human health and the environment.

With respect to your constituent's suggestion regarding imposing a tax on new batteries, EPA does not have the authority to impose such a tax. Therefore, we are not able to consider this approach. I can be of any further assistance, please let me know.

Sincerely,

/s/ J. Winston Porter
Assistant Administrator

Enclosure

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JANUARY 89

1. Spent Lead Acid Batteries

The owner/operator of a facility that collects spent lead acid batteries drains the acid and then manifests the acid off-site for reclamation. The battery shell, which still contains the lead plates, is sent to a facility that extracts the lead for smelting. Should these battery shells when sent off-site, be managed as EP Toxic hazardous waste or as spent lead acid batteries subject to Subpart G of 40 CFR §266?

First, the material is classified as a solid waste after the acid is drained. Second, either a "spent lead acid battery" or a battery shell must exhibit a characteristic of hazardous waste to be a hazardous waste in the Subtitle C system. Assuming the battery case exhibits a characteristic, then the owner/operator of the facility would be regulated as a hazardous waste generator because he generates spent acid which exhibits the characteristics of corrosivity. The act of draining the batteries, however, is not considered part of the reclamation process. Therefore, the owner/operator would not be subject to the requirements of §266.80(b), for example, notification, contingency planning, closure, and all other applicable provisions 40 CFR Part 264.

However, the facility that cracks the battery to remove the lead plates will be subject to these provisions of 40 CFR 266.80(b).

Source: Matt Straus (202) 475-8551
Research: Robyn Neaville (202) 382-3112



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 19

E. L. Williams, Jr.
Colonel, USAF
Director of Environmental Protection
Defense Logistics Agency
Defense Reutilization and Marketing Service
Federal Center
74 N. Washington
Battle Creek, Michigan 49107-3092

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Dear Colonel Williams:

This letter responds to your September 19, 1989 request for information regarding the regulatory status of spent lead-acid batteries stored by the Defense Reutilization and Marketing service (DRMS) before reclamation and the applicability of the speculative accumulation provision found at 40 CFR 261.2(c)(4).

The speculative accumulation provision (the requirement to recycle 75% of a material within one calendar year to demonstrate that the material is not a solid waste) is entirely separate and distinct from the regulations applicable to spent lead-acid batteries. The speculative accumulation provision is used to define a material as a solid waste. Because the only use for this provision is to bring under regulation as a solid waste those materials which are intended to be recycled in one year, but are not, the speculative accumulation provision is not applicable to those materials already defined as solid wastes (e.g., spent lead-acid batteries). This is evident in the definition of "accumulated speculatively" at 40 CFR 261.1(c)(8) which states that "... (Materials that are already defined as solid wastes also are not to be included in making the calculation.)"

Under Federal regulations, the lead-acid batteries that DRMS collects and stores are spent materials that are reclaimed. As provided in Table 1 at 40 CFR 261.2(c), spent materials that are reclaimed are solid wastes. Assuming lead-acid batteries likely exhibit one or more characteristics of a hazardous waste, they are defined as hazardous wastes pursuant to 40 CFR 261.3(a)(2)(i). However, certain recyclable materials are regulated under special provisions. In the case of recycled spent lead-acid batteries, the appropriate regulatory section is 40 CFR Part 266 Subpart G.

Part 266 Subpart G states that "Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under Parts 262 through 266 or Part 270 or 124 of this chapter, and also are not subject to the requirements of section 3010 of RCRA." Therefore, DRMS is not subject to regulation under RCRA for the storage of spent lead-acid batteries. (The spent batteries remain a solid waste and, if they exhibit a

- 2 -

characteristic, a hazardous waste; however, if they are reclaimed, they are exempted from substantive regulation under RCRA).

You should note that State regulations may differ from, and, in fact, be more stringent than, Federal regulations. Therefore, you should also contact the appropriate State regulatory agencies to determine what State regulations may be applicable.

Thank you for your interest concerning the recycling of lead-acid batteries. If you have further questions regarding the applicability of Federal regulations, you, or your staff, should call the RCRA/CERCLA Hotline at 1-800-424-9346, or contact Mitch Kidwell, of my staff, at (202) 475-8551.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edwin F. Abrams", written in a cursive style.

Edwin F. Abrams
Chief
Review Section



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9497.1989(03)

NOV. 17 1989

PAGE 1
SOLID WASTE AND EMERGENCY RESPONSE

Jean M. Beaudoin, Chairperson
BCI Environmental Committee
Fox, Weinberg and Bennett
750 17th Street, Northwest
Washington, D.C. 20006

Dear Ms. Beaudoin:

Thank you for your October 24, 1989, letter concerning the impact of the Land Disposal Restrictions (LDR) on the recycling of lead-acid batteries. The Agency encourages the recycling of solid waste and believes it is important for preserving resources and can prevent environmental degradation. Thus, we strongly support the reclamation of lead-acid batteries.

Restricted wastes may be stored on the land in tanks or containers (i.e., land disposed) without meeting treatment standards, provided it is done solely with the intent of accumulating such quantities of hazardous waste as necessary to facilitate proper recovery, treatment or disposal. In addition, this storage must comply with all other applicable storage standards such as those relating to secure storage, secondary containment in some instances, and other requirements. (See 40 CFR 268.50.)

The Agency has indicated in a previous rulemaking that the shell surrounding a lead-acid battery is considered to be a container (see 47 FR 12318, March 22, 1982; see also 40 CFR 264.314 (d)(3)). Thus, to the extent that lead-acid battery storage meets all the conditions set forth in the LDR storage prohibitions at 40 CFR 268.50, such storage is permissible.

We are including your letter in the Third Third Rule Docket and will specifically address any issues it raises in our Response to Comments Background Document.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sylvia Lowrance", written over a horizontal line.

Sylvia Lowrance
Director
Office of Solid Waste



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 13 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Ms. Kristina Richards
Senior Engineer
Applied Environmental Technologies Corporation
7 Belver Avenue, Suite 210
North Kingstown, Rhode Island 02852

Dear Ms. Richards:

This is in response to your letter of March 22, 1990, in which you asked several questions concerning the management of used oil and the identification of listed hazardous wastes.

1) Question on 40 CFR 266 Subpart E: Does this subpart apply to all used oils, or does it apply only to used oils which exhibit characteristics of a hazardous waste? The definition in 40 CFR 266.40(b) implies that the regulation applies to all used oils. However, one arrives at 40 CFR 266.40 because it is referenced by 40 CFR 261.6(a)(2)(iii). 40 CFR 261.6 covers the requirements for "recyclable materials," which are defined by EPA as hazardous wastes that are recycled. Therefore, 40 CFR 261.6 would not apply to nonhazardous used oils. This implies that 40 CFR 266 Subpart E does not apply to nonhazardous used oils.

ANSWER: 40 CFR 266 Subpart E applies to all used oil, both hazardous and non-hazardous. However, the level of regulation imposed under Subpart E can differ substantially. The used oil regulations may be clarified in the following way:

- o Used oil that meets the definition of 40 CFR 266.40(b) and is burned for energy recovery is regulated under 40 CFR 266, Subpart E.
- o Used oil that exhibits a characteristic of hazardous waste and is burned for energy recovery is regulated under 40 CFR 266, Subpart E (40 CFR 261.6(a)(2)(iii)), rather than Subpart D, provided it is not mixed with a listed hazardous waste. Subpart E specifies two classes of used oil:

- "On-specification" used oil is subject to minimal requirements.
- "Off-specification" used oil is fully regulated under Subpart E.
- o Used oil that exhibits a characteristic of hazardous waste but is recycled in a manner other than being burned for energy recovery is not regulated under any provisions of 40 CFR Parts 262 - 266, 270, or 124 (40 CFR 261.6(a)(3)(iii)).

Please note that the definition of used oil in §266.40(b) is a statutory definition -- Section 1004(36) of the Resource Conservation and Recovery Act (RCRA). Under the authority of that section and Section 3014 of RCRA, Congress gave EPA special authority to regulate used oil that is destined for recycling. The requirement that EPA develop management standards for recycled used oil is independent of a determination concerning the identification or listing of used oil as a hazardous waste. The used oil fuel standards under Subpart E were developed under this authority. Thus, any used oil that meets the definition of §266.40(b) and is burned for energy recovery is regulated under Subpart E.

2) Question on 40 CFR 261.31: With regard to the 10% rule for F-listed solvents, what does "before use" mean? Does "before use" mean as purchased from a manufacturer, or as used by a generator? For example, if a generator purchased a product that contained 15% toluene and 85% water, then the generator blended the material with more water to prepare the material for use at the generator's facility, so that the resulting material contained 8% toluene and 92% water, how would the waste generated from using this material (as a cleaning solvent) be identified?

ANSWER: With regard to listed F wastes, "before use" means before use at the facility, not when purchased. Thus, in your example, the waste solvent generated would not meet the listing description.

3) Question on 40 CFR 261.31: As I understand the F003 listing, the product, before use, must contain 100% (or technical grade) F003-listed solvent(s) in order for the waste generated from using the solvent to be identified as F003.

In addition, mixtures containing F003-listed solvents and 10% or more of the solvents listed in F001, F002, F004, and F005 are identified with the waste number F003 and the waste number(s) representing the other solvent(s) present. In this case, however, how much of the F003-listed solvent(s) must be present in the mixture for F003 to apply?

ANSWER: You are correct in your first point that, in order to meet the F003 listing description, the product (before use) must contain only (i.e., 100%) the solvents listed under F003 (according to the regulation). With regard to your second question, the regulation states that the listing applies to "all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005." Should the solvent meet the ten percent criteria of F001, F002, F004, and/or F005 solvent and contain F003, the regulation (or the preamble language of December 31, 1985) contains no guidelines for the minimum amount of F003 solvents needed to meet the listing description; therefore, any amount will do so.

- 4) Question on 40 CFR 261.33: There are references in the comment at the end of 40 CFR 261.33(d) to "commercially pure grade and "technical grade." How does EPA define these terms?

ANSWER: The Office of Solid Waste does not have a regulatory definition for the two terms in your question. However, please refer to the Federal Register preamble concerning the comment to §261.33(d) (45 FR 78529, November 25, 1980) for more details. Potentially, "technical grade" or "commercially pure grade" can refer to any and all grades of purity of a chemical that are marketed, or that are recognized in general usage by the chemical industry.

- 5) Question on 40 CFR 261.32: Do K-listed waste numbers apply only to wastes generated from facilities whose primary industries are the industrial categories listed, or do they apply to wastes generated from the manufacturing operations listed, regardless of what the primary industrial category of the generator is? I understand that K062 only applies to industries within specified SIC codes, but does this concept apply to all the other K-listed wastes as well?

ANSWER: The EPA Hazardous Waste Numbers listed under 40 CFR 261.32 are wastes from "specific sources," and the sources are specified in the listing description. These may be the "manufacturing operations listed" to which your letter refers. The primary SIC code for the facility does not limit the applicability of the hazardous waste listing description(s) to that (or any other) facility. For example, production of various organic chemicals with different SIC codes may occur at large, complex facilities.

Thank you for your inquiry. If you need further assistance,
please contact Ed Abrams, Chief, Listing Section at
(202)382-4770.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

cc: Waste Management Division Directors, Regions I - X
Susan Bromm, OWPE (OS-520)

AUGUST 1990

3. Definition of a Used Oil Marketer

A used oil generator sends used oil to a corporation which blends it at one site and then ships it off-site to another of its divisions, where it is burned for energy recovery pursuant to 40 CFR Part 266, Subpart E. Who is the used oil marketer in this instance: the generator or the corporate division which blended the oil and sent it off-site to be burned?

40 CFR Section 266.43(a) defines the term "marketer" to include both "generators who market used oil fuel directly to a burner" and "persons who receive used oil from generators and produce, process, or blend used oil fuel from these used oils (including persons sending blended or processed used oil to brokers or other intermediaries)." In this instance, the generator is not marketing the used oil directly to the burner, even though the burning and blending are performed by the same company. As noted in the February 1985 Hotline Monthly Report Question, one doesn't have to sell the oil to a distinct corporate entity in order to qualify as a "marketer": "(a)lthough the term marketer implies commercial activity, the regulations governing used oil fuel marketers were meant, in part, to regulate transportation of used oil fuel off-site." By sending the used oil off-site, the blender in this instance qualifies as a marketer, despite the fact that the burner and blender are different parts of the same corporation. All the requirements of a marketer specified in Section 266.43, therefore, must be fulfilled in this instance by the blender rather than the used oil generator.

Source: Angela Wilkes, OSW (202) 382-7934
Research: Ken Sandler

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MM - 5 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Determination on the Regulatory Status of Two Waste Oil Management Practices Utilized by Wyoming Coal Companies

TO: Robert L. Duprey, Director
Hazardous Waste Management Division
Region VIII

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

This memorandum responds to your March 4, 1991 request for regulatory determinations regarding two different scenarios in which waste oil is utilized by Wyoming coal companies. These determinations concern: 1) whether the waste oil is a solid waste when used in certain ways, 2) whether the waste oil is being legitimately recycled (rather than disposed of) when used in these ways, and 3) whether the management of the waste oil is subject to Part 266 Subpart E. Although your memorandum does not specify what type of waste the "waste oil" is, our response assumes it is "used oil." The responses to your questions may change based on what the "waste oil" is. For example, a listed oily waste or an unused off-specification product oil could have a different regulatory status than used oil under the different recycling scenarios you describe.

1. Coal Treating.

In the first scenario, the coal companies mix/spray approximately three gallons of used oil per ton/cubic yard of pea-coal (coal crushed to pea size) during railroad car loading. The used oil is used to suppress coal dust while in transit to power plants and, to a lesser extent, to increase the BTU value of the coal. It is my understanding that this is a standard practice in the coal industry and that the pea-coal is burned as fuel.

Because the used oil is being burned for energy recovery (assuming the oil is a spent material rather than an unused commercial fuel oil product), the used oil is a solid waste (see 40 CFR 261.2(c)(2)). Because the coal/oil is ultimately used as a fuel, the material is subject to regulation as a "used oil" being burned for energy recovery (see 40 CFR Part 266 Subpart E).



The toxicity characteristic and TCLP are not applicable as long as the used oil is legitimately recycled. (See the exemption at Section 261.6(a)(2)(iii)).

Insofar as such use of the used oil is a standard practice within the coal industry, our concerns regarding whether this is a legitimate recycling practice focus on the amounts of used oil being used and on the hazardous constituents contained in the waste oil itself. (If such use was not a standard practice, the Agency would be concerned about the actual use of the waste oil for this purpose.) More specifically, if used oil is used in excess of the amounts necessary (e.g., if the oil leaks out of the railroad cars while in transit), such use could be considered sham recycling, subject to regulation as a hazardous waste management activity if the used oil exhibits a hazardous characteristic.

2. Use in making explosives.

In the second scenario, the used oil is used as an ingredient to produce ANFO (an acronym for an explosive normally made by combining ammonium nitrate and a fuel oil, such as a product #1/#2 diesel oil blend or product #2 diesel oil) that is used to remove overburden/coal from the earth. The key determination is whether such use of the used oil is legitimate recycling (i.e., is the waste oil a legitimate ingredient in the production of ANFO). If the used oil is not a legitimate ingredient, the used oil is a solid waste (and hazardous if it exhibits a characteristic of a hazardous waste), and the use of the used oil to produce the ANFO, as well as the use of the used oil-derived ANFO, would be subject to permitting requirements.

A key factor in evaluating whether the used oil is a legitimate ingredient is a comparison of the constituents found in the used oil to the constituents found in the analogous raw material, i.e. fuel oil. To the extent that there are hazardous constituents in the oil that are not found in the fuel oil (or that are present in the fuel oil, but in significantly lower concentrations), the oil is not a legitimate ingredient in the production of ANFO (unless it can be demonstrated that such hazardous constituents are actually useful in the production of the product or to the product itself). [Note: Other factors to consider include an assessment of: 1) how the oil is managed (i.e., whether the oil is handled in a manner similar to the fuel oil before use and whether it is handled in a manner to prevent release to the environment), 2) whether the oil is as effective as the fuel oil when used as an ingredient in ANFO production (i.e., whether more used oil must be used to replace the fuel oil and whether the waste oil-derived ANFO performs as well as the fuel oil-derived ANFO), and 3) whether excessive amounts of oil are used (i.e., excessive amounts of oil being used could indicate an intent to discard)].

If the used oil is not a legitimate ingredient in the production of ANFO, then it is a solid waste being treated by mixing with ammonium nitrate and the toxicity characteristic is applicable. And, if hazardous, the used oil may be subject to the "open burning and detonation" requirements of 40 CFR 265.382. [Note: Whether the used oil-derived ANFO itself performs as well as the fuel oil-derived ANFO is not the determining factor in considering the regulatory status of the waste oil. In other words, just because a secondary material can be used as an ingredient and still result in a usable product does not, by itself, mean that the secondary material is not a solid waste and nor does it mean, necessarily, that the processing is legitimate recycling. Rather, the determining factors must include the consideration of the constituents in the secondary material and the role these constituents play in the production of the product.]

You mentioned in your letter that the Mine Safety and Health Administration (MSHA) is currently allowing/monitoring this practice at Bridger Coal Company from a health and safety standpoint. It should be noted that although there is agency overlap between EPA and MSHA regarding health, safety and environmental considerations, neither agency's jurisdiction supersedes the other's. For example, if EPA determined that the used oil is a legitimate ingredient in the production of ANFO, this would not absolve the coal company from its regulatory obligations under the MSHA. Likewise, if MSHA grants approval of the use of used oil as an ingredient in ANFO, this does not absolve the company from its regulatory obligations under RCRA. Nonetheless, you may find it useful to share this response with your colleague from MSHA, Mr. Dick Fischer, whom you mention in your letter.

I hope this has helped to resolve the issues you have presented regarding the current regulatory status of used oil used as a dust suppressant in the transportation of pea-coal and as an ingredient in the production of ANFO. As you know, we are currently developing regulations applicable to the management of used oil. If you have any further questions regarding the regulation of used oil or the determination of legitimate vs. sham recycling, your staff should contact Denise Wright (for used oil) or Mitch Kidwell (for recycling) at FTS 475-8551.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 16 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Ralph Eschborn
DuPont Recovery Management Systems
Suite 207, Webster Building
3411 Silverside Road
Wilmington, DE 19810

Dear Mr. Eschborn:

This letter is in response to your April 5, 1990 letter to Matt Straus regarding DuPont Recovery Management Systems' proposal to collect, fortify and recycle previously used fixer. In your letter you asked EPA to make a determination on the applicability of the Resource Conservation and Recovery Act (RCRA) Subtitle C requirements to the recycling process.

As I understand your proposed recycling process, photographic fixer that is used in the photographic film development process would be drawn off from the working baths once its concentration of ammonium thiosulfate reaches a certain level (targeted at 175 g/l per attachments to your letter, and not to fall below 150 g/l per your letter). The used fixer solution would then be transported to your Regional Service Centers, "refortified," and then sold back to the customers for use in developing film.

The issue which is raised is whether or not the used photographic fixer solution meets the definition of a "spent material," as the RCRA regulations define the term in 40 CFR 261.1(c)(1). According to Section 261.2(c)(3), spent materials that are reclaimed are solid wastes (and, if they are also hazardous wastes, must be managed according to the RCRA hazardous waste regulations). The definition of a spent material is "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing." (The electrolytic treatment, filtration, and "fortifying" that you propose would appear to be a processing/reclamation activity.)

It appears that the used photographic fixer solution meets the definition of a spent material, even though it may still have enough ammonium thiosulfate to function effectively as a fixer. Because the

used fixer, as a result of contamination, is being removed for processing it is "spent" as far as the customer is concerned (even though, should the customer decide to do so, s/he could continue to use the fixer for its original purpose). You mention the similarities between this and the situation faced by persons reclaiming spent solvent. A similar situation exists with respect to solvent reclaimers who arrange regular pick-ups of used solvents (for example, in vapor degreasers). Although the solvent may still be useful in that its contamination level does not mandate its reclamation, when the reclaimer removes the customer's solvent, it is "spent" insofar as its potential use by the customer.

In contrast, we stated in the January 4, 1985 preamble to the regulation defining materials as solid wastes (50 Federal Register 624) that when solvents used to clean printed circuit boards are no longer pure enough for that purpose, but are still pure enough for use as metal degreasers, they are not yet wastes because the solvent can continue to be used for its solvent properties. Similarly, if you were to remove used fixer from one customer's site and sell it to another customer for use as photographic fixer, that continued use as a fixer would mean the fixer was not a waste. However, the recycling scheme you have proposed does not fit the "continued use" situation; the used fixer is being "fortified," or reclaimed. Thus the used fixer is a solid waste, and, if a hazardous waste, must be managed according to the hazardous waste regulations.

In the recycling situation you have outlined, there are reduced requirements in the federal hazardous waste program for reclaiming precious metals. (Silver is one of the precious metals that can be reclaimed under the reduced recycling regulations.) Handlers of recyclable materials from which precious metals are reclaimed are directed by 40 CFR 261.6(a)(2)(iv) to the reduced recycling regulations in 40 CFR Part 266, Subpart F. Those regulations require only that the generator, transporters, and storers notify EPA of their hazardous waste management activities, comply with the use of the manifest, and keep records to show that they are not accumulating the materials speculatively.

In addition, some of your customers may qualify for the exemption from use of the manifest found at 40 CFR 262.20(e); however, you have not provided us with information for us to make a determination whether they may qualify.

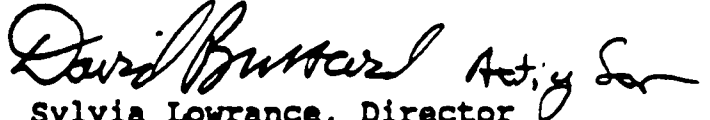
It is encouraging to learn that you are proposing a recycling strategy for hazardous wastes; EPA is investigating ways to encourage environmentally protective recycling.

Finally, the regulations described in this letter are the federal hazardous waste regulations. States and localities may have

more stringent requirements, or requirements that are broader in scope. You will need to contact them to determine what their requirements are.

If you have further questions, please contact Becky Cuthbertson at (202)475-9715, or John Lank at (404)347-4552.

Sincerely,


Sylvia Lowrance, Director
Office of Solid Waste

cc: John Lank



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG - 5 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulatory Status of Residues From Secondary Lead Smelters That Recycle K069 Wastes

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Waste Management Division Directors, Regions I-X

It has come to my attention that there is an issue about the status of wastes such as slags and drosses that result from secondary lead smelting when the smelter returns its emission control dust/sludge (Hazardous Waste K069) to the smelting furnace as feedstock. This memorandum reiterates that such residues are hazardous wastes subject to Subtitle C regulation if they exhibit a hazardous characteristic (e.g., toxicity for lead), and it discusses the Agency's intent regarding whether such residues are considered listed hazardous wastes pursuant to the "derived from" rule.

EPA stated in the February 21, 1991 "Boiler/Industrial Furnace" Final Rule ("BIF Rule") (56 Fed. Reg. 7134, 7144) that residues from metal recovery of listed hazardous wastes normally are considered to be "derived from" treatment of hazardous waste and thus listed hazardous waste themselves. Although this general principle remains valid, we note that EPA did not intend for the "derived from" rule to apply to K069 slags and drosses that result from returning the K069 to the smelting furnace as feedstock. The Agency initially attempted to achieve this result through application of the so-called "indigenous" principle to K069 slags. See August 17, 1988 "First Third" Land Disposal Restrictions Final Rule, 53 Fed. Reg. 31138, 31198-99. The June 1, 1990 "Third Third" Land Disposal Restrictions Final Rule (55 Fed. Reg. 22520, 22565-68) also presumed this result in its discussion of slags from secondary lead production, which were discussed exclusively in the context of D008 wastes. However, a subsequent decision by the U.S. Court of Appeals, in American Petroleum Institute v. EPA, 906 F.2d 726, 740-42 (D.C. Cir. 1990), called into question the validity of the "indigenous principle" as EPA had applied it. (See BIF Rule, 56 Fed. Reg. at 7142, 7144, for a brief discussion of the court's decision.) Although EPA maintained in the BIF Rule that residues from treating listed hazardous wastes in metals recovery processes

generally are subject to the "derived from" rule, the Agency overlooked the recycling practices in the secondary lead industry in promulgating that rule. It was not our intent that the "derived from" rule apply to secondary lead smelting residues that result when K069 dusts are recycled to the smelting process as feedstock.

We expect to address these issues more formally in the context of upcoming rulemakings. In the interim, please contact Mike Petruska at 475-8551 if you have any questions.

cc: Regional Counsel RCRA Branch Chiefs
Gary Jones, OE-RCRA
Steve Silverman, OGC
Susan Bromm, OWPE-RED



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 4 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Richard A. Svanda
Director
Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
Saint Paul, Minnesota 55155-3898

Dear Mr. Svanda:

This letter responds to your January 16, 1991 request for an interpretation concerning the regulatory exemption found at 40 CFR 261.6(a)(3)(ii) for "used batteries (or used battery cells) returned to a battery manufacturer for regeneration." In your letter you explain that the Minnesota State Legislature has passed a bill making it illegal to dispose of four types of waste battery cells in municipal solid waste landfills. The bill went further by requiring manufacturers to establish a system for proper handling and disposal of such batteries.

You are requesting that EPA interpret the exemption for used battery regeneration to include material recovery. In this way, the management of the batteries would be exempt from the otherwise applicable hazardous waste regulations (e.g., manifesting and storage), thus facilitating the recycling of these materials. As alternatives to this interpretation, you request that EPA either: 1) revise 40 CFR Part 266 Subpart G, "Spent Lead-Acid Batteries Being Reclaimed," to include all waste batteries being reclaimed; or 2) recommend to the State regulatory agencies that they use enforcement discretion in implementing the applicable regulations.

In promulgating the exemption for used batteries that are "regenerated," the Agency discussed its reasons for doing so (see the April 4, 1983 proposal preamble, 48 FR 14496). The main reasons were that there was minimal risk of environmental damages and that the activity of regenerating the batteries was very similar to the recycling of a commercial product. Such activities are generally not considered waste management activities, but are more akin to a manufacturing operation. In the January 4, 1985 final rule preamble (see 50 FR 633), EPA defined reclamation to include the "regeneration" of waste materials and the processing of waste materials to recover usable products, but not all reclamation is exempt. In the preamble discussion, the Agency drew a distinction between regeneration (i.e., processing to remove contaminants in a way that restores a



product to its usable original condition, as in the reclamation of spent solvents through distillation) and material recovery (i.e., processing to recover usable material values as the end-products of the process, as in the reclamation of metal values by the smelting of a secondary material). EPA's long-standing policy is that smelting is not regeneration, and batteries sent for smelting are therefore not exempt under this provision, i.e., the definition of "regeneration" is well established and does not include metals recovery. A change in the meaning of "regeneration" is not interpretive, but would require a regulatory change (i.e., amending 40 CFR 261.1(c)(4)), and would have far-reaching implications, e.g., the standards at Part 266 Subpart G for spent lead-acid batteries that are reclaimed would not apply to anything if the spent lead-acid batteries were exempt.

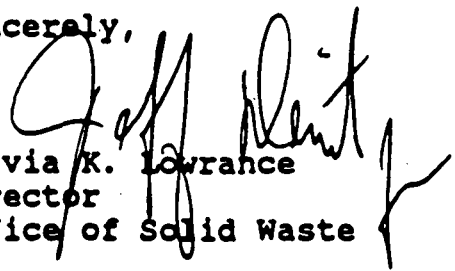
Regarding your request that the Agency extend the current reduced regulatory requirements applicable to spent lead-acid batteries that are reclaimed to all waste batteries, EPA may consider such an amendment to encourage the recycling of waste batteries provided that protection of human health and the environment can be ensured. The reasons for the special requirements for spent lead-acid batteries destined to be reclaimed were discussed in the April 4, 1983 proposal (see discussion 48 FR 14498-99) to the January 4, 1985 final rule. While EPA required hazardous waste permits for storage at reclamation sites (e.g., secondary smelters and battery crackers), EPA did not believe that regulatory controls on generators and transporters were necessary because there were other incentives outside of RCRA that would ensure that the materials would both arrive at their intended destination and would not be improperly managed before their reclamation. For example, spent lead-acid batteries were an established valuable commodity and were customarily reclaimed (indeed, the secondary lead smelting industry is based on the reclamation of lead-acid batteries) and mishandling during transportation was considered unlikely due to Department of Transportation requirements under 40 CFR 122. Also, the Agency believed that the storage of the spent batteries by retailers, wholesalers, or local service stations would be properly managed because these establishments rely heavily on good public relations with the consumer. To the extent that the same considerations are evidenced in the management of other types of waste batteries, the Agency may consider providing a similar regulatory framework in a future rulemaking.

Finally, with regard to your third alternative, it is certainly within the purview of an authorized State to use discretion in how it implements its own hazardous waste program, including how it sets its enforcement priorities. However, EPA has a policy against giving definitive assurances, written or oral, outside the context of a formal enforcement proceeding,

that EPA will not proceed with an enforcement response for a violation of an environmental protection statute or regulation.

We share your interest in finding alternatives to control the disposal of potentially hazardous waste streams that are typically managed in municipal landfills. The situation you described will be considered in efforts underway to address multiple concerns regarding the regulation of hazardous waste recycling. If you have further questions regarding the regulations applicable to these waste types, you may contact Mr. Mike Petruska, Chief of the Regulatory Development Branch, at (202) 475-8551.

Sincerely,



Sylvia K. Lowrance
Director
Office of Solid Waste



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 30 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Paul E. Pentz
Executive Vice President, C.O.O.
SERVISTAR Corporation
P.O. Box 1510
Butler, PA 16003-1510

Dear Mr. Pentz:

This letter responds to your letter of May 13, 1991 concerning the regulation of nickel-cadmium (NiCd) batteries under the Resource Conservation and Recovery Act (RCRA) and state legislation requiring manufacturers to take back spent batteries (take-back programs). We appreciate your interest in developing recycling programs for NiCd batteries and in the RCRA regulation of these programs. We commend your recycling efforts and hope that you will be developing recycling systems not only in states passing take-back legislation, but nation-wide.

We are considering the points that you raise in your letter concerning the difficulties involved in implementing recycling programs for NiCd batteries if they exhibit the TC. We are currently examining the available options to determine how to facilitate the kind of take-back system you describe. We expect it will take us several more weeks to assess options and reach a tentative decision on how to best address your concerns. At that time, we will notify you of the results of our analysis and of our plans to implement the decision.

To ensure that you are informed about our approach to this issue, there are several options that we are exploring. First, we are investigating what could be accomplished in the short term to alleviate the problems you have identified. One possibility is to extend the current regulations governing lead-acid battery reclamation to spent NiCd battery reclamation. As part of this effort, we will be evaluating issues such as the size of the problem, the hazards posed by NiCd battery waste management and recycling practices, and the feasibility of possible solutions.

Second, over the longer term, we are currently analyzing the RCRA regulations to determine how they could best be modified to encourage environmentally sound recycling of hazardous wastes. In particular, we are evaluating how to address reverse distribution systems that involve the return of hazardous wastes

to product manufacturers. In any case, we will continue with this longer term effort to examine fully how best to address this difficult issue, including the possibility of changes to the regulations to accommodate take-back systems.

Finally, we would like to be sure that you are aware that under the current federal regulations, hazardous wastes generated by certain persons are not subject to the full hazardous waste regulations even when subsequently collected and managed by others. Particularly, these excluded wastes include household wastes generated by individuals at home (40 CFR 261.4(b)(1)) and hazardous wastes generated by conditionally exempt small quantity generators (generators who generate a total of less than 100 kilograms of hazardous waste per month; 40 CFR 261.5).

Thank you for your interest in the hazardous waste regulations concerning recycling of NiCd batteries. Should you have any further questions regarding this issue, please contact Mike Petruska, Chief of the Regulatory Development Branch, at (202) 475-8551.

Sincerely,



David Bussard
Director
Characterization and Assessment
Division

Permitting Policies

9501 – PERMITTING PRIORITIES

JUL 9 1982

Guidance for Permitting of Hazardous Waste Incinerators

John Skinner, Director
State Programs and Resource Recovery Division

Regional Hazardous Waste Division Directors

As you are aware, the amendment for hazardous waste incinerators was published in the Federal Register on June 24, and was accompanied by a notice announcing that the suspension on calling Part B's for incinerators has been lifted. The "information burden" clearance from OMB was also received recently (clearance #2050-0002). The Agency is thus in a position to begin the permitting process for these facilities. This memorandum is intended to provide guidance as to the priorities which should be followed in formulating regional plans for permitting incinerators.

In Rita Lavello's memorandum of June 18 to the Regional Administrators various targets were set for the numbers of incinerator permits to be issued in FY 83 and the numbers to be called in FY 83 for issuance in FY 84. These targets were set for each region on the basis of the permitting resources projected to be available. Assuming roughly a year's time from the time a permit is called to when it is issued, adherence to the targets will necessitate calling a substantial number of incinerator Part B's during the remainder of this fiscal year, and during the first quarter of FY 83. Incinerators must be considered to be the first priority of the RCRA permitting program in the coming months.

In establishing priorities for permitting of hazardous waste incinerators we expect to use the same general approach we have been using for storage facilities. That is, new facilities will be assigned the highest priority for permit issuance, and existing facilities should be prioritized according to their potential for causing environmental harm. The following are factors which should be considered in ranking existing incinerators for calling Part B applications:

- o Age of the facility
- o Size
- o Proximity to population centers
- o Complexity of the waste mixtures incinerated
- o Toxicity of the wastes incinerated
- o Prior history of poor operation or air pollution violations

It should be expected that most incinerator facilities will also have some type of storage capability at the site. In such cases the Part B should be called for both the incinerator and the storage facilities. These storage facilities can be counted against the permitting targets in Attachment 1 of Rita Lavelle's June 13 memorandum, according to the specified substitution ratios.

If there are any questions regarding the incinerator permitting program, please contact Randy Chrismon of my staff at 382-4535.

29 DEC 82

MEMORANDUM

SUBJECT: RCRA Land Disposal Permit Strategy

FROM: John H. Skinner, Acting Director
Office of Solid Waste

TO: Regional Hazardous Waste Division Directors

On January 26, 1983, the new Part 264 hazardous waste land disposal regulations will become effective, and EPA will begin the process of requesting Part B applications for selected land disposal facilities. This memorandum is intended to provide guidance on selecting facilities for priority attention in this initial phase of the land disposal permit program.

The decisions as to which land disposal facilities will be permitted first, and why, must be made carefully. Each of these permit actions will require a considerable investment of the Agency's permitting resources, and they must therefore be targeted to achieve maximum environmental benefits. In addition, this permit program will be highly visible and subject to intense scrutiny by the public and the regulated community. To assist in making the initial call-in decisions, we strongly urge that the states be consulted and actively involved in the selection process. Some states may already have developed their own land disposal permit strategies, and these should be accommodated by the regions to the extent that they do not conflict with EPA's objectives.

The primary objective of the RCRA land disposal permit program must be to maximize the benefits to public health and the environment. This is consistent with our previous policies for permitting hazardous waste storage facilities and incinerators. The following priorities should be assigned by the regions in assessing Part B call-ins for land disposal facilities:

- Facilities which are known to be sources of groundwater or surface water contamination. Highest priority should be given to cases where sole source aquifers and other drinking water supplies are being endangered. Information regarding groundwater contamination should be solicited from the states, and may also be available from interim status quarterly reports and other sources.

--Facilities which may be causing environmental damage. This could include facilities which have histories of poor operating practices, prior enforcement actions, inadequate liner systems (where applicable), or inspection reports indicating improper facility designs or unsafe management practices. Facilities which have yet to report groundwater monitoring data, or for which data is questionable should be examined closely for permit action. Again, primary emphasis should be on protection of valuable aquifers and other water supplies.

--Facilities which pose potentially significant environmental risks. Assessment of environmental risks could include the proximity of the facility to population centers, aquifers and surface waters, facility size, nature of the wastes being disposed of, and other environmental factors.

In addition to these primary environmental considerations, several other factors should be taken into account:

New Submissions. Permit applications for new facilities should continue to receive high priority on the region's permitting resources.

Multi-Process Facilities. It has been the Agency's policy that facilities which contain more than one type of process should be covered by one comprehensive permit. As a result, some high priority incineration facilities have not yet been called since they are located with land disposal operations. The regions may wish to target these facilities for the first round of call-ins.

Monofills and Neutralization Surface Impoundments. As explained in the preamble to the new Part 264 land disposal regulations, EPA currently plans to propose adjustments to its regulatory approach for monofills and neutralization surface impoundments. Part B's for these two types of facilities should therefore be given lower priority for call-in unless there is evidence that such a facility is causing environmental damage.

Effects on Competition. It is possible that permitting of a facility or facilities could have some effect on business competition. This is most likely in a case where a commercial land disposal facility is required to obtain a RCRA permit while a nearby competitor is allowed to remain under interim status. Regions should consider effects on competition in formulating their overall call-in strategies (for example, calling all commercial landfills in an area at the same time).

Although the Agency has not yet received OMB approval to call Part B's for existing land disposal facilities, we expect to receive approval by January 26.

The importance of this permitting effort demands that EPA begin its implementation as soon as it is legal and practical to do so. I therefore request that the initial round of call-in letters be prepared in advance by each region so that they can be mailed immediately after the regulations become effective. Subsequent call-ins to fulfill regional target commitments should be timed so as to balance workload demands.

