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Solid Waste and Emergency Response (OS-343)
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EPA

RCRA Permit Policy Compendium

Volume 10

9522.1980 - 9528.1990

Permitting Procedures (Parts 124 & 270)

- **Applications**
- **Conditions**
- **Changes**
- **Interim Status**

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9522 – GENERAL INFORMATION

Part 270 Subpart A

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

OSWER POLICY DIRECTIVE NO

9522.00-1

SEP 15

OFFICE OF
SOLID WASTE AND EMERGENCY RESPO

MEMORANDUM

SUBJECT: Effect of Land Disposal Restrictions on Permits

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

TO: Hazardous Waste Division Directors
Regions I-X

On or before November 8, 1986, the Agency will promulgate regulations that will restrict the disposal of certain solvents and dioxins that are hazardous wastes. (Note that in the absence of such regulations a ban on the land disposal of these wastes would automatically take effect on November 8 pursuant to the self-implementing RCRA provision at §3004(e).) The land disposal restrictions will apply to all land disposal facilities regardless of any existing permit conditions.

The HSWA land disposal restrictions supersede the §270.4 provision which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C. Therefore, the permit does not shield the facility from the new land disposal requirements. The Agency is in the process of amending §270.4 to make it consistent with the self-implementing requirements of RCRA. (See 51 FR 10715, March 28, 1986.) However, these provisions automatically apply to permitted facilities even without the regulatory change. In addition, there is no need to reopen or modify the existing permits to incorporate those provisions. The land disposal restrictions are fully enforceable notwithstanding contrary or absent permit provisions concerning land disposal.

Similarly, for those land disposal permits that are now being processed it is not necessary to provide permit conditions regarding the applicability of the land disposal restrictions since they apply automatically. However, the Fact Sheet should briefly describe the effect of the new requirements for the benefit of the public and the facility owner/operator. The following language is recommended for inclusion in the Fact Sheet:

"SELF-IMPLEMENTING HSWA PROVISIONS

In several instances HSWA imposes self-implementing requirements that apply to all facilities regardless of their current permit conditions. RCRA provisions that supersede permit conditions include: 1) requirements that go into effect by statute, and 2) regulations promulgated under 40 CFR Part 268 restricting the placement of hazardous wastes in or on the land. Pursuant to this RCRA authority, certain dioxins and solvents have been restricted from land disposal unless treated according to specified standards. Although the permit does not contain conditions regarding the management of the restricted dioxin and solvent wastes, the facility is required to comply with the standards in 40 CFR Part 268."

Once the land disposal restriction program is established, it will be preferable to incorporate the applicable standards and practices into new permits. This will clarify specific activities at the facility and will simplify enforcement of the land disposal requirements at permitted facilities.

Please feel free to contact Frank McAlister of the Permits Branch (FTS 382-2223) if you have any questions regarding this matter.

cc: Hazardous Waste Branch Chiefs, Regions I-X
Bruce Weddle, OSW
Lloyd Guerci, OWPE
Carrie Wehling, OGC

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

NOV 13 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPON

MEMORANDUM

SUBJECT: Region X's Recommended Revision of 40 C.F.R. §§270.4(a) and 270.32(b)(1)

FROM: Gene Lucero, Director
Office of Waste Programs Enforcement

Marcia Williams, Director
Office of Solid Waste

TO: Charles E. Findley, Director
Hazardous Waste Division
Region X

In your memorandum dated June 26, 1987, you identify several potential enforcement problems in the RCRA permitting regulations and in the corresponding language in the Agency's model permits. In addition, you present alternative language that Region X intends to incorporate into permits to prevent these enforcement problems. Specifically, you express concerns with the language of §270.4(a) (and similar language in §270.32(b)(1)) which states:

> Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA.

Several issues are involved in the consideration of this "permit shield" provision. First, we agree that this language may be overly broad for some of the reasons you cited in your memorandum. However, we do not believe that it presents a serious impediment to enforcing the RCRA Subtitle C requirements that are outside the permit's scope. Although an argument can be made that §270.4(a) limits the enforceability of any RCRA Subtitle C requirements not addressed by the permit, such an interpretation would conflict with the intent of other RCRA provisions. Many of the Subtitle C requirements are not designed for, and are not appropriate for inclusion as permit conditions, namely Parts 260, 261, 262, and 263. An illustration of the Agency's intent to implement these Part 260-263 standards outside

of the permit is §262.10(f) which applies the Subtitle C Part 262 generator standards to permitted facilities that generate hazardous wastes.

Second, the regulations at §270.32(b)(1) indicate that a permit should include conditions that incorporate the standards specified in Parts 264, 266, 267, and 268. (Note, however, that the applicability of Part 267 has expired.) The purpose of §270.32(b)(1) and the "permit as a shield" provision of §270.4(a) is to assure the permittee that by complying with the permit, he or she is in compliance with the RCRA facility standards. Thus, given §270.32(b)(1), the permit shield applies in all cases to the facility standards of Parts 264 and 266.

The relation of the permit shield provision to Part 268 is more complex. As a result of HSWA, the self-implementing facility standards imposed by statute and the Part 268 land disposal restrictions apply to all permitted facilities despite the shield provision of §270.4(a), except in those cases where the self-implementing requirements have been incorporated into the permit. (See the March 28, 1986 proposed amendment to §270.4, 51 FR 10715.) Consequently, if the self-implementing RCRA provisions are incorporated into the permit, the permit will act as a shield from these self-implementing requirements. EPA maintains its position that it is generally preferable to incorporate the Part 268 and related statutory standards into new permits whenever possible. At the same time, the Agency must assure that the permittee is obligated to comply with new or amended self-implementing provisions that occur after permit issuance. Sample permit language is provided below to achieve that effect.

Based on the two points discussed above, we believe that §270.4(a) is not as serious an impediment as you suggest. However, we agree with your concern that there is a potential for confusion, and concur with your approach to modifying the permit language to clarify the effect of the permit for enforcement purposes. We recommend a few changes to your suggested alternative language to indicate more clearly which 40 C.F.R. Parts are shielded by the permit and those that are not shielded. Thus, the boilerplate language should read as follows:

> Compliance with this permit during its term constitutes compliance, for purposes of enforcement, with 40 C.F.R. Parts 264 and 266 only for those management practices specifically authorized by this permit. The permittee is also required to comply with Parts 260, 261, 262, and 263 to the extent the requirements of those Parts are applicable.

In addition, one of the following conditions should be used to reflect the applicability of the statutory and Part 268 self-implementing provisions:

1. For permits that do not incorporate self-implementing requirements:

   The permittee must also comply with all applicable self-implementing provisions imposed by the RCRA statute or the Part 268 regulations.

2. For permits that incorporate self-implementing requirements:

   Compliance with this permit constitutes compliance, for purposes of enforcement, with Part 268 only for those management practices and related standards specifically authorized by this permit. The permittee must also comply with all applicable self-implementing provisions that take effect after issuance of this permit, whether they are imposed by the RCRA statute or the Part 268 regulations (including amendments).

You may also add a general provision which states that compliance with the permit does not constitute a defense against any action brought under law to protect human health or the environment, including other requirements not necessarily included in the permit.

Thank you for bringing this matter to our attention. We will continue to reexamine the entire permit shield issue to determine whether further changes to §270.4(a) are warranted. If you have additional questions or observations on this subject please contact Frank McAlister of the Office of Solid Waste (FTS 382-2223) or Susan Hodges of the Office of Waste Programs Enforcement (FTS 475-9315).

cc: Waste Management Division Directors, Regions I-IX
RCRA Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X

9522.1983(02)

MEMORANDUM

SUBJECT: Definition of "Major Handlers" of Hazardous Waste

FROM: Lee M. Thomas /signed/ Lee M. Thomas
Acting Assistant Administrator for
Solid Waste and Emergency Response

TO: Program Implementation Guidance Addressees

ISSUE

What definition will provide consistency in the designation by EPA and authorized States of "major handlers" of hazardous waste?

DISCUSSION

Compliance with the 40 CFR Parts 270 and 271 requires certain hazardous waste handlers to be designated as "major." This designation is intended to identify, for administrative purposes, environmentally significant hazardous waste handlers and to be used in concentrating inspection, permitting, and reporting resources on those handlers.

The original definition of a "major handler" of hazardous waste, which was the subject of PIG-82-2 (May 14, 1982), was based on information available to the Agency at the time, including our experience with imminent hazard and Superfund sites. It was a first step in providing a uniform, nationally consistent standard to identify major handlers to serve as a focus for limited RCRA resources. As more data have become available, it has become evident that changes and clarifications to the existing definition would make it more useful in the implementation of RCRA. That revision is identified below.

The States and EPA Regional Offices should jointly develop updated lists of designated "major handlers" based on this revised definition. The lists will be used by authorized States and the Regions for program implementation, budget decisions, inspections, reporting, and permit overview. The increased attention which must be directed to these facilities is resource intensive. Thus, the resulting lists of major handlers will be considered in the budget planning process for allocations of resources. The effective implementation date for this definition is October 1, 1984. The Regions and the States will develop lists of major handlers on the basis of this definition during FY 1984 for use in FY 1985.

DECISION

The following hazardous waste handling activities are to be designated as "major":

I. All facilities subject to ground-water monitoring and/or protection requirements

II. All incinerators

III. Up to 10% of remaining TSDF's

IV. Up to 3% of generators and transporters

Percentages are to be based on the number of known handlers in HWDMS as of October 1, 1983. EPA or the State may add facilities, generators or transporters to the list, subject to the 10% and 3% ceilings, and shall notify the other party in writing. However, the deletion of any facility, generator or transporter must be agreed to in writing by both parties. The list will be reviewed and renegotiated at least annually.

Reporting requirements in 40 CFR 270.5 or in the annual RCRA Guidance which refer to major handlers apply to the above designated list. Those major handlers which comprise categories I, II, and III are designated as major facilities for EPA permit overview.

RCRA/SUPERFUND HOTLINE SUMMARY

- An interim status container storage facility has a surface impoundment without interim status. The surface impoundment is used for storage of stormwater run-off from the facility and parking lot. The sludge that has accumulated in the impoundment has become EP toxic due to lead. Can the surface impoundment qualify for interim status since it was in existence on November 19, 1980, and is now generating a hazardous waste? Does this impoundment meet the definition of "existing portion"?

According to the November 19, 1980, Federal Register, page 76633, a facility that determined on August 18, 1980, that its solid waste was not hazardous may retest that waste after November 19, 1980 and discover that the waste now exhibits a Subpart C characteristic. If the facility files Part A of the permit application within 30 days of discovering that the waste is now hazardous, the facility should qualify for interim status. In this case, the facility could revise its Part A to include the surface impoundment. The impoundment meets the intent of "existing portion" and does not need a liner since the impoundment was in existence for waste management before November 19, 1980, and has received hazardous waste prior to permit issuance.

rce: Fred Lindsey, Debbie Wolpe, OSW

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MAY 84

A Part B applicant has an "existing" storage surface impoundment with a liner. According to 270.2(b)(1) and 264.221(a), "existing" surface impoundments are not required to install liners but are required to conform with all other design and operating requirements in 264.221, as well as the ground water protection requirements. Must the applicant describe the liner in the Part B application?

The applicant is not required to describe the liner in the application. EPA, however, recommends that the applicant include such information in their Part B.

Source: Art Day
Research: Gordon Davidson

30 JUL 1984

MEMORANDUM

SUBJECT: Issuance of RCRA Permits to Facility Owners and Operators

FROM: John Skinner
Director, Office of Solid Waste (WH-563)

TO: Regional Division Directors, Regions I-X

This Office continues to learn of RCRA permits being issued only to facility operators in those instances where the facility operator and the facility owner are different people. Section 270.1(c) requires that "owners and operators of hazardous waste management units must have permits during the active life (including closure) of the facility...." In addition, §270.10(b) requires the operator to apply for the permit and the owner to sign the application along with the operator when the facility operator and owner are different persons (see §270.10(b)).

Please ensure in the future that all RCRA permits are issued to both the owner and operator of the facility in those cases where the facility is owned by one person and operated by another.

WH-563:CMiller:sed:S243:382-4692:7/23/84:Disk Chaz 4 #3

OCT 1 1984

MEMORANDUM

SUBJECT: EPA Review of Draft State RCRA Permits

FROM: Bruce R. Weddle
Director, Permits and State
Programs Division (WH-563)

TO: James Scarborough, Chief
Residuals Management Branch, Region IV

This memorandum is in response to your recent inquiry concerning the need for the Regional Administrator's signature on the transmission of comments resulting from EPA's review of draft State RCRA permits. As you pointed out, 40 CFR 271.19 and 271.134 provide that "[t]he "Regional Administrator may comment on the permit applications and draft permits as provided in the Memorandum of Agreement..." [emphasis added]. You also correctly noted that this authority has not been formally delegated to any other EPA official; i.e., it is not specifically addressed in EPA's Delegations Manual.

We have consulted with the Office of General Counsel and concluded that it is not necessary to amend EPA's Delegations Manual to provide a formal, explicit redelegation of this authority. Sufficient authority exists within EPA's regulations to allow another EPA official to sign comments resulting from EPA's review of draft State permits. For the explicit purposes of 40 CFR Parts 270, 271 and 124, section 270.2 defines the term Regional Administrator to include "the authorized representative of the Regional Administrator. We suggest that you ask your Regional Administrator to designate in writing either the Air and Waste Management Division Director or yourself, as appropriate, as his authorized representative for transmittal of EPA's comments resulting from draft permit reviews.

If you have any further questions on this issue, please feel free to contact Truett DeGeare at (FTS) 382-2210.

cc: Hazardous Waste Management Division Directors,
Regions I - X
Peter Guerrero, OSW
Gail Cooper, OSW
Susan Schneider, OSW

9522.1985(01)

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

FEB 1 1 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

PIG-85-1

SUBJECT: Assignment of a Memorandum to the Program Implementation Guidance System

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

TO: Program Implementation Guidance System Addressees

On January 25, 1985, the Offices of Water Enforcement and Permits, Drinking Water, Federal Activities, and Solid Waste issued the attached memorandum to Regional Administrators. The memorandum identifies the appropriate signatories for Department of Defense permit applications. I think that the guidance contained in this memorandum is of such value as to warrant wider distribution and incorporation into our system of Program Implementation Guidance. For future reference and ease in filing, I have designated this memorandum as Program Implementation Guidance number 85-1 .

Attachment

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

JAN 25 1985

MEMORANDUM

SUBJECT: Signatories to Department of Defense Permit Applications

FROM: Rebecca W. Hanmer, Director
Office of Water Enforcement and Permits (EN-335)

Victor Kimm, Director
Office of Drinking Water (WH-550)

Allan Hirsch, Director
Office of Federal Activities (A-104)

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

TO: Regional Administrators
Regions I-X

Purpose

This memorandum identifies who must sign Department of Defense (DoD) permit applications for four permit programs:

o National Pollutant Discharge Elimination System (NPDES), 40 CFR Part 122

o Underground Injection Conrol (UIC), 40 CFR Part 144

o State Dredge or Fill "404" (404), 40 CFR Part 233

o Hazardous Waste Management (HWM), 40 CFR Part 270

Exception

Government-Owned Contractor-Operated (GOCO) facilities that require permits under any of the four permit programs listed above are not covered since they present significantly different issues than were considered during the development of this guidance.

Development

This document has been developed in conjunction with staff of DoD and the four permit programs involved. Attachment A contains the regulatory language for corporate and Federal signatories to permit applications. Attachment B contains a discussion of the criteria used to develop this guidance.

Background

In compliance with a settlement agreement arising from litigation of the Consolidated Permit Regulations, EPA modified corporate signatory requirements and established requirements for Federal agencies under the NPDES, UIC, State 404, and HWM permit programs (48 FR 39611, September 1, 1983; §§122.22, 144.32, 233.6, 270.11). In the preamble to the September 1 rule, EPA gave two examples of how the signatory regulations were to be applied to Federal agencies. In essence, the proper signatory level for Federal permit applicants is that comparable to EPA's Regional Administrator.

However, because DoD has no geographical division of responsibility that parallels EPA's Regional Administrators, the EPA Regional Offices are not clear who they should accept as a proper DoD signatory. The confusion is compounded because DoD lines of authority and responsibility for the management and budgeting of environmental activities are complex and difficult to follow. This problem first surfaced in regard to several permits in the HWM permit program, but applies to the four permit programs.

Issue Resolution

The acceptable signatory for DoD permit applications is the Installation Commander of a rank of 06 or higher, if the installation employs more than 250 persons and authority to sign permit applications has been assigned or delegated to the Installation Commander in accordance with applicable DoD procedures. If an Installation Commander does not meet these requirements, the permit application must be signed by a superior officer who meets the requirements.

In addition, where a tenant is present on the installation and has authority or responsibility for any aspect of the regulated activity, the Tenant Commander (rank of 06 or higher) must also sign the application. The Tenant Commander must also employ more than 250 persons and have been assigned or delegated authority to sign permit applications in accordance with applicable DoD procedures. Again, if the Tenant Commander does not meet these requirements, the permit application must be signed by a superior officer meeting the requirements.

Nothing in this guidance precludes applicable delegated States from requiring signatories to DoD permit applications to conform to more stringent State requirements.

Implementation

EPA Responsibilities:

EPA will inform each of its Regional Offices and applicable delegated States of this guidance.

Permit authorities will keep both the notification of changes in personnel and the DoD directive discussed below in the appropriate permit file.

DoD Responsibilities:

DoD will inform all Installation Commanders and Tenant Commanders conducting regulated activities of their responsibilities under this guidance.

In some situations, DoD has allowed low level officials to sign the permit applications for existing permits. DoD will notify the permit authority of the appropriate personnel, as identified in this guidance, to ensure that the proper signatories are included in the existing permit file.

Since in the past, the authority and responsibility for all activities required during the conduct of regulated DoD facilities (e.g., planning, management, budget, and compliance activities) has been unclear, DoD will develop the appropriate delegation procedures to implement this guidance. This guidance will clarify the responsible party or parties for conducting regulated activities. DoD will furnish this delegation directive to the permit authority in order that it may be appended to the permit file. DoD will delegate the authority and responsibility to sign permit applications in accordance with DoD procedures prior to future permit issuance.

In addition, for any replacement of personnel at the Installation Commander or Tenant Commander level during the term of the permit, DoD will notify the permit authority of the change and furnish the name of the new person(s) responsible for the regulated activities.

Attachments

ATTACHMENT A

Corporate Signatory Language

40 CFR §§122.22(a)(1), 144.32(a)(1), 233.6(a)(1), 270.11(a)(1) reads:

"For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures."

Federal Signatory Language

40 CFR §§122.22(a)(3), 144.32(a)(3), 233.6(a)(3), 270.11(a)(3) reads:

"For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA)."

ATTACHMENT B

SIGNATORIES TO DEPARTMENT OF DEFENSE PERMIT APPLICATIONS

Discussion

The Department of Defense (DoD) is headed by the Secretary of Defense, a Cabinet level appointment. Reporting directly to the Secretary are the Secretaries of the three Military Departments (Army, Navy and Air Force). The Military Departments are organized into varying numbers of Major Commands that are functional alignments rather than geographical divisions. Subordinate to the Major Commands are the Installation Commanders; the numbers of installations in each Major Command vary widely. In the DoD chain-of-command, the Installation Commander is responsible to one Major Command. Each Installation Commander is expected to establish the necessary organizational structure to fulfill the Major Command's function (i.e., training, air defense, etc.).

Also reporting directly to the Secretary of Defense are the Directors of the 12 Defense Agencies. The Defense Agencies have varying management structures -- some geographical and some functional. Defense Agencies do not have independent installations; rather, Defense Agencies' activities are tenants on installations operated by the Military Departments.

Since the heads of the Military Departments, the Defense Agencies and the Major Commands are centrally located within the Pentagon, they are not directly responsible for the implementation of systems necessary to gather complete and accurate permit application information. In addition, the Major Commands are far removed from the operation and management of day-to-day environmental activities on individual installations.

Generally, the Installation Commander holds a rank of 06, which is a Colonel (Army and Air Force) or a Captain (Navy). The Installation Commander is responsible for operating pollution control facilities on the installation. He is also responsible for planning and for anticipating the need for new pollution abatement projects. However, some installations have tenants that share responsibility for pollution control. One example is the Defense Logistics Agency (DLA) that shares responsibility for the handling and storage of DoD hazardous wastes with the Installation Commander. The budgets for both the Installation Commander and Tenant Commander(s) are subject to approval from their major commands, their Military Departments and eventually the Congress.

DoD installations usually cover hundreds of acres and provide complete support for thousands of civilian and military personnel and military families living on the installation. The Installation Commander oversees, controls and manages complete communities that consist of such things as housing, stores, gas stations, utilities, waste treatment facilities, dining halls, fire and police departments, warehouses, motor pools, runways and hospitals.

A review of the organization of DoD indicates that the Installation Commander fulfills the literal requirement of the signatory regulation promulgated on September 1, 1983. Defense installations are the principal geographic unit of DoD and the Installation Commander has responsibility for its overall operation. However, since DoD is not organized primarily into large geographic units similar to EPA's Regional Offices, it is important to ensure that the overall intent of the signatory provision is applied.

9522.1985(03)

WH-563:BWilson:(cs/sd):S243:382-4692:5/20/85:Disk - Wilson #1
changes to final 6/27/85:smw
Control No. OSW-082
Due Date 5/21/85

5 JUL 1985

Ms. Patricia A. Petruff
Dye, Scott, & Deitrich, P.A.
P.O. Drawer 948
Bradenton, Florida 33506

Dear Ms. Petruff:

Thank you for your letter of May 1, 1985, on behalf of Wenczel Tile Company of Florida, Inc. I apologize for the lack of a timely response to your letter of February 22. We received several hundred inquiries about the Hazardous and Solid Waste Amendments of 1984 (HSWA) as a result of the December teleconference and have not yet been able to respond to them all.

Your letter raises issues about the two requirements of Section 213 of HSWA. As you know, Section 213 requires that, for retention of interim status, an application for a final determination regarding the issuance of a permit and a certification of compliance with applicable ground-water monitoring and financial responsibility requirements must be submitted for all land disposal facilities by November 8, 1985. The §201(k) definition of land disposal is relevant to this provision. Therefore, all landfills, surface impoundments, land treatment facilities, and waste piles are subject to the requirements of §213. In general, for the purposes of applying the HSWA, the broader statutory provision prevails rather than that of 40 CFR 260.10 because HSWA supercedes inconsistent RCRA regulations.

However, independent of HSWA, EPA has the authority to request a permit application at any time before the statutory deadline of November 8, 1985. Specifically, 40 CFR 270.10(e)(4) requires a Part B to be submitted on the date specified by EPA. In this case, Wenczel Tile must submit a Part B by the October 8 date specified by the EPA.

In addition, the company must satisfy the requirement to certify compliance with applicable requirements by November 8, 1985, or interim status will be lost. "Certification of compliance" means that the facility is in compliance with Florida's ground-water monitoring and financial responsibility requirements that are equivalent to EPA's interim status requirements. For specific requirements for the Wenczel Tile facility, you should contact Mickey Hartnett of EPA Region IV at (404)-881-3067.

9522.1985(04)

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

AUG 30 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Partial Permitting

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

TO: Harry Seraydarian
Director, Toxics and Waste Management Division

In your memorandum of May 9 (attached) you requested our response to your proposal for permitting of a new incinerator unit at the Dow Chemical plant in Pittsburg, California. Outlined below is a discussion of that proposal and our recommendations regarding issuance of a separate permit.

We agree with your conclusion that issuance of a new incinerator permit for the facility which is to be phasing out its land disposal units is consistent with EPA's policy of encouraging treatment alternatives to land-based waste disposal methods. As you know, however, any such permit must address corrective action for releases from all solid waste management units at the facility as required by new section 3004(u) of RCRA. You proposed that the preliminary assessment, site investigation and/or corrective action for those land disposal units be addressed through a schedule of compliance in a permit which could be issued for construction of the new incinerator, but which would not otherwise cover the land disposal units at the facility.

The existing land disposal units at the facility are also regulated units as defined in §264.90(a). As discussed in the preamble to the HSWA final codification rule, (see discussion of §3005(i)) regulated units are subject to existing standards under Subpart F of Part 265 and Part 264 for gathering information on releases to ground water. Permit schedules of compliance for information gathering -- as provided for in §3004(u) for solid waste management units -- cannot be used for investigating ground water releases from regulated units. Consequently, the proposed approach which you have suggested for permitting this facility does not appear to be workable.

We can, however, suggest an alternative approach which would expedite the issuance of the permit to the incinerator unit by addressing any releases to ground water from the regulated units in separate permits.

Section 3005(i), as amended by HSWA, reaffirmed that ground water releases from regulated units are subject to existing RCRA regulations. This regulatory scheme encompasses not only the substantive cleanup requirements in Part 264 Subpart F, but also the procedural permitting requirements in Part 270, and the provision for partial permitting in 40 CFR 270.1(c)(4) in particular. We could, therefore, issue a partial permit covering the new incinerator unit, all releases to media other than ground water from the regulated unit, and all releases from non-regulated units. A permit issued separately to the regulated units would address any needed ground water corrective action in accordance with Subpart F of Part 264.

We believe this approach is fully consistent with the basic objectives of sections 3004(u) and 3005(i). If you have any further questions on this issue, please call Peter Guerrero, Chief, Permits Branch at 382-4740.

Attachment

cc: Regional Hazardous Waste Management Division Directors
Regional Hazardous Waste Branch Chiefs

09 MAY 1985

Multiple RCRA Permits at A Single Facility

Original Signed By:
Harry Seraydarian
Director, Toxics and Waste Management Division, Region 9

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

Issue:

Are the Regions precluded by statute, regulation or policy from issuing more than one RCRA permit at a single hazardous waste management facility? In particular, may we issue a permit for a new incinerator at an existing land disposal facility, deferring until a later date the issuance of a permit for the land disposal units?

Background:

Although the subject of issuing several permits at one "facility" has been discussed in the past with your staff, to our knowledge no official policy postion was ever taken. In 1982, when only tank and container facilities could be permitted, we had several discussions with Headquarters staff which led to our understanding that we could begin to process permits for tank/container units at facilities which also had land disposal or incinerator units. Since we felt that this could ultimately lead to a duplication of effort, we never followed this course of action. By virtue of having only Phase II A authorization, California has proceeded with issuance of tank/container permits at sites also conducting land disposal.

In a few recent cases, we have been presented with circumstances which cause us to reexamine our policy of going through the permit process only once at each facility. When your staff has been presented with the issues, we have received conflicting advice.

Perhaps the best example of the situation we have in mind is the Dow Chemical plant in Pittsburg, California. Dow has existing tank/container, incinerator, and surface impoundment units operating under interim status. In response to our request, Dow submitted a Part B permit for its existing units. Due to complex ground water issues at the facility and trial burn requirements, we do not expect early issuance of a permit for the Dow interim status units.

365B - T-2-2/Wilson-grace: 5/05/85

Recently we received a permit application from Dow for a new waste incinerator at the Pittsburg plant. The unit is part of Dow's efforts to upgrade its waste management practices and discontinue land disposal both on-site and off-site. The new unit, because of its large cost, can not be constructed under interim status, and must receive a RCRA permit before commencement of construction. We are persuaded that expedited issuance of a RCRA permit for the new unit would be environmentally responsible, for the following reasons.

1. It would be consistent with EPA's policy of encouraging high technology waste disposal as an alternative to land disposal.

2. Although the incinerator would only dispose of wastes generated at Pittsburg and a few other small Dow facilities, any reduction in the amount of waste going to land disposal is an advance.

3. The installation of the incinerator (and additional on-site treatment facilities) is required for Dow to close its surface impoundments. Due to the lengthy lead time required for incinerator construction, the surface impoundment closure will be delayed if the incinerator is not permitted.

Recommended Action:

The passage of the HSWA has clearly led to complications in the issuance of multiple permits at a single facility. Since the statute now requires that we address all releases from Solid Waste Management Units (SWMUs) in all RCRA permits, we must deal with this provision. In Dow's case, the existing Hazardous Waste Management Units (HWMUs) are, of course, also SWMUs.

We propose the following course of action at Dow and other facilities with similar circumstances.

1. "Fast-tracking" the permitting of new, higher technology units by addressing them in a single-unit permit.

2. Addressing corrective actions at SWMUs (including HWMUs) through permit conditions that require the continuation of preliminary assessment, site investigation, and/or corrective action in general terms. The conditions will include a compliance schedule for completion of the next phase of the corrective action process, depending on its status as of the time of permit issuance.

3. Continuation of interim status for other units at the facility until permit issues can be resolved.

4. Major modification of the permit to incorporate all other units at the facility. At this time, the corrective action provisions would be updated.

Requested Action

Your review of our recommended course of action is requested. Unless we receive objections within thirty (30) days, we will assume that you have none, and we will proceed as outlined above.

We also request that in developing regulations to codify the HSWA, you consider the circumstances above, and allow adequate flexiability for the Regions to proceed with approval of new high technology units prior to resolution of all issues at an individual facility.

Should questions arise in your evaluation of this proposal, Bill Wilson should be contacted at FTS 454-8391.

cc: Permit Section Chiefs, Regions 1-8, and 10

9522.1985(05)

DEC 13 1985

Mr. Eliot Cooper
Manager
Environmental Affairs
Waste-Tech Services, Inc.
445 Union, Suite 223
Lakewood, Colorado 80228

Dear Mr. Cooper:

This letter confirms the information that was provided to you in our December 3, 1985, meeting regarding the RCRA permitting issues which were raised in your letter of October 21, 1985. In that correspondence you presented three RCRA permit issues regarding on-site treatment by fluidized bed incineration and your interpretations of those issues. Our response to those issues are as follows:

Issue 1: "Waste-Tech Services will own and operate the incinerator on the leased property of the generator. Waste-Tech Services will be applying for all environmental permits to be issued to Waste-Tech Services."

Answer: Under 40 CFR §270.10, both the owner and the operator of the facility must sign the RCRA permit and are subject to the conditions of the regulation. Although Waste-Tech Services will be the owner and operator of the hazardous waste incinerator, it is not the sole owner or operator of the facility under RCRA. A "facility" is defined under §260.10 as "...all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste." Therefore, the generator's property (including property leased to Waste-Tech Services for the unit) will be considered the "facility" under Subtitle C of RCRA (§260.10) and the generator, as owner of the land, and Waste-Tech Services, as the operator of the incineration unit, must sign the permit for the incinerator. As a matter of general policy, the owner or operator of the facility will include: the owner of the land, the owner of the structures (e.g., the incinerator unit) and the operator of the facility or unit (45 FR 33169, May 19, 1980). The ownership status of the property for purposes of RCRA permit signatory requirements will be determined based on State and Federal laws ~~and the terms of agreement between the parties. Clarification~~

of the issue of who is the "owner" of the facility is provided in the Regulation Interpretation Memorandum which was published in 45 FR 74489, November 10, 1980. A copy of that memorandum is enclosed.

Issue 2: "Waste-Tech Service's incineration facility will be located on the generator's property leased to Waste-Tech Services. Waste will never cross any public highway or leave the generator's property. Therefore, manifesting of the waste transferred from the generator to Waste-Tech Services will not be required."

Answer: The issue, as stated, is correct. On-site treatment of hazardous waste is excluded from the manifest requirements in §260.10.

Issue 3: "Waste-Tech Services will be incinerating waste materials on-site at a generator's facility. Waste-Tech Services contractual relationship with the generator requires that the generator assume all responsibility for the proper treatment and disposal of incinerator residuals, including bed material, ash, and scrubber waste water sludge."

"Since the generator already has inplace a closure plan that accounts for all the wastes that are generated on site, and assumes responsibility for all residuals resulting from incineration of their waste, Waste-Tech Services closure plan will only address the costs necessary to decontaminate our equipment and ensure that our leased site has not been contaminated."

Answer: Issue 3 is directly related to the issue of permit signatories which is discussed under Issue 1. Since both Waste-Tech Services and the owner of the property must sign the permit, they will be jointly and severally responsible for all RCRA requirements which include, but are not limited to, the treatment, storage, and disposal of residue resulting from incineration, since the residue is a hazardous waste (§261.3), and the removal of incinerator residue from the incinerator site for closure of the unit (§264.351).

The generator and Waste-Tech Services may use a contractual agreement to determine who prepares the permit application and who carries out the conditions of the permit (e.g., performance of closure plan). This agreement, however, does not eliminate liability incurred by either the owner or the operator of the facility. Although the contract may provide for a division of responsibility and liability, EPA may, if necessary, bring enforcement actions against all responsible parties involved (45 FR 33169, May 19, 1980).

In conversations that you have had with members of my staff you have indicated that you are considering using fluidized bed incinerators for mobile treatment of hazardous waste. I would like to point out that my Division is presently conducting a study to develop procedures for facilitating the permitting of mobile treatment units and invite you to discuss any additional issues on this subject with Nancy Pomerleau at 202/382-4500. Technical questions about the RCRA incinerator requirements should be addressed to Robin Anderson at 202/382-4498.

Sincerely,

Bruce R. Weddle
Director
Permits and State Programs Division

Enclosures:
FR Notice, November 10, 1980, 40 CFR Part 122
Summary of meeting with Waste-Tech Services on December 3, 1985

cc: Peter Guerrero
Art Glazer
Robin Anderson
Nancy Pomerleau
Carrie Wehling (LE-132S)
Hazardous Waste Branch Chiefs, Regions I-X

UNITE TES ENVIRONMENTAL PROTECTION NCY

DEC 2 [illegible]

Mr. [illegible]
Environmental [illegible]
Mineral By-Products, Inc.
[illegible] Ridge Drive
[illegible]
[illegible], Ohio [illegible]

9522.1985(06)

Dear Mr. [illegible]:

Thank you for your letter of August 12, 1985, proposing an alternative permitting process that will reduce the time for granting a permit for small quantity hazardous waste treaters.

Under the Resource Conservation and Resourcy Act (RCRA) the Environmental Protection Agency (EPA) is responsible for regulating the management of hazardous wastes in the United States. In order to accomplish this task several guidelines and procedures has been established to monitor and regulate the treatment, storage and disposal of hazardous waste throughout the U.S.A. Our major responsibility under RCRA is to protect the human health and the environment from pollutants contained in hazardous wastes. Because of this we must assure effective treatment of the wastes through the submission of the data required in a Part B permit application.

The use of lime, pozzolanics, cement, fly ash, etc. does not by the very nature of the process assures adequate treatment of the wastes. It is because of this that a Part B permit application is required for small or large scale hazardous waste treaters.

While your suggestion has many attractive features it does not appear to provide the adequate assurance that Congress desired for treatment of hazardous wastes. Therefore, EPA can not justify such modified permit procedures at this time.

Thank you for your interest and suggestions.

Sincerely yours,

Juan A. Baez-Martinez
Chemical Engineer
Treatment, Recycling and Reduction
Program

U.S. GPO 1985-467-053

9522.1986(01)

Mr. Ronald D. Conte
Operations Coordinator
Petroswill Chemicals, Inc.
2523 Hogadore Road
Akron, Ohio 44312

Dear Mr. Conte:

I am responding to your letter of June 27, 1986, which requested clarification of the definition of several terms in 40 CFR 270.2.

The terms "holding" and "temporary period" are not explicitly defined in the RCRA regulations. Holding in context of these regulations means containment. Storage, as defined in RCRA means "the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste." The term disposal (the opposite of storage or containment) is defined in RCRA (and in the RCRA regulations) as "the discharge,...leaking, or placing of any waste into or on any land...so that such...waste...may enter the environment." The types of "holding" devices (i.e. containers, tanks, surface impoundments, and waste piles) are defined in the regulations.

The term "temporary period", although not explicitly defined, is indirectly limited in the regulations by the closure plan and financial responsibility requirements. These require the facility owner/operator to specify up front the operating period (closure time) and the maximum amount of waste in storage at any time and at closure. This defines the extent of the "temporary period" and storage activity. At closure, the waste must be removed from all storage units.

All hazardous waste storage units, including storage units at recycling facilities, are regulated by the RCRA rules unless exempted in Part 261, 264, or 265. Items associated with storage units that are used to transfer hazardous waste, such as pipes, funnels or hoses, are regulated as part of the storage unit.

This document has been retyped from the original.

I understand that you recently met with staff in EPA's Region V to discuss these definitions as well as the applicability of the requirements in 40 CFR Parts 264, 265 and 270 to your facility. Since implementation of our regulations is the responsibility of our Regional offices I urge you to continue working with Region V. However, if you need additional help please feel free to contact me.

Sincerely,

Marcia Williams, Director
Office of Solid Waste

cc: Y.J. Kim, Region V
Lisa Pierard, Region V

This document has been retyped from the original.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 86

6. Post-Closure Permits

A storage and disposal facility has a surface impoundment. The facility stopped receiving waste on January 25, 1983. However, the facility did not get certification of closure until September 10, 1984. Is this facility required to have a post-closure permit?

Yes; Permits covering the post-closure care period are currently required for all disposal units that close after January 26, 1983 (§270.1(c)). Units are closed once certification of closure is received not when the unit stops receiving waste. 50 FR 28712 n. 14 (July 15, 1985).

Section 3005(i) of RCRA, which was added in the 1984 amendments requires that any landfill, surface impoundment, land treatment unit, or waste-pile unit which qualifies for the authorization to operate under interim status and which receives hazardous waste after July 26, 1982 must meet applicable permit standards concerning groundwater monitoring, unsaturated zone monitoring, and corrective action under Section 3004.

In order to bring §270.1 permitting requirements in line with RCRA Section 3005(i), EPA proposed on March 28, 1986 to amend its regulation generally to ensure that all landfills, surface impoundments, waste piles and land treatment units that received waste after July 26, 1982 will be reviewed for compliance with the permitting standards for groundwater monitoring, unsaturated zone monitoring, and corrective action. EPA's preferred alternative for conducting this review is the issuance of a post-closure permit.

Source: Matt Hale (202) 382-4740
Research: Carla Rellergert

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

9522.1986(03)

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

NOV 20 1986

MEMORANDUM

SUBJECT: Applicability of Post-Closure Permit Requirements

FROM: Marcia Williams, Director Marcia Williams
Office of Solid Waste

TO: David Wagoner, Director
Waste Management Division, Region VII

In your memorandum of October 30, 1986, you requested clarification as to the applicability of post-closure permit requirements to the Armco Steel facility in Kansas City, Missouri. Based on our understanding of the facts of this particular situation, we offer the following guidance.

The basic question posed by Armco is whether or not their facility requires a post-closure permit under current regulations, based on the facility's having ceased receiving hazardous wastes at their landfill on January 25, 1983, and having certified closure of the landfill in September 1984. Armco's interpretation that the facility is not required to obtain a post-closure permit, based on the fact that waste was not received after the January 26, 1983 effective date, is incorrect. The requirement to obtain a post-closure permit [§270.1(c)] is tied to the date on which the unit is closed. The concept of "closure" in this context is discussed in the preamble to the July 15, 1985 Final Codification Rule, as follows:

> "...closure...does not mean simply ceasing to place waste in a unit. Closure, as a regulatory concept under these rules, is a proceeding during which EPA determines, after public review, that the facility has an adequate closure plan and that the facility implements that plan. Thus closure is not complete under the hazardous waste regulations until a certification of closure has been given under 40 CFR 265.115." (50 FR 28712 n. 14)

Clearly, since the Armco landfill did not certify closure until after January 26, 1983, the facility is required to obtain a post-closure permit.

The language in the preamble to the proposed codification rule (51 FR 10715), which is cited by Armco as supporting its contention that the facility is not subject to a post-closure permit, has been misinterpreted. This preamble discussion, parts of which are quoted in Armco's letter of June 11, 1986, explains the §3005(i) provision of RCRA, and the proposed approach for codifying it. As explained in the preamble, the applicability of post-closure permits is tied to the date of closure of regulated units [§270.1(c)], while the applicability of Subpart F requirements is tied to the date of last receipt of hazardous wastes [§264.90(a)]. The March 28 proposed rule would have created a consistent test for applying post-closure permits and Subpart F requirements; i.e., receipt of wastes after July 26, 1982. It should be understood that the March 28 proposed rule would thus have changed the test for post-closure permit applicability from the current requirements. Note that under either situation, the Armco facility would be subject to the post-closure permit requirement, since wastes were received after July 26, 1982.

Because post-closure permit requirements are explicitly spelled out in the July 15, 1985 rule and elsewhere, we do not believe it is necessary at this point to publish a Federal Register notice clarifying these requirements. However, we will address the question specifically in the rule finalizing the March 28 proposal. In addition, we are sending a copy of this memorandum to RCRA Branch and Section Chiefs in the other regions.

If you have any further questions, please contact George Faison at FTS 382-4422.

cc: RCRA Branch Chiefs, Regions I-X
RCRA Permit Section Chiefs, Regions I-X

NOV 16 1987

MEMORANDUM

SUBJECT: Region X's Recommended Revision of 40 C F R. §§270.4(a) and 270.32(b)(1)

FROM: Gene Lucero, Director
Office of Waste Programs Enforcement

Marcia Williams, Director
Office of Solid Waste

TO: Charles E. Findley, Director
Hazardous Waste Division

In your memorandum dated June 26, 1987, you identify several potential enforcement problems in the RCRA permitting regulations and in the corresponding language in the Agency's model permits. In addition, you present alternative language that Region X intends to incorporate into permits to prevent these enforcement problems. Specifically, you express concerns with the language of §270.4(a) (and similar language in §270.32(b)(1)) which states,

> Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA

Several issues are involved in the consideration of this "permit shield" provision. First, we agree that this language may be overly broad for some of the reasons you cited in your memorandum. However, we do not believe that it presents a serious impediment to enforcing the RCRA Subtitle C requirements that are outside the permit's scope. Although an argument can be made that §270.4(a) limits the enforceability of any RCRA Subtitle C requirements not addressed by the permit, such an interpretation would conflict with the intent of other RCRA provisions. Many of the Subtitle C requirements are not designed for, and are not appropriate for inclusion as permit conditions, namely Parts 260, 261, 262, and 263. An illustration of the Agency's intent to implement these Part 260-263 standards outside

of the permit is §262.10(f) which applies the Subtitle C Part 262 generator standards to permitted facilities that generate hazardous wastes.