If there are any questions or comments concerning strategies for calling land disposal facilities, please contact Steve Levy at 382-4740.

cc: Regional Hazardous Waste Branch Chiefs
S. Napolitano
B. Weddle
S. Levy
J. Lehman

NOV - 9 1984

MEMORANDUM

SUBJECT: RCRA Reauthorization Statutory Interpretation #1:
Immediate Permit Requirements

FROM: Loe M. Thomas
Assistant Administrator

TO: Addressees

On November 9, President Reagan signed The Hazardous and Solid Waste Amendments of 1984. These amendments to the Resource Conservation and Recovery Act (RCRA) will have a profound effect on almost every aspect of the management of hazardous waste in this country. Provisions are effective in both authorized and unauthorized States. EPA is responsible for implementation until a State is authorized for the new provisions.

This memorandum alerts EPA Regions and States to those new provisions of the Act immediately applicable to RCRA permits issued as of the date of enactment (DOE), November 9, 1984. Permits in process, including draft permits, must address the newly effective requirements before issuance. It is important to note that in authorized States, EPA is responsible for incorporating the new provisions into the permit. Therefore, issuance of a valid RCRA permit in authorized States must be accomplished through joint permit processing with EPA until States are authorized for the new provisions.

To assist in identifying the extent to which draft permits and permits under development, as well as permit applications, must now be revised, the attached table briefly describes, by facility type, the new requirements which are to be immediately reflected in final permit conditions. The attachment does not include provisions that affect the permit program at later dates, nor does it cover early enactment provisions beyond permitting. Subsequent memoranda will describe the full range of new RCRA provisions that affect hazardous waste management programs at the Federal and State level, including joint permit processing, and will include a schedule of implementation guidance.

While new requirements for permit applications already in process may delay the issuance of some permits, other permit processing activities will not be substantially affected. Activities that should continue include:

- Requesting land disposal permit applications. However, under the new legislation, within one year of enactment all existing interim status land disposal facilities must submit their Part B permit application, as well as a certification of compliance with applicable ground-water and financial responsibility requirements, in order to retain interim status. Because of the new statutory requirement, the timeframe provided in the National Permits Strategy for requesting remaining land disposal permit applications, including the one year extension into FY 1986, is eliminated. Current schedules for calling in land disposal facilities should be reevaluated and new schedules should be developed which will conclude all Part B requests for existing interim status land disposal facilities within the first six months of enactment;
- Requesting remaining incinerator applications, as scheduled;
- Processing interim status closures. However, owners and operators of land disposal facilities that received waste after July 26, 1982, and closed between that date and January 26, 1983, should be advised in writing that the new RCRA amendments extend the Part 264 ground-water monitoring and response requirements to them.
- Joint inspection and permit writer visits within ninety days of the permit application request should continue. These visits should be used to assist facilities in understanding new requirements, as well as to offer them advice on application requirements that have not changed;
- Continuing technical evaluations of those parts of the permit applications that are not affected by the RCRA amendments;
- Preparing public participation plans for the environmentally significant facilities whose permit applications are in process or will be requested in FY 1985.

For your information, we are currently in the midst of a process to identify and analyze the issues that reauthorization poses for near-term implementation of the RCRA program. Our aim is to prepare the policies and guidance that the Regions and States need on specific reauthorization issues according to their

significance and immediacy. Additional "RCRA Reauthorization Statutory Interpretations" will be issued periodically to alert Regions, States and other affected or interested organizations to the interpretations of various provisions such as those described in the attachment, as well as to key changes in program directions and policies necessitated by the latest RCRA amendments.

Until guidance is provided on the new permit requirements highlighted in the attachment, I encourage you to call Peter Guerrero, Chief, Permits Branch (PTS-382-4740) to discuss their scope, policy interpretations and implementation procedures.

Attachment

Addressees:

Regional Administrators, Regions I-X
Regional Waste Management Division Directors, Regions I-X
Hazardous Waste Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X
State Hazardous Waste Program Directors
Assistant Administrator for Enforcement and Compliance Monitoring
Associate General Counsel for Solid Waste and Emergency Response
OSWER Office Directors

OCT 1 1985

MEMORANDUM

SUBJECT: Application of November 1988 Deadline to
Waste Piles and Post-Closure Permits
for Jack M. McGarry *fm*

FROM: J. Winston Porter
Assistant Administrator

TO: Harry Seraydarian, Director
Toxics and Waste Management Division

In your memorandum of August 30, you requested our interpretation regarding application of the November 1988 deadline to waste piles and post-closure permits. We agree with your conclusion that all waste piles are subject to §213(c) of HSWA requiring issuance or denial of all land disposal permit applications by November 1988. This interpretation is consistent with §201(k) of HSWA which includes waste piles in the definition of land disposal.

With regard to the priority of post-closure permits, we recognize the difficulty in making final determinations on all land disposal applications by November 1988. We must, however, continue to strive to meet that goal. Therefore, in order to achieve the greatest environmental benefits from available resources, high priority should be placed on the processing of operating land disposal unit applications and Part 265 closures. For those land disposal units where releases are likely or have already been identified, either §3008(h) orders or §3004(u) authority through post-closure permits should be used. The selection of the appropriate mechanism for addressing these releases should be set through the facility management planning process. The issuance of post-closure permits for the remaining land disposal units a lower priority.

If you have any further questions, please contact Peter Guerrero, Chief, Permits Branch at 382-2210.

cc: RCRA Branch Chiefs
RCRA Permit Section Chiefs

WH-33:GFAISON:td:S256:382-2221:9/19/85:Disk

SEP 11 1986

Mr. Kenneth L. Waesche
Director
Waste Management Division
Colorado Department of Health
4210 East 11th Avenue
Denver, Colorado 80220

Dear Mr. Waesche:

Thank you for your letter of July 25, 1986, in which you identified potential issues associated with the permit application for destruction of nerve agents at the Pueblo Army Depot. Because Congress mandated, under P.L.99-145, that the Army destroy the U.S. stockpile of nerve agents by September 30, 1994, EPA considers the permitting of incinerators to destroy the nerve agent stocks a high priority. We set January, 1988, as the target date for final issuance of the RCRA permits because we anticipate it will take at least several years to construct these incinerators once the RCRA permits are issued. The high permitting priority for the nerve agent projects is reflected in EPA's FY-1987 RCRA Implementation Plan.

We recognize that Colorado has other high priority work involving land disposal facilities. However, Colorado and EPA Region VIII must factor the Pueblo permit application into the State grant workplan negotiation process to ensure that it receives priority attention in FY-1987. If you believe the State does not have adequate resources to process this application, you should consider allowing EPA to assume the lead for processing it, though Colorado would be responsible for issuing the permit.

EPA has stressed to the Army that they are subject to State requirements, both technical and administrative, which may be more stringent and also more extensive (i.e., siting approvals) than the Federal requirements, and that the Army needs to work with the States where their facilities will be located to ensure that all State requirements are met in a timely manner. EPA (HQ) is heavily involved in this project to provide technical guidance and assure coordination between the Army, EPA Regional Offices, and the States. This involvement was supported by the States, Regions, and the Army, at the May 15-16, 1986, EPA-State-Army meeting. Chip Stewart of the Colorado Department of Health represented Colorado at that meeting.

The permitting timeframe that we have established for the Army to meet the Congressionally mandated deadline of 1994 is, admittedly, ambitious. There are many aspects of this project, such as Part B application deficiencies and siting difficulties, that may affect the ability to meet the mandated deadline. The Army is well aware of the problems and is working with the States and Regions to resolve these issues early in the process. The EPA-State-Army workgroups which have been active this summer is one attempt to ensure that the Army's applications are complete and thereby minimize the need for multiple and time-consuming Notices of Deficiency (NODs). (Chip Stewart has been a workgroup participant and we appreciate his input.)

With regard to the siting issues, the Army has launched an expanded public information program in an attempt to make the public more receptive to the new facilities. The Army has held two public meetings on their Environmental Impact Statement (EIS) for this project in Pueblo, Colorado, on April 28, and August 21, 1986. Similar public meetings were held for the other proposed sites, which are located throughout the U.S. The purpose of the meetings on the EIS is to inform the public about the strategy and the risks posed by the nerve agent disposal program, and to solicit comments regarding the EIS. The deadline for public comment on the EIS is September 23, 1986. It is my understanding that the Army plans to have an expanded public information program during FY 1987 for all their permit applications.

I appreciate your concern regarding the difficulties which may be encountered in processing the permit application for the Pueblo Army Depot and your raising them to me at this time. I urge you to raise the permitting priority issue and other resource concerns during the annual grant negotiation process with the EPA Region VIII Office, which I believe is underway now.

Please feel free to contact me if you have additional questions or concerns.

Sincerely,

Arthur Glazer
Chief, PAT Incinerator Section

cc: Bruce Weddle
Liz Cotsworth
Ken Shuster
Robin Anderson

Larry Wapensky
Denise Hawkins
Bob Duprey
Jon Yeagley

SEP 17

MEMORANDUM

SUBJECT: Land Disposal Facilities Not on a Permitting or Closure Schedule

FROM: Marcia E. Williams, Director *MD EWM*
Office of Solid Waste

TO: Hazardous Waste Division Directors, Regions 1-10

In November 1986, OSW began tracking progress toward the November 1988 permitting deadline in the RCRA Permit Activities Monthly Report. This report includes a number of facilities that are not on a multi-year strategy for permitting or closure. These facilities lack a multi-year strategy for a number of reasons. In some cases, the facility no longer functions as a RCRA site (e.g., the facility is bankrupt or under Superfund's jurisdiction), or is not considered to be a land disposal facility but has not been removed from the land disposal universe. However, in most cases the facility's RCRA regulatory status is unresolved.

All facilities that are RCRA-regulated facilities are subject to the permitting deadline. Delays in determining their regulatory status could lead to missing the permitting deadline at these facilities. As a result, we should resolve the regulatory status of these facilities as soon as possible.

Attached to this memorandum is a list of these facilities in your Region (this list is found in OSW's RASMENU in the Multi-Year Strategy section under the title, "List of Facilities Not on the Disposal Multi-Year Strategy with C305=D in HWDMS". All regions have access to the RASMENU.). Please resolve the regulatory status of these facilities by November 1, 1987, in the following fashion:

- 1). Send a permitting or closure multi-year strategy for the land disposal facilities on this list that are subject to RCRA regulation to George Garland, Chief of the State Programs Branch. OSW's Information Management Staff (IMS) will then assign the appropriate multi-year strategy designation to these facilities.

- 2). Replace the C305=D designation in HWDMS with the correct C305 designation for any facilities that are no longer subject to RCRA regulation (e.g., if a facility is actually only a RCRA storage facility, it should become C305=S, if it is not a RCRA-regulated facility, C305 should be blank).
- 3). Keep the C305=D designation for all bankrupt facilities or facilities now subject to Superfund. OSWER is currently creating a new designator in HWDMS that will identify these facilities.

In a number of cases, Regions have discovered operating land disposal facilities that do not have either interim status or a permit, ~~operating as land disposal facilities~~. When these facilities are discovered, they are entered into HWDMS as C305=D facilities. They automatically appear in the "not on a permit or closure track" category. IHS moves these facilities into the closure track after consulting with the Region involved. We will continue this practice for all newly discovered illegal facilities.

If you have any questions, please contact Chaz Miller of the Information Management Staff on (FIS) 382-2220.

Attachment

cc: Jack McGraw (without attachment)
RCRA Permit Section Chiefs, Regions 1-10
HWDMS RPO's, Regions 1-10
Kate Bouve (without attachment)
Bruce Weddle (without attachment)
Ken Schuster (without attachment)

WH-563:CM:cm:382-2220:9/11/87:CM's disk7doc99

DEC 14 1987

MEMORANDUM

SUBJECT: RCRA Program Directions for FY 1989

FROM: J. Winston Porter
Assistant AdministratorTO: Regional Administrators
Region I-X

During the development of the FY 1988 RCRA Implementation Plan, several Regions expressed a desire to take a more integrated approach to addressing environmentally-significant facilities and activities. I agree that as we move beyond the November 1988 land disposal permitting deadline, we need to focus even more of our resources on corrective action and closure at the entire universe of environmentally-significant facilities.

To direct our resources toward these goals, we will need effective ways to identify the most significant facilities. With the development over the last few years of facility management plans and multi-year strategies, we began a process to establish priorities based on the environmental significance of facilities.

In an effort to refine and apply this process more broadly, some Regions have established systems to rank all facilities and activities based on potential threats to human health and environmental significance. As we incorporate an even greater emphasis on health and environmental benefits in our decision making and priority setting, it becomes increasingly important for RCRA program managers to continue to refine and apply their screening and ranking systems to identify those facilities posing the greatest health and environmental risks.

In FY 1989, efforts to establish priorities should be expanded to encompass the entire universe of facilities, including all treatment, storage, and disposal facilities, whether operating or closing. We do not envision this to be a highly resource-intensive effort but rather anticipate that existing data sources and Regional and State knowledge of site conditions can, to a large extent, be used to establish priorities. In addition,

-2-

since a number of these priority facilities may ultimately be eligible for management under Superfund, Superfund resources also will be available to assist in the initial screening and ranking through the PA/SI process. This preliminary establishment of priorities is an integral part of the Environmental Priorities Initiative (EPI).

Once environmentally significant facilities have been identified, high priority should be placed in FY 1989 and beyond on addressing corrective action and permitting or closure/post-closure at the most significant facilities, regardless of RCRA and CERCLA authorities to address these facilities. Although the 1989 incinerator deadline will continue to be an important goal, some reallocation of resources from incinerator permitting to other environmentally-significant facilities and activities may be justified on a case-specific basis. As part of this effort to increase our focus on the most environmentally-significant facilities, the Office of Solid Waste is examining revision of the SPMS system to better reflect the level of effort and environmental benefits associated with the various targetted activities.

This memorandum is intended to help focus your initial planning activities for FY 1989. Additional guidance will be provided in the FY 1989 RCRA Implementation Plan, the FY 1989 Agency Operating Year Guidance, and through the EPI Task Force. Also, to help support these planning efforts, OSWER will be issuing guidance on the use of Section 3008(h) orders, RCRA National Priorities List listing policy, and post-closure permits as tools for instituting corrective action. Finally, as part of the EPI, Superfund resources will be used to conduct approximately 1,000 new preliminary assessments (PAs) on the highest priority sites and you will have available for priority setting purposes information on RCRA sites that are now in CERCLIS and that have received PAs and SIs. Guidance on this effort also will be provided.

As we plan for the challenges of FY 1989, I look forward to working with you to ensure the greatest level of environmental benefits are achieved.

cc: Deputy Administrator
Regional Division Directors
Regional RCRA Branch Chiefs
Regional Enforcement Branch Chiefs
Regional Superfund Branch Chiefs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 28 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Impact of Proposed Rules on Permit Deadlines

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-563)

A handwritten signature in dark ink, appearing to read "Marcia Williams", written over the typed name and title.

TO: Allyn M. Davis, Director
Hazardous Waste Management Division (6H)
Region VI

Your memo of November 30 indicated concern that the timing of the proposed location standards and incinerator rules may jeopardize your ability to meet the 1988 and 1989 permit deadlines. The draft location and incinerator standards were developed partly in response to public concerns about shortcomings in the current regulations. I do not believe that delay of these important regulations until after the 1988 and 1989 statutory permitting deadlines would be an environmentally sound decision in light of their importance.

We do recognize, however, that proposing new regulations in the midst of the permitting process has the potential to delay certain permit activities where the public is concerned about EPA and/or the State issuing a permit that does not incorporate the new requirements. In order to minimize any disruption of the permit process, we will continue to share drafts of these rules with the Regions prior to proposal. Where you conclude that the draft rule contains a requirement applicable to a permit you are drafting and that such a requirement is needed to protect human health or the environment, you can use the omnibus provision to add that requirement to the draft permit.

When we propose the new incinerator requirements in the Spring, the preamble will explain that we have provided guidance documents to the permit writers to help them implement the proposed controls immediately under the omnibus authority codified at §270.32(b)(2).

While we currently do not plan to include a similar discussion in the proposed location standards rule, you may also use the omnibus provision to apply a proposed location requirement to a particular facility. The Permit Assistance Teams are available to assist you in resolving any permit specific issues that arise.

In conclusion, I believe that if we work together we can minimize any permit delays these new regulations may cause. Should the regulations legitimately cause you to miss a SPMS commitment, we will be able to renegotiate these on a case-by-case basis. I would expect, however, that we can jointly keep delays to a minimum through regular communication on the direction of the rules and on their impact on particular permits.

cc: Regional Hazardous Waste Division Directors
Thad Juszczak
Bruce Weddle
Joe Carra

RCRA/SUPERFUND HOTLINE SUMMARY

JULY 1990

2. Toxicity Characteristic Waste Part B Permit Application Deadlines

An existing, previously unregulated facility may become subject to RCRA regulations (and begin to operate under interim status, 40 CFR Part 265 regulations) because it is handling a waste newly regulated due to the Toxicity Characteristic (TC). According to the March 25, 1990 Federal Register (55 FR 11798), the facility must submit a Part A Permit application six months from the date of publication in the Federal Register (55 FR 11846) by September 25, 1990. When must the facility submit the Part B portion of the permit application?

The date on which the facility must submit its Part B permit application depends on the type of unit. If the permit is for a facility other than a "land disposal facility," then the TSDF must submit its Part B application when EPA requests it, with a date established that provides the facility at least six months notice. (40 CFR 270.1(b)) If the facility meets the definition of a land disposal facility, then the Part B must be submitted no later than 12 months after the date on which the facility first becomes subject to the permit requirement (40 CFR 270.73(d)(1)), in this situation, by September 25, 1991. The definition of land disposal facility is not codified in 40 CFR, but a statutory interpretation can be found in the September 25, 1985 Federal Register. (50 FR 38946) The Agency interprets the term to encompass the following facilities: "landfills; land treatment units; surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells". (50 FR 38947)

Source: Wayne Roepe, OSW (202) 475-7245
Research: Cynthia Hess

9502 – CORRECTIVE ACTION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 18 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESP

MEMORANDUM

OSWER POLICY DIRECTIVE #9502.00-2

SUBJECT: RCRA, Corrective Action at Federal Facilities

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators, Regions I - X

On March 5, 1986, we published two notices in the Federal Register (copies attached) about corrective action at Federal facilities. I am writing to clarify some possible misconceptions over the two March 5 notices.

The first notice states: (1) §3004(u) applies to Federal facilities; (2) Federal agencies are subject to the same "property-wide" definition of facility as other owner/operators; and (3) the term "owner" applies to individual Federal departments, agencies, and instrumentalities rather than the U.S. government. The second notice announces EPA's intent to promulgate rules to further clarify Federal ownership and to establish a scheme of priorities for corrective action at Federal facilities.

Our office has heard conflicting statements on the effect of EPA's intent to promulgate a rule on national priorities. Some Federal agencies may incorrectly believe that corrective action has been "put on hold" until EPA issues a final regulation. This is not true. Until EPA issues a final rule on priorities for corrective action at Federal facilities, the Regions must continue to process and issue permits, including negotiating corrective action schedules of compliance under §3004(u). Current permitting negotiations on corrective action between EPA and Federal agencies must not be affected by the two Federal Register notices. EPA shall continue to require corrective action at Federal facilities and EPA shall continue to require schedules of compliance in the permits of Federal facilities. Where appropriate, administrative orders under §3008(h) should also be issued to direct Federal agencies to conduct corrective action activities prior to issuance of the permit.

In negotiating schedules of compliance, the Federal agencies may legitimately raise the issue of the relative priority of the facility in question. Where EPA, the State and the Federal agency agree that the facility is of lesser importance, the timeframes for conducting corrective action activities in the schedule of compliance should reflect this. Where the three parties are unable to agree on the schedule for conducting corrective action activities, these disputes should be referred to Bruce Weddle, Director, Permits and State Programs Division, OSW, or Lloyd Guerri, Director, RCRA Enforcement Division, OWPE, to resolve permitting or enforcement issues, respectively. We are prepared to work with the Federal agency Headquarters to obtain resolution of these problems.

I have already written to the major Federal agencies (Departments of Energy, Defense and the Interior) to explain our intent to continue the permit process and to negotiate schedules of compliance for corrective action. I urged each of them to begin considering their own priorities to facilitate the negotiation process, and I will meet with each agency to discuss its plans.

While negotiation of corrective action schedules of compliance may be handled on a case-by-case basis until the final rule is promulgated, there is one area discussed in the Federal Register notice which we cannot address without a regulation. The notice states that in some situations where a private party has partial property interests such as leases or mineral extraction rights, it may be appropriate to define the facility boundary in terms of the private party's property interest rather than the Federal agency's property interest. In these limited situations the private party would be responsible for taking corrective action rather than the Federal government. In all such cases prior to issuance of the final rule, the Federal agency will be considered the owner of such property and will be held responsible for releases from such operations and for releases on its contiguous Federal lands.

I hope this will help to clarify corrective action at Federal facilities. Questions on this subject may be addressed to Paul Connor, Federal Facility Coordinator in OSW (FTS 475-7066) for permitting issues or to Tony Baney, Federal Facility Coordinator in OWPE (FTS 382-4460) for enforcement issues.

Attachments

cc: Director, Hazardous Waste Division,
Regions I-X
Chief, Hazardous Waste Branch,
Regions I-X
Allan Hirsch, OFA
Regional Federal Facility Coordinators,
Regions I-X

August 4, 1986

MEMORANDUM

SUBJECT: Implementation of UIC Corrective Action Requirements

FROM: Michael B. Cook, Director
Office of Drinking Water

Marcia Williams, Director
Office of Solid Waste

TO: Charles H. Sutfin, Director
Water Division, Region V

Basil G. Constantelos, Director
Waste Management Division, Region V

Several issues have recently been raised by Region V regarding how RCRA corrective action requirements under §3004(u) should be addressed when issuing permits to hazardous waste injection wells under the Safe Drinking Water Act. This memorandum is intended to clarify several points of guidance contained in Underground Injection Control Guidance #45, issued on April 9, 1986.

As outlined in the above guidance, a UIC permit may be issued to a hazardous waste injection well at a RCRA interim status facility, without addressing the requirements of RCRA §3004(u). In such case, the well retains RCRA interim status until such time as the entire facility is addressed for the purposes of corrective action. When the §3004(u) requirements have been addressed for the entire facility, the well obtains a RCRA permit by rule. The §3004(u) requirement cannot be implemented selectively at the well only.

For a UIC permit which is issued at an interim status facility for which the §3004(u) requirement is not addressed, a corrective action program for the injection well (as outlined in Section VIII of Guidance #45) should be followed. Such

This has been retyped from the original document.

corrective action programs will be implemented under SDWA authorities, and need not invoke RCRA §3004(u).

To the extent that existing SPMS accounting measures specify that UIC permits for hazardous waste injection wells must also be RCRA permits by rule, we will work to adjust those measures to reflect the guidance in this memorandum.

We appreciate the complexity of these issues, and the difficulties inherent in effectively coordinating and implementing these new requirements. If you have any questions or further problems, please contact Ellen Berick in the Office of Drinking Water (382-5547), or Dave Fagan in the Office of Solid Waste (382-4740).

cc: Hazardous Waste Division Directors, Regions I-X
RCRA Branch Chiefs, Regions I-X
Water Division Directors, Regions I-X
Drinking Water Branch Chiefs, Regions I-X
B. Weddle
P. Baltay



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY POLICY DIRECTIVE NO. 1
WASHINGTON, D.C. 20460

9502.00-4

AUG 21 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Implementation of RCRA Facility Assessments

FROM: J. Winston Porter, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Hazardous Waste Division Directors, Regions I-X

The purpose of this memorandum is to clarify existing policy and to provide further guidance on implementation of RCRA Facility Assessments (RFAs) in the RCRA permit and the RCRA enforcement programs in the Regions.

As outlined in previous guidances, as well as in the FY 86 and FY 87 RIPs, the RCRA Facility Assessment (formerly referred to as PA/SI) is designed to be the first step in the process of implementing the RCRA corrective action process. The general function of the RFA is to provide the basis for the Agency to make preliminary determinations as to whether or not there are, or are likely to be, releases of concern at a facility. The RFA also assists in determining whether or not, and what types of, further investigations or interim measures should be required of the owner/operator.

It is in the Agency's interest, and the public's interest, to have made an overall assessment of actual and potential environmental problems from all sources at a facility, and to have determined, before issuing a permit, what investigations must be initiated at the facility to characterize the nature and extent of the contamination. Each of the Regions has begun to initiate some number of RFAs. It is our understanding, however, that the RFAs being conducted by the Regions and States vary significantly in terms of their technical approach and completeness. In particular, sampling and analysis, which will often be necessary in making determinations in an RFA, is in some cases not being done before the permit is issued. In other cases, RFAs have not been conducted at all prior to issuing permits.

An RFA should be completed before issuance of a RCRA permit. A "complete" RFA will typically include a site visit as well as any sampling and analysis required to make the necessary determinations in the RFA. It should be understood

that, for the purposes of SPMS tracking, only complete RFAs will be counted as accomplishments.

If properly planned and executed, an RFA can be completed within a relatively short time frame (three months or less). Since RFAs can be conducted concurrently with other permit review activities, we believe that doing RFAs prior to permitting should have little impact on permit issuance schedules. There may be some facilities, however, which are scheduled to receive draft permits in the next several months (i.e., this calendar year), but for which an RFA has not been initiated. If completing an RFA for such facilities is likely to substantially delay issuance of the final permit, Regions may consider having the necessary sampling and analysis portion of the RFA done after permit issuance, under a schedule of compliance. In such cases, however, the Preliminary Review and Visual Site Inspection portions of the RFA should be completed before the permit is issued.

It may also be appropriate to conduct an RFA before taking action under RCRA Section 3008(h), the Interim Status Corrective Action Authority. Information from the RFA can provide evidence necessary to meet §3008(h) criteria where it is not otherwise available, and can provide information necessary to properly scope an order. We recognize, however, that it may not be possible to conduct an RFA prior to issuing an order in cases where there is a need to initiate such an action quickly or when a facility is not a current RFA priority. RFA priorities for FY 1987 are all operating land disposal facilities scheduled for permit issuance by November 1988, and 30 percent of the closing land disposal facilities.

Previous guidance has expressed a preference for requiring owner/operators to perform sampling and analysis which may be required to complete an RFA. It should be understood that while owner/operator support, if it can be secured on a timely basis, is encouraged, owner/operator support should not be sought if it cannot be expected to be timely or reliable. Regions have been provided substantial extramural funds to perform RFAs. These funds should be used as necessary to assure timely completion of comprehensive RFAs.

We recognize that completing RFAs prior to issuance of permits may have some implications in terms of timing and resources for certain facilities. We ask that Regions communicate any concerns regarding this policy to Dave Fagan (OSW) at FTS 382-4692.

cc: Regional Hazardous Waste Branch Chiefs
Regional RCRA Permit Section Chiefs
Regional RCRA Enforcement Section Chiefs
M. Williams
G. Lucero
B. Weddle
L. Guerici



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9502.00-6

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Definition of Solid Waste Management Unit for the
Purpose of Corrective Action Under Section 3004(u)

FROM: Marcia E. Williams, Director
Office of Solid Waste

A handwritten signature in dark ink, appearing to read "Marcia Williams", is written over the printed name and title.

TO: Hazardous Waste Division Directors, Regions I-X

The purpose of this memorandum is to provide clarification regarding one aspect of the definition of solid waste management unit as related to RCRA corrective action under Section 3004(u). The concept of a solid waste management unit has been explained in various guidances since the passage of the 1984 Hazardous and Solid Waste Amendments (HSWA).

As explained in the July 15, 1985 HSWA Codification Rule, a solid waste management unit is "... any unit at a facility from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes." This definition was intended to include those types of units which have traditionally been subject to regulatory control under RCRA: container storage areas, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, underground injection wells and other physical, chemical and biological treatment units.

A memorandum from John Skinner to the Hazardous Waste Division Directors (June 14, 1985) further interpreted the term solid waste management unit to include areas at facilities which have become contaminated by routine, systematic and deliberate releases of hazardous waste or hazardous constituents. An example of this type of "solid waste management unit" is a wood preservative "kickback" area, where drippage of preservative fluids onto soils from pressure-treated wood is allowed to occur over time. This interpretation was reiterated in the final RCRA Facility Assessment Guidance and the National RCRA Corrective Action Strategy of October 14, 1986.

Recently, however, several Regions have inquired whether the term "deliberate" meant that the owner/operator had actually intended to create the release of hazardous wastes or hazardous constituents. We wish to clarify that the term "deliberate" in this context was not meant to require a showing that the owner/operator knowingly caused a release of hazardous wastes or hazardous constituents. Rather, the term "deliberate" was included to indicate the Agency's intention not to exercise its Section 3004(u) authority to proceed against one-time, accidental spills which cannot be linked to a discernible solid waste management unit. An example of this type of release would be an accidental spill from a truck at a RCRA facility. Routine and systematic releases constitute, in effect, management of wastes; the area at which this activity has taken place can thus reasonably be considered a solid waste management unit. Therefore, in implementing corrective action under Section 3004(u), Regions and States should consider areas which have become contaminated through routine and systematic releases of hazardous wastes or hazardous constituents to be solid waste management units. It is not necessary to establish that such releases were deliberate in nature.

This concept, and other issues relating to the definition of solid waste management unit, will be addressed in the proposed rulemaking being developed for corrective action under Section 3004(u).

If you have any questions regarding this interpretation of solid waste management unit, please contact David Fagan at FTS 382-4497.

cc: Regional RCRA Branch Chiefs
Regional RCRA Permit Section Chiefs
Gene Lucero
Bruce Weddle
Joe Carra
Mark Greenwood

UNITED STATES ENVIRONMENTAL PRO
WASHINGTON, D.C. 20460

9502.00-7

MAR 8 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONMEMORANDUMSUBJECT: Use of §3008(h) Orders or Post-Closure Permits At
Closing Facilities

FROM: J. Winston Porter, Assistant Administrator

TO: Regional Administrators, Regions I - X

SUMMARY

The purpose of this memorandum is to clarify the use of §3008(h) orders and post-closure permits to address corrective action at closing interim status facilities. The first part of this memo briefly reviews the authorities and their applicability. The second part of this memo presents considerations that may be used in making your decision on whether to use a §3008(h) order or a post-closure permit with §3004(u) and §3004(v) conditions.

I. BACKGROUND

Many closing RCRA facilities require corrective action to mitigate potential threats to human health and the environment. Corrective action at environmentally significant closing facilities should be completed as expeditiously as possible.* Two principal authorities can be used to compel corrective action at these facilities: §3008(h) orders and post-closure permits.** Questions have arisen regarding which authority to use. In particular, advice has been sought on when to use a post-closure permit instead of §3008(h) order to compel corrective action at interim status facilities or facilities that have lost interim status.

*The Environmental Priorities Initiative (EPI) provides a priority-setting mechanism for identifying and evaluating environmentally significant facilities.

**Two other RCRA corrective action authorities, §3013 and §7003, may also be available. Additionally, Superfund authorities may also be applicable. Furthermore, these authorities may be used in combination.

A. Section 3008(h)

Section 3008(h) authorizes EPA to issue corrective action administrative orders and to initiate civil actions for facilities currently under interim status, facilities that once had interim status, or facilities that should have had interim status. A §3008(h) order may be issued whether the facility is operating (prior to receiving a permit), is closing, or is closed.

Section 3008(h) orders may address releases or potential releases to all media. EPA may use these orders to require study or cleanup actions where the Agency has made the determination that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility. (Guidance on the interpretation of §3008(h) is provided in a December 16, 1985 memorandum from J. Winston Porter.)

B. Section 3004(u)

Section 3004(u) requires every treatment, storage or disposal facility that is seeking a RCRA permit after November 8, 1984 to undertake corrective action for releases of hazardous waste or hazardous constituents from solid waste management units (SWMUs), regardless of when the waste was placed in the unit involved. Section 3004(u) allows the use of schedules of compliance in the permit to accomplish corrective action.

C. Post-Closure Permits

Post-closure permits are required for any landfill, waste pile, surface impoundment, or land treatment unit which received waste after July 26, 1982, or which ceased the receipt of wastes prior to July 26, 1982 but did not certify closure until after January 26, 1983. However, a post-closure permit is not required if the unit closes by removal under standards equivalent to §264 standards.* Post-closure permits are also not required for treatment and storage units, although under the new tank regulations (51 FR 25422), post-closure permits may be required. For treatment and storage units, we

*Interim status units that closed by removal after January 26, 1983 under Part 265 standards are subject to post-closure responsibilities unless such units demonstrate that the facility meets the closure by removal standards of Part 264. (See December 1, 1987, 52 FR 45788 amending 40 C.F.R. §270.1(c)).

recommend that a RCRA Facility Assessment (RFA) be completed and a §3008(h) order be issued, if necessary, before the operating permit is denied.

Under current regulations post-closure permits are required even where a facility has closed under interim status and a §3008(h) order has been issued to address corrective action. The terms of any §3008(h) order may, of course, be made part of the post-closure permit, as appropriate.

II. Considerations in Selecting §3008(h) Orders or Post-Closure Permits

As discussed above, there are situations in which only one authority is applicable. For example, for units not subject to post-closure care (e.g., interim status treatment and storage facilities or facilities with surface impoundments that have clean closed according to Part 264 standards), §3008(h) orders are the appropriate corrective action authority. In many cases, however, either authority may be used; e.g., interim status land disposal facilities subject to the post-closure care requirements.

Since §3008(h) and §3004(u) provide overlapping authority in terms of the scope and type of cleanup actions which may be required of interim status facility owner/operators, when a choice is available we leave the decision to the Regions to determine whether to use a §3008(h) order or §3004(u) conditions in an operating or post-closure permit. The following considerations are offered to assist you in deciding, on a case-by-case basis, how to proceed.

- o A post-closure permit may be an easier approach than a §3008(h) order in the case of a willing owner/operator. A §3008(h) order/judicial action may be the preferable first step where the owner/operator is uncooperative, or where there is disagreement with the Agency or uncertainty over the scope of activities to be conducted. (Some regions have found that the owner/operator may prefer a post-closure permit instead of a §3008(h) order because of the perceived stigma attached to an enforcement order.)

- o In situations which will require long-term oversight, it may be more appropriate to determine at the outset to use a post-closure permit instead of issuing a §3008(h) order. Permits are designed to address long-term activities. Enforcement authorities, which may involve judicial action and approvals, are less well-suited for activities requiring long-term oversight. (Of course, as noted above the cooperativeness of the owner/operator will influence this decision).

o A §3008(h) order may be more appropriate where a prompt action is necessary and where a post-closure permit is not soon scheduled to be issued.* This is because §3008(h) orders allow more flexibility in both timing and scope than permits. For example, a §3008(h) order could focus only on the specific cleanup requiring immediate attention without having to address post-closure care or corrective action elsewhere on the facility. Conversely, a post-closure permit must address, to the extent necessary, releases from all SWMUs as well as post-closure care activities.

o A §3008(h) order may be more appropriate than a post-closure permit where there is concern that releases are coming from sources other than SWMUs. The language of section 3008(h) refers to releases from facilities. This may be broader language than that in section 3004(u) which refers to releases from SWMUs.

CONCLUSION

These considerations should be evaluated and weighed in any decision on which corrective action authority should be used. The Agency's objective for closing facilities is to minimize the post-closure release of hazardous wastes and hazardous constituents into the environment and to address corrective action for existing or potential releases at the time of closure. The post-closure permit provides a coordinated one-step mechanism for addressing corrective action at the entire facility together with post-closure care for regulated units. In the long-run, therefore, we anticipate that post-closure permits should serve as the routine mechanism for the majority of corrective actions at closing land disposal facilities. Under current regulations, use of §3008(h) will not obviate the need to issue a post-closure permit, unless closure by removal takes place and satisfies Part 264 standards as required under the new rules promulgated at 52 FR 45788. Hence, complementary use of both a §3008(h) order and a post-closure permit (with or without additional §3004(u) conditions added) remains an important option.

*If an imminent and substantial endangerment to health or the environment exists, a §7003 order may be appropriate.

December 7, 1984

MEMORANDUM

SUBJECT: Region VIII Policy
Oily Wastewater Treatment Ponds

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Robert L. Duprey, Director
Region 8
Air and Waste Management Division (8AW-WM)

We have reviewed the proposed Region VIII position discussed in your memos dated May 1 and October 12, 1984 that define permitting coverage of refinery wastewater treatment ponds. As your staff may have informed you, there have been several meetings between my staff and yours to discuss this problem. We have also met with Chevron, Phillips, Tosco and API and, separately, with Region IX to discuss the issue. We share your concern about the threat posed to ground and surface waters by some of the unlined wastewater ponds that treat or store oily wastewaters. However, we believe that the similarity of downstream unit sludges (in terms of lead and chromium levels) to those found in the API Separator are not a sufficient basis for defining the material in the downstream units as API Separator Sludge. In fact, the similarity of these sludges was a significant factor in our decision to move forward on an expanded listing to regulate these pond sludges.

Specifically, we are planning in a forthcoming listing to regulate oil/water/solids separation sludges generated in the wastewater treatment system prior to biological treatment. This listing was originally proposed in November of 1980. We expect to issue a notice identifying all of the available data in support of the listing and to provide some clarifications in response to previous comments. Current plans are to promulgate that listing by late summer.

While the listing revision should cover most sludges generated in these ponds, we realize that does not address your

This has been retyped from the original document.

short term problem. We do have some suggestions in this regard. Section 206 of the Hazardous and Solid Waste Amendments of 1984 provides that persons obtaining RCRA permits must undertake corrective action for all releases of hazardous constituents from any solid waste management unit as a condition of obtaining the RCRA permit. Thus, if a refinery pond is releasing hazardous constituents and the refinery seeks a RCRA permit for any unit at the facility, the refinery would have to undertake corrective action for the releases from the pond. (This could be done either through the permit, or pursuant to an interim status compliance order.) This principle applies even if the pond is not considered to hold a hazardous waste, since Section 206 applies to releases of hazardous constituents from solid waste management units.

A second option for addressing these pond sludges is to regulate the wastes as hazardous based on their exhibiting one or more of the characteristics of hazardous waste (see 40 CFR §261.21-24). You mentioned this option in your recent letter with respect to EP Toxicity. However, your staff seems to have overlooked corrosivity (high pH has been found in some COD ponds) and reactivity (§261.23(a)(5)). It is likely that some refinery pond sludges will contain excessive levels of reactive sulfides.

The final option that could be used to deal with downstream impoundments and basins is applicability of the mixture rule. It is imperative, however, that your staff understand the proper framework for the application of the mixture rule. To maintain that a pond is regulated because an API Separator is an inherently inefficient unit and allows sludge to be carried through to a pond, is inaccurate. Likewise, downstream oxidation ponds are not regulated simply because they sometimes receive flow that has bypassed the API Separator. In both cases, the listed API Separator Sludge has not yet been generated. Rather, API Separator Sludge is generated when it is deposited in the bottom of an API Separator. The mixture rule is relevant only in those cases where previously deposited sludge is scoured, resuspended, and then carried out of the unit with the wastewater. If the Region can make a case for scouring from a separator, the mixture rule is applicable and the wastewater becomes a hazardous waste until delisted or discharged to a stream subject to regulation under the Clean Water Act.

The burden of proof in the demonstration of scouring is upon the Agency. Such an argument, although technically complex, can be made based on well established hydrodynamic principles. Realizing that there are limited resources and capability for developing such an argument by the Regions, we have (at the

request of your staff) taken an active role in the development of guidance for the application of this argument. Attached to this memo is a preliminary list of factors that may be required to establish the occurrence of scouring from a given separator. These points are being provided at this time to facilitate the initiation of information gathering in the more serious cases.

We have also requested that the Office of Waste Programs Enforcement (OWPE) develop more thorough guidance. That effort is being conducted by their contractor (Metcalf & Eddy). We anticipate that your staff will be contacted by them in the near future. The contractor should be able to provide some direct assistance to your staff in some specific cases, thereby serving the dual purpose of training and resolution of specific factors of concern. Mike Barclay (FTS: 475-8727) of OWPE is the Headquarters lead on that project and should be contacted for any further information. Ben Smith of my staff (FTS: 475-8551) is our technical expert in this matter and the lead on our study of petroleum refineries and their wastes. Do not hesitate to contact him if additional questions arise pertaining to this or other matters.

cc: RA's Region I-X
Mike Barclay (OWPE)
Steve Siverman (OGC)
Susan Manganello (ORC, Region VIII)

Attachment

Factors To Be Evaluated In Determining The Potential For Separator Sludge Scouring

Sludge Accumulation Practices - Continuous sludge removal from the separator rules out the occurrence of scouring. At the other end of the spectrum are facilities that allow sludge to accumulate to considerable depth. Accumulation to a depth greater than 50% of the flow depth makes scouring probable. Intermediate ranges of accumulation will probably depend more heavily on other factors.

Flow Variability - Unless overloaded, units with maximum-to-minimum, flow ratios at the separator effluent of less than 2 and inlet flow ratios of less than 4 are probably not experiencing much resuspension of sludge.

Poor Separator Design Or Operation - Factors contributing to scour conditions include: excessive, inlet or outlet zone turbulence; nominal horizontal velocities greater than 30 feet per minute; nominal overflow rates (flow/surface area) greater than 10,000 gallons per day/square foot of basin; basins less than 30 feet in length; operation under pressure (e.g., with a backwater at the inlet of a separator with a frozen surface), settling zone turbulence (sometimes seen as bubbling with solids entrainment).

Separator Effluent Characteristics - Excessive weir loading (e.g., operation with a suppressed weir, flow depth greater than a foot) facilitate carryover of resuspended particles. Visible, large (diameter greater than 1/4 inch) sludge particles in the separator effluent are strong evidence of scouring associated with microbial degradation of deposited sludge.

Sludge Characteristics - Particle size distribution as measured by wet sieve and hydrometer analyses is necessary information to define scour conditions. The presence of coke fines in the wastewater influent is also important because that size of particle (<.1mm) is non-cohesive and highly susceptible to resuspension.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 6 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: RCRA Reauthorization Statutory Interpretation #3:
Immediate Implementation of New Corrective Action
Requirements.

FROM: Jack W. McGraw
Acting Assistant Administrator

TO: Addressees

BACKGROUND

One of the most important early-enactment provisions of the RCRA reauthorization is the new authority for corrective action for continuing releases [Section 3004(u)]. As you know, this provision is applicable to all permits issued after November 8, 1984. This memorandum provides preliminary guidance on the new information to be submitted with Part B applications to satisfy the new requirements. The guidance applies to those facilities whose Part B applications have been requested, and for which final determinations were not made prior to November 8, 1984.

The new continuing release provision in effect requires that each facility seeking a RCRA permit must (a) identify all solid waste management units at the facility; (b) identify releases of hazardous wastes or constituents that have occurred from those units; and (c) perform corrective action for those releases. Virtually all regulated facilities will be affected by this provision, since it applies to inactive and closed units at such facilities, as well as to the operating units subject to permitting.

Much of the implementation of the continuing release provision is subject to interpretations which have not yet been made by the Agency. An effort is currently underway to clarify the full impact of this provision on the RCRA permit program.

Policy guidance on implementation of the new §3004(u) authority, including the requirement for financial assurance for corrective action, is expected to be issued in draft within a month. Separate guidance is being developed on how to determine whether or not a facility has a release that may pose a threat to human health and the environment. Additional guidance on the technical aspects of different types of corrective action programs, and on the use of interim status corrective action orders, will also be issued.

ACTION

Several actions can be taken to implement this new corrective action requirement prior to issuance of the above mentioned guidance packages. Specifically, we recommend that a notice be sent to each facility whose Part B has been requested and for which a final determination was not made prior to November 8, 1984. This notice should provide a general explanation of the new corrective action provision, and the fact that additional information must be submitted to satisfy the new requirement. In general, EPA will need to obtain the following information in order to determine whether a facility is in compliance with section 3004(j):

- (a) Identification of each unit at the facility that might fall within the definition of solid waste management unit, that has not already been described in the Part B application. Although no final decision has yet been made on the definition, a solid waste management unit may include any landfill, surface impoundment, waste pile, land treatment unit, injection well, incinerator, tank (including wastewater treatment units, elementary neutralization units, and tanks used in reuse/recovery operations), container storage area, transfer station, or waste recycling operation at the facility. The applicant should also understand that EPA views the "facility" as not limited to the area where wastes are managed, but includes the entire contiguous property under the control of the owner or operator. For each unit, the following information should be supplied:

- Type of unit
- Location of each unit at the facility on a topographic map
- General dimensions
- Whether the unit is currently operating, and if not, when the unit closed or ceased operating
- Description of the wastes that were placed in the unit (where available)

- (b) All information available to the owner/operator on whether or not releases have occurred from any of the solid waste management units (including the hazardous waste units) at the facility. Releases to ground water, as well as to other media (e.g., soils, surface water, air) should be described. Such information would include available ground or surface water monitoring data, results of soil sampling, spill reports, inspection records, etc.

We recommend that in most cases, applicants who have already submitted their Part B application should be given no more than 30-45 days in which to submit this information.

It should be understood that there is currently no provision in 40 CFR Part 270 which requires submission of the above information in Part B applications. In a sense, therefore, submittal of the information by permit applicants is "voluntary." However, section 3005(c) of the Act provides that permits can be issued to facilities only upon a determination that the facility is in compliance with the requirements of Section 3004 of the Act. Therefore, failure to submit information to demonstrate a facility's compliance with the §3004(u) requirement would be grounds for denial of the permit.

The above information, when submitted by the permit applicants, will allow the permit writer to make an assessment as to which facilities are likely to require corrective action programs, and how permitting and enforcement priorities might subsequently be realigned.

Some States may have existing regulatory requirements analogous to the new RCRA continuing release provision. Such States may already have gathered substantial information on solid waste management units and releases at their facilities. In preparing the notices to be sent to permit applicants, Regional Offices should coordinate with their States to avoid requesting such information that has already been collected by a State agency.

Some facilities may contain only units with a relatively low likelihood of having caused a release (e.g., indoor container storage areas, above-ground tanks, etc.). In such cases, the Region/State may consider going forward with issuing the permit, providing that:

- The owner/operator has indicated that there is no information indicating a release from any of the units; and
- An assessment of the facility, based on a site inspection and other available information, confirms that a release that poses a threat to human health and the environment is unlikely to have occurred.

For many facilities, the absence of a release will not be so easily established. Further, some facilities will already have determined that such a release(s) has occurred. For these facilities further information will have to be developed to identify and/or characterize releases. As noted earlier, guidance on these issues will be forthcoming.

Any questions or comments on procedural aspects of implementing this corrective action authority should be directed to Dave Fagan (382-4497). For information on the guidance packages being developed, please contact Art Day (382-4658), or George Dixon (382-4494).

Addressees:

Regional Administrators, Regions I-X
Regional Waste Management Division Directors, Regions I-X
Hazardous Waste Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X
State Hazardous Waste Program Directors
Assistant Administrator for Enforcement and Compliance Monitoring
Associate General Counsel for Solid Waste and Emergency Response
OSWER Office Directors

June 17, 1985

Regulation of Wood Treatment Plant Drip Areas as Solid Waste Management Units

John Skinner, Director
Office of Solid Waste

James C. Scarbrough, Chief
Residuals Management Branch, Region IV

In your April 23, 1985, memo, you asked whether the ground areas at a wood treatment plant that receive drippage from the treated wood are solid waste management units and, therefore, subject to the continuing release provisions of HSWA. We agree with you that these areas are solid waste management units, subject to the continuing release and interim status corrective action order requirements of the 1984 RCRA amendments.

As we understand the process, when the pressure treated wood is removed from the treating cylinder, excess preservative is forced out of the wood by the internal pressure still remaining in the wood. This is commonly referred to as kick-back drippage. The length of time over which drippage occurs varies from about four to twenty-four hours, depending on the type of wood treated, the series of pressure or vacuum treating cycles employed, and the preservative solutions used. Often, a final vacuum is drawn on the preserved wood which then delays the onset of this drippage by an hour or so after it is taken out of the pressure treating cylinder.

Although some of these residuals have been found to contain significant concentrations of carcinogenic substances (such as chrysene and benzo(a)pyrene), they are not currently classified as hazardous wastes under RCRA, either as discarded commercial chemical products under Section 261.33 or otherwise as listed or characteristic wastes. The Agency is now obtaining data to determine whether these residuals should be listed along with other wastes from the wood preserving industry.

These residuals, however, are definitely solid wastes. Therefore, any specific ground area that routinely receives this

This has been retyped from the original document.

kick-back drippage would be considered a "solid waste management unit" since it is a discrete area of the facility where wastes have been or are deliberately, routinely, and systematically placed or allowed to leak onto the land. The unit is thus subject to the corrective action requirements of 3004(u), providing that the facility is seeking a RCRA permit.

If the facility has interim status but is not seeking a permit, enforcement authorities under Section 3008(h) and others can be used to require necessary corrective measures.

I trust that this response is helpful to you in preparing your case in the compliance order proceeding regarding a wood treater's Part B permit application.

June 14, 1985

MEMORANDUM

SUBJECT: Regulatory status of wood preservative "Kickback" emissions

FROM: John H. Skinner, Ph.D.
Director
Office of Solid Waste (WH 565)

TO: Elizabeth Maxwell
Assistant Regional Counsel
Region V

In a March 29, 1985 memo, you requested clarification of the regulatory status of the ground area around tracks or other areas outside of the immediate treating cylinder area where drippage collects from newly treated wood.^{1/} This area (referred to as the "kick-back drippage area") is a solid waste management unit, subject to the corrective action requirements of the 1984 RCRA amendments.

As we understand the process, when the pressure treated wood charge is removed from the treating cylinder, excess preservative is forced out of the wood by the internal pressure still remaining in the wood. This is commonly referred to as kick-back drippage. Typically, a charge of newly treated wood is allowed to rest in a specific area while still loaded on the railroad platform car for some time during this pressure equalization process. In some cases, this drippage may be partially collected in troughs or sumps beneath the tracks. The length of time over which drippage occurs varies from about four to twenty-four hours, depending on the type of wood treated, the series of pressure or vacuum treating cycles employed, and the preservative

^{1/} While the Agency has determined the status of this area, we are currently evaluating other parts of wood preserving plants to determine if these areas also should be classified as land-based units.

solutions used. Often, a final vacuum is drawn on the preserved wood which then delays the onset of this drippage by an hour or so after it is taken out of the pressure treating cylinder.

At Southern Wood Piedmont's Waverly, Ohio facility, some of this residual is collected in troughs beside the railroad track and periodically dredged out manually. Substantial amounts, however, also drip onto the ground. The facility has supplied analytical data demonstrating significant concentrations of carcinogenic substances in these deposits (e.g., chrysene at 2500 ppm and benzo(a)pyrene at 730 ppm).

Although these residuals are not currently classified as hazardous wastes under RCRA, either as discarded commercial chemical products under Section 261.33 or otherwise as listed or characteristic wastes, the Agency is now obtaining data to determine whether these residuals should be listed along with other wastes from the wood preserving industry.

These residuals, however, are solid wastes. The specific ground area which routinely receives this kick-back drippage would be considered a "solid waste management unit," since it is a discrete area of the facility where wastes have been or are deliberately, routinely, and systematically placed or are allowed to leak onto the land. The unit is thus subject to the corrective action requirements of 3004(u), providing that the facility is seeking a RCRA permit. If the facility has interim status but is not seeking a permit, enforcement authorities under Section 3008(h) and others can be used to require necessary corrective resources.

cc: Regional Administrators
Regional Branch Chiefs

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JUNE 85

Corrective Action

1. A treatment facility is applying for a Resource Conservation and Recovery Act (RCRA) §3005 operating permit. This facility currently manages scrap metal destined for reclamation. On January 4, 1985, (50 FR 614), the Agency declared that scrap metal, when recycled, is a Subtitle C waste. Concurrently, the Agency announced that it would not regulate scrap metal destined for recycling at this time. Because this facility is seeking a §3005 operating permit, the facility must address releases of hazardous waste or constituents from any solid waste management unit pursuant to §3004(u) (corrective action). Must this facility address the unregulated scrap metal management area concerning releases?

Even though scrap metal destined for recycling is not regulated, it is considered a solid waste. Thus, a release of a hazardous waste or constituent at the scrap metal management area (solid waste management unit) must be addressed pursuant to §3004(u) of RCRA.

Source: Dave Pagan (202) 382-4497

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

AUGUST 85

Corrective Action for Continuing Releases (§3004(u))

2. An owner/operator of a treatment, storage or disposal facility (TSDF) is preparing a RCRA Part B application. The facility design includes sumps holding wastewater. The wastewater is considered a listed hazardous waste because it contains spent chlorinated solvents listed in §261.31 and the mixture rule of §261.3(a)(2)(iv) applies. Wastewater is held in the sump for less than 90 days. Is the owner/operator required to address these sumps in the Part B application?

Assuming the sumps are made of non-earthen material and have sufficient structural integrity, they would be regulated as tanks (see Regulation Interpretative Letter #110 regarding tanks versus surface impoundments and §264.191). Section 262.34 states that hazardous waste may be stored in tanks or containers for 90 days or less without a RCRA permit provided compliance with §262.34 (a) through (c). On this basis alone, the sumps need not be addressed in the Part B application (§264.1(g)(3) and §270.1(c)(2)(i)).

However, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require that information be submitted regarding solid waste management units, including sumps, for RCRA permits issued after November 8, 1984. The new corrective action provisions for continuing releases (§3004(u) of the Solid Waste Disposal Act, as amended) requires identification of all solid waste management units at the

facility and releases of hazardous wastes and hazardous constituents from these units. Guidance on the §3004(u) corrective action provision is found in RCRA Reauthorization Statutory Interpretation #3 (RSI #3) dated February 5, 1985, and the July 15, 1985, codification rule (50 FR 28711). RCRA permits issued after November 8, 1984, must contain compliance schedules for corrective action and assurances of financial responsibility for completing such corrective action per §264.101 (50 FR 28711).

Source: Dave Fagan (202) 382-4497



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9502.1985(06)

OCT 29 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Application of HSWA Sections to DOE's Oak Ridge Facility

FROM: Marcia Williams *Marcia*
Director
Office of Solid Waste

TO: James H. Scarbrough
Chief, Residuals Management Branch
Waste Management Division, Region IV

Your July 25, 1985, letter asked several questions regarding the applicability of HSWA requirements to the DOE Y-12 facility at Oak Ridge. The first provision you asked about is §3004(u), which is invoked only when a facility is seeking a RCRA permit. HWDMS indicates that the Y-12 facility is seeking a permit, which triggers the corrective action authority to address releases from solid waste management units (SWMUs). However, Oak Ridge is a Federal facility. The applicability of §3004(u) has been called into question for Federal facilities, and EPA is involved in on-going negotiations with other Federal agencies on this issue. Specifically, the final codification rule states that:

The extent to which the above interpretation applies to Federal facilities raises legal and policy issues that the agency has not yet resolved....Permit applications for Federal facilities will continue to be processed, but recognizing that final Federal facility permits may not be issued where these unresolved issues exist, EPA will make its best efforts to resolve these issues in the next 60 days.
50 ~~Fed.~~ Reg. 28712 (July 15, 1985).

If the ~~facility~~ is seeking a RCRA permit and it has no SWMUs or if it has SWMUs that it agrees to address, the permitting process can move forward and corrective action pursuant to §3004(u) can progress accordingly. However, if the facility is not willing to address SWMUs, the permitting process for this facility becomes more complex. For further information on §3004(u), please contact Dave Fagan of the Permits Branch at FTS 382-4751.

The final codification rule does not set standards for implementation of §3004(v) and states that in the interim decisions to issue orders for this section shall be done on a case-by-case basis. This section of HSWA provides that:

As promptly as practicable after the date of enactment...the Administrator shall amend the standards...regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste...to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment....

If you are interested in pursuing such an order for this facility, you should contact Ginny Steiner of the Office of Waste Programs Enforcement at FTS 475-9320.

We are as yet unsure what mechanism to use in applying §3008(h) to Federal facilities due to our dispute resolution policy for such facilities. Normally, however, if a facility is operating under interim status, the authorities in §3008(h) can be used to deal directly with on-going environmental problems. The trigger for issuing such orders and initiating civil referrals is the existence of a release. However, because of the nature of the §3008(h) provision, it is subject to limitations. Your question is not entirely clear, however, in terms of what units are leaking and their permitting status. You state that the pond is a RCRA unit and then state that it has no ground-water monitoring system. If the pond is operating pursuant to the interim status requirements, it must have a ground-water monitoring system. If you have specific questions on this process or how it should be implemented, please call Ginny Steiner at the number listed above.

In addition, you have asked whether it is significant in determining the applicability of RCRA corrective action that one or more contaminants being released through the NPDES point are not specified in the permit. This factor is not significant in determining RCRA's applicability to the release. The key question is whether the release from an out-fall addressed in the NPDES permits is within the exemption for NPDES discharges found in §1004(27) of RCRA. We are currently developing guidance covering RCRA jurisdiction and NPDES discharges.

You have also asked whether a release which occurred prior to the date of the NPDES permit could be addressed by corrective action measures pursuant to §3004(u). Corrective measures could apply to a release which occurred prior to the issuance of a NPDES permit. As a matter of policy EPA has decided to

rely on the NPDES program to address releases, otherwise within the scope of §3004(u), that are addressed by that program. See 50 Fed. Reg. 28714 (July 15, 1985). In keeping with that policy it may become necessary to distinguish between releases which occurred prior to the issuance of a NPDES permit and any subsequent releases. As a practical matter this may be difficult if not impossible to do; therefore, EPA policy is that where such a distinction cannot be made and the existence of a prepermitted release is clear, the entire contaminated area is subject to clean up.

Please feel free to contact Chaz Miller, our Federal Facilities Coordinator, at FTS 382-2210 if you have any further questions on these issues; we are developing the policies for these new statutory authorities as quickly as possible.

cc: Thomas W. Devine, Director, Waste Management Division,
Region IV
RCRA Branch Chiefs, Regions I-X
State Programs Branch, OSW
Permits Branch, OSW



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 1985

9502.1985(09)

MEMORANDUM

SUBJECT: Interpretation of Section 3008(h) of the Solid Waste Disposal Act

FROM: *J. Winston Porter*
J. Winston Porter, Assistant Administrator
Office of Solid Waste and Emergency Response

Courtney M. Price
Courtney M. Price, Assistant Administrator
Office of Enforcement and Compliance Monitoring

TO: Regional Administrators
Regional Counsels
Regional Waste Management Division Directors
Director, National Enforcement Investigation Center

As part of our effort to support case development activities undertaken by United States Environmental Protection Agency personnel, we are transmitting to you guidance on the use of Section 3008(h), one of the corrective action authorities added to the Solid Waste Disposal Act by the Hazardous and Solid Waste Amendments of 1984. As you are aware, Section 3008(h) allows the Agency to take enforcement action to require corrective action or any other response necessary to protect human health or the environment when a release is identified at an interim status hazardous waste treatment, storage or disposal facility. Because the authority is broad, both with respect to the kinds of environmental problems that can be addressed and the actions that the Agency may compel, we have produced the attached document to provide initial guidance on the interpretation of the terms of the provision and to describe administrative requirements. The document will be revised as case law and Agency policy develop. In addition, the Office of Solid Waste and Emergency Response intends to develop technical guidance on various types of response measures and the circumstances in which they might be appropriate.

In view of the need to issue RCRA permits and to ensure that the substantial number of interim status facilities expected to cease operation in the near future are closed in an environmentally sound manner, we encourage you to use the interim status corrective action authority as appropriate to supplement the closure and permitting processes. Questions or comments on this document or the use of Section 3008(h) authority in general can be addressed to: Gene A. Lucero, Director of the Office of Waste Programs Enforcement (FTS 382-4814, WH-527) or Fred Stiehl, Associate Enforcement Counsel for Waste (FTS 382-3050, LE-134S).

Attachment

I. INTRODUCTION

The Hazardous and Solid Waste Amendments of 1984 have substantially expanded the scope of the RCRA hazardous waste management program. One of the most significant provisions is the interim status corrective action authority, which allows EPA to take enforcement action to compel response measures when the Agency determines that there is or has been a release of hazardous waste at a RCRA interim status facility. Prior to the 1984 Amendments, EPA could require remedial action at interim status facilities by, inter alia, (1) using RCRA §7003 or CERCLA §106 authorities if an imminent and substantial endangerment may have been presented, or (2) when significant ground-water contamination was detected, calling in Part B of the RCRA permit application and requiring corrective action as a condition of the permit. The Amendments added Section 3008(h) to deal directly with environmental problems by requiring clean-up at facilities that have operated or are operating subject to RCRA interim status requirements.

The purpose of this document is to provide preliminary guidelines on the scope of Section 3008(h) and to summarize appropriate procedures. The document will be revised as case law and Agency policy develop. Other relevant RCRA guidances that may be consulted include:

- Final Revised Guidance on the Use and Issuance of Administrative Orders under Section 7003 of RCRA, Office of Enforcement and Compliance Monitoring and Office of Solid Waste and Emergency Response - September, 1984.
- Issuance of Administrative Orders under Section 3013 of RCRA, Office of Enforcement and Compliance Monitoring and Office of Solid Waste and Emergency Response - September, 1984.
- Draft Guidance on Corrective Action for Continuing Releases, Office of Solid Waste and Emergency Response - February, 1985.
- Final RCRA Ground-Water Monitoring Compliance Order Guidance, Office of Solid Waste and Emergency Response - August, 1985.

To expedite §3008(h) actions, the Regions should establish procedures for drafting and reviewing orders and referrals and clearly delineate the roles and responsibilities of Regional RCRA enforcement and program personnel (including CERCLA personnel as necessary) and the Office of Regional Counsel in those processes. Draft orders should be sent to the Chief, Compliance and Implementation Branch, RCRA Enforcement Division, Office of Waste Programs Enforcement.

Headquarters is committed to conducting timely review of §3008(h) orders. To avoid the delays associated with discussion and review of rough drafts, we ask that orders be in "near final" form when they are submitted. Generally, the orders will be examined to determine whether (1) the elements of proof are adequately defined and documented, (2) the response to be compelled is practicable and environmentally sound, and (3) the action supports national RCRA program goals. Written comments or concurrence will be provided to the Regions within ten working days of receipt.

III. SCOPE OF SECTION 3008(h)

Section 3008(h) provides:

- (1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under Section 3005(e) of this subtitle, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment, or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.
- (2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under Section 3005(e) of this subtitle, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such a person shall be liable to the United States for, a civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order."

pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment. The exemptions described in the CERCLA definition are considered inapplicable or inappropriate for RCRA purposes, however, and are not included in the RCRA definition.

The term 'environment' is also broad. The legislative history for Section 3008(h), which discusses use of the authority to respond to releases to various environmental media, makes it clear that Section 3008(h) is not limited to a particular medium. H. Rep. No. 1133, 98th Cong., 2d Sess. 111-112 (1984). The Agency will use Section 3008(h) to address releases to surface waters, groundwater, land surface or subsurface strata and air.

It is not necessary to have actual sampling data to show a release. An inspector may find other evidence that a release has occurred, such as a broken dike at a surface impoundment. Less obvious indications of release might also be adequate to make the determination. For example, the Agency could have sufficient information on the contents of a land disposal unit, the design and operating characteristics of the unit, and the hydrogeology of the area in which the unit is located to conclude that there has been a release to groundwater.

In addition to on-site information gathering undertaken specifically to support a §3008(h) action, other sources that may provide information on releases include:

- Inspection Reports.
- RCRA Part A and Part B permit applications.
- Responses to RCRA §3007 information requests.
- Information obtained through RCRA §3013 orders.
- Notifications required by CERCLA §103.
- Information-gathering activities conducted under CERCLA §104.
- Informants' tips or citizens' complaints corroborated by supporting information.

"Hazardous constituents" are the substances listed in Appendix VIII to 40 CFR Part 261. H. Rep. No. 198, 98th Cong., 1st Sess. 60-61 (1983). According to the legislative history for Section 3004(u), which is read in conjunction with Section 3008(h), the term also includes Appendix VIII hazardous constituents released from solid waste and hazardous constituents that are reactive by-products. S. Rep. No. 284, 98th Cong., 1st Sess. 32 (1983). It should be noted that the legislative history for the new underground storage tank provisions states that Section 3008 is not applicable to underground storage tanks regulated under Subtitle I. Such releases may be addressed by Section 7002 and Section 7003 authorities, however. H. Rep. No. 1133, 98th Cong., 2d Sess. 127 (1984). Section 3008(h) remains applicable to releases from underground tanks containing hazardous or solid waste subject to Subtitle C provisions.

"...from a facility..."

For interim status corrective action purposes, EPA intends to employ the definition of 'facility' adopted by the Agency in the corrective action program for releases from permitted facilities. The preamble to the permitting requirements for land disposal facilities indicates that the term 'facility' refers to ..."the broadest extent of EPA's area jurisdiction under Section 3004 of RCRA...[meaning] the entire site that is under the control of the owner or operator engaged in hazardous waste management." 47 FR 32288-89 (July 26, 1982). See also the Final Codification Rule. 50 FR 28712 (July 15, 1985). Therefore, the definition of facility encompasses all contiguous property under the owner or operator's control.

The permit program, as amended by Section 3004(u), requires corrective action for releases of hazardous waste and hazardous constituents from solid waste management units at a facility. EPA interprets 'solid waste management unit'

releases from waste management units not required to undertake corrective action or otherwise exempt from RCRA regulations and releases, such as air emissions, to environmental media other than groundwater. Id. at 112.

The text of the statute, the broad remedial purpose, and the clear intent to authorize action beyond the scope of the permit regulations support the position that Section 3008(h) authorizes EPA to address all types of releases of hazardous waste within a facility. As discussed previously, the term 'hazardous waste' encompasses 'hazardous constituents' from both hazardous and solid waste.

Section 3008(h) will also be used to address releases that have migrated from the facility. New Section 3004(v), which provides that EPA may issue orders requiring corrective action for releases that have crossed the facility boundary if the permission of the owner of the affected property can be obtained, supports the Agency's interpretation that such releases are subject to action under Section 3008(h). See also the Final Codification Rule. 50 FR 29716 (July 15, 1985).

In a §3008(h) order or judicial referral, Agency personnel should describe hazardous and solid waste management units within the boundary of the facility and hazardous and solid wastes (and associated hazardous constituents) managed by the facility in addition to information indicating that a release has occurred. Since Section 3008(h) unequivocally authorizes EPA to address releases from units, the order or complaint should establish some link between the hazardous constituents in a release and the hazardous or solid wastes in waste management units where possible. For example, the findings of fact might state that the facility treats, stores or disposes of certain listed Subtitle C wastes, that those wastes were listed because they contain the hazardous constituents cited in Appendix VII to 40 CFR Part 261 and that some or all of those constituents have been found in the environment, thereby indicating a release.

The Agency believes that Congress intended the interim status corrective action authority to apply to such facilities. The legislative history for Section 3008(h) supports this position by making it clear that the authority can be used to address releases from units that do not have interim status, such as wastewater treatment tanks. H. Rep. No. 1133, 98th Cong., 2d Sess. 112 (1984).

Third, EPA considers Section 3008(h) to be applicable not only to owners or operators of facilities in the above two categories but also to units or facilities at which active operations have ceased and interim status has been terminated pursuant to 40 CFR Part 124 or Sections 3005(c) and 3005(e)(2) of RCRA. Section 3008(h) specifically provides that the interim status corrective action orders may include a suspension or revocation of the authority to operate under interim status, as well as any other response necessary to protect human health or the environment. Consequently, a corrective measures program can be imposed under Section 3008(h), even if a facility's interim status has been taken away as a result of an interim status corrective action order. The Agency also believes that Section 3008(h) can be used to compel responses to releases at facilities that lost interim status prior to a §3008(h) action. This approach is consistent with Congressional intent to assure that significant environmental problems are addressed at facilities that treat, store or dispose of hazardous waste but do not have a final RCRA operating or post-closure permit. H. Rep. No. 1133, 98th Cong., 2d Sess. 110-112 (1984).

Where a State is authorized to administer the RCRA program, the requirements for obtaining the State's equivalent to interim status may differ from those of the federal program. In authorized States that do not duplicate the federal procedures, hazardous waste treatment, storage and disposal facilities that have not been granted or denied a final RCRA permit are generally considered interim status facilities. Land disposal facilities that were issued State permits

For example, a §3008(h) order might require that the owner or operator conduct a study to characterize the nature and extent of contamination, then select a remedy and submit a corrective action plan to EPA. The Agency and the owner or operator would then confer on the plan and amend the order to reflect any modifications. H. Rep. No. 1133, 98th Cong., 2d Sess., 111 (1984). Because a study on the nature and extent of contamination and the selection and design of a remedy may require a significant amount of time, Section 3008(h) should be employed to require interim measures as necessary to protect human health and the environment prior to completion of the study and selection of a remedy. Examples of interim remedies that could be compelled include removal of the waste or containment of the source of the contamination by lining a unit or erecting dikes. In some instances, preliminary pumping and treating of affected groundwater may be appropriate.

While the information needed to make a determination that there is or has been a release is minimal, more information may be needed to justify a specific interim or full remedy. The Administrator can require "corrective action or such other response measures as he deems necessary to protect human health or the environment." To show that a response may be necessary to protect human health or the environment, the present or potential threat posed by the release should be described. The Agency may consider a variety of factors, including the quantity of hazardous waste; the nature and concentration of hazardous constituents or other hazardous properties exhibited by the waste; the facility's waste management practices; potential exposure pathways; transport and environmental fate of hazardous constituents; humans or environmental receptors that might be exposed; the effects of exposure, and; any other appropriate factors. To compel corrective action investigations or studies, only a general threat to human health or the environment needs to be identified.

Elements of Orders

Because it is the focal point in all proceedings subsequent to its issuance, the initial order must be as complete as possible. Failure to develop an adequate document may have adverse consequences if the Agency seeks judicial enforcement. All §3008(h) orders should contain the following general elements:

- A statement of the statutory basis for the order.
- Factual allegations showing that there is or has been (1) a release (2) of hazardous waste or hazardous constituents (3) into the environment (4) at or from an interim status facility. Facts indicating that the response is necessary to protect human health or the environment should also be presented.
- A determination, based on the factual allegations, that there is or has been a release of hazardous waste or hazardous constituents to the environment from an interim status facility.
- An order that clearly identifies the tasks to be performed, and a schedule of compliance accompanied by appropriate reporting and approval requirements.
- A statement informing the respondent that he has a right to request a hearing within 30 days of issuance concerning any material fact in the order or the terms of the order.
- A notice of opportunity for an informal settlement conference. It is the Agency's policy to encourage settlement of §3008(h) actions through informal discussions. The respondent should be cautioned, however, that a request for a conference does not affect the 30 day period for requesting a hearing.
- A statement that EPA may assess penalties not to exceed \$25,000 per day of non-compliance with the order.

It may be appropriate to include a provision for stipulated penalties in orders on consent. Such a provision, however, should be drafted to make it clear that the stipulated penalty is not EPA's sole remedy and that Agency has not waived its statutory authority to assess penalties under Section 3008(h)(2). It is recommended that the Regions pursue judicial referrals to impose penalties for noncompliance with a §3008(h) administrative order rather than issuing a subsequent order for penalties.

Development and Preservation of the Administrative Record

§3008(h) orders might be reviewed in administrative or judicial proceedings. Therefore, it is essential that information required by the statute and all other relevant information or documents obtained by the Agency be compiled in an administrative record, preserved and readily retrievable. The EPA official initiating the action should maintain a file that contains the following:

- EPA investigative records, such as inspection reports, sampling and analytical data, copies of business records, photographs, etc.;
- Reports and internal Agency documents used in generating or supporting the enforcement action, including expert witness statements;
- Copies of all documents filed with the Regional Hearing Clerk or the Presiding Officer;
- Copies of all relevant correspondence between EPA and the respondent;
- Written records of conferences and telephone conversations between EPA and the respondents, and;
- Copies of all correspondence between EPA and State or other federal agencies pertaining to the enforcement action.

V. CIVIL JUDICIAL ACTIONS

Under Section 3008(h), EPA may initiate civil judicial action to compel appropriate relief, including a temporary or permanent injunction, or to enforce a §3008(h) administrative order. As noted previously, the decision to pursue administrative or judicial remedies will be made on a case-by-case basis. Generally, however, a civil judicial action may be preferable to issuance of an administrative order in the following types of situations:

- A person is not likely to comply with an order or has failed to comply with a §3008(h) order.
- A person's conduct must be stopped immediately to prevent irreparable injury, loss or damage to human health or the environment.
- Long-term, complex and costly response measures will be required. (Because compliance problems are more likely to arise during implementation of these actions than while carrying out a simple, short-term action, it may be better to have the matter already before the court for ease of enforcement.)

In addition to increasing the number and kinds of units subject to corrective action, EPA will use the Section 3004(u) authority to address releases to air, land and surface waters as well as to groundwater. Furthermore, Section 3004(v) allows EPA to require corrective action beyond the facility boundary where necessary to protect human health and the environment unless the facility owner or operator is unable to obtain permission from the owner of the affected property.

Permitting can be a lengthy process. Therefore, the interim status corrective action authority should be used to address significant environmental problems prior to issuance of the permit. With respect to 'regulated units', which cannot be permitted until the facility is in compliance with Part 270 requirements to assess ground-water contamination and develop a corrective action plan if necessary, Section 3008(h) may be particularly useful for compelling activities not addressed by the Part 265 and Part 270 regulations. For instance, interim corrective action measures could be required prior to permit issuance. For releases from solid waste management units and hazardous waste management units other than 'regulated units', Section 3008(h) may be used to compel interim measures, studies to characterize the nature and extent of contamination and the threat posed by the release, selection of remedy and design, construction and implementation of the remedy.

If an interim status facility is seeking an operating permit or will be required to obtain a post-closure permit, any §3008(h) action at that facility should be designed to meet the needs of the permitting process to the extent possible. If all necessary steps in a corrective measures program will not be completed prior to issuance of a permit, compliance schedules in the order should be developed so that they can be readily incorporated in the permit.

With regard to imminent and substantial endangerment actions, the legislative history makes it clear that enactment of Section 3008(h) does not alter the Agency's interpretation of Section 7003. H. Rep. No. 1133, 98th Cong. 2d Sess. 111 (1984). RCRA §7003 or CERCLA §106 actions are appropriate if conditions at an interim status facility may present an imminent and substantial endangerment and the Agency needs to move quickly to address the problem. The 'imminent hazard' provisions of RCRA and CERCLA may be especially helpful if the Agency wishes to take action against responsible parties other than or in addition to the current owner or operator.

VII. RESERVATION

The policies and procedures set forth herein and the internal office procedures adopted pursuant hereto are intended solely for the guidance of United States Environmental Protection Agency personnel. These policies and procedures are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States. The Agency reserves the right to take any action alleged to be at variance with these policies and procedures or that is not in compliance with internal office procedures that may be adopted pursuant to these materials.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9502.1986(01)

JAN 8 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: RCRA Corrective Action at Federal Facilities

FROM: *J. Winston Porter*
Winston Porter
Assistant Administrator

TO: Regional Administrators, Regions I - X

On November 19, 1985, I sent you a memorandum describing a Federal Register notice we intended to publish addressing RCRA corrective action activities at Federal facilities. In that memorandum, I requested that you contact each of the environmental commissioners in your Region to inform them of the notice and explain to them the issues involved.