Second, the regulations at §270.32(b)(1) indicate that a permit should include conditions that incorporate the standards specified in Parts 264, 266, 267, and 268. (Note, however, that the applicability of Part 267 has expired.) The purpose of §270.32(b)(1) and the "permit as a shield" provision of §270.4(a) is to assure the permittee that by complying with the permit, he or she is in compliance with the RCRA facility standards. Thus, given §270.32(b)(1) the permit shield applies in all cases to the facility standards of Parts 264 and 266.

The relation of the permit shield provision to Part 268 is more complex. As a result of HSWA the self-implementing facility standards imposed by statute and the Part 268 land disposal restrictions apply to all permitted facilities despite the shield provision of §270.4(a). Consequently the Agency proposed to amend §270.4 to make it consistent with the self-implementing requirements (See 51 FR 10715, March 28, 1986.) The final rulemaking should be published soon. EPA maintains its position that it is generally preferable to incorporate the Part 268 and related statutory standards into new permits whenever possible. According to the proposed language for §270.4, if the self-implementing RCRA provisions are incorporated into the permit, the permit will act as a shield from these self-implementing requirements.

Based on the two points discussed above, we believe that §270.4(a) is not as serious an impediment as you suggest. However, we agree with your concern that there is a potential for confusion, and concur with your approach to modifying the permit language to clarify the effect of the permit for enforcement purposes. We recommend a few changes to your suggested alternative language to indicate more clearly which 40 C.F.R. Parts are shielded by the permit and those that are not shielded. Thus, the boilerplate language should read as follows.

> Compliance with this permit during its term constitutes compliance, for purposes of enforcement, with 40 C.F.R. Parts 264 and 266 only for those management practices specifically authorized by this permit. [Note: include a reference to Part 268 only if these standards have been incorporated into the permit]. The permittee is also required to comply with Parts 260, 261, 262, and 263 [and 268, if not included in the permit] to the extent the requirements of those Parts are applicable.

You may also add a general provision which states that compliance

brought under law to protect human health or the environment including other requirements not necessarily included in the permit.

Thank you for bringing this matter to our attention. We will continue to reexamine the entire permit shield issue to determine whether further changes to §270.4(a) are warranted. If you have additional questions or observations on this subject please contact Frank McAlister of the Office of Solid Waste (FTS 382-2223) or Susan Hodges of the Office of Waste Programs Enforcement (FTS 475-9315).

cc. Waste Management Division Directors, Regions I-IX
RCRA Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 87

3. Mixture Rule - Discharges to Wastewater

Incidental spills, onto a cement slab, from the normal handling or transfer of virgin solvent into cleaning tanks, are collected in an underlying sump. The contents of the sump are at times diluted and eventually discharged to an on-site wastewater treatment system meeting the exemptions under 40 CFR §264.1(g)(6), §265.1(c)(10), and §270.1(c)(2)(v) and regulated under §402 of the Clean Water Act. The cleaning operation is at a manufacturing site. Will the wastewater qualify for the §261.3(a)(2)(iv)(D) mixture rule "de minimis losses" exemption?

Yes, although the material spilled is not a chemical intermediate used in a production process or a raw material used in a production process, it is a discarded commercial chemical product which has been spilled during normal material handling operations at a manufacturing site and is disposed of via drainage to the wastewater treatment process. The amount of material would not be counted against the 1 to 25 ppm exclusion level for spent solvents mixed with wastewater (see footnote 37, 46 FR 56587, November 17, 1981). In this case, what is being discarded is not a spent solvent, but an unused commercial product and will meet the requirements of §261.3(a)(2)(iv)(D) de minimis losses.

Source: Mike Petruska (202) 382-4765
Matt Straus (202) 475-8551
Research: Craig Campbell

3. Clean Closure of Interim Status Surface Impoundment and Waste Pile

A waste pile and surface impoundment, both interim status, were clean closed in 1985 per Section 265.228 and Section 265.258. Closure was certified as per Section 265.115. Will the waste pile and surface impoundment site require ground-water monitoring?

According to the December 1, 1987, Codification Rule (52 FR 45788), owners/operators of surface impoundments and waste piles that received waste after July 26, 1982, or certified closure after January 26, 1983, must have post-closure permits unless they demonstrate that the "clean closure" met Part 264 standards (Section 270.1(c)).

Sections 270.1(c)(5) and (6) outline the procedures for determining if the closure met Part 264 standards (i.e., equivalency determination). If equivalency is shown, then the surface impoundment and waste pile will not be required to have a post-closure permit. If, on the other hand, the Agency decides equivalency was not met, a post closure permit will be required. The post closure permit would have to address applicable Part 264 Ground-water monitoring, unsaturated zone monitoring corrective action and post-closure care requirements.

These requirements also apply to landfills and land treatment units.

Source: Sharon Frey (202) 475-6725
Research: Cheryl McNabb

UNITED ATES ENVIRONMENTAL PROTECTION ENCY 9522.1988(02)

MAR 7 1988

Mr. Dic Olsen
General Operations Manager
Fenton Company, Inc.
1608 North Beckley
Lancaster, Texas 75134

Dear Mr. Olsen:

Thank you for your letter of February 5, 1988, in which you requested information on the regulatory status of direct-fired sludge dehydration equipment that is part of a wastewater treatment facility.

Your understanding of the requirements in 40 CFR 270.1(c)(2)(v) is correct. Sludge dehydration equipment is excluded from the Environmental Protection Agency's (EPA's) hazardous waste regulations provided the equipment meets the definition of wastewater treatment unit as defined in 40 CFR 260.10 and actually is used to evaporate water from the sludge. The definition of wastewater treatment unit includes the requirement that the device meets the definition of a tank. We believe that most sludge dryers do meet the definition of tank. One such example would be a sludge dryer integrally equipped with a feed hopper that contains and accumulates waste. It is, however, important to note that the exclusion provided by §270.1(c)(2)(v) does not apply to conventional incinerators. Such devices are subject to Subpart O of Parts 264 or 265 even when part of a wastewater treatment system.

As we have discussed in recent telephone conversations, there is some confusion regarding the regulatory status of direct-fired dryers. While direct-fired dryers may meet, the current definition of incinerator, EPA did not intend to regulate dryers as incinerators. As we have discussed, EPA is developing a Federal Register notice that will clarify the regulatory status of sludge dryers and propose to revise the definition of incinerator to exclude sludge dryers specifically. We are also proposing a new definition for sludge dryers that would cover both direct and indirect-fired units.

This proposal, soon to be published in the Federal Register, will clarify that all sludge dryers meeting the criteria in 40 CFR 270.1(c)(2)(v) are eligible for the wastewater treatment exclusion provided the equipment meets the definition of wastewater treatment unit in 40 CFR 260.10. Sludge dryers not eligible for the wastewater treatment exclusion, including direct and indirect-fired units, would have to comply with the interim status standards of Subpart P of Part 265 or the permit standards of Subpart X of Part 264 (52 FR 46946, December 10, 1987).

If I can be of further assistance, please don't hesitate to contact me at (202)382-7935.

Sincerely,

Mary Cunningham
Chemical Engineer
Waste Treatment Branch

cc: Joe Carra
Dave Bussard
Bob Dellinger
Bob Holloway
Sonya Stelmack
Steve Silverman
RCRA Hotline
Incinerator Permit Writers' Workgroup

UN .D STATES ENVIRONMENTAL PROTECT..A AGENCY

APR 28 1988

MEMORANDUM

SUBJECT: Review of Shell Oil's Wood River Manufacturing Complex - Minimum Technological Requirements Waiver Petition, Section 3004(o)(2)

FROM: James Michael, Chief
Land Disposal PAT Section (WH-563)

TO: Kevin J. Moss
RCRA Permitting Branch, IL Unit
Region V

In response to your March 18, 1988 memorandum, the Land Disposal Permit Assistance Team (PAT) has completed its review of the petition submitted by Shell Oil for its Wood River Manufacturing Complex for a modification of the minimum technological requirements (MTR) under Section 3004(o)(2) of RCRA.

Our review indicates that the alternative design and operating practices as presented by Shell Oil, together with location characteristics will not prevent the migration of hazardous constituents into the ground water or surface water as effectively as the double liner and leachate collection system outlined in Section 3004(o)(1)(A)(i) of RCRA.

Shell Oil has argued that the impoundment for which it is seeking the waiver is situated within a larger, engineered ground-water management system beneath the entire Wood River Manufacturing Complex that prevents the migration of contaminants beyond the property boundary. Essentially the engineered system consists of an on-site well field that creates a cone of depression to contain and collect any hydrocarbon product losses and soluble contaminants emanating from the bottom of the impoundment. The waiver petition attempts to provide a detailed description of the ground-water flow pattern and demonstrate that the well field will indeed provide effective containment.

Section 3004(o)(2) authorizes a waiver of the double liner and leachate collection system requirements only upon a demonstration that a proposed alternative will "prevent the migration of any hazardous constituent into the ground water or surface water" at least as effectively as a double liner and leachate collection system. Shell Oil's proposal, however, specifically allows migration of hazardous constituents into the ground water. The term "ground water" in Section 3004(o)(2) is not qualified by the phrase "beyond the property boundary". Nor is there any evidence of Congressional intent that the term "ground water" means only ground water beyond the property boundary. Surely if Congress had intended such a test for waivers of the double liner and leachate collection system requirement, it would have stated so clearly. To the contrary, in amending Section 3004 of RCRA, Congress devised a threefold scheme to ensure protection of human health and the environment for hazardous waste treatment, storage and disposal activities.

The first "line of defense" is the requirement of a liner and leachate collection system to prevent the escape of hazardous constituents from landfills or surface impoundments. The second "line of defense" is the requirement for ground-water monitoring to detect any failure of such containment device. The third "line of defense" is the requirement to take corrective action to clean up any problems resulting from such failure. Containment with collection and removal of leachate within the unit to prevent leakage to ground water, as the intended purpose of the liner and leachate collection system requirement, is supported both by the language of Section 3004(o)(2) in authorizing waivers of such requirements only for methods equally effective at preventing migration to ground water, and by the language of Section 3004(o)(5)(B). That section provides that the liner requirements of Section 3004(o)(1)(A)(i) can be satisfied pending issuance of regulations by construction of a liner system " . . .to prevent the migration of any constituent through such liner. . ." Any system, therefore, that only controls constituent migration after it enters ground water cannot meet the equivalency test of Section 3004(o)(2).

The situation outlined by Shell Oil in its petition fully allows migration of hazardous constituents to the ground water beneath the unit and therefore does not prevent the migration of hazardous constituents "into the ground water." Moreover, because migration of hazardous constituents freely occurs with respect to such ground water, the Shell Oil control scenario cannot be "as effective as" a double liner and leachate collection system in preventing migration to the ground water.

We are, therefore, unable to conclude that the proposed alternative would be as effective as the liner and leachate collection system requirement in preventing migration of hazardous constitutents into the ground water. Should you have questions regarding the content of our response please contact Chris Rhyne at FTS 382-4692.

cc: Bruce Weddle
Suzanne Rudzinski
Chris Rhyne
Karl Bremer, Region V

9522.1988(04)

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

NOV 2 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPC

Mr. Ronald T. Taritas
Environmental Technology Corporation
1124 Morse Avenue
Schaumburg, IL 60193

Dear Mr. Taritas:

This is in response to your letter of September 19, 1988 in which you raise several questions about permit requirements as they relate to on-site treatment and wastewater treatment unit exemptions.

Under Subtitle C of the Resource Conservation and Recovery Act (RCRA), the scope of the RCRA permit requirements are detailed in 40 CFR Section 270.1(c). A RCRA permit is required for treatment, storage, or disposal of any hazardous waste. Treatment, storage, or disposal of hazardous wastes are defined as hazardous waste activities in 40 CFR Section 260.10.

Specific exclusions to the RCRA permit requirements are found in 40 CFR Section 270.1(c)(2). Generators that accumulate hazardous waste on-site in compliance with 40 CFR Section 262.34 are exempt from the requirement to obtain a RCRA permit, as specified in 40 CFR Section 270.1(c)(2)(i). The Agency currently interprets this regulatory exemption from permitting to cover storage and treatment activities in a generator's accumulation tanks or containers. The reasoning behind this policy can be found in Office of Solid Waste (OSW) memoranda dated June 17, 1986 and December 15, 1987 (copies enclosed), and preamble language in 51 FR 10168, March 24, 1986.

As I understand your letter, you are interested in applying the on-site treatment exemption for generators to the ribbon blender unit that stabilizes the listed F006 sludge, and possibly to the filter press, as well. It is important that you understand that this response is only dealing with a theoretical situation since the final determination as to whether and which RCRA regulations apply is facility-specific and, thus, must be made by the appropriate EPA Regional Office or authorized State. In the following discussion, I will deal with your Generators A and B separately.

Generator A

Your description of Generator A did not include enough detail to determine which RCRA regulations are applicable. One possibility is to assume that every unit at the facility meets the definition of a wastewater treatment unit per 40 CFR Section 260.10. If this is the case, the on-site treatment exemption for generators is not relevant since Part 264 standards (i.e., Subpart J--Tank Systems) and Part 270 permit requirements do not apply to owners and operators of wastewater treatment units, in accordance with 40 CFR Sections 264.1(g)(6) and 270.1(c)(2)(v), respectively.

For the above assumption to be correct, however, Generator A's wastewater treatment plant must be subject to regulation under either Section 402 or 307(b) of the Clean Water Act. In addition, each unit at the facility must either treat or store hazardous wastewater or hazardous wastewater treatment sludge (listed waste F006) and each unit on-site must meet the definition of a tank in 40 CFR Section 260.10. If material entering the filter press from the wastewater treatment plant is identified as a wastewater, rather than a wastewater treatment sludge (listed waste F006), the wastewater must exhibit a characteristic of a hazardous waste, such as EP toxicity for lead, cadmium, or chromium, to be identified as a hazardous wastewater. The Agency defines wastewaters as wastes that contain less than 1% total organic carbon and less than 1% total suspended solids (i.e., total filterable solids). See 53 FR 31145, August 17, 1988.

Another possibility is to assume that Generator A's facility is not subject to regulation under either Section 402 or 307(b) of the Clean Water Act. If this is the case, no units on-site are eligible for the wastewater treatment unit exemption. All units not meeting the definition of a wastewater treatment unit could be regulated as generator accumulation tanks or containers, depending on when the wastewater is identified as a hazardous waste. If the wastewater can be identified as a hazardous waste at its point of generation, the 90-day accumulation time period begins when the wastewater first enters the first unit (90-day accumulation tank or container) at the facility. Shipment of the stabilized (as specified in your letter) hazardous waste from the ribbon blender must take place within 90 days of the beginning point mentioned above.

A final possibility is to assume that all units on-site can be identified as wastewater treatment units except for either the filter press or the ribbon blender. This condition could only exist if either the filter press or the ribbon blender does not meet the definition of a tank (e.g., container) in 40 CFR 260.10. This scenario becomes much more complicated and

would best be answered by the appropriate EPA Regional Office or authorized State based on the specific facility design and operating parameters.

In any case, all tanks or containers at the facility must be in compliance with Subparts J or I, respectively, of Part 265 and Generator A must also comply with Subparts C and D of Part 265, as well as Section 265.16, as specified in 40 CFR Section 262.34. In other words, Generator A must be in compliance with all the time-frames and technical requirements outlined above and detailed in Section 262.34 to utilize the on-site treatment exemption for generators.

Generator B

Based on the information provided in your letter, the treatment of the listed waste K061 in the central accumulation tank would not require a RCRA permit provided the following conditions are met. First, from the moment Generator B places the K061 in the central accumulation tank, the K061 must be shipped off-site within 90 days. Second, the accumulation tank must be in compliance with the technical standards for hazardous waste tanks in Subpart J of Part 265. Third, Generator B must comply with Subpart C. Preparedness and Prevention and Subpart D, Emergency Procedures, of Part 265. Finally, all other regulatory requirements in 40 CFR Section 262.34 must be met by Generator B.

I want to reiterate that the above discussion addresses a theoretical situation. Facility-specific determinations as to the applicability and extent of regulation under RCRA must be made by the appropriate EPA Regional Office or authorized State. As you know. an authorized State may have more stringent regulations than those of the Federal government.

If you have further questions or need additional clarification, please contact Steve Cochran at (202) 475-8551.

Sincerely.

Sylvia K. Lowrance for
Director
Office of Solid Waste

Enclosures

9522.1988(05)

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPON:

NOV 30 1988

Mr. Ronald B.L. Jones
Environmental Consulting
15 Hollow Road
Watertown, Connecticut 06795

Dear Mr. Jones:

In your letter of October 24, 1988, you requested information on the December 1, 1987, Codification Rule (FR 45798 and 45799), as it applies to interim status surface impoundments and waste piles that had "clean closed." The following information should answer each of your specific questions.

- The time period during which a RCRA Part B post-closure permit must be obtained for a unit that received hazardous waste after July 26, 1982 and has closed under Part 265 rules:

  The EPA Regional Office or the State Agency responsible for the Subtitle C program, if authorized for this aspect of the program, will request you to submit a RCRA Part B permit application for these units. This is done on a priority basis, with the units at facilities that pose the greatest environmental risk being reviewed first. An application for a post-closure permit must be submitted to the agency within 6 months of the request.

- The time period during which an owner or operator of a waste pile that "clean closed" under Part 265 may petition the Regional EPA Administrator for an equivalency waiver to the Part 264 clean closure requirements:

  The procedures for such a petition are described in 40 CFR 270.1(c)(6), a copy of which is enclosed. The owner or operator who wishes to submit an equivalency demonstration is urged to do so before the Part B permit application is requested, since submitting this demonstration will not exempt the owner/operator from having to submit the requested RCRA Part B post-closure permit application.

Since processing an equivalency demonstration and reviewing the data submitted to support the demonstration may be time consuming, it may not be possible for the responsible agency to make a final determination on the petition during the six month period prior to the date that the permit application is due. The owner or operator should not therefore await such a determination prior to initiating the required permit application when requested.

o Does EPA have any guidance on equivalency demonstrations:

At the present time, my staff is preparing a policy directive that will explain in more detail what we will expect from an owner or operator who submits a petition to demonstrate equivalency with Part 264 clean closure requirements. I expect to have a completed policy directive by early January 1989. When it is available, you can receive a copy by contacting the Regional EPA Waste Management Division office.

o How can I obtain a copy of the "Surface Impoundment Clean Closure Guidance Document":

The draft document is under internal review at this time. Therefore, it is not available for public distribution. We will announce the availability of this guidance when it is completed in the Federal Register.

I hope the above information has adequately answered your questions. If there is any further information that you may need, please call Les Otte of my staff at (202) 382-4654.

Sincerely,

S/

Sylvia K. Lowrance
Director
Office of Solid Waste

Control # OSW-388
Final

9522.1990(01)

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

JAN 26 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONS

John A. King, Director
Washington Programs
Tricil Inc.
1155 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036-4306

Dear Mr. King:

In your letter of November 15, 1989, you inquired about the administration of Federal and State permits issued to the Earth Industrial Waste Management facility in Tennessee. As you stated in your letter, in September 1984 EPA issued a RCRA storage permit and in January 1985 the state of Tennessee granted a state storage permit to the facility. Tennessee received RCRA authorization in February 1985. You asked several questions about the enforcement and administration of the permits, which are answered below.

In your first question, you ask what effect the Federal permit has in an authorized state. The Federal permit remains in effect even though the state was subsequently authorized. In fact, it is only the Federal permit which gives the facility the authority to operate under RCRA; the state-issued permit was issued prior to the state being authorized for RCRA, and therefore does not satisfy the RCRA requirements. Therefore, it would be inadvisable to terminate the EPA permit until Tennessee has a RCRA permit in place. EPA encourages states to take over the responsibility for the administration of existing RCRA permits after states are given RCRA authorization. There are several ways the state can become the sole responsible agency for the facility's permit, and there is existing EPA policy on this matter. You should discuss such transfer of permit administration with the state of Tennessee and the EPA Regional office in Atlanta.

Secondly, you ask about the specific state and EPA enforcement responsibilities for permit conditions. EPA enforces the conditions contained in the Federal RCRA permit. The state of Tennessee enforces the conditions contained in its state-issued permit. Obviously, this means that the facility is subject to dual permits which are, for the most part, identical. Although in such cases EPA and the state agree on a sharing of their respective enforcement responsibilities in order to avoid duplication of effort, it is preferable for the state to take

over all of the permit responsibilities, as discussed above.

Finally, you asked about incorporating some of the interim status operations at the site into the state permit. We recommend that if the state plans to add such operations to the permit that it first take whatever action is necessary to give the state administrative authority for the RCRA permit. Then any subsequent permit modification by the state will satisfy both the state and Federal requirements.

I hope that this response has addressed your concerns. Please contact Wayne Roepe of my staff at 202-475-7245 if you have further questions.

Sincerely yours,

Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Wayne Roepe, OSW
Wayne Garfinkle, U.S. EPA Region 4

9523 – PERMITTING APPLICATIONS

Part 270 Subpart B

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

9523.00-11

DEC 10 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPO

MEMORANDUM

SUBJECT: Denial of RCRA Operating Permits

FROM: Marcia Williams, Director
Office of Solid Waste (WH-562)

TO: Hazardous Waste Division Directors
Regions I-X

A number of Regions have raised the question of whether they can deny a permit for the active life of a facility, while deferring a final decision on post-closure conditions. The concern of these Regions is that, once a permit application has been denied, a post-closure permit can no longer be required.

Although EPA's permitting regulations envision only one approval or denial decision on a permit application, they do not prohibit the permitting authority from dividing this decision into two parts, one applying to the active life of the facility and the other to the post-closure period. Consequently, EPA or an authorized State (unless it has more stringent requirements) may deny the active portion of a permit application, pending a decision on post-closure conditions. After denial of the operating portion, the facility would be required to cease receiving hazardous waste and begin closure.

If a Region or an authorized State adopts this approach with respect to a particular facility it should make it clear in its tentative decision that it is denying the permit only with respect to the active life of the facility and that the facility is still required to obtain a post-closure permit. We recommend that you include the following information in the Notice of Intent to Deny with respect to such a facility.

> The tentative decision to deny the permit application runs to the active life of the facility only. The permit denial will not affect the requirement that the owner or operator obtain a permit covering the applicable post-closure care period with respect to the hazardous waste management units for which the permit is denied, in accordance with 40 CFR 170.1(c).

A comparable statement should be included in the final notice of denial.

We will also be proposing to amend §270.1(c) of the permitting regulations to clarify EPA's authority to divide permit decisions in this way. The proposal is scheduled for publication in February. Before this clarification is issued, you should include the statement cited above in any Notices of Intent to Deny.

If you have any questions on this issue, please contact Matt Hale of the OSW Permits Branch.

cc: RCRA Branch Chief, Regions I-X
Bruce Weddle, OSW
Matt Hale, OSW
Carrie Wehling, OGC

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

OSWER POLICY DIRECTIV
No. 9523.00-12

MAR 30 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPO

MEMORANDUM

SUBJECT: Summary of Permit Assistance Team (PAT) Comments

FROM: Bruce R. Weddle, Director
Permits & State Programs Division

TO: Hazardous Waste Management Division Directors
Regions I-X

Attached is the second in a series of periodic reports which summarize major issues that PAT members have addressed in their reviews of specific Part B applications, permits, and closure plans. (The first PAT Summary Report was issued on March 14, 1986.) These reports cover issues that are of generic, national interest rather than strictly site-specific interest. The attached report includes reviews conducted by the Land Disposal PAT in the first half of 1986. In order to ensure that the report reflects current EPA policy and guidance, we obtained review comments from all divisions in OSW and from the Office of General Counsel.

We are in the process of preparing another series of documents which will summarize PAT reviews of proposals for Alternate Concentration Limits (ACLs). These "ACL Fact Sheets" will describe the setting, issues, and recommendations at sites where the PAT reviews ACL proposals. The first ACL Fact Sheet was issued by Ken Shuster on December 4, 1986. The Fact Sheets are being prepared in response to the ACL Implementation Strategy. For more information, contact Mark Salee at FTS 382-4755.

We hope that the recommendations provided in this document will be helpful for permit writers encountering similar situations at other RCRA facilities. By sharing the PAT's suggestions from a few sites, we hope that permit decision-making will be somewhat easier and faster at many more sites nationally. We encourage you to distribute this Report to your staff and State permit writers. To make that easier, I have enclosed multiple copies of the report.

Attachment A to the report lists the facility names, Regions, PAT Coordinators, and dates for the reviews summarized in this report. Attachment B provides a list of guidance documents and directives used in preparing the PAT reviews. Attachment C is a current roster of the members, expertise, and telephone numbers of the Land Disposal PAT staff.

If you have any questions, comments, or suggestions on the PAT Summary Report, please contact Terry Grogan at FTS 382-4692.

Attachments

cc: RCRA Branch Chiefs, Regions I-X
Permit Section Chiefs, Regions I-X
Winston Porter
Jack McGraw
Tom Devine
Marcia Williams
Jeff Denit
Bruce Weddle
Susan Bromm
Joe Carra
Sylvia Lowrance
Mike Gruber
Tina Parker
Suzanne Rudzinski
PAT staff
Jim O'Leary
Paul Cassidy
Les Otte
Jon Perry
Barbara Pace
Lloyd Guerci
Mark Greenwood
Matt Hale
George Garland
Art Day
Bob Tonetti
Jim Bachmaier
Ken Shuster
Sue Moreland (ASTSWMO)
Carrie Wehling
Tina Kaneen
Dov Weitman
Art Glazer
Myles Morse

SUMMARY OF PERMIT ASSISTANCE TEAM (PAT) COMMENTS

Exemption Requests from Minimum Technology Requirements

1) Exemption Request under HSWA §3005 (j)(2)

An existing facility applied for a waiver from the surface impoundment double liner requirement of §3005 (j)(1) under the exemption provided in §3005 (j)(2). The waiver was requested for a holding basin constructed by excavating a depression in natural, low permeability (1.0×10^{-7} cm/sec or less) site soils. To receive a waiver under §3005 (j)(2), a surface impoundment must have at least one liner that is not leaking and meet certain other requirements. The facility contends that the impoundment's native soil foundation constitutes a liner for purposes of satisfying §3005 (j)(2).

Section 3005 (j)(12)(A) of HSWA defines "liner" for purposes of the §3005 (j)(2) waiver as follows:

> A liner designed, constructed, installed and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground-water, or surface water at any time during the active life of the facility.

A literal interpretation of §3005 (j)(12)(A) precludes the use of a native soil foundation as a liner because such a liner is neither "installed" nor "constructed". This reading is supported by the legislative history indicating that the liner must satisfy EPA's current regulatory standards. See 129 Cong. Rec. H8142 (daily ed., Oct. 6, 1983). Based upon the above statutory language and legislative history, only facilities with an "installed" liner will be eligible for this exemption and no "in-situ" liners will be permitted (note that a liner constructed by emplacing and recompacting excavated native soils may meet this definition if it prevents migration during the active life of the facility).

Land Treatment Facilities

1) Compatibility Test for Combined Waste Disposal

A demonstration of compatibility is required under §264.282 for any new waste that is to be added to an existing land treatment unit. This requirement applies even if the new waste has been treated to render it non-hazardous prior to placement in the land treatment unit. The demonstration of compatibility must demonstrate that the new waste will not inhibit the land treatment unit from transforming, degrading or immobilizing the waste currently being applied per 264.273(a), in addition to showing successful treatment of any newly applied hazardous waste in the presence of existing wastes. See guidance reference 7.

2) Waste Minimization Requirements

Sludge applied to land treatment units must conform to the waste minimization requirements of HSWA. For sludge, waste minimization usually requires dewatering. The optimum operation of units located in arid climates, however, may require the application of sludge with more water than normally remains after dewatering. Since the owner/operator must comply with the HSWA waste minimization requirements only to the extent economically practicable, the PAT has interpreted this to mean that the owner/operator must dewater sludge only when the water content is in excess of that required for optimum operation of the land treatment unit. The water fraction, once it has been removed, among other options, can be delisted (if derived from a listed waste), or tested against the characteristics, or treated and discharged via a NPDES permitted system.

3) Principal Hazardous Constituents

When identifying Principal Hazardous Constituents (PHC) of land treated wastes, which may be required for unsaturated zone monitoring under 264.278(a)(2), it is important to identify all constituents that may enter the hazardous waste stream(s) to be land treated. This is particularly true at petroleum processing facilities where solvents used in cleaning process equipment may enter the waste streams to be land treated. Solvents used for equipment cleaning can vary considerably within a facility and between facilities; the selection of PHCs for individual monitoring programs should reflect these differences, based on actual solvents used. Trichloroethylene, a common solvent, can be of particular concern due to its high mobility.

4) Land Treatment Unit Performance

The performance of a land treatment unit is measured in large part by its ability to degrade, transform or immobilize all hazardous wastes applied. For wastes containing both organic and inorganic hazardous constituents, performance cannot be determined based solely upon the ability to immobilize heavy metals. The ability of the unit to degrade and treat organic constituents must also be monitored, and the analyses should include all the principal organic constituents in the waste. The Land Treatment Demonstration Guidance (reference 7) can assist in determining land treatment unit performance.

5) Unsaturated Zone Monitoring-- Soil Pore Liquid Sampling Frequency

The purposes of a lysimeter system at a land treatment unit are (1) early detection of the transport of constituents or degradation products through the unsaturated zone to the ground water, and (2) to help monitor the effectiveness of the treatment process. If hazardous constituents are migrating out of the treatment zone, the waste treatment system parameters, typically including waste application ratios, need to be corrected.

Guidance on Unsaturated Zone Monitoring (reference 8) is available. A suggested approach for scheduling the sampling of soil pore liquid at land treatment units is to sample one or two weeks after significant rainfall events based upon the long term, site-specific meteorology. Alternately, because the timing of sampling is critical, a better approach is to use a tensiometer to identify the arrival of the wetted front created by the rainfall or waste application. This instrument can be used with the actual lysimeter system. As water moves through the soil profile, a tensiometer located next to the lysimeters will indicate when the wetting front is at the depth of the lysimeters. Samples should be collected at this time to ensure that the sample is of water and waste constituents moving through the soil profile and not stagnant soil pore water.

Ground-Water Monitoring

1) Screening of Monitoring Wells

The proper screening of monitoring wells is critical in order to determine the presence of contamination. Heavier constituents tend to migrate and accumulate in the lower parts of an aquifer. Sampling and well design must be able to detect this condition. Clay and silty clay layers in the saturated zone should also be monitored since studies have shown that some organic constituents can migrate in some types of clay soils. The RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (reference 9) is finalized and covers monitoring well design and construction.

QA/QC Methodologies

1) Additional Verification by GC/MS

QA/QC methodologies are crucial to assure that the analytical data collected for land treatment demonstrations are as accurate as possible. See guidance reference 7. When preparing a QA/QC plan for organic principle hazardous constituent analysis by the alternative method which uses a gas chromatography/flame ionization detector (GC/FID) instead of the GC/MS method, the laboratory or owner/operator should verify a certain percentage (e.g., 10%) of the initial run (and future runs, as necessary) by GC/MS. This approach will corroborate and justify the use of the GC/FID.

2) Construction Quality Assurance Plans

A rigorous construction quality assurance plan should be developed and implemented to insure that a completed hazardous waste facility meets or exceeds all design criteria and specifications. Draft Guidance is available for construction quality assurance for land disposal facilities (reference 1).

Any proposed plan should describe how the required limits of permeability will be achieved and maintained during the construction of clay layers in liners and caps. The guidance recommends the construction of a test fill using the soil, equipment, and procedures to be used in the final construction of the clay layer in order to assure that permeability limits will be met. The construction of the test fill must be as stringent as the actual liner for the facility.

Each construction quality assurance plan should identify who will conduct (i.e., oversee and perform) the quality assurance measures. It is important that the person(s) be qualified and independent of the construction contractor to ensure proper placement and representative sampling of the liner during placement.

Chemical Compatibility Testing

1) Method 9090

The Method 9090 chemical compatibility test exposes the membrane liner materials to the waste or leachate being managed at a facility and simulates the conditions expected during the actual use of the liner material. After exposure, the liner material must be compared to an unexposed sample of liner material using the physical testing described in Method 9090. The parameters being compared include changes in thickness, mass, area, and hardness, and the retention of physical properties such as tear resistance and tensile properties. The comparison should address any change in the properties of the liner material when compared to the unexposed sample.

Method 9090 was originally developed to test only liner material; however, it is important that all other man-made materials that come in contact with waste or leachate be subjected to the immersion test portion of Method 9090. Other materials that potentially come in contact with waste or leachate are geotextiles, geogrid and piping used in the leachate collection systems. Directive 9480.00-13 (reference 10) addresses Method 9090 and provides references for the individual tests that these other materials must undergo after the immersion test.

2) Obtaining and Maintaining Representative Leachate

Halogenated organics are one of the most deleterious chemical families to high density polyethylene (HDPE). When performing compatibility testing on HDPE, the owner/operator must demonstrate that the sample of waste or leachate used is representative of the waste or leachate from their facility and that the proposed methodology is capable of maintaining the concentrations of halogenated and other volatile organics actually found in a facility's leachate throughout the test.

Because these organic compounds are volatile, care should be taken not to aerate the leachate sample. Since Method 9090 requires long exposure time (120 days), loss of volatiles may occur. This change in waste composition may require the waste or leachate to be replaced at least monthly in order to maintain representative conditions throughout the exposure period. (Replacement of leachate does not trigger the beginning of the 120-day period again.)

Waste Pile Liner Equivalency

1) The Use of a Concrete Pad as a Liner

A facility maintains that a concrete pad under a waste pile meets the definition of "equivalent protection" under HSWA §3015(a) and can be substituted for the liner requirement. A concrete pad, however, fails to meet this definition and the performance requirements of §264.251. Concrete is not impervious. It has a calculable permeability and operations on the pad will likely degrade any relatively impermeable coating that may be applied. Concrete has a tendency to expand and crack, allowing the escape of leachate. Also, the chemical compatibility of leachate with the concrete must be demonstrated. Certain leachate constituents (e.g., sulfates, acids) may be corrosive to concrete.

Landfill Design

1) Final Cover Slope

Final cover with slopes that exceed the recommended grade may experience erosion problems and slope instability. If the design slope exceeds 3-5%, the applicant should demonstrate that soil erosion will not exceed 2 tons/acre using the USDA Universal Soil Loss Equation and may be required to perform slope stability analysis. (See reference 3 for slope guidance.)

2) Waste Settlement

When calculating settlement of a landfill for final cover design, allowances must be made for the settlement of the waste itself. Most waste materials settle and decompose at a greater rate than natural soils used in the final cover. Organic decomposition will consolidate waste layers regardless of operational techniques.

3) Flexible Membrane Liner in Final Cover

An interim status facility proposes to use a flexible membrane liner in the final cover of a landfill with steep slopes approaching 2:1 and a waste depth of several hundred feet in some places. Membrane liners are unstable when used as a component of a final cover system on steep slopes and may fail catastrophically under seismic and other stresses in such situations. Additionally, this unusually deep landfill is subject to extreme settlement that will effect numerous tears in any conventional flexible membrane liner.

Therefore, a flexible membrane liner is not recommended under these conditions. Given the site-specific climatic and geophysical conditions, an adequately designed and constructed soil-only cover should be used for closure of this facility under §265.310.

4) Foundation Layer of the Final Cap

A facility proposed a final cap design with a low permeability layer constructed out of either contaminated or clean soil. Since this layer must provide long term minimization of the migration of liquids, it must be carefully designed and constructed. Assurance of a consistently low permeability soil requires that the soil be relatively homogeneous. Soil contaminated with hazardous constituents will likely not be uniformly low in permeability. In order to achieve and maintain consistent low permeability, clean soils should be used in this layer.

5) Leachate Collection System Design

In order to satisfy the requirements for landfill design specified in §264.301(a), the leachate collection system design should generally be based upon realistic infiltration rates (based upon actual daily precipitation data for the area), not the annual average rate of infiltration. This is because landfill cells are open depressions during their active life.

6) Geotextile Materials

When geogrid and geotextile materials are specified as part of the leachate collection system in place of conventional drainage material, they should be evaluated to assure that they have the equivalent drainage capacity of a one-foot layer of compacted sand.

7) Use of Berm Material from Manufactured Slag

A facility wishes to construct berms from manufactured slag. This material should be investigated for the presence of hazardous constituents. Based on the design presented, if any hazardous constituents are found, the facility should be discouraged from using this material. These consitituents may be detected in the ground-water monitoring system, obscuring any releases from the wastes in the unit.

8) Use of a Composite Primary Liner

Several facilities have proposed using a "composite" primary liner. Directly below the primary synthetic liner, these facilities have proposed adding an additional layer of either clay or chalk. This addition is not specifically required by the Minimum Technological Requirements of §3004(o)(1) of HSWA nor is it recommended in the "Double Liner Guidance" (reference 6). The extra layer has the advantage of providing a reduction in leachate movement and extra long-term reliability. Since the extra layer is not prohibited, it can be allowed to remain in the design.

Closure

1) Closure of a Land Treatment Unit with Vegetative Cover

Owners or operators of land treatment units must make their best effort to establish a vegetative cover. This can involve the use of soil conditioners, fertilizers and irrigation to supply the necessary growing conditions. If the unit is closing under §265.280 requirements and the owner or operator can show that they have tried to implement the vegetative cover without success, they are justified in the use of another closure procedure (e.g., clean closure or addition of another cover soil) for the site.

2) Extended Closure Period

A facility has requested an extended closure period so that the facility can continue to receive non-hazardous solid waste in order to bring the disposal area up to design grade. Extended closure periods may be approved if: (1)(i) the partial or final closure activities will, of necessity, take longer than 180 days to complete; or (ii)(A) the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and (B) there is reasonable likelihood that the owner/operator or another person will recommence operation of the hazardous waste management unit or the facility within one year, and (C) closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and (2) the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements (§265.113(b)).

The facility in question does not meet the criteria in §265.113(b); extending the closure period for the purpose of receiving additional non-hazardous waste is not necessary to proceed with closure nor will it provide any environmental benefit.

Exposure Information and Evaluation

1) Role of the Agency for Toxic Substances and Disease Registry (ATSDR)

The role of ATSDR is to evaluate human populations with known or suspected exposure, not to determine if a release has occurred and has migrated to potential human exposure points. It is not necessary to refer a facility to ATSDR unless a release has occurred and human exposure is either suspected or confirmed. All referrals to ATSDR for health assessments under RCRA §3019 must be approved by Headquarters. Candidates for referral should be forwarded with the appropriate summary report as described in reference 2. ATSDR can provide less formal technical assistance or consultation as also described in reference 2.

2) Exposure Information Reports (EIR)

In order to adequately review a facility's EIR, the Part B application and any other documents pertaining to possible releases should be examined. The objectives of these reviews are 1) to identify human exposure to releases which may require ATSDR involvement and 2) to identify potential human exposure to future releases which may be mitigated through permit conditions. Therefore, the EIR review process should be closely integrated with ongoing RCRA Facility Assessments (RFAs). Guidance (reference 2) describing the procedure for reviewing EIRs is available and should be consulted.

Attachment A

PAT Reviews Included in This Summary

Facility	Region	PAT Coordinator	Review Date
Amax Nickel	VI	Chris Rhyne	June 1986
BKK	IX	Chris Rhyne	December 1985
Bob's Home Service	VII	Chris Rhyne	January 1986
Casmalia Resources	IX	Chris Rhyne	April 1986
CECOS	II	Chris Rhyne	December 1985
Chemical Waste Management	IV	Chris Rhyne	January 1986
Environmental Waste Control	V	Robert Kayser	December 1985
Fondessy	V	David Eberly	April 1986
Hess Oil Virgin Islands Corp.	II	Nestor Aviles	February 1986
Murphy Oil USA, Inc.	VI	Nestor Aviles	March 1986
RMT Properties, Inc.	VIII	Robert Kayser	April 1986

Attachment B

List of Guidance Documents Used in Preparing the PAT Reviews

1. Construction Quality Assurance for Hazardous Waste Land Disposal Facilities, October, 1985, EPA/530-SW-85-021.

2. Procedural Guidance for Reviewing Exposure Information under RCRA §3019, September, 1986, Directive Number 9523.00-2A.

3. Draft RCRA Guidance Document: Landfill Design--Liner Systems and Final Cover (Chapter E only); July, 1982.

4. Criteria for Identifying Areas of Vulnerable Hydrogeology Under the Resource Conservation and Recovery Act--Statutory Interpretive Guidance (July 1986, Interim Final) NTIS No. PB-86-224946.

5. Interim Status Surface Impoundments, Retrofitting Variances, July 1986, NTIS No. PB-86-212263.

6. Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments --Design, Construction and Operation, Draft May 1985, EPA/530-SW-85-013.

7. Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations, July 1986.

8. Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units, April 1986.

9. RCRA Ground-Water Monitoring Technical Enforcement Guidance, October 1986.

10. Supplementary Guidance on Determining Liner/Leachate Collection System Compatibility, Effective Date 8/7/86, Directive Number 9480.00-13.

Attachment C 2/27/87

Land Disposal Permit Assistance Team (PAT)

Current Organization and Staff

Assistance Branch
Suzanne Rudzinski, Chief (382-4761)

Land Disposal Permit Assistance Section
Terry Grogan, Chief (382-4692)

- Chris Rhyne (Civil Engineer, 382-4695)

  - Disposal Design & Operating Stds (liners, leachate collection)
  - Liner Compatibility
  - Closures (clean-up standards)

- Bob Kayser (Chemist, 382-4536)

  - Exposure Assessments
  - Chemical Analysis
  - Appendix VIII Monitoring

- Janette Hansen (Geologist, 382-4754)

  - Ground-water Monitoring
  - RFA Technical Assistance
  - Corrective Action Technologies

- Mark Salee (Environmental Scientist, 382-4755)

  - ACLs
  - Risk Assessments
  - Ground-water Protection Regulations

- Dave Eberly (Civil Engineer, 382-4691)

  - Disposal Design & Operating Stds
  - Construction QA; Liquids in Landfills
  - Closures (caps)
  - Surface Impoundment Retrofitting and Waivers

- Amy Mills (Geologist, 382-3298/4692)

  - Ground-water Monitoring
  - Corrective Action
  - RCRA Technical Ground-water Staff Meetings

OSWER POLICY DIRECTIVE

9523.00-1

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

MAR 14 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPC

MEMORANDUM

SUBJECT: Summary of Recent Permit Assistance Team (PAT) Comments

FROM: Terry Grogan, Program Manager
Land Disposal PAT Program

TO: Permit Section Chiefs
Regions I - X

The OSW Permits Branch plans to provide a semi-annual report summarizing major issues that PAT members address in their reviews of specific Part B applications. These reports will cover issues that are of national interest rather than strictly site-specific interest. The attached report is the first in this series; it summarizes generic issues addressed in PAT comments prepared for nine land disposal Part B applications reviewed during 1985. We hope the recommendations provided in this summary of recent PAT comments will be helpful for permit writers encountering similar situations at other RCRA facilities. Therefore, we encourage you to share this report with your staff and State permit writers.

Since this report is the first attempt to derive written national suggestions from site-specific PAT comments, we are very interested in your reaction. Please let me know if the report and current format are useful. Is the level of detail provided here adequate? Would you like to see the original PAT comments for specific sites or some other form of guidance?

Attachment A to the report lists the facility names, Regions, and PAT reviewers for each application included in this report. Attachment B provides a current roster of the members and expertise of the Land Disposal PAT staff.

cc: Marcia Williams
Bruce Weddle
Jack Lehman
Eileen Claussen
Lloyd Guerci
Peter Guerrero
Truett DeGeare
Ken Shuster
Jerry Kotas
Sylvia Lowrance
Mark Greenwood

SUMMARY OF RECENT PERMIT ASSISTANCE TEAM (PAT) COMMENTS

Sampling Procedures

1) Filtering Ground Water Samples

The practice of filtering ground water prior to analysis can remove contaminants sorbed onto particulates which can give misleading indications of ground water quality. The August 1985 Draft RCRA Ground-water Monitoring Technical Enforcement Guidance Document recommends that ground water samples collected for metals analysis should be split into two portions. One portion should be filtered through a 0.45 micron filter and analyzed for dissolved metals. The recommended approach for the second unfiltered portion is to use a mild acid digestion method (e.g., Method-3010, SW-846) to yield total recoverable metals. Any difference in concentration between the total and dissolved fractions may be attributed to either the original metals content of the particles or to the migration of dissolved metals onto the particles.

2) Bailers

The composition of bailers is important when monitoring for certain types of constituents. For example, brass bailers should not be used when sampling for metals because brass can introduce metallic ions into the samples.

The Use of Models

1) Unusual Ground Water Situations

In situations where aquifers are composed of highly stratified sediments or have other unique features, most current mathematical models may not accurately predict aquifer characteristics. Therefore, the model used should include a trial-and-error phase, in which computed drawdowns are matched with observed field drawdowns. A recommended reference is: Land, Larry F., "Utilizing a Digital Model to Determine the Hydraulic Properties of a Layered Aquifer" Ground Water v.15, no. 2 pp 153-159 (1977).

Applying HSWA Corrective Action Requirements to Releases from Process Areas

1) Interpretation of "SWMU"

A facility is underlain by contaminated soils and ground water resulting from prior releases from process areas. Draft policy guidance (January 30, 1985) interprets the term

"solid waste management unit" (SWMU) to exclude accidental spills from production areas. However, the contamination at this facility appears to be the result of routine, deliberate, and systematic discharges from the process area. Such deliberate deposition qualifies the process area as a de facto SWMU.

Request for a Liner Exemption

1) Liner Exemption Based on Design Concept

A facility applied for an exemption from the landfill liner and leachate collection and removal system requirements of §264.301. The owner/operator claimed that the landfill unit will not result in migration of leachate from the unit due to its intergradient design. The unit is located within the uppermost aquifer and the net migration of water is into the unit. Theoretically, migration of contaminants out of the unit will be prevented since this is counter to the inward flow of water. However, this design does not qualify for a liner exemption, which requires that the unit prevents the migration of hazardous constituents into ground or surface water at any future time. Although the net flow of ground water is into the proposed facility, under certain conditions (i.e., when the waste reaches saturation) constituents can be expected to migrate out of the waste and eventually out of the unit.

Stabilization of Bulk Liquids

1) Acceptable Chemical Stabilization Techniques

To treat bulk hazardous liquids, owner/operators must demonstrate that the 'treatment' applied to the liquid is not absorption. Chemical stabilization is one treatment alternative for bulk hazardous liquids. Stabilization technologies commonly used include Portland cement-based processes and other pozzolanic processes using lime products and materials such as fly ash, ground slag, and cement kiln dust.

2) Demonstrations of Stabilization

After chemical transformation has occurred, the end product should pass the Paint Filter Liquids Test finalized on April 30, 1985 (50 FR 18370). In addition, the owner/operator must demonstrate that the waste has been adequately stabilized. EPA is in the process of recommending a performance standard to help owners/

operators and permit writers determine whether a process is "chemical stabilization" (as opposed to absorption). This standard uses an unconfined strength test to make the determination. The owner/ operator has the option of proposing a different methodology as long as adequate stabilization can be demonstrated.

Corrective Action

1) Regulatory Status of Contaminated Ground Water

John Skinner's memo of December 26, 1984, states that contaminated ground water collected and derived from a listed waste or hazardous due to presence of a characteristic is a hazardous waste and subject to Subtitle C regulations. Therefore, owner/ operators proposing a corrective action such as counterpumping must manage such collected ground water as a hazardous waste. The Part B application must include the procedures used to manage ground water so that they can be evaluated.

2) Removal of PCP by Activated Carbon

Passing contaminated water through activated carbon usually works well for most organic chemicals. However, the applicability of this method for PCP (pentachlorophenol) may be questionable. The phenolic group in PCP is weakly acidic ($pK_a = 4.7$) and PCP will ionize in neutral water. In the ionic form, the compound is highly water soluble and its affinity for carbon severely reduced. Specific data must be provided (e.g., from bench or pilot studies) that demonstrate the applicability of activated carbon in removing PCP.

3) Permit Specifications

Corrective action programs, when warranted for regulated land disposal units, must be specified as part of a facility's permit. The permit should include the basic measures to be taken for the corrective action, and predict when the goals of the corrective action plan will be met. Any future changes in the specifics of the corrective action program would entail a permit modification. It is important that the owner/operator adequately define the zone(s) of contamination, aquifer hydraulic characteristics, and the hazardous constituents in the groundwater. The owner/operator should conduct pilot pump tests to verify the performance of any counterpumping installation if necessary.

ACLs

1) Use of Acceptable Surface Water Limits

When the only exposure to ground water contaminants is via surface water, then it is possible to base the ACLs on acceptable surface water limits for the contaminants present in the ground water and to use a surface water dilution factor to derive the ACLs. The dilution factor, however, must be sufficiently conservative relative to the assumed stream flow. In general, the owner/operator should assume a 7-day, 10-year low flow. The dilution calculations should only consider mixing within some State-approved zone and will depend on the ground water loading to the river.

Owner/operators intending to use surface water dilution in an ACL application must prepare a surface water analysis to determine the cumulative impact on the river. The analysis should include upstream, downstream and point of discharge sampling for the Appendix VIII constituents present in the ground water.

The actual ground water discharge to a surface water body must be verified by appropriate ground water delineation methodology. It is not sufficient to assume that all ground water discharges to a surface water body. It must be demonstrated that ground water flow does not go under and beyond the surface water body.

2) Potential Point of Exposure

In an ACL submission, the applicant must address the on-site use of ground water as well as any use downgradient of the facility. Ground water exposure is assumed to be at the facility's waste management boundary unless there are use restrictions on-site. The fact that ground water is not currently used is not sufficient evidence to assume no potential exposure. If ground water use restrictions, i.e., deed restrictions, are implemented on-site, then the property boundary is assumed to be the potential point of ground water exposure. If the point of exposure is at a surface water body, ground water use restrictions should be in effect from the waste management boundary to the point where ground water discharges to surface water.

When calculating exposure through surface water in order to determine an ACL, surface water exposure should be based on exposure immediately outside the mixing zone. Applicants

cannot assume that water consumed will be treated prior to consumption because the criterion is not technology-based and exposure must be estimated adjacent to the mixing zone. For surface waters, the potential point of use is at the shoreline or area of the waterbody where contaminated ground water discharges. The requirement that the point of exposure is at the edge of the mixing zone is primarily for the protection of the environment, as the ACL guidance stresses the importance of protecting the environment as well as human health. Aquatic toxicity data should be compared with human toxicity data to determine limiting effects of the constituents of concern. Information should be submitted on aquatic habitats adjacent to ground water discharges to the surface waterbody. Special attention should be placed on bioaccumulation of hazardous contaminants by benthic organisms and fishery resources.

3) Modeling Information Required for ACL Demonstrations

Modeling degradation and attenuation of constituents between hazardous waste management units and a potential point of exposure is a valid method for developing ACLs. However, all modeling must be substantiated by sufficient information and sampling. Model documentation is necessary for most ACL proposals. For example, applicants must provide the full name of all models used as well as documentation on why and how the model was applied.

4) Grouping of Toxic Contaminants

Grouping can mask the effects of individual chemicals. In addition, degradation products can be lost in grouping schemes. Nevertheless, the ACL guidance allows grouping of hazardous constituents in order to simplify the ACL demonstration. The burden of proof that a grouping of constituents is appropriate is on the owner/operator. Exposure pathways and metabolic endpoints for each constituent must always be considered when determining appropriate groupings. The fate and transport mechanism, not concentration and volume, are the most important factors for choosing the most mobile constituents within a grouping.

Attachment A

PAT Reviews Included in This Summary

Facility	Region	PAT Coordinator
Allied Chemical	III	Amy Mills
Chem Waste Management	IV	Chris Rhyne
Ciba-Geigy	IV	Rich Steimle
Eaton Corp	V	Amy Mills
G.E. Waterford	II	Amy Mills
Hytek	X	Amy Mills
International Paper	VII	Vernon Myers
Permapost	X	Robert Kayser
USPCI	VI	Robert Kayser

Attachment B

OSW Permits Branch

Land Disposal Permit Assistance Team (PAT)

- Terry Grogan, Manager (382-4740)

Current Staff:

- Chris Rhyne (Civil Engineer; 382-4695)
  - Disposal D & O Standards (liners, leachate collection)
  - Closures (caps, etc.)
  - CERCLA sites

- Bob Kayser (Chemist; 382-4536)
  - Appendix VIII Monitoring
  - Waste Analysis
  - Exposure Assessments

- Nestor Aviles (Chemical Engineer; 382-2218)
  - Land Treatment

- Janette Hansen (Hydrogeologist; 382-4754)
  - Groundwater Monitoring
  - Corrective Action
  - PA/SI Field Test and Training

- Mark Salee (Environmental Scientist; 382-4740)
  - ACLs
  - Exposure/Risk Assessments

- Dave Eberly (Civil Engineer; 382-4691)
  - Disposal Standards

- Vacancy (Geologist)

Others:

- Mickey Hartnett (Environmental Engineer; 382-4755)
  - On detail from Region IV to develop program for Corrective Action technical assistance.

- Rich Steimle (Hydrogeologist; 382-7912)
  - On detail to Ground Water Task Force.

- Amy Mills (Geologist)
  - On academic leave until 1/87.

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

9523.00-15

MAR 30 1988

OFFICE OF
NO EMERGENC

MEMORANDUM

SUBJECT: Summary of Permit Assistance Team (PAT) Comments

FROM: Sylvia Lowrance, Director
Office of Solid Waste (WH-562)

TO: Hazardous Waste Management Division Directors
Regions I-X

Attached is the third in a series of periodic reports which summarize major issues that PAT members have addressed in their reviews of specific Part B applications, permits and closure plans. (The first and second PAT summary reports were issued on March 14, 1986 (OSWER Policy Directive No. 9523.00-14) and March 30, 1987 (OSWER Policy Directive No. 9523.00-12), respectively.) These reports cover issues that are of generic national interest rather than strictly site-specific interest. The attached report includes reviews conducted by the Land Disposal PAT from September 1986 thru April 1987. In order to ensure that the report reflects current EPA policy and guidance, we obtained review comments from all divisions in OSW and from the Office of General Counsel.

We hope that the recommendations provided in this document will be helpful for permit writers encountering similar situations at other RCRA facilities. By sharing the PAT's suggestions from a few sites, we hope that permit decision-making will be somewhat easier and faster at many more sites nationally. We encourage you to distribute this report to your staff and State permit writers. To make that easier, I have enclosed multiple copies of the report.

Attachment A to the report lists the facility names, Regions, PAT coordinators, and dates for the reviews summarized in this report. Attachment B provides a list of guidance documents and directives used in preparing the PAT reviews. Attachment C provides information on user access to the Hydrologic Evaluation of Landfill Performance (HELP) Model. Attachment D is a memorandum addressing the RCRA regulatory status of contaminated ground water.

If you have any questions, comments, or suggestions on the PAT Summary Report, please contact James Michael at FTS 382-2231.

Attachments

cc: RCRA Branch Chiefs, Regions I-X
Permit Section Chiefs, Regions I-X
J. Winston Porter
Jack McGraw
Tom Devine
Jeff Denit
Bruce Weddle
Susan Bromm
Ken Shuster
Joe Carra
Mike Gruber
Jim O'Leary
Suzanne Rudzinski
PAT Staff
Paul Cassidy
Les Otte
Art Day
Jon Perry
Jim Bachmaier
Elaine Stanley
Lisa Friedman
Tina Kaneen
Fred Chanania
Matt Hale
George Garland
Terry Grogan
Tom Kennedy (ASTSWMO)

SUMMARY OF PAT REVIEWS:

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SUMMARY OF PERMIT ASSISTANCE TEAM (PAT) COMMENTS

Ground-water Monitoring

1) Well Development

An owner/operator indicated in his/her permit application that extracting the required well volumes by bailing prior to sampling, removed fine materials that were 'trapped during well installation'. This sample extraction that occured over a year of monitoring resulted in additional well development.

Proper well development, as described in the RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD) (Reference 11), requires that the wells be clay and silt free. Turbid ground water promotes biochemical activity and possible interference with ground-water sample quality. Turbidity readings over 5 nephelometric turbidity units (N.T.U.) may be grounds for rejecting samples from a monitoring well. TEGD provides a decision chart for turbid ground-water samples.

The quality of any monitoring data that was obtained from improperly developed wells is questionable.

2) Appropriate Well Construction Materials

Several facilities have used polyvinyl chloride (PVC) as monitoring well construction material in the saturated zone.

PVC is not an inert material and constituents such as phthalate and tetrahydrofuran in ground-water samples have been attributed to PVC well casing or pipe solvents. PVC materials can be used, however, in composite well construction where PVC or other non-inert material is used above the saturated zone while inert materials are used in the saturated zone. The TEGD (Reference 11) provides a complete description of appropriate monitoring well construction materials.

When a facility has already installed wells with materials that do not meet the TEGD requirements, it is not necessary that the whole monitoring system be replaced and the data discarded. A properly constructed and located comparison well can be installed and sampled. Comparison of data from the new well with the existing data will determine if constituents detected in the older wells, such as phthalate, are due to the PVC materials or to contamination of ground water from other sources.

3) Calculation of Purge Volume

A commonly encountered error in sampling procedures involves the calculation of the evacuation volume prior to sampling. The correct calculation should include the volume of water in the gravel pack as well as the volume of water in the casing. With a small diameter

casing (e.g. 2 inches), the actual boring may be much larger. The water in the gravel pack can represent a significant percentage of the well volume and should be removed in order to sample the aquifer correctly.

4) Appendix IX

In the July 9, 1987, Federal Register, EPA promulgated a new list for ground-water monitoring, Appendix IX to Part 264, which will replace the Appendix VIII monitoring requirement. Existing SW-846 methods are adequate for the compounds listed on Appendix IX. [See Reference 4 for the final Appendix IX list]

Appendix IX is a list of chemicals taken from Appendix VIII for which it is feasible to analyze in ground-water samples. In addition, Appendix IX contains 17 chemicals routinely monitored in the Superfund program.

5) Use of Accelerated Monitoring Schedules

A facility which was deficient in the ground-water monitoring section of their Part B Application was requested to improve their monitoring network by drilling more wells and developing them properly. Once these deficiencies are corrected, an accelerated ground-water monitoring schedule, sampling four times within four months, was recommended.

This recommendation, which was designed to bring a facility into compliance as soon as possible, is in accordance with the recommendations in the RCRA Ground-water Monitoring Compliance Order Guidance (Reference 10). When scheduling the accelerated monitoring, the facility could schedule one sampling event after a significant rainfall, the second event after a dry period and the remaining two events can be interspersed within the four month time frame. At the site in question, this sampling scheme should allow data representat: of the site to be obtained quickly. Note, however, that this type of an accelerated sampling scheme may not be appropriate for all facilities in all locations.

6) Maintenance of Ground-water Monitoring Networks

Ground-water monitoring networks that will be used during the life of the facility and its closure period, will need at least some maintenance in order to assure that representative samples are being obtained. Often the maintenance needed will be redevelopment of the monitoring well. The inital performance of a well should be determined and any significant changes over time may indicate the need for periodic redevelopment or a maintence assessment. In other cases, such as after severe damage by accidental or natural occurrences like flooding, well replacement may be warranted.

A contingency plan should be prepared by the facility addressing the proposed course of action should the integrity of the monitoring wells become damaged. The regulations (§264.310(b)(3)) clearly require the owner/operator of a landfill to maintain their monitoring well network during closure period. However, appropriate language should be included in the permit to make adequate maintenance of the system during the life of a unit and its closure period a permit condition. While not absolutely necessary for enforcement, further elaboration of the requirements will clarify the duties of the owner/operator.

Landfill Design

1) Definition of Replacement Unit

A replacement unit, as defined in the preamble to the Final Codification Rule; Hazardous Waste Management System (50 FR 28706, July 15, 1985) is a "unit that is taken out of service and emptied by removing all or substantially all the waste from it" prior to being reused. A facility planned to dewater half of an interim status surface impoundment that is bisected by an underwater dike and to route all incoming waste to the southern portion. The northern section was scheduled to receive consolidated waste from several other impoundments and to close as a landfill. The northern section, however, meets the criteria of a 'replacement unit' since the deposition of the original waste material has stopped, substantial dewatering is planned and placement of waste from other units is to occur prior to closure.

Under §3015(b) of HSWA, facilities authorized to operate under §3005(e) shall be subject to the minimum technological requirements of 3004(o) for each replacement or lateral expansion of an existing landfill or surface impoundment. The north section must be retrofitted to satisfy these requirements before the deposition of the waste from other units can begin.

The southern unit, as an existing surface impoundment, becomes subject to the minimum technological requirements and must be retrofitted if it continues operation after November 8, 1988 per §3005(j), unless a waiver is obtained.

2) Double Liner Waiver Petitions

Another facility requested a waiver from the double liner requirement for a new unit based upon Section 3004(o)(2), which allows for an exemption to the double liner requirement if "alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners or leachate collection systems".

The proposed bottom liner design is a 2-ft layer of compacted material with 5 x 10^{-6} cm/sec permeability. This bottom liner design is substandard because it does not meet the requirements of section 264.221(c) (3-foot layer of recompacted clay of at least 1 x 10^{-7} cm/sec permeability). Since the design does not meet the requirements of §264.221(c), location characteristics or operating practices must compensate for the deficiency, as allowed under §264.221(d). This unit is to receive wet sludges and an unusually large amount of leachate is expected. The owner/operator did not present any operational reason to grant the petition. Similarly, the location of the unit would not prevent migration of hazardous constituents to the ground water because ground water is typically near or at the surface. Therefore, the PAT saw no compelling evidence that hydrogeologic conditions would favor a variance.

Since this alternate double liner design did not satisfy the §264.221(d) criteria for preventing migration to ground water at least as effectively as a double liner system under §264.221(c), and location characteristics and operational practices did not compensate for the liner design, the PAT recommended that the petition for a double liner waiver not be granted.

3) Determination of Equivalent Liner Design

The PAT reviewed a proposed double liner design in order to verify that it meets the general minimum technology requirement set forth in Section 3004(o)(1)(A)(i). The liner design was compared to the interim statutory design found in Section 3004(o)(5)(B) of HSWA and codified in §264.301(c).

The comparison was conducted on a layer by layer basis. The proposed primary leachate collection system, the top liner and the secondary leachate collection system for the facility were either identical or exceeded the Agency's recommended specifications for the interim statutory design. The secondary liner system, however, varies significantly from the interim statutory design which may be satisfied by at least 3 feet of 10^{-7} cm/sec compacted clay or other natural material. The proposed bottom liner will consist of an 80 mil high density polyethylene (HDPE) liner to be installed immediately over an existing ethylene propylene rubber (EPDM) liner and an existing leak detection system. Before installation of the bottom liner, the EPDM liner will be cleaned and the seams tested for leaks. The HDPE liner will form a compression fit over the existing liner and its seams will be constructed perpendicular to the existing liner's seams.

The interim statutory design requires that a bottom liner be designed, operated and constructed to prevent the migration of any constituent through such a liner during the operating and post-closure monitoring period (§3004(o)(5)(B)). The PAT concluded that a carefully constructed redundant FML bottom liner should

result in a liner that controls migration as well as, or better than, 3 feet of 1×10^{-7} cm/sec clay. As long as waste/liner compatibility is clearly demonstrated, a system constructed of the proposed components was determined to be equivalent to the interim statutory design.

4) Calculation of Leachate Volume for Collection System Design

An engineer for a facility designed the leachate collection system for their new landfill based upon leachate volume estimated from calculations using Moore's Equation (see Permit Writers' Guidance Manual for Hazardous Waste Land Treatment, Storage and Disposal Facilities, Reference 7). While the use of this equation is acceptable, the equation best applies to a long term, steady-state impingement rate and not to short-term storm events. In order to most accurately consider variations in rainfall data such as storm events, the HELP (Hydrologic Evaluation of Landfill Performance) model is preferred. This model is available to any engineer or technically trained individual for evaluating the design of leachate collection systems. See Attachment C for information on obtaining the user guide and software package.

5) Cap Design Modifications

A facility proposed several modifications to their cap design specifically to reduce erosion potential. The soil layer was increased from two feet to three feet. The increased soil depth, plus the presence of a drainage layer and geotextile material, mitigates the impacts of frost action.

The facility also proposed to use roughened HDPE membrane as the synthetic liner over the clay layer in order to reduce the potential for sliding. The friction angle between the roughened membrane and the clay is 29 degrees, a significant increase over the friction angle between a smooth membrane and the clay layer. A potential problem with the use of roughened HDPE membrane is its limited commercial availability at this time.

Anchor trenches have also been proposed to tie down the liner, filter and drainage layer material for the purpose of increasing slope stability. The trenches act as drainage conduits as well, increasing the efficiency of the drainage system.

6) Use of a Test Plot to Support an Alternate Cover Design

A facility proposed a cap design that is significantly different from the recommended design criteria specified in the July 1982 Draft Guidance Document: Landfill Design—Liner Systems and Final Cover (Reference 2).

The final cover, based upon the guidance, should have two or mor feet of "soil capable of sustaining plant species". The facilit proposed that the cap will be comprised of 24 inches of compacte Ponce clay, 18 inches of compacted caliche and 6 inches of veget ated, uncompacted caliche. Caliche is a limestone deposit that is found in arid regions. This soil, when in contact with moist could harden like concrete and may not sustain vegetative growth The proposed plant specie, weeping lovegrass, is not indigenous to the area and has roots up to 18 inches in length, which is longer than the 6 inch vegetative layer could support.
The best alternative for this facility would be to redesign their cap to conform to the specifications in the guidance. However, they can use cap components which differ from the recommended design if the facility constructs a test plot in order to demonstrate that the proposed material will support a vegetative cover.

7) Potential for HDPE Failure

An engineering report prepared for a landfill liner design indicat that the material to be used as a sub-base under an HPDE liner showed differential settlement of up to 1.5 feet over a horizontal distance of 2 feet.

The engineering report assumed that the HDPE membrane could tolerat such settlement, but research has shown that HDPE liners usually fail along a narrow area. Stretching a localized imperfection, such as a shallow scratch, over the 1.5 feet differential settlement could result in a hole in the liner.

The facility should prepare a stable base under the HPDE liner as required in §264.301 (a)(1)(ii).

Land Treatment Units

1) Waste Characterization/Waste Analysis Plan

A petroleum refinery is undertaking a land treatment demonstration but has not adequately characterized its waste. A waste analysis plan prepared according to the requirements of §§264.271(b) and 264.272(c)(1)(i) must include testing for Appendix VIII constituents that are reasonably expected to be in or derived from the wastes. The waste analysis plan for refinery wastes should include testing for the EPA approved subset of Appendix VIII constituents found in petroleum wastes (e.g., the "Skinner List"). The Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations (Reference 5) should be referred to for a complete discussion on the development of waste analysis plans. Appendix D in reference 5 provides a copy of the list of Appendix VIII constituents that may be found in petroleum wastes.

2) Demonstration of Land Treatability

A facility based its land treatment demonstration on the degradation of the oily fraction of the wastes and on the immobilization of lead and chromium in the soil. They did not account for the treatment of any other Appendix VIII constituents detected in their waste. This same facility only conducted the feasibility test program using leachate column tests. These tests will provide information on the loading rate of the soil, but will not be able to determine the site/soil assimilative capacity.

Section 264.272 requires that the owner/operator must demonstrate that hazardous constituents in the waste can be completely degraded, transformed or immobilized in the treatment zone. A properly conducted demonstration should evaluate all the processes involved in a land treatment unit including degradation, transformation and immobilization. A toxicity study, which identifies toxic loading rates and evaluates the impact of the wastes on indigenous soil microorganisms, should be conducted. A transformation/detoxification study, which is also a necessary part of the demonstration, should provide information on the decrease in toxicity of the waste/soil mix to soil microorganisms over time. Reference 5 provides complete information on the components of a good land treatment demonstration.

3) Control of Soil Moisture

A saturated land treatment unit is unable to accept sludge with a high quantity of water since these conditions would promote anaerobic conditions in the treatment zone. These conditions would lead to a decrease in microbial degradation of organics and the migration of run-off containing large amounts of hazardous constituents. An owner/operator at a facility where saturation of the unit is possibile, even during a portion of the year, should conduct studies to measure and control soil moisture. A water balance for the facility that accounts for seasonal changes should be part of such a study.

4) Selection of Principal Hazardous Constituents (PHC)

PHCs are defined in §264.278(a)(2) as "hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation and immobilization". Therefore, the PHC for any land treatment unit can only be selected after the completion of an adequately designed land treatment demonstration (see previous item 2). PHCs are those hazardous constituents that have the lowest site/soil assimilative capacity. Constituents selected should also have a low to moderate vapor pressure so they will not volatilize from the waste shortly after application. The criteria for the selection of PHCs is covered in Reference 5.

5) Permitting of Land Treatment Units

After several years of an on-going land treatment demonstration, a facility still has not proven that their unit can degrade, transform and immobilize the hazardous constituents in their waste. A satisfactory land treatment demonstration will require more effort, time and a large investment by the applicant.

The land ban restrictions for the 'California List' or 'first third' waste constituents will affect most of the current land treated wastes. Due to the potentially short life of certain land treatment units, the owner/operators of units that have not demonstrated satisfactory treatment should be requested to consider closure of their land treatment unit. As stated in OSWER Policy Directive 9486.00-2 (Reference 6), any Part B deficiencies should be addressed quickly. Only one Notice of Deficiency should be necessary for the applicant to submit a complete application. If they are unable to quickly correct the deficiencies, the Region should consider permit denial.

6) Presence of High Water Table in Limited Areas of Unit

During a land treatment demonstration, a land treatment unit was observed to have two central areas that had a seasonal high water table within 3 feet of the treatment zone. The facility proposed to use a pumping system to lower the water table.

While the treatment zone in any land treatment unit, per §264.271 (c)(2), must be at least 3 feet above the seasonal high water table, a costly pumping system is not the only alternative to achieve this standard. The facility may clean up the areas with a high water table and discontinue their use for the treatment of waste. Clean up entails the removal of soil from these areas and placement of the soil in the active treatment unit. New soil should be replaced in these areas and the areas should be fenced off. In effect, this land treatment unit could be operated as two smaller units separated by the high water table areas.

7) Issuance of an Immediate Full-Scale Facility Permit

A facility with an existing interim status land treatment unit submitted a carefully prepared, complete land treatment demonstration as part of their permit application. The demonstration addressed all the requirements of Subpart M - Land Treatment, identifed all the potential problems encountered at the unit and provided measures that will be implemented to correct these problems Because the demonstration addressed all Agency requirements, the issuance of a full operating permit was recommended instead of a two-phase permit.

Permit Issuance

1) Joint Permitting by EPA and a State

Facilities located in a State which has been authorized for the RCRA 'base program', but not the HSWA provisions, may currently be issued joint State and Federal permits which together constitute the "RCRA permit". The State prepares the portion of the permit covering non-HSWA matters. EPA should incorporate the HSWA provisio into the State issued permit or, if necessary, EPA may issue a separate permit for HSWA requirements. In instances where a new facility has a joint permit, the permittee must be informed that construction cannot begin until both the State permit and the EPA HSWA permit are issued (either jointly or separately).

2) Use of HSWA Omnibus Provision to Incorporate Land Disposal Restriction: in Permits

A Region prepared a draft permit in which they used the 'omnibus provision'(§3005(c)(3)) to incorporate proposed land disposal restricti as a permit condition. The 'omnibus provision', as stated in the preamble to the December 1, 1987 final codification rule (52 FR 4578 gives EPA the authority to impose permit conditions above and beyond existing regulatory requirements if the current requirements are inadequate to protect human health and the environment.

The self-implementing HSWA provisions, such as the land disposal restrictions, supersede the §270.4 provision (i.e., "permit as a shield") which states that compliance with a RCRA permit constitutes compliance with Subtitle C. Therefore, the land disposal restrictio apply regardless of whether or not they are included in the permit. OSWER Policy Directive No. 9522.00-1 (Reference 3) clarifies the sel implementing requirements of HSWA.

To simplify enforcement and to clarify the duties of the owner/operator, however, the PAT recommends that permits issued after land ban or other self-implementing HSWA regulations incorporate the requirements of those regulations, as they apply to the specific facility. In the case under discussion, since the restrictions rule was only proposed at the time, the PAT recommended that the permit not contain specific conditions for these restrictions due to the likelihood of changes in the rule.

3) Editing of Permit Content prior to Issuance

Several Regions have prepared draft permits with unedited portions of the permit application appended to the permit. Unedited attachments may not correspond with the wording in the body of the permit and some sections may be contradictory or confuse requirements in the permit. Permit conditions need to be precise.

Appending Part B sections that are not relevant to the permit may mean that any operational changes affecting subjects within those sections, however insignificant, may require a permit modification. The PAT recommends that all portions of the permit be reviewed for "applicability, importance and clarity."

4) Permit Language

A permit prepared for a container storage area stated that the permittee can "store a maximum of 600 drums in the container storage area". Because the permit is an enforceable document, the permit language must be precise. This statement implies that the only containers to be stored at this facility will be drums. The languac should reflect all the types of containers to be stored at this site.

5) Methods for Establishing Background

The use of the minimum detection limit (MDL) to establish background as a ground-water protection standard is an acceptable method. However, the permit should reference the appropriate analytical methods in SW-846 (Reference 13) and specify target detection limits. The new list of Appendix IX to Part 264 includes suggested methods and practical quantification limits (See Reference 4).

6) Permit Condition for Corrective Action Site Investigation

A facility has several abandoned waste disposal ponds (SWMUs) from a previous owner. Based on the results of the RCRA Facility Assessment, the units to be evaluated in the facility's RCRA Facilit Investigation (RFI) should be specified as a permit condition.

Any components required in the RFI, such as the characterization of the nature and extent of contamination, the definition of pathways for migration, the identification of areas threatened by releases an the evaluation of interim measures, should also be specified in the permit. The draft document, RCRA Facility Investigation (RFI) Guidance, July 1987 (Reference 9) should be consulted.

A site investigation could identify a release that does not require immediate remedial measures because it is not currently a threat to human health or the environment, but has the potential to become a threat in the future. Corrective actions under §3004(u) should not be limited to releases that already pose a threat. The monitoring of such a release for a reasonable period of time would be an appropriate permit condition.

Corrective Action

1) Location of the Point of Compliance Wells

Under Subpart F, once ground-water contamination is detected from any regulated unit, the owner/operator is required to establish a

ground-water protection standard as described in §264.92. The point of compliance (POC) must be established directly downgradient of the regulated unit(s).

For corrective action programs under HSWA, however, specific monitoring wells, which were installed as part of the site investigation, may be designated as POC wells. The POC wells for non-regulated soli waste management units should be identifed in the HSWA portion of the permit.

2) Treatment Requirements for Ground Water Removed During Corrective Acti

Permits including corrective action conditions for ground-water treatment programs must not only include pumping and removal requirements but must specify treatment standards or methods of handling contaminated ground water. Although ground water itself is not a hazardous waste, ground water that contains hazardous waste leachate must be managed as if it were hazardous waste since the leachate is subject to regulation under Subtitle C. Once the ground water is treated such that it no longer contains a hazardous waste, the water is no longer subject to Subtitle C regulation. See the memorandum from OSW to Region IV, "RCRA Regulatory Status of Contaminated Ground Water", November 13, 1986 (Attachment D).

3) Selection of Appropriate Treatment Technologies

A facility proposed a corrective action program where contaminated ground water was treated by air stripping. One of the organic contaminants, methyl isobutyl ketone (MIBK), is extremely soluble in water and may not readily volatilize from aqueous solutions.

The degree to which a contaminant leaves the water phase and enters the air phase is dependent on the design of the system employed and on a combination of physiochemical characteristics. A substance's solubility in water and its vapor pressure are key factors for determining whether a substance is amenable to air stripping. MIBK tends to remain in the water phase instead of being released into the air phase. Therefore, MIBK may not be a good candidate for remova from ground water by the air stripping method presented by the owner/operator.

Any proposed technology that is approved as part of the corrective measures at a facility must be based upon the type of contaminants found, the level of contamination, and the technology's ability to meet the treatment standard.

4) Evaluating Air Emissions from Treatment Units

Some treatment technologies do not destroy contaminants but remove them from one medium, such as ground water, and then release them int a second medium, such as air. Air emissions from treatment units,

particularly those resulting from air stripping and other air releas technologies, should be considered by the permit writer before appro a corrective action plan. The owner/operator should be required to determine stack emission rate estimates as well as perform dispersic modeling in order to determine if air emission controls are necessar

While volatile organics released to the air via air stripping are no hazardous waste, releases of hazardous constituents to the air from hazardous waste management or solid waste management units are subje to corrective action authorities. The permit (or a 3008(h) order) s address contamination of both the ground water and the air resulting from waste management at the facility as necessary to protect human health and the environment.

5) Use of Field Studies in Approving Emerging Technologies

A facility proposed to clean up contaminated soil with an in-situ bio-reclamation technology. When a facility proposes to use an emerging technology, such as insitu treatment, which depends upon site specific conditions, it is best to require a pilot scale field study which is separate from any laboratory test. Experience at Superfund sites has shown that methods that work well in the laboratory may not work well in the field. The reverse may also be true. In lieu of any specific Agency guidance, the PAT will be able to provide assistance when evaluating the results of field studies.

6) Verification Monitoring

Until HSWA corrective action policy on monitoring is established, ground-water monitoring to verify that the ground-water protection standards determined for hazardous constituents released from SWMUs have been achieved under a HSWA corrective action should be similar to existing monitoring requirements for compliance with ground-water protection standards at regulated units. This monitoring should include quarterly sampling and analysis of the POC wells for all the contaminants specified in the ground-water protection standard. Flex ibility, however, can be included in the HSWA corrective action perm: After the first few years, for example, a different monitoring scheme may be appropriate.

The permit may also include requirements for monitoring of Appendix IX constituents "reasonably expected to be in or derived from the wastes" in the SWMUs. The frequency of such monitoring (e.g., annually) should be included in the permit.

7) Termination of HSWA Corrective Action Programs

Corrective action programs for releases from regulated units can be terminated when the ground-water protection standard has not been exceeded for three consecutive years (§264.100(f)). This approach can also be applied in HSWA corrective action permits. The HSWA permit, however, may also include a technical feasibility clause. When the maximum possible reduction of contaminants from the ground water has been achieved and the media (ground water) protection

standard is still being exceeded, further use of that technology may not be required. At that point, if no other technology or combinati of technologies will achieve any additional reduction in contaminant levels, the corrective action program could be terminated.

Miscellaneous Topics

Disposal of Non-hazardous Waste in RCRA Regulated Units Waiver Request for Liquid in Landfill Restrictions

A facility wished to dispose of non-hazardous dredge material in a landfill that was undergoing closure after the loss of interim status. The facility sought a waiver under §3004(c)(3), contending that there is no alternative disposal site and that the liquid condition of the dredge material will not present a risk of contamination to any underground source of drinking water.

The owner/operator did not meet the requirement of §3004(c)(3)(A) which requires the demonstration that no reasonably available alternative exists other than placement in their closing landfill. The facility based their contention of no available alternatives on the refusal of neighboring states to accept the dredge material without dewatering. The facility did not adequately investigate all alternatives, such as the deposition of dredge material in a sanitary landfill, which is considered to be an available alternative based upon the Statutory Interpretative Guidance of April 1986 (Reference 12).

The determination of 'reasonably available' also involves technical and engineering considerations. A dewatering option was never thoroughly evaluated. If the dredge material could be dewatered to pass the Paint Filter Liquids Test, the restriction in §3004(c) would not apply. The disposal of nonhazardous waste in a landfill that has lost interim status, however, is discouraged by Agency policy. As stated in Gene Lucero's memorandum of December 20, 1985 (Reference 1), the receipt of non-hazardous waste is acceptable only if it does not delay closure.

Criteria for the Referral of Facilities to the Agency for Toxic Substances and Disease Registry (ATSDR) under §3019

Three facilities, each in different Regions, have ground-water contamination that has migrated off-site. Releases at two of these facilities have contaminated residential wells. At the third facility while direct exposure to contaminated ground water has not been documented, public concern about potential exposure is extreme. Due to the history of contamination at these sites, the off-site migration, and the promixity of the public, the assistance of the Agency for Toxic Substances and Disease Registry (ATSDR) is warranted.

These sites were referred to ATSDR for a "health consultation". A health consultation by the ATSDR enables a Region to determine what information should be gathered (e.g., during a RCRA Facility Investigation) to allow the ATSDR to undertake a more detailed

health assessment at a later date. This consultation could address releases from all land disposal units (e.g. SWMUs) with off-site migration, not just regulated units. See Reference 8 for details on the 3019 process.

Attachment A

PAT Reviews Included in this Summary

Facility	Region	PAT Coordinator	Review Date
American Cyanamid	II	Chris Rhyne	January 1987
Ashland Chemical Co.	V	Janette Hansen	January 1987
B.F. Goodrich	IV	Robert Kayser	November 1986
Dow Chemical	V	Robert Kayser	March 1987
Fondessy Landfill	V	Chris Rhyne	November 1986
G.E. Waterford	II	Chris Rhyne Mark Salee	December 1986
Highway 36	VIII	Dave Eberly Janette Hansen	November 1986
International Paper Co.	IV	Janette Hansen Robert Kayser	March 1987
IT Corporation	V	Chris Rhyne	January 1987
Lion Oil	IV	Nestor Aviles Amy Mills	February 1987
McDonnell-Douglas	VI	Janette Hansen	September 1986
Mills Services	II	Robert Kayser	February 1987
Ross Incineration Services	V	Chris Rhyne	March 1987
Shell Oil	X	Nestor Aviles	February 1987
United Technologies/ Hamilton Standard Site	I	Robert Kayser	April 1987
Union Carbide	II	Dave Eberly	April 1987
U.S. Pollution Control, Inc.	VI	Janette Hansen	February 1987
U. S. Steel	V	Dave Eberly	March 1987

Attachment B

List of Guidance Used in Preparing the PAT Reviews

1. "Accepting Nonhazardous Wastes After Losing Interim Status", Memorandum Gene Lucero, December 20, 1985.

2. Draft Guidance Document: Landfill Design--Liner Systems and Final Cover, (Chapter E only), July 1982.

3. Effect of Land Disposal Restrictions on Permits, Effective Date 9/15/86, Directive No. 9522.00-1.

4. Federal Register, vol. 52, 25942.

5. Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations, July 1986.

6. Permitting of Land Treatment Units: EPA Policy and Guidance Manual on Land Treatment Demonstration, Effective Date 9/17/86, Directive 9486.00-2.

7. Permit Writer's Guidance Manual for Hazardous Waste Land Treatment, Storage and Disposal Facilities, October 1983.

8. Procedural Guidance for Reviewing Exposure Information under RCRA Section 3019, September 1986, Directive No. 9523.00-2A.