Shortly after that I sent another memorandum requesting that contact with the State environmental commissioners be delayed while we considered some issues surrounding the notice. Those issues have now been resolved and I am, once again, requesting that you personally contact your environmental commissioners to explain the notice. Lee Thomas and I are meeting with the fifteen State environmental commissioners on the State/EPA Committee on January 16. Since I intend to bring this issue up at the meeting, I would appreciate your making these contacts before the meeting.

I am attaching a copy of my November 19 memorandum, the Federal Register notice and talking points which may be useful when you telephone the environmental commissioners. As before, subsequent to your contacts with the environmental commissioners, I recommend that your RCRA Division Directors and Branch Chiefs also contact their State counterparts in order to inform them.

The development of regulations addressing corrective action at Federal facilities will take some time. However, I want to stress that we should proceed, in close cooperation with the States, to process Federal facility permit applications, including corrective action where required.

Attachments

cc: Hazardous Waste Division Directors,
Regions I - X
Hazardous Waste Branch Chiefs,
Regions I - X



UNITED STATES ENVIRONMENTAL PRO
WASHINGTON, D.C. 204

9502.1986(01)
Attachment

NOV 19 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: RCRA Corrective Action at Federal Facilities

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators, Regions I - X

On July 15, 1985, EPA codified the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) in the Federal Register. The preamble to the Codification Rule (50 FR 28712) explained that Federal agencies had several concerns about the corrective action provision in §3004(u) of HSWA. The preamble stated that EPA would attempt to resolve the legal and policy issues raised by the other agencies subsequent to promulgation of the Codification Rule.

Following extensive negotiation, EPA and the Federal agencies have agreed that Federal facilities are subject to corrective action requirements to the same extent as any other facility. This decision will be announced in the Federal Register (see attached draft notice, an advance copy of which was E-mailed to you on Friday, November 15). The announcement will also explain that the Federal agencies have identified several issues which EPA believes merit further consideration through future rulemaking.

By this memorandum, I will explain those issues and how EPA intends to address them. I am also requesting that you personally contact each of the State environmental commissioners in your Region to inform them of the soon-to-be published Federal Register notice and explain to them the issues involved.

Below is a full discussion of each of the issues raised by the Federal agencies and how EPA intends to address them. I have also attached talking points which may be useful when you telephone the environmental commissioners. I ask that you make all of the telephone calls by November 27. Subsequent to your contacts with the environmental commissioners, I recommend that your RCRA Division Directors and Branch Chiefs also contact their State counterparts in order to inform them.

Definition of "Owner"

a. Although EPA has concluded that the statute requires Federal agencies to operate under the same property-wide definition of facility as non-Federal entities, the Federal agencies have pointed out that the United States could be considered the "owner" of a Federal hazardous waste facility. Under that interpretation, contiguous tracts of Federal lands owned by the United States but administered by different Federal agencies could be considered a single "facility" for corrective action purposes. Therefore, for purposes of §3004(u), EPA is interpreting the concept of ownership as referring to individual Federal departments, agencies and instrumentalities.

EPA will propose a rule to clarify the definition of owner and explain more fully the rationale for recognizing specific subdivisions. In some cases, ownership would refer to major departmental subdivisions that exercise independent management authority over hazardous waste facilities. For example, within the Department of Defense, each of the four branches of the Armed Services would be treated individually as an "owner".

b. The Department of Interior has expressed concern that Federal agencies might be considered owners of hazardous waste facilities on Federal lands operated by private parties with partial property interests such as leases or mineral extraction rights. EPA intends to propose a rule that limits Federal agency responsibility for facilities operated by private parties with legal ownership interests by identifying a "principal owner" for the purpose of defining the facility boundary under §3004(u). To determine whether a private party on Federal lands should be treated as a "principal owner", EPA might consider such factors as the degree of control the Federal agency exercises over the private party's actions or the amount of benefit the agency derives from the private party's waste management operation.

National Priorities for Corrective Action at Federal Facilities

Federal agencies have advocated the establishment of national priorities for cleaning up releases at Federal facilities under §3004(u). The agencies have argued that since the Federal budget is not unlimited, priorities would help optimize the use of available funds nationally. They are also concerned that States may not share the same priorities as those that may be established on a national basis.

Therefore, EPA intends to develop rules that would allow Federal agencies, subject to EPA approval and after consultation with the States, to set priorities for corrective action. These rules would assure a State's full participation in establishing the priorities, but they would also require State adherence to the priorities, once established.

As stated earlier, EPA intends to fully involve the States in the development of the rules described here. We also intend to involve Federal agencies and environmental groups, in order to obtain the broadest possible perspective in developing the regulations. Please solicit, from your States, their views on how we might best obtain State input; i.e., the appropriate State organizations or individuals in State government who should be involved in our negotiations.

We have informed the Regional RCRA Division Directors and Branch Chiefs of a conference call on this issue. The call will be conducted on November 21 from 2:00 to 3:00 pm, Eastern Standard Time, and will be sponsored by staff of the Office of General Counsel and the Office of Solid Waste. To participate in the call, Regional personnel should dial FTS-475-8347.

Attachments

cc: Hazardous Waste Division Directors,
Regions I - X

January 23, 1986

9502.1986(01a)

MEMORANDUM

SUBJECT: Information on Solid Waste Management Units

FROM: Marcia Williams, Director
Office of Solid Waste

TO: Regional Hazardous Waste Division Directors

As you know, §3004(u) requires corrective action for all releases of hazardous waste or constituents from previously unregulated solid waste management units (SWMUs). The implementation of this provision has broad resource implications for the RCRA program. In order to properly plan for and request the needed level of resources, we are undertaking a project to characterize the SWMU universe nationally.

This exercise will take place in conjunction with the Regional Implementation Reviews and will be performed by Headquarters review team members. Based on the responses received from the SWMU letters sent by your offices in January 1985, and any other SWMU information summaries you may have already completed in-house, information will be compiled on: (1) the number of unregulated SWMUs by facility type (i.e., storage/treatment, incinerator, disposal), and (2) information on the type of SWMUs if such information is available. Although your existing SWMU information should be available at the time of the facility review portion of your scheduled Implementation Review, this exercise will not require you to further analyze or summarize that information. A review team member will contact your staff prior to the facility review.

If you have any further questions concerning this project, please contact Peter Guerrero, Chief Permits Branch, at 382-4740.

This has been retyped from the original document.

JAN 1 1986

Mr. Richard C. Fortuna
Hazardous Waste Treatment Council
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Fortuna:

I am pleased to respond to your letter of December 30, 1985, in which you posed several questions regarding the Environmental Protection Agency's current policy approach to implementing the new RCRA corrective action authorities provided by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The following are our responses to the specific questions which you raised in your letter.

Q: Can a facility terminate interim status simply by withdrawing its Part A application?

A: A facility cannot simply withdraw its Part A application with the intention of terminating interim status and thereby absolve itself of any future RCRA responsibilities. As provided by 40 CFR 270.73, interim status is terminated when (a) final administrative disposition of a permit application is made; or (b) interim status is terminated as provided in §270.10(e)(5). Termination of interim status must take place according to the procedures specified in 40 CFR Part 124. Thus, a facility such as the one mentioned in your letter cannot terminate its interim status by simply withdrawing its Part A application. Interim status will additionally be terminated if a facility failed to certify under the Loss of Interim Status provisions of HSWA, and may be terminated pursuant to an enforcement order. In any case, however, the termination of interim status does not terminate the facility's obligation to comply with interim status requirements, including groundwater monitoring and closure, permitting requirements or corrective action requirements.

Q: Are all land disposal units that received hazardous wastes after July 26, 1982, subject to the §3004 corrective action requirements, even if such a unit is closing? What if such units did not take hazardous wastes, but are releasing hazardous constituents?

A: Yes, all land disposal units that accepted hazardous

waste after July 26, 1982, are potentially subject to RCRA corrective action authorities. First, EPA would consider all such units to fall within the scope of its authority to issue corrective action orders to interim status facilities under Section 3008(h). EPA believes that Section 3008(h) applies not only to facilities operating under interim status, but also to all facilities that terminate interim status and facilities that accepted hazardous waste after November 1980, but never formally qualified for interim status. In addition, 40 CFR §270.1(c) currently requires units that receive hazardous waste after January 26, 1983, to obtain either operating permits or post-closure permits. These permits will require corrective action under 40 CFR 264.100 and Section 3004(u). Also, new Section 3005(i) requires all units receiving hazardous waste after July 26, 1982, to meet the requirements of Subpart F to 40 CFR Part 264. This includes requirements for corrective action for releases to groundwater under 40 CFR §264.100. To implement this requirement, EPA is in the process of amending §270.1(c) to extend permit applicability to units that received hazardous waste after July 26, 1982. These permits will also require corrective action under 40 CFR 264.100 and Section 3004(u). A land-based unit that does not receive hazardous waste, but releases hazardous constituents may fall under these corrective action requirements. We will assume for the purposes of answering your question that the unit accepted solid waste and is a solid waste management unit. All releases of hazardous constituents from solid waste units located within the boundaries of a facility that contains any hazardous waste unit subject to the Section 3008(h) interim status order authority or subject to permit requirements will fall within the scope of the new corrective action requirements. Section 3008(h) allows EPA to order cleanup of releases from solid waste units at facilities within the scope of the interim status corrective action authority; Section 3004(u) requires cleanup at facilities that obtain permits.

Q: When is a facility or unit that undertakes closure subject to corrective action for continuing releases, and under which authorities: §3005(c) post-closure permits, §3004(u), §3008(h), or §3005(i)? Under what circumstances would different or dual authorities be used at the same facility? Which units would be subject to post-closure permits, and which units subject to other corrective action mechanisms?

A: As explained above, if a closing unit has caused a release requiring corrective action, that corrective action can be required through either a post-closure

permit (using the authority of §264.100 or §264.101, depending on the type of unit and the type of corrective action required), or through an enforcement order. (We are assuming that, by referring to closure, you are describing a facility that has at least one unit that accepted hazardous waste.) Section 3005(i) of RCRA does not of itself provide a separate mechanism for corrective action; rather, it simply establishes the applicability of Part 264 standards to regulated units.

The exact mechanism(s) which will be used to require corrective action will depend on the specifics of the situation at the facility. The scope of the corrective action authorities under §3008(h) and §3004(u) are similar. Regions and States are in the process of preparing plans for environmentally significant facilities to determine which authority, or combination of permitting and enforcement authorities, may be appropriate and yield most effective environmental results. An example of a situation where a mix of authorities might be used to implement corrective action could be a facility where a serious release situation is known to exist, but where a permit for the operating units at the facility will not be issued for a substantial period of time. A §3008(h) enforcement order could be issued to compel the owner/operator to begin the necessary investigations and/or implement required corrective actions, while the permit is being prepared. When the permit is issued, the remaining corrective action activities would be conducted under the permit.

As explained in the previous response, the facilities currently subject to post-closure permits include all of those facilities that had an operational land disposal unit as of January 26, 1983. If a facility is subject to a post-closure permit, all solid waste management units at that facility are covered by that permit.

Q: What monitoring requirements are or will be imposed at such facilities to determine the nature and scope of the required corrective action?

A: Regulated units which close under interim status are subject to the applicable ground water monitoring requirements of Subpart F of Part 265. The adequacy of existing ground water monitoring systems will be evaluated as part of the closure process, and if necessary, will be required to be upgraded. If ground-water contamination is detected, the owner/operator is required under §265.93 to make an assessment of the nature and extent of contamination. In addition, the units are subject to other authorities, including post-

closure permits and orders under Sections 3013 and 3008. Upon issuance of a post-closure permit, the applicable requirements for ground water monitoring, including compliance monitoring and corrective action, must be complied with. As indicated by the preamble of the final codification rule, the Agency will generally look to the protection standards of Subpart F for clean up levels for releases to ground water at solid waste management units. EPA is developing technical guidances for investigations at solid waste management units.

Q: Would units that stored or managed fuels deemed to be hazardous under State law also be considered solid waste management units? Under what circumstances, if any, would such units not be solid waste management units?

A: The question of whether or not a unit which stores or manages a fuel would be classified as a solid waste management unit depends, in part, on whether or not that fuel is considered to be a solid waste under Part 261 RCRA regulations. If the fuel is a solid waste, the unit would be a solid waste management unit.

Q: How does EPA Headquarters plan to interact with the States and EPA Regional Offices to ensure that closures of interim status facilities address the corrective action requirement?

A: The Office of Solid Waste and Emergency Response currently is examining a number of issues relating to closing RCRA facilities and integration of corrective action at those facilities. We expect to be issuing guidance to the Regions and States addressing the specific issues which you have raised, and others, in the future.

Please let me know if you have any questions.

Sincerely,



J. Winston Porter
Assistant Administrator

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JANUARY 86

5. Corrective Action

The Hazardous and Solid Waste Amendments of 1984 (HSWA) set forth requirements for corrective action for continuing releases under §3004(u). This provision is applicable to any facility that is seeking a RCRA permit.

A facility currently has a RCRA permit and is seeking a major modification to that permit under §270.41. Would this facility be subject to the corrective action requirements of §3004(u) when going through a major permit modification?

Section 3004(u) states that corrective action for a facility shall be required as a condition of each permit issued after November 8, 1984. Because a permit modification is not equivalent under §270.41 to the issuance of a permit, a facility that is seeking a major modification to a RCRA permit issued prior to November 8, 1984, is not required to address the corrective action requirements of §3004(u). A facility permit being reviewed for reissuance, however, is subject to the §3004(u) corrective action provisions.

Source: Carrie Wehling (202) 475-8067



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9502.1986(04)

FEB 13 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: RCRA Corrective Action at Federal Facilities

FROM: *Bruce R. Weddle*
Bruce R. Weddle, Director
Permits and State Programs Division

TO: Allyn M. Davis, Director
Hazardous Waste Management Division (6H)
Region VI

This responds to your memorandum of January 15, 1986, in which you pose several questions about corrective action at Federal facilities. I hope this clarifies the relation between the national priorities and corrective action.

You asked how national priorities for Federal facilities will be coordinated. We do not expect to have a final rule published in the Federal Register before eighteen months from now. In the interim, the Regions and States must continue to process and issue permits to Federal facilities. Priorities will be reflected in the compliance schedules of the permits for individual Federal facilities. Compliance schedules should be negotiated on a case-by-case basis with each facility, with one of the factors considered being the parent agency's nationwide corrective action responsibilities.

There are many ways we could address national priorities in the proposed rule. One method would be to establish a national ranking for each Federal facility. Another method would be to develop a process for negotiating compliance schedules for corrective action at Federal facilities. At the moment we are considering the latter approach. Under this method, corrective action would continue to be addressed as described above.

You also expressed concern about lack of funding for Federal facilities. EPA can influence the parent agency's funding decisions through the A-106 budgeting process. You should aggressively use the A-106 process to ensure that funding is available to undertake the activities in permit or enforcement compliance schedules in the timeframes provided.

You also asked if §3008(h) orders could be issued to Federal facilities. You should continue to issue §3008(h) orders when appropriate. Although we cannot assess penalties to other Federal agencies, we can use the authority of §3008(h) to compel investigation and cleanup activity.

Finally, your memo stated that in accordance with Winston Porter's November 21, 1985, memo, you would not contact State Environmental Directors about corrective action at Federal facilities. That memo explained that the States should not be contacted until issues raised by the Department of Energy were resolved. These issues have now been resolved. This was explained in a January 8, 1986, memo from Winston Porter requesting the Regions to contact the States. Please begin contacting State Environmental Directors if you have not already done so. If you have further questions about corrective action at Federal facilities, contact Paul Connor of my staff at (FTS) 382-2210.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9502.1986(05)

MAR 24 1986

Mr. Philip X. Masciantonio
United States Steel Corporation
One Tech Center Drive
Monroeville, PA 15146

Dear Mr. Masciantonio:

I am pleased to respond to your letter of February 19, 1986, regarding the applicability of RCRA corrective action requirements to facilities for which Part A applications were filed, but at which hazardous wastes were never actually stored, treated or disposed.

If, as you stated in your letter, your facility never did treat, store or dispose of hazardous waste (as defined in 40 CFR Part 261), EPA does not consider that facility to have attained interim status, even though a Part A application was submitted (i.e., a "protective filing"). This interpretation is outlined in a Federal Register notice published on September 25, 1985 (50 FR 38946).

Facilities which have never engaged in treatment, storage or disposal of hazardous waste are not subject to the corrective action provisions of RCRA §3004(u) or §3008(h). It should be noted, however, that authorities under CERCLA or other statutes may be available to the Agency to address environmental concerns at such facilities, regardless of their status under RCRA.

I hope this has adequately addressed your concerns. Please let me know if I can be of further assistance.

Sincerely,

J. Winston Porter
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9502.1986(06)

APR 15 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Mary L. Walker
Assistant Secretary for
Environment, Safety and Health
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mary:

Section 3004(u) of the Resource Conservation and Recovery Act (RCRA) requires hazardous waste facility owner/operators seeking permits to undertake corrective action for environmental releases at solid waste management units within their facilities. On March 5, 1986, EPA published in the Federal Register a notice (copy enclosed) announcing EPA's intent to promulgate rules implementing these corrective action provisions at federal facilities.

Among other things, the March 5 notice indicated that "EPA intends to develop rules that would allow Federal agencies, subject to EPA approval after consultation with the States, to set priorities for correcting releases from solid waste management units at facilities that they own or operate."

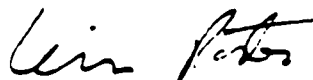
The notice also indicates that, in the interim before these rules are finalized, EPA and the States will review and issue RCRA permits, with EPA implementing corrective action requirements at federal facilities until the State is authorized. EPA will address issues not yet resolved by rulemaking on a case-by-case basis.

I want to encourage you to begin developing plans to establish corrective action priorities within your agency. Having such internal priorities will facilitate the ongoing negotiation process for permitting during this interim period. I would like to meet with you within the next two to three months to discuss your preliminary prioritization planning.

I look forward to working with you to implement the corrective action provisions. If you have any questions, please contact Jim Cruickshank of my staff, at 382-4431.

Thanks very much for your cooperation and assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Winston Porter".

J. Winston Porter

Enclosure

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 86

7. Corrective Action for UIC Wells

The owner of a hazardous waste underground injection well is applying to his State for a UIC permit after November 8, 1985. Section 3004(u), as amended by the Hazardous and Solid Waste Amendments of 1984, stipulates that a RCRA permit issued after November 8, 1984 must require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility. Must corrective action be addressed in the UIC permit?

Section 270.60(b), regarding permit-by-rule regulations for UIC wells was amended in the final codification rule (50 FR 28752) to require compliance with corrective action regulations under §264.101. The proposed codification rule of March 28, 1986 restates that a UIC permit issued after November 8, 1984 is not a RCRA permit-by-rule until corrective action requirements have been met for all solid waste management units at the facility (51 FR 10714). A memorandum dated April 9, 1986, from Michael Cook (Office of Drinking Water) to the Regions further clarifies this point by stating that a UIC permit is a RCRA permit-by-rule when corrective action has been addressed for the entire facility.

Corrective action for the well only will be addressed in the UIC permit. If there are other RCRA units at the facility, corrective action for those units will be addressed in a RCRA permit, when it is issued. If there are no other RCRA units requiring a RCRA permit, then corrective action for any other solid waste management units will be addressed in the UIC permit.

Source: Dave Fagan (202) 382-4740
Research: Kim Gotwals

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 86

1. Corrective Action Orders Under §3008(h)

The owner/operator of a surface impoundment has managed hazardous wastes in the impoundment without interim status or a RCRA permit. A release of hazardous wastes from the impoundment has contaminated surrounding soil and groundwater. Upon discovery of this improper management and resultant contamination, the EPA intends to issue a corrective action order under Section 3008(h) of RCRA. Given that the owner/operator never an interim status, can the corrective action order be issued?

Section 3008(h) authorizes the EPA Administrator to issue corrective action orders to address releases of hazardous wastes into the environment from facilities authorized to operate under Section 3005(e). This authority extends to include those facilities that should have had interim status, but failed to notify EPA under Section 3010 of RCRA or failed to submit a Part A application. Accordingly, the corrective action order can and should be issued to ensure prompt and thorough clean-up of the site. (Please see the December 16, 1985 memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, entitled "Interpretation of Section 3008(h) of the Solid Waste Disposal Act").

Source: Virginia Steiner (202) 475-9329
Research: Jim Ginley

MEMORANDUM

SUBJECT: Permit Issues Related to U.S. Army -
Aberdeen Proving Grounds

FROM: Bruce Weddle, Director
Permits and State Programs Division

TO: Robert Allen, Chief
Waste Management Branch

In your memorandum of January 24, you requested our response to several issues surrounding the issuance of the corrective action portion of the permit for Aberdeen Proving Grounds. Our response to each issue is discussed separately below. This information has also been discussed with Jack Potosnak of your staff.

1. Definition of "facility" as it applies to Federal facilities.

Notice was published March 5 (51 Federal Register 7722) which resolves three issues outlined in the Final Codification Rule, regarding the definition of facility for purposes of corrective action at Federal facilities:

1. Will establish that §3004(u) is applicable to Federal facilities;
2. Reconfirms the definition of "facility" as the entire site under control of the owner/operator;
3. Establishes that the owner of Federal lands is the individual Federal department or agency, rather than the ~~US~~ ^{U.S.} Government.

A second notice was also published which announces our intent to develop regulations to address additional issues raised by Federal agencies including national priorities for corrective action.

2. Unexploded Ordinances

You inquired as to whether range/impact areas containing unexploded ordinances at Aberdeen qualify as solid waste management units. We believe such areas do not qualify because there is a strong argument that unexploded ordinances fired during target practice are not discarded materials within the regulatory definition of "solid waste". Ordinances that do not explode would be expected to land on the ground. Hence, the "ordinary use" of ordinances includes placement on land. Moreover, it is possible that the permittee has not abandoned or discarded the ordinance, but rather intends to reuse or recycle them at some point in the future.

Also, the U.S. District Court for the District of Puerto Rico held that the military target practice activities do not generate "solid waste" because the statutory definition does not include materials resulting from military operations. Barcelo v. Brown, 478 F. Supp. 646, 668-669 (D. Puerto Rico 1979) (copy of relevant portions attached). The Court qualified this position, however, by suggesting that when the military engages in activities that resemble industrial, commercial or mining operations, or community activities, materials resulting from such operations are wastes and are subject to regulation under RCRA. Hence, we think the Court's opinion suggests that materials resulting from uniquely military activities engaged in by no other parties fall outside the definition of solid waste.

3. White Phosphorus Burial Zone

As relayed in your memorandum, white phosphorus munitions were dumped in a shallow water area and covered with fill. The area is part of the Chesapeake Bay, but it is within the boundary of Aberdeen Proving Ground. You asked whether the fact of being underwater restricts applicability of RCRA/ HSWA authorities, and whether a multi-year monitoring program can be prescribed at the location.

As described in the January 30, 1985, draft guidance on corrective action for continuing releases under §3004(u), the term "solid waste management unit" applies to active and inactive units containing hazardous wastes or solid wastes at the facility. Further, the term facility is defined as including all contiguous property under the control of the owner or operator at which the units subject to permitting are located. In the case of the white phosphorus burial zone, since white phosphorus is a hazardous waste and the unit is located within the facility boundary, the fact of being underwater would have no effect on its designation as a solid waste management unit. Further, since the unit would be subject to §3004(u), a water quality monitoring program would appear to be an appropriate response to determine evidence of any releases from the unit.

4. Radioactive Material

You inquired as to whether several items listed in your memorandum fell under the "source special nuclear, by-product material" exemption under 261.(a)(4). The items would not be exempt to the extent they are mixed with or contain hazardous waste. However, no RCRA regulations have been developed to cover such mixed radioactive wastes.

5. Drum Cleanup

Your last issue centered on the appropriateness of a permit condition requiring a facility-wide effort to locate and recover abandoned 55 gallon drums found on the site. Drums with contents would be tested and removed to the container storage area if found to be hazardous.

We do not believe existing authorities would allow recovery of these drums unless there was evidence of a release. Under the authority of Section 3004(u), if EPA's preliminary assessment showed that there was a reasonable likelihood of releases of hazardous constituents from any of these drums, EPA or the facility could test the material in the drums to determine if the remaining waste is hazardous and to determine if any releases have occurred. If releases had occurred, the appropriate corrective action measures could be required.

If you have any further questions, please contact George Paison at 382-4422.

Attachment

cc: RCRA Branch Chiefs (w/o Attachment)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MAY 86

4. Corrective Action

The Hazardous and Solid Waste Amendments of 1984 contain several corrective action provisions. Section 3004(u) requires that permits contain provisions for corrective action and financial responsibility for implementing such corrective action. Amended Section 3004(a) of the Solid Waste Disposal Act (SWDA) authorizes regulations on financial assurance for corrective action. Does this financial responsibility requirement extend to amended Section 3004(v), corrective action beyond the facility boundary?

Yes, the proposed codification rule dated March 28, 1986 (51 FR 10714) explains that the financial responsibility requirement extends to corrective action beyond the facility boundary. Proposed Section 264.101(c) codifies this requirement. The final closure rule, issued on May 2, 1986 (51 FR 16422), contains some financial responsibility provisions, but does not contain specific provisions for corrective action. The Agency will address the specific requirements for financial responsibility for corrective action in a separate proposal due out in September 1986.

Source: Debbie Wolpe (202) 382-7729
Research: Kim B. Gotwals

JUN 16 1986

Mr. Harry C. Conger
 President and CEO
 Waste-Tech Services, Inc.
 19400 West 10th Avenue
 Golden, Colorado 80401

Dear Mr. Conger:

Thank you for your May 21, 1986, letter concerning the requirements needed to meet the land disposal ban of the Hazardous and Solid Waste Amendments of 1984 (HSWA). You expressed concern that the permitting process and the corrective action program pose an impediment in meeting the July 1987 land disposal ban deadline for halogenated organics and similar deadlines. We appreciate your thoughtful comments and suggested guidance to the Regions and States.

While the Congress and the Environmental Protection Agency (EPA) believe it is important to implement the land disposal ban, Congress did not indicate a willingness to forego other important activities, such as corrective action and permitting, to accomplish this. EPA is trying to implement corrective action and permitting in a manner that has the least disruptive impact on implementation of the land disposal ban.

As to your suggestion for a waiver of the pre-construction ban, Section 3005(a) of the Resource Conservation and Recovery Act (RCRA) precludes construction of new facilities until a permit is issued. EPA does not have discretion to waive this; it would require a statutory change.

You also made some specific suggestions about corrective action. We have issued guidance which addresses many of your concerns a copy of which is enclosed. The guidance states that an incinerator/treatment unit can be permitted separately. That permit must address all releases to media other than ground water from regulated units--i.e., land disposal units that received waste after July 24, 1982--and all releases from non-regulated units. A permit issued separately to regulated units would address any needed ground water corrective action in accordance with Subpart F of 40 CFR Part 264. Corrective action for media other than ground water normally takes place after issuance of the permit through permit schedules of compliance. For ground water releases from regulated units, remedial investigations, however, must be conducted and corrective measures be developed before issuance of the permit.

SYMBOL

Finally, ground water releases from regulated units can be addressed in separately issued permits. This is usually the most time and resource intensive part of corrective action, so it should greatly reduce permit development and processing time for incinerator/treatment units.

Again, thank you for your thoughtful letter. The Agency identifies new treatment capacity as a high permitting priority and will continue to do everything that it can to implement the most efficient regulatory program within the new provisions of the law.

Sincerely,

/s/ Jack W. McGrath

J. Winston Porter
Assistant Administrator

WH-562/D.2EITLIN/sld/6-9-86/Control No.:AX600861/Due Date:6-10-86
382-4651

August 22, 1986

MEMORANDUM

SUBJECT: Applicability of Regulations on Financial Assurance for
Corrective Action

FROM: Deborah L. Wolpe

TO: Gary Gosbee, Region I

You have asked for an interpretation of the applicability of the financial assurance for corrective action requirement to both regulated units and other solid waste management units. The July 15, 1985, final codification rule contained two references to the financial assurance for corrective action. Section 264.101 entitled "Corrective Action for solid waste management units" states that permits shall contain "...assurance of financial responsibility for completing such corrective action." Section 264.90(a)(2) entitled "Applicability", states that "...The financial responsibility requirements of §264.101 apply to regulated units." Your question appears to be whether §264.90(a)(2) supersedes §264.101(b), so that financial assurance only applies to regulated units.

As you know, regulated units are a subset of solid waste management units (see 50 Fed. Reg. 28702, 28714, July 15, 1985). Our interpretation is that the statement on financial assurance in §264.90(a)(2) is not necessary, but is there as a reminder that regulated units are subject to the requirement in §264.101. Ordinarily, an owner or operator of a facility with only regulated units complies with the requirements of §264.100, not §264.101, and therefore might miss the financial assurance requirement, which is only in §264.101. Financial assurance applies to all solid waste management units, including regulated units.

This has been retyped from the original document.

AUG 22 1986

Mr. Carl Schafer, Jr.
Deputy Assistant Secretary
of Defense, (Environment)
Department of Defense
The Pentagon, Room 3D833
Washington, D.C. 20301

Dear Mr. Schafer:

I would like to bring to your attention an issue that may frustrate our mutual efforts to clean up hazardous waste contamination. On November 8, 1985, the Cannon Air Force Base submitted a Part B permit application to Region VI. The application addressed one surface impoundment, one container storage area, one landfill, and one open-burning treatment area. The Part B application contained no information on the 41 sites addressed by the CAFB Installation Restoration Program. On April 30, 1986, Region VI requested information on the solid waste management units that were not identified in the Part B application. CAFB responded to EPA's request with the following language:

We have omitted these sites and units with the understanding that the Environmental Protection Agency agreed at the Washington level that the IRP will continue to function as a DOD program that is not regulated under RCRA and the 1984 Amendments. We understood this agreement was based on recognition that clean up of DOD sites should be based on national priorities rather than regional or local ones. If the IRP is subject to regulation by the EPA regions, national priorities will be lost. We have not been notified by Air Force authorities of any change in this understanding. Therefore, we did not include in our Part B application any site or unit addressed in the IRP.

CAFB states that RCRA and the 1984 Amendments do not apply to DOD's IRP. We are concerned that CAFB's position represents the official position of the Air Force. For example, Offutt AFB has informed another EPA Regional Office that the Base is not required to sign a schedule of compliance under Section 3004(u) of RCRA until EPA issues a final rule on national priorities for corrective action.

It appears that the Air Force has misinterpreted our rulemaking efforts on corrective action at Federal facilities. It is EPA's position that Section 3004(u) applies to Federal facilities. Furthermore, we shall continue to call for permit applications and to issue RCRA permits to Federal facilities. Our permitting program is not delayed or postponed pending our rulemaking on priorities for corrective action at Federal facilities. We reiterated our position on this issue in a March 5, 1986, Notice published in the Federal Register, which clearly stated that, "In the interim [while working to resolve national priority and principal owner issues], EPA and the states will proceed to review and issue RCRA permits, and EPA will implement 3004(u) requirements at federal facilities."

Because our permitting program cannot wait for a final rule on national priorities, we encourage you to begin setting priorities for corrective action under Section 3004(u) of RCRA. Your priorities can be used as a factor during permit negotiations, and schedules of compliance under Section 3004(u) can reflect the relative priority of your facilities.

If the Air Force has misinterpreted our position on Section 3004(u), I would appreciate your clarifying to them their obligations under RCRA. I am confident that our offices can avoid misunderstandings during future permit negotiations if we maintain a common understanding of RCRA. Please let me know the outcome of any discussions on this matter you may have with the Air Force.

Sincerely yours,

/s/ Jack W. McGrath

✓
W. J. Winston Porter
Assistant Administrator

cc: Warren Hull
Michael Heeb
Jim Cruickshank

bcc: Hazardous Waste Division Directors & Branch Chiefs,
Regions I-X

SEP 12 1985

MEMORANDUM

SUBJECT: Regulatory Status of Wood Treatment Cylinder
Creosote Sumps

FROM: Marcia Williams, Director /S/
Office of Solid Waste

TO: Patrick M. Tobin, Director
Waste Management Division, Region IV

Your memorandum of July 9 requests a determination of the RCRA regulatory status of underground sumps which collect waste creosote from production pipelines and treatment cylinders at wood treatment facilities. Based on our understanding of the case presented, and after discussions with your staff, we offer the following guidance.

As we understand the sump described in your memo, it is routinely used to collect drippage, leakage, or other spillage of creosote from wood treatment cylinders and associated piping, and the material is not collected for recycling. The creosote appears to qualify as a solid waste as defined in section 261.2(a)(2) as, among other things, any material which is discarded by being abandoned. Section 261.2(b)(3) defines abandoned material as that being accumulated, stored, or treated (but not recycled) before or in lieu of being disposed of, burned or incinerated. Since the creosote is not a hazardous waste, the sump would not be a unit requiring interim status or a permit.

From the description provided in your memorandum, it appears that the sump in question is a discernible unit (presumably a tank) in which solid wastes have been managed. As such, the sump would be considered a solid waste management unit (SWMU) for purposes of implementing corrective action under RCRA §3004(u) or §3008(h). (See the discussion of SWMUs at 50 FR 28712, July 15, 1985.)

Please be aware, if you are not already, that the Agency is currently developing a proposed regulation (expected to be published in the Federal Register in the spring of 1987) which may list as hazardous wastes certain wood preservation and treatment wastes. Such a listing may affect the regulatory status of the sump in question. (For additional information contact Dr. Cate Jenkins at FTS 382-4786.) In addition, you may also wish to review a draft memorandum entitled "RCRA Regulatory Interpretation Assistance Request - Cleanup of Residues of Commercial Chemical Products Within a Warehouse Storage Area," which was circulated to the Regions for review on June 3, and which deals with issues related to those posed in your memorandum.

The recent decision by Judge Yost in In re Brown Wood Preserving Co., Inc. (RCRA-84-16-R) does not require EPA to publish this memorandum. That decision takes the position that the Administrative Procedure Act requires the Agency to publish policy memoranda and interpretive statements that set out new rules or substantially modify existing rules. This memorandum merely offers an opinion as to whether the facts you have outlined for this facility fit the existing definitions of "solid waste," "hazardous waste," and "solid waste management units." It does not establish a general policy of treating all process sumps at wood preserving facilities as "solid waste management units." Nor does it create or change any other rule or policy.

I appreciate that we need to be careful to go through notice and comment on decisions that might be interpreted as expanding regulatory controls beyond what is evident from existing rules or statutory language. For example, if we list certain wood preservation wastes we may want to discuss in the Federal Register the regulatory status of areas in which environmental releases from treated wood are routine and expected.

However, publishing statements of general policy would not solve the entire problem presented in the Brown case. The Regions also need to ensure that the facts of each case show a violation of the statute or regulations. Complicated scientific or technical issues may require you to use experts to present or explain the evidence.

Applying these ideas to the facility described in your memorandum, to regulate the sump as a SMU you would have to collect facts demonstrating, for example, that the creosote in the sumps

was in fact "discarded," and that the sump is a "discrete" unit. This memorandum cannot substitute for firm factual evidence concerning the specific facility at issue.

If you have additional questions, please contact Michele Anders at FTS 382-4534.

cc: Gene Lucero, CWPE

Attachment

SEP 22 1986

MEMORANDUM

SUBJECT: Open Burning/Open Detonation at DOD Facilities

FROM: Bruce R. Weddle, Director
Permits and State Programs Branch (WH-563)
Office of Solid Waste

TO: Gary B. Gosbee, Chief
MA Waste Regulation Section
EPA Region I

This memo responds to your September 8, 1986 memo about EPA's definition of SWMU's at DOD facilities. Your memo outlined EPA's regulation of open burning/open detonation (ob/od) areas, and you explained how this applies to the Fort Devens facility.

I agree with your interpretation of the ob/od issue, and it appears from your description of the units at Fort Devens that your interpretation of SWMU's is consistent with our understanding of the ob/od issue. RCRA applies to discreet areas where DOD performs ob/od for disposal purposes. RCRA does not apply to "training areas" or "impact ranges" as long as these areas are not used for disposal purposes. If however, DOD used a training area or impact range for disposal purposes, then these areas might be subject to RCRA.

In the near future EPA will propose new regulations under Subpart X of 40 CFR Part 264. The proposed regulations in Subpart X address the ob/od issue. Because you have practical experience in this area I encourage you to comment on the new regulations when they are proposed in the Federal Register.

Paul Connor (FTS 475-7066) is the contact on this issue in my Division and Ossi Meyn (FTS 382-4654) is the point of contact on the new Subpart X regulations. Thank you for keeping me informed on this issue.

cc: Dave Fagan
Ossi Meyn
George Garland
Jim Michael
Andrea O'brien
Gwen Ruta
Craig Johnston
Tina Kaneen
Lee Herwig
Warren Hull
Matt Hale

September 29, 1986

Captain Michael Carricato
Deputy Assistant Secretary
of Defense (Environment)
Room 3D833
The Pentagon
Washington, D.C. 20301-8000

Subject: Summary of the September 17, 1986 Meeting

Dear Captain Carricato:

Thank you for coming here to discuss the applicability of RCRA to DOD's installations. I was encouraged by our meeting, and I was pleased with our progress in identifying RCRA issues that arise at your facilities. This letter summarizes my understanding of the issues we discussed at the September 17 meeting. Please contact me if your understanding of our meeting differs from the following.