9. RCRA Facility Investigation (RFI) Guidance, Draft, April 1987.

10. RCRA Ground-water Monitoring Compliance Order Guidance, August 1985.

11. RCRA Ground-Water Monitoring Technical Enforcement Guidance Document, September 1986, NTIS No. PB87-107751.

12. Statutory Interpretative Guidance of April 1986, April 1986.

13. Test Methods for Evaluating Solid Waste, SW-846, March 1987.

Attachment C

Access to HELP Model User Guide and Software

User Guides

Hydrologic Evaluation of Landfill Performance, Vol. I NTIS PB85-100-840

Hydrologic Evaluation of Landfill Performance, Vol. II NTIS PB85-100-832

Software

c/o Dr. Paul Schroder (601) 634-3709
Environmental Laboratory
Waterways Experiment Station
P.O. Box 831
Vicksburg, Miss. 39180

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

SEP - 2 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Summary of Assistance Branch Permitting Comments

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

TO: Hazardous Waste Management Division Directors
Regions I-X

Attached is the fourth in a series of periodic reports which summarize major issues that Assistance Branch members have addressed in their reviews of specific Part B applications, permits and closure plans. (These reports were formerly called the "PAT Summary Reports"; previous reports were issued in March 14, 1986 (OSWER Policy Directive No. 9523.00-14), March 30, 1987 (OSWER Policy Directive No. 9523.00-12), and March 30, 1988 (OSWER Policy Directive No. 9523.00-15)). These reports cover issues that are of generic national interest rather than strictly site-specific interest. The attached report includes reviews conducted by the Disposal and Remediation Section and the Alternative Technology and Support Section from January 1987 to March 1988. In order to ensure that the report reflects current EPA policy and guidance, we obtained review comments from within OSW and from the Office of General Counsel.

We hope that the recommendations provided in this document will be helpful for permit writers encountering similar situations at other RCRA facilities. By sharing the Assistance Branch's suggestions from a few sites, we hope that permit decision making will be somewhat easier and faster at many more sites nationally. We encourage you to distribute this report to your staff and State permit writers. To make that easier, I have attached multiple copies of the report.

Attachment A to the report lists the facility names, Regions, coordinators, and dates for the reviews summarized in this report. Attachment B provides a list of guidance documents and directives used in preparing the reviews.

If you have any questions, comments, or suggestions on the Summary of Assistance Branch Permitting Comments, please contact James Michael at FTS 382-2231.

Attachments

cc: RCRA Branch Chiefs
Regions I-X
Permit Section Chiefs
Regions I-X
J. Winston Porter
Jack McGraw
Tom Devine
Jeff Denit
Bruce Weddle
Susan Bromm
Ken Shuster
Joe Carra
Jim O'Leary
Suzanne Rudzinski
Elizabeth Cotsworth
Jim Michael
DRS Staff
ATSS Staff
Paul Cassidy
Les Otte
Art Day
Jim Bachmaier
Elaine Stanley
Lisa Friedman
Tina Kaneen
Fred Chanania
Matt Hale
George Garland
Tom Kennedy (ASTSWMO)

OSW Directive No. 9523.00-17

Summary of Assistance Branch Permitting Comments

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OSW Directive No. 9523.00-17

SUMMARY OF ASSISTANCE BRANCH PERMITTING COMMENTS

January 1987 - March 1988

This is fourth in a series of documents summarizing some of the comments provided to Regional permit writers by staff of OSW's Asssistance Branch on permitting. It was formerly called the "PAT Summary Report".

This summary is organized into three sections. The first section, Issue Resolution, provides examples of issues that have been raised at one or more facilities. This section covers special situations where regulations or policy decisions were applied to actual circumstances. The second section, Recommendations, addresses comments routinely made to answer questions on items often overlooked or poorly understood, and to convey technical information. This section should be generally helpful to the permit writer. Finally, there is a section describing new guidance that may be of interest to the Regions.

ISSUE RESOLUTION

Ancillary Equipment on Tank Systems

1) Secondary Containment for Flanges and Joints

Threaded joints and flanges used in tank system piping vary widely. Frequently, the Assistance Branch staff is asked to clarify if a specific design is exempt from the requirement for secondary containment.

An owner/operator asked if a joint consisting of a flange bolted to a second flange is required to have secondary containment. Bolted flange joints, that are above ground and inspected daily, are not required to have secondary containment; however, the completed and installed system must be tested for tightness prior to use.

Secondary containment is intended to apply to any threaded joint system, including threaded joints fabricated of special materials such as teflon or plastic. Any joint where waste may come in contact with the thread must have secondary containment.

2) Secondary Containment for Ancillary Equipment

A facility submitted a design for a secondary containment system for the waste lines entering a neutralization tank. The proposed secondary containment system was an existing

trench that conveyed non-hazardous wastewater to the same neutralization tank. The Assistance Branch was asked to determine if the existing trench was acceptable as secondary containment.

The hazardous waste pipe was to be suspended over the existing trench which was adequately sized to contain both the flow in the pipe, should a leak occur, and the maximum volume of wastewater. Secondary containment, however, must be dry in order to detect any leaks from the hazardous waste line. Once a release is detected, any waste must then be removed. The proposed system, therefore, was not acceptable.

The facility modified its proposal to include a dry trough below the hazardous waste pipe. The second proposal met the full intent of the secondary containment requirement and was deemed acceptable.

New Tank Systems

1) The Status of New Tank Systems at Facilities Permitted between the Promulgation and Effective Dates of the New Tank System Regulations

Any tank system installed after July 14, 1986 is, by definition, a new tank system. About six months fall between this date and the effective date of the revised Federal regulations (January 12, 1987). For tanks subject to RCRA standards but not HSWA, this time lapse is even more pronounced in States that had pre-HSWA authorization and have additional time to adopt equivalent tank system regulations. Can permits issued during this time lag reflect the intent of the revised tank regulation?

In the case of a State-issued permit, the permit must reflect the State statutory or regulatory requirement in effect prior to final permit disposition. If a State has a regulation analogous to Section 270.41(a)(3) (Reference 5) the Director can modify a permit in order to include new statutory requirements or regulations applicable to the permit upon the effective date of the legal authority. Thus, a permit issued for a tank system can be modified to reflect the revised standards when they go into effect.

After the permit modification, any tank system installed after July 14, 1986 would be considered a "new" tank system which must have secondary containment. The phase-in period allowed for 'existing' tank systems would not apply.

The State Director has the option to use a State law analogous to the "omnibus provision" (Section 270.32(b)(2)) to reflect the requirements of the regulations during this lag time. OSWER Policy Directive #9523.00-15 (Refer ence 11) clarifies when to use the (Federal) omnibus provision.

It should be noted that new underground tanks are regulated under HSWA. At this time, no States are authorized to apply these requirements.

Variances for Classification as a Boiler

The Assistance Branch was requested to determine if specific units which do not meet the definition of boiler were eligible for a variance to be classified as a boiler under Section 260.32. Two proposals were reviewed and the following issues were specifically addressed. An evaluation of all the applicable criteria, however, was conducted in each case prior to making the final determination. At both facilities, the inability of either unit to meet any of the criteria for classification as a boiler supports the final determination that these units are not eligible for a variance.

1) Integral Boiler Design of the Combustion and Energy Recovery Sections.

In order for a controlled flame combustion unit to meet the definition of a boiler given in Section 260.10, the combustion chamber and the energy recovery section must be of integral design. Two facilities have units which they refer to as "post-combustion chambers" located between the combustion section and the energy recovery section. The post-combustion chambers are insulated flow passages between the main combustion chamber and the heat recovery section. The owners of these units requested variances. They contend that these passages are not ducts or other connectors which, as stated in the regulations, are not permissible as components between the combustion and energy recovery sections in units which meet the integral design requirement of a boiler.

The owners assert that additional thermal oxidation of wastes occurs in the post-combustion chambers, providing high hazardous waste destruction, and that combustion therefore continues until the gases reach the energy recovery section.

The oxidation of additional waste products, however, does not mean that combustion occurs. Combustion, as defined

in Webster's New Collegiate Dictionary, is a specific process which is "accompanied by the evolution of light and heat". In fact, information on the performance of these units showed a net loss of heat over the length of the chamber instead of a heat gain as would occur during combustion. The conditions in the chamber that promote the oxidation of trace organics is part of a good incinerator design. The Assistance Branch found that these units do not meet this criteria for a boiler.

2) Integral Boiler Design Based Upon the Operation of a Control System Between the Combustion and Energy Recovery Sections

40 CFR Section 260.10, which defines boilers, provides an example of units that do not meet the integral design requirement as units "in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas..." An owner/operator maintained that his unit was a boiler because the combustion section was connected to the energy recovery unit not only by a duct but by a control system as well. The Assistance Branch evaluated the owner's contention that his unit was a boiler.

The control system in this unit does connect the steam raising portion with the combustion chamber. The control system, however, was designed for safety purposes to reduce the risk of explosion and other unsafe conditions. Under unsafe conditions this type of automatic control system would shut the unit down.

True boilers have control systems designed to regulate steam output. Boiler control systems would typically provide at least a 3 to 1 turn down control on steam production by varying the fuel, air and water. When evaluating the appropriateness of any unit to meet the definition of a boiler, the common and customary usage of similar units is important. The lack of steam control by this unit's control system is typical of incinerators. The Assistance Branch noted that the lack of a true boiler control system supported the denial of the boiler petition.

3) Variance Petition under Section 260.32 for Classification as a Boiler Based upon Innovative Design of the Unit

An owner submitted a petition for classification of his unit as a boiler. He maintained that the innovative techniques employed during the construction of his unit should be a factor in the evaluation of his petition since

the boiler classification variance was meant to allow for new or unusual units which EPA did not have the opportunity to consider when developing the boiler definition. During the review of the petition, the Assistance Branch evaluated the performance of the innovative component in order to determine if it was significantly different from that of the current technology.

The innovative component was the insulation around the post-combustion chamber. The insulation was constructed of 8 inches of compressed refractory material installed by a unique, soon to be patented process. The owner of the unit and the designer of the process stated that the use of this material was innovative.

The performance of the insulation was both theoretically and practically evaluated. Actual performance was considerably less than what was anticipated from the theoretical calculations. Based on the theoretical heat transfer calculations, the performance of the innovatively applied insulation was not significantly better than that for insulation designed and installed according to current incinerator industry standards. While the installation technique for the insulation may be "innovative", the insulation process did not provide any improvement over current practice. Thus, even though the insulation was different from the type normally used, the difference was deemed insignificant since it achieved results similar to conventional insulation.

4) Thermal Efficiency Requirement for Boilers

Section 260.10 states that any "boiler" must "maintain a thermal energy recovery efficiency of at least 60 percent". As part of a demonstration to support a waiver petition for classification as a boiler, a unit was described as operating with a 65% energy recovery. The Assistance Branch evaluated this claim.

The unit in question is not able to measure the fuel flow rate and the waste addition varies by 50 percent. Without appropriate documentation, the thermal efficiency data is unsupported. The determination of boiler efficiency should be conducted under controlled conditions following one of the methods certified by the American Society of Mechanical Engineers.

Incinerators

1) Use of Thermal Relief Vents

Design drawings in a permit application for a new incinerator included a thermal relief vent between the combustion chamber and the air pollution control equipment. The Assistance Branch was requested to determine if the use of a vent to bypass the air pollution control equipment should be allowed.

The thermal relief vent was proposed to protect the air pollution control equipment from excessive heat during emergency situations such as failure of power and water cooling systems. OSWER Policy Directive #9488.00-3 (Reference 1) discusses the acceptability of these vents in new incinerators. Indiscriminate use of relief vents is deemed to be a violation, however, EPA has recognized that they may occasionally be needed to protect employees and air pollution control equipment. Thermal relief vents, therefore, are allowed in the design of new incinerators.

The permit, however, should require the design to include the necessary backup systems to reduce the use of these vents. The system should have interlocks such that the vent can only open after the waste feed has been cut off. The operating plan should include a list of parameters and cut-off points at which the vent may be used. A review of the permittee's operating plan should be made to identify and eliminate the use of the thermal relief vent in situations where it may not be absolutely necessary.

Minimum Technology Requirements for Vertical and Lateral Expansions

1) Application of Minimum Technology Requirements to Vertical Expansions.

A facility planned to expand its landfill vertically. During the public comment period on their draft permit, the applicability of minimum technological requirements to such an expansion was raised. The Assistance Branch was requested to evaluate the issue.

The facility opened the landfill trench in question in 1978 under a TSCA permit. Currently the unit accepts RCRA waste under interim status. The proposed vertical expansion would not exceed the capacity of the unit stated in the Part A application, and there are no limits in the

existing permits on the elevation of RCRA wastes placed in the unit. The proposed expansion will extend 21 feet vertically above the original grade limitation for TSCA wastes; however, no waste will be placed beyond the existing lateral boundaries.

The Assistance Branch found that the proposed vertical expansion is permissible without meeting the minimum technological requirements because: (1) The proposed vertical expansion does not exceed the unit boundaries; and (2) The landfill was in use and operational prior to the date of the enactment of HSWA, therefore, the above-grade expansion does not fit the definition of a new unit.

May 1985 guidance (Reference 4), however, states that a vertical expansion beyond any hazardous waste permit capacity or elevation limits affects the operational status of the unit. If the operation of the unit was limited on November 8, 1984, a subsequently proposed vertical expansion would constitute a "new unit" and is subject to minimum technology requirements. This facility has no vertical RCRA hazardous waste permit limits; therefore, the minimum technology requirements do not apply to this vertical expansion.

Lateral Expansion During Closure.

After a RCRA Facility Investigation (RFI), an owner/operator planned to close several solid waste management units by consolidating the waste from two waste soil piles with the residue in a surface impoundment regulated under interim status. The volume of the resulting waste mixture is estimated to exceed the existing capacity of the impoundment. The Region was concerned that the proposed closure plan would not be permissible.

The consolidation of waste material is an acceptable closure activity. If the proposed consolidation necessitates the placement of any hazardous waste beyond the boundary of the regulated unit or beyond any limits imposed by a RCRA permit since November 8, 1984, the action results in a lateral expansion which must meet the minimum technological requirements. Moreover, if the consolidation into the surface impoundment occurs after November 8, 1988, the surface impoundment must meet minimum technology requirements. Finally, if waste from any of the units being placed in the impoundment are subject to the land disposal ban, then the waste may not be placed in the impoundment unless it is treated in accordance with 40 CFR 268 Subpart D or the owner/operator has sucessfully petitioned under 40 CFR 268.6.

Waiver Petitions from Minimum Technological Requirements - 3004(o)(2)

A facility may petition for a waiver from minimum technological requirements under Section 3004(o)(2) if their alternate design and specific operating practices, when viewed in combination with the characteristics of the site location, will prevent the migration of hazardous constituents into ground or surface water as effectively as the required design. The Assistance Branch is often asked to evaluate facility specific factors to see if they meet the conditions of the waiver. During two recent evaluations, the following issues were raised.

1) Minimum Technology Waiver Petition due to Alternate Design and Operational Factors

An owner/operator of an existing surface impoundment proposed to install a liner system consisting of a 36-ml hypalon sheet over a leachate collection system constructed over two existing 4-inch layers of bentonite separated by a drainage layer. The owner contends that this design is at least as effective as the minimum technology requirements (MTR). The MTR specify a 36-inch clay layer because a liner of such thickness would be constructed by the placement of several clay lifts. Discontinuities in an individual lift would be unlikely to occur in the same area on subsequent lifts. The existing 4-inch layer is applied in one lift and does not provide any safeguard over any irregularities that might allow leakage.

While the new design alone was insufficient, the owner/operator also planned to use operational factors which he claimed would make the alternate design as effective as the minimum technology requirements. The impoundment has a limited life span with planned closure in 1989 which makes the unit a short-term operation. The leachate system does not show any evidence of a leak, and no ground-water contamination has been found. If a leak were to occur, the owner plans to drain the impoundment. While the liquids stored in the impoundment are listed hazardous wastes, they do not exhibit any of the characteristics for which the wastes were listed. The Permit Assistance Staff recommended that the waiver be granted contingent upon the short-term operation of the unit.

2) Waiver Petition Demonstrating Design and Operating Practices which Prevent Migration

A facility petitioned for an alternate design and operation approach that prevents the migration of contaminated ground water from under the unit. The Assistance Branch was asked to determine if the proposed design met the intent of the 3004(o)(2) waiver provision.

The owner of the surface impoundment proposed to install intragradient cut-off walls downgradient of their surface impoundment. The collected, contaminated ground water would be removed from behind the walls and treated. Migration of contaminated ground water beyond the waste management area, therefore, would be prevented.

Section 3004(o)(2) allows a waiver only if the owner can demonstrate that the proposed alternative will "prevent the migration of any hazardous constituents into the ground water". The term "ground water" is intended to mean any ground water and not ground water beyond the waste management area. In order to meet the equivalency test required by this waiver, the alternate liner design must be as effective as the minimum technology requirements for liner design in preventing the migration of any constituent through the liner. The Assistance Branch recommended denial of this waiver request.

RD&D Permits

1) Qualifying for a RD&D Permit for an Incinerator

Research, development and demonstration permits, regulated by Section 270.65, were intended to be available for processes and units which treat hazardous wastes with innovative technologies. Several Regions have received applications for RD&D permits for technologies already established for treating hazardous waste and which are specifically regulated elsewhere under RCRA. The Assistance Branch was asked to determine if incinerators, in particular, could be eligible for a RD&D permit and under what circumstances they would qualify.

The purpose of RD&D permits is to produce data on technical or economic feasibility of experimental processes or technologies; however, existing treatment methods may qualify if the permit is intended to allow treatment of waste streams not previously treated by this type of unit, or if the operating conditions would be modified for different or expanded uses of the technology. The Assistance Branch, after discussion with the Office of General Counsel, clarified that incinerators are eligible for RD&D permits (Reference 8) if they further the

knowledge on treatability, design and/or combustion research through experimental (but not commercial) research applications.

In one such instance, a research facility applied for an RD&D permit for an incinerator and they proposed to conduct a study on the products of incomplete combustion (PICs) from incinerators. They also proposed to produce a biological system study on the fate and transport of PICs in the environment. The results of these proposed studies would add to the body of information on the characteristics and quantity of residuals emitted from incinerators. Based upon the proposed study of the effects of PICs on biological systems, the proposed incinerator was determined to be eligible for a RD&D permit.

2) Operating Time for RD&D Permits

Section 270.65(a)(1) states that an RD&D permit can be issued for up to 365 days of operation. A particular facility wishes to continue operation under its RD&D permit for longer than one calendar year. A Region asked the Assistance Branch for appropriate wording on the permit.

While RD&D permits are limited to 365 days of actual operation, many experimental units operate sporadically for a few days and are then shut down for longer periods while the results are evaluated. In some cases, 365 days of operation may extend over numerous years. In order to keep track of the unit's operation, guidance (Reference 3) suggests that permit writers may include a calendar-based expiration date in RD&D permits in cases when warranted.

RD&D permits may be renewed up to three times. The appropriateness of the justifications for an extension should be considered with any future permit renewal applications. The application will be evaluated based upon the initial results of operation, the need for more data, any changes in operating conditions and the occurrence of any enforcement actions.

RECOMMENDATIONS

Tank Systems

1) Applying Regulations Promulgated Under Two Authorities

The universe of hazardous waste tank systems currently affected by the July 14, 1986 regulatory amendments varies from State to State. The tank system regulations were promulgated under two authorities. Those applicable to RCRA tank systems are now in effect only in States that do not have authorized RCRA base programs. States authorized for the base RCRA program must amend their programs before the regulations become effective. Those provisions applicable to HSWA regulated tank systems are effective in all States. The Assistance Branch is often asked to clarify which provisions apply universally and which apply only in unauthorized states.

The following requirements apply in all States:

- interim status requirements applicable to small quantity generator tank systems (Section 3001(d))
- leak detection for all new underground tanks that cannot be entered for inspection (Section 3004(o)(4))
- permitting standards for underground tanks that cannot be entered for inspection (Section 3004(w))

Regulations applicable to above-, on-, in-, and enterable underground tanks currently apply only in unauthorized States. Authorized States have until July, 1988 (if only regulatory changes are needed) or July, 1989 (if statutory changes must be made) to amend their programs to reflect the Federal requirements. Further information is provided in the Implementation Strategy for Tank Systems (Reference 12).

Incinerators

1) Selection of Principle Organic Hazardous Constituents (POHCs)

Current research by the University of Dayton Research Institute has led to a new incinerability ranking of Appendix VIII compounds based upon thermal stability data (Reference 9). Until now, incinerability ranking of Appendix VIII compounds has been based upon a compound's heat of combustion.

Guidance is being developed to reflect the new ranking of compounds. A Regional Office proposed to specify at least one POHC based on each of these rankings as an interim approach. The Assistance Branch agreed that this approach is acceptable, and suggested additional criteria, such as chemical structure, toxicity and concentration, which may also be used.

2) Use of Surrogate Wastes During a Trial Burn

Surrogate wastes are mixtures of chemicals combined to exhibit the characteristics of the actual waste materials and to contain the same hazardous chemicals expected to be burned by an incinerator. Surrogate wastes are often proposed by facilities for use during the trial burn. Simulating the burning characteristics of any individual waste, however, is very difficult. As a result of this difficulty, facilities should use actual wastes during the trial burn if they are available. In cases where the principle organic hazardous constituents (POHC) concentrations in the actual waste are not high enough to determine the destruction and removal efficiency (DRE), the wastes may be spiked.

If the facility cannot modify its plan to burn actual wastes, such as in the case of a commercial incinerator, the owner/operator should provide justification for the use of surrogates. If any facility must use surrogate wastes, the surrogate waste should be as much like the actual waste as possible. If an incinerator is planning to burn solid waste, surrogate solids should be mixed with the POHC feed.

3) Destruction and Removal Efficiency (DRE) Calculations

A facility planned to include in their DRE calculations the POHC input into the system from city water used to prepare a lime slurry for removing acid gases by their scrubber. During a review of the trial burn plan, the Assistance Branch evaluated their methodology for the DRE determination.

According to Section 264.343(a)(1), the mass feed rate of POHC input used for DRE calculations must equal the mass feed rate in the waste stream only. In order to complete the determination, all the POHCs in the exhaust gases must be included in the calculations. Any additional POHCs volatilized from the slurry used in the scrubber system must be included if they are released with the emission gases.

4) Sampling During a Trial Burn

In their trial burn plan, a facility proposes to obtain one grab sample per test run for residue analysis. The proposed frequency of sample collection is inadequate for the collection of a representative sample from any test run. An acceptable plan would be to collect grab samples at frequent intervals over the entire test period. These samples should be composited before analysis.

5) Use of Sampling Trains in Modified Method 5 (MM5)

Several facilities planned to use a single MM5 train to sample for both particulates and semi-volatile POHCs during a trial burn. This approach is incorrect. The drying of the filter for the particulate analysis results in the potential loss of semi-volatile compounds. The correct procedure involves the use of two separate trains, one for particulate sampling and one for the sampling of semi-volatile organics.

Ground-water Monitoring

1) Confirming Ground-water Contamination

A draft permit condition for a detection monitoring program required three sampling events to confirm ground-water contamination. Under Part 264 Subpart F, only one confirmatory sampling event is necessary to trigger a compliance monitoring program.

The Subpart F requirement for triggering a compliance monitoring program is based upon one sampling event and one confirmatory sampling. A slug of contamination detected in the initial sampling could pass the compliance point during the time it takes to obtain results from additional confirmatory sampling events.

2) Disposal of Purged Water.

The ground-water sampling and analysis plans at many facilities have no procedures for handling purged water. Purged water from monitoring wells should not be discarded onto the ground because the purged water could contain hazardous waste. It should be tested for hazardous characteristics in order to determine an appropriate disposal method, particularly if previous sampling events indicated the presence of hazardous constituents. Alternately, collected purge water can be disposed back into surface impoundments that are permitted to receive any constituents expected in leachate or contaminated ground water.

Ground-water Modeling

1) Determination of Site-specific Permeability for Application in a Model.

A facility proposed to use a model to support their no-migration waiver petition. They obtained several soil samples in order to determine a soil permeability factor. A mean value was calculated for input into the model.

Modeling efforts to determine the potential for migration of hazardous constituents to or in ground water should use the worst-case value measured representative of a site in order to incorporate a margin of safety. The applicant was asked to re-run the model using the highest value of the coefficient of permeability.

2) Selection of Critical Constituents for Use in a Transport Model

A waiver applicant planned to demonstrate no migration into ground water by selecting critical constituents for use in their modeling effort. Inputs included half-life and retardation factors. The applicant selected acrolein and acrylonitrile based upon their relatively long half-lives in ground water.

However, the high retardation factors which indicate slow movement, make the selection of these two chemicals unrepresentative of the worst case. The most appropriate constituent(s) for modeling must be based on an evaluation of all relevant factors. Concentration of the constituents in the waste and their retardation factors should be evaluated along with half-life when selecting constituents with the greatest potential to migrate. The Assistance Branch recommended that other constituents be chosen in this case.

3) Use of Appropriate Models based upon Site Characteristics

A waiver applicant proposed to use a one-dimensional model to demonstrate no migration of hazardous constituents into ground water. The hydrogeological and soil characteristics of the site displayed several non-uniformities and could be described as a fairly complex system.

A one-dimensional model, as proposed by the applicant, can be very limiting. The attributes of the model must reflect the conditions observed at the site. Also, data representative of the whole site should be collected for input into the chosen model. Given the complexities of the site, a more sophisticated model, such as a 2- or 3-D model, would be necessary to support a demonstration of a 'no migration'.

Landfill Design

1) Composite Bottom Liner Equivalency

A facility proposed to install a 60-ml high density polyethylene (HDPE) liner over a compacted clay layer with a permeability not exceeding 1×10^{-6} cm/sec as the lower liner for a new cell. The Assistance Branch was asked to determine if the proposed liner was equivalent to the current requirement under Section 264.301(c) for a 3 foot compacted clay-only liner with a permeability not greater than 1×10^{-7} centimeters per second.

The staff felt that a composite liner with a clay component of 1×10^{-6} cm/sec permeability was equivalent to a clay liner with lower permeability. Regulations proposed on March 28, 1986 (Reference 6), when they become effective, will be more restrictive. They will require a composite bottom liner consisting of a flexible membrane liner over a 3 foot clay layer with a permeability not more 1×10^{-7}. Until then, the clay-only liner requirement is the standard applied to evaluate liner equivalency.

2) Evaluation of a Steep Slope Using the Universal Soil Loss Equation

A facility proposed to install a cover with a slope that significantly exceeds the recommended 3-5% grade. The owner maintains that the annual soil loss, based upon the Universal Soil Loss Equation, would be just less than the 2 tons/acre/year limit recommended by EPA. The Assistance Branch was asked to review the facility's calculations.

The five factors used in the soil loss equation are subjective and selected based upon the site engineer's best judgement. If slightly larger factors were applied than the ones selected by the applicant, the soil loss would be substantially greater (as much as 33 tons/acre/year). In order for the Assistance Branch to accept the applicant's predicted soil loss, the anticipated loss should be significantly less than 2 tons/acre/year so that any underestimation of the selected factors would not result in an actual loss of more than the soil loss limit. The Assistance Branch requested additional documentation from the applicant.

3) Demonstration of Material Durability

An applicant conducted a demonstration of material durability by using polyethylene tanks to perform the compatibility testing on their HDPE liner components. The polyethylene tank material absorbs the same kinds of chemicals as the HDPE samples, thereby reducing the constituent level in the test leachate. This could lead to an unrealistic strength data after immersion testing. The Assistance Branch recommends that glass vessels be used for immersion testing.

4) Minimum Technological Requirements for Secondary Soil Liner

A facility planned to construct a side slope liner by scarifying and remolding the exposed soils prior to placement of the synthetic membrane. Section 264.301(c) requires that this liner be constructed "with at least a 3 foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} cm/sec." Scarifying and remolding alone do not meet the requirements for recompaction.

Permit Conditions

1) Specification of an Adequate Number of Emergency Coordinators

Assistance Branch review of a Part B application addressed the contingency plan for the facility. This facility had only one emergency coordinator designated in their plan.

The regulations in Section 264.55 require that an emergency coordinator be available at all times. At the minimum, one additional employee must be designated and trained as emergency coordinator to provide around-the-clock and vacation coverage. At this particular facility, the Assistance Branch recommended that two more emergency coordinators be designated in order to provide adequate coverage.

2) Requirement for Additional Testing as a Permit Condition

In a draft permit, a State required that all stabilized wastes that have passed the paint filter test also be subjected to an unconfined compressive strength test at 50 psi. While a Region can specify permit conditions for additional testing, the current Federal policy and the proposed rule on containerized liquids are less stringent than the draft State permit condition. The State is allowed, however, to be more stringent than the EPA. Note that under the Federal policy, the compressive strength test is necessary only if the Region is unsure that true chemical stabilization has occurred.

AVAILABILITY OF NEW GUIDANCE

Tank Systems

EPA guidance document, "Compilation of Persons Who Design, Test, Inspect, and Install Storage Tank Systems" (EPA/530-SW-88-019) is now available. The document provides a list of individuals and firms who provide the services of an independent, qualified, registered professional engineer, corrosion expert, or qualified installation inspector as required in the July 14, 1986 regulations for hazardous waste tank systems.

Attachment A

Assistance Branch Staff Reviews Included in this Summary

Facility Name	Region	Staff Coordinator	Review Date
Buckner Barrel	II	Chester Oszman	May 1987
Ciba-Geigy (Glen Falls, N.Y.)	II	Chris Rhyne	June 1987
Ciba-Geigy (Queensbury, N.Y.)	II	Chris Rhyne	March 1988
Fort Barton Industries	I	Sonya Stelmack	February 1987
General Dynamics	I	Sonya Stelmack	June 1987
General Electric (Waterford, N.Y.)	II	Chris Rhyne	February 1988
Eli Lilly and Company	V	Chester Oszman	June 1987
Envirosafe Services (Grand View, Idaho)	X	Amy Mills	February 1987
Memtek Corporation	I	Nestor Aviles	January 1987
Monsanto (Chocolate Bayou, TX)	VI	Dave Eberly	April 1987
Moore Business Forms and	VI	Nestor Aviles	May 1987
National Institute of Health (NIH)	III	Nestor Aviles	February 1988
SCA Chemical Services	II	Chris Rhyne	December 1987
SOHIO	VI	Chris Rhyne	October 1987
Union Carbide Agriculture Products Company	III	Chris Rhyne	July 1987
U.S. Ecology	IX	Chris Rhyne	February 1988
USPCI	VIII	Dave Eberly	January 1988

Attachment B

List of Guidances Used in Preparing the Assistance Branch Reviews

1. "Acceptability of Thermal Relief Vents on Hazardous Waste Incinerators", OSWER Policy Directive #9488.00-3.

2. Compilation of Persons Who Design, Test, Inspect, and Install Storage Tank Systems, February 29, 1988, EPA/530-SW-88-019.

3. Guidance Manual for Research, Development, and Demonstration Permits under 40 CFR Section 270.65, July 1986, EPA/530 SW-86-008, OSWER Policy Directive #9527.00-1A.

4. Guidance on the Implementation of the Minimum Technological Requirements of HSWA of 1984, Respecting Liners and Leachate Collection Systems; EPA/530-SW-85-012.

5. "Hazardous Waste; Codification Rule for the 1984 RCRA Amendments" 52 FR 45788, July 15, 1985.

6. "Hazardous Waste Management System; Proposed Codification of Statutory Provisions", 50 FR 10706.

7. "Hazardous Waste Management System; Preamble to the Final Codification Rule", 50 FR 28706.

8. "Incinerator Eligibility for RD&D Permits" Memorandum from Susan Bromm, Acting Director, Permits & States Programs Division, March 8, 1988.

9. "Predicting Emissions from the Thermal Processing of Hazardous Wastes", Hazardous Wastes and Hazardous Materials, June 30, 1986.

10. Questions and Answers Regarding the July 14, 1986 Hazardous Waste Tank System Regulatory Amendments, August 1987, EPA/530-SW-87-012.

11. "Summary of Permit Assistance Team Comments", 1988, OSWER Policy Directive #9523.00-15.

12. "Implementation Strategy for the Hazardous Waste Tank System Regulations". EPA/530-SW-87-018. May 1987.

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

MAR 14 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Summary of Assistance Branch Permitting Comments

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

TO: Regional Waste Management Division Directors
Regions I-X

Attached is the fifth in a series of periodic reports which summarize major issues that Assistance Branch staff have addressed in their reviews of specific Part B applications, permits, closure plans and in their responses to site-specific situations[1]. These reports cover issues that are of generic national interest rather than strictly site-specific interest. The attached report includes reviews conducted by the Disposal and Remediation Section and the Alternative Technology and Support Section during April and May, 1988. To ensure that the report reflects current EPA policy and guidance, we obtained review comments and concurrences from within OSW, from the Office of Waste Programs Enforcement, and from the Office of General Counsel.

We hope that the recommendations provided in this document will be helpful for permit writers encountering similar situations at other RCRA facilities. By sharing the Assistance Branch's suggestions from a few sites, we hope that permit decision-making will be somewhat easier and faster at many more sites nationally. We encourage you to distribute this report to your staff and State permit writers. To make the distribution easier, I have attached multiple copies of the report.

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[1] (These reports were formerly entitled "PAT Summary Reports": previous reports were issued on March 14, 1986 (OSWER Policy Directive No. 9523.00-14), March 30, 1987 (OSWER Policy Directive No. 9523.00-12), March 30, 1988 (OSWER Policy Directive No. 9523.00-15), and September 2, 1988 (OSWER Policy Directive No. 9523.00-17)

Attachment A to the report lists the facility names, Regions, review coordinators, and dates for the reviews summarized in this report. Attachment B provides a list of guidance documents and directives used in preparing the reviews.

If you have any questions, comments, or suggestions on the Summary of Assistance Branch Permitting Comments, please contact Jim Michael, Chief, Disposal and Remediation Section, OSW at FTS 382-2231.

Attachments

cc: RCRA Branch Chiefs
Regions I-X
Permit Section Chiefs
Regions I-X
Jon Cannon
Jeff Denit
Jim O'Leary
Joe Carra
Matt Hale
Ken Schuster
Suzanne Rudzinski
Elizabeth Cotsworth
Alex Wolfe
Jim Michael
DRS Staff
ATSS Staff
Art Day
Les Otte
Ken Skahn
Susan Bromm
Steve Heare
Scott Parrish
Lisa Friedman
Tina Kaneen
Fred Chanania
Bob Dellinger
Tom Kennedy (ASTSWMO)

Summary of Assistance Branch Permitting Comments

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SUMMARY OF ASSISTANCE BRANCH PERMITTING COMMENTS

April 1988 - May 1988

This report is the fifth in a series of documents summarizing some of the comments provided to Regional permit writers by OSW's Assistance Branch. The report is organized into two sections. The first section, Issue Resolution, provides examples of issues that have been raised at one or more facilities. This section covers special situations where regulations or policy decisions were applied in actual circumstances. The second section, Recommendations, addresses comments routinely made to answer questions on items often overlooked or poorly understood, and to convey technical information. This section should be generally helpful to the permit writer. A contact person has been listed for each item to answer additional questions.

ISSUE RESOLUTION

Popping Furnaces

1) Automatic Waste Feed Shut-off

The Army is in the process of applying for permits for their munitions deactivation (popping) furnaces that are located at about a dozen Army facilities around the nation. These "popping furnaces" are hazardous incinerators where the waste material is obsolete munitions that must be exploded in the incineration chamber during the incineration process. The explosive nature of the waste poses specific problems unique to these units in meeting Subpart O requirements.

Section 264.345(e) requires that "an incinerator must be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits . . .". Explosive wastes in the "hot zone" near the furnace cannot be safely stopped before the incinerator chamber due to risk of explosion outside the unit. A design was proposed at an Army facility that meets the requirement for an automatic waste feed cut-off without compromising safety. The proposed design consists of two conveyors. The first conveyor feeds waste munitions onto a second conveyor which, in turn, feeds the munitions in the "hot zone" into the feed chute. The automatic control would stop the first system in the event of deviations from permit operating conditions, while the waste in the "hot zone" would continue safely into the unit.

The Assistance Branch reviewed the proposed waste feed system and concurs that this system meets the regulatory requirements under Section 264.345(e) for an automatic waste feed cut-off.

Contact: Sonya Stelmack 202 or FTS-382-4500

2) Fugitive Emissions

Fugitive emissions are characteristic of popping furnaces during the explosion of the munitions waste in the incinerator chamber. Section 264.345(d) requires that fugitive emissions from the combustion zone be controlled by keeping the combustion zone totally sealed; or by maintaining a combustion zone pressure lower than atmospheric pressure; or by an alternate method which can be demonstrated to provide fugitive emissions control equivalent to the maintenance of combustion zone pressure lower than atmospheric.

An Army facility proposed to maintain lower than atmospheric pressure in their combustion zone; however, they could not do so continuously. They requested that the permit be worded so that a specific number of positive pressure excursions would be allowed. The Assistance Branch concluded that allowing positive pressure excursions would not meet the regulatory requirement for fugitive emission control. The Assistance Branch informed the Army that their other proposed option of providing a totally enclosed system where the collected fugitive emissions would then be returned to the incinerator with the air intake would be acceptable. A more recent Army proposal to enclose the furnace retort in a negative-pressure shroud rather than totally enclosing the system will also be considered, provided the Army submits adequate supporting data.

Contact: Sonya Stelmack 202 or FTS-382-4500

Subpart X - Miscellaneous Units

1) Units Regulated under Subpart X

A facility has ten units that the owner/operator maintains are miscellaneous units which should be regulated under Subpart X. The owner/operator describes these units as pits. Wastewater containing reactive waste enters the unlined pits. The liquid is first allowed to evaporate or percolate out of the units. The owner/operator then ignites the remaining residue after the liquid is removed.

The Region contends that these units are surface impoundments and should be regulated under Subpart K. The Assistance Branch was asked to evaluate the nature of these units and identify the applicable regulations.

Surface impoundments may be used to store, dispose or treat hazardous waste. The process occurring in these units is the treatment of wastewater (which does not have the potential to detonate) by dewatering with the subsequent open burning of the residue. Additionally, Section 260.10 specifically includes pits as an example of surface impoundments. Therefore, all requirements applicable to surface impoundments, including land disposal restrictions, November 8, 1988 retrofit deadlines, and minimum technology requirements, apply to these units. Subpart X is intended to cover units not regulated elsewhere and will not replace or supercede any restrictions or requirements contained in another Subpart. Units that are containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, boilers, industrial furnaces and injection wells are specifically excluded from Subpart X.

If the Regional Administrator feels that the Subpart K standards do not provide adequate protection during the burning phase of the treatment process, additional permit conditions may be based upon the HSWA omnibus provisions in Section 3005(c) in order to protect soil and air.

Contact: Chet Oszman 202 or FTS-382-4499

2) Open Burning/Open Detonation (OB/OD) Unit Requirements

Non-military waste explosives can be open burned/open detonated if the waste has the potential to detonate as stated in Section 265.382. If the waste explosives, including wastes consisting of part solvent, do not have the potential to detonate, the waste cannot be destroyed in OB/OD units. Solvents contaminated with explosives to the extent that they have the potential to detonate may be open burned provided that the unit qualifies under either 264, Subpart X or 265, Subpart Q. The open burning and detonation of waste explosives is considered to be a treatment process rather than waste disposal, and therefore the land disposal deadlines and restrictions do not apply. Treatment residues, however, may be subject to such restrictions.

Contact: Chet Oszman 202 or FTS-382-4499

Even when commercial fuels are used, there is the potential for ignitables or hazardous constituents to be released to the surrounding soil and surface water. The individuals responsible for conducting the exercise should be advised to prevent any such releases. In situations were releases do occur and these releases may pose a threat to human health or to the environment, a variety of Federal and/or State enforcement/cleanup authorities may be called upon.

Contact: Chet Oszman 202 or FTS-382-4499

Closure

1) Use of Soil Background Levels for Clean Closure

Several Regions requested clarification on setting soil cleanup levels at facilities that plan to achieve clean closure. As stated in the preamble to the March 19, 1987 final regulations, verified reference doses (RfDs) and Carcinogenic Potency Factors (now correctly called Carcinogenic Slope Factors, or CSF) can be used to determine cleanup levels for contaminants when they are available. In cases where no Agency-recommended levels exist, the soil cleanup level may be based on either background levels or data developed by the owner/operator to support a health-based limit.

Background levels can be determined in two ways. Soil samples can be taken from uncontaminated areas of the facility and at representative depths. The background samples must be taken in areas that are not contaminated from spills or by the operation of the waste management unit or in some cases, by the operation of any manufacturing processes that may be present. The second approach uses published literature as the source of naturally-occurring levels in similar soils to establish background levels.

At one facility the chemicals of concern were lead and cadmium. At that time, the Office of Research and Development (ORD) was evaluating data on the toxicity of both of these substances. While the toxicological information for lead and cadmium was undergoing current review, the RfD for cadmium (0.0005 mg/kg/day) was likely to be approved and could be used to set a soil cleanup level. After applying the appropriate exposure assumptions, the RfD translated into a cleanup level of 9 mg/kg of cadmium. The cadmium level proposed by the owner/operator for the closure of their land disposal unit was acceptable as it was based on the proposed RfD. (The RfD of 0.0005 mg/kg/day was approved on May 25, 1988.)

3) Permit Requirements for Waste Explosives

The Assistance Branch was asked to clarify the circumstances under which the disposal of explosives would require a permit and to define the point at which unused explosives become a waste.

A Subpart X permit or interim status is necessary for the non-emergency open burning/open detonation of waste explosives. The immediate response provisions of Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) allow an exception to the permit requirement to be made in situations where the threat of explosion (i.e., the discharge or threat of discharge of a hazardous waste) presents an emergency situation. If immediate action is not required, but the threat to human health and the environment persists, the Director may issue an emergency permit under Section 270.61(a), bring an imminent hazard action under RCRA Section 7003, or perform a removal action pursuant to CERCLA Section 104.

When explosives are fulfilling their normal use pattern and there is no intent to discard them, they are not hazardous waste nor are they subject to Subpart X. However, damaged or leaking explosives or other undetonated explosives that, for safety reasons, cannot be used (such as expired shelf life) are waste, and can be hazardous waste.

Contact: Chet Oszman 202 or FTS-382-4499

4) Applicability of Subpart X Permits to Fire Training Exercises

Fire fighters routinely train by extinguishing blazes set as part of a training exercise. Often various types of fuel are used to ignite the training structure. The Assistance Branch was asked to determine if these exercises and training areas require Subpart X permits.

The burning of commercial fuel in fire training exercises is within the normal use of that fuel product. However, verification must first be made to establish that the material to be burned is actually commercial fuel. Once the material is verified as commercial fuel, burning in fire fighter training exercises does not constitute a RCRA regulated activity. If the material to be burned is not a commercial fuel but any other ignitable hazardous waste such as used oil or spent solvents, this type of open burning is prohibited.

Even when commercial fuels are used, there is the potential for ignitables or hazardous constituents to be released to the surrounding soil and surface water. The individuals responsible for conducting the exercise should be advised to prevent any such releases. In situations were releases do occur and these releases may pose a threat to human health or to the environment, a variety of Federal and/or State enforcement/cleanup authorities may be called upon.

Contact: Chet Oszman 202 or FTS-382-4499

Closure

1) Use of Soil Background Levels for Clean Closure

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At one facility the chemicals of concern were lead and cadmium. At that time, the Office of Research and Development (ORD) was evaluating data on the toxicity of both of these substances. While the toxicological information for lead and cadmium was undergoing current review, the RfD for cadmium (0.0005 mg/kg/day) was likely to be approved and could be used to set a soil cleanup level. After applying the appropriate exposure assumptions, the RfD translated into a cleanup level of 9 mg/kg of cadmium. The cadmium level proposed by the owner/operator for the closure of their land disposal unit was acceptable as it was based on the proposed RfD. (The RfD of 0.0005 mg/kg/day was approved on May 25, 1988.)

The RfD for lead is undergoing revision as a result of new information on the neuro-behavioral effects of lead. The RfD workgroup is not expected to reach a decision on the new level in the near future. Lead is also undergoing evaluation to determine if it acts as a potential carcinogen via oral exposure. The determination of a CSF is expected to take a while; therefore, soil cleanup levels for lead should be based on background levels.

Contact: Chris Rhyne 202 or FTS-382-4695

2) Redesignating Unit Type during Interim Status

An owner/operator wishes to redesignate a unit that has been operating as an interim status surface impoundment as a landfill. The owners propose to stabilize the waste, retain the stabilized waste, redesignate the unit as a landfill and continue operations. The bottom liner system of the unit does not meet the minimum technology requirements. As a surface impoundment, the owners must either retrofit or stop receiving wastes by November 8, 1988. If the unit stops receiving waste, it must close in order to comply with Section 3005(j) requirements.

Under Section 270.72(c), changes in process can be made during interim status only under the following two circumstances:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or;

(2) It is necessary to comply with Federal regulations or State or local laws.

The Region concluded that neither criterion could be satisfied for this facility.

In this particular situation, however, the authorized State regulations which are analogous to Section 270.72(c) also allow for a change if "proposed changes are demonstrated to result in safer or environmentally more acceptable processes." In order to comply with the State condition, the owner would have to demonstrate that a landfill operating with less than a minimum technology liner is safer or environmentally more acceptable than a closed or retrofitted surface impoundment. The Assistance Branch did not believe that such a demonstration is possible and that the facility could not, therefore, meet the State requirement. The State, however, ultimately would be

responsible for determining if the demonstration satisfies the condition for a more acceptable process. Note that if the unit conversion were allowed to take place, the unit would be an existing landfill unit, and not a new unit subject to MTRs.

Contact: Dave Eberly 202 or FTS-382-4691

RCRA Corrective Action

In order to set cleanup standards at a facility undertaking corrective action to remediate releases from their solid waste management units, a Region asked the Assistance Branch to clarify the Agency policy on determining cleanup levels, compliance points, timing of corrective action and the use of institutional controls.

1) Cleanup Standards

Promulgated standards should be used as cleanup standards when they are available. Maximum contaminant levels (MCLs), established under the Safe Drinking Water Act (SDWA), are available for some contaminants and should be used for a cleanup standard for ground water that is or potentially can be a source of drinking water. When promulgated standards are not available, Agency health-effects data should be used to derive the cleanup level.

EPA's Integrated Risk Information System (IRIS) provides current Agency health assessments and regulatory decisions on many chemicals. When setting cleanup levels for carcinogens based upon the Carcinogen Slope Factor (CSF), the risk range should fall between 1×10^{-4} and 1×10^{-7}.

Standard exposure assumptions for drinking water should be used for setting cleanup levels based upon verified reference doses (RfDs) and CSFs in ground water used, or potentially used, for drinking. Cleanup levels in soil should be based upon exposure assumptions corresponding to the potential land use. For example, if children can play in the area after cleanup and the soil contamination is surficial, the potential for children to ingest soil must be considered. Guidance on specific exposure assumptions and exposure scenarios is currently being developed.

Contact: Reid Rosnick 202 or FTS-382-4755

2) Compliance Points for Soil and Ground Water Cleanup

The objective of corrective action to ground water is to restore beneficial use if possible. In cases where ground water is or has the potential to be used for drinking, cleanup should be throughout the plume. However, there are circumstances, such as when the waste is left in place or the unit is still operating, that preclude cleanup throughout the whole plume. In such situations, the compliance point is at the edge of the waste management unit.

The compliance point for soils is any area that may be available for direct contact with the soils. In cases where subsurface soils are contaminated to the extent that ground water contamination is or has the potential to occur, soil cleanup levels should be set to protect the ground water.

Contact: Reid Rosnick 202 or FTS-382-4755

3) Timing of Cleanup Activities and Monitoring of the Site

At this time, the proposed corrective action regulations will not establish a time frame for attaining cleanup levels. A number of factors should be evaluated prior to setting a schedule for a particular facility. These factors are: (1) the extent and nature of contamination; (2) the practical capability of the remedial technology to meet the objectives; (3) the availability of treatment or disposal capacity for wastes; (4) the use of emerging technologies; and, (5) potential risk to human health and the environment from exposure prior to the attainment of cleanup levels. In general, expeditious cleanup, particularly of off-site contamination, is the goal.

With respect to ground water corrective action under Subpart F (Section 264.100), the owner/operator is required to monitor ground water during the compliance period (resume compliance monitoring) after cleanup activities have ended to demonstrate that the ground-water protection standard is being achieved. If corrective action is ongoing at the end of the compliance period, corrective action cannot be terminated until the ground water protection standard is not being exceeded for three consecutive years. While this time frame has been applied to corrective action from SWMUs, it is often difficult to demonstrate reliably that the standard has been achieved for three years in all hydrogeological settings.

The Agency is proposing Section 3004(u) corrective action regulations that determine the timing for demonstrating compliance based on a case-by-case basis. When selecting the length of time appropriate to determine compliance, the Region should consider the following: (1) the extent and concentration of the release; (2) the behavior of the hazardous constituents in the affected medium; (3) the accuracy of monitoring techniques; (4) the characteristics of the contaminated media; and, (5) any environmental, seasonal or other pertinent factors.

Contact: Reid Rosnick 202 or FTS-382-4755

4) Use of Institutional Controls in the RCRA Program

Institutional controls may be used to limit exposure during cleanup; however, they should not be viewed as a substitute for cleanup. In some cases, the presence of institutional controls may allow final cleanup to be deferred if the owner/operator can assure that there is no potential for exposure. Institutional controls may also be used in situations where technical limitations prevent compliance with cleanup standards.

Institutional controls may be engineered features that prevent exposure such as fences or barriers. They may also be non-engineered controls that prohibit access to ground water or limit use, such as deed restrictions.

Contact: Reid Rosnick 202 or FTS-382-4755

RECOMMENDATIONS

Popping Furnaces

1) Conducting Trial Burns Prior to the HSWA Deadline for Permitting Interim Status Incinerators

Because it usually takes one year to issue a permit after a trial burn, interim status facilities should schedule the trial burn prior to November 1988 in order to meet the November 8, 1989 deadline for permitting interim status hazardous waste incinerators. The Army has proposed that the data collected from the trial burns conducted at one facility be applied to other popping furnaces. The only circumstances where an owner/operator can use data from one incinerator in lieu of conducting a trial burn at another is when the two units are similar in all significant respects including unit type, combustion chamber size, dimensions of major components and operating conditions. In addition, the wastes burned in the other units must be adequately represented by the wastes burned during the trial burn. This means that the types and concentrations of organic hazardous constituents and metals must be similar. The incinerability, form, and ash content of the waste must also be comparable.

The Assistance Branch feels that the use of data from a trial burn at one facility in lieu of trial burns at the other facilities will not be acceptable for all Army popping furnaces because the units were built by different manufacturers, are of different ages, have worn differently over the years, and have had different modifications made to them.

An alternate proposal by the Army is to conduct "base" trial burns at each facility using the wastes that the facility will most often burn after permitted. A "large scale" trial burn would also be conducted with a broad range of wastes at one facility to represent the worst-case waste to be burned in any of the units.

The Assistance Branch and the Incinerator Permit Writer's Workgroup agreed that this type of approach could be acceptable for setting a more flexible range of permit conditions for the popping furnaces provided that the "large scale" trial burn is conducted at 3 or

4 facilities. Furthermore, the results from each facility that conducted a "large scale" trial burn must be consistent to allow the data to be used in lieu of large scale trial burns at all popping furnaces. If the results are not consistent, permit conditions must be based on the individual facility trial burns.

Contact: Sonya Stelmack 202 or FTS-382-4500

2) Evaluation of Part B Applications for Popping Furnaces

The adequate evaluation of a trial burn plan for a "popping furnace" involves additional criteria beyond that required for the evaluation of most incinerators since the explosive nature of the waste will affect the combustion process and ash carryover. For example, in typical hazardous waste incinerators, the ash content of the waste is the major variable along with the efficiency of the air pollution control equipment that affects the release of particulate matter from the stack. In the case of popping furnaces, the explosive content of the waste must also be evaluated because of the potential effect on particulate formation and entrainment. For popping furnaces it is possible that there are several "worst-cases" that must be evaluated during a trial burn. The waste burned in the trial burn should be selected for the "worst-case" with respect to incinerability of Appendix VIII compounds, particulate and metals emissions.

The Assistance Branch has also been encouraging that metal limits be set to adequately protect human health and the environment under the authority of the omnibus provision (Section 3005(c)(3)).

Contact: Sonya Stelmack 202 or FTS-382-4500

Liner Requirements

1) Use of In-place Hydraulic Conductivity Testing during Liner Installation

The requirement to perform in-place hydraulic conductivity testing on the soil liner of a test fill was a condition of the final permit for one facility The owner/operator of the unit objected to the requirement and requested clarification of current EPA policy on the use of in-place versus laboratory hydraulic conductivity testing.

The current EPA policy was adopted in May 1985 in the "Draft Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments -- Design, Construction, and Operation" (see Reference 3, Attachment B). The Agency maintains that in-place hydraulic conductivity testing is "the most accurate means of consistently determining the actual hydraulic conductivity of a constructed soil liner." The guidance recommends that the in-place hydraulic conductivity test be performed on a test fill using the same equipment and techniques that will be used during the construction of the actual liner.

EPA policy was reinforced by OSWER Policy Directive #9472.003 (See Reference 5, Attachment B), which was issued in October 1986. This document presents further support to the Agency's position that in-place testing is superior to laboratory testing. This does not mean that laboratory testing is not a significant component of a construction quality control program. Research, however, has shown that laboratory permeability tests often produce results that are one to three orders of magnitude lower than the actual hydraulic conductivity present in the field. A satisfactory in-place hydraulic conductivity test does not have to determine the specific hydraulic conductivity but must document that it is less than 1×10^{-7} cm/sec.

An unofficial survey found that the majority of Regions consistently implement the policy requiring in-place hydraulic conductivity testing.

Contact: Chris Rhyne 202 or FTS-382-4695

2) Freeze-Thaw Concerns with Clay Layer in Final Cover

A facility located in a northern state proposed to install the clay liner portion of the final cover on their landfill only 24 inches below the surface. In this section of the country, frost penetration was 36 inches.

The Assistance Branch was asked to evaluate the proposed design. Based on EPA guidance (See Reference 3, Attachment B), we recommended that the clay layer below the flexible membrane layer (FML) be completely below the average frost depth. It is permissible to allow for snow cover in the frost depth calculations. At this

location, 6 inches of snow cover is typical; therefore, we recommended that the soil layer above the clay liner need be increased by only 6 inches instead of one foot.

Contact:- Chris Rhyne 202 or FTS-382-4695

Hazardous Waste Stabilization

1) Use of Natural Material in a Waste Stabilization Process

A facility that planned to close its interim status surface impoundment needed to develop a site-specific process that would sufficiently stabilize its highly organic and oily waste material. The facility engineers proposed to use cement kiln dust as the pozzolanic component in the process. They also proposed to use caliche, a locally occurring form of calcium carbonate, as an absorbent in the process.

In order to demonstrate that stabilization has occurred, the waste must be shown to have undergone chemical change. The engineers conducted a series of laboratory and field tests with various proportions of the chemical additives. They monitored soluble organic carbon (SOC) levels in the leachate. Based upon data showing that lower SOC levels were found in the leachate of stabilization mixtures containing caliche as well as the cement kiln dust, the engineers demonstrated that caliche was a necessary component in the stabilization process. Considering these results and the increased strength of this stabilized material over time, the Assistance Branch concluded that stabilization was occurring.

Contact: Dave Eberly 202 or FTS-382-4691

Permit Issuance

1) HSWA Permit Preparation

A Region prepared a draft HSWA permit for a facility by using the RCRA Corrective Action Plan (CAP) (See Reference 4, Attachment B) as a guide. The Region asked the Assistance Branch to comment on this approach and the permit language.

While the Assistance Branch agreed that the CAP was the best currently available guide for Regions to use to prepare HSWA permits, the CAP is more in the nature of a checklist, from which specific permit conditions can be developed. Incorporation of general CAP requirements directly into a permit is likely not to be specific enough. (Please note that the Module for Corrective Action for Solid Waste Management Units of the Model Permit, distributed for review and use on November 30, 1988, is also an appropriate guide for using Sections 3004(u) and (v).)

Further, there are several points that the permit writer must keep in mind when applying this reference. First, the CAP was designed to cover all possible corrective action requirements, including interim status corrective action orders under Section 3008(h) as well as permit requirements under Section 3004(u). The permit writer must select the applicable Section 3004(u) requirements from the "menu" of requirements presented in the CAP. Certain CAP requirements related to Section 3008(h) are <u>not</u> appropriate for permits.

Second, the permit writer must, for any individual facility, identify the information already available in the Part B application and collected during the RCRA Facility Assessment (RFA). It is not necessary to require information that has already been provided elsewhere. Based upon this information, facility-specific permit conditions can be developed using the CAP as a checklist, but not as a model for the actual permit condition language.

Contact: Dave Eberly 202 or FTS-382-4691

2) Authority to Implement Subpart X Standards in RCRA Authorized States

The Agency is using the authority under Section 264.1(f)(2) to implement the regulations for miscellaneous units in all States at the same time, regardless of their authorization status. This authority exists independent of HSWA. Section 264.1(f)(2) applies specifically to the regulation of units not covered by any Federal permit requirements at the time that an individual state program was authorized. This authority was created to avoid the situation that no permits (such as Subpart X permits) could be issued in an authorized state for several years after permit standards were promulgated by the Agency (i.e., until the state receives Subpart X authorization). Therefore, Subpart X requirements will be implemented by EPA in all

states at the same time. See OSWER Policy Directive #9489.00-2 (See Reference 1, Attachment B) for further clarification.

Contact: Chet Oszman 202 or FTS-382-4499

3) Permitting Deadlines for Subpart X Facilities

The permit application deadline of November 8, 1988 and the permit issuance deadline of November 8, 1992 promulgated in Section 3005(c) of HSWA, are relevant to Subpart X facilities that had interim status as of November 8, 1984. The permit applications due in 1988 need only address those units which were listed (or should have been listed) in a facility's Part A application as of November 1984. Any permit issuance made in 1992 need address only those units subject to the 1988 application deadline (although it can address other units as a discretionary matter). This may mean that permit issuances in 1992 will be partial permits since only units with interim status before November 8, 1984 must be addressed. Regions are encouraged to notify interim status facilities in order to give them the opportunity to meet the November 1988 deadline.

Contact: Chet Oszman 202 or FTS-382-4499

Attachment A

Assistance Branch reviews included in this summary

Facility Name	Region	Coordinator	Review Date
Burnham Corporation Foundry	V	Mark Salee	May 1988
CSSI	X	Chris Rhyne	May 1988
Hawthorne Army Ammunition Plant	IX	Sonya Stelmack	May 1988
IBM	I	Amy Mills	April 1988
Morton Thiokol	VIII	Chet Oszman	May 1988
SCA (Model City)	II	Chris Rhyne	April 1988
R&D Fabricating	VI	Chet Oszman	May 1988
Sinclair Oil	VI	Dave Eberly	April 1988
Tooele Army Depot	VIII	Sonya Stelmack Jim Michael	April 1988 May 1988
Umatilla Army Depot	X	Sonya Stelmack	April 1988
Union Carbide (Ponce, P.R.)	II	Dave Eberly	April 1988
Union Carbide (Sisterville, WVA)	III	Dave Eberly	May 1988

Attachment B

List of Guidance Documents used in Preparing the Assistance Branch Permitting Comments

1. "Issues Relating to Miscellaneous Units," OSWER Policy Directive #9489.00-2 (April 26, 1988).

2. "Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators," Final Rule, Federal Register, Vol. 52, No. 237. p. 46946.

3. Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments -- Design, Construction, and Operation , DRAFT, EPA 530-SW-85-014, (May 24, 1985).

4. "RCRA Corrective Action Plan," OSWER Policy Directive #9902, (November 14, 1986).

5. Technical Guidance Document: Construction Quality Assurance for Hazardous Waste Disposal Facilities, EPA 530-SW-86-031, OSWER Policy Directive #9472.003, (October 1986).

OCT 22 1982 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 9523.1982(01)

DATE

SUBJECT Existing Incinerators and Data in Lieu of Trial Burn

FROM Bruce R. Weddle, Acting Director
State Programs and
Resource Recovery Divison (WH-563)

TO Division Directors, Regions I-X

Having spoken with many EPA regional hazardous waste program personnel and operators of existing incinerators, it has become apparent that some confusion exists concerning trial burn plans and data in lieu of trial burns. The purpose of this memo is to make clear that existing incinerators may submit data in accordance with the provisions of Section 122.25 (b)(5)(iii) on wastes that have been combusted during interim status. These facilities do not need to submit a trial burn plan for approval.

Section 122.25(b)(5)(iii) sets out the requirements for submitting data in lieu of a trial burn. A variety of information is required including a waste analysis plan and analytical results, incinerator engineering description, and actual sampling and analysis results demonstrating 99.99% destruction and removal efficiency of the principal organic hazardous constituent(s). Also required is information on incinerator operating parameters which will lead to operating permit conditions under §264.345.

The clear purpose of §122.25(b)(5)(iii) is to provide data to specify operating conditions that will ensure compliance with the performance standards in §264.343. Note that the standards in §264.343 are clear and explicit. The incinerator must demonstrate 99.99% DRE as calculated by the formula given in the regulation; an incinerator producing HCl emissions of more than 1.8 kg/hr must control HCl emissions to 1% of the uncontrolled amount or 1.8 kg/hr (whichever is more); and particulate emissions must be controlled to 180 mg/dscm corrected for the amount of oxygen in the stack gases. These three performance standards provide the only authority under the existing regulations for controlling emissions from hazardous waste incinerators.

The standards for accepting data in lieu of a trial burn are found in the regulations. Section 122.25(b)(5)(iv) provides that the Regional Administrator ("the Director") must approve a permit application without a trial burn if he finds that the wastes and the incinerators are sufficiently similar and the data provided is adequate to specify operating conditions ensuring ... "that the performance standards in §264.343 of this Chapter will be met by the incinerator." Clearly, an existing incinerator that obtains data on the waste it has combusted under interim status standards satisfies

the requirements for similarity of waste and incinerator design. Similarly, to satisfy the third requirement, the applicant need only present the operating parameters (as outlined in §264.345) used when compliance with §264.343 was demonstrated. These operating parameters then become permit conditions. Thus, the Regional Administrator lacks the regulatory authority to require the owner or operator of an existing incinerator to submit a trial burn plan for approval before the operator gathers performance data.

Of course, many operators of existing facilities may wish to submit trial burn plans voluntarily. The emissions sampling and analysis required is quite expensive and the selection of POHCs is critical to the acceptability of data in lieu of trial burn plans. In order to avoid repeating the tests, an operator may submit a proposed trial burn plan. In this case, the Director can review and approve an acceptable plan [see §122.27(b)(4)].

Finally, while reviewing the 24 June 1982 incinerator regulations, one should keep in mind that the certification requirement at 122.25(b)(5)(iii)(E)(3) should have been deleted. You received a memorandum dated 26 August 1982 that this is being corrected.

I hope this has resolved the confusion regarding the submission of data in lieu of a trial burn. If you have any questions, contact Randy Chrismon at 382-4535.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

FEBRUARY 83

2. Question: Does any part of a container storage Part B permit application need to be certified by a professional engineer; and, if so, does the professional engineer need to be registered in the State the facility is in?

Answer: No technical data needs to be certified for container storage. Other units like tanks that do require certification are not limited to State certified PE's, but the Region should be consulted.

Source: Dave Fagan
Research: Irene Horner

JUN 17 1983

MEMORANDUM

SUBJECT: Land Owner Signature on Part A

FROM: John Skinner
Director
Office of Solid Wastes (WH-562)

TO: Tom Devine
Director
Air & Waste Management Division
Region 4

Pursuant to §270.10 both the owner and operator are required to sign a permit application for a hazardous waste management facility. This dual signature requirement is the subject of a recent proposal in the Federal Register (July 23, 1983) which modifies the requirements for both signatures so that, in certain identifiable situations, the owner's signature may be waived by the Director. The preamble to the proposal summarizes the legal basis behind the present signature requirements. These regulations were proposed as a result of the NRDC settlement. They will have no effect on your questions.

The answers to your specific questions are:

1. Are incorrect signatures a criminal violation? Yes, if the signer knowingly signs the permit application either falsely or incorrectly.

2. To what extent should we try to ascertain who is the property owner (title search)? You should generally assume the person claiming to be the property owner is the property owner. A title search is an inappropriate use of resources unless you have good reason to believe the applicant is not the property owner.

3. What risk and liability does EPA encounter if we issue a permit to the wrong party based on the part A which is incorrect? None, however a permit writer who accepts a signature that he knows is false or incorrect and whose conduct is fraudulent under applicable state or Federal law, may be guilty of fraud.

4. Whose resources should be used to check proper title? In the rare case where a title search is needed, the permitting authority should conduct the title search.

5. Should we be concerned at all or just let the Public Notice serve to inform and if no one comes forward assume the Part A signature is correct? EPA must assume applicants are dealing in good faith, except in those situations where EPA has good reason to believe the applicant is not. Public notice should serve to inform the public as to who owns and who operates the facility. If members of the public know of an error, they should so inform EPA.

cc: Hazardous Waste Branch Chiefs Regions I-X

RCRA/SUPERFUND HOTLINE SUMMARIES

SEPTEMBER 83

If a facility is in the process of filing Part B of its permit application, can the application include any of the changes which were proposed (April 4, 1983, 48FR14472) for the new definition of solid waste?

No, the permit application must reflect the hazardous waste regulations which are in effect at the time of filing. If the regulations change, it might be necessary to modify the draft permit or the permit.

Source: Steve Levy

JAN 17 1984

Karsten Odland
818 Forest Road
La Grange Park, Illinois 60525

Dear Mr. Odland:

The Office of General Counsel sent your letter of October 3, 1983, to this Office for a reply to your questions concerning the requirements for obtaining a hazardous waste management facility permit under the Resource Conservation and Recovery Act (RCRA). The Office of Solid Waste is responsible for both the technical standards and permit regulations under RCRA. This letter confirms the telephone conversation you had with a member of my staff on this subject and summarizes his discussion of EPA's position.

In your letter you discussed the problems caused by requiring an estimate of the expected date of closure in the permit application for a hazardous waste management facility. As you pointed out, it is difficult to determine the expected closure date of a manufacturing facility since there is often no intention to close. You also expressed your reluctance to certify in the permit application that all the information is true and accurate if the facility does not intend to close.

EPA does not require a specific date of closure. Our regulations only require an estimate of the expected date of closure. This expected date then allows EPA to determine if the financial assurance mechanisms for closure are adequate. You can note in the application that the date provided is only an estimate since there are no current plans to close the facility. This may alleviate your concerns about the certification. Additionally, the estimated date of closure can be changed as new information becomes available or facility plans change.

I appreciate your bringing this matter to our attention. If you have any further questions, please do not hesitate to call upon Mr. Chaz Miller of the Permits Branch. He may be reached at U.S. EPA, Office of Solid Waste, Permits Branch, WH-563, 401 M Street S.W., Washington, D.C. 20460, (202) 382-4535.

Sincerely yours,

/S/

Bruce R. Weddle
Acting Director
Permits and State Programs Division

9523.1984(02)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE APR - 3 1984

SUBJECT Guidance on Petroleum Refinery Waste Analyses for Land Treatment Permit Applications

FROM John Skinner, Director
Office of Solid Waste

TO Hazardous Waste Permit Branch Chiefs,
Regions I-X

Introduction

The purpose of this memo is to provide permit writers guidance on evaluating petroleum refinery waste analyses submitted in land treatment permit applications. A list of Appendix VIII hazardous constituents suspected to be present in petroleum refinery wastes and a special analytical method for refinery wastes are provided.

Background

The general Part B information requirements specified under §270.14(b) require the submittal of (1) chemical and physical analysis data on the hazardous wastes to be handled at the facility including all data that must be known to treat, store, or dispose of wastes properly in accordance with Part 264, and (2) a copy of the waste analysis plan. In addition, the specific information requirements under §270.20 require an owner/operator of any facility that includes a land treatment unit to submit "a list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analyses performed pursuant to §264.13." Also, §270.20(a) stipulates that the description of the treatment demonstration plan must include a list of potential hazardous constituents in the waste.

Because the design and management of a land treatment unit is based on the goal of attaining treatment of hazardous constituents (i.e., constituents listed in Appendix VIII), it is very important that the presence of these constituents in the land treated wastes be accurately identified and quantified. This is best achieved through a comprehensive waste analysis for all Appendix VIII constituents. However, due to the cost and analytical difficulties associated with these analyses, many applicants have submitted requests to conduct analyses for some subset of Appendix VIII, which are "reasonably expected to be in or derived from the wastes to be land treated." To date, the majority of wastes proposed for land treatment have been petroleum refinery wastes, specifically the listed wastes K048-K052.

The evaluation of these Appendix VIII subsets for each land treatment application has been difficult due to the lack of published information on specific organic compounds in refinery wastes, and also due to the variability of waste characteristics within the refinery industry. However, OSW has gathered sufficient information from EPA research studies, in-house waste studies and analyses, and refinery process evaluations to develop a conservative list of hazardous constituents that are suspected to be present in petroleum refinery wastes. This list is provided in Attachment 1. This list should be used by permit writers as a guide in determining which constituents may and may not be eliminated from consideration when completing waste analyses for a land treatment permit application. Additional explanation of the derivation and use of this list is provided below.

Derivation and Use of List

The list of hazardous constituents suspected to be present in refinery wastes was derived from a review of data on petroleum refinery wastewater and sludge characteristics from the following sources: (1) literature, particularly EPA research reports; (2) in-house waste analyses completed by EPA research laboratories; (3) preliminary data from the OSW refinery waste study; and (4) an evaluation of petroleum refinery processes. Although these four sources were used, the data base on specific hazardous organic constituents in sludges was still limited. Considerable weight was placed on wastewater data as indicators of sludge characteristics (e.g., API separator sludge).

Also, the list in Attachment 1 is a generic list developed by combining waste analysis data on all five listed refinery wastes (K048-K052). Due to the lack of extensive data, no attempt was made to differentiate between the characteristics of these five refinery wastes. Until sufficient information is available to allow development of separate lists for each waste, the attached list should be considered applicable to dissolved air flotation float (K048), slop oil emulsion solids (K049), heat exchanger bundle cleaning sludge (K050), API separator sludge (K051), and leaded tank bottoms (K052).

To compensate for the limited data base and variability among refineries, the attached list is purposely comprehensive. It includes a total of 89 hazardous constituents or groups of constituents (e.g., trichlorobenzenes). All of these constituents have been identified as possibly being present in the above referenced wastes. Many of the compounds on the list may be present at low concentrations and others may not be present at all in certain wastes at some refineries.

The permit writer should use the attached list as a guide to the Appendix VIII constituents that should be addressed in

the up-front waste analyses and waste analysis plans for Part B applications that propose land treatment of petroleum refinery wastes. A permit applicant may further refine this list by providing detailed evidence that certain hazardous constituents cannot be present in the listed wastes at that particular refinery. In most cases, however, waste analysis data on the constituents listed in Attachment 1 will be necessary to make this showing.

Analytical Methods

To assist in the analysis for specific organic constituents in petroleum refinery wastes, OSW has developed a column cleanup procedure which is provided in Attachment 2. This draft method is used specifically to separate semivolatile aliphatic, aromatic, and polar compounds in the waste matrix. The method should be used only by experienced residue analysts. Volatile compounds are determined using method 8240 with PEG (tetraglyme) Extraction. Test method 3050 should be used for all metal analyses. These methods are described in SW-846.

Relationship to Delisting and Listing Efforts

Finally, the attached list is consistent with the waste analysis information that EPA has requested from delisting petitioners. Many petroleum refinery operators who are preparing Part B applications for land treatment facilities also have submitted delisting petitions to the Agency for one or more of their wastes. It is important that the waste analysis data requested by the Agency for permitting and delisting be consistent, although there may be differences in the extent of data necessary in certain cases. Therefore, the list of Appendix VIII constituents provided in Attachment 1 is also being used in refinery delisting actions. Additional information on non-Appendix VIII constituents, however, is being collected as part of OSW's new waste assessment and listing efforts for petroleum refineries. These compounds, which are listed at the end of Attachment 1 for your information, may be added to Appendix VIII in the future. Although it is not required at this time, permit applicants should be encouraged to provide information on these waste constituents.

If you have any questions on the listing of specific hazardous constituents in Attachment 1 or on the recommended test methods, please contact Ben Smith (382-4791) of the Waste Identification Branch. Other questions pertaining to the use of the above guidance in permitting land treatment facilities should be directed to Mike Flynn (382-4489) of the Land Disposal Branch.

Attachments

cc: Jack Lehman
Fred Lindsey
Ken Shuster
Eileen Claussen
Matt Straus
Bruce Weddle
Peter Guerrero

ATTACHMENT 1

Appendix VIII Hazardous Constituents Suspected to be Present in Refinery Wastes

**Acetonitrile (Ethanenitrile)
**Acrolein (2-Propenal)
**Acrylonitrile (2-Propenenitrile)
Aniline (Benzenamine)
Antimony
Arsenic
Barium
Benz (c) acridine (3,4-Benzacridine)
Benz (a) anthracene (1,2-Benzanthracene)
**Benzene (Cyclohexatriene)
Benzenethiol (Thiophenol)
Benzidine (1,1-Biphenyl-4,4'diamine)
Benzo(b)fluoranthene (2,3-Benzofluoranthene)
Benzo(j)fluoranthene (7,8-Benzofluoranthene)
Benzo(a)pyrene (3,4-Benzopyrene)
**Benzyl chloride (Benzene, (chloromethyl)-)
Beryllium
Bis (2-chloroethyl) ether (Ethane, 1,1'-oxybis (2-chloro-))
Bis (2-chloroisopropyl) ether (Propane, 2,2'-oxybis (2-chloro-))
**Bis (chloromethyl) ether (Methane, oxybis (chloro))
Bis (2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis (2-ethylhexyl) ester)
Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester)
Cadmium
Carbon disulfide (Carbon bisulfide)
p-Chloro-m-cresol
**Chlorobenzene (Benzene, chloro-)
**Chloroform (Methane, trichloro-)
**Chloromethane (Methyl chloride)
2- Chloronapthalene (Naphthalene, beta-chloro-)
2-Chlorophenol (Phenol, o-chloro-)
Chromium
Chrysene (1,2-Benzphenanthrene)
Cresols (Cresylic acid) (Phenol, methyl-)
**Crotonaldehyde (2-Butenal)
Cyanide
Dibenz(a,h)acridine (1,2,5,6-Dibenzacridine)
Dibenz(a,j)acridine (1,2,7,8-Dibenzacridine)
Dibenz(a,h)anthracene (1,2,5,6-Dibenzanthracene)
7H-Dibenzo(c,g)carbazole (3,4,5,6-Dibenzcarbazole)
Dibenzo(a,e)pyrene (1,2,4,5-Dibenzpyrene)
Dibenzo(a,h)pyrene (1,2,5,6-Dibenzpyrene)
Dibenzo(a,i)pyrene (1,2,7,8-Dibenzpyrene)
**1,2-Dibromoethane (Ethylene dibromide)
Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)
*Dichlorobenzenes
**1,2-Dichloroethane (Ethylene dichloride)
**trans-1,2-Dichloroethene (1,2-Dichlorethylene)
**1,1-Dichloroethylene (Ethene, 1,1-dichloro-)
**Dichloromethane (Methylene chloride)

**Dichloropropane
Dichloropropanol
Diethytl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)
7,12-Dimethyl-benz(a)anthracene
2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)
Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)
4,6-Dinitro-o-cresol
2,4-Dinitrophenol (phenol, 2,4-nitro-)
2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)
Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)
**1,4-Dioxane (1,4-Diethylene oxide)
1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
**Ethyleneimine (Azridine)
**Ethylene oxide (Oxirane)
Fluoranthene (Benzo (j,k) fluorene)
**Formaldehyde
Hydrogen sulfide (Sulfur hydride)
Indeno (1,2,3-cd)pyrene (1 10(1,2-phenylene)pyrene)
Lead
Mercury
Methanethiol (Thiomethanol)
3-Methylchlolanthrene (Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-)
**Methyl ethyl ketone (MEK) (2-Butanone)
Naphthalene
Nickel
p-Nitroaniline (Benzenamine, 4-nitro-)
Nitrobenzene (Benzene, nitro-)
4-Nitrophenol (Phenol,pentachloro-)
Pentachlorophenol (Phenol, pentachloro-)
Phenol (Benzene, hydroxy-)
Pyridine
Selenium
*,**Tetrachloroethanes
**Tetrachloroethylene (Ethene, 1,1,2,2-tetra chloro-)
**Toluene (Benzene, methyl-)
*Trichlorobenzenes
*,**Trichloroethanes
**Trichloroethene (Trichloroethylene)
*Trichlorophenols
Vanadium

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* If any of these groups of compounds are found, the specific isomers listed in Appendix VIII should be identified.

** Use Test Method 8240 for these volatile compounds.

*** Use Test Method 3050 in SW-846 for all metals; see Attachment 2 for semivolatile organic compounds.

Non-Appendix VIII Constituents of Concern (may be added to App. VIII)

Cobalt
1-Methylnapthalene
Styrene
Hydroquinone
Anthracene
Indene
5-Nitro acenaphthene
Quinoline
Phenanthrene
Pyrene

ATTACHMENT 2

Column Cleanup of Petroleum Wastes

Introduction

The following procedure is intended for application to the analysis of semivolatile organic compounds in oily waste samples. Its application is necessary in those cases where the conventional cleanup procedures (Methods 3510, 3520, 3540, 3550) fail to provide suitable detection limits (approximately 10ppm) for the semivolatile compounds specified in Attachment 1. Analysis of the cleaned-up extracts should be performed according to Method 8270, a capillary GC/MS technique.

It should be noted that this procedure is in draft form. It may be modified as more experience is gained.

Cleanup Techniques

It is anticipated that after a sample is subjected to conventional extraction procedures (Methods 3510,3520, 3540, and 3550) or after dilution, a cleanup step may be required to remove matrix interferences and yield acceptable detection limits for compounds of interest. Determination as to whether an extract needs to be cleaned can usually be provided by either examination of the sample itself or by knowledge of the particular waste stream that was sampled. It is also possible to estimate whether or not the extract is suitably clean for GC/MS analysis. An aliquot of the methylene chloride extract can be evaporated to dryness and the total amount of material in the aliquot weighed. In general, if the extract contains less than a few milligrams of material per millilitre of solvent, it is probably clean enough for capillary CG/MS. If it contains more materials, it will likely require additional preparation.

In most instances, some type of cleanup technique will be necessary in order to achieve suitably low detection limits for the target compounds. If much aliphatic material exists in the sample it will mask the compounds of interest. Mere dilution will not remedy the situation as detection limits are raised by the dilution.

If acidic compounds such as phenols are suspected of being present in the sample, a separate fraction containing these acids can be created using the organic extract obtained above. Methods 3530, a base/neutral acid cleanup extraction technique, may be applicable to the cleanup of certain sample types. Modifications to Methods 3530 are as follows:

a) In Section 7.6, the organic and aqueous phases are both treated as containing compounds; and

b) Section 7.15 will not be necessary.

The aqueous phase, when transferred to organic solvent after Section 7.13, will contain acidic compounds. The organic phase contains basic and neutral compounds. In most instances, the acidic fraction will be clean enough for GC/MS analysis. The base/neutral extract, however, may require further cleanup. Thus, a cleanup procedure has been devised for base/neutral extracts that minimizes the interferences caused by high concentrations of aliphatic and polymeric materials.

Although the cleanup procedure is thoroughly described in the next section, one generally proceeds as follows. The sample is subjected to cleanup by placing a representative aliquot of the sample on an alumina column and successively eluting with hexane, methylene chloride, and diethyl ether to yield 3 fractions containing the aliphatic (hexane fraction), aromatic (methylene chloride fraction) and polar compounds (ether fraction). The methylene cloride fraction is then concentrated to about 1 ml. and then is analyzed by GC/MS for the compounds of interest. The hexane concentrate can be screened by GC/MS to determine if compounds were eluted into the hexane fraction. However, this usually will not be required. If polar compounds are of interest, the ether fraction is also analyzed.

Quantitation of the semivolatile constituents in Attachment 1 is to be performed using the reverse search technique. Additionally, tentative identification should be attempted for the ten organic compounds detected at the highest concentrations. Identifications should be made via a forward search of the EPA/NIH mass spectral library. Concentrations should be approximated by comparison of the compound response to that of the closest eluted internal standard. A procedural blank, matrix spike, and duplicate should be analyzed for every batch of samples.

Accuracy and precision control charts should be maintained for indicator constituents. The percent recoveries of spiked surrogate standards for a given sample type should be plotted versus sample identification number. Table 1 contains a list of the surrogate compounds to be employed for the analysis of semivolatile organic compounds, and recovery limits. Recovery limits are based upon obtaining a final extract sufficiently clean, such that the surrogate compounds should be present at 50 ppm or higher in the extract. If dilution of the sample is still required, detection of the surrogates may be difficult and the associated recoveries imprecise or non-existant. Such samples should be spiked with higher surrogate levels and resubjected to the cleanup procedure.

Table 1. Surrogate Standards for Semivolatile Organic Compound Analysis

	Recovery Limits
Acid surrogates	
phenol-d_5	40-115%
2-fluorophenol	
2,4,6-tribromophenol	
Base/neutral surrogates	
nitrobenzene-d_5	
5-fluorobiphenyl	50-120%
terphenyl-d_{14}	
acridine-d_9	
pyrene-d_{10}	

The precision control chart should consist of the percent difference for indicator constituent concentration determined in duplicate samples of a given sample type versus sample identification numbers.

Column Clean Up of Petroleum Wastes

Scope and Application

This method is used to cleanup samples containing high levels of aliphatic hydrocarbons, such as wastes from petroleum refining. It is used specifically to separate aliphatics, aromatics, and polar compounds in the waste matrix. This method is applicable to API separator sludges, rag oils, slop oil emulsion, and other oily wastes derived from petroleum refining. This method is recommended for use only by or under close supervision of experienced analysts.

Summary of Method

Take a 200 mg aliquot of the waste/methylene chloride concentrate from step 7.13 of Method 3530. Dissolve the aliquot in hexane and spike with 10mg each of d_9-acridine, d_5-nitrobenzene, d_5-phenol, 2-fluorobiphenyl, tribromophenol, d_{14}-terphenyl, 2-fluorophenol, and d_{10}-pyrene. Apply the mixture directly to the alumina column.

The column is eluted sequentially with hexane, methylene chloride, and diethyl either and the corresponding three fractions are collected. An aliquot of the CH_2Cl_2 fraction is evaporated under a gentle stream of nitrogen and weighed to determine the appropriate concentration factors prior to

GC/MS. If pyrene or terphenyl is recovered at less than 50%, the procedure should be repeated.

Interferences

Matrix interferences will likely be coextracted from the sample. The extent of these interferences will vary considerably from waste to waste depending on the nature and diversity of the particular waste being analyzed. The use of additional cleanup extractions can be used as necessary for specific compound identification and quantitation.

Apparatus

Glass Column: 30 cm long x 1 cm I.D. with glass frit or glass wool and stop clock.

Aluminum weighing boats: Approximately 2 in. in diameter.

Analytical Balance: Capable of weighing to ±0.5 mg.

Concentrator Tube, KD, 10 ml

Evaporative Flask, KD, 250 ml

Snyder Column, KD, three-ball micro

Snyder Column, KD, two-ball micro

Steam Bath

Boiling Chips: 10-40 mesh carbarundum. Heat to 450°C for 5-10 hours.