We discussed three issues that often arise when EPA is preparing a RCRA permit for a DOD facility. These issues arose recently in two letters from DOD to EPA Region III. The letters addressed RCRA permits at DGSC in Richmond, and Aberdeen Proving Ground. We are anxious to resolve these issues and I hope that our recent discussions more accurately reflect DOD policy than do the two letters. The three issues are:

1. Will EPA's RCRA permits incorporate the IRP cleanup schedule for "IRP units"?
2. Does EPA's RCRA program have oversight over the IRP?
3. Does RCRA apply to "non-IRP units"?

We agreed that EPA's schedule of compliance under §3004(u) could incorporate, to the extent practicable, the IRP cleanup schedule. We further agreed that EPA's RCRA program included oversight over the IRP cleanup when included in the permit. Finally, we agreed to further discuss the applicability of RCRA to "non-IRP units."

This has been retyped from the original document.

We discussed EPA's definition of "facility." I reiterated EPA's position that is discussed in the March 5, 1986 FR Notice. We agreed that if DOD wishes to pursue this issue, you will discuss this with me, and I will schedule a meeting with Marcia Williams, if necessary.

We agreed on the need for policy development between our offices and for dispute resolution procedures. I suggested two possible mechanisms:

- a headquarters-level task force that would meet regularly to discuss issues and resolve policy questions for DOD facilities;
- a process for resolving disputes between DOD and authorized States or EPA Regional offices. We agreed to address these proposals in more detail during subsequent meetings between our two offices.

I mentioned a meeting between our two Offices of General Counsel on the issue of DLA ownership. You agreed to look into ways of expediting the transfer of information to us about DLA's property management authority. This information will assist our General Counsel's office in resolving this issue.

We will contact you shortly to set up another meeting. Please let me know if you have anything to add to this summary.

Sincerely yours,

Bruce R. Weddle, Director
Permits and State Programs Division
Office of Solid Waste

cc: Paul Connor
Mike Heeb
Warren Hull
Marcia Williams

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

SEPTEMBER 86

5. RCRA Enforcement

When can the §3008(h) authority be used? How can a §3013 order support the §3008(h) action?

The Hazardous and Solid Waste Amendments of 1984 (HSWA) added §3008(h), one of the corrective action authorities, to the Solid Waste Disposal Act. Section 3008(h) allows the Agency to require corrective action or any other response necessary to protect human health or the environment when a release of hazardous waste is identified at an interim status hazardous waste treatment, storage or disposal facility.

Section 3008(h) provides: "Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment...". Appropriate information can be obtained from a variety of sources, including data from laboratory analyses of soil, air, surface water or ground water samples, observations recorded during inspections, photographs, and facts obtained from facility records.

Actual sampling data is not necessary to show a release. Other evidence that a release has occurred might be a broken dike at a surface impoundment discovered by an inspector. Less obvious indications of a release might also be adequate to make the determination. For example, the Agency could have sufficient information on the contents of a land disposal unit, the design and operating characteristics of the unit, and the hydrogeology of the area in which the unit is located to conclude that there has probably been a release to groundwater. The Agency could then order the owner or operator to perform an investigation to confirm the presence of contamination, and, after confirmation, to undertake corrective action.

However, to exercise the interim status corrective action authority, the Agency must first have information that there is or has been a release at the facility. Additional sources that may provide information on releases include: Inspection reports, RCRA Part A and Part B permit applications, responses to RCRA §3007 information requests, information obtained through RCRA §3013 orders, notifications required by CERCLA §103, information gathering activities conducted under CERCLA §104, and informants' tips or citizens' complaints corroborated by supporting information.

A §3013 order may be used in some instances in which EPA does not have adequate information that there is or has been a release. Section 3013 provides that the Agency may compel monitoring, testing and analysis if the presence of hazardous waste at a facility or site at which hazardous waste has been treated, stored or disposed of may present a substantial hazard to human health or the environment.

Source: Ginny Steiner (202) 475-9329
Research: Caroline Danek

007 -7 000**MEMORANDUM**

SUBJECT: Headquarters Support for Corrective Action Technology

FROM: Bruce R. Waddle, Director
Permits and State Programs Division

TO: RCRA Branch Chiefs, Regions I-X

The corrective action authorities of RCRA provide one of the Agency's most effective tools for assuring the clean-up of releases at hazardous waste management facilities. Because of this, we are committed to providing you with continuing technical assistance on corrective action. This summer the Land Disposal Permit Assistance Team (PAT) had a PhD candidate in geology working full time investigating case studies of corrective action technologies. He focused on the clean-up of ground water, soil, and surface water. The results of his efforts were: (1) the creation of a corrective action computer database; (2) biweekly technical sessions for OSWER staff; (3) a seminar for non-technical management and staff; and (4) a list of suggested publications for a base library on corrective action.

Some of the results of these efforts are available for your use right now, while other projects are in the planning stage. The computer database is now available to help your staff analyze corrective action proposals which are submitted by owner/operators. It contains over 200 entries, which are summaries of journal articles and EPA publications on corrective action technologies which have been demonstrated in the field or in bench scale projects. The system is designed around a list of key words, which is attached (along with an example of a data output). We direct the computer to search for and locate entries that contain key words in which you are interested. For example, you may be interested in cleanup experience with specific chemicals (e.g., PCBs, TCE), or using specific technologies (e.g., air stripping, in situ biological treatment). When the computer finds entries which contain those key words, it will print out a citation and abstract of the appropriate article(s). If the abstract seems relevant, the entire article can then be examined in your library.

More details will be given to your staff when they call in with a request. At the present the data base is accessed by calling Janette Hansen (PTS 382-4754) or Dave Eberly (PTS 382-4691) with your requests. After we get a computer with a modem, you will be able to directly access the database with a Regional PC through a modem. We will send out detailed instructions on how to do this when the system is set up. The database will be updated on a regular basis.

This summer's seminar on corrective action technologies was well received. I have attached a copy of the handout from the seminar, which I believe will be useful to you, even without having attended the seminar.

As was mentioned above, a list of suggested references on corrective action was compiled during the creation of the database. I have attached that list in hopes that your office will be able to provide your staff with copies of each publication. The sources of the publications are also attached.

In the future, we plan to set up a corrective action computer bulletin board for staff to communicate between Regions. For example, if a staff member in one Region would like to know if anyone else has encountered a situation similar to one which they have met, they can put up a "note" on the bulletin board. Staff from other Regions can view the bulletin board and contact the person who had the question. This can help to improve communication between the Regions on issues of common interest. We will also consider the need for other information sharing mechanisms (e.g., conference calls, workshops) as we all develop experience in this area.

Finally, we hope that you will help us to share interesting corrective action proposals throughout the Regions and States. When you receive a proposal which could be of some interest to others, please contact Dave Eberly or Janette Hansen (numbers listed above). They will work with you to decide the best way to disseminate the information. If you think of other ways in which we can help, please contact Terry Grogan of the Land Disposal PAT (PTS 382-4740).

Attachments

cc: Winston Porter
Marcia Williams
Gene Lucero
Henry Longest
Jack Lehman
Permit Section Chiefs, Regions I-X
RPA Contacts, Regions I-X
Sue Moreland, ASTSWMO
Ken Shuster
Matt Hale
Terry Grogan
Dave Pagan
Art Day
Don Sanning, ORD

DEC 8 1986

MEMORANDUM

SUBJECT: The Department of Defense Installation
Restoration Program

FROM: Marcia E. Williams, Director */S/*
Office of Solid Waste

TO: Waste Management Division Directors
Regions I - X

This memorandum discusses RCRA permits at facilities owned or operated by the Department of Defense (DOD). DOD has developed the Installation Restoration Program (IRP) to identify and clean up hazardous waste sites. Under the IRP, DOD prepares studies and generates data that can assist EPA in drafting RCRA permits.

The IRP is carried out in stages that are comparable to the stages of a cleanup required by RCRA. Phase I of the IRP is intended to identify waste sites and is comparable to a RCRA Facility Assessment. A Phase I report should identify most, if not all, of the solid waste management units at a DOD facility. Phase II of the IRP characterizes the nature and extent of contamination at a site or unit. Phase II usually provides site characterization information and monitoring data and is comparable to a RCRA Facility Investigation. Phase III of the IRP is an R&D phase that is used where a site cannot be controlled with proven technology or where a site is suitable for evaluating new technologies. Although the permitting process has no R&D stage, Phase III of the IRP can be helpful in identifying new or unique corrective measures. Phase IV of the IRP develops and implements a remedial action plan. Phase IV is comparable to identifying and implementing corrective measures under RCRA.

EPA has placed a high priority on RCRA compliance at Federal facilities. The work performed under the IRP will provide you with much of the information you need to prepare a permit, and I urge you to incorporate the IRP process into the permit development process. This means that you need to work with the DOD installation in reviewing the results of each phase of the IRP process and when necessary, expand the scope of the IRP to include all solid waste management units at the facility.

Please keep in mind that we are developing a rule that will recognize priorities for corrective action at Federal facilities. After we promulgate the rule we will incorporate a facility's priority into the schedule of compliance under §3004(u) of RCRA. Until we prepare a final rule, permits should recognize that DOD can not address releases from every solid waste management unit at every facility simultaneously.

In sum, I urge you to use the IRP process when you implement the RCRA corrective action authorities under §3004(u). Thank you for your attention to this matter.

cc: RCRA Branch Chiefs
Regions I - X

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JANUARY 87

3. Corrective Action - §3008(h)

A container storage facility subject to interim status (RCRA Section 3005(e)) has two solid waste management units (SWMUs) on site. If the facility was closed before receiving a full Part B permit, could EPA enforce interim status corrective action measures (RCRA Section 3008a(h)) against the facility to clean up the SWMUs?

The authority to enforce corrective action measures at an interim status facility is not necessarily tied to closure at hazardous waste management units at the facility in question. Facilities with closed units may remain in interim status. Furthermore, once a facility has obtained interim status, it is potentially subject to an enforcement action pursuant to section 3008(h).

March 6, 1987

Gary D. Vest, Deputy
for Environment, Safety, and Occupational Health
Deputy Assistant Secretary of the Air Force
(Installations, Environment, and Safety)
Department of the Air Force
Washington, D.C. 20330-1000

Dear Mr. Vest:

Thank you for your letter of December 24, 1986 concerning the inventory of Federal facilities compiled pursuant to Section 3016 of the Resource Conservation and Recovery Act (RCRA). We appreciate your efforts in submitting a timely inventory to EPA and we look forward to working with you when we prepare for the next inventory that is due January 31, 1988.

In your letter you raised several concerns about the inventory. One concern is the need for more time to complete the next inventory. We agree that Federal agencies need more time to compile their inventories, and we intend to distribute the questionnaires for the 1988 inventory well in advance of the January 31 deadline. Our target date for distributing the 1988 inventory questionnaires is June 1987. This date will give you six months to complete your next inventory.

Another concern in your letter is the need for more accurate instructions. Please be aware that we are revising both the questionnaire and the instructions. When we have prepared drafts of these documents we will distribute them to the Federal agencies for comment. The drafts will be distributed through EPA's Federal Roundtable which meets monthly and is sponsored by EPA's Office of Federal Activities. Your representative on the Federal Roundtable will receive the draft questionnaire and instructions for comment.

Your letter also asked about the applicability of RCRA to releases that are being investigated under CERCLA. Before Congress amended RCRA in 1984, RCRA's corrective action authorities applied only to landfills, surface impoundments, waste piles, and land treatment areas that received hazardous waste after January 26, 1983. However, the 1984 amendments greatly expanded EPA's authority under RCRA to include past hazardous waste management practices at RCRA

This has been retyped from the original document.

facilities. Section 3004(u) of RCRA states that every RCRA permit issued after November 8, 1984 shall require ". . . corrective action for all releases of hazardous waste or constituents from any solid waste management unit . . . regardless of the time at which waste was placed in such unit" (emphasis added). Therefore, RCRA permits must address corrective action for releases from any inactive, closed inactive, closed or abandoned units at the facility. For those Air Force installations that must obtain a RCRA permit it is likely that the IRP sites at the installation qualify as solid waste management units and must, therefore, be addressed in a RCRA permit. Under RCRA's corrective action authorities.

Many of your IRP sites that are subject to RCRA's corrective action authorities are also subject to CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 120 of SARA requires EPA to ensure that a preliminary assessment (PA) is performed before April 1988 for every site identified in the "Federal Agency Hazardous Waste Compliance Docket." Where the PA indicates that the site should be evaluated under EPA's Hazard Ranking System (HRS), EPA has until April 1989 to finish listing the site on the National Priorities List (NPL). Within six months after a site is placed on the NPL the Federal owner/operator must begin a remedial investigation/feasibility study (RI/FS). The statute further provides that EPA and the appropriate State shall publish a timetable for the "expeditious completion" of the RI/FS. Within 180 days of the completion of the RI/FS, EPA and the Federal owner/operator must enter into an interagency agreement (IAG) for the "expeditious completion" of all necessary remedial actions.

For those IRP sites that are subject to both RCRA and CERCLA, the requirements of both programs must be satisfied in full. However, it is possible that the work performed under one program would satisfy the requirements of the other program. Although EPA has not fully developed guidelines for implementing both programs at a single facility, EPA will employ the authority or combination of authorities that best resolve the waste management issues at your installations.

The decision as to which program or programs will be used at your installations should have little or no impact on the ability of the IR program to clean up your hazardous waste sites. The cleanup standards for RCRA and CERCLA are, except for minor exceptions, the same. The procedures for cleaning up waste sites under RCRA are comparable to the procedures under CERCLA. Furthermore, given the expanded role for States under SARA, the degree of State involvement in both programs is similar. As EPA progresses in developing rules and guidances for the RCRA Corrective Action Program, we are striving to assure consistency between RCRA and CERCLA.

This has been retyped from the original document.

This letter provides only a brief summary of how RCRA and CERCLA may be implemented at your installations. However, we are preparing a guidance document that describes these issues in greater detail, and we will distribute this document when completed.

The final question in your letter concerns our list of potential RCRA violators. We compiled this list of facilities from information submitted to us as part of the inventory. We placed a facility on the list if the inventory indicated that it operated a RCRA unit, but had not submitted a Part A application, a Part B Application, or a closure plan.

As you requested, we examined your inventory responses for the 12 Air Force sites on our list of potential RCRA violators. The following explanation accounts for each site:

- The two sites at Wright-Patterson AFB, Zone 4 and Zone 5, are on the list because the inventory indicated that the installation has an operating waste pile, but had not submitted a Part A application.
- We placed the Municipal Airport for the Arkansas National Guard on the list because the inventory indicated that the airport operates storage and treatment tanks but had not submitted a Part A application.
- The underground tank at Vance AFB is on the list because the inventory indicated that the tank is an operating storage tank but had not submitted a Part A application.
- We placed three sites at Dover AFB on the list because the inventory indicated that each site has an operating RCRA unit, but had not submitted a Part A application.
- Finally, there are four sites which we have determined should not be on the list of potential RCRA violators. The four sites are "Building 219 []" and "Landfill 1" at Griffiss AFB, the "Site D-4 Landfill" at Kelly AFB, and the DRMO Storage facility at Plattsburgh AFB. The questionnaires for these sites were filled out correctly. However, when we entered the information from the questionnaires into our database, we mistakenly indicated that these

This has been retyped from the original document.

sites had operating RCRA units which had not submitted the required information. We will forward this information to the appropriate EPA Regional Office.

Again, thank you for your letter concerning the Federal Facilities Inventory. We urge the Air Force to participate in the process of revising the inventory questionnaire and instructions. We hope that through our mutual efforts and cooperation we are able to produce a thorough and accurate inventory of Federal facilities. For more information about the inventory, please contact Paul Connor, at 475-7066.

Sincerely yours,

Marcia E. Williams
Director
Office of Solid Waste

Gene A. Lucero
Director
Office of Waste Programs Enforcement

cc: Lee Berwig, OPA

MAR 13 1987

MEMORANDUM

SUBJECT: Interim Final RCRA Corrective Action Plan (CAP)

FROM: Marcia E. Williams, Director /S/
Office of Solid WasteTO: James H. Scarbrough, Chief
Residuals Management Branch, Region IV

In your January 20, 1987, memo to me, you expressed various concerns about the contents and use of the CAP, including the application of protection standards.

I agree that we need comprehensive guidance to implement the RCRA corrective action program. The Office of Solid Waste recently completed the options selection process for §3004(u) corrective action, which resolved several outstanding issues necessary for development of regulations. In the next several months, we will be issuing guidance to implement these decisions. Such guidance will address the four key issues identified in your memorandum, with special emphasis on setting clean-up target levels for all media. The CAP and the RFI Guidance will be revised accordingly to reflect the resolution of these issues and field experience in using these documents. The next draft of the RFI Guidance, which will be distributed for Agency comment in April 1987, will address these issues in a new section on RCRA Health and Environmental Assessments.

Your memorandum also addresses whether the RCRA guidance should reference the Superfund Public Health Evaluation Manual (SPHEM). We have examined this document and believe that it contains a good deal of useful information for evaluating impacts to public health. We are using the SPHEM in developing the RFI Guidance section on performing RCRA Health and Environmental Assessments. The SPHEM will serve as a useful technical reference for the RCRA corrective action program. For instance, the SPHEM provides detailed guidance on how to assess health impacts at known points of exposure. However, the elements of the SPHEM that deal with determining the location of potential exposure points address an issue that has not yet been fully resolved for RCRA

corrective action. As you know, corrective action decisions may be based on the presumption that potential exposure can occur anywhere up to the waste management unit. In addition, the SPHEM directs the use of maximum contaminant levels (MCLs) when determining human health impacts. The use of MCLs versus other health-based standards (e.g., reference doses) has not yet been resolved in the RCRA corrective action rule development process.

You also expressed concern over the technical framework of the CAP, including corrective measure alternative selection and laboratory and bench scale studies. I believe that the CAP provides the flexibility to alleviate these concerns. The existing technical framework of the CAP affords a flexible approach to determining the number of corrective measure alternatives after the need for corrective measures has been established. That is, the number (i.e., one or more) of alternatives to be submitted by a RCRA facility can be determined by the Regional Office on a facility-specific basis (see CAP, page 4). This approach on alternative selection was clarified on February 3, 1987, at a meeting between OSW staff and several of your staff in Atlanta.

The CAP also affords flexibility in the application of laboratory and bench scale studies. As stated on page 2 of the CAP, the scopes of work in the CAP are examples and could be modified, enhanced, or sections deleted based on site-specific situations. Therefore, at your discretion, laboratory and bench scale studies may not be required for a specific facility or such studies may be shifted to the Corrective Measures Study part of the corrective action process. Overall, the CAP should serve as a reference for Regional Offices to prepare permit and enforcement order conditions, not as a prescription to be followed in every case.

If you or your staff wish to discuss the above matters further, please contact Art Day (382-4658) or George Dixon (382-4494) of the Land Disposal Branch or Matt Hale, Chief of the Permits Branch (382-4740).

cc: Gene Lucero
Joe Carra
Bob Tonetti
Matt Hale
Art Day
Dave Fagan
George Dixon
George Faison

April 2, 1987

MEMORANDUM

SUBJECT: Interpretations of RCRA Applicability to Releases of
Hazardous Waste

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562)

Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

TO: Kenneth D. Feigner, Chief
Waste Management Branch, Region X

This memorandum responds to your memoranda of December 25, 1986 and January 20, 1987, in which you raised several issues regarding applicability of RCRA corrective action authorities, and the implications of termination of interim status by authorized States in regard to implementing §3004(u) corrective action.

The first general concern which you raised relates to the applicability of RCRA to releases from less-than-90-day accumulation units. The Hotline report that you cited and which stated that such releases "are not generally covered by RCRA regulations," requires clarification. It is clearly possible to address releases from less-than-90-day accumulation units by using the imminent and substantial endangerment authorities of RCRA §7003 or CERCLA §106. The alternative theory which you suggest presents a number of policy and legal issues which we believe merit further consideration.

The other concern which you raised in your 12/29/86 memorandum dealt with the applicability of §3004(u) to facilities which are closing but which are not subject to post-closure permits. You assert that §3004(u) could be applicable to closing interim status facilities which are not subject to post-closure permits. This interpretation is based on the fact that certification of closure does not terminate interim status in the absence of a final administrative disposition. You suggest that until a permit is denied, or interim status is otherwise terminated, the facility remains "subject" to a permit and is, therefore, subject to §3004(u).

This has been retyped from the original document.

There are several legal limitations to this approach, and the Agency has no plans at this time to develop requirements such as those you have suggested.

If closure for the entire facility has been certified and is, in fact, in compliance with 40 CFR Part 265 and no post-closure permit is required, there should be no wastes or units at the facility which would be subject to a RCRA permit. If the same facility later wishes to resume operation, the Region may request a Part B, thereby bringing the facility into the universe subject to §3004(u) requirements. Absent such actions, however, §3004(u) does not apply. Agency interpretation of the applicability of §3004(u) has consistently been limited to facilities seeking a permit.

While §3004(u) could be construed to mean that corrective action can be required either by promulgation of standards or by issuing permits, Agency interpretation, as supported by the legislative history, has consistently been that any standards promulgated under this Section will be standards for facilities in the process of being permitted. Although the corrective action standards will not be applicable as self-implementing interim status (Part 265) standards, we anticipate that they will generally be applied in §3008(h) actions. As discussed at the Branch Chiefs' meeting in January, we intend to include language to this effect in the preamble to the regulation to be proposed in the Fall of 1987.

As summarized in your 1/20/87 memorandum, there was some discussion during the RCRA Branch Chiefs' meeting of whether EPA could act to "preserve" interim status at a facility which is denied a permit by an authorized state. The discussion suggested that such an action might be desirable for the purpose of implementing §3004(u) corrective action, if necessary, at such facilities.

An authorized state's denial of a base program permit is a final administrative disposition of the permit application. A facility's authorization to operate pursuant to interim status terminates upon such denial (see §3005(e)(1)(C)). Interim status is granted by statute and cannot be "preserved" by EPA. It will not, therefore, be possible to extend interim status after a permit has been denied for the purpose of imposing corrective action requirements. The Agency has taken the position, however, that §3008(h) will still apply since the facility previously had interim status.

We understand that the Regions were reluctant to exercise §3008(h) authorities in the absence of administrative hearing procedures. Since guidance on the hearing procedures has been signed by the Assistant Administrator for Enforcement and Compliance Monitoring and the Assistant Administrator for Solid Waste and

Emergency Response and has been distributed, we assume that this is no longer an issue.

If you have questions concerning these interpretations, you may contact Michele Anders (for corrective action and permitting issues) at 382-4534, or Susan O'Keefe (for enforcement questions) at 475-9313.

cc: RCRA Branch Chiefs, Regions I through IX

June 30, 1987

MEMORANDUM

SUBJECT: RCRA Permits with HSWA Conditions

FROM: Bruce Weddle, Director
Permits & State Programs Division (WH-563)

TO: Sam Becker, Chief
Hazardous Waste Compliance Branch
Region VI

During my recent visit you raised two questions related to the issuance of RCRA permits with HSWA provisions. The first issue concerned the implications of a Region issuing the HSWA provisions of a permit before the State permit. The other question pertained to the status of the HSWA portion of a jointly issued permit if the State portion is appealed.

The Agency's policy on the timing of the State and Federal portions of the permit has been described in detail in a OSWER memorandum to the Regions by Jack McGraw (July 1, 1985; copy attached). EPA's policy is that joint RCRA permits should be issued simultaneously by EPA and the States. The memorandum describes several exceptions to joint permitting that may occur if the State has already issued the draft or final permit. However, no consideration was given to the Region issuing the HSWA conditions prior to issuance of the State permit.

Beyond the policy memo noted above, I believe it is inappropriate to issue the HSWA portion independent of the rest of the permit. First and foremost, a permit is not a complete RCRA permit unless both the State and Federal portions have been issued. Therefore, issuing only the Federal portion of the permit would have no practical impact. Without a complete RCRA permit, new facilities cannot begin construction, nor can existing facilities expand beyond the limits allowed under interim status. Furthermore, without the State permit, it is likely that the HSWA corrective action requirements could not be effectively enforced because §3004(u) authorities are linked to issuance of the RCRA permit.

This has been retyped from the original document.

For many facilities, there may also be valid technical reasons to issue the Federal and State portions simultaneously. Certain HSWA requirements may utilize data submitted for the baseline program permit, e.g., HSWA corrective action conditions may require a variety of data submitted by the facility for the State permit. For example, any corrective action for contaminated ground water required for regulated units under Subpart F could directly impact ground-water investigations required for SWMUs under HSWA.

I also foresee a potential problem arising in public perception if the Federal portion is issued before the State permit. This may lead the public to expect that corrective action investigations and clean-up activities will be initiated, even though such conditions could not be properly enforced as noted above. More generally, the public may be confused by the separation of corrective action activities and the operating permit. Therefore, public participation efforts would be more effective if the State and Federal portions are issued together.

Your other question pertained to the impact on the HSWA conditions of a complete RCRA permit if the State portion alone is appealed. If a request for review of a RCRA permit is granted all contested permit conditions will be stayed, including any uncontested conditions which are not severable from the conditions in dispute. Therefore, whether or not the HSWA conditions would be stayed depends on whether they could be properly implemented without the contested conditions in the State permit. In many cases, HSWA conditions will be severable from contested portions of the State permit. Corrective action requirements to investigate releases from SWMUs, for example, could presumably begin while unrelated portions of the State permit are stayed.

I hope I have answered your questions. If I can be of any further assistance, please let me know.

Attachment

cc: Bill Honker, Region VI
Suzanne Rudzinski
Matt Hale
Bob Kaysor
Dave Fagan
Frank McAlister
Carrie Wehling

July 24, 1987

MEMORANDUM

SUBJECT: Definition of Solid Waste Management Unit for the
Purpose of Corrective Action Under Section
3004(u)

FROM: Marcia E. Williams, Director
Office of Solid Waste

TO: Hazardous Waste Division Directors, Regions I-X

The purpose of this memorandum is to provide clarification regarding one aspect of the definition of solid waste management unit as related to RCRA corrective action under Section 3004(u). The concept of a solid waste management unit has been explained in various guidances since the passage of the 1984 Hazardous and Solid Waste Amendments (HSWA).

As explained in the July 15, 1985 HSWA Codification Rule, a solid waste management unit is "...any unit at a facility from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes." This definition was intended to include those types of units which have traditionally been subject to regulatory control under RCRA: container storage areas, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, underground injection wells and other physical, chemical and biological treatment units.

A memorandum from John Skinner to the Hazardous Waste Division Directors (June 14, 1986) further interpreted the term solid waste management unit to include areas at facilities which have become contaminated by routine, systematic and deliberate releases of hazardous waste or hazardous constituents. An example of this type of "solid waste management unit" is a wood preservative "kickback" area, where drippage of preservative fluids onto soils from pressure-treated wood is allowed to occur over time. This interpretation was reiterated in the final RCRA Facility Assessment Guidance and the National HSWA Corrective Action Strategy of October 14, 1986.

This has been retyped from the original document.

Recently, however, several Regions have inquired whether the term "deliberate" meant that the owner/operator had actually intended to create the release of hazardous wastes or hazardous constituents. We wish to clarify that the term "deliberate" in this context was not meant to require a showing that the owner/operator knowingly caused a release of hazardous wastes or hazardous constituents. Rather, the term "deliberate" was included to indicate the Agency's intention not to exercise its Section 3004(u) authority to proceed against one-time, accidental spills which cannot be linked to a discernible solid waste management unit. An example of this type of release would be an accidental spill from a truck at a RCRA facility. Routine and systematic releases constitute, in effect, management of wastes; the area at which this activity has taken place can thus reasonably be considered a solid waste management unit. Therefore, in implementing corrective action under Section 3004(u), Regions and States should consider areas which have become contaminated through routine and systematic releases of hazardous wastes or hazardous constituents to be solid waste management units. It is not necessary to establish that such releases were deliberate in nature.

This concept, and other issues relating to the definition of solid waste management unit, will be addressed in the proposed rulemaking being developed for corrective action under Section 3004(u).

If you have any questions regarding this interpretation of solid waste management unit, please contact David Fagan at FTS 382-4497.

cc: Regional RCRA Branch Chiefs
Regional RCRA Permit Section Chiefs
Gene Lucero
Bruce Weddle
Joe Carra
Mark Greenwood

August 11, 1987

MEMORANDUM

SUBJECT: SWMU Corrective Action RIA Facility Data Base

FROM: Betsy Tam
Economic Analysis Staff (WH-565)

TO: See Attached List

The purpose of this memo is to present a summary of the SWMU CA RIA facility data base. The purpose of this data base is to represent the range of types of facilities with newly regulated SWMUs. Based on the facility characteristics in this data base we will estimate a range of risks and costs for five regulatory scenarios. These regulatory scenarios vary by timing and extent of corrective action required.

We developed this data base by collecting RFA data for a sample of 65 RCRA facilities from the population of facilities with RFAs recommending RFIs. We randomly selected a stratified sample to represent the appropriate proportions of land disposal, storage and treatment, and incinerator facilities in the population. As a result, the data base includes 21 land disposal facilities, 41 treatment and storage facilities, and three incineration facilities. These 65 facilities have a total of 893 SWMUs.

In many cases the RFAs did not provide adequately detailed descriptive information. Such inadequate information included waste type, unit sizes, and hydrogeologic settings. This information is essential for estimating potential risks and comparing the effectiveness of alternative regulatory scenarios. Therefore, we used best professional judgment to develop reasonable assumptions for the missing data from available information, such as the DRASTIC system for hydrogeologic settings. As a result, although the 65 facilities are based on much actual RFA data, we consider these facilities as hypothetical because of the assumptions we had to make to fill in the data gaps.

Exhibit 1 displays the number of SWMUs per facility. Within our sample of facilities, the minimum number of SWMUs per facility is one

This has been retyped from the original document.

and the maximum number of SWMUs per facility is 42. The number of SWMUs per facility includes both Subtitle C regulated units and newly regulated units.

Exhibit 2 presents the distribution of SWMUs by type of SWMU and by type of facility. This exhibit indicates an average of 14 SWMUs per facility, with about half of the units already Subtitle C regulated and the other half newly regulated SWMUs. Exhibit 2 indicates that Federal Facilities tend to have larger numbers of SWMUs per facility than other TSDFs. Exhibit 2 also indicates that land disposal, incinerator, and Federal Facilities tend to have slightly more newly regulated SWMUs than Subtitle C units. This exhibit indicates that storage and treatment facilities tend to have similar numbers of newly regulated SWMUs and Subtitle C regulated units. Finally, this exhibit indicates that the average and median numbers of SWMUs per facility are similar, which suggests that there are not extreme outliers biasing these descriptive statistics.

Exhibit 3 provides the average number of SWMUs per facility by type of SWMU. This exhibit indicates that the average number of each unit type at a facility is between one and six, with tanks being the most frequent unit type on average. Exhibit 3 also provides the percentage of facilities with each SWMU type. The exhibit indicates that facilities with newly regulated tanks or landfills are most frequent. Finally, the exhibit indicates that facilities with Subtitle C tanks or containers are most frequent.

Exhibit 4 lists the nine most frequent waste streams associated with the facilities in the data base. The RFA data did not always provide adequate waste stream data. Therefore, based on the facility processes or other unit waste streams reported in the RFAs, we assigned appropriate waste streams based on best professional judgement. Exhibit 4 indicates that the nine listed waste streams account for almost 42% of all of the SWMUs. About 14% of the units are associated with non-hazardous wastes or, in a few cases, inadequate information was available to determine an appropriate waste stream. Exhibit 5 is a summary of all waste streams associated with the 893 units in the data base. These waste streams have been combined in more general groups compared to the waste streams listed in Exhibit 4. Exhibit 5 indicates that spent solvents constitute the most frequent waste stream category at 21% of the units.

Exhibit 6 presents the distribution of the facilities across DRASTIC hydrogeologic settings. DRASTIC is a system developed by the National Water Well Association in 1984. The DRASTIC system divides the United States into hydrogeologic settings and provides generally recognized values for Depth to ground water, net Recharge, Aquifer media, Soil types, Topology, Impact zone, Conductivity, and other

input parameters within each hydrogeologic setting. Exhibit 7 provides a more detailed description of the DRASTIC hydrogeologic settings in terms of some of the few key parameters.

In addition to these summary statistics describing our facility data base, I have a listing of each of the 65 hypothetical facilities. This listing describes each facility in terms of the following:

- type of facility;
- numbers and types of units;
- DRASTIC setting and descriptive hydrogeologic setting components;
- nearest downgradient water well;
- ground water velocities;
- regulatory status of units;
- waste stream types;
- waste throughput or capacities of units;
- year units open and close; and
- year waste is removed.

Please review this summary information and let me know if you would also like to review a listing of each of the 65 facilities. If you believe there are types of facilities not adequately represented by our data base, I would appreciate your suggestions. I can be reached at 202/382-3403 to discuss questions and comments.

3 SEP 87

MEMORANDUM

SUBJECT: Fiber Optics for In-Situ Monitoring

FROM: Marcia Williams, Director
Office of Solid Waste (WH-562) */s/*TO: Erich Bretthauer, Director
Environmental Monitoring Systems Laboratory/Las Vegas

Thank you for the report you provided recently, describing and providing the status of fiber optics applications for in-situ monitoring. While we have recently had to make some difficult short-term priority choices, this subject remains of substantive interest to us in OSW as a means of field monitoring at waste management facilities.

There are several potential applications for developing and improving advanced field monitoring techniques. Our future efforts in OSW are directed toward a continuum of control, based upon waste-specific/site-specific interactions. Ash monofills (a single, consistent waste at a site) are a cogent example, one for which a near-term solution is needed. In this particular application, the contaminating constituents are, generally, lead and cadmium. Simplified detection of releases of constituents such as these would perhaps enable us to define corrective action before significant contamination problems occur.

Another application of interest to us is in biotechnology, where the sensor might be deployed to detect degradation products of the bio process, or to detect "toxic" conditions prior to undertaking in situ treatment. Other potential applications include the use of fiber optic sensors for detecting air emissions (e.g., from land treatment areas) or serving as a monitor in geologic repositories (e.g., an air sniffer in a salt dome).

With our ever-increasing need for field monitoring at hazardous waste sites, fiber optics technology does show promise. We would like to see one (or more) of our applications become part of your fiber optics research program.

cc: Tom Devine
Norbert Dee
Meg Kelly
John Skinner
Darwin Wright

DEC 21 1987

MEMORANDUM

SUBJECT: Options for Voluntary Corrective Action

FROM: Marcia Williams *BS*
Director
Office of Solid WasteTO: Directors
Waste Management Divisions, Regions I-X

Many unpermitted hazardous waste generators and other industrial property owners are likely to have solid waste management units on their property that require some degree of corrective action. In a number of cases, the facility owners may wish to proceed with corrective action, either to reduce their liability or to forestall subsequent EPA or State action. Under current RCRA regulations, however, certain activities conducted during voluntary correction action will require a permit if the wastes are hazardous waste (i.e., they are known to include listed hazardous wastes or they are determined to be hazardous under 40 CFR 261 Subpart C). This could include relatively straight forward activities, such as dewatering wastes or treating groundwater, as well as more complicated treatment technologies such as incineration.

We are concerned that the time needed to obtain a permit may in some cases substantially delay desirable cleanup and provide a significant disincentive to generators and other facility owners considering voluntary corrective action. I am interested in identifying approaches that would allow certain relatively low concern treatment activities to be conducted during corrective action without a full RCRA permit. We have identified several possible approaches that might be used to allow voluntary corrective action at unpermitted sites. These approaches are outlined in the attachment.

Options 1-3 are possible now, without any regulatory or statutory changes. With regard to these options, I am specifically interested in the potential benefits and obstacles you see to each of the approaches. Are generators or others likely to avail themselves of these? Have you used any of these approaches with parties seeking to do voluntary corrective action?

Option 4 would require a rule change. In our preliminary discussions with the Office of General Counsel, they have indicated that they see potential legal problems to this approach. Nevertheless, I believe that it may be worth further investigating this option to see if a legally defensible approach can be developed. With regard to this option, I'm specifically interested in your thoughts on the types of treatment activities that may be appropriate for conditional exemptions from permitting.

I see this issue of voluntary corrective action as being very important to our program. I appreciate you taking the time to consider this issue and I look forward to your reactions.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9502.1988(01)

AUG 23 1988

MEMORANDUM

SUBJECT: OECM Comments on Corrective Action Rule

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste *JKR SKL*

TO: Edward Reich
Deputy Associate Enforcement Counsel

Last week when we met to discuss your Office's non-concurrence issues on the RCRA corrective action rule we reached tentative agreement as to how those issues would be resolved. This memorandum summarizes my understanding of the agreements we reached.

Issue 1. CAMU. The idea of including discernible units within a CAMU will not be explicitly proposed in the rule, but will be discussed in the preamble. The preamble will also discuss optional approaches, as per the suggested preamble language in your August 9 memorandum.

Issue 2. Temporary Units. Temporary units will be limited to managing wastes that originate within the boundary of the facility, similar to the concept contained in the "Christmas Tree" rule (see attached excerpt from that rule). We will also develop additional preamble language explaining the legal rationale behind temporary units, emphasizing how notice and comment on such units is provided through the permit/order procedures. Additional clarifying language describing how the land disposal restrictions apply to land-based temporary units will also be developed.