Syringe: 1 ml glass

50 ml beaker

250 ml beaker

Reagents

Hexane: Distilled in glass (B&J) or equivalent

Methylene Chloride: Distilled in glass (B&J) or equivalent

Diethyl Ether: Distilled in glass (B&J) or equivalent

Alumina: Dried overnight at 130°C, neutral 80-325 MCB chromatographic grade

Sodium Sulfate: Washed with CH_2Cl_2 and heated to 150°C for 4 hours

Procedure

Weigh out 10.0 gm of alumina and add to the chromatographic column that is filled to about 20 mL with hexane.

Allow the alumina to settle and then add 0.5 gm sodium sulfate.

Let the solvent flow such that the head of liquid in the column is about 1 cm above the sodium sulfate layer. Stop the flow.

Add the aliquot equivalent to 100-200 mg of material.

Start the flow and elute with 13 ml of hexane. Collect the effluent in a 50 beaker. Label this fraction "aliphatics".

Elute the column with 100 ml of methylene chloride and collect the effluent in a 250 ml beaker. Label "aromatics".

Elute the column with 100 ml of diethyl ether and collect the effluent in a 250 ml beaker. Label "polars".

Weigh three sample boats to the nearest 0.5 mg. Reduce the volume of each fraction using the KDs to between 1 and 5 ml. Record the volume of each and place 1/2 of each sample in the respective boat.

Evaporate the liquid in each boat under a gentle stream of nitrogen. Reweigh each boat and record the weight of each fraction.

Calculate the weight of each fraction as a proportion of the total sample. For example, fraction 1 is 56.3 mg, fraction 2 is 25.4 mg, and fraction 3 is 85.0 mg.

Calculate the amount of sample in the fractions and adjust the volumes so injection will permit determination of various components on scale

12.7 mg/2500 ul = 5.1 ug/ul

Dilute each of the three fractions obtained by a ratio so that the sample entering the capillary column does not exceed 2.5 ug. For example, if the calculated weight of the fraction as a proportion of the total sample is 12.7, and the amount of sample in the fractions is 5.1 ug/ul as in the above example, dilute the sample 1:1 with methylene chloride.

Quality Control

Before processing any samples, the analyst should demonstrate through the analysis of a distilled water method blank that all glassware and reagents are interference-free. Each time a set of samples is extracted or there is a change in reagents, a method blank should be processed as a safeguard against

chronic laboratory contamination. The blank sample should be carried through all stages of the sample preparation and measurement. Standard quality assurance practices should be used with this method. Laboratory replicates should be analyzed to validate the precision of the analysis. Fortified samples should be carried through all stages of sample preparation and measurement; they should be anlayzed to validate the sensitivity and accuracy of the analysis.

RCRA/SUPERFUND HOTLINE SUMMARY

APRIL 84

4. Must a company's Part B permit application submission include a closure date if the company has no plans for closure in the near future?

   Yes; 270.14(b)(13) requires a closure plan to be submitted with the Part B application, and the estimated closure date is part of that closure plan (264.112(a)(4)). Later, if the estimated closure date changes, the closure plan must be amended as a minor modification to the permit (270.42(g)).

RCRA/SUPERFUND HOTLINE SUMMARY

MAY 84

2 The "Permit Applicants Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities" (final draft, SW-970), provides check lists of all the information requirements and associated permitting standards that an applicant for a land treatment, storage, or disposal facility may need to address. Are these check lists to be be used as a format for preparing a Part B application?

The check lists can be used as an application format. The check lists are provided as a tool for both the applicant and permit reviewer to use as a reference to ensure that all information required is included in the application. The check lists should be included in the application to aid the reviewer. The check lists allow an applicant to indicate the location in the application of information responding to each requirement. There are no formal application format requirements.

Source: Art Day
Research: Gordon Davidson

PERMIT POLICY Q & A REPORT

TRIAL BURN

SEPTEMBER 10, 1984

Trial Burns

1. Question: Has the Agency issued any RCRA permits for incineration on the basis of data submitted in lieu of a trial burn? 40 CFR 270.19(c) and (d).

Answer: The Agency has not yet issued any RCRA incineration permits on the basis of data obtained from other incinerators in lieu of a trial burn. In order for data submitted in lieu of a trial burn to be acceptable, the incinerators and the wastes must be sufficiently similar so that the permit writer can confidently establish incinerator operating conditions for the second incinerator without the benefit of a trial burn.

9523

PERMIT POLICY Q & A REPORT

DEFINITION

SEPTEMBER 10, 1984

2. Question: Can EPA declare a Part B application complete even though the applicant has not submitted ground-water monitoring (GWM) data? 40 CFR 264 Subpart F and 40 CFR 270.14(c)

Answer: No. The Agency cannot declare a permit application complete without ground water monitoring data. The Agency can use enforcement to secure facilities' compliance with Part 265 ground water monitoring requirements, §3013 orders if a substantial hazard is suspected, and the authority of 40 CFR 270.14(c) to obtain the necessary ground water monitoring information. More detailed guidance on this issue will be issued shortly.

PERMIT POLICY Q & A REPORT

PART B INFORMATION REGARDING FUTURE POTENTIAL EXPANSIONS

SEPTEMBER 10, 1984

5. Question: Can an applicant submit information along with his Part B, for potential expansions to his facility and obtain a permit for those expansions when he has no definite expansion date. 40 CFR 270.10(f).

Answer: Yes. The applicant, however, must submit information at the same level of detail as if construction were to begin immediately upon receipt of a RCRA permit or at a later date, consistent with a schedule of compliance specified in the permit. The Part B application must be in such detail that the permit writer can draft an enforceable permit and so that there can be meaningful public participation and review of the proposed facility and permit conditions. In other words, he must fully satisfy all the information requirements of a Part B application and the Part 264 standards for a new facility. This is difficult to do in the absence of specific plans. In addition, when the applicant does finally decide to undertake the expansion, he must conform exactly to the plans and specifications contained in the permit. Applicants without firm expansion plans should be encouraged to restrict their permit application to the existing facility and to request a major modification when the expansion plans and schedule are definite. The applicant, however, should be warned that a major modification of this nature could, in effect, constitute a new application. The applicant should also be advised of any relevant regulations regarding the procedures for expanding the capacity of a permitted facility.

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

9523.1984(10

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

DEC 18 1984

MEMORANDUM

SUBJECT: Recent Clarifications of RCRA Authorities

FROM: Peter Guerrero
Branch Chief
Permits Branch (WH-563)

TO: Section Chiefs
Regions I-X

The attached documents clarifys your authority in two important aspects of the RCRA permit program. First, you will find a decision issued by the Chief Judicial Officer in the case of City Industries, Inc. That decision reversed the ALJ's holding that EPA lacks the authority to assess penalties under Section 3008 of RCRA for failure to submit a complete RCRA permit application.

The second attachment is a technical change, announced in the Federal Register, which clarifies our authority to apply Part 265 standards until closure and post closure responsiblities are fulfilled. Previously, the wording of §265.1 implied that once a facility's interim status was terminated the facility would no longer have to meet §265 interim status standards, i.e. closure, post closure, and financial responsibility. However, EPA has the statutory authority under Section 3004 to enforce the Part 265 standards at facilities which no longer have interim status. The revisions to §265.1 makes it clear that Part 265 requirements apply to RCRA facilities until either a permit is issued or until all applicable Part 265 closure and post closure responsibilities are fulfilled.

Attachments

Peter Greenes

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

MEMORANDUM

DATE: November 29, 1984

SUBJECT: Administrator's Decision Regarding Authority Under RCRA Section 3008 to Assess Penalties for Failure to Submit a Complete and Adequate Part B Application

FROM: James H. Sargent
Regional Counsel, Region IV

TO: Lee Thomas (WH-562A)
Courtney Price (LE-133)
Lisa Friedman (LE-132S)
Regional Counsels
Regions I-III and V-X

Attached is a copy of the decision issued by the Chief Judicial Officer on November 21, 1984 in the case of City Industries, Inc., Docket No. 83-160-R-KMC. That decision reversed the ALJ's holding that EPA lacks the authority to assess penalties under Section 3008 of RCRA for failure to submit a complete and adequate Part B RCRA permit application. This affects many pending enforcement cases in the regions and reaffirms our authority to seek penalties for deficiencies in Part B RCRA permit applications.

Attachment

cc: RCRA/CERCLA Team Leaders

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	
	)	
City Industries, Inc.,	)	RCRA (3008)
	)	Appeal No. 83-4
Respondent	)	
	)	
RCRA 83-160-R-KMC	)	
	)	

ORDER

This appeal is from an order of an Administrative Law Judge (presiding officer) dismissing an administrative complaint brought against City Industries, Inc. (respondent).[1/] In that order the presiding officer held that it was inappropriate to assess a civil penalty against respondent for its alleged failure to submit "Part B" of its RCRA permit application.[2/] For the reasons stated below, the initial decision is reversed and this proceeding is remanded to the presiding officer for further proceedings consistent with this order.

1/ 40 CFR §22.20(b) provides that such an order constitutes an initial decision. An initial decision is appealable to the Administrator or his delegatee pursuant to 40 CFR §22.30.

2/ The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. §6928(a)(1) et seq., requires any person who owns or operates a hazardous waste management (HWM) facility to obtain a RCRA permit from the Agency. Pursuant to Agency regulations, owners or operators of facilities in existence on November 19, 1980, are allowed to continue in operation, pending the Agency's final permit determination, if, among other things, they submitted Part A, and subsequently, Part B of the RCRA permit application. See notes 4 and 5, infra, for descriptions of "Part A" and "Part B" of the RCRA permit application.

Background

Respondent owns and operates a hazardous waste storage facility which was doing business in Orlando, Florida on November 19, 1980.[3/] RCRA regulations provide for a bifurcated permit application procedure for facilities in existence on that date, i.e., so called "existing facilities." An owner of an existing facility is required to submit Part A of its permit application first.[4/] Subsequently, at the Agency's request, the owner of such a facility is required to submit Part B of its permit application.[5/]

Respondent timely submitted Part A of its permit application and, accordingly, attained "interim status."[6/] However, when

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3/ Although respondent is no longer receiving hazardous waste at this facility, it continued to store hazardous waste for some period of time thereafter and accordingly was required to have a permit. See 40 CFR §270.1 (1983). See EDF v. Lamphier, 714 F.2d 331, 335 (4th Cir. 1983). The record does not show whether respondent is currently storing hazardous waste.

4/ Part A must contain the information listed in 40 CFR §270.13 (1983). This includes a description of the hazardous waste activities which are conducted at the facility, the name and location of the facility, certain information identifying the facility's operator and owner, a scale drawing of the facility, a description of what processes will take place at the facility, e.g., treatment, storage, disposal, the design capacity of these items, identification of the hazardous waste to be handled at the facility, the quantity of hazardous waste to be handled at the facility, and a topographic map.

5/ Part B must set forth information relating to a facility's operational procedures, such as security arrangements, closure plan, flood plan, detailed plans for ground water monitoring, etc. 40 CFR §§270.14-29 (1983). The information required to be submitted as Part B of the permit application is more extensive and detailed than that required for Part A.

6/ When a Part A application for a facility is submitted to the Agency (together with preliminary notification of hazardous waste activity required by RCRA §3010), the facility is authorized to operate on an interim status basis, i.e., pending the Agency's final decision on the facility's permit application.

EPA Region IV subsequently requested Part B of the application, the materials which respondent submitted were unacceptable to the Region.[7/] Consequently, the Region filed an administrative complaint against respondent charging that it violated 40 CFR §270.10(e) which requires an existing facility to submit Part B of its permit application when so requested by the Agency. A civil penalty of $5,000 was sought in the complaint for this alleged violation.

In its answer to the complaint, respondent contended that its Part B application was adequate and the Region should have accepted it. Alternatively, respondent contended that "failure to submit [an adequate] Part B application is not an action cognizable under the Resource Conservation and Recovery Act for purposes of assessment of civil penalties." (Emphasis added.) The presiding officer agreed with this latter contention and dismissed the administrative complaint with prejudice. This appeal followed.

Discussion

The sole issue on appeal is whether a civil penalty can be assessed against an owner of an existing HWM facility who, despite the Agency's request to do so, fails to submit an

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7/ The Region gave respondent a number of opportunities to correct deficiencies which it had identified in respondent's Part B application. Although respondent made attempts at correcting them, it failed to submit a Part B application which was acceptable to the Region. Whether respondent's Part B application was in fact adequate (and therefore was erroneously found unacceptable by the Region) is an issue to be determined on remand.

adequate Part B RCRA permit application. Central to the resolution of this issue is RCRA §3008(g) which states that the Agency is authorized to assess civil penalties only for violations of RCRA requirements:

> Civil Penalties - Any person who violates any requirement of this subchapter [Subchapter III - Hazardous Waste Management] shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation. 8/ (Emphasis added.)

The presiding officer held that RCRA contains no requirement that an owner or operator of an HWM facility apply for a RCRA permit or submit an adequate permit application. Accordingly, the presiding officer held that respondent's failure to submit an adequate Part B application is not a violation of any requirement contained in RCRA. I disagree.

40 CFR §270.10(e)(4)(1983) clearly requires submission of a Part B permit application after the Agency requests it: 9/

8/ See also RCRA §§3008(a)(1) & (a)(3).

9/ Implicit in §270.10(e)(4)'s requirement to submit a Part B permit application is the requirement to submit an adequate (or complete) Part B application. Of course, no regulatory requirement is violated where an owner or operator initially submits an inadequate or incomplete Part B application but subsequently corrects it before expiration of the six month deadline referenced in §270.10(e)(4). However, if the owner or operator fails or refuses to correct such deficiencies within the six month period, §124.3(d) allows the Agency to deny the permit and assess an appropriate civil penalty:

> (d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be

(next page)

> At any time after promulgation of Phase II [operating standards] the owner and operator of an existing HWM facility may be required to submit Part B of their permit application. The State Director may require submission of Part B . . . if the State . . . has received interim authorization for Phase II or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. (Emphasis added.)

40 CFR §270.10(e)(4) was promulgated pursuant to the statutory authority found in RCRA §3005 which directs the Agency to promulgate regulations requiring RCRA permits for owners and operators of HWM facilities. 10/ Accordingly, violating any requirement contained in 40 CFR §270.10(e)(4) is tantamount to violating a requirement contained in RCRA itself. 11/ Therefore,

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(Footnote No. 9 cont'd)

> taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k). (40 CFR §124.3(d).)

(The presiding officer interprets §124.3(d) as allowing assessment of a civil penalty if, and only if, a facility continues to operate after notification by the Agency that its interim status has been terminated for failure (or refusal) to correct deficiencies in its Part B permit application. However, there is no support for the view that §124.3(d) was meant to envision such a sequential approach, and it is hereby rejected.)

10/ The text of RCRA §3005 reads in relevant part as follows:

> (a) Permit requirements. -- Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section.

11/ Agency regulations promulgated pursuant to statutory authority have the force and effect of law. Service v. Dulles, 354 U.S. 363 (1959); Rodrigues v. Dunn, 128 F. Supp. 604 (1955), aff'd

(next page)

it is clear that failing to submit an adequate Part B application is a violation of a RCRA requirement, and the presiding officer's holding to the contrary is reversed. 12/

This case is remanded to the presiding officer for further proceedings consistent with this order. 13/

So ordered.

Ronald L. McCallum
Chief Judicial Officer

Dated: NOV 21 1984

(Footnote No. 11 cont'd)

249 F.2d 958 (1957). See also Farmer v. Philadelphia Elec. Co., 329 F.2d 3 (1964); Atwood's Transport Liner, Inc. v. U.S., 211 F. Supp. 168 (1962), aff'd 373 U.S. 377 (1963); 3 Mezines, Stein & Gruff, Administrative Law, §13.03 (1977).

It should be noted that interpretive rules, i.e., rules promulgated by an Agency which interpret a statutory provision may not, in certain circumstances, have the force and effect of law. 40 CFR §270.10 is not an interpretive rule; rather it falls into the category of a legislative rule, i.e., a rule which Congress has specifically authorized the Agency to promulgate and as such has the force and effect of law.

12/ It is not necessary for purposes of this decision to consider whether the failure of an existing facility to submit a Part A application is also a violation of a RCRA requirement. Therefore, that issue is neither addressed nor resolved here.

13/ See note 7, supra.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Order In the Matter of City Industries, Inc., RCRA (3008) Appeal No. 83-4 were delivered to each of the following persons, in the manner indicated:

By 1st Class Mail, postage prepaid:

Arthur Greer
President,
City Industries, Inc.
3920 Forsythe Road
Orlando, FL 32807

Keith M. Casto
Assistant Regional Counsel
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

Sandra A. Beck
Regional Hearing Clerk,
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

Thomas B. Yost
Administrative Law Judge
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

By Hand Delivery:

Bessie Hammiel
Hearing Clerk
U.S. EPA Headquarters
401 M Street, S.W.
Washington, DC 20460

Eileen J. Barnhardt for

M. Gail Wingo
Secretary to the Chief
Judicial Officer

Dated: NOV 21 1984

RCRA/SUPERFUND HOTLINE SUMMARY

MARCH 84

Must the owner or operator of a container storage facility in a downtown area check all nearby businesses for the possibility of injection or withdrawal wells in accordance with the 270.14(b)(19)(ix) topographic map requirement?

No, the owner or operator of the container storage facility does not have to check with the individual businesses in the city. He could, however, check with the city water department for potential wells. The State or city may also have a well drillers licensing board which could provide that information.

Source: Amy Mills and Burnell Vincent

9523.1985(01)

FEB 25 1985

Mr. John R. Knight
Manager of Refining
Flying J, Inc.
P. O. Box 2328
Williston, North Dakota 58801

Dear Mr. Knight:

In your letter of February 1, 1985, you asked for EPA's position concerning a situation where the property owner refuses to co-sign a Part B application made by the operator of a hazardous waste facility.

In your case, I understand that the U.S. Corps of Engineers is the owner of property on which you are operating a RCRA regulated surface impoundment. The Corps of Engineers apparently prefers not to co-sign the Part B application you submitted. Our regulations require that "the owner must also sign the permit application" made by an operator of a facility [40 CFR 270.10(b)]. If the owner chooses not to sign the application then a RCRA permit cannot be issued. EPA would then deny the permit. Upon denial of the permit, the owner or operator must submit a closure plan and close in accordance with §265.112(c) and §265.228.

EPA encourages Flying J, Inc. and the Corps of Engineers to work together to develop a cooperative course of action concerning the future of the unit.

Sincerely yours,

John H. Skinner
Director
Office of Solid Waste

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 85

Part B Application

3. A facility's Part B permit application is due after a Federal Register announcement of a final rule affecting the facility's hazardous waste management activities but prior to the effective date of the final rule. Is the permit applicant required to address applicable sections of the new final rule in the Part B permit application?

   Since the new final rule is not effective when the initial Part B application is due, the permit applicant is not required to address the new final rule provisions in the initial Part B application. However, all permits issued must reflect all applicable Part 264 requirements in effect on the date of issuance. Therefore, in most cases, if the new final rule will be in effect prior to permit issuance, the initial Part B application should be modified to reflect the new rule. If the new final rule will become effective shortly after permit issuance, the applicant may still want to address the requirements of the new rule in the Part B application rather than go through a permit modification at a later date.

   Source: Terry Grogan (202) 382-2224

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 85

5. Personnel Training During Post-Closure

The owner/operator of an interim status surface impoundment is completing closure. All standing hazardous waste liquids have been removed; however, some hazardous waste residues and contaminants will remain in place. Therefore, the owner/operator, per §265.228(c), will provide post-closure care as for a landfill. There will be no active management of hazardous waste or hazardous waste leachate during the post-closure period. In the post-closure permit application which the owner/operator must submit, is he required to meet the "personnel training" requirement listed in §264.16?

The owner/operator of an interim status surface impoundment must address all the information requirements in §270.14 and §270.17. If the post-closure permit application does not include the information covering training programs as required by §270.14(b)(12), the owner/operator must include a justification for not meeting this requirement.

The personnel training requirement of §264.16 is designed primarily to ensure the facility's compliance with the requirements of Part 264. If the owner/operator of the closed surface impoundment is no longer actively managing hazardous waste, then personnel training may not be required during the post-closure operating period. Post-closure permit guidance, being prepared by the Permits and State Programs Division of the Office of Solid Waste, will address technical and administrative requirements for the post-closure care period. The permit writer continues to have authority to ask for more information from the owner/operator as the situation may require.

Source: Lillian Bagus (202) 382-4691

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9523.1985(06)

OCT 18 1985

MEMORANDUM

SUBJECT: Post-Closure Permit Part B Requirements

FROM: Bruce R. Weddle, Director
Permits and State Programs Division

Original Signed By
Marcia E. Williams

TO: Waste Management Division Directors,
Regions 1-X

This Division has recently received a number of inquiries concerning information requirements for Part B post-closure permit applications. Outlined below is a brief discussion of those requirements and a list of information elements which should be included in such applications.

40 CFR 270.14 establishes the information requirements for RCRA permit applications. Because of the inherent differences between an operating permit and a permit covering only post-closure care activities, some of the information requirements for an operating permit will not be applicable to a permit for the post-closure care period. Section 270.10(c) gives EPA and States the authority to determine that an application is complete whenever an application form and supplemental information are completed to the satisfaction of the Director. We therefore recommend that the Director only require information be submitted which is relevant to post-closure care activities. Relevant information may be determined on a case-by-case basis. At a minimum, however, it should include:

A. Pre-HSWA Regulatory Requirements (§270.14):

- A copy of the post-closure inspection schedule (§270.14(b)(5))
- Floodplain information (§270.14(b)(11)(iii - iv))
- A copy of the post-closure plan (§270.14(b)(13))
- Documentation of the notice in deed or an appropriate alternative instrument (§270.14)(b)(14))
- Cost estimate for post-closure and post-closure financial mechanism (§270.14)(b)(16))
- A copy of the state financial instrument if appropriate (§270.14)(b)(18))
- Groundwater data and information demonstrating compliance with requirements for detection monitoring, compliance monitoring and corrective action, as applicable [§270.14 (c)]

~~- Information on solid waste management units and corrective action for releases to those units (264.101)~~

CONCURRENCES

b. New information required by HSWA, including at least:

- Information on solid waste management units and releases from those units (§264.101; see RSI #3)
- Financial responsibility for corrective action (if applicable)
- For landfills and surface impoundments, exposure information (§270.10(j)) (Note that lack of exposure information would not result in an incomplete application, but would be a separate violation).

As stated above, this list represents the minimum information that should be required. In some cases, it may be appropriate to require additional information depending on the nature of the facility, waste characteristics and other factors. For example, if a facility is expected to handle wastes (e.g. leachates) during the post-closure period which could potentially cause environmental or public health damage if mismanaged or if accidents were to occur, it may be advisable to require a contingency plan (§270.14(b)(7).

If you have any further questions, please contact George Faison at 382-2221.

cc: RCRA Branch Chiefs
Permit Section Chiefs

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

November 18, 1985

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive #9540.6-1A

MEMORANDUM

SUBJECT: Post-Closure Permit Part B Requirements

FROM: Marcia E. Williams, Director \s\
Office of Solid Waste

TO: Waste Management Division Directors,
Regions I-X

This Office has recently received a number of inquiries concerning information requirements for Part B post-closure permit applications. Outlined below is a brief discussion of those requirements and a list of information elements which should be included in such applications.

40 CFR 270.14 establishes the information requirements for RCRA permit applications. Because of the inherent differences between an operating permit and a permit covering only post-closure care activities, some of the information requirements for an operating permit will not be applicable to a permit for the post-closure care period. Section 270.10(c) gives EPA and States the authority to determine that an application is complete whenever an application form and supplemental information are completed to the satisfaction of the Director. We therefore recommend that the Director only require information be submitted which is relevant to post-closure care activities. Relevant information may be determined on a case-by-case basis. At a minimum however, it should include:

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- Financial responsibility for corrective action (if applicable)
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As stated above, this list represents the minimum information that should be required. In some cases, it may be appropriate to require additional information depending on the nature of the facility, waste characteristics and other factors. For example, if a facility is expected to handle wastes (e.g., leachates) during the post-closure period which could potentially cause environmental or public health damage if mismanaged or if accidents were to occur, it may be advisable to require a contingency plan (§270.14(b)(7)).

If you have any further questions, please contact George Faison at 382-2221.

cc: RCRA Branch Chiefs
Permit Section Chiefs

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 86

1. RCRA Permits for Mobile Treatment Units

A company would like to build a mobile hazardous waste incinerator. The company submitted a Part B permit application. Under the preconstruction ban of §270.10(f), a company must have a permit before beginning construction on a unit. Is there any way to begin construction earlier?

RCRA §3005(a), as amended by the Hazardous and Solid Waste Amendments of 1984, requires owners and operators of all hazardous waste treatment, storage, and disposal facilities to obtain a RCRA permit prior to constructing a RCRA facility. A mobile treatment unit (MTU) can be prefabricated and transported to the proposed treatment site, but construction of the site itself, such as pouring concrete foundations and connecting the MTU to physical structures on-site cannot occur until the RCRA permit is issued (RCRA §1004(2)).

EPA is developing a policy to streamline the permitting process for MTU's and is considering the concept of statewide permits. A draft policy is expected on March 30, 1986.

Source: Nancy Pomerleau (202) 382-4500
Research: Jennifer Brock

9523.1986(02)

July 31, 1986

Dr. Barry L. Johnson
Associate Administrator
ATSDR
Chamblee 28-South
1600 Clifton Road, NE
Atlanta, Georgia 30333

Dear Dr. Johnson:

I am responding to your letter of May 28, 1986, which raised several important issues regarding the procedures EPA has developed for interacting with ATSDR in conjunction with reviews of exposure information under RCRA §3019. We discussed these issues in our meeting on july 7, 1986, with Mr. Porter.

Before responding to your letter, let me briefly explain how I view the process we use for reviewing Exposure Information Reports (EIR). The review of an EIR follows the same basic steps we use in reviewing a RCRA Part B Permit application, i.e., a general completeness review followed by a technical evaluation. The purpose of the EIR completeness review is to determine if the applicant has submitted all the necessary pieces of information. Because the EIR is based in large part on information from the Part B application, the EIR and Part B for a facility are generally reviewed concurrently. Once the EIR is determined to be complete, the permit writer will conduct a technical review and look for evidence of significant prior or continuing releases from the facility.

If the writer determines there is no evidence of a significant release, he will consider any impact of potential future releases and will consider the addition of special permit conditions to mitigate potential exposure. If significant releases are known (or suspected) to have already occurred, a more detailed examination of the exposure potential will be conducted and a health assessment may be initiated. If the EIR and Part B information submitted to date does not clearly show whether there is exposure from a release, the permit writer will request additional information from the applicant so a firm decision can be made.

This document has been retyped from the original.

In response to your concern about ATSDR's role in this process, there are specific areas where EPA (and authorized states) will need ATSDR expertise and assistance. The prime areas is, of course, to conduct health assessments where there is known or probable exposure to the public from releases. In addition, we will ask ATSDR to provide technical assistance in defining what additional information to request from applicants where the level of public exposure is not clear from the information submitted to date.

In many cases, the Regions will turn to EPA Headquarters for assistance in defining and reviewing this additional information. As you know, within my office we have created Permit Assistance Teams (PATs) which are groups that draw on a variety of expertise as needed for the particular facility under review. Ralph Touch is one of the people we intend to include in the resource pool for these PATs. We will also continue to ask for Ralph's participation in PATs or workgroups that are developing general procedures and guidance to implement §3019.

We are asking the Regional Offices to provide us with a list of facilities where they expect to need ATSDR either to initiate a health assessment over the next six months, or to provide technical assistance for further defining and reviewing information from applicants where the level of exposure is not clear. We will share this information with you so that we can work together in defining the specific areas where we will need your help for these facilities.

As I understand your request, you believe ATSDR's role should be broader than I have outlined above. Specifically, you suggest ATSDR should also review all EIR's, and that EPA (and authorized States) should routinely consult with ATSDR in all cases where there is evidence of release, even if it is clear there is no public exposure. At this time, I do not believe ATSDR assistance in these activities is necessary (for example, ATSDR expertise would not be required in cases where there is a remote landfill which shows no evidence of release of hazardous wastes). If experience dictates otherwise, we will, of course, request the involvement of ATSDR in the EIR reviews. We will be happy to make all EIR's and other supporting information available to ATSDR. However, we would consider these reviews to be outside the scope of our Interagency Agreement and the Proposed Draft Memorandum of Understanding, except in cases where we request your assistance.

This document has been retyped from the original.

Your letter also raised a question about the estimated cost range for ATSDR's services. There seems to be some confusion over the substance of the April 16, 1986, letter from Bruce Weddle to Ralph Touch. The purpose of that letter was to request ATSDR to review monitoring data compiled for the BKK landfill, rather than to request a health assessment. The questions to be addressed by ATSDR related to the adequacy and quality of the existing data, and the appropriateness of the procedures to be used by EPA contractors in evaluating the data. Ralph Touch estimated that this limited review of the BKK data would cost about $3,000 and require three weeks to complete, therefore, we chose to use these specific numbers in our response. However, we recognize the potentially wide-range of costs for health assessments and provided for it in the Interagency Agreement between EPA and ATSDR for RCRA §3019. The Agreement indicates a range of $2,000 to $5,000. Although this range is lower than the $3,000 to $10,000 you suggest, the range in the Agreement is only an estimate and the higher range may be more accurate for some cases.

Please contact me if you have any further comments or questions.

Sincerely yours,

Marcia Williams, Director
Office of Solid Waste

cc: Bruce Weddle
Eileen Claussen

bcc: Ken Shuster
Art Glazer
Terry Grogan
Bob Kayser
Ralph Touch
Peter Guerrero
Reva Rubenstein
Jack Lehman
Art Day
Jon Perry

This document has been retyped from the original.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

AUGUST 86

7. RCRA Compliance Orders

Is a RCRA compliance order issued to the owner of a facility or its operator? Who is responsible for complying with the order?

EPA has always held that both the owner and the operator are equally responsible for compliance with the permit issued to a facility. Section 3005(a) of RCRA requires "each person owning or operating" a treatment, storage, or disposal facility to obtain a permit. The permit regulations require both owner and operator to sign the permit application according to 40 CFR 270.10(b). The permit will be issued to both the owner and operator.

Preamble discussions in the May 19, 1980 Federal Register confirm this concept of dual responsibility at 45 FR 33169 and 45 FR 33295. Both discussions specifically reference situations where the operator may be different from the landowner or facility owner. EPA considers both the owner (or owners) and operator of a facility to be responsible for regulatory compliance. For this reason, EPA may initiate an enforcement action against either the owner, the operator, or both. Normally, the compliance order is issued to the person responsible for the daily operations at the facility because this person is most likely to be in the position to correct the problems. If the operator is unable or unwilling to rectify the problems then EPA may issue a separate compliance order to the owner.

Sources: Tony Baney (202) 382-4460
Carrie Wehling (202) 475-8067
Research: Kim B. Gotwals

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9523.1986(04)

OCT 27 1986

Mr. Lawrence C. Tropea, Jr., P.E.
Director, Environmental Control
Environmental Control Department
Reynolds Metals Company
Richmond, Virginia 23261

Dear Mr. Tropea:

Thank you for your letter dated October 2, 1986 expressing your concern regarding the regulation of your Downingtown, Pennsylvania facility. We appreciate the dilemma you have faced in determining when this facility will be subject to regulation.

Based on the information we have, you are correct in your belief that this incinerator will not be subject to regulation due to the "redefinition of solid waste", promulgated on January 4, 1985, until Pennsylvania amends its regulations to reflect that rulemaking. We expect this will happen in 1987.

When Pennsylvania revises its rules, you will be required to submit a permit application according to the procedures of State law. For information regarding State law you may wish to contact Donald A. Lazarchik, Director of the Bureau of Solid Waste Management, Pennsylvania Department of Environmental Resources, at (717) 787-9870.

With regard to the Part A application which you already submitted to EPA Region III, EPA regards that submission as a protective filing. Protective filers are not considered to be operating pursuant to interim status. Since this facility did

not have interim status on November 8 1984 the provision under the Hazardous and Solid Waste Amendments of 1984 (HSWA) that requires each interim status facility desiring to retain interim status to submit a Part B by November 8, 1986 does not apply.

If you have any questions regarding this letter, please contact John Humphries at (215) 597-8116 or Marty madison at (202) 382-2229.

Sincerely,

Bruce R. Weddle
Director
Permits and State
Programs Division

cc: Robert Allen, Region III
John Humphries, Region III
George Garland

NOV 21 1986

Dr. Barry L. Johnson
Associate Administrator
Agency for Toxic Substances and Disease Pegistry
Chamblee 28 South
1600 Clifton Road, NE
Atlanta, Georgia 30333

Dear Dr. Johnson:

Thank you for your recent letter of October 30. I agree that we should meet to discuss ATSDR health assessments under RCPA §3019. I would also like to follow-up on several issues that you raised.

The "Procedural Guidance for Reviewing Exposure Information under RCRA Section 3019" alluded to in your letter was issued in final form and distributed to the Regions on September 26, 1986. This document alerts the Regions to the possibility of the public submitting release and/or exposure information to ATSDR, as well as to EPA or the State. The guidance (page 9) goes on to state that ATSDR should forward copies of these submissions to the EPA Region, and encourages the Regions to coordinate any response with ATSDR's activities. I believe that we still need to work out the details of this process in future meetings.

While §3019 allows public submissions, the statute does not explicitly provide for public petitions to ATSDR for health assessments. However, we recognize that public petitions for assessments at RCRA sites may be forthcoming under the new Superfund provisions. For this reason, we agree that published procedures for responding to petitions should cover RCRA facilities, as well as Superfund sites. I look forward to working with OERR and ATSDR to develop these procedures.

In your letter you also sought clarification of the role of Mr. Ralph Touch as part of the Permit Assistance Team (PAT). Let me assure you that Mr. Touch will be involved in all phases of the PAT decision-making process, including workload planning and preliminary technical assistance, as well as formal referrals to ATSDR for a health assessment. To date, no formal PAT meetings have been convened to recommend reforrals, and Regional requests for site-specific assistance have been fairly limited.

On October 28, we forwarded the attached letter to Mr. Touch which summarizes the results of our survey of the Regions for sites likely to need ATSDR assistance in the near future. Since then, we also sent to Mr. Touch the data for one site in Region IV (B.F. Goodrich, Kentucky) for ATSDR review. In this case we are seeking technical assistance in performing a preliminary evaluation of the potential impact of apparent exposure to the public, caused by releases into the Tennessee River, in order to determine the need and extent of further evaluation. We will continue to keep Mr. Touch informed by phone of the status of other §3019 sites and will send him the necessary data as our Regions generate it.

I look forward to meeting with you soon to discuss these and other issues. Ralph Touch will be meeting with my staff to discuss the status of funds for ATSDR activities, the list of candidate facilities for ATSDR assistance, and procedural issues. I suggest that we meet shortly after this so that we can take advantage of our staff's discussions. Please have your secretary contact my office to arrange our meeting.

Sincerely Yours,

/S/

Marcia Williams
Director
Office of Solid Waste

Attachment

cc: Ralph Touch

9523.1987(02)

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

SEP 14 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPC

LETTER TO STATE ENVIRONMENTAL COMMISSIONERS

In recent months I've noted a number of actions by State legislatures aimed at preventing the siting of new hazardous waste management facilities, or otherwise limiting new capacity to deal with these wastes. In addition, some States have set moratoria on completing permit decisions, or on approving changes to permits needed for expanded waste management capacity. Another potential action being considered is limiting the amount of waste coming into a State from other States.

I'm sure you share my concern that if this trend continues, it will become increasingly difficult to site or permit new waste management facilities. The irony is that these new facilities are often safer and better designed than older, existing facilities. Also, the resulting capacity shortfalls in some areas could mean that wastes would be shipped longer distances for handling. Such transportation of hazardous wastes increases, of course, the risk of spills and leaks.

I'm particularly concerned about actions designed to limit much needed treatment capacity. Sound, permanent treatment is usually preferable to continuing the storage or disposal of wastes in or on the land. Also, there is already a nationwide shortage of commercial hazardous waste incineration capacity.

The Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (SARA) requires States to certify by October 1989 that adequate capacity to handle hazardous wastes is available in their States, or through arrangements with other States. This certification is a requirement for continued Superfund funding in a State after October 1989. Erecting statutory barriers to hazardous waste management in a State may not be consistent with the required capacity certification.

Most States are authorized by EPA to manage their own Resource Conservation and Recovery Act (RCRA) program. Although RCRA requires an authorized State program to be "consistent," it also allows States to be more stringent. EPA took both of these provisions into account when developing rules that required authorized States to avoid unreasonable restrictions and prohibitions on waste movement and management. We may be compelled to initiate withdrawal of RCRA authorization from a State which takes an action in violation of these requirements.

We recognize, however, that States must balance public health and environmental concerns with the need for adequate waste management capacity. EPA has not opposed, for example, legitimate State measures to protect areas with vulnerable hyrogeology from the effects of waste disposal. Nor has EPA discouraged States from providing greater public involvement in permit decisions. We are concerned, however, that States not use their authorities arbitrarily to prohibit environmentally sound waste management practices.

I hope I can count on your support in this vital matter. Please let me know if you have any questions or comments on this letter.

Sincerely,

J. Winston Porter
Assistant Administrator

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 87

2. Exposure Information Requirements

Section 270.10(j) requires that exposure information accompany Part B applications for landfills or surface impoundments. Is submission of exposure information a condition for permit issuance? What should the exposure information include?

No. Section 270.10(c) states that an application for a Part B permit is not considered incomplete if the owner or operator fails to submit the exposure information described in Section 270.10(j). Failure to submit exposure information is a separate violation of Section 3019 of RCRA.

At a minimum, the exposure information should address all potential pathways of human exposure to hazardous wastes or constituents resulting from releases during accidents and normal operations, including releases associated with transportation to or from the unit. These pathways include ground-water, surface water, air emissions, food chain contamination, and multi-media contamination. The potential magnitude and nature of the human exposure which may result from the releases should also be addressed.

Source: Bob Kayser (202) 382-4536
Research: Tish Zimmerman

5. Contents of Part B Permit Application: General Requirements

The Part B of the permit application must contain general information requirements. One of these requirements is information on the traffic pattern, estimated volume and control of traffic, descriptions of access road surfacing, and load bearing capacity of roads (Section 270.14(b)(10)).

Why is this information required?

Is the information limited to on-site traffic, or must the traffic patterns surrounding the facility also be described?

The intent of requiring submittal of the traffic related information is to ensure that movement of hazardous waste will be conducted safely to minimize the risk of accidents. The traffic related information is only required for that area inside and immediately surrounding the hazardous waste management facility.

There are no standards in Part 264 with which traffic related items must comply. However, the overriding concern is safety. Permit applicants should ensure that the movement of waste into, out of, and within the facility will be conducted in a manner that minimizes accident potential. Additionally, general traffic movement should not be such that hazardous waste managed at the facility will be disturbed by the traffic. In order to present traffic related items effectively, the Agency recommends that both a discussion and a drawing be provided with the Part B permit.

Permit applicants should provide a thorough description of both the pattern of general traffic and the pattern of traffic moving hazardous waste within the facility. The applicant should also provide a description of traffic on roadways traveled by the public which intersect with access roadways to the facility. The following items should be considered for inclusion in the discussion of traffic patterns and volumes: routes traveled; distances traveled; number of vehicles; types of vehicles; waste movement; sampling and unloading locations; and amount of pedestrian traffic.

Permit applicants are also required to submit a description of roadway surfaces and load bearing capacity. The intent here is to insure that the roadways are appropriate for the type and number of vehicles that will be using them. If the road surface is such that it will require periodic maintenance, the frequency and type of maintenance could also be described. Finally, the reviewing agency may also be concerned with the amount of dust that will be generated by vehicular traffic in and around the facility.

Source: *Permit Applicant's Guidance Manual for the General Facility Standards of Part 264*

Research: Chris Bryant

9523.1991(01)

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

MAR 13 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Glenn English
House of Representatives
Washington, D.C. 20515

Dear Mr. English:

Thank you for your letter of February 4, 1991, regarding the Environmental Protection Agency's (EPA's) authority to consider a permit applicant's history of compliance with the Resource Conservation and Recovery Act (RCRA).

As Mr. Robert Layton stated in his January 15, 1991, letter to you, RCRA section 3005(c) requires that EPA (or the state) shall issue a permit to a hazardous waste treatment, storage, or disposal facility once the EPA determines that the facility is in compliance with the requirements of sections 3004 and 3005 of RCRA. Neither section 3004 nor 3005 explicitly requires a permit applicant to have complied with RCRA in the past, or requires EPA to deny a permit if past noncompliance has occurred. However, the statute provides a broad "omnibus" authority that the EPA may use to address a facility's compliance history when developing permit conditions or making permit decisions. The scope of this omnibus authority and our implementation of this provision are described below.

Section 3005(c)(3) provides that permits issued under that section shall contain whatever terms and conditions EPA determines are necessary to protect human health and the environment. When issuing a permit, EPA may invoke this omnibus authority to address past noncompliance in two ways. First, EPA may include permit conditions that specifically address areas in which the facility has a history of noncompliance if EPA determines that such conditions are necessary to protect human health and the environment. In addition, in perhaps a more extreme and unusual case, some instances of serious past noncompliance could conceivably lead EPA to conclude that noncompliance in the future is inevitable. If EPA cannot draft conditions to ensure protection of human health and the environment in this type of case, then EPA may invoke its omnibus authority to deny the permit (see the enclosed page from the Federal Register notice). It is important to note that the omnibus provision is invoked on a case by case basis, and only where EPA believes that the usual permitting conditions will not provide adequate human health and environmental protection.

Furthermore, EPA need not rely completely on the potential for permit denial to encourage compliance with RCRA prior to permit issuance. Section 3008 of RCRA authorizes EPA to take enforcement actions against facilities prior to permit issuance, including those already operating under interim status. Thus, even though previous violations of the interim status standards of Part 265 may not ultimately prevent the issuance of a permit, a facility owner or operator is still subject to civil and criminal penalties for those violations (including penalties for each day of non-compliance).

After issuing a permit, EPA has several mechanisms in place to address noncompliance. The regulations at 40 CFR 270.43(a) allow EPA either to terminate a permit or to deny its renewal if the owner or operator fails to comply with any term of the permit or if the facility's operation endangers human health or the environment. In addition, EPA may invoke enforcement authority under RCRA section 3008 to remedy noncompliance at a permitted facility.

In light of the above statutory and regulatory authorities, it does not appear necessary to modify the regulations at this time. If you have any further questions on this matter, please have your staff contact Devereaux Barnes at (202) 475-7267.

We appreciate your interest in the safe and effective management of hazardous waste.

Sincerely yours,

/S/

Don R. Clay
Assistant Administrator

Enclosure

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPC

MEMORANDUM

OSWER Directive

SUBJECT: Post-Closure Permit Part B Requirements

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

TO: Waste Management Division Directors,
Regions I-X

This Office has recently received a number of inquiries concerning information requirements for Part B post-closure permit applications. Outlined below is a brief discussion of those requirements and a list of information elements which should be included in such applications.

40 CFR 270.14 establishes the information requirements for RCRA permit applications. Because of the inherent differences between an operating permit and a permit covering only post-closure care activities, some of the information requirements for an operating permit will not be applicable to a permit for the post-closure care period. Section 270.10(c) gives EPA and States the authority to determine that an application is complete whenever an application form and supplemental information are completed to the satisfaction of the Director. We therefore recommend that the Director only require information be submitted which is relevant. to post-closure care activities. Relevant information may be determined on a case-by-case basis. At a minimum, however, it should include:

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If you have any further questions, please contact George Faison at 382-2221.

cc: RCRA Branch Chiefs
Permit Section Chiefs

9524 – PERMIT CONDITIONS

Part 270 Subpart C

9524.1982(01)

February 8, 1982

MEMORANDUM

TO: Director
Air and Hazardous/Waste Management Division
Regions I - X

FROM: Gary N. Dietrich
Director
Office of Solid Waste

SUBJECT: RCRA Permits for Facilities That Have Underground Tanks

Chris Capper's December 21, 1981 memo on RCRA Permit Priorities and Procedures has apparently raised some questions concerning the permitting of tank storage facilities. In calling in Part B applications for facilities that have storage or treatment in tanks please remember that these regulations DO NOT APPLY to underground facilities that cannot be entered for inspection! In most cases you will not be able to tell from a Part A application whether an underground tank can be entered for inspection (or even if the tank is above or below ground). Therefore, you may want to contact these facilities prior to sending the "call letters" or put something in the letter to address this.

If you are calling for a Part B application from a facility that has a combination of underground storage tanks that cannot be entered for inspection as well as other storage facilities (tanks that can be inspected, above ground tanks, or containers) the options for the facility operator are as follows:

1) The operator can voluntarily choose to install manholes for inspection, or discontinue the use of the tanks which cannot be inspected.

2) The operator can continue to utilize those tanks under the interim status standards until such time as Part 264 regulations are promulgated.

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If they elect the second option they will face a second permitting action after future regulations dealing with underground tanks are promulgated. This is at least 12 to 18 months away. The region should maintain a record of those facilities which continue to use these tanks so that follow up action can be taken once they become regulated.

bcc:	Skinner	DeGeare
	Weddle	Glazer
	Lingle	Regional Permitting Contacts (via Magnifax)
	Levy	

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Recurring Permit Issues: Interpreting Regulatory Authority for RCRA Permit Conditions

Other Federal Authorities

A related issue that has arisen in some of the first permit reviews is whether RCRA permit writers should insert permit conditions which would require permittees to meet requirements established under other Federal laws and regulations. Permit writers should realize that the RCRA regulations have been specifically written to avoid duplication of coverage with other Federal authorities. The supporting information behind the Part 264 regulations points out that the Agency has excluded from the regulations many proposed Part 264 standards that would have required permittees to meet other Federal laws and regulations (see 45 Fed.Reg. 33171; May 19, 1980.) Therefore, as a general matter, permit writers should not include in RCRA permits conditions based on other Federal authorities merely for repetition or emphasis. Such conditions should only be used if the permit writer decides they are needed to meet RCRA regulatory requirements.

OCT 5 1984

MEMORANDUM

SUBJECT: Use of Compliance Schedules in RCRA Permits

FROM: Bruce R. Weddle
Division Director
Permits and State Programs Division

TO: Hazardous Waste Directors, Region I-X

Many Regions have requested guidance on the appropriate use of compliance schedules in RCRA permits. In response to those requests, the Permits Branch has developed the attached guidance.

To summarize the main points, compliance schedules in RCRA permits cannot be used to satisfy, after the permit has been issued, the information requirements of Part 270. Compliance schedules can be used to allow facilities to come into compliance with Part 264 standards that are not required under Part 265.

Please distribute this guidance to your respective staffs. Any questions regarding when compliance schedules can be used in RCRA permits should be referred to Elizabeth Cotsworth at FTS 382-4751.

Attachment

WH-563:RChrismon:srm:S243:24691:8/12/84:Randy's disk "Memos"

USE OF COMPLIANCE SCHEDULES
IN RCRA PERMITS

A number of Regions have asked about the appropriate use of compliance schedules in RCRA permits. The following explains Agency policy on this issue.

Compliance Schedules in Permits

In general, compliance schedules in permits should be used to allow the construction or installation of equipment that is not required under Part 265 but that is required to comply with Part 264 standards. To be acceptable, compliance schedules must be specific, enforceable, allow for public notice and comment on the detailed permit condition, and allow the applicant additional time only where that time is legitimately needed.

Specificity means that the compliance schedule must set forth, in detail, what the applicant is supposed to do, when the applicant is supposed to do it, and when the work is to be completed. Thus, the schedule should include the design and construction specifications, interim milestones for construction, and a specific date for completion. The schedule must also require the applicant to notify the Director within 14 days of each interim date and the final completion date.

Enforceability means that the requirements imposed by the compliance schedule on the owner/operator can be achieved and that the Agency can confirm that the owner/operator has successfully met his responsibilities. It also means the scheduled activities must comply with the technical standards of Part 264. The permit writer must have an opportunity to evaluate the details of design, construction, and operation to assure their adequacy in light of Part 264 requirements.

The complete compliance schedule must be included in the draft permit so the public will have an opportunity to comment on its content. The compliance schedule must be complete as to the details of what is to be done, when, and by whom.

Suggested Uses of Compliance Schedules in RCRA Permits

1. Should a compliance schedule in a RCRA permit be used to bring a facility into compliance with Part 265 standards?

No. A facility should be in compliance with Part 265 standards at the time a RCRA permit is issued. In situations where the facility is not in compliance with the requirements of Part 265, especially when compliance problems will prevent development of a draft permit, the permit writer should refer the case to the enforcement staff. The enforcement staff will make decisions as to the appropriate enforcement action to pursue. When enforcement actions result in administrative orders, a compliance schedule may be included in the order.

2. Can a compliance schedule be used to allow a facility additional time to provide Part B application information after the permit is issued?

No. Use of a compliance schedule for this purpose is unacceptable and may be illegal. For example, the RCRA regulations provide that the Director must specify detailed ground-water monitoring conditions in the facility permit. To develop these permit conditions, information on ground-water monitoring at the facility is necessary and, generally, should be drawn from the Part B permit application. Without adequate ground-water monitoring data, it is impossible to know whether a facility should be conducting detection or compliance monitoring or corrective action. In addition, there may be no information that would support the details of a ground-water monitoring plan, such as number, location and design of wells. Without this information, the Agency cannot develop a permit that complies with the Subtitle C regulations. Additionally, the public is not given adequate notice or opportunity to comment on the ground-water monitoring program. Because the Agency does not have adequate information on these items, <u>it cannot issue a permit.</u>

3. Can compliance schedules be used to bring a facility into compliance with Part 264 standards not required under Part 265?

Yes. Where a facility, which is in compliance with Part 265, must undertake new construction or installation of equipment in order to comply with Part 264, a RCRA permit should be issued with an attached compliance schedule.

For example, although an interim status storage facility does not require secondary containment, secondary containment is required under Part 264. Accordingly, the permit applicant must submit design, construction and operating specifications for a secondary containment system in his application. The permit writer may then approve those specifications and make them part of the draft RCRA permit. A compliance schedule would be included in the draft permit, setting forth milestones for various tasks, a final completion date for construction and a requirement for the permitee to notify the Director within 14 days of complying with each interim date and the final date. See §270.33. Incorporation of the compliance schedule in the draft permit would provide the public with notice of the details of the proposed design, construction, and operation of the secondary containment

system, and also the proposed schedule for completion of the work. After addressing the public comments, the permit writer can issue the final permit and attached compliance schedule.

Note the important factors of this scenario:

A. All information requirements of Part 270 are satisfied before the draft permit is written.

B. The permit writer has an opportunity to assess the adequacy of the design, construction, and operation details.

C. The compliance schedule is specific as to what is to be done, who is responsible for seeing that activities are completed, and when those activities are to be completed.

D. The public has a full opportunity for notice and comment.

4. Should a compliance schedule be used to issue a permit and allow modifications to an existing incinerator that has failed the trial burn?

No. The Agency should not issue a permit to a facility which has failed to demonstrate, in accordance with Part 270, compliance with the Part 264 performance standards.

This scenario appears to be similar to the secondary containment situation described previously. There is, however, a fundamental difference between the two situations. With respect to secondary containment, it can be ascertained from the applicant's proposed designs and specifications that the containment structure will comply with the Part 264 technical standards. With respect to an incinerator, however, there is a much higher level of uncertainty that proposed modifications will result in the incinerator achieving compliance with the performance standards in Part 264, Subpart O. The Agency cannot issue a permit to an incinerator that cannot demonstrate its ability to comply with the regulations.

Generally, the permit writer has several options. The Agency can delay any final action, send a letter to the applicant saying that we will deny the permit unless we get trial burn results demonstrating compliance with the Part 264 performance standards within a specified time period. The Director could also issue an administrative order to achieve the same results. The applicant, of course, can submit a new trial burn plan using different operating parameters or modify the facility and submit a new trial burn plan incorporating the new modifications. This order likely would contain a compliance schedule. Finally, in some circumstances, it may be appropriate to deny the permit.

5. For incinerators, should a RCRA permit be issued with an attached compliance schedule to bring an existing incinerator into compliance with Part 264 monitoring requirements necessary for an adequate trial burn?

No. All continuous monitoring instrumentation should be installed for the trial burn. Under §§270.19(d) or 270.62(b)(5), the Director must find that the trial burn will allow him to set operating conditions for the unit before he can approve the trial burn plan. If the continuous monitoring equipment is not installed during the trial burn, the Director cannot set operating conditions. Therefore, under the authority of Part 270, the Director can require continuous monitors to be installed before the trial burn is conducted and the permit issued.

6. Should permits with compliance schedules be used to correct deficiencies in interim status ground-water monitoring data?

Where the ground-water monitoring data are lacking or questionable due to poor sampling and analytical techniques, improper well placement, or lack of monitoring, the Agency cannot issue a RCRA permit with an attached compliance schedule to develop adequate data. Rather, the permit writer should refer the case to the enforcement office for action. Close coordination between the permits and enforcement staffs will, of course, be necessary to ensure that the relief sought through enforcement action will be consistent and compatible with the Part B information requirements.

7. May the permit writer develop permit conditions in areas where the Part B is deficient? For example, if an applicant fails to specify information regarding fire prevention and control can the permit writer still draft permit conditions in that area?

Yes. It should be kept in mind that the applicant is not the sole source of information available to the permit writer. For example, the permit writer's knowledge of safety codes, such as the National Fire Protection Association Code, can provide the basis for permit conditions. The permit writer can impose draft permit conditions on necessary fire prevention and control measures based on the NFPA code, even though the applicant has failed to specify this information in the Part B application. The permit writer, in essence, is completing the application for the applicant by drawing on his own knowledge and best engineering judgment.

For More Information

The above examples cover the situations where use of compliance schedules has been suggested. Headquarters will be working with the Regions to establish a national clearing house for sharing "model" permits, permit conditions, NODs, and compliance schedules. In the meantime, any questions regarding when compliance schedules can be used should be referred to Elizabeth Cotsworth at FTS-8-382-4751.

9524.1984(02)

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

OCT 11 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: Recurring Permit Issues: Extent of Permit Conditions and the Velsicol Decision

FROM: Bruce Weddle, Director
Permits and State Programs Division (WH-563)

TO: Hazardous Waste Division Directors,
Regions I-X

Attached to this memo is a copy of the Administrator's Decision in the Velsicol Appeal. Velsicol challenged its RCRA permit on the grounds that EPA lacked the authority to incorporate parts of the permit application into the permit as enforceable conditions and on the grounds that this incorporation would lead to an inflexible permit with conditions that exceed RCRA's requirements. Velsicol had submitted a permit application that described both RCRA and non-RCRA activities at a chemical plant. The application led to a permit that was not limited to the RCRA storage facility at this plant.

The Administrator, citing the need for flexibility in writing permit conditions, declared that a permit writer can restate the requirements of the regulations, incorporate parts of the permit aplication directly into the permit, or write a completely original permit condition. The latter two approaches are permissible as long as "the permit conditions are 'based' on the appropriate substantive provisions of the regulations and are 'necessary to achieve compliance with the Act and regulations.'" This ruling upholds the approach used in the Model Permit.

The Administrator also found that both Velsicol and the Region had failed to take full advantage of the permit process to work together in preparing the permit conditions. As a result, permit conditions were written that, as the Region conceded, were too broad. For this reason, he remanded the permit to Region IV for additional public comment and potential revision of the permit after public comment. In the new public comment period, Velsicol can submit the information necessary to limit the permit to the regulations.

In summary, this decision allows permit writers to continue using the Model Permit as the basis for RCRA permits, and to

continue to incorporate parts of the permit application in the draft permit or to, when necessary, write completely original permit conditions. Permit writers must also ensure that applicants are aware that parts of the permit application can be put into the permit as enforceable permit conditions. Accordingly, the applicant should be encouraged, through NODs and requests for additional information, to identify and remove information that is not needed to demonstrate compliance with RCRA. The permit writers are also free to excise extraneous information from those parts of the application that are incorporated into the permit.

This guidance replaces our earlier guidance of January 20, 1984, entitled "Recurring Permit Issues: Extent of Permit Conditions."

Attachment

cc: RCRA Branch Chiefs, Regions I-X
RCRA Permit Section Chiefs, Regions I-X
OSW Permits Branch

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:	)	
	)	
Velsicol Chemical Corporation,	)	RCRA Appeal No. 83-6
	)	
Applicant	)	
	)	
Permit No. TND-061-314-803	)	
	)	

REMAND AND PARTIAL DENIAL OF PETITION FOR REVIEW

In a petition filed pursuant to 40 CFR §124.19 (1983),[1/] Velsicol Chemical Corporation (Applicant) requested review of a Resource Conservation and Recovery Act (RCRA) permit issued to it for operation of a hazardous waste management (HWM) facility at its chemical manufacturing plant in Chattanooga, Tennessee.[2/] The contested permit was issued on September 28, 1983, by the Director, Air and Waste Management Division, Region IV, U.S. Environmental Protection Agency. According to the Applicant, the permit is inflexible due to "Region IV's

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1/ 40 CFR §124.19 provides in pertinent part:

> (a) Within 30 days after a RCRA . . . final permit decision has been issued . . ., any person who filed comments on the draft permit . . . may petition the Administrator to review any condition of the permit decision.

2/ The Applicant is currently operating its facility under the authority of "Interim Status," a provision in RCRA which allows persons who own facilities which were in existence on or before November 19, 1980, to continue in operation until final action is taken on their permit applications.

extensive incorporation of Velsicol's [permit] application into the permit itself . . . ." The Applicant's specific objections to the permit fall into two broad categories: (1) the Region lacks the authority to incorporate substantial portions of the permit application in the permit as enforceable conditions; and (2) such incorporation led to a permit which is inflexible and contains conditions that are "stricter than required by the RCRA regulations." 3/

As explained below, insofar as the Applicant questions the Regional Administrator's authority to incorporate portions of the permit application in the final permit, the Applicant has not carried its burden of showing, in accordance with §124.19(a)(1) and (2), that the permit determination is clearly erroneous or involves an exercise of discretion or policy which is important and which should be reviewed as a discretionary matter. 4/ Therefore, review of that aspect of the permit is denied.

3/ See "Velsicol Chemical Corporation's Reply to Region IV's Response in Opposition to Velsicol's Petition" dated January 20, 1984. In its petition, the Applicant requests review of eightee conditions in the permit. In some instances, it is not possible to discern the precise basis for the Applicant's challenge to a specific condition.

4/ The preamble to the regulations containing this standard for accepting review states that "this power of review should be only sparingly exercised [and] . . . most permit conditions should be finally determined at the Regional level . . . ." 45 Fed. Reg. 33412 (May 19, 1980).

However, with respect to the challenges to specific permit conditions on grounds that they are inflexible and too strict, the permit determination is remanded to the Region for the purposes of reopening the comment period and revising the permit conditions where appropriate.

A.

There is no compelling reason to question the Region's authority to incorporate portions of the permit application in the Applicant's permit. The regulations confer broad discretion on the Regional Administrator to either: (1) restate the requirements of the regulations as permit conditions (which he did in some instances); or (2) to "establish other permit conditions" which meet the regulatory standards. 40 CFR §270.32(b) ("Establishing Permit Conditions"). The text reads as follows:

> (b) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in 40 CFR Parts 264, 266, and 267. In satisfying this provision, the Director [Regional Administrator or authorized representative] may incorporate applicable requirements of 40 CFR Parts 264, 266, and 267 directly into the permit or establish other permit conditions that are based on these parts.

When the Regional Administrator elects to "establish other permit conditions," instead of simply restating the requirements of the regulations, he can choose between incorporating parts of the permit application directly in the permit or crafting a completely original permit condition in his own words. No legal significance attaches to his choice, however, for in either

READS ESTAB OTHER PERMIT CONDITIONS AS MEANING
INCORP IS OK

instance the sole test of legal sufficiency is whether the requirements of §270.32(b) are satisfied, i.e., whether the permit conditions are "based" on the appropriate substantive provisions of the regulations and are "necessary to achieve compliance with the Act and regulations." Therefore, the contention that the Regional Administrator is without authority to incorporate portions of the application is rejected. 5/

Similarly, there is no basis for contending, as Velsicol does, that restating the requirements of the regulations should be preferred over incorporation of the permit application. The permit issuer needs to have broad discretionary powers in deciding which of the several approaches to writing permit conditions under §270.32(b) is most appropriate: permits are issued for many different kinds of hazardous waste facilities, ranging from those which only store small amounts of hazardous waste on a temporary basis, to those which are in the business of disposing of large quantities of hazardous waste on a contin-

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5/ In some cases, the regulations actually direct the Regional Administrator to incorporate approved plans from the application, thus depriving the Regional Administrator of discretion to do otherwise. For example, 40 CFR §264.112 (Closure Plan) provides:

> (a) The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with §270.14(b)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with §122.29 of this chapter, the approved closure plan will become a condition of any RCRA permit.

uous basis. In some cases, a restatement of the regulation will be sufficient to insure the safe handling of the waste; in others it will not. Similarly, in some cases incorporation of the permit application will be sufficient; in others it will not. Finally, in some cases it may be necessary to devise new language that is tailor-made for the specific circumstances. Therefore, any suggestion that any single approach to writing permit conditions is preferable in all circumstances is categorically rejected.

The Applicant argues, however, that even if incorporation is authorized by the regulations, it is bad policy. According to the Applicant, it results in inflexible permits which will have to be modified in the future, thus wasting valuable Agency and applicant resources. This argument also fails to persuade me that the permit should be reviewed. There is no reason to assume, as the Applicant evidently does, that incorporation will inevitably produce an inflexible permit needing modification. On the contrary, the outcome depends in large part on what the Applicant has submitted and on whether the procedures for developing permits are used effectively, so that unnecessary conflicts over the terms and conditions of the permit are minimized. Based on the record before me, I am convinced that the Applicant and the Region have not taken advantage of the permit procedures

to avoid the present controversy. [6/]

B.

The applicable procedures for permit issuance contemplate that the permit issuer and the permit applicant will work together in developing a permit. [7/] To that end, the regulations provide that if the permit application does not contain the information required to write a permit, the Regional Administrator may issue a "notice of deficiency," requesting the information necessary to complete the application. 40 CFR §124.3(c). After the application is officially "complete," the Regional Administrator may still request additional information to clarify what has already been submitted, 40 CFR §124.3(c); and still later, after the draft permit determination is issued for public comment, the Regional Administrator may modify the permit (and reopen the comment period) if the Region receives comments from the Applicant (or the public) that appear to raise substantial new questions concerning the permit, 40 CFR §124.14. Naturally, if the comments indicate that the permit would be contrary to the Act

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6/ For much the same reason I do not believe that it is necessary to address the Applicant's contention that incorporation of major portions of its application leads to the inclusion of permit conditions that, under §270.32(b), allegedly are not "necessary to achieve compliance with the Act and regulations." (Emphasis added.) There is no reason to assume that incorporation inevitably leads to inclusion of unnecessary conditions. In any event, whether or not a particular condition is necessary can be judged on a case-by-case basis and corrected as appropriate.

7/ See generally, 40 CFR Part 124 (1983).

or the regulations, the Regional Administrator can always deny the permit application (after proper notice, including circulation of a revised statement of basis) if the Region lacks the information necessary to make the permit conform to the law, 40 CFR §§124.3(d) and 124.6(b). In other words, the regulations provide an opportunity for an exchange of information between the Region, the Applicant, and the public in developing the terms of the permit. In the present case, however, it appears that neither the Region nor the Applicant took full advantage of this opportunity and the result, as the Region concedes, is a permit that contains provisions which are too detailed or that cover portions of the facility which are not directly related to hazardous waste operations. 8/

8/ The Region nevertheless justifies issuing the permit in its present form on the grounds that it is the Applicant's responsibility to provide the permit issuer with the information needed to prepare the permit, and if the resulting permit is too inflexible or embraces matters not properly within the scope of the regulations, the permit Applicant is at fault, for the permit merely reflects the information supplied by the Applicant. And if that information produces an inflexible or overly broad permit, then the permit Applicant has no one to blame other than itself. The Applicant's remedy, according to the Region, is to seek a modification of the permit.

The Applicant, on the other hand, responds by pointing out that it gave the Region the information it requested; that the Region is under a duty to prepare an adequate permit; and that, regardless of the over or underabundance of the information supplied by the Applicant, the Region is not authorized to put conditions in the permit that are beyond its authority.

For reasons which are not apparent from the record, the Region did not request clarifying information,[9/] or issue a notice of deficiency, or reopen the public comment period for the purpose of considering modification of the proposed permit or denial of the permit application. The record does show, on the other hand, that the Applicant did raise its concerns about inflexibility and overbroadness in its comments on the draft permit. However, the record also shows that the Applicant's comments were not accompanied by the information which the Region would have needed to change the permit so that it would conform to the regulations.[10/]

Since the Region concedes that some of the conditions in the permit are too broad, it is my conclusion that the Region erred when it issued the permit. Given the Region's stated willingness to entertain proposals to amend certain permit conditions, the Applicant should be given an opportunity to submit the information that will enable a permit to be prepared that is narrower and distinguishes between the Applicant's hazardous

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9/ The Region did request other information from the Applicant to clarify some of the submitted material, but that request did not address the matters in question here.

10/ See, for example, 40 CFR §124.13 ("Obligation to raise issues and provide information during the public comment period"). Of course, it is a settled principle of law that the party who is in possession of information has the burden of producing it. See McCormick on Evidence (2d ed. 1972) ("A doctrine often repeated by the courts is that where the facts, with regard to an issue lie peculiarly in the knowledge of a party, that party has the burden of proving the issue.").

and nonhazardous waste operations, and otherwise conforms to the regulations. Therefore, I am remanding the permit to the Region so that the comment period can be reopened under §124.14, thus giving the Applicant another opportunity to submit that information.

Conclusion

Accordingly, for the reasons stated above, it is my conclusion that review of the RCRA permit is not warranted at this time. The petition for review is denied insofar as it challenges the Regional Administrator's authority to incorporate portions of the permit application in the final permit. However, regarding Applicant's objection to specific conditions in the permit, the permit determination is remanded for the purposes of reopening the comment period to provide an opportunity to obtain the additional information needed to revise those permit conditions. 11/ If the information is not forthcoming and the Region is, therefore, unable to write a permit that complies with the Act and the regulations, the Region is instructed to issue an appropriate notice of its intent to deny the permit.

11/ Of course, only the permit conditions contested in the Applicant's petition for review will be the subject of the reopened comment period.

Any final permit determination shall reflect the Region's response to all comments. Thereafter, the Region's permit determination may be appealed in accordance with §124.19. 12/

So ordered.

William D. Ruckelshaus
Administrator

Dated: SEP 14 1984

12/ For purposes of judicial review, final Agency action occurs after a final RCRA permit is issued by the Regional Administrator and Agency review procedures are exhausted. See 40 CFR §124.19 (f)(1).

9524.1985(01)

Mr. Thomas M. Hellman, Ph.D.
Manager
Health, Safety and Environmental Protection
General Electric
Fairfield, Connecticut 06431

Dear Dr. Hellman:

Thank you for your letter of June 13 regarding RCRA incinerator permits. Specifically, you inquired as to whether an incineration facility which is intended to burn non-hazardous waste and/or hazardous wastes banned from land disposal, but is overdesigned to meet RCRA requirements, can secure a RCRA permit at a future time.

RCRA Section 3005(a) and 40 CFR 270.10 prohibit physical construction of a hazardous waste management facility without a RCRA permit. When applying this requirement, the intent of the owner in constructing the facility is the primary factor of consideration. A permit is required prior to construction if the owner intends for the facility to handle non-hazardous waste for a period of time, and them apply for a permit to handle hazardous waste (including hazardous waste banned from land disposal) at a later date. If the facility is intended to burn only solid non-hazardous wastes, a permit prior to construction is not required.

If an incinerator is constructed with the intention of burning only solid waste and those wastes are listed as hazardous wastes sometime in the future, the facility would be eligible to receive a permit provided that all permitting requirements are met. Such a facility would have to comply with any additional standards applicable to that treatment process which have been adopted subsequent to the construction of the incinerator.

RCRA allows an exemption from the requirement to have a permit prior to construction for facilities constructed pursuant to an approval issued under section 6(e) of the Toxic Substances Control Act for the incineration of polychlorinated biphenyls. any person owning or operating such a facility may file an application for a RCRA permit to incinerate hazardous wastes after construction or operation of that facility.

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We endorse your decision to seek environmentally sound alternatives to land disposal in your hazardous waste management strategies. In regard to this issue, I also recommend that you contact the State RCRA permitting agency since Connecticut is authorized to issue RCRA incinerator permit. For further information, please contact:

Stephen Hitchcock
Hazardous Material Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Building
Hartford, Connecticut 16106

If we can be of further assistance, please contact Art Glazer of my staff at (202) 382-4692.

Sincerely,

John Skinner
Director
Office of Solid Waste

cc: Stephen Hitchcock, Connecticut
Dennis Huebner, Region I

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9524.1988(01)

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

FEB 23 1988

Ms. M. Therese Yasdick
Environmental Counsel
Chemical Waste Management, Inc.
3303 Butterfield Road
Oak Brook, Illinois 60521

Dear Ms. Yasdick:

This is in response to your letter of November 24, 1987 in which you requested clarification of the reporting requirements of section 270.30(l)(10) of the RCRA regulations. As you know, that section, on its face, requires permittees to report all instances of non-compliance not reported under other paragraphs of section 270.30.

In your letter, you raised the concern that this requirement, read literally, would require owners and operators to notify EPA of every instance of non-compliance, however trivial. You suggested, instead, that the Agency adopt three specific criteria for when reporting would be required under section 270.30(l)(10). You expressed concern that, if the Agency failed to adopt those criteria, the result would be an unnecessary burden on industry and a chilling effect on internal environmental audit programs. After careful review of your suggestions and concerns, we agree that there are certain instances of non-compliance with permit conditions that do not warrant reporting under section 270.30(l)(10). However, we believe these are limited to minor facility recordkeeping, reporting, and similar oversights that are immediately corrected once discovered. We further agree that the reporting requirements of this section are limited to non-compliance only with permit conditions and not to other Federal, State, or local requirements. We have addressed individually below the criteria you suggested and the concerns you raised about application of the reporting requirements of section 270.30(l)(10).

First, you suggested that reportable instances of non-compliance should be limited to violations of 40 CFR Part 264. We do not believe, however, that reporting requirements should be limited in this way. RCRA permits may contain

provisions that do not extend from the regulations of Part 264 yet are extremely significant. For example, the omnibus provision of section 3005(c)(3) of RCRA allows the Agency to impose such permit conditions as it determines are necessary to protect human health and the environment. Conditions imposed under this provision might fall outside of the scope of Part 264 but would also, by definition, be significant. Violations of those provisions would likely be significant as well and would require reporting under section 270.30(1)(10). Similarly, violations of air emissions standards, which have been proposed under 40 CFR Part 269, also may be significant. On a related point, you asked whether section 270.30(1)(10) requires reporting of any non-compliance with any other Federal or State requirements that are not part of the RCRA permit. We do not believe that is the intent of section 270.30(1)(10). Other subsections of section 270.30(1) refer to reporting of non-compliance <u>with permit requirements</u>. For example, section 270.30(1)(2) requires reporting of anticipated activities that might result in "non-compliance with permit requirements." The reference to "non-compliance" in section 270.30(1)(10) is intended to be the same; that is, it refers to non-compliance with the permit requirements.

Second, you suggested that instances of non-compliance reportable under section 270.30(1)(10) should be limited to instances that "significantly and adversely affect the sound environmental operation of the facility." We disagree with this suggestion on the grounds that the standard is overly subjective. Furthermore, the purpose of the reporting requirement is not simply to identify specific instances of non-compliance leading to actual harm, but rather to indicate overall records of compliance and patterns of non-compliance. This end would not be served if reporting were limited to instances of non-compliance that met the suggested standard.

Finally, you suggested that all reportable instances of other non-compliance should exclude matters discovered and addressed by an internal environmental audit program. You expressed concern that a literal interpretation of section 270.30(1)(10) would have a chilling effect on internal environmental audit programs and pointed out that the Agency's policy on environmental audits acknowledges industry's need to "self-evaluate environmental performance with some measure of privacy" (51 FR 25004). However, that policy also states that "audit reports may not shield monitoring, compliance, or other information that would otherwise be reportable and/or accessible to EPA" (id). Further, it explicitly states that the policy "does not alter regulated entities'...obligations to monitor record, or report information required under environmental

statutes, regulations, or permits..." (id). Therefore, while the Agency encourages and supports environmental auditing, it does not support the use of environmental audits to shield otherwise reportable violations. At the same time, the Agency believes that its enforcement policies do in fact provide a strong incentive for environmental audits by facility owners or operators. In the Federal Register notice announcing its policy on environmental auditing, the Agency noted that while environmental auditing cannot substitute for regulatory oversight, it can help facilities become subject to less regulatory action by helping them improve their performance. For this reason, we do not believe that the reporting requirements of section 270.30(1)(10) will have a chilling effect on environmental auditing.

Although the Agency believes that the specific criteria that you suggest are inappropriate, we acknowledge that requiring notification for every instance of permit non-compliance, however trivial, could be extremely burdensome, both to the facility owner or operator and to EPA, without providing significant benefits. The Agency did not intend such a result in section 270.30(1)(10). Instead, we believe that this reporting requirement should not apply to minor recordkeeping, reporting, and similar oversights that are immediately corrected once discovered. Under this interpretation, violations such as the example you cited in your letter, that is, failure to put the time of an inspection on an inspection form, need not be reported. Also fitting into this category would be failure to maintain all aspects of personnel training plans up to date and minor deviations from time deadlines, such as time for submission of biennial reports. The Agency believes, however, that even seemingly insignificant violations become significant if repeated. Therefore, it should be noted, that if a violation meeting the above criteria is part of a repeating pattern, reporting is required.

I hope this clarification of the reporting requirements of section 270.30(1)(10) answers your questions about its application and alleviates your concerns about unnecessary burden to industry imposed by that section. If you have any questions on this issue, please contact Frank McAlister of the Office of Solid Waste (202) 382-2223.

Sincerely,

Jeffery D. Denit
Acting Director
Office of Solid Waste

9524.1989(01)

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

FEB 27 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Use of Omnibus Authority to Control Emissions of Metals, HCl, and PICs from Hazardous Waste Incinerators

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

TO: Hazardous Waste Division Directors, Regions I-X

Questions have recurred regarding the implementation under omnibus authority of the forthcoming proposed amendments to the hazardous waste incinerator standards, and the relationship between implementing the controls and meeting the November 8, 1989, permitting deadline. This memorandum provides OSW's policy on these issues.

We are concerned that the existing standards for hazardous waste incinerators under 40 CFR 264.340 may not be fully protective for all facilities with respect to emissions of toxic metals, hydrogen chloride (HCl) and products of incomplete combustion (PICs). We have developed proposed amendments to the standards to better address the hazards posed by these emissions. The proposed rules have completed the internal Agency review process and are under review by the Office of Management and Budget. We anticipate that the proposed rules will be published for public comment in the spring of 1989.

In the interim, until the rules are promulgated, EPA permit writers should use the authority provided under Section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), to apply additional permit conditions as necessary to adequately control these emissions. This provision, often called the "omnibus" authority, gives permit writers the authority to apply additional permit conditions as necessary to adequately protect human health and the environment. Thus, EPA permit writers have the authority and the responsibility to consider, on a case-by-case basis during the permit process, whether controls based on the current regulations are fully protective, and, if not, to establish additional permit conditions as necessary to protect human health and the environment.

The use of the omnibus authority is clearly within the initial intent of Congress in including the omnibus provision in the statute, as evidenced by the legislative history at S. Rep No. 284, 98th Cong., 1st Sess. 31 (1983), which states:

> "[the omnibus authority] can also be used to incorporate new or better technologies or other new requirements in permits, where EPA intends to add such technologies or requirements to the regulations but has not yet issued a final regulatory amendment."

Guidance Documents

To assist permit writers, we have developed two guidance documents: Guidance on Metals and Hydrogen Chloride Controls for Hazardous Waste Incinerators, December 29, 1988 (Draft final report); and Guidance on PIC Controls for Hazardous Waste Incinerators, December 30, 1988 (Draft final report). These guidance documents recommend a step-by-step approach to develop permit conditions consistent with the regulatory requirements the Agency plans to propose. We recommend that permit writers use the guidance documents to develop appropriate permit conditions. However, in using the guidance documents or other information to establish permit conditions under the omnibus authority, the permit writer must provide the applicant and other interested parties due process. The permit writer must explain and document what the concern is, and thoroughly discuss why the additional permit conditions are needed to ensure protection of the public health and the environment. Through the permit process, he must provide the time and opportunity for comment, he must fully respond to those comments, and he must include the responses in the administrative record of the permit. In short, the permit writer must provide a sound technical basis for inclusion of the permit conditions under the omnibus authority.

Permit writers need not wait to use OSW's guidance documents until the documents have been issued in final form. Like the proposed rules, the guidance documents have completed the internal Agency review process. We anticipate that the documents will be published in the spring of 1989, and made available through the National Technical Information Service. Permit writers should use the guidance notwithstanding its draft status because, as indicated above, the permit writer must justify thoroughly and, in writing, any requirements applied under the omnibus authority.

The permit writer cannot simply refer to the guidance document to support the conditions included in the permit. Moreover, we anticipate that the guidance may change over time as permit writers and applicants gain experience dealing with the issues and as additional information becomes available (e.g., health effects data; improvements in dispersion models). We plan to revise the documents as needed after publication and to provide notice in the Federal Register of the availability of subsequent editions.

By considering the need for additional controls under the omnibus authority on a case-by-case basis, permit writers can avoid petitions from interested parties asserting that the permit is not adequately protective. The Administrator has already ruled in favor of a petition for review of a RCRA incineration permit that argued, in part, that adequate controls on metals and PIC emissions were not provided in the permit. The Administrator subsequently directed the Region to consider adding permit conditions addressing PICs and metals.

State Permit Writers

We encourage State permit writers to implement the guidance if the State has an omnibus authority in its statute. EPA permit writers should review the draft State permit to determine if it adequately protects human health and the environment, particularly with respect to emissions of metals, hydrogen chloride, and PICs. If the State permit does not provide adequate controls, the EPA permit writer should provide these controls in the HSWA portion of the permit, given that the omnibus authority is a HSWA provision. HSWA provisions must be implemented by EPA in authorized States until the State obtains authorization for HSWA provisions as well. To date, only one State, Georgia, has been authorized under HSWA.

Impact on Permitting Deadline

We do not believe that considering the need for additional controls for metals, HCl, and PIC emissions during the permit process will cause the Regions or States to miss the November 8, 1989, permitting deadline established by HSWA. We developed the guidance documents to enable the permit writer to apply appropriate controls on a site-specific basis and to explain to interested parties the need for those controls. In addition, we have conducted four training workshops for Regional and State permit writers on how to use the guidance documents. Finally, Headquarters staff in the Combustion Section, WMD, and the Alternate Technology and Support Section, PSPD, are available to assist permit writers as necessary. Limited contractor funds are also available to handle special problems that may arise.

Some permits, however, may have already progressed to a stage where issuance of the permit would be substantially delayed if a trial burn was required to demonstrate conformance with the metals and PIC controls recommended by the guidance documents. Examples are when the trial burn has already been conducted or where the trial burn plan has been approved. In these cases, the guidance documents recommend that permit writers establish conservative, but reasonable, interim controls until the owner or operator conducts a trial burn to demonstrate that the interim requirements (or less stringent requirements) will not result in an exceedance of the limits recommended by the guidance documents. Methods for determining these interim limits are presented in the guidance documents. In applying these interim controls, however, the permit writer must still thoroughly explain in writing the basis for imposing such conditions and provide interested parties due process through the RCRA permit procedures.

Nonetheless, if a State believes that it may not be able to meet the November 8, 1989, permitting deadline because of the policy on implementing controls on metals, HCl, and PIC emissions, the State should discuss the situation with the Regional Office. If site-specific guidance is needed, the Regional Office may discuss the situation further with Joseph Carra, Director, Permits and State Programs Division.

cc: State Hazardous Waste Division Directors
Incinerator Permit Writers' Workgroup
Jeffery H. Denit
David Bussard
Robert Tonetti
Joseph Carra
Steven Silverman
James Berlow
Bob Holloway

MAR 2 1989

MEMORANDUM

SUBJECT: Ecolotec Permit Remand Order and Use of the Omnibus Provision

FROM: Joseph S. Carra, Director
Permits and State Programs Division

TO: B. G. Constantelos, Director
Waste Management Division, Region V

This memorandum is in response to your request of January 9, 1989 for guidance on the use of the Agency's omnibus authority under section 3005(c)(3) of RCRA and 40 CFR 270.32(b)(2). As you stated in your memorandum, the Administrator signed a Remand Order on the Ecolotec RCRA permit appeal that directs the Region to reconsider its decision in light of the Agency's omnibus authority. You expressed concern that the Remand Order could have significant implications for the RCRA permitting process by broadening substantially what the Agency must consider in connection with permit issuance. You then posed several questions about use of the omnibus authority in light of the Ecolotec appeal decision.

We understand your concerns about the uncertainty that omnibus authority creates in the permit process. However, we believe that the Remand Order of the Ecolotec permit appeal should not have any substantial impact on what the Agency must consider in connection with permit issuance. The Remand Order instructs the Region to reconsider the Ecolotec permit because the Region failed, in making the original permit decision, to recognize the Agency's authority under the omnibus provision to deny a permit. As stated in the decision, "[t]he Region is simply directed to reconsider the facility and the permit under the proper legal perspective, i.e., one that includes denial of the permit...." We do not believe that the Order should be interpreted to criticize the manner in which the Region used the omnibus authority to impose permit conditions. In fact, the Order specifically states that Region V recognized and properly exercised its discretion under the omnibus provision to impose permit terms on Ecolotec beyond those required by EPA regulations. Nor does this Order reduce the ability of the

Region to rely on the Federal regulations as establishing the appropriate level of human health and environmental protection, as long as there are no site-specific circumstances that indicate otherwise.

We address below the questions that your memorandum raises about the omnibus authority.

1. How broad is the Agency's authority to gather information not required by the regulations?

Under §270.10(k) of the RCRA regulations, the Agency has broad authority to require information from permit applicants concerning permit conditions issued under §270.32(b)(2) (the omnibus provision) when necessary to protect human health and the environment. The Agency discussed the extent of this authority in the preamble of the Final Codification Rule published on December 1, 1987 (53 FR 45788). That preamble states that, while the authority to collect information under §270.10(k) should be used sparingly and not for random and unjustified fishing expeditions or for conditions unrelated to hazardous waste activities, it can otherwise be used in specific circumstances where existing regulatory requirements may require supplementation to ensure that human health and the environment are adequately protected.

2. Will we be required to conduct risk assessments at every site prior to permit issuance?

The omnibus provision does not impose an obligation on the Agency to conduct risk assessments at every site. Further, as discussed above, we do not believe that the Remand Order on the Ecolotec appeal requires the Agency to routinely gather additional information when issuing a permit or to routinely go beyond the regulatory standards. The Agency continues to be required to examine all relevant data and information that are available when issuing a permit. If, based on this normal quantum of data, the Agency determines that site-specific circumstances exist that require further investigation, then additional information may be gathered from the applicant under the authority of §270.10(k).