Issue 3. Point of Departure. We will add rule language on 10^{-6} as the point of departure in setting cleanup levels. The language is essentially the same as the language in the NCP (see attached rule language).

Issue 4. Target Levels. The preamble discussion which explains the circumstances in which it will not be necessary to specify preliminary target levels will be expanded to include additional clarifying examples.

~~Issue 5. Aggregate Risk. As a result of a meeting between~~
~~soon as possible to clarify this issue. It is our understanding~~
~~that the approach outlined in the rule is consistent with how the~~

SYMBOL

media aggregate risk would be a factor in establishing cleanup levels and triggering corrective measure studies. This discussion will essentially reiterate the NCP language; i.e., that cross media analyses will be done when there are indications that site-specific exposure conditions warrant such analyses.

Issue 6. Protectiveness. As we discussed, the approach articulated in the rule for setting cleanup standards within the risk range, which allows flexibility to consider several factors in selecting the appropriate level, is a fundamental concept in both the RCRA and CERCLA programs. You indicated that this would not be a non-concurrence issue for OECM.

If you have any questions concerning the above, please let me know. I will be in touch with you later this week, to confirm that this summary of our meeting is accurate, and to discuss how to move the rule forward to OMB.

cc: B. Weddle (OSW)
M. Hale (OSW)
D. Fagan (OSW)
B. Grimm (OSWER)
S. Leifer (OECM)
J. Cannon (OECM)

FEB 16 1988

Mr. Kenneth M. Kastner
Assistant General Counsel
Chemical Manufacturers Association
2501 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Kastner:

I am writing in response to your letter of January 7, 1988, in which you outlined the concerns on the Chemical Manufacturers Association (CMA) regarding constraints on voluntary corrective action, and offered several ideas as to how the RCRA program could be adapted to facilitate voluntary cleanups.

We share your concern that the current RCRA regulatory structure provides a disincentive to voluntary cleanup, and we appreciate your recommendations on this question. We are currently exploring possible solutions to the issue through a number of avenues, including EPA-sponsored corrective action roundtables, in which your organization has been participating, and the Keystone RCRA Project, which has identified voluntary corrective action as a specific area of concern. I trust that out of these efforts we and other interested groups can agree on a series of regulatory and, if necessary, statutory changes that will remove impediments to voluntary cleanups, and at the same time ensure adequate protection of human health and the environment.

In your letter, you suggested two specific areas for possible regulatory change -- permitting and the definition of hazardous waste. In the case of the first, you suggested a RCRA permit waiver for voluntary cleanups, contingent upon compliance with certain reporting, handling, design, and operation standards similar to the standards currently found in 40 CFR Part 264. As you may know, EPA discussed a similar approach in its June 3, 1987 proposal on mobile treatment units (52 FR 20914). We believe that this approach deserves particular consideration for voluntary corrective action, and we expect to explore it in more detail through the Keystone RCRA project.

You also suggested that EPA not define as "hazardous" any wastes subject to voluntary corrective action. We agree that treating cleanup wastes as hazardous wastes may not always be the most effective way of managing some of these wastes --particularly soils and groundwater with low levels of contamination. Consequently, we are examining the current regulatory status of contaminated soils and groundwater to ascertain whether other approaches to these wastes can assure protection of human health and the environment. As a result of this review we expect to reach a decision on whether regulatory changes are necessary.

We recognize that the issues you raise require prompt resolution, and the Agency is committed to addressing them expeditiously. As you realize, however, your specific recommendations and more generally the issue of voluntary corrective action raise substantial technical, policy, and legal issues. We hope over the next several months to work with you and other interested groups to resolve these issues and develop an overall strategy for encouraging voluntary cleanups. We look forward to your continued participation in this process.

Sincerely,

Jeffrey D. Denit
Acting Director
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAF 2 ---

Angus Macbeth, Esq.
Sidley and Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Re: Financial Assurance for Corrective Action Beyond the
Facility Boundary

Dear Mr. Macbeth:

This is in response to your January 5, 1989 letter concerning current regulations requiring financial assurance for corrective action beyond facility boundaries. Sections 3004(a)(6) and 3004(v) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), codified at 40 C.F.R. 264.100(e) and 264.101(c), require that corrective action be instituted beyond the facility boundary where necessary and that assurances of financial responsibility for such corrective actions be provided.

As discussed in the December 1, 1987 second HSWA modification rule (52 F.R. 45788), Congress intended that owners and operators of hazardous waste management facilities provide financial assurances for corrective action beyond the facility property boundary. The Agency does not believe that this requirement duplicates other financial assurance requirements such as the third-party liability coverage requirements. (40 CFR 264/265.147). Under 40 CFR 264/265.147 an owner or operator must maintain specific types and levels of coverage for bodily injury and property damage to third-parties. Sections 264.141(g) and 265.141(g) provide that the terms "property damage" or "bodily injury" have the meaning given such terms under applicable state law. Additionally, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. (40 CFR 264/265.141(g)).

In general we believe that it is both appropriate and likely that onsite or off-site corrective action activities will exceed the common definition and construction of "bodily injury" or "property damage" as found in an insurance policy issued to

satisfy RCRA third-party liability coverage requirements. The Agency is also concerned that to allow the use of established liability coverage financial instruments to satisfy known corrective action costs could deplete those instruments, thereby rendering funds unavailable to satisfy the claims of injured third-parties.

However, insurance policies can be used to satisfy financial responsibility for off-site corrective action under the current regulations in certain circumstances. Specifically, if an insurance carrier determines that off-site corrective action costs are covered under the terms of its policy, and the carrier provides unequivocal documentation of a specified payment to cover all or a part of off-site corrective action activities, then that policy would satisfy all or part of the required financial assurance for corrective action.

The above discussion concerning the use of insurance to satisfy off-site corrective action financial assurance requirements can be extended, under limited circumstances, to the use of other financial assurance instruments for liability coverage provided by a third-party, i.e., letter of credit, surety bond, guarantee and trust fund. Those circumstances could arise only when the off-site corrective action costs are part of a third-party claim against the owner, operator, or holder of the financial instrument and that claim has triggered payment of the instrument pursuant to 40 CFR 264.151(h), (k), (l) and (m). The owner or operator of a facility subject to the financial assurance requirements cannot itself be considered a third-party within the meaning of applicable regulations and instruments.

Similarly, when an owner or operator uses the financial test or corporate guarantee to comply with third-party liability financial responsibility regulations, and a certified settlement or court judgement resulting from a third-party claim for property damage is coincident with all or part of the cost estimate prepared for off-site corrective action, a second mechanism would not have to be used to cover that portion of the corrective action cost. If, in the situation described above, the owner/operator wishes to use the financial test or guarantee to demonstrate compliance with both third-party liability requirements and off-site corrective action financial assurance, the cost estimate to be used in the alternative formula provided in 40 CFR 264.151(g) would be equal to the sum of the third-party liability requirements and any off-site corrective action costs not coincident with the valid third-party claim. The Agency intends to carefully re-examine the procedures and financial instruments requirements for corrective action (51 F.R. 37854), to ensure that owners and operators of facilities are afforded ample flexibility to meet the requirements and that sufficient funds are available to cover all necessary liabilities.

Finally, your letter requests that the issue of duplicative coverage also be examined in the context of the Subtitle D rule. The Agency is considering these issues in the context of the Subtitle D proposal (August 30, 1988 53 F.R. 33314) and will formally respond to any comments concerning this issue as part of the final rule.

Should you have any questions concerning the above matter you may contact Margaret Schneider (382-4696) in the Office of Solid Waste or Anne Ryan (382-7703) in the Office of General Counsel.

Sincerely,

J. Winston Porter
Assistant Administrator

May 25, 1989

MEMORANDUM

SUBJECT: Comments on the Proposed OERR and OWPE Lead
Cleanup Policy Memo

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

TO: Robert Duprey
Acting Deputy Assistant Administrator

In response to your question concerning the OERR and OWPE policies on soil cleanups for lead, I'd like to briefly describe OSW's approach to setting lead cleanup standards. The current OSW interim policy is stated in the Clean Closure guidance (52 FR 8706 3/19/87), the Subpart S Corrective Action draft proposal, and the RCRA Facilities Investigation guidance (Draft as of 1/25/89) is to use background soil levels for lead and any other constituents for which an Agency recommended health based exposure limit (RfD, Cancer Potency Factor) is not available. We have reiterated this policy to the Regions and have provided some guidance on how to determine background levels.

We recognize that background levels of lead in soil will vary from location to location. In some cases, they may be as high as the Superfund proposed levels of 500-1000 ppm, while in other cases they are likely to be somewhat lower. Currently, an Agency Workgroup chaired by ORD is developing a health-based guidance document for lead. The Science Advisory Board is reviewing their efforts. Once this guidance has been developed, we anticipate that the Superfund and RCRA programs will adopt it and will thereby become consistent in their cleanup policies for lead.

This has been retyped from the original document.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9502.1990(01)

MAY 7 1990

MEMORANDUM

SUBJECT: Interim Guidance on Establishing Soil Lead Cleanup Levels at RCRA Facilities

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: David A. Ullrich, Acting Director
Waste Management Division, Region V (5HR - 13)

This is in response to your memorandum of February 15, 1990 requesting interpretation as to whether a recent OSWER Superfund directive (#9355.4-02), which sets forth interim soil cleanup levels for lead at Superfund sites, also applies to RCRA closures and corrective actions. In addition, this memorandum will supplant the memorandum from Sylvia Lowrance to William Muno dated May 27, 1988, interpreting the use of soil background levels for lead as clean closure standards.

As you know, establishing a health-based "cleanup" level for lead in soil has been a major issue for the Agency for some time. Presently, there is an interoffice project underway to develop site-specific soil lead cleanup levels based on a biokinetic uptake model, as referenced in the above guidance memorandum. We anticipate that this model will be finalized within the next several months; however, we recognize the importance of addressing this issue at this time and so are offering this interim guidance.

We understand that during this interim period, Region 5 and other Regions and States will need to make decisions as to the appropriate levels for lead in soil in the context of RCRA closures and corrective actions. It is our understanding, based on some preliminary runs of the new model, that the soil lead cleanup levels could be as low as 100 - 150 ppm at some facilities. These levels would reflect a set of default values, based on conservative assumptions regarding exposure and other factors. Thus, there may be a number of situations where it would be appropriate to use other assumptions in setting cleanup levels for specific facilities. For more information on the

15-341: 304-4004-700 VSTN:CCCH-NSTN 11/11/90 11:11:11

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: FEB 15 1990

SUBJECT: OSWER Directive #9355.4-02 (Soil lead cleanup levels,
and its Effect on RCRA Closures.

FROM: *Norman Spindler*
David A. Ullrich, Acting Director (SHR-13)
Waste Management Division

TO: Sylvia K. Lowrance, Director (OS-300)
Office of Solid Waste

The purpose of this memorandum is to request your interpretation as to whether a recent OSWER Superfund directive has any effect on RCRA closures. The directive (#9355.4-02) sets forth interim soil cleanup levels for lead at Superfund sites. Recently, the State of Ohio has informed us that an Ohio consulting firm, ERM-Midwest, is attempting to use this guidance to establish clean closure levels for lead at RCRA facilities. The Ohio EPA has asked for the U.S. EPA's assistance in responding to ERM-Midwest on this issue.

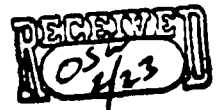
The Ohio EPA became authorized to approve closure plans in June 1989. Prior to that time, Region V approved closure plans for Ohio facilities. It has been Region V's position that, in general, Superfund guidance is not applicable to RCRA closures because of differences in the Superfund and RCRA statutes (such as for cost-effectiveness requirements). However, to assist the State of Ohio, an interpretation from Headquarters would be helpful on the particular directive referred to in this memorandum.

We are aware that the Office of General Counsel is preparing a response to this issue, based on procedural grounds only, for the legal action against the Agency involving Burnham Corporation in Zanesville, Ohio. However, we believe a policy interpretation is necessary at this time on this issue, removed from the specifics of the Burnham case. We are concerned that this issue will continue to arise at RCRA facilities that may employ ERM-Midwest as a consultant.

We would appreciate a response as soon as possible, as Ohio is in the process of dealing with at least two facilities on these issues. If you need any additional information to complete your report, please contact Francine Norling of my staff, at FTS 886-6198.

Attachments

cc: Ed Kitchen, OEPA



to contact Susan Griffin of the Health Assessment Section (FTS-382-6392).

Until the model is finalized, we believe that it may be appropriate under some exposure conditions, to establish soil lead cleanup levels based on the CDC-derived numbers, presented in OSWER directive 9355.4-02, rather than the 100 - 150 ppm range provided above. Alternatively, background levels may also be an appropriate choice for cleanup levels. Background levels could be used, for example, in urban settings or industrial areas, where they sometimes exceed levels derived from health-based models.

If you have any further questions, please contact Dave Fagan (FTS-382-4497) or Lisa Askari (FTS-382-4535).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9503.1991(01)

MAY 21 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Steve Nowak, Controller
Compacting Technologies International
2417 N.W. Thurman
P.O. Box 29046
Portland, Oregon 97210

Dear Mr. Nowak:

I am writing in response to your letter, dated March 14, 1991, in which you request clarification of the definition of treatment. Of particular concern to you is whether treatment includes practices such as compacting hazardous waste inside a steel drum.

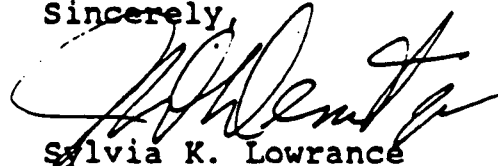
As described in your letter, Compacting Technologies International (CTI) sells a machine that compacts hazardous waste inside a steel drum; the benefit to the customer is a reduction in waste volume and thus, a reduction in disposal cost. Your concern seems to be whether such a practice constitutes treatment that is subject to the permitting requirements of 40 CFR 270.

Treatment is defined in 40 CFR 260.10 as "...any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume" (emphasis added). Based on the limited amount of information in your letter, a machine that compacts hazardous waste in a drum will meet the definition of treatment if the reduction in volume results in a change in the physical, chemical, or biological character or composition of the waste. Bear in mind, however, that under many circumstances, RCRA permits are not required for generators who treat their waste on-site in tanks or containers (see enclosed memorandum dated June 17, 1986).

A final determination on whether a permit is required for such a compaction practice, however, must be made in the EPA region or authorized state where this machine will be operated. The determination will be subject to site-specific conditions and waste types that are best assessed by regional or state personnel.

I hope this information is helpful. Again, if more specific information is needed, please contact the applicable EPA regional office or the authorized state.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Sylvia K. Lowrance', is written over the typed name.

Sylvia K. Lowrance
Director
Office of Solid Waste

9504 – COMPLIANCE AND ENFORCEMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 16 1984

MEMORANDUM

SUBJECT: Enforcing Groundwater Monitoring Requirements in
RCRA Part B Permit Applications

FROM: Courtney M. Price *Courtney M. Price*
Assistant Administrator for Enforcement
and Compliance Monitoring

Lee M. Thomas *Lee M. Thomas*
Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Counsels
Regions I-X

Air and Hazardous Materials Division Directors
Regions I-X

Existing regulations under the Resource Conservation and Recovery Act (RCRA) require owners and operators of hazardous waste land disposal facilities to conduct groundwater monitoring in order to obtain a Part B RCRA permit. (40 CFR 270.14(c)(4), (6), and (7); 40 CFR 264.98(h)(2) and 264.99(f)). To satisfy these requirements, owners and operators must, under certain circumstances, monitor for each constituent listed at 40 CFR Part 261, Appendix VIII.

Recently a number of Regional Offices, in response to inquiries from the regulated community, have questioned whether certain groundwater monitoring requirements might be waived in appropriate circumstances. Specifically questioned is the need to monitor for each and every constituent listed in Appendix VIII.

There are essentially three arguments advanced to support selective waiver of the regulatory requirements:

1) certain constituents listed in Appendix VIII are unstable in water and therefore, will not be detected in groundwater using generally accepted analytical techniques;

2) EPA-accepted, standardized test procedures do not exist for some Appendix VIII constituents. Until such procedures are specified, EPA should not require facility owners to monitor for these constituents; and

3) certain constituents are not analyzable by scan methodology. Testing for these constituents is difficult, and the individual chemical methods used are very expensive and should not be required unless there is some reason to believe that such constituents are actually present in the groundwater.

DISCUSSION

Any request to waive or selectively enforce groundwater monitoring requirements runs counter to the high enforcement priority the Agency has assigned to groundwater monitoring violations and must be viewed carefully. Nevertheless, the Agency recognizes that there is technical merit to some of the contentions set forth above and is developing regulatory changes to correct these problems. Proposal of these changes by the Office of Solid Waste is expected in August 1984, and that Office plans to promulgate the changes as a final rule by early 1985.

Recognizing the problems created by existing regulations, we believe that it is permissible for Regional enforcement personnel to assign low priority to certain technical regulatory violations in appropriate circumstances. The first situation concerns the regulation which currently requires permit applicants to monitor for constituents which, because of their chemical properties, are not detectable in groundwater using generally accepted analytical techniques. The constituents that fall into this group are set forth at Attachment I to this memorandum. Because these constituents cannot be detected in groundwater, there is no conceivable environmental benefit to be gained by requiring formal laboratory analysis.

The second situation which we believe merits low enforcement priority involves the failure to monitor for those constituents for which there are no EPA-approved test methods. These constituents are set forth at Attachment II to this memorandum. We believe that low enforcement priority is warranted in these cases because the absence of any approved test method makes meaningful analysis of any reported data difficult.

Unlike the first two situations, the last situation presented by permit applicants does not warrant any change in our enforcement priorities. This situation concerns the need to monitor for those constituents that are not analyzable by scan methodology. These constituents are listed in Attachment III to this memorandum. Applicants have argued that absent some indication that such constituents are present in the groundwater, no monitoring should be required.

This argument is not persuasive. The regulations clearly require analysis for these constituents. Unlike those constituents listed in Attachment II, accepted test procedures do exist for Attachment III constituents. The fact that such test procedures are expensive is legally irrelevant. Moreover, EPA has previously rejected the notion that facility owners can determine the hazardous constituents emerging from a land disposal unit from records detailing the wastes previously disposed of at the facility. Therefore, a facility owner's failure to monitor for these Attachment III constituents should ordinarily result in enforcement action.

Attachments

ATTACHMENT I

Acetyl chloride
Aluminum phosphide
Carbon oxyfluoride
Dimethylcarbamoyl chloride
Fluorine
Methyl chlorocarbonate
Methyl isocyanate
Nitrogen dioxide
Phosgene
Toluene diisocyanate
Zinc phosphide

ATTACHMENT II

Cacasin
Ethylenebisdithiocarbamic acid
2-Fluoroacetamide
Iron dextran
Lasiocarpine
Mustard gas
Nitrogen mustard, N-oxide and HCl salts
Nitrogen mustard and HCl salts
Nitric oxide
Phosphine

ATTACHMENT III

Cyclophosphamide
Formaldehyde
Formic acid
Hexachlorohexahydrodimethanonaphthalene
Hydroxydimethylarsine oxide
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
Selenourea
Streptozotocin
Strychine



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 29 1984

MEMORANDUM

SUBJECT: Part B Permit Applications with Insufficient
Ground-Water Monitoring Data

FROM: Lee M. Thomas *Lee M. Thomas*
Assistant Administrator for Solid Waste and
Emergency Response

Courtney M. Price *Courtney M. Price*
Assistant Administrator for Enforcement and
Compliance Monitoring

TO: Regional Administrators, Regions I-X
Regional Counsels, Regions I-X
Air and Hazardous Materials Division
Directors, Regions I-X

BACKGROUND

Regional personnel have raised questions as to how to deal with RCRA Part B permit applications containing insufficient ground-water monitoring (GWM) data. (This includes hydrogeological data, specifications on well construction, sampling methodology, past monitoring results, and other aspects of ground-water protection as required by 40 CFR §270.14(c).) The GWM data submitted in Part Bs is often insufficient to satisfy the informational requirements of §270.14(c). The failure of many facilities to generate appropriate GWM data prior to the Part B due date has resulted in a number of incomplete Part Bs, as well as complications and delays in the permitting process.

While general guidance on responding to late and incomplete Part B applications is set out in a memo dated September 9, 1983, the deficiency of a Part B with respect to GWM data presents a special case. This type of deficiency is often the result of a facility's failure to comply with Part 265 requirements and can be addressed (or if detected early can be avoided) through enforcement of the Part 265 requirements. Further, Part Bs with inadequate GWM data are often submitted by facilities that have been suspected of presenting substantial hazards to human health or the environment.

through ground-water contamination. If Orders issued under RCRA §3013 are used to require such facilities to gather appropriate ground-water data, that data may also satisfy the Part 270 informational requirements and thus ensure that such facilities submit adequate Part Bs.

The purpose of this memorandum is to provide EPA Regional Offices with guidance on which mechanisms can be used to prevent GWM deficiencies in Part Bs, and to discuss what mechanisms are available to respond to deficiencies when they occur.

This memorandum was prepared before RCRA reauthorization, and therefore does not reflect the new provisions regarding ground water protection or permitting. Guidance on implementation of those provisions will be provided separately.

I. GWM Information Needed in Part Bs

Section 270.14(c) lists the requirements for GWM information in Part Bs. In essence, the permit applicant must characterize the uppermost aquifer, describe any existing contamination, and provide all information necessary for EPA to establish either a detection, compliance, or corrective action program in the facility's permit.

Data generated during a facility's interim status period may or may not fulfill the Part B information requirements. In general, if a facility has fully complied with the GWM requirements of Part 265, including well placement, sampling frequency, and sampling methodology, the results of interim status monitoring should be deemed conclusive evidence of the presence or absence of contamination. In a majority of cases, however, facilities have not complied fully with 265 requirements. This category includes facilities which have installed only three downgradient wells, where a minimum of four or more is necessary to meet the standard of §265.91. Facilities which have not fully complied with 265 requirements may need to do substantially more work, in some cases including hydrogeological investigations and well installations, before they can successfully meet Part 270 requirements. EPA's Permit Applicant's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities, and the RCRA Permit Writers' Manual for Ground-Water Protection, provide descriptions of specific information needed from applicants.

Prior to or upon calling in a facility's Part B, Regional personnel should examine any available interim status data from the facility, and determine what additional data the facility must generate in order to produce a complete Part B. This determination should be coordinated with the joint permit writer/inspector site visit conducted when the Part B is called in. This initial review of the facility, and early setting of expectations by EPA, is essential to expediting the Part B process.

If EPA makes clear to the facility what types of data are expected in the Part B, and the initial Part B does not provide this data, the Region should respond in accordance with the "Late and Incomplete Part B Policy". In such cases, conservative deadlines should be set for the facility's response to a Notice of Deficiency.

It should be noted that §270.14(c) requires more and different GWM data than does Part 265. In particular, §270.14(c)(2) and (4) to require facilities to investigate hydrogeological conditions at the site, including any plume of contamination that has entered ground water from a regulated unit at the facility. In addition, in order to satisfy §270.14(c)(6) - (8), facilities must provide information to support a determination of whether hazardous constituents (i.e., compounds listed in Part 261 Appendix VIII) are present in the ground water. Regional personnel should explain to facility owners and operators as early as possible what kinds of data (e.g., piezometric, resistivity, pump-test, sampling for Appendix VIII compounds, etc.) will be necessary to meet the Part B requirements.

Clearly, the exact type and extent of testing and information gathering will vary considerably from facility to facility due to such site-specific factors as geology and contaminant behavior. Also, as a technical matter, Regional personnel initially may not know exactly what types of data gathering are necessary from each facility. Experience has shown that initial ground-water investigations often uncover problems which require further investigations. Even under the best conditions of Regional attention to facility Part B preparation, applicants may have to submit several Part B documents before the application can be deemed adequate. Although we understand that some delays of this nature are inevitable, certain delays can be avoided through early involvement between the Regions and applicants.

II. Facilities for which the Part B Due Date Has Passed

In general, the most appropriate response to a facility that has submitted an incomplete or inadequate Part B is enforcement action under RCRA §3008. The action should cite violations of 40 CFR Part 270. The "RCRA Civil Penalty Policy" should be used to determine appropriate penalty amounts.

III. Facilities for which the Part B is Not Yet Due, and where a Hazard May Exist

Some facilities with significant deficiencies in Part 265 ground-water data may also be presenting hazards to human health or the environment through ground-water contamination. EPA's authority under RCRA §3013 can be used to gather data at facilities for which the Administrator determines that the presence or release of a hazardous waste may present a substantial hazard to human health or the environment. A §3013 Order may be used to require such monitoring, testing, analysis and reporting as the Administrator deems reasonable to ascertain the nature and extent of such a hazard. Revised Guidance on writing §3013 Orders was issued on September 26, 1984, and supersedes previous Guidance.

Data generated by facilities in response to §3013 Orders could be used to satisfy Part B informational requirements. Therefore, activities required by §3013 Orders should be consistent with monitoring activities required for compliance with Part 270, as well as with Part 264 requirements that will be applied in the future.

IV. Facilities for which the Part B is Not Yet Due, and which are in Violation of Interim Status Standards

A major category of GWM deficiencies involves owners and operators who are subject to but have not complied with interim status ground-water monitoring requirements in Part 265. There are a variety of Part 265 violations at facilities, ranging from no monitoring wells in place to inappropriate sampling techniques. The result may be insufficient data from which the facility can respond to §270.14(c).

In some cases, prompt enforcement of Part 265 violations may be sufficient to ensure the development of adequate GWM data to meet the Part B requirements. For instance, if the Part 265 violation is an insufficient number of monitoring wells, the specified remedy (installing additional wells) may be sufficient to provide data for the §270.14(c) requirements for information regarding possible ground-water contamination and for a proposed well network.

Alternatively, where a Part 265 remedy will not provide usable or sufficient information to satisfy a Part B requirement, and where a substantial hazard may exist, it may be more appropriate to use EPA's broader authority under RCRA §3013 to obtain data. Also, where a Part 265 remedy will not satisfy Part B requirements,

and the Part B will be due shortly, enforcing the Part 265 requirements may be counterproductive. In that case it may be more practical to wait for the Part B due date and enforce the requirements of Part 270. Of course, it is generally appropriate to assess penalties for past violations of the Part 265 requirements, regardless of whether future compliance with Part 265 is sought.

V. Facilities Not Currently in Violation of Interim Status GWM Standards

There is a range of situations where an applicant is not in violation of Part 265, but has not generated complete Part 265 data either. These facilities' Part Bs do not include enough Part 265 data to address the §270.14(c) requirements properly. This category of facilities includes:

- neutralization surface impoundments;
- facilities operating under a §265.90(c) waiver which was not evaluated by EPA or an authorized state;
- facilities located in states which prohibited well installation prior to state approval, and the state issued its approval late (or has not yet done so); and
- facilities in early stages of Part 265 ground water "assessment", and where contamination data is not yet available.

In addition, new facilities often present little or no existing data from which to evaluate compliance with §270.14(c).

The foregoing are complex situations and the appropriate response may vary. We intend to develop further guidance on the information-gathering mechanisms that may be applicable to these categories. As mentioned in Section I of this memorandum, Regional personnel should notify facilities as early as possible prior to or upon calling in their Part Bs (or upon knowledge of a planned new facility submittal) of the types of data that must be submitted in the Part B in order to satisfy §270.14(c). These informational requirements should be further clarified during the EPA joint permit writer/inspector site visit when the Part B is called in.

cc: John Skinner
Fred Stiehl
Gene Lucero
Tony Montrone
Bruce Weddle
Jack Lehman
Eileen Claussen
Peter Guerrero
Ken Shuster

JUN 12 1986MEMORANDUM

SUBJECT: Update of CERCLA National Priorities List
Including RCRA Facilities

FROM: Vanessa Musgrave (WH-563)
Public Involvement Coordinator

TO: Public Involvement Coordinators, Regions I-X
Public Affairs Staff, Regions I-X
RCRA Branch Chiefs, Regions I-X

The Office of Public Affairs recently sent me a copy of the rulemaking adding sites to the CERCLA National Priorities List (NPL). I am forwarding some of that information which I thought would be of interest to you.

The Superfund program added 170 sites to its final National Priorities List (NPL), making them eligible for longterm action and federal funding under CERCLA. Also, 45 other sites were proposed for the list. Among those added to the NPL were six RCRA-regulated facilities. This rulemaking also includes a policy that outlines when RCRA facilities will be placed on the NPL. The policy is outlined in the press release, which is attached for your information.

I have also attached other documents on this NPL update which affect the RCRA program and may be of interest to you. This includes:

* Final rulemaking of May, 1986, which includes:

- background information on the NPL and the updates
- a list of the 703 sites ranked by Hazard Ranking Score (HRS)
- a list of sites added and proposed in this rulemaking, listed alphabetically by State/Territory
- number of final and proposed sites in each State/Territory

- * proposed update #5, alphabetically listing sites being considered for the MPL, and on which there will be a sixty-day public comment period;
- * descriptions of each RCRA-related site, including those finalized and those which were previously proposed but not covered by this rulemaking.

Please note that descriptions of all MPL sites have not been included. Instead, I have enclosed site descriptions of 1) RCRA-related sites; 2) federal facilities that are included in the Army's plan to demilitarize nerve gas from eight locations across the country; 3) facilities that I know are of particular interest to Regional staff. Please share this information with any other Regional and State staff you believe have an interest in this material.

If you would like copies of any other site descriptions, contact the public affairs office in your Region or call me at FTS 382-4751. I will be happy to meet your request.

cc: without/attachment Matt Hale
Dave Pagan
Terry Grogan
Art Glazer
Carol Ansheles
George Garland
Susan Brown
Susan Mullard
Toni Ferrara
Pam Garrow
Andy Caraker
Daphne Gemill
Anne Penn
Melissa Friedland
Joan Warren
Kate Connors
Debbie Rutherford
June Taylor
Robin Woods
Matt White
Gordon Davidson

JUL 20 1987

MEMORANDUM

SUBJECT: Enforcement of Applicable RCRA Regulations at Facilities
with Pending Delisting Petitions

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

Marcia Williams, Director
Office of Solid Waste (WH-562)

TO: Waste Management Division Directors
Regions I, IV, V, VII, & VIII

Air & Waste Management Division Director
Region II

Hazardous Waste Management Division Director
Region III, VI & X

Toxics & Waste Management Division Director
Region IX

The purpose of this memorandum is to restate Agency policy regarding the enforcement of applicable RCRA regulations at hazardous waste handlers that have pending delisting petitions. It has come to our attention that some Regions and States may be allowing non-compliance with some or all of the RCRA Subtitle C requirements pending a decision on active delisting petitions. We are reaffirming here that these wastes remain hazardous wastes and that they, and the units in which they are managed, are subject to all applicable RCRA regulations, including financial responsibility, groundwater monitoring and closure requirements, until the delisting is officially granted. In addition, facilities are still subject to the 1988 and 1989 statutory deadlines for permit issuance.

Sections 260.20 and 260.22 establish a petition process which allows a facility to demonstrate that its waste, although captured by the broad listings of Section 261.3, does not meet any criteria under which the waste was listed, including the presence of additional constituents. Decisions on waste delisting have always been based on a chemical characterization of the waste itself and of the processes generating that waste, not on facility design, management practices or site conditions. Therefore, until a final decision is made to grant the petition, the waste is hazardous and the facility remains subject to enforcement of all applicable regulations (including compliance with Subpart F groundwater monitoring requirements). Facilities that are not in compliance with RCRA regulations are subject to enforcement action.¹

Concomitantly, facilities (excluding those with temporary or informal exclusions) that had pending delisting petitions on November 8, 1985, were subject to the Loss of Interim Status (LOIS) provision of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Facilities that failed to validly certify compliance with Subparts F and H and submit a Part B application for an operating permit on or before November 8, 1985 were required to cease operating their hazardous waste land disposal units and submit a closure plan for those units by November 23, 1985. Facilities with pending delisting petitions that failed to retain interim status and continued to operate after November 8, 1985, and/or failed to submit the required closure plan are subject to enforcement actions under Section 3008 of RCRA.

¹ Facilities whose only waste was subject to a temporary or informal exclusion were not required to meet Part 265 standards during the effective time of the exclusion. However, all temporary and informal exclusions that had not previously been acted on expired by statute on 11/8/86 (Section 3001(f)(2)(8)). Facilities that had either a temporary or informal exclusion were in one of four categories on 11/8/86: (1) the final delisting was granted and that waste is no longer subject to regulation under RCRA; (2) the petition was denied when, after repeated requests from the Agency, the facility failed to provide additional information for the petition; these facilities had to be in compliance with Part 265 regulations immediately; (3) the completed petition was denied based on the merits of the petition (i.e., the waste was determined to be hazardous); these facilities had six months from the date of publication of the denial in the Federal Register to come into compliance with Part 265 standards; or (4) the exclusion expired by statute; these facilities' petitions moved back into the standard delisting process and the facilities were again subject to all applicable RCRA requirements.

-3-

If you have any questions regarding the iteration of this policy, please call Steve Heaze at 382-2287.

cc: Elaine Stanley
Bruce Weddle
RCRA Site Management Branch Chiefs,
Regions I - X

NBrowne:cmc:WH-527:6/19/87:475-9326
Nancy 1: File 1

JUN - 5 1987

MEMORANDUM**SUBJECT: OSHA Hazardous Waste Site Activity****FROM: Art Glazer, Chief
Incinerator/Storage PAT Section****TO: Hazardous Waste Branch Chiefs, Regions I-X**

During the March Permit Writers Conference Call, I polled the Regions to determine if you anticipated needing large-scale assistance from the Occupational Safety and Health Administration (OSHA) to address issues relating to worker health at RCRA facilities. The potential need for OSHA assistance had come up during earlier discussions with the Regions when we were identifying candidate facilities for health assessments by ATSDR under Section 3019 of RCRA.

As it turns out, the polled Regions generally did not foresee the need for large-scale OSHA assistance in addressing worker health issues at this time since there had been only a few isolated cases where worker health issues had surfaced. However, several Regions indicated it may be helpful to have access to information OSHA has prepared on TSDs they have inspected in order to assist the permit writers in evaluating worker safety/contingency plans or other aspects of the Part B. My staff talked with OSHA's staff and they can provide us with information on OSHA's compliance monitoring history at RCRA facilities.

OSHA has been inspecting RCRA facilities and has developed a data system. OSHA's data system divides the RCRA universe into two categories: generators (including on-site facilities) and off-site TSDs. Attached is a list of OSHA Regional Administrators responsible for monitoring RCRA/CERCLA facilities and an example of how OSHA records inspections in its data system. This information was furnished by staff at OSHA's Health Response Team (HRT) which is located in Salt Lake City.

EPA and OSHA have worked together in the past at several RCRA facilities (e.g., EPA inspectors have referred facilities to OSHA's inspectors when there was concern for worker safety). Although EPA does not have a signed agreement with OSHA to do joint inspections at RCRA facilities, or for that matter, to make referrals. OSHA's HRT provided us with a print-out from their data system of past OSHA activities at RCRA commercial facilities; about 75 inspections (some repeats) have been recorded over the last several years. The print-out is not in a format that lends itself to easy reproduction, so I am attaching several pages as an example. OSHA's information on RCRA facilities appears to be useful in writing permits and performing inspections. You are encouraged to contact the appropriate OSHA Regional Administrator (note. OSHA's Regions are the same as EPA's Regions) to discuss inspection philosophies or to obtain a compliance report on a particular facility.

One of OSHA's HRT objectives is to prepare a "Compliance Directive and Targeting Notice" (CDTN) which will list facilities targeted for inspection. OSHA agreed to send us a copy when it is completed and in turn I'll provide each of the you with a copy. You can also contact HRT's Cindy Coe at FTS 586-5696 or OSHA's HQ-RCRA representative Chap Pierce at FTS 523-7216 to discuss this information system or their general operating procedures.

I hope this information aids you in the working with OSHA. If you have any questions regarding OSHA's standards, policy, or guidance from the EPA standpoint, please contact Chet Oszman at FTS 362-4499.

Attachments

cc. Bruce Waddle, OSW
Suzanne Rudzinski, OSW
Cindy Coe, OSHA
Chap Pierce, OSHA
Chet Oszman, OSW

9505 – PUBLIC PARTICIPATION IN PERMITTING ACTIVITIES



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460

NOV 13 1985

9505.1985(01)

MEMORANDUM

SUBJECT: Public Participation Program Requirements for FY 1986

FROM: Clem Rastatter, Deputy Director
Permits and State Programs Division *Clem Rastatter*

TO: Dave Stringham, Chief
Solid Waste Branch, Region V

In your memorandum of September 3, 1985, you requested guidance on several issues relating to FY 86 implementation of the expanded RCRA public involvement program. The following is our response to the specific questions raised in that memorandum.

The draft guidance "Community Involvement in RCRA Permitting" issued in April 1985, should be used as the basis for developing public participation programs. Though it is being revised, no major substantive changes have been made. We expect the revised document to be available within the next several weeks.

As explained in the April draft guidance, Regions and States are to identify and prioritize facilities which, for permitting purposes, will require expanded public involvement activities. It is understood that not all facilities will require or receive increased public participation activity. The final judgment on choosing facilities for this program will be made between the Regions and the States, based on the level of public concern and other criteria as listed in the guidance. The Regional staff should use their best judgment, on a case-by-case basis, to reach an agreement with authorized States on completing necessary public involvement when a State is unable to do so. We encourage the Regions to enlist State participation as much as possible.

As stated in the FY 86 RIP, the Regions should also ensure, through cooperative agreements and work programs, that States carry out their responsibilities for expanded public participation, including field assessments and public involvement plans. We expect this important element of the RCRA program to be evaluated during mid and end-of-year reviews of State programs, as well as in Regional implementation reviews.

Facility Management Plans (FMPs) and Public Participation Plans for any given facility should be closely coordinated. The information gathered for each is complementary to the other in

developing a comprehensive strategy for a facility. As adjustments are made to one, the other should be assessed for any necessary modification or new information that has surfaced. Both are flexible working documents designed to assist Regions and States in targeting action where it is most needed. Furthermore, any public involvement activities that have significant impact on workload should be included in facility management plans.

We recognize that expanded public involvement activities will further stretch staff and funding resources in the Regions and States. To assist in implementing this program, training is being given in each Region to develop public involvement skills. The Regions also have the ability to use contract funds for public involvement activities either through the Kearney contract or the CERCLA REM contracts. We are examining options for additional assistance to the Regions through contractor support.

Some public involvement activities have been figured into FY 86 workload models for permits. Approximately 15% of the pricing land disposal permit issuance is for public participation activities, such as placement of a public notice, preparation for public hearings, and response to comments.

As you know, in FY 86 one work year has been given each Region to develop and implement this expanded public involvement program. Attached are estimates (developed last year) of work hours and costs to complete specific public participation tasks. These figures will be updated in the near future, to incorporate recent operating experience of RCRA and Superfund programs. We expect these updated pricing factors to be incorporated into the next version of the RCRA workload model.

Formal criteria for evaluating Regional and State public involvement programs have not been fully developed. However, during the current Regional implementation reviews public involvement will be one of the issues addressed. Questions to be asked during the file reviews have been developed (see attached). We will be working over the next several months to develop more formal review criteria and procedures for assessing public involvement programs.

This program is one that must remain flexible; not all problems or controversies can be anticipated. The Regions and States should make plans for public involvement activities using best staff judgment, and should also be prepared to respond to controversies that arise suddenly. We believe that implementing this public involvement program will enable Regional and State RCRA staff to anticipate many controversies and be able to effectively deal with difficult questions and issues raised by the public.

I trust this addresses your concerns and clarifies public involvement goals for your Region and States. Vanessa Musgrave in the Permits Branch is available to assist you and your staff in implementing this new program. Please feel free to contact her at FTS 382-4751 with any questions.

Attachment

cc: Branch Chiefs, Regions I-IV, VI-X
Peter Guerrero
Dave Fagan
Vanessa Musgrave
Truett DeGeare
Public Involvement Coordinators, Regions I-X

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9505.1986(01)

September 18, 1986

MEMORANDUM

SUBJECT: Field Assessment and Public Involvement Plan
for the Occidental Incinerator

FROM: Vanessa Musgrave, HQ

TO: Drew Lehman and Larry Ennist, Region II

It occurred to me that there are several points you may want to communicate to EPA Regional and State staff who have not been involved with the planning for the Occidental incinerator facility's public involvement plan to date. In particular, you need to be sure that these staff clearly understand the purpose and likely outcome of the field assessment and public involvement plan. Otherwise, I think, they may have unrealistic expectations about how much the plan can accomplish and what is involved in its preparation. Specifically, they should understand that:

- o The purpose of the field assessment is to research community concerns, not to provide new information to the community. We will mostly be listening in our interviews with citizens and officials in the Niagara Falls area.
- o The findings from this research effort will be used to prepare the public involvement plan.
- o The public involvement plan is only the first step in the overall public involvement program for the permitting process for the Occidental facility. The plan will describe the findings of the field assessment and describe activities to be undertaken by the State and Region during the permitting process to provide information to the public and provide opportunities for public input.
- o The plan will be consistent with the facility management plan. In addition, the plan will include public participation activities required under State and Federal law or regulations and will explain how to tailor those and other activities to the specific needs of the potentially affected public near the Occidental facility.

SYMBOL N

- o One important reason for developing this plan is to have a model for public involvement plans to be developed by other Regions or States. In particular, because many facilities involve both RCRA and CERCLA activities, this plan can begin to address the coordination of these activities.

It is important that all staff involved with the Occidental incinerator understand the limits on the amount a public involvement plan can accomplish before the field assessment is conducted. A plan can help coordinate public involvement activities and prevent unnecessary friction with the community caused by haphazard or insufficient efforts. However, no one should expect the plan to identify activities that will resolve all the public's concerns and prevent any local opposition to Federal or State government actions.

If you have any questions or want to discuss these topics further, please give me a call at 202/332-4751.

cc: Susan Katz
Paul Counterman
Jim Dolan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9505.1987(01)

AUG 13 1987

MEMORANDUM

SUBJECT: Negotiated Permits

FROM: Marcia Williams, Director *DOG*
Office of Solid Waste (WH-562)

TO: Regional Division Directors
Regions I-X

As we move toward the 1988 and 1989 permitting deadlines and as we permit new treatment and disposal capacity over the next several years, we are likely to face a number of difficult issues, both with the facility seeking the permit and with the public. I believe that in a number of these cases, ~~an~~ ^{an} effective route to a sound and protective permit will be through a formal negotiating process, including representatives of all interested parties and run by a neutral facilitator. We found this approach useful in our regulatory negotiation on RCRA permit modifications. Such an approach should be equally applicable to permitting. This may be particularly true for permitting new facilities.

I strongly encourage you to consider a negotiation process in issuing permits and am willing to provide financial support to a pilot negotiating project in one of the Regions. Specifically, the Office of Solid Waste will commit approximately \$20-25,000 of extramural funds for a neutral facilitator and logistical support for negotiations related to a specific permit. If any of you are interested in financial support for such a project, please let me know.

A wide range of facilities may be appropriate for negotiated permits. In selecting a pilot, however, we will be looking for a project that has a reasonable chance of reaching a successful conclusion within six months. Although a new facility might be an appropriate candidate if the community is generally receptive to its siting, I believe that a facility raising controversial siting issues would not be a good subject of a pilot study since we wish to quickly determine the suitability of the process to permitting. Ideally, a permit should be selected where the community has a stake in the facility and where negotiations could be focused on technical issues, such as the scope of corrective action requirements.

Please let me know if you have any facilities in your Region that you believe are appropriate for negotiation, and if you are interested in financial support from OSW for a pilot project. If you have any questions on this issue, please contact Frank McAlister of the Permits Branch (382-2223).

cc: Regional Branch Chiefs, Regions I-X
Bruce Weddle
Matt Hale
Frank McAlister

Permitting Procedures (Parts 124 and 270)

9520 – PERMITTING PROCEDURES

Part 270

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

FEBRUARY 86

2. The Omnibus Provision and Permits

An interim status landfill contains reactive hazardous waste (D003). The landfill is a regulated unit because it accepted hazardous waste after July 26, 1982. Since it is a regulated unit, the landfill is subject to 40 CFR 264 post-closure standards. EPA enforces 40 CFR 264 post-closure standards by issuing a post-closure permit. Prior to closure, the waste at the facility will be treated until it no longer exhibits the characteristic of reactivity. The permit writer is concerned that during the post-closure period, waste residues will be reduced anaerobically to the point where the material would again exhibit the characteristic of reactivity. The permit writer wants to require the owner of the site to perform hydrogen sulfide gas monitoring and sulfide detection during the post-closure period to measure the rate of anaerobic reactions. Can these monitoring requirements be included in the post-closure permit?

Yes; the Hazardous and Solid Waste Amendments of 1984 (HSWA) significantly increased the authority of the EPA when writing permits by adding an "omnibus provision" to the Solid Waste Disposal Act (§3005(c)(3)). This provision states that "[e]ach permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." The final codification rule published in the July 15, 1985 Federal Register (50 FR 28702) incorporated the statutory provision into 40 CFR 270.32(b)(2) of the regulations. This provision gives permit writers the authority to impose permit standards in addition to applicable permit standards found in 40 CFR 264, as long as the permit writer can justify the need for the additional standards in terms of protection of human health and the environment. Additional standards can be justified by basing the standards on such sources as documented studies, expert opinions, and published articles.

Source: Lillian Bagus (202) 382-4691

9521 – GENERAL REQUIREMENTS

Part 124 Subpart A

2 - MAY 1984

MEMORANDUM

SUBJECT: Inadequate Part B Permit Application

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

TO: James H. Scarbrough, Chief
Residuals Management Branch, Region IV

You have requested guidance on whether the use of Section 3008 administrative orders is appropriate to compel RCRA permit applicants to submit "technically adequate" information after an application has been determined "complete."

A determination that an application is complete is not necessarily a determination that the application is free of deficiencies. During the detailed review of the application and the drafting of permit conditions, it may become necessary to clarify, modify or supplement previously submitted material before progressing to a draft permit or a decision to deny.

The regulations specifically provide the Regions authority for gathering information after an application has been determined complete. "After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material." 40 CFR 124.3(c).

If applicants do not supply the requested information, the Regions may compel them to do so. If the information is not forthcoming, the Regions may deny the permit. "If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA Section 3008..." 40 CFR 124.3(d).

You are correct in concluding that the enforcement guidance dated September 9, 1983, speaks only to "late or incomplete"

PBJDSU00
: (4/25/84)

Due D

: Juetlesen: (sed): 5243: 382-4092: 4/30/84
No. DIV. 32

Cont

applications. That guidance was intended to apply to the period before the application is determined complete. After the finding that the application is complete, supplemental information may be needed. You have several options for obtaining this additional information.

If you believe written or verbal attempts to get additional information will not be successful, you may: issue a warning letter (leading to a Section 3008 administrative order), go directly to a Section 3008 order, or issue a notice of intent to deny the permit. The specific mechanism used is an area of discretion and requires case by case judgments by Regional offices. The Regions should select the administrative or enforcement mechanisms that will most efficiently expedite the development of information necessary for RCRA permit decisions. The office of Waste Programs Enforcement is currently working on guidance which will assist you in selecting among enforcement responses. This guidance should be available midsummer.

cc: Branch Chiefs, Regions I-III, V-X
Regional Directors, Regions I-X

MAY 7 1984

Dr. Robert Bernstein, Commissioner
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

Dear Dr. Bernstein:

Thank you for your letter of April 4 expressing your concern about EPA's requirement that authorized States hold a public hearing after issuance of a draft hazardous waste permit. I understand that the Texas Department of Health is committed to an effective public participation program in permit issuance, and I appreciate your concern about the regulatory agency appearing to have made up its mind at the time of the permit hearing.

Section 7004(b) of RCRA requires EPA and authorized States to publish notice of the Agency's intention to issue a permit and to hold a hearing if written notice of opposition is received. EPA and authorized States are thus required by RCRA to publicly notice their intention to issue a permit prior to holding a hearing. The statute requires this approach in order to allow the public opportunity to review and provide comments on the specific conditions which the Agency intends to apply in the draft permit.

Nothing in RCRA or the EPA regulations precludes a State from holding a public hearing or meeting prior to issuance of the draft permit, as long as an additional opportunity for a hearing is provided following issuance of the draft permit. We do, in fact, recognize the value and importance of early public involvement in the permit process. In our draft National Permits Strategy we include Regional Office preparation of facility-specific public participation plans and suggest that a public meeting be held prior to issuance of the draft permit, in addition to the hearing which is subsequently held.

(WH-563-B)S.Abscher:cra:4/26/84:18-256
Disk: A-1 (Side 2) Index: 16
AX-400957

I wish to commend the state of Texas for its commitment to develop a sound hazardous waste management program. Texas has been in the forefront in pursuit of interim and final authorization. Please let me know if I may be of further assistance.

Sincerely yours,

/s/ Jack W. McGraw 

Lee M. Thomas
Assistant Administrator

cc: Dick Whittington, P.E., Region VI
Charles E. Nemir, Texas Department of Water Resources

9 JUL 1984

MEMORANDUM

Subject: Reporting Withdrawals as Final Permit Determinations

From: John H. Skinner, Director /5/
Office of Solid Waste

To: Hazardous Waste Division Directors, Regions I-X

Purpose

This memo is in response to your inquiries concerning how to report permit withdrawals in the Strategic Planning and Management System (SPMS). It replaces all earlier guidance in this regard.

Requirements for a Withdrawal Final Determination

For SPMS purposes, a permit application is considered withdrawn when EPA, or an authorized state, approves the closure plan for the facility following an inspection, a public notice of the plan, and response to comments. Termination of interim status through permit denial is not a prerequisite for counting a withdrawal as a final determination, nor does it matter whether the Part B request precipitated the closure or whether the facility voluntarily chose to close in the absence of a Part B request.

As discussed in previous guidance and in conversations we have had, it is a regional and state decision whether to proceed to deny a permit and terminate interim status for facilities which request withdrawal. Note, if you deny a permit for facilities which have withdrawn (as defined above), this permit denial should not be reported as a "permit denial" final determination in SPMS since the "permit denial" category is reserved for facilities which requested a permit and were denied because they failed to submit an adequate Part B and/or failed to show compliance with the Part 264 standards. We are developing separate guidance on how and when to terminate the interim status of facilities.

Protective Filers

In no case should the withdrawal of a protective filer be reported as a final permit determination. A withdrawal is considered a final determination only if the facility qualified for interim status, requested withdrawal (e.g., went out of business, changed waste streams, moved to under 90-day storage), an inspection was conducted of the facility, and a closure plan was approved after public notice.

Less Than 90-day Storers

Regarding less than 90-day storers, some regions have asked whether closure plans should be required and, if so, when such plans should be implemented. We are also developing guidance in this area; in the interim, you should report reversions to less than 90-day storage as final determinations in SPMS only if the procedures outlined in this memo are followed (i.e., inspection, public notice, closure plan approval, etc.). Depending on our future guidance on facilities which have become less than 90-day storers, we may track activities related to actual closure of these facilities outside the SPMS system entirely.

New Facilities That Withdraw

Applications withdrawn for new facilities will not be counted as final determinations in SPMS since there is no closure process for these facilities. However, you should indicate these withdrawals in the RWDMS permit action record because we do want a record of these actions to assist us in evaluating regional workload. (If EPA, or an authorized state, drafted a permit (or a notice of intent to deny a permit) prior to the applicant's request for withdrawal, the draft permit is counted in SPMS towards the region's commitment for draft permits).

RWDMS Data Elements

We recognize that you may need to change your procedures for reporting final determinations in RWDMS to accommodate this guidance. The OSW Information Management Task Force reviewed a draft of this guidance during their meeting of June 19 and 20 and made recommendations for changing the reporting procedures to minimize the burden in the regions. The primary changes involve redefining some of the codes under the C1105 component (facility status information). We will be sending a memorandum to you shortly requesting your comments on the Task Forces' recommendations. Until the final reporting procedures for RWDMS are developed, we will continue to verify the number of withdrawal final determinations over the phone with your staff before we forward this information for use in SPMS.

If you have any questions or comments please contact
Peter Guerrero on 8-382-4740 or Doug Ruby on 8-382-4499.

Attachment

cc: Hazardous Waste Branch Chiefs, Regions I-X
HWDMS RPOs, Regions I-X
Peter Guerrero
Steve Levv



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9521.1985(01)

SEP 25 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Applicability of Post-Closure Permitting
Requirements to Non-Regulated Units

FROM: Marcia E. Williams, Director *Marcia Williams*
Office of Solid Waste

TO: Charles E. Finley, Director
Hazardous Waste Division, Region X

In your memorandum of May 20 (attached) and in phone conversations with Jeff Webb of your staff, you requested clarification on several points regarding closure for disposal facilities that stopped receiving waste prior to July 26, 1982. Outlined below is a discussion of those points.

We agree with your interpretation that land disposal units that stopped receiving wastes prior to July 26, 1982 and closed after January 26, 1983 are subject to the post-closure permit requirements of §270.1(c), but not ground-water monitoring requirements of Part 264 Subpart F. We do not agree with your conclusion, however, that such a permit could require compliance with Part 265 ground-water monitoring requirements. Part 265 is applicable only to interim status units and cannot be incorporated into a permit.

If the unit described above is the only unit at the facility subject to permitting, issuance of a post-closure permit would have little benefit since ground-water monitoring requirements cannot be applied. The unit/facility in this case should be closed under interim status, and thus subject to the general closure performance standards of Part 265 and post-closure ground-water monitoring (§265.117), as applicable. If the unit has caused ground-water contamination, enforcement action to compel corrective action under §3008(h) should be initiated. Alternatively, if the unit is located at a facility which has another unit(s) requiring a permit, the 3004(u) corrective action authority would apply when the permit is issued since the unit is a "solid waste management unit."

-2-

If you have any further questions regarding this issue, please contact Dave Fagan, Acting Manager, Permits Policy Program at 382-4740.

Attachment

cc: RCRA Branch Chiefs
Permit Section Chiefs

9521.1986(02)

MAR 24 1986

Mr. C. Edward Ashby, Jr.
Envirosafe Services, Inc.
115 Gibraltar Road
Horsham, PA 19044

Dear Mr. Ashby:

I am writing in response to your letter of February 25, 1986, to the Administrator, in which you offered several observations and raised specific concerns regarding the RCRA permitting process. I appreciate your having taken the time to communicate these concerns, based on your company's particular experiences with permitting of your hazardous waste facilities.

I agree with your general assertion that the RCRA permit process is time consuming and resource intensive, and that there may be regulatory and other changes which can be made to enhance the efficiency of the permit process, without sacrificing environmental protection. In recognition of this, the Office of Solid Waste recently established a task force to comprehensively examine the problems of the RCRA permit program as it currently functions, and to recommend changes to improve the process. The results of this task force effort should be available in the next several weeks.

Your basic observation regarding the fundamental differences between the RCRA permit process and other EPA permit programs is also well taken. It is true that RCRA permits are quite comprehensive in nature, in contrast to other types of environmental permits, such as NPDES permits. However, the RCRA permit does not cover a discrete discharge from a well defined source, but rather must address in a comprehensive way a number of design and operational aspects of a facility relevant to the management of hazardous wastes. This is a reflection of the complex nature of hazardous waste management facilities, and the various means by which hazardous wastes, if mismanaged, can cause environmental damage. The objective under RCRA is not to control pollutant levels at a specific emission source, BUT rather to minimize potential threats to human health and the environment from a variety of potential sources. This requires a more comprehensive approach to permitting than is the case with most other environmental permit programs.

In regard to your specific concerns over the need to fully characterize proposed new units in a Part B application, and to ~~have facility contingency plans address future additions to the facility the current RCRA requirements do allow certain flexibility~~

in this regard. The owner/operator has the option of permitting proposed new units as part of the Part B application, or after the permit has been issued through a major modification to the permit. In either case, however, sufficient information must be submitted to enable the Agency to determine whether or not the unit complies with all applicable standards. Similarly, the contingency plan for a facility must adequately address potential hazards from all permitted units at the facility. If a new unit is added during the term of the permit which materially increases the potential for hazards, or changes the response necessary in an emergency, the contingency plan must also be amended.

Your letter also specifically expressed your concern regarding the current regulations for permit modifications, contained in Subpart D of 40 CFR Part 270. The Agency recognizes that the regulations as currently structured do impose a substantial administrative burden on both EPA and facility owner/operators. It is our hope that a regulatory negotiation effort which is now being organized will develop a more workable approach to modifying RCRA permits. The regulatory negotiation group for this effort has not been selected. I appreciate your offer to participate in this important effort; it will certainly be considered.

I appreciate the opportunity to respond to your concerns with the RCRA permit program. Please let me know if I can be of any further assistance.

Sincerely,

/s/ Jack H. Lewis

J. Winston Porter
Assistant Administrator

April 8, 1986

9521.1986(03)

Honorable William M. Thomas
House of Representatives
Washington, D.C. 20515

Dear Mr. Thomas:

Thank you for your letter of February 4 in which you raised questions concerning the permitting process in the State of California. Specifically, you inquired about the processes which govern the award of permits for new hazardous waste land disposal facilities and the use of local government permits to prevent out-of-county wastes from being accepted for disposal.

States can be authorized under the Resource Conservation and Recovery Act (RCRA) to operate their State hazardous waste programs in lieu of the Federal program. In States that are not authorized, hazardous waste disposal facilities are subject to Federal requirements if the wastes they handle meet the Federal definition of hazardous waste in 40 CFR Part 261. In those States, EPA is responsible for reviewing and processing permit applications in accordance with Federal regulations. In addition, disposal facilities in unauthorized States must meet any State requirement.

Generally, counties and municipalities may also separately regulate or issue permits for hazardous waste facilities. Under RCRA, political subdivisions of States are expressly authorized to impose requirements, including those for site selection, which are more stringent than those imposed by EPA regulations. However, they may not impose less stringent requirements. State law may also restrict the ability of localities to regulate hazardous waste facilities and the intrastate transportation of wastes. Questions concerning State law should be directed to the State of California.

In your second question you solicited EPA's views on a possible prohibition by Kern County, California on the importation of hazardous wastes generated outside the county. RCRA provides that States and localities may impose more stringent requirements on hazardous waste facilities than those imposed by EPA regulations. However, not all more stringent State or local requirements are valid. Courts have found that certain more stringent requirements which significantly affect out-of-state persons and threaten important Federal interests are inappropriate for State or local resolution. For example, under the Clean Air Act and Clean Water Act, courts have held that State laws which control pollution which moves interstate can significantly affect persons in other States. In some cases, these restrictions have been held to be precluded by Federal statute under the Supremacy Clause of the United States

Constitution. In addition, courts have held that State waste import bans violate the commerce clause of the Constitution and, therefore, are illegal. Local requirements on transporters that unreasonably burden or discriminate against waste generated in other localities have been declared invalid for the same reason. Also, where it is physically impossible to comply with both Federal and State or local rules, the courts have held that Federal rules prevail.

In addition, local regulation of hazardous materials transportation may be preempted by the Hazardous Materials Transportation Act administered by the U.S. Department of Transportation (DOT). The Act provides a procedure whereby States and localities may seek an advisory opinion on whether a requirement is preempted. Your constituents may wish to contact DOT for further information.

EPA opposes unreasonable restrictions on the free movement of hazardous waste which are not related to legitimate health and safety concerns. The Agency is concerned that barriers will prevent shipment of hazardous wastes to the most appropriate facility for treatment or disposal. Therefore, EPA discourages the enactment of restrictions on the free movement of wastes, and will not grant authorization to a State that bans the transportation of wastes into or through the State.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Lee M. Thomas

bcc: Deputy Administrator
Assistant Administrator, OSWER
General Counsel
Enforcement and Compliance Monitoring
Region IX
Regional Operations
External Affairs/Manson
Congressional Liaison



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

Mr. Alfred B. Devereaux, Jr.
Assistant Secretary
State of Florida Department of
Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301-8241

FILE COPY

Dear Mr. Devereaux:

Thank you for your July 7, 1986, letter expressing concern about the Environmental Protection Agency's (EPA's) policy for expanding public involvement opportunities in the Resource Conservation and Recovery Act (RCRA) permitting program.

EPA's public involvement program is designed to provide information and uncover citizen concerns while there is still opportunity to address them during the permit review process. We encourage the States to integrate early public involvement activities into the permitting process to ensure responsive and effective permitting.

RCRA and the Hazardous and Solid Waste Amendments mandate the Agency respond to citizens' concerns and provide a defined role for the public in the decisionmaking process. The Guidance on Expanded Public Involvement in the RCRA Permitting Program allows great flexibility to Regions and States to provide such opportunity as appropriate in each community. This guidance is relevant to both new and existing facilities, whether it is for closure or operation.

The guidance does not state that every RCRA facility must have an expanded public involvement program, but rather that specific facilities be targeted for expanded public involvement, and it provides criteria for targeting these facilities:

- facilities that receive wastes from a Superfund site;
- facilities that are environmentally significant;
- facilities that are already controversial or have the potential to become controversial; and
- facilities for treatment and incineration, existing or proposed.

We believe that it is important for the States to apply this guidance in administering their permit programs. We encourage the States to review the permit applications to discover which are or may become controversial and develop an expanded public involvement program for those permits. If you have any further questions concerning the implementation of this program, please contact Vanessa Musgrave in the EPA Permits and State Programs Division, Office of Solid Waste, at (202) 382-4751.

Sincerely,

Lee M. Thomas

WH-562/MUSGRAVE/D.ZEITLIN/sld/7-23-86/Control No: AX601099
382-4651/Due Date: 7-28-86

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 86

3. Appeal/Recourse Process for Permit Denial

An owner/operator (o/o) of an interim status facility is seeking a final RCRA permit. If the o/o submits a complete permit application, but the state or region denies the permit, what procedural recourse or appeal process may the o/o follow? It appears that Part 124 Subparts A and E both state procedures to follow for appealing a permit denial.

If the o/o of an interim status facility submits all necessary information, then a final decision to grant or deny the permit can be made. An o/o wanting to appeal a permit denial would follow the procedure in §124.19 of Part 124 Subpart A, which addresses recourse for permit denial. This Subpart contains procedures for informal hearings. Briefly, the o/o has a 30-day period in which he may request a review by serving a notice to the Regional Administrator.

On the other hand, Part 124 Subpart E outlines a more formal appeal process for permit or interim status terminations. Thus, if the o/o of an interim status facility fails to submit adequate information for a final permit application, then its interim status could be terminated, and the Agency would follow the appeal procedures in Subpart E. Generally, the formal or "evidentiary" hearing of Subpart E is applicable to RCRA facilities only where there has been a termination of a permit based upon a RCRA violation or the termination of interim status based upon a failure to submit information necessary to make a final permit decision.

Source: Carrie Wehling (202) 475-8067
Research: Margaret Kneller

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MAY 86

2. Interim Status and SQGs

A small quantity generator (SQG) has been treating hazardous waste on-site in compliance with 40 CFR 261.5(g) since May 1980. During the month of January 1986, the generator produced more than 1000 kgs. of hazardous waste, exceeding the quantity limitation for SQGs. Now, the hazardous waste must be managed as large quantity generator waste according to 40 CFR Part 262. The hazardous waste must be sent off-site or managed on-site at a facility which is RCRA permitted or in interim status. Since the generator has been a SQG up to this point, the generator never obtained interim status for his SQG waste treatment facility. Can the generator now obtain interim status in order to continue treating the waste on-site?

According to Section 3005(e) of RCRA, any owner/operator (o/o) may obtain interim status if the o/o meets three requirements, and has not already been denied a permit. The first requirement the o/o must meet is to be in existence on November 19, 1980, or on the effective date of regulatory changes which first render the facility subject to the permit requirements. The above mentioned generator meets this requirement because the facility was treating hazardous waste on November 19, 1980 even though the o/o was not subject to substantive regulations.

The second requirement the o/o must meet is to comply with Section 3010 of SWDA. Section 3010 required the o/o of a treatment, storage, or disposal facility to submit a notification of hazardous waste activity form within 90 days of the date when the hazardous waste first became subject to regulation. Because small quantity generators were exempted under 40 CFR 261.5 from the 3010 notification requirement, this o/o need not have submitted a 3010 notification in order to obtain interim status per 40 CFR 270.70.

Finally, Section 3005(e) requires the o/o to submit a permit application. Where, as here, the facility becomes subject to RCRA permitting due to changes at the facility, not regulatory action, 40 CFR 270.10 requires the o/o to submit Part A of the permit application within 30 days of the date the facility first becomes subject to 40 CFR Parts 265 or 266.

Source: Carrie Wehling (202) 475-8067
Research: Ingrid Rosencrantz

Section 3004(u) of RCRA requires owners and operators (o/o) of disposal facilities seeking a permit to conduct corrective action for all releases of hazardous waste or constituents from any solid waste management unit (SWMU) at the facility. Are there any situations in which an interim status facility could avoid corrective action requirements under §3004(u)?

Any facility that is not required to obtain a permit under Section 3005(c) of RCRA will not have to meet Section 3004(u). Interim status units that continue operating will generally have to obtain permits.

- However, a permit would not be required for an interim status facility where all units containing hazardous wastes are tanks or containers, if it continued to operate after converting to generator status and met the accumulation standards in 40 CFR 262.34.

Permits will also be required for some facilities that close under interim status. Under 40 CFR 270.1(c), some surface impoundments, waste piles, land treatment units, and landfills ("land disposal units") must obtain post-closure permits.

- No permit would be required for a closing interim status facility that has no land disposal units. Units such as tanks, containers and incinerators do not require post-closure permits.
- The current version of 40 CFR 270.1(c) requires post-closure permits for all facilities with land disposal units that close after January 26, 1983. To implement new Section 3005(i) of RCRA, EPA recently proposed to change this requirement to require post-closure permits for all land disposal units that received waste after July 26, 1982 (see 51 FR 10706). EPA is considering a further revision to require post-closure permits for facilities with land disposal units that received waste after July 26, 1982 or closed after January 26, 1983. Facilities that would not be required to have post-closure permits under these criteria will not be subject to Section 3004(u).

Although Section 3004(u) would not apply to closing units that fall in these three categories, EPA could use authorities under the closure regulations and Section 3007 of RCRA to investigate the facility for releases from the closing hazardous waste units. This investigation could also extend to other potential sources of contamination at the facility, especially if information about additional sources were needed to determine whether the closing hazardous waste units were the sources of any contamination found. This investigation could be very similar to the RCRA Facility Assessment (RFA) required under Section 3004(u) for permitted units. If EPA found a release of hazardous waste, or hazardous constituents from hazardous or solid waste, it could order corrective action under the interim status corrective action order authority in Section 3008(h). Section 3008(h) orders may be issued both before and after closure.

Contact: Tina Kansen (202) 382-7706
Research: Kevin Weiss/Charlotte Mooney

AUG - 7 1987

MEMORANDUM

Subject: Thermex Energy/Radian's request for guidance on the compliance dates for submitting a Part B permit application, issuing or denying a RCRA permit, and complying with the minimum technological requirements for surface impoundments.

To: Michael J. Sanderson, Chief
RCRA Branch
EPA Region VII

From: Susanne Rudzinski, Chief
Assistance Branch
EPA Headquarters

On July 2, 1987 and July 10, 1987 Thermex Energy/Radian requested guidance on the regulatory status (i.e., permitting requirements) of Thermex's manufacturing and laboratory facilities located in Hallowell, Kansas from both the Kansas Department of Health and Environment and EPA, respectively. Specifically, Thermex/Radian has asked us to identify (1) the minimum technology requirements (MTR) compliance date for the three surface impoundments at the Hallowell manufacturing facility; (2) the date Thermex must submit a Part B application for the three surface impoundments and tank at the laboratory in order to prevent the loss of interim status; (3) the date that the Kansas Department of Health and Environment must issue a final permit or final permit denial; and, (4) the date closure of the three surface impoundments must begin if a closure plan is submitted by November 8, 1987.

In response to their first question, Section 3005(j)(1) of the Resource Conservation and Recovery Act (RCRA) requires that all surface impoundments either meet the minimum technological requirements (MTR) of Section 3004(o)(1)(a) of RCRA by November 8, 1988 or stop receiving hazardous wastes. Section 3005(j)(6) of RCRA, however, specifies that any surface impoundment brought into the hazardous waste management

system, as a result of the promulgation of additional hazardous waste listings or characteristics, shall have four years from the date of promulgation of a new hazardous waste listing or characteristic to either meet the MTR or stop receiving hazardous wastes. The revocation of Thermex's temporary exclusion was promulgated on July 17, 1986 (see 51 FR 25887). As a result of the revocation of Thermex's temporary exclusion, Thermex's waste was brought back into the hazardous waste management system. We agree with Thermex/Radian's interpretation of Section 3005(j)(6) that revocation of a temporary exclusion has the same impact as bringing a waste into the system by a new listing. As a result, Thermex should have four years from the promulgation date of the revocation of its temporary exclusion and final denial of its delisting petition to either comply with the MTR or to stop receiving hazardous wastes. The date by which Thermex must either comply with the MTR or stop receiving hazardous wastes, therefore, is July 17, 1990.

The second question raised in Thermex/Radian's letter asks by what date must Thermex submit a Part B permit application for the impoundments (at the manufacturing facility) and the tank (at the laboratory facility) to prevent the loss of interim status. RCRA Section 3005(e)(3) does not apply to facilities having temporary exclusions. As long as Thermex had originally filed Part A applications for their three surface impoundments and for their tank and did not modify their Part A applications to delete the units handling the temporarily excluded wastes, the facilities have not lost interim status and no further action is required by the facilities. We note that Part B permit applications for the three surface impoundments and the tank are not required until the State or Region calls in the permit applications, however the facilities are subject to interim status standards until the permit is issued.

Their third question asks by what date must the Kansas Department of Health and Environment (KDHE) issue a final permit or final permit denial if Thermex submits a permit application for the Hallowell surface impoundments by November 8, 1987. As indicated above, Thermex is not required to submit a Part B permit application unless a Part B permit application is called in by the State or Region. Should Thermex, however, submit an application on November 8, 1987, KDHE is not required to process the Part B permit application for the Hallowell surface impoundments by November 8, 1988.

Thermex/Radian's fourth question asks us to identify the date implementation of closure of the three surface impoundments must begin after submittal of a closure plan on November 8, 1987. Again, as stated in response number two, Thermex does not have to submit a closure plan or implement closure. If Thermex voluntarily submitted a closure plan or stopped receiving hazardous waste, they would, under federal regulations, be required to initiate Part 265 closure within either 90 days after the surface impoundments stop receiving wastes or the closure plan is approved by the State Director or Regional Administrator, whichever is later. Closure would then have to be completed within 180 days (see 40 CFR Part 265.113). We note that the State Director or Regional Administrator may extend the time period in which closure must be implemented or completed if Thermex were to demonstrate the requirements of 40 CFR Part 265.113(a) or (b), respectively.

We are not planning on responding directly to Thermex on their substantive issues, rather we are directing them back to the Kansas DHE. I trust you will be conveying our guidance on this issue to the Kansas Bureau of Waste Management so that they can respond to Thermex.

DEC 15 1997

MEMORANDUM

SUBJECT: Requested Re-interpretation of On-site Treatment Exemption

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562B)

TO: Robert F. Greaves, Acting Chief
Waste Management Branch (3HW30)

This is in response to your request for a re-interpretation of the on-site treatment exemption. We have reviewed your concerns regarding our interpretation. While in general we continue to believe that treatment in tanks or containers is allowed under Section 262.34, the questions you posed indicate that the rule as currently written is unclear and should be clarified.

1. General policy. Although 40 CFR 270.1(c) does state that a permit is required for treatment, storage, and disposal of hazardous waste, please note that Section 270.1(c)(2)(1) exempts generators who accumulate hazardous waste on-site in compliance with Section 262.34 from the requirement to obtain a RCRA permit. The exemption does not depend on whether or not treatment is conducted. The reason for this general policy is as follows. First, as you have stated, Section 262.34 does not preclude treatment in accumulation units. Also, the performance standards under Part 265, Subparts I and J, apply to the generator's containers and tanks regardless of whether storage, treatment, or both processes occur in them. In addition, both Subparts I and J contain special handling requirements for ignitable, reactive, and incompatible wastes, and these requirements should adequately control treatment typically conducted in tanks or containers. Finally, treatment often renders waste less hazardous, or at least easier to transport or more amenable for recovery. For all of these reasons, OSW believes that treatment is not only allowable under Section 262.34, but also is consistent with sound waste management.

0
2

2. Thermal treatment. You raised the concern that generators could conduct thermal treatment such as detonation or open burning under Section 262.34 and thereby avoid permitting for obviously dangerous activities. Certainly, detonation and open burning were never intended to be allowed under Section 262.34. As explained above, a large part of the Agency's rationale in allowing treatment under Section 262.34 was that the same standards would apply for both treatment and storage. Thermal treatment is subject to Part 265, Subpart P; so in this case, the standards are not the same. The regulatory language of Section 262.34 is not clear on this point, and OSW is considering promulgating amendments to clarify applicability of the section.

If you have further questions in this area, please contact Michael Petruska at FTS 475-8551.

cc: Waste Management Branch Chiefs,
Regions I, II, and IV-X

APR 19 1988

MEMORANDUM

SUBJECT: Call-in of Storage and Treatment Applications

FROM: Sylvia Lowrance, Director /S/
Office of Solid WasteTO: Waste Management Division Directors
Regions I-X

Section 3005(c)(2)(C) of RCRA provides a statutory deadline by which interim status treatment and storage facilities must submit their Part B permit applications or their interim status will terminate on November 8, 1992 if EPA has not issued a permit. The deadline for storage and treatment facilities to submit their permit applications is November 8, 1988.

You should be aware, however, that these deadlines apply only to facilities and units that were in interim status on November 8, 1984. A unit handling temporarily excluded waste on November 8, 1984 or a unit added to an interim status facility after this date through a change in interim status would not be subject to the 1988 application deadline or the 1992 permitting deadline.

In order to give facilities subject to the 1988 deadline a full six-month period to prepare and submit their applications (at least for affected units), I urge you to send letters notifying these facilities of the deadlines, and reminding them that they should submit a Part B application if the facility intends to continue operating after November 8, 1988. If the facility (or unit) plans to close prior to November 8, 1988, you should consider requesting a written confirmation of intent to close in lieu of a Part B application. For closing facilities, it would be useful to remind them that they must submit their closure plan for approval at least 45 days prior to the date that closure will begin. (Section 265.112(d)(1) requires owner/operators to submit closure plans 45 days before they begin final closure of a facility with only tanks, container storage, or incinerator units.)

These letters should be received by the regulated community on or before May 8, 1988. In authorized States, the letters could consolidate the State and Federal permit application requirements so that the permitting jurisdiction of the two agencies is clear. (Note that this requirement to send letters to storage and treatment facilities is referred to on page 2.1 of the FY 1988 RIP.)

You should also expect facilities submitting Part B applications by the 1988 deadline to make a good faith effort to provide complete applications. I believe that there are good reasons to require preparation of a complete application by the 1988 deadline. For example, preparation of a complete Part B may initiate actions which are environmentally beneficial. These actions include:

- o Precipitation of decisions to close facilities that will have difficulty complying with Part 264 regulations or that do not intend to upgrade to meet permit standards; and
- o Stimulation of applicant decisions to begin improvements.

I am sensitive to the problems created when applications become stale during the time they are awaiting processing. Some of these problems might be alleviated if an additional letter is sent to facilities several months prior to the scheduled date of permit processing. This will give them an opportunity to amend and update their Part B before processing begins. You may wish to consider trying this approach.

Thank you for your cooperation in meeting this important deadline. If you have any questions, please call Frank McAlister at FTS 382-2223.

cc: RCRA Branch Chiefs,
Regions I-X



9521.1989(02).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 9 1988

OFFICE OF
SOLID WASTE AND EMERGENCY

MEMORANDUM

SUBJECT: Staying HSWA Permit Conditions

FROM: Sylvia K. Lowrance, Director
for Office of Solid Waste (OS-300)

TO: Allyn M. Davis, Director
Hazardous Waste Management Division, Region VI

This memorandum responds to your request of October 26, 1988 for clarification of certain issues related to the staying of permit conditions. You asked us to address the applicability of §124.16(b)(2) to HSWA/RCRA joint permits. In addition, you asked whether the Region can and should postpone the effective date of the HSWA portion of the permit in each of the following cases:

- a. Where both the HSWA portion and the authorized State RCRA portion of the permit were appealed, the HSWA issues have been resolved, but some time will elapse before the State issues are also resolved and the State portion of the RCRA permit can become effective, and
- b. Where the State portion of the permit is appealed without any appeal of the HSWA conditions.

You explained that your questions arose in the context of appeals of facility permits in authorized States. We address your questions below in that context.

I. Applicability of § 124.16(b)(2).

Section 124.16(b)(2) provides that "[n]o stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director." In your memorandum, you suggest that §124.16(b)(2) was promulgated before the enactment of HSWA and was not intended to apply to the situation where an authorized State is issuing its authorized portion of a RCRA permit and EPA is issuing the HSWA portion of that permit.

We agree that §124.16(b)(2), along with its requirement for a written request from the State Director, does not apply to joint EPA-State issuance of RCRA permits in authorized States. As you know, under our interpretation of the statute and regulations, only one permit is typically issued to a facility under the authority of Subtitle C. Because most authorized States are not yet authorized for HSWA, however, the permit usually consists of a Federal portion (issued by EPA pursuant to HSWA) and a State portion (issued by the authorized State pursuant to RCRA). The HSWA portion, in and of itself, is only part of the RCRA permit. It would not qualify, therefore, as an "EPA-issued RCRA...permit" under §124.16(b)(2). A different situation exists in unauthorized States, where EPA issues the entire RCRA permit (HSWA and non-HSWA portions). Such a permit would qualify as an "EPA-issued RCRA...permit" under §124.16(b)(2).

II. Staying of HSWA Permit Conditions.

In your memorandum, you outline situations in which the HSWA portion of a permit might become effective before resolution of an appeal on the State portion. You express concern about declaring the HSWA portion of a permit effective because doing so might cause the facility to lose interim status.

We recognize that problems might arise if facility interim status were to terminate before a permit became fully effective. However, issuance of the HSWA portion of a jointly issued RCRA permit does not terminate the interim status of a facility. Interim status ends when final administrative disposition of the RCRA permit application occurs. Thus, effectiveness of the authorized State's permit decision is a prerequisite for termination of interim status. This will be a matter of State law (e.g., whether the State appeal stays the State permit decision). If permit effectiveness is stayed during an appeal as a matter of State law, facility interim status most likely continues under State law until the entire State portion of the permit goes into effect. We believe that the Region will, in most cases, want to issue the HSWA portion of the permit and begin corrective action as soon as possible. This will not jeopardize a facility's interim status should non-HSWA State portions be appealed. Furthermore, corrective action conditions can become effective when the permit is "issued" (per the language in RCRA section 3004(u)), not necessarily when all permit appeals are completed.

If, for some reason, the Regional Administrator wishes to delay the effective date of the HSWA portion, as your memorandum suggests, the ability to do so depends on the circumstances in each case. We have, therefore, addressed the issue in the context of each scenario you present in your memorandum.

a. Both the HSWA and State RCRA portion of the permit are appealed (under EPA and State procedures respectively).

In the first scenario you describe, both the HSWA portion and the RCRA portion of the permit are appealed and Federal resolution of the HSWA issues occurs before the State appeal is resolved. We believe that, in the course of reissuing the HSWA portion after an appeal, the Regional Administrator has discretion to postpone the effective date of the HSWA portion under the procedures of §124.15(b)(1) and §124.19(f). It should be noted that such a postponement may not be necessary in many cases because we interpret §124.16(a)(2) to mean that uncontested HSWA provisions that are inseverable from stayed State provisions are also stayed.

b. The State portion is appealed and the HSWA portion is not.

Under your second scenario, the State portion of the permit is appealed without any appeal of the HSWA conditions. In this case, the Regional Administrator does not have an opportunity to delay the effective date under either §124.15(b)(2) or §124.19 because the Regional Administrator's final permit decision has been issued and become effective prior to advent of the permit appeal.

This outcome is a function of the nature of the joint RCRA/HSWA permitting process. In the case of an authorized State, where issuance of the full RCRA permit is a combined action, State procedures must be followed to issue the State portion and the procedures of Part 124 must be followed to issue the Federal portion. While there may be a joint proceeding, two separate decisions must be made because the State has no authority to issue the Federal portion or vice versa. These two decisions can occur at the same or different times. In turn, the State portion must be appealed through State procedures and the HSWA portion through the procedures of Part 124. Where there is no appeal of the HSWA portion, no stay of the HSWA portion occurs automatically per §124.16(a)(1) as no appeal is taken under §124.19. Furthermore, the Regional Administrator's issuance of the HSWA portion will already have an effective date specified, per §124.15(b). Hence, the Region will not have the

opportunity to alter that date once the final HSWA permit decision becomes effective, except via permit modification procedures. However, the effective date of the HSWA provisions could otherwise be delayed automatically under §124.16(a)(2) if they are inseverable from stayed RCRA permit conditions.

I hope this addresses all of your concerns. If you have any questions, please call Barbara Foster at FTS 382-4751.

cc: Michelle Anders
Fred Chanania

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 23 1990

MEMORANDUM

SUBJECT: Splitting a Federal RCRA Permit

FROM: Dev Barnes, Director
Permits and State Programs DivisionTO: James Scarbrough, Chief
RCRA and Federal Facilities Branch, Region IV

This memorandum is in response to your correspondence, dated May 1, 1990, in which you requested guidance concerning the proper procedure for "splitting" RCRA permits which were originally issued for a non-authorized State, when the State has subsequently become authorized and has issued a "base" permit identical to the non-HSWA portion of the Federal permit. We offer the following suggestions:

One procedure, which may have some advantages, would be for EPA to modify the Federal permit and specify an accelerated expiration date (e.g., 30 days hence) for the entire permit. Simultaneously, EPA would modify the State permit to incorporate explicitly the HSWA provisions which were originally in the Federal permit. This portion of the State permit would remain Federally administered. If the permittee requests the modifications, both could be Class I modifications according to 40 CFR Part 270.42. Accelerated expiration is a specifically listed Class I modification, and the addition of already existing HSWA permit conditions to a State permit would qualify as Class I under 270.42(d), since it would not constitute a substantive change. The advantage to this procedure would be that only one permit would remain, thereby reducing any potential confusion.

Another possible alternative would be simply to modify the Federal permit to allow for accelerated expiration of the non-HSWA portion. The Region would have to be careful to make sure that only the base portions of the permit were identified and allowed to expire, and not the HSWA elements. This would achieve in effect the same result as the previous option. However, two separate permits would continue to exist, at least until the State is authorized for corrective action, at which time the Federal permit could be ~~eliminated~~ and the State permit modified

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

to incorporate a State-implemented HSWA portion.


Under either procedure, actual termination of the permit or portions thereof, according to 40 CFR Part 124, would be unnecessary. Although we believe there is a potential advantage to using the first procedure (that is, having a single consolidated permit), either option would be legally acceptable and should be relatively straightforward administratively.

We have consulted with the Office of General Counsel concerning this issue, and this memorandum reflects our joint wisdom. If you have any questions, please call Dave Fagan of my staff (382-4497) or Carrie Wehling of OGC (382-7703).

cc: Pat Tobin
RCRA Hazardous Waste Branch Chiefs, Regions I-III & V-X

9503 – SPECIAL PERMITTING UNIVERSE

MAY 10 1985

MEMORANDUM**SUBJECT: Definition of Mixed Waste (DOE Facilities)****FROM:**  John Skinner, Director
Office of Solid Waste**TO:** James H. Scarbrough, Chief
Waste Management Division
Region IV

This is in response to your memo of April 1, 1985, concerning DOE facilities.

The question of which radioactive wastes are subject to RCRA control turns on the definition of "byproduct material" as defined under the Atomic Energy Act. Such "byproduct material" is not subject to RCRA control. Radioactive wastes that are not "byproduct," i.e., so called "mixed wastes," are subject to RCRA control if the waste exhibits a characteristic or contains listed waste. We have been discussing this issue with DOE for several months and have developed, at staff level, a reasonable definition of "byproduct material." This definition will be proposed by DOE under Atomic Energy Act authority. Subsequently, we will propose administrative regulations setting out procedures for DOE facilities.

In any event, under the RCRA amendments, facility owners and operators of land disposal facilities, including DOE, have a statutory responsibility to submit a Part B permit application and certify that they are in compliance with the Interim Status Subpart F requirements (see Section 3005(e)(2)). Since most DOE facilities generate and dispose of non-radioactive hazardous wastes just like other industries, they are subject to this requirement even if the hazardous wastes are combined after generation with radioactive wastes which are not subject to RCRA control. However, the requirements of the statute are not limited to non-radioactive hazardous wastes, but cover all hazardous wastes under RCRA control. There is no provision that exempts land disposal facilities holding "mixed wastes" from the duty to comply with Section 3005(e)(2) simply because DOE has not yet finalized its definition of "byproduct."

Until DOE promulgates the definition of "byproduct" I suggest that you use the staff level definition as interim guidance. DOE has determined, under that definition, which wastes from each generating plant are byproducts and which are "mixed wastes" subject to RCRA control. We have reviewed those lists and find them to provide a reasonable split between wastes that are hazardous primarily due to radioactivity and those that present primarily a chemical hazard. We suggest that DOE facilities proceed to develop their Part B's based on these tests.

To implement this, we have written a letter to DOE management advising them of their statutory responsibilities and suggesting that they proceed in accordance with the draft definition. Many DOE facilities will be interacting with authorized States rather than EPA. Where appropriate, Regions should pass this information on to those States.

If there are any questions on this matter, call Andrea Pearl (382-2222) or Jon Perry (382-4654).

cc: RCRA Branch Chiefs, Regions I - III, V - X
Office of Federal Activities
Regional Federal Facilities Coordinators,
Regions I - X

i:rm2106:5/2/85:OSW-60:Disk#15-440

OSW:WH-565:AWLINDSEY:gb:382

MAY 10 1985

Mr. William A. Vaughn
Acting Assistant Secretary for
Policy, Safety, and the Environment
Department of Energy
Washington, D. C. 20585

Dear Mr. Vaughn: .

I am writing to be sure you are aware of certain statutory responsibilities the Department of Energy (DOE) has in managing certain wastes under the new amendments to the Resource Conservation and Recovery Act (RCRA). Under these amendments (Section 3005 (e)(2)) owners and operators of hazardous waste land disposal facilities, by November 8, 1985, must:

- (a) submit a RCRA Part B permit application to EPA or an authorized State,
- (b) certify that they are in compliance with the interim status groundwater monitoring requirements of Subpart F of 40 CFR part 265, and
- (c) certify compliance with the interim status financial requirements of Subpart H of 40 CFR Part 265 (under §265.140(c) Federal facilities are exempt from these requirements--certification should simply so state).

Failure to do so will automatically result in loss of interim status for these facilities and they will therefore be operating illegally.

As you are probably aware, our staffs have been meeting for some months to discuss acceptable definitions for determining which radioactive wastes are subject to RCRA control (so-called "mixed wastes") and which are "byproduct" materials and thus exempt from RCRA. Your Office of General Counsel has developed a definition that reasonably accomplishes this and your generating plants have identified specific waste streams that fall in each category. My staff has reviewed these lists and finds that they generally relegate wastes that pose a chemical hazard to RCRA control while those that pose a high level radioactivity hazard are generally

exempt as "byproduct materials". But it does not appear that in the near future remaining questions surrounding the definition of "byproduct" will be fully resolved and the definition proposed and promulgated under the Atomic Energy Act.

The November 8 deadline is rapidly approaching, and developing permit applications and groundwater monitoring systems that meet the RCRA requirements are time consuming activities. Therefore, as an interim approach, I recommend that DOE use the lists of wastes developed from the staff definition in determining which wastes and waste management facilities are subject to RCRA regulatory control for the purpose of complying with the November 8 deadline. Also, many of your plants generate nonradioactive hazardous wastes subject to RCRA control. These wastes and DOE facilities managing them must also comply with the new amendments to the statute .

Many States have been authorized to manage the permitting operation. In those States, your application should be sent to the appropriate State agency. Our regional offices (contact list enclosed) are prepared to counsel your facilities on this matter. Truett DeGeare (382-2210) is the appropriate contact on permitting questions in Washington. Guidance on the mechanics of certifying compliance with the monitoring rules will be issued in the near future. Bob Linnett (382-4844) is the appropriate contact should you have questions in the meantime.

Sincerely,

/s/ Jack W. McGraw

Jack W. McGraw
Acting Assistant Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 30 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulation of "Mixed Wastes" at DOE Facilities

FROM: John H. Skinner
Director
Office of Solid Waste

TO: James H. Scarbrough
Chief, Residuals Management Branch
Waste Management Division, Region IV

The purpose of this memorandum is to respond to your request for guidance on the ability of States and Regional Offices to regulate "mixed wastes" (those wastes which have both radioactive and hazardous characteristics, but which are not "by-product" material) at DOE facilities.

The first issue is whether States are authorized to handle mixed wastes. The answer is that they are not. A State may of course regulate mixed waste pursuant to State law, however, such regulation is not part of the authorized State RCRA program. When a State applies for authorization to operate its RCRA program, EPA reviews each portion of its program to ensure that it is equivalent to the Federal requirement. Because EPA had no interpretation on the radioactive waste exemption, there is no way that EPA could have reviewed the State programs for equivalence. When EPA publishes a Federal Register notice explaining its interpretation of the mixed waste issue, States will be required to develop equivalent authority, or, if such authority is already part of their hazardous waste program, they will be required to certify (through the Attorney General) that they are interpreting the radioactive waste exemption in the same manner as EPA. I refer you back to my May 1, 1985, memorandum on the applicability of RCRA to DOE facilities for a more detailed discussion of this issue.

The next issue which you raise is whether DOE should be sending Part B applications to various authorities based on whether the facility handles mixed or RCRA-only wastes. I understand your confusion on this issue and will try to clarify it here.

For purposes of the wastes that are clearly under RCRA, the answer here is no different than it is for any facility at this stage of the RCRA program. Where a State is authorized for the RCRA program, EPA and the States are currently involved in issuing RCRA permits because of joint permitting under the Hazardous and Solid Waste Amendments of 1984 (HSWA). Therefore, a complete RCRA permit application should be sent to both authorities. For a discussion of this joint permitting process, see RCRA Statutory Interpretation #5, dated July 1, 1985. Where EPA operates the hazardous waste program, DOE should submit only one application directly to EPA.

Both EPA and DOE have agreed that RCRA also applies to DOE facilities handling certain mixed wastes. Permitting these facilities is a bit more complicated. Where a State is authorized it can issue RCRA permits only for RCRA wastes. If a State also has authority under its own laws to regulate mixed waste, the State portion of the permit will address that mixed waste although this portion of the permit will not be part of the RCRA permit. We recognize the limitations of this approach, however, we simply do not have the authority to do otherwise; the State's authorized program operates in lieu of EPA's which means that EPA cannot issue a RCRA permit covering those wastes either. EPA has authority to directly conduct permit activities in an authorized State only when the regulations governing that activity derive from HSWA. The addition of mixed wastes to the Federal universe of RCRA-regulated wastes is not pursuant to HSWA. Therefore, EPA has no authority to permit such activity in an authorized State. Until such time as the State is specifically authorized for mixed wastes, EPA cannot enforce any State permit conditions relating to such wastes.

Where the State is not authorized, EPA will be issuing the permits for mixed waste and these permits will be RCRA permits. The only remaining question, therefore, is how to define mixed waste. Although we do not yet have a final definition of mixed waste (due to remaining questions over "by-product" material), we recommend that permits be issued for those mixed wastes which DOE acknowledges are subject to RCRA, based on waste stream analyses that were generated by DOE at individual plants. They were reviewed by the EPA technical workgroup addressing DOE issues and were determined acceptable for use in permitting. You should be requesting those documents from the specific DOE facilities which you will be regulating. You should make sure that the documents are the original studies that have not been revised since EPA's review. Headquarters policy is that where you suspect a

DOE facility is handling nonradioactive hazardous waste, you should proceed with the Part B application unless and until you are notified by the facility that it does not handle such wastes. In addition, DOE controlled mixed waste as indicated in the waste stream analyses is subject to RCRA if such wastes are mixed with RCRA waste after generation, e.g., where the waste is placed in a RCRA site.

I have also included a copy of the staff level definition of by-product material referred to in my May 10, 1985, memorandum as per your request, however, please realize that it is still in draft form. If you have any additional questions on this matter, please feel free to call Andrea Pearl of our State Programs Branch at FTS 382-2210.

Attachment

cc: Thomas W. Devine, Director, Waste Management Division,
Region IV
RCRA Branch Chiefs, Regions I-X
State Programs Branch, OSW
Permits Branch, OSW
Fred Lindsey, OSW
Jon Perry, OSW



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

DEC 23 OSWER Directive #9503.50-1A(85)

MEMORANDUM

SUBJECT: RSI Memorandum for RD&D Permits

FROM: Marcia Williams, Director *Marcia Williams*
Office of Solid Waste (WH-562)

TO: Allyn M. Davis, Director
Hazardous Waste Management Division (6H)

I am responding to your memorandum of November 13, 1985, which requested policy guidance on the following issues pertaining to RD&D permits.

1. May an RD&D permittee who collects hazardous waste from a generator who does not have a TSD RCRA permit, return the unused or reduced part of the waste to that generator after experimentation?

Although the Agency may modify or waive permit application and permit issuance requirements to expedite the permitting of RD&D activities, there is no authority to modify or waive the requirements pertaining to shipping hazardous waste from an RD&D facility. Waste shipped from an RD&D facility must be manifested and go to a facility with a RCRA TSD permit. The RD&D facility could arrange for the generator's transporter to pick up the unused and reduced portions of waste and take it to such a facility -- either the facility normally used by the generator or another facility.

2. How much reporting information should be required from permittees, and who should accept this information and in what form?

The reporting requirements are determined by what information is necessary for the Agency to ensure protection of human health and the environment. Because each RD&D permit is unique, the time-frame for reports and the level of detail required must be determined on a case-by-case basis. Applicants who intend to ultimately apply for a full RCRA permit must assure that their

procedures meet routinely acceptable research practices, otherwise, the Agency may not be able to consider their results in issuing the permit. When Regions receive information on the results of experiments, this information should be submitted to Art Glazer, Program Manager, Permits Branch. This information will then be shared with other EPA Headquarters staff and ORD to assist the Agency in developing permit standards and analytical methods for new techniques and processes, and to assist the Agency's research efforts. There is no set form for submittal of information, except that the information must be legible and the results clear.

3. If the permittee wants to test more than one machine, whether or not they are similar or modified, is a permit required for one set-up or is it for an entire experimental process? When a permittee is finished with one machine, he may want to decontaminate and dispose or sell it, but then he wishes to continue similar experiments. Is this considered partial closure of an RD&D permit?

RD&D permits should cover all experimental processes to minimize the need for permit modifications. The permit applicant should identify, as best they can, all potential alterations or additions to their experimental equipment and this information should be covered in the permit. Given the uncertainty with RD&D activities, we see no problem with including conditions in the permit to cover activities that could potentially occur but do not actually happen.

Decontaminating and disposing or selling one machine, when other equipment is still operating, should be considered partial closure of the RD&D facility. Since an RD&D facility is required to have a closure plan, the permit should address procedures to partially close. Permittees should be required to decontaminate equipment which will be sold. The procedures for decontamination should be specified in the permit.

4. Has any decision regarding mobile RD&D units been made?

Not at this time. As you may know, we have formed a workgroup to develop recommendations for expediting the permitting of mobile treatment units, including RD&D activities. We expect to issue a set of draft recommendations to the Regions for comment in a month or so. In the meantime if you have specific questions on permitting mobile units or wish to provide your thoughts on the issue please contact Art Glazer on 382-4692.

- 3 -

If you have any further questions on permitting RD&D facilities please contact Art Glazer on 382-4692

cc: Peter Guerrero
Bruce Weddle
Art Glazer
William Rhea
Permit Section Chiefs Region I-V, VII-X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 24 1985

9503.51-1A

MEMORANDUM

SUBJECT: RD&D Permit for a Sludge Drying Process in a Wastewater System

FROM: Marcia E. Williams, Director *Marcia Williams*
Office of Solid Waste (WH-562)

TO: Allyn M. Davis, Director
Hazardous Waste Management Division (6H)
Region VI

In your letter of November 15, 1985, you requested written confirmation that the use of a sludge drying unit, manufactured by Water Management, Inc., at facilities with a wastewater treatment unit, would not jeopardize their exemption from RCRA permitting. The sludge dryer is intended to further reduce the volume of sludge requiring disposal.

If the sludge drying unit is a tank, as stated in your letter, then persons who are currently exempt from RCRA permit requirements under 40 CFR §270.1(c)(2)(v) because they have a wastewater treatment unit, will continue to be exempt from RCRA permitting if they use this sludge dryer. The Agency has clarified the definition of "tank", for the purposes of the wastewater treatment unit definition in §260.10, to cover unit operations which are not obviously tanks such as presses, filters, sumps, and many other types of processing equipment. (See attached memorandum dated July 31, 1981 from John Lehman to Richard Boynton, "Suspension of Regulations for Wastewater Treatment Units.")

I understand that the intent of the sludge dryer is to assist metal finishing industries, who have wastewater treatment units, to meet the waste minimization requirements of the new RCRA §3002(b). You should advise Water Management, Inc. that although their potential clients will continue to be exempt from RCRA permit requirements, their clients must comply with the RCRA manifest requirements of 40 CFR Part 262 for generators. Also, they must comply with 40 CFR Parts 261-263, as appropriate. The clients will need to sign the RCRA manifest for off-site shipments of the residue resulting from the use of the sludge dryer, including the waste-minimization certification statement on the revised Uniform Hazardous Waste Manifest Form (see 50 FR 28744-46, July 15, 1985).

The client must also submit a biennial report to the Regional Administrator which includes a description of the efforts undertaken to reduce the volume and toxicity, as well as a description of the changes in volume and toxicity of the wastewater actually achieved during the year, by comparing it to previous years (\$262.41, 50 FR 28746, July 15, 1985).

Since the sludge drying unit is intended for use by persons with wastewater treatment units, and the facilities with these units are exempt from RCRA permitting, it is unclear why Water Management, Inc. wants a research, development, and demonstration permit to test the unit. You should discuss this issue with Water Management, Inc. to determine if you should spend the resources on processing their permit application.

If your staff has any further questions on this matter, please have them contact Nancy Pomerleau at (FTS) 382-4500.

Attachment

cc: Bruce Weddle
Jack Lehman (WH-565)
Irene Horner (WH-565A)
Ken Gray (LE-132S)
Peter Guerrero
Art Glazer
Nancy Pomerleau
Tina Parker (WH-562)
William Rhea, Region 6
Hazardous Waste Division Directors, Regions I-X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 204

9503.51-1A
Attachment

JUL 31 1981

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Richard C. Boynton, Chief
Permits Development Section
U.S. Environmental Protection Agency
John F. Kennedy Building
Boston, Massachusetts 02203

Re: Suspension of Regulations for Wastewater Treatment Units

Dear Mr. Boynton:

This letter responds to your recent request for an interpretation of the regulations of November 17, 1980 (43 FR 76074) which suspended certain requirements of the hazardous waste regulations for owners and operators of wastewater treatment units where such facilities are subject to regulation under Section 402 or 307(b) of the Clean Water Act.

Your letter is correct in stating that there is nothing in the definitions, preamble, or regulations which precludes an off-site hazardous waste management facility from qualifying for a suspension of the hazardous waste requirements in 40 CFR Parts 122, 264 and 265. The Agency considered limiting the suspension and proposed amendments to on-site facilities but was unable to justify that this type of facility was inherently less hazardous than an off-site facility so as to necessitate different standards. Accordingly, EPA does not intend to distinguish between on-site and off-site facilities in this regulation.

Even under the terms of the suspension, hazardous waste shipped to an off-site facility will, of course, be subject to the manifest requirements. In addition, the treatment facility must be subject to regulation under either Section 402 or 307(b) of the Clean Water Act.

To be completely exempted for now (and ultimately subjected to the permit by rule) all units in a facility must meet the definition of "tank" in §260.10. Lagoons, incinerators, and other types of facilities are not eligible. It is, however, true that the definition of "tank" is rather broad, covering unit operations which are not obviously tanks such as presses, filters, sumps, and many other types of processing equipment.

The Agency also intends that the phrase "subject to regulation under either Section 402 or 307(b) of the Clean Water Act" should be given a broad interpretation. This phrase includes all facilities that are subject to NPDES permits and encompasses facilities subject to either categorical pretreatment standards or general pretreatment standards. It is not necessary that the permits actually be issued or that pretreatment standards actually be in force. It is sufficient that the facility be subject to the requirements of the Clean Water Act.

It should be noted that eligible facilities must in fact be treating "wastewaters" and not concentrated chemicals or non aqueous wastes. While we have not promulgated a formal definition, we are interpreting the term to refer to wastes which are substantially water with contaminants amounting to a few percent at most. It has been suggested that a formal definition would be helpful. We are considering adding such a definition to the final promulgation.

Public comments on the November 17, 1980 proposal also noted that some wastewater treatment units do not discharge a liquid stream and thus are not subject to the Clean Water Act. EPA is considering changing this "subject to" language to include such zero discharge facilities. We expect to finalize the proposed regulations for wastewater treatment units and elementary neutralization units within the next few months.

If you have any further questions, please do not hesitate to call me or Fred Lindsey, the Deputy Division Director at FTS 755-9183.

Sincerely yours,



John P. Lehman, Director
Hazardous & Industrial Waste Division

cc: Dennis Heubner
EPA, Region I

Ernest Regna
EPA Region II

Robert L. Allen
EPA Region III

James Scarbrough
EPA Region IV

Karl J. Klepitsch
EPA Region V

R. Stan Jorgensen
EPA Region VI

Robert L. Morby
EPA Region VII

Lawrence P. Ganda
EPA Region VIII

Arnold R. Don
EPA Region IX

Kenneth D. Feigner
EPA Region X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

9503.52-1A

JAN 2 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

C. T. Philipp, P.E.
President
Water Management, Incorporated
2300 Highway 70 East
Hot Springs, Arkansas 71901

Dear Mr. Philipp:

In your letter of December 5, 1985 you requested that the Agency identify the Resource Conservation and Recovery Act (RCRA) status of sludge dryers that are part of a "conventional treatment system" not regulated by RCRA. You questioned whether adding a sludge dryer to a wastewater treatment unit exempted from RCRA permitting will jeopardize the exemption. The RCRA-Superfund Hotline correctly identified sludge drying for you as a treatment process according to the definition of treatment in 40 CFR §260.10. However, when sludge dryers meet the definition of wastewater treatment units, they qualify for the wastewater treatment exemption of §§264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v). In your case, adding a sludge dryer to treat sludge generated by a treatment system operating under a wastewater treatment exemption does not subject the treatment system to RCRA permitting.

As you know, sludge dryers must meet the three criteria in the definition of wastewater treatment unit in order to be part of a wastewater treatment exclusion. First, the information you sent shows that your sludge dryer qualifies as a tank as defined in §260.10; that is, it is designed to contain hazardous waste and is constructed primarily of nonearthen materials that provide structural support. Furthermore, the Agency has clarified the definition of tank--for this exemption--to include unit operations such as presses, filters, sumps, and many other types of processing equipment. (See the attached memorandum dated July 31, 1981, from John Lehman to Region I.) In addition, the preamble of the November 17, 1980, proposed rule (45 FR 76077-76078) clarified the definition of a wastewater treatment unit as follows:

This definition...covers...the sludge digesters, thickeners, dryers and other sludge processing tanks... in which hazardous wastewater treatment sludge is treated; and any...tanks used for the storage of such sludge.

Second, the sludge dryer treats or stores a wastewater treatment sludge which is a hazardous waste as defined in §261.3 (i.e., the sludge itself is a listed waste, derived from treatment of a listed waste, or is hazardous on the basis of characteristics identified in §261 Subpart C). This means that the treatment of sludges generated from wastewater treatment units is also exempt from regulation under the RCRA treatment standards.

Tanks (here a sludge dryer) that do not themselves have any discharge subject to regulation under Sections 402 or 307(b) of the Clean Water Act, but that are part of the wastewater treatment system, qualify for the exemption if other tanks in the treatment train have discharges that are subject to these Clean Water Act provisions. So the third condition, being part of a wastewater treatment unit subject to regulation under Section 402 or 307(b) of the Clean Water Act, can be met by sludge dryers in certain circumstances. However, as the November 17, 1980 preamble stated (45 FR 76077), even the proposed regulations...."may not provide adequate environmental protection where treatment of the hazardous wastewater tends to result in the escape of hazardous waste constituents into the atmosphere (e.g., the treatment of highly toxic volatile wastes in open tanks)." Unless the Administrator promulgates regulations covering wastewater treatment units, wastewater treatment tanks that qualify for exemption under current RCRA standards may volatilize their contents and retain the exemption.

Sludge dryers may be used as part of a program to meet the waste minimization requirements of Section 3002(b) of RCRA without requiring permitting if the above conditions are met. Of course, although exempted from permitting requirements in the wastewater treatment units, any hazardous waste sludge that is removed from the tanks is subject to applicable regulations under §§260-266, such as manifesting off site, permitted storage after 90 days, and so on. If you have any additional questions regarding this exemption for wastewater treatment units, please do not hesitate to call Irene Horner at 202-382-7917.

Sincerely yours,

John E. McGraw

 J. Winston Porter
Assistant Administrator

Enclosure



WATER MANAGEMENT, INCORPORATED

2300 HIGHWAY 70 EAST
HOT SPRINGS, ARKANSAS 71901
(501) 623-2221

December 5, 1985

Mr. Lee M. Thomas, Administrator
U.S. EPA
Mail Code A-100
401 M. St. S.W.
Washington, DC 20460

RE: Sludge Dryers - Metal Finishing Industry
Waste Minimization Program

Dear Mr. Thomas:

As you may know, your Agency notified industry in the Federal Register, 7/15/85, p. 28733-34 that Waste Minimization was a definite goal of your Agency. We support this goal.

There is a definite problem of interpretation that is delaying the use of sludge dryers to accomplish waste minimization. I hope that your office can clear this up as soon as possible. We and many of our potential customers have contacted the Hotline and have been advised that drying is a form of treatment per Section 260.10 under RCRA. This is technically true; however, the sludge dryer can also be considered as an extension of the conventional treatment system.

I am enclosing several copies of our sales literature on our dryer. Please note the back page where we illustrate four solids concentration devices in the following order:

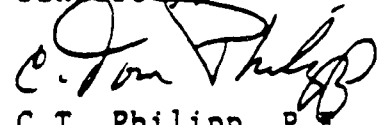
1. Clarifier to separate solids from water.
2. Sludge thickener to separate solids from water.
3. Filter press to separate solids from water.
4. Dryer to separate solids from water.

It is very important that your Agency define a sludge dryer as an extension of a conventional treatment system because of insurance premiums! The minimum cost for liability coverage (40 CFR 264.147) is \$50,000 annual premium. Therefore, how can a generator purchase a dryer to save \$30,000/yr. in disposal costs if the regulations change his generator classification to a TSD classification? The goal of waste minimization will be deterred if dryers are classified as a RCRA regulated unit operation. Dryers should be regulated under NPDES or state/local permit regulations.

Page Two
U.S. EPA
December 5, 1985

Will you please review this problem and advise me at your earliest convenience. It is most important that the personnel at the Hotline give accurate uniform answers to this question.

Sincerely,


C.T. Philipp, P.E.
President

CTP/mjt

Enclosures

cc: Marcia Williams,
Director of Office of Solid Wastes

Governor Bill Clinton,
State of Arkansas

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 27 1991

MEMORANDUM

Subject: Potentially Conflicting Regulation of Infiltration Galleries by the Office of Ground Water and Drinking Water and the Office of Solid Waste

From: Sylvia K. Lowrance
Director
Office of Solid Waste

To: Frederick F. Stiehl
Enforcement Counsel for Water

This is in response to your July 26 memorandum regarding potential conflicts in the regulation of infiltration galleries by OGWDW and OSW as a result of our April 2, 1991 Federal Register notice extending the Toxicity Characteristic compliance date for certain injection wells. Apparently, since the compliance date was not extended for infiltration galleries, our discussion was construed to indicate that injection wells and infiltration galleries are mutually exclusive unit types. As is explained below, this was not our intention.

The intent of the extension was to provide relief to operators of injection wells used in certain hydrocarbon recovery operations. Since application of the TC would cause these Class V wells to become Class IV wells, these beneficial cleanup operations would be halted in cases where the Class IV wells do not have UIC permits and where the cleanup operations do not meet the conditions of Section 3020 of RCRA. We believed that owners/operators of these units were in an impossibility situation--that is, their operation would be in violation of RCRA, but the continuation of the cleanup was ordered by the State. Where the unit was not an injection well, this impossibility did not exist, since they could continue to operate the unit under interim status. For such units (i.e., units other than injection wells), the extension was not provided. In distinguishing between units to which the extension was applicable vs. other units, we noted that if the infiltration gallery met the definition of an injection well, then the extension would apply. That is, we recognized that some of the units identified by the industry as "infiltration galleries" may meet the UIC program's definition of an injection well and, if they did, they were included in the extension. On the other hand, certain units that could conceivably be identified as

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

"infiltration galleries" (e.g., leaking surface impoundments) were not injection wells and thus were not included in the extension.

We believe that this approach is consistent with that of OGWDW and the Department of Justice, as described it in your memorandum. In order to clarify this matter, there are two apparent options: we could either issue a clarifying memorandum to the Regions or publish a short clarification notice in the Federal Register. We would be pleased to work with you to develop appropriate language to ensure consistency between our offices. Should you wish to pursue either of these options, or discuss another course of action, please contact Dave Topping of my staff at 382-7737.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 30 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Permit Status of Underground Injection Wells Used in
Certain Hydrocarbon Recovery Operations

FROM: Sylvia K. Lowrance
Director
Office of Solid Waste *S.K.L.*

TO: James R. Elder
Director
Office of Ground Water and Drinking Water

On April 2, 1991, OSW promulgated a rule that extended the compliance date for the Toxicity Characteristic until January 25, 1993 for groundwater that is reinjected through injection wells during certain cleanup operations. More specifically, application to produced groundwater from free-phase hydrocarbon recovery operations at petroleum refineries, marketing terminals, and bulk plants was deferred at the point at which the groundwater is reinjected. Without this extension, most reinjected groundwater from these operations would have become a RCRA hazardous waste on September 25, 1990.

The basis for this compliance date extension was a regulatory "impossibility" situation encountered at these operations. In many cases, the cleanup/recovery operations were mandated under State orders but would be banned under both RCRA and UIC regulations unless they were, among other things, part of a cleanup under either RCRA or CERCLA. The two-year extension was intended to allow time for the Agency to develop a mechanism to permit these wells (as Class IV) upon the January 25, 1993 compliance date of the TC. The purpose of this memorandum is to ensure that our Offices work together to resolve this situation before that date.

In a February 19, 1991 memorandum from Peter Cook to Jeffery Denit (copy attached), it was stated that ODW's policy is that Agency approval of these operations under RCRA or CERCLA constitutes "authorization by rule" for the Class IV wells involved in the cleanup. Since this may be crucial to establishing the mechanism to allow continued operation of these operations, we should ensure that the affected programs are comfortable with this policy and that it is legally defensible.



Key issues include the meaning of "approved under RCRA or CERCLA." It must be determined whether this "approval" is in the form of a permit, a written order, or some less formal endorsement of the operation. Likewise, the scope of the RCRA permit-by rule provisions of 40 CFR 270.60 (b), which afford a RCRA permit to a UIC-permitted injection well, should be discussed and clarified. There are also procedural issues to be addressed, including whether the policy has been subject to sufficient public notice and comment.

Depending upon the resolution of these issues, one of several options may be preferred. If additional notice and comment is not required, an explanation of the policy could be included in an upcoming TC clarification notice planned by OSW. Otherwise, notice and comment requirements could be satisfied through an OGWDW rulemaking to codify the policy into the UIC regulations.

We look forward to working with you on this issue to ensure that the purpose of the compliance-date extension is realized. The OSW lead for this project is Dave Topping, who can be reached at 382-7737. Please have the appropriate member of your staff contact him at your earliest convenience.