3. When is use of the omnibus provision appropriate?

As a rule, the Agency's position is that EPA's regulations are protective of human health and the environment and that permits implementing these regulatory standards will also be protective. As you know, however, there may be site-specific environmental circumstances in which regulatory requirements may need supplementation and use of the omnibus provision may be appropriate. The decision to invoke omnibus authority must be made on a case-by-case basis and only when the Agency, after

examining all relevant data supplied during the permitting process, determines that such circumstances exist. The most obvious use of the omnibus authority is to impose additional permit conditions reflecting standards that have been proposed but are not yet in effect. Another use of the omnibus might be to impose permit conditions not required by the regulations but detailed in guidance documents issued by the Agency. This latter example is not, however, a broad directive to turn guidance into regulatory requirements. Rather, it would be most appropriate when guidance specifically identifies particular situations where current generic regulations might need to be supplemented. In any case, while there will be other circumstances in which the omnibus authority can and should be used to impose permit conditions or deny permits, such situations should be uncommon.

4. What are the legal limits of the omnibus provision i.e., do we have authority to deny a permit even though the facility has submitted a complete and technically adequate application?

In the preamble of the July 15, 1985 Codification rule, the Agency clearly stated that in order for the omnibus authority to accomplish its intended effect, the authority to issue permits containing conditions deemed necessary to protect human health and the environment must encompass the authority to deny permits as well. The Agency further discussed the legal limitations of our omnibus authority in the preamble of the December 1, 1987 Second Codification rule. There, the Agency pointed out that the intent of the provision includes authorization to impose permit conditions beyond those mandated by the regulations. Thus, even if a facility submits a permit application that is complete and technically adequate as defined by EPA regulations, if due to environmental circumstances at the facility, compliance with the regulations will not assure protection of human health and the environment, and the Agency cannot impose additional conditions that will provide adequate protection, then the Agency can and should invoke omnibus authority to deny the permit.

I hope this answers any questions you might have about the effect of the Ecolotec Remand Order on use of the omnibus provision. If you have any further questions, please contact Barbara Foster at FTS 382-4751.

cc: Tina Kaneen
Lisa Pierard
Waste Management Division Directors, Regions I-IV, VI-X
Barbara Foster

MAR 23 1989

MEMORANDUM

SUBJECT: Postponement of a Land Treatment Demonstration for Navajo Refining Company, Artesia, New Mexico Authorized by the New Mexico Environmental Improvement Board

FROM: Joseph S. Carra, Director
Permits and State Programs Division (OS-300)

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

This memorandum is in response to your request of December 29, 1988 for guidance on certain permitting issues related to land treatment facilities. You mentioned that the questions arose because the New Mexico Environmental Improvement Board delayed the start date of a land treatment demonstration for an interim status land treatment unit owned by Navajo Refining Company. As you explained in your memorandum, the postponement occurred as follows:

1. On January 22, 1988, the State of New Mexico issued a two-phased permit to the facility in which it required that the land treatment demonstration phase (Phase I) be effective for a period of one year from the effective date of the permit unless terminated, revoked, or reissued.

2. On March 22, 1988, Navajo Refining Company appealed the state-issued permit and requested a de novo hearing, which was held on May 31, 1988. In its appeal, Navajo Refining submitted Proposed Findings and Reasons which alleged that the Board has the authority to reverse a decisions of a Director under various circumstances. Navajo suggested that the Board change the start date of the treatment demonstration Phase I period to a later date.

3. On August 12, 1988, the Board considered the appeal and tentatively decided to postpone the start date of the land treatment demonstration until August 8, 1990. EPA stated its opposition to delaying the demonstration, but the Board nevertheless rendered its final decision to postpone the start date of the Phase I land treatment demonstration until August, 1990.

You asked several questions about the status of the facility and the state appeal. Because New Mexico is an authorized State, your questions are governed by New Mexico law, and we have no reason to comment on state law matters. In addition, most of your questions appear to be of a generic nature about land treatment demonstrations and permitting. We have answered your questions in a similarly non-facility-specific vein, assuming that federal law is applicable. We emphasize that our comments do not analyze the Navajo Refining situation as a matter of applicable state law.

1. Can a permit be appealed based on reasons other than those received during the public comment period?

Yes. Section 124.19 of the RCRA regulations governs who may appeal a RCRA permit under federal law. That section provides that any person who filed comments on a draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Section 124.19 does not limit the subject matter of the appeal unless the person failed to file comments or participate during the public hearing on the draft permit, in which case the person may only petition for review to the extent of the changes from the draft to the final permit decision. Note, however, that New Mexico state law could differ significantly from §124.19.

2. Is the permit a legally enforceable document if it does not require the land treatment demonstration until a future date?

Under federal regulations at §270.63, the Agency may issue a two-phase facility permit, such as the permit issued to Navajo Refining, to a facility with a land treatment unit. Such a permit becomes effective, thus enforceable, according to the procedures in §124.15, that is, 30 days after issuance unless a later date is provided in the permit or the permit is appealed. Under federal law, the effective date of a treatment demonstration phase would not affect the effective date of the facility permit.

3. Can a permit be issued for Phase II without Phase I being implemented first?

Yes. As discussed above, the federal regulations at §270.63 provide for issuance of a two-phase permit to a facility with a land treatment unit. Such a permit normally contains general facility standards and two portions related to the land treatment standards of Subpart M. The first portion, Phase I, provides for the treatment demonstration; the second, Phase II, contains conditions to attempt to meet all Subpart M requirements based on substantial, yet incomplete or

inconclusive information submitted in Part B of the permit application (see §270.63(b)). As is disscussed above, all portions of the permit are issued at once, and the "facility" permit becomes effective per §124.15. The Phase I portion becomes effective as provided in the permit. The Phase II portion becomes effective only after the Phase I treatment demonstration is completed and, based on the results of the Phase I treatment demonstration, all necessary permit modifications are made per §270.63.

4. What is the regulatory status of a facility when a two-phase permit is issued under §270.63?

Under federal law, a facility is "permitted" once the permit goes into effect. At that time, the facility becomes subject to general facility standards under Part 264 as well as corrective action provisions of the permit. The land treatment unit is subject to the standards of Part 264 insofar as it is used for the treatment demonstration, the remainder of the unit complies with interim status standards until Phase II of the permit goes into effect pursuant to §270.63(d).

5. Can EPA require a treatment demonstration through the HSWA omnibus provision?

At the time that the HSWA portion of the permit was issued, the Agency could have required a treatment demonstration using omnibus authority if such a requirement were necessary to protect human health and the environment. However, whether the omnibus authority is appropriate for use after initial permit issuance, such as when a permit is renoticed as a result of changes made in response to an appeal, is an issue still under consideration by EPA at this time.

6. Is a State's administrative process for changing a permit to reflect a different start date for the land treatment demonstration subject to major modification requirements including public notice and opportunity for comment?

The State's administrative process is a matter of state law. Under federal law, any change made as the result of an appeal decision need not be made as a permit modification because the contested portion of the permit has not yet become a final permit decision under §124.15. However, if the change is substantial, then public notice and opportunity for comment may be advisable. Once the permit becomes effective, any change to it must be made as a permit modification. If the State has procedures similar to the previous federal major/minor modification system, a change of the start date for a land treatment demonstration would likely be a major modification and subject to public notice and comment.

9525 – CHANGES TO PERMITS

Part 270 Subpart D

ATK1/1104/59 kp

9525.1982(01)

January 29, 1982

MEMORANDUM

SUBJECT: Proposed Mechanism for Handling Mobile Treatment Units

FROM: John H. Skinner
Director, State Programs
and Resource Recovery Division (WH-563)

TO: Howard Zeller
Acting Director
Enforcement Division, Region IV

This is in response to your memorandum of September 25, 1981, requesting concurrence with your proposed mechanism to handle mobile treatment facilities.

We agree with Region IV's interpretation of the regulations, that interim status and RCRA permits are site specific and therefore, mobile treatment units alone cannot receive permits (or interim status) but must be permitted (or receive interim status) for use at a particular location. We have written at least one letter to that effect. (See letter from John Skinner to Timothy Vanderver of Chemfix Technologies, Inc. dated June 2, 1981, sent to the Regions on that date).

The following approach, which is somewhat similar to the one suggested in your memorandum, will enable mobile treatment units to operate within the scope of the RCRA program. This approach has been developed after meeting with several mobile treatment companies. We have divided the approach into the following four situations:

(1) Non-emergency situations at a site which has interim status;

(2) Non-emergency situations at a site which has a RCRA permit (e.g., periodic use of mobile treatment units during the operating life of the facility, use at closure);

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(3) Non-emergency situations at a site which does not have interim status or a RCRA permit (e.g., remedial actions at inactive sites);

(4) Emergency situations (e.g., spills, emergency response).

(1) Non-emergency situations at a site which has interim status

This approach would enable a mobile treatment unit to operate during interim status under one of three alternatives. (Alternative (c) will be proposed soon as an amendment to 40 C.F.R. §122.23, Changes during interim status).

(a) An interim status facility which intended to use mobile treatment equipment, but did not include it in the original Part A permit application, may amend its Part A application to include the mobile treatment process. The Agency would treat these facilities as it would any facility which submitted an incomplete Part A permit application. The only requirement is that the equipment must have been in existence on or before November 19, 1980,[1] and the facility must have qualified for interim status.

(b) Mobile treatment may be added to a facility as a new process or an increase in the design capacity of an existing process under the allowable changes during interim status, 40 C.F.R. §122.23(c)(2) or (c)(3). Under these sections, a mobile treatment unit may be added to a facility if it is necessary either to prevent a threat to human health and the environment because of an emergency situation; to comply with Federal regulations or state and local laws; or because of a lack of available treatment, storage, or disposal capacity at other facilities. It should be noted, however, that these sections will change with the amendment to §122.23.

1/ Because mobile treatment units are unique in that they are used intermittently at different sites, they will be considered in existence if they were operating at any site on or about November 19, 1980. Normally, a unit would have to be operating on or about November 19, 1980, at a site which qualified for interim status to be considered in existence.

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(c) The proposed amendments to 122.23(c) will include a section which will allow interim status facilities to add tanks and containers used for the treatment or storage of hazardous waste. Such tanks and containers may be added for any reason, whether or not the facility previously had tanks or containers, or any treatment or storage process. The facility must have qualified for interim status, however. This amendment, if promulgated as proposed, will enable most interim status facilities to add mobile treatment done in tanks or containers to their facilities.

(2) Non-emergency situations at a site which has a RCRA permit

A mobile treatment unit may be added to a permitted facility under §122.15 as a permit modification. Section 122.15(a)(1) allows a permit to be modified, or revoked and reissued when substantial alterations or additions to the permitted facility or activity occur.

We will be proposing amendments to §122.17 which, in some limited circumstances, may allow the addition of mobile treatment units to be considered minor modifications to a facility.

(3) Non-Emergency situations at a site which does not have interim status or a RCRA permit

Our approach is to require a permit before a mobile treatment operator may begin operation at a non-emergency site which does not have interim status or a RCRA permit. In most situations where the mobile treatment company is handling the clean-up, it will be considered both owner (of the equipment) and operator, and must apply for a permit. If there is another owner involved as well, e.g., owner of the land, that owner may also have to sign the permit application.

(4) Emergency Situations

There are two emergency mechanisms already in place in the RCRA regulations. First, storage or treatment done in immediate response to a spill of hazardous waste may occur without first obtaining a RCRA permit. (See 40 CFR §264.1(g)(8), 45 FR 76630, November 19, 1980).

Second, there is a provision for an emergency permit in 40 CFR §122.27. This is a temporary permit to be used in the event that treatment, storage, or disposal of hazardous waste must take place due to an emergency situation.

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Your concept of a generic permit would allow the mobile treatment operation itself to obtain a permit, and then require public notice before the mobile treatment operation is used at each individual site. The concept is obviously a departure from the present RCRA scheme of site specific permits. We will look into this suggestion further. In the meantime, the approach described in this memorandum must be used.

We would appreciate any comments you have on our approach to handling mobile treatment units. If you have further questions or comments, please contact Deborah Wolpe at (202) 755-9107.

cc: Directors, Air & Hazardous Materials Division, Regions I, III-X
Director, Water Division, Region II
James Bunting
Martha Prothro
Dotz Darrah

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RCRA/SUPERFUND HOTLINE SUMMARIES

AUGUST 84

8. An interim status facility undergoes a transfer of stock while the name of the owner/operator remains the same and the facility operations do not change. Does this change require a modified Part A permit application under §270.72(d)?

   If stock is transferred from an interim status facility, the transaction must be scrutinized by the Agency. In situations where a majority of the company's stock is transferred to another company, operational control and the financial status of the company may change. In these situations, it is appropriate to require a modified Part A. If, however, only a minority interest is transferred, operational control and financial status may not change.

   In these cases a modified Part A is not necessary (assuming no name change).

   Source: Susan Schmedes.
   Research: Tom Gainer

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 85

4. Permit Modification

An owner/operator has a RCRA permit to store hazardous waste in containers and tanks The owner/operator also generates hazardous waste on-site. The owner/operator intend to construct an additional storage area for the purposes of storing hazardous wastes

for 90 days or less. Would the construction of this new storage area be considered an action that would require modification to the facility's RCRA permit (§270.41 or §270.42)?

Construction of the 90-day storage area would not require modification of the facility's storage permit. A generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status provided that all §262.34 requirements are met. The 90-day storage area provision only applies to hazardous waste generated on-site.

In order to avoid potential confusion regarding construction, modification, and permitting, the following suggestions are recommended:

(a) the owner/operator should contact in writing the appropriate U.S. EPA Regional office or State office, if authorized, and inform both the Director and the appropriate enforcement personnel regarding the construction of the 90-day storage area and the owner/operator's intent to comply with §262.34 requirements in that area; and

(b) post a sign or notice in a visible place to identify the 90-day storage area to distinguish it from the permitted container area and storage tanks.

Source: Nancy Pomerleau (202) 382-4500

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9525.1986(01)

MAR 24 1986

Dr. Geraldine Cox
Chemical Manufacturer's Assoc.
2501 M Street, N.W.
Washington, D.C. 20037

Dear ~~Ms~~ Dr. Cox:

I apologize for the delay in responding to your letter of February 10, 1986, concerning the final rule to list solvent mixtures (50 FR 53315, December 31, 1985).

Facilities that were permitted to manage EPA Hazardous Waste Nos. F001-F005 before December 31, 1985, may handle the newly listed solvent mixtures wthout major permit modifications. Thus, you are correct in stating that major permit modifications are required when a facility is not already permitted to manage the applicable F001-F005 waste.

If you have additional questions, please call Jacqueline Sales of my staff, at 382-4770.

Sincerely,

Alan S. Corson
Chief
Studies and Methods Branch (WH-562B)

U.S. GPO 1984-436-836

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

9525.1986(02)

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MAR 27 1986

Robert T. Stewart
Jones, Day, Reavis and Pogue
2300 LTV Center
2001 Ross Avenue
Dallas, Texas 75201

Dear Mr. Roberts:

Thank you for your letter of February 10 concerning RCRA permit modifications. In that letter, you requested advice as to whether a facility with a RCRA permit would need to have its permit modified because of the amended definition of solid waste. Your letter described two separate scenarios, each of which is addressed below.

In the first case, a facility had received a RCRA permit and a unit at that facility was handling an unregulated material described in the Part B application. Through the redefinition of solid waste, the material is now defined as a hazardous waste. In this instance, the need for a permit modification would have to be determined on a case-by-case basis. If the handling of the previously unregulated material was not detailed in the draft permit that received public comment, or if conditions contained in the permit specifically exempted that unit from RCRA standards, then a permit modification would be required. If the unit and the waste was fully detailed in the draft permit and was subject to full RCRA standards, then a permit modification would not be required.

In the second case, a facility had received a RCRA permit which included a unit that was handling an unregulated material, however, the material was not described in the Part B application. The applicable law in this case is Section 3005(e)(1) of RCRA which provides that any facility in existence on the effective date of RCRA statutory or regulatory changes that render the facility subject to the requirement to have a permit or interim status may qualify for interim status. Section 3005(e)(1), however, is limited to <u>facilities</u> which become subject to the requirement to have a permit. <u>Units</u> at facilities described above are not eligible for interim status since interim status terminated upon issuance of the permit. In order for these units to handle a newly regulated waste, a facility must apply for a permit modification before the effective date of the statutory or regulatory amendment mandating such change.

Your letter also stated that allowing newly regulated units to obtain interim status would be consistent with 40 CFR 270.1(c)(4) which allows partial permitting of a facility. We disagree with your interpretation, however, that the section also extends to eligibility for interim status. Finally, your letter stated that requiring permit modifications would put permitted facilities at an unfair disadvantage with interim status facilities. We agree that the procedures for adding new wastes are less burdensome for interim status facilities. However, newly regulated units at such facilities are not automatically eligible for interim status. Under 40 CFR 270.72, a revised Part A permit application must be submitted prior to any change during interim status. If the change results in an increase in the design capacity of the facility, approval may only be granted because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities. In no event can a change during interim status exceed fifty percent of the capital cost of a comparable new facility.

We recognize that current requirements for adding new hazardous wastes at permitted facilities place a difficult burden on both the owner/operator and the permitting authority to submit and process modification applications in a timely manner. We are currently exploring regulatory alternatives that would provide some relief in this area.

If you have any further questions on this subject, please contact Peter Guerrero, Chief Permits Branch, at 382-4470.

Sincerely,

Marcia Williams

Marcia E. Williams
Director
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 11 1986

9523.1986(04)

Mr. Craig A. Barney
Rohm and Haas
Research Laboratories
727 Norristown Road
Spring House, Pa. 19477

Dear Mr. Barney:

Thank you for your letter of July 16, regarding the management of scintillation vials containing D001 wastes. I will respond to your questions in order.

1. If a RCRA facility (either permitted or with interim status) intends to manage waste other than those identified in its Part A permit application (whether as a result of handling mixed waste or otherwise), it must submit a revised Part A permit application to apply for a permit modification or a change during interim status, whichever is applicable (see 40 CFR 270.41 and 270.72). The same is true if the units or processes in which those wastes are managed will change as a result of accepting wastes previously not included on the Part A. Only where none of the information on the existing Part A changes may a facility manage radioactive mixed wastes without any notification to EPA or the authorized State.

2. If the facility is not changing the hazardous wastes it is handling or the units or processes in which the wastes are handled, then the RCRA permit need not be amended. However, the facility must comply with any applicable NRC licensing requirements, as well, if it wishes to begin storing radioactive mixed waste.

3. The waste must be manifested in accordance with both RCRA and AEA requirements.

However, radioactive mixed waste is not subject to AEA requirements if the Nuclear Regulatory Commission has designated the radioactive components of that waste as "below regulatory concern". This has been done for liquid scintillation media with 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of medium used for liquid scintillation counting (see attached Federal Register notice).

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 86

5. Termination of Permits

A permitted facility closes all its tanks and container storage areas, its only RCRA-regulated units. The region now wishes to terminate the permit because the facility no longer has any active units and is not subject to the post-closure care requirements of 40 CFR 264.117. The facility has complied with all the permit conditions and has disclosed all relevant facts for the permit. On what basis may EPA terminate the facility's permit?

40 CFR 270.43(a) presents the reasons for which EPA may terminate a facility's permit or deny a permit renewal application. EPA may terminate a permit if the facility fails to comply with any condition of the permit, or if the permittee fails to fully disclose relevant information during the permit application or issuance process.

EPA may also terminate a permit if the permittee misrepre sents any relevant facts, or if the permitted activity endangers human health or the environment. A different type of permit termination occurs when a permit is revoked and reissued during transfer of a permit to a new owner/operator, per §270.30(l)(3) and §270.41 (b)(2) or the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an authorized state under §271.8(b)(6). Nothing in the regulations allows for permit termination because permit conditions no longer apply to a facility. Normally the owner/operator of a facility that has closed all its RCRA units and has no post-closure care requirements would allow the permit to expire. Although the owner/operator is still subject to Part 264 standards, there are no hazardous waste management activities to regulate. The owner/operator's financial responsibilities should end after the region receives certification of closure (§§264.143(i), 264.147(e)). According to §124.5(a) the permittee may request termination, but EPA may still only terminate a permit for the reasons given in §270.43.

Nevertheless, EPA does have authority to modify a permit if the Director receives new information, or there are material and substantial alterations to the permitted activity, that justify permit conditions different from those in the existing permit (§270.41(a)(1)(2)). According to §270.50, the maximum permit duration is ten years, but a permit may cover a shorter time period. In this situation, EPA could modify the permit so that it would expire shortly after the earlier closure date.

Source: Matt Hale (202) 382-4740
Research: Jennifer Brock

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 86

4. Termination of Permits

A permitted facility closes all its tanks and container storage areas, its only RCRA-regulated units. The region now wishes to terminate the permit because the facility no longer has any active units and is not subject to the post-closure care requirements of 40 CFR 264.117. The facility has complied with all the permit conditions and has disclosed all relevant facts for the permit. On what basis may EPA terminate the facility's permit?

40 CFR 270.43(a) presents the reasons for which EPA may terminate a facility's permit or deny a permit renewal application. EPA may terminate a permit if the facility fails to comply with any condition of the permit, or if the permittee fails to provide complete information relevant to the permit application or issuance process. EPA may also terminate a permit if the permittee misrepresents any relevant facts, or if the permitted activity endangers human health or the environment. A permit may also be revoked and reissued during transfer of a permit to a new owner/operator, per §270.30(l)(3) and §270.41(b)(2). Nothing in the regulations allows for permit termination because permit conditions no longer apply to a facility. Normally the owner/operator of a facility that has closed all its RCRA units and has no post-closure care requirements would allow the permit to expire. Although the owner/operator is still subject to Part 264 standards, there are no hazardous waste management activities to regulate. The owner/operator's financial responsibilities should end after the region receives certification of closure (§§264.143(i), 264.147(e)).

If a facility owner/operator wishes to terminate its permit before the termination date in the permit, it should request a major permit modification under §270.41. According to §270.50, the maximum permit duration is ten years, but a permit may cover a shorter time period. In this situation, EPA could modify the permit so that it would expire shortly after the earlier closure date.

Source: Matt Hale (202) 382-4740
Research: Jennifer Brock

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 86

17. Treatment Capacity

In an effort to supply greater treatment capacity for restricted wastes, how may an owner/operator incorporate new waste streams into his existing permitted treatment operation?

To increase the availability of treatment facilities for restricted wastes, the Agency has added a provision to the permitting standards, §270.42 [51 FR 40653], which allows for the addition of new waste streams to an existing permitted facility as a minor permit modification. The conditions under which a permittee may incorporate such a minor modification are (1) the hazardous waste must have been prohibited from land disposal under Subpart C of Part 268, (2) the treatment is in accordance with the standards established under §268.41, or a variance pursuant to §268.44, (3) handling and treatment of the restricted waste will not present risks substantially different from those of wastes listed in the permit and (4) the minor permit modification is Federally or State approved and the changes will not require modification of treatment processes or physical equipment.

Source: Jacqueline Sales (202) 382-4770

Research: Dave Phillips
Kris Andersen

2. Corrective Action and Permits

If a release of hazardous waste or hazardous constituents from a solid waste management unit (SWMU) is identified after the issuance of a permit, can EPA reopen the permit and modify it to include additional investigation and/or corrective measures? Does the "permit as a shield" provision in 40 CFR 270.4(a) protect the facility from such action until the permit comes up for reissue?

Permits issued prior to November 8, 1984, the date of enactment of the Hazardous and Solid Waste Amendments, cannot be reopened to establish a Section 3004(u) corrective action program until reissuance. Permits issued after November 8, 1984, address releases from all solid waste management units (SWMUs) at the facility. During the permitting process EPA conducts a RCRA Facility Assessment (RFA) to determine whether there has been a release from any SWMU located within the facility's boundaries. The RFA also determines whether any further investigations or corrective measures are necessary. EPA will then develop a custom-made corrective action program which will be incorporated into the permit. Most permits currently being issued contain a reopener clause for newly identified releases after permit issuance. Absent such a reopener clause, if the Director receives information about a new release, then the authority under Section 270.41(a)(2) could be employed. Section 270.41(a)(2) states that when the Director has received new information that "was not available at the time of permit issuance (other than revised regulations [see Section 270.41(a)(3)], guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance" the permit may be modified during its term.

The "permit as a shield" provision in Section 270.4 does not provide a shield when new information such as mentioned above is obtained after permit issuance. The "permit as a shield" provision applies to standards that are established in the permit which cannot be arbitrarily changed by the Director during the term of the permit. Section 270.41(a)(3) allows a permit to be modified during its term due to amended standards or regulations at the request of the permittee (see 52 FR 45793). Section 270.41(a)(3) also allows the Director

2. Corrective Action and Permits (Cont'd)

to "modify the permit when the standards and regulations on which the permit was based have been changed by statute or amended standards or regulations" such as the land disposal restrictions in 40 CFR Part 268.

Source: Matt Hale (202) 382-4740
Dave Fagan (202) 382-4497
Research: Deborah McKie

9525.1988(02)

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

JUL 1 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Guidance on Permitting Issues Related to the Dupont Edgemore Facility

FROM: Bruce R. Weddle, Director
Permits and State Programs Division

TO: Robert E. Greaves, Chief
Waste Management Branch
Region III

This is in response to your memo of June 6, 1988, in which you requested guidance from Headquarters on several permitting issues related to the Dupont Edgemoor facility in Delaware. You explained in your memo that the facility was granted a construction and operation storage permit by the State and a HSWA permit by EPA. The State permit expires on September 30, 1989; the HSWA permit on March 1, 1989. You also explained that the facility never built the storage unit for which the permit was requested and no longer wishes to do so. You raised several issues about the status of the permit in light of the above. Each issue you asked is addressed individually below. Please note that, for clarity, we have reframed a few of the issues.

1. As the unit was never built, is the State portion of the permit effective?

The question of whether construction is necessary for the State portion of the permit to become effective is one of State law. Under the Federal regulations, construction is not required for the permit to become effective. A final permit decision becomes effective 30 days after the Regional Administrator issues notice of the decision unless: (1) a later effective date is specified in the decision; (2) review is requested; or (3) no comments requested a change in the draft permit, in which case the permit shall become immediately effective (see § 124.15(b)). Thus, if the State law is similar to the Federal, construction is not required for the permit to become effective.

2. If the State portion of the permit has not been effectuated, (that is, construction of the unit has not taken place), can the corrective action portion of the permit be enforced?

Section 3004(u) of HSWA specifically states that "permits issued under section 3005 shall contain schedules of compliance for ...corrective action ...." Since the full RCRA permit (State and Federal portions) in this case has been issued, the statutory requirement for corrective action has been triggered. Therefore, the corrective action portion of the permit can and should be enforced even if construction under the State portion has not occurred.

3. Is revocation of the permit a State, Federal, or combined action?

Revocation and reissuance of the full RCRA permit is a combined action because issuance is a combined action. To revoke and reissue the State portion, State procedures must be followed; to revoke and reissue the Federal portion, the procedures of Part 124 must be followed. It should be noted that this does not preclude a joint proceeding; however, two separate decisions must be made. Most important, the State has no authority to revoke and reissue the Federal portion or vice versa.

4. If it is possible to separate the State portion from the corrective action portion during revocation of the permit, can the corrective action portion of the permit be enforced separately if the State portion is revoked?

Yes. If the State portion is revoked or terminated, or if it expires, there is no effect on the HSWA portion of the permit. Once the permit is issued, the HSWA portion can continue on its own.

5. What can be done, if anything, to extend the terms of the corrective action portion of the permit beyond March 1, 1989?

We believe there are three ways to extend the terms of the corrective action portion of the permit beyond March 1, 1989.

A. Permit Modification. Under section 270.41, the Agency can modify a permit if cause exists under paragraph (a) or (b) of that section. The Agency could use this authority to extend the expiration date of the corrective action portion of the permit by means of a permit modification. There is no

requirement under the regulations that the permittee agree to the extension. Using this approach the permit life could be extended until September 29, 1995 since section 270.50(b) limits such an extension of the original permit life to a total of 10 years.

Modification of the permit under section 270.41(a)(2) to increase the permit term is allowed if the Agency receives information that was (1) not available at the time of permit issuance and (2) would have justified the application of different permit conditions at the time. To determine whether these grounds can be satisfied, we suggest that you investigate (1) whether the facility RFA, when completed, will result in new information about releases at the facility that would have justified a longer term for corrective action; and (2) whether Dupont's subsequent decision not to operate is new information that would have justified a different term for the corrective action portion of the permit because of the change in the expected duration of Dupont's active interest in the site.

B. Revocation and Reissuance. Section 270.41 provides for revocation and reissuance of permits. Under section 270.41(a)(2), the causes for revocation and reissuance are the same as those for permit modification discussed above; however, the permittee must agree to the revocation and reissuance. Section 270.41 also provides that if a permit is revoked and reissued, it is reissued for a new term. Thus, the permit term could be extended for a period of up to 10 years from the date of reissuance.

C. Continuation of Permit. If the Agency does not take action under A or B above, the permit will expire. There are two ways to continue the HSWA permit at expiration. First, if the facility submits a timely application for a new HSWA permit, the existing permit conditions continue in force under section 270.51(a) until a new permit is issued. Second, if, at the time of expiration, the facility is not in compliance with the terms of the permit, then the Agency can invoke section 270.51(c)(3) of the regulations, which allows the Regional Administrator to issue a new permit under Part 124 with appropriate conditions. Of course, this procedure requires the Agency to demonstrate that the facility is out of compliance with its permit. In this case, the Agency could demonstrate non-compliance if, for example, the facility failed to complete the RFA required by the HSWA portion of the permit.

6. <u>If the permit expires and the Region is therefore unable to enforce the corrective action portion of the permit, is Section 3013 the proper enforcement vehicle to address corrective action</u>?

Section 3013 allows the Agency to require monitoring, testing, analysis, and reporting, and therefore this section can be used to require such activities to investigate the need for corrective action. However, the Agency cannot compel corrective action under that section. Either section 3008(a) or 7003 would be an appropriate enforcement authority to carry out corrective action. Note that under section 7003, the Region would have to demonstrate that there is imminent and substantial endangerment. In summary, the most effective response is to pursue permit modification, revocation and reissuance, or continuation as discussed above, prior to the time that the HSWA permit expires. Otherwise, EPA's ability to pursue any needed corrective action at the facility is a potentially more complex process.

I hope this answers your questions regarding the Dupont Edgemoor facility. If you have any questions, please contact Frank McAlister at 382-2223.

cc: Matt Hale
Frank McAlister
Barbara Foster
Fred Chanania
Jackie Tenusak
RCRA Branch Chiefs, Regions I-X

2. Interim Status vs. Permit Modification for Newly Regulated Units

An owner or operator of a fully permitted facility manages RCRA non-hazardous waste in several surface impoundments. This waste will become subject to Subtitle C regulation if the Toxic Characteristic Leaching Procedure (TCLP) for waste identification becomes final and effective.

a) Will the surface impoundments qualify for interim status? If a permit modification is required, what modification class would be applicable?

Newly regulated units at fully permitted facilities do not qualify for interim status. Interim status is granted to facilities and not to individual units per Section 3005(e) of RCRA. Instead, the permittee would follow the permit modification procedures in Section 270.42(g). First, as of the time the TCLP rule becomes effective, the Class 1 permit modification process must be followed for the permittee to continue managing the newly identified waste. Under these procedures, the permittee notifies EPA and the public. Six months after the TCLP rule's effective date, the permittee must then apply for a Class 2 or 3 permit modification, depending on the modifications necessary, and follow the appropriate procedures. Permittees that have not previously managed the newly identified waste may not use the process in Section 270.42(g) and must complete the applicable permit modification procedure prior to treating, storing, or disposing of the waste. (See 53 FR 37912, 37922.)

b) Section 3005(j)(6)(A) of RCRA states that surface impoundments that become subject to Subtitle C due to the promulgation of a new listing or characteristic for identifying a waste as hazardous will have four years from the date of such promulgation to meet the retrofitting requirements under Section 3004(o) of RCRA. Does this provision apply to existing surface impoundments which become newly regulated but are not authorized to operate under interim status?

Yes. EPA currently interprets Section 3005(j)(6)(A) as being applicable to units at facilities requiring permit modification due to a new listing or characteristic for identifying a waste as hazardous. Therefore, newly regulated units at fully permitted facilities will have four years from the date of promulgation of a new listing or characteristic to comply with the retrofitting requirements.

Source:	Wayne Roepe	(202) 382-4740
Resource:	Debbie Doherty	(202) 382-3112

I. SIGNIFICANT QUESTIONS AND RESOLVED ISSUES—AUGUST 1990

RCRA

1. Public Comment Periods for Permit Modifications

When submitting a Class III permit modification request, the permittee, per 40 CFR Section 270.42(c)(2), must hold a public meeting and provide the public with at least 60 days to comment on the request. According to Section 270.42(c)(6), "after the conclusion of the 60-day comment period, the Director must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124." According to Section 124.10(b)(1), the public must be provided with a 45-day comment period. Do these comment periods serve the same function? If so, could just one comment period suffice in lieu of the other?

The 60-day comment period in Section 270.42(c) and the comment period in Section 124.10(b) are separate and distinct because they are designed for two different purposes. The 60-day period allows comment on the permitee's request and assists the Director in deciding whether to prepare a draft modification or a tentative denial; the 45-day period allows comment on the Director's proposed action. The review periods must occur separately. The differences are summarized in the table below:

	INITIATED BY:	WRITTEN COMMENTS ON:	ORAL COMMENT FORUM:
60-DAY PERIOD	The permittee	The permittee's request	A public "meeting" conducted by the permittee
45-DAY PERIOD	The Director	The draft modification or tentative denial.	A public "hearing" conducted by the Director *

* Not mandatory

The 60-day comment period is the first to occur and is initiated by the permittee. The permittee <u>must</u> hold a public meeting no fewer than 15 days after the meeting notice or no fewer than 15 days before the end of the comment period. After the conclusion of the 60-day comment period, the Director will issue a draft permit modification and allow the public 45 days to comment on the draft. The Director will hold a public hearing if requested.

Source: Wayne Roepe, OSW (202) 475-7245
Research: Kevin Dunn

9525.1990(02)

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

OCT 17 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. James T. McVey
Executive Vice President
Diversified Scientific Services, Inc.
P. O. Box 863
Kingston, Tennessee 37763

Dear Mr. McVey:

This is in response to your letter of August 8, 1990, in which you request the Environmental Protection Agency's (EPA) consideration and advice on your proposal to treat some radioactive mixed waste prior to disposal. Currently, your permit, which was issued under the authority of the Resource Conservation and Recovery Act (RCRA) for treatment, storage, and disposal (TSD) of hazardous waste, does not include provisions for the management of the specific type of mixed waste you propose to treat. I understand that my staff has discussed this issue and the delay in our response in earlier telephone conversations with you.

Specifically, you propose to stabilize 825 drums of barium chloride salts (D005 wastes) containing low concentrations of uranimum prior to disposal of the waste in a licensed nuclear waste burial facility. This waste would be shipped from its present location at Westinghouse Materials Company of Ohio in Fernald, Ohio, to Diversified Scientific Services, Incorporated's (DSSI's) TSD facility in Kingston, Tennessee for treatment. The State of Tennessee, which is authorized for both the radioactive mixed waste program and radioactive materials licensing activities, has denied your request to treat the D005 waste under the existing conditions of your RCRA permit. The State has determined that your RCRA permit must be modified to include specific provisions for the management of D005 waste, prior to treating the waste for land disposal. EPA concurs with the State's assessment that this waste may not be treated at the DSSI facility without first obtaining the necessary modification to DSSI's RCRA permit.

Before addressing the permit modification procedures, please be advised that D005 waste is subject to the land disposal restrictions which are provisions of the Hazardous and Solid Waste Amendments (HSWA) to RCRA. Among other things, HSWA

prohibits restricted wastes from land disposal unless the wastes meet the treatment standards established by EPA. For D005 waste, EPA has prescribed a treatment level of 100 mg/l as the characteristic level for barium. In your letter, you indicated that the D005 mixed waste would be disposed at a licensed nuclear waste burial site after treatment. Therefore, the waste must be treated to meet the land disposal restriction program's prescribed treatment level prior to such disposal.

In regard to RCRA permit modification procedures, there are two procedural avenues available for obtaining the necessary modification: through State procedures or through Federal procedures. Since Tennessee is authorized to control D005 mixed waste, you could apply to the State for appropriate changes to your RCRA permit. In this case, you would follow the State's permit modification process. Alternatively, since Tennessee does not have authorization for the land disposal restrictions, EPA administers and enforces this program, as mandated by HSWA, until the State is specifically authorized to do so. Pursuant to this Federal authority, EPA may add conditions to your RCRA permit to allow treatment of the D005 wastes so that the land disposal restrictions will be met. In this case, the Federal modification procedures in 40 CFR 270.42 would be used. Please note that on March 7, 1989, EPA created expedited modification procedures to allow facilities to add new waste codes and/or treatment processes to comply with the land disposal restrictions, if the specified conditions are met (54 FR 9596; see enclosure). However, you should also note that a Federal change to the RCRA permit will not override more stringent state requirements. In this regard, you should confirm with the State that such Federal approval will also satisfy the State program.

I encourage you to work closely with the EPA Region and State authorities to obtain the permit modification required to treat the D005 waste. Mr. Wayne Garfinkel in the RCRA program office, USEPA Region IV, in Atlanta, Georgia may be contacted at (404) 347-3433 for further assistance on this matter. In addition, Mr. Dale Ozier of the Solid Waste Management Division, Department of Health and Environment in Nashville, Tennessee may be contacted at (615) 741-3424, for assistance from the State.

Also, we have a strong interest in following the development of safe and environmentally sound treatment and disposal methods for mixed waste, particularly in view of the current shortfall in treatment and disposal capacity. As part of our effort to maintain current information in this area, I invite you to work closely with my staff to exchange information on technology development, as well as existing permitted facilities involved in the management and disposal of radioactive mixed waste.

If you have general questions regarding the Federal permit modification procedures, please contact Wayne Roepe of my staff at (202) 475-7245. Please contact Jared Flood of my staff at (202) 475-7066, if you have any questions concerning our activities on radioactive mixed waste.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

Enclosure

cc: Wayne Garfinkel
USEPA, Region IV

Dale Ozier
Solid Waste Management Division
Dept. of Health and Environment

9527 – SPECIAL FORMS OF PERMITS

Part 270 Subpart F

9527.1982(01)

November 2, 1982

MEMORANDUM

SUBJECT: RCRA Permits for Mobile Treatment Units Using the Same Type of Equipment

FROM: Rita M. Lavelle
Assistant Administrator
Office of Solid Waste and Emergency Response (WH-562A)

TO: Regional Administrators and Regional Waste Management Directors, Regions I-X

As you know, a RCRA permit is required for each site at which hazardous waste treatment, storage or disposal facilities (TSDFs) operate. If the TSDF is mobile or if the same type of equipment (e.g., a tank of identical design) is used at more than one site to handle a similar or identical waste, a RCRA permit is still required at each location. The purpose of this memorandum is to establish the policy the Agency will use to permit mobile treatment units (MTU's) and to permit fixed facilities where a person uses the same type of equipment to handle similar or identical wastes at multiple locations.

A person applying to use the same type of equipment at multiple locations will find that much of the information in the permit application for the first location will not change for the other locations because the information is not site-specific. Permit writers should note that after the non-site-specific permit conditions have been developed for the first RCRA permit, these permit conditions should be used for all subsequent permits. While not changing any procedures for obtaining a RCRA permit, this policy will assure national consistency for permits issued to facilities using the same or similar equipment and should expedite the issuance of RCRA permits without compromising environmental controls.

The procedures an applicant and permit writer should use to deal with MTU permits or same-type-equipment permits are as follows: An applicant must apply for and be issued a RCRA permit at the first site. It is the responsibility of the applicant to notify the permit writer of the first RCRA permit. The application for the permit at the next site should consist of the

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non-site-specific information from the first application, a copy of the first permit, and the site-specific information for the new location. This site-specific information must include any variation in the equipment or wastes from those permitted at the first site. The permit writer should use the non-site-specific permit conditions from the first permit (to the extent that variations in equipment and wastes do not require otherwise) as conditions in the second permit and draft new permit conditions for the site-specific items only.

The Agency can also rely on previous responses to comments for comments dealing with non-site-specific permit conditions received in a second (or subsequent) proceeding if the same or similar comments were raised on an earlier permit. Response to public comment concerning non-site-specific issues should be as follows: If a comment is similar to a comment raised in an earlier permit issuance proceeding, any response should be the same as that given in the first proceeding. If, however, a significant comment addresses an issue differently than it was addressed in the first proceeding, or a significant comment raises an issue not addressed in the first proceeding, the Regional Administrator must, of course, respond to that comment before the permit may be issued.

The reuse of part of the initial permit application and the resulting permit conditions will allow EPA to streamline the permit process for mobile treatment units and for multiple facilities that use the same type of equipment to handle similar or identical wastes. This policy is likely to be first applied to EPA's mobile incinerator which is currently being permitted in Region II.

I have discussed this approach with Dr. John A. Todhunter, Assistant Administrator for Pesticides and Toxic Substances, and he has indicated that it is consistent with and similar to the approach his office will use to permit mobile facilities disposing of PCB's.

For more information or guidance on the policy outlined in this memorandum, contact Jeff Detlefsen, of my staff, at EPA Headquarters, 202-382-4500.

cc: Dr. John A. Todhunter

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NOV 19

Mr. Lewis D. Walker
Deputy for Environment, Safety and
Occupational Health
OASA (I&L)
Room 2E613
Pentagon
Washington, D.C. 20310-0103

Dear Mr. Walker:

My staff and I have reviewed the Technical Document dated 27 June 1985, which was submitted by the U.S. Army Chemical Agent/Munitions System (CAMDS) Directorate, to consider the CAMDS site at Tooele Army Depot in Tooele, Utah as a "totally enclosed treatment facility" and thereby exempted from RCRA Subtitle C requirements. The substance of this document was presented to technical, policy, and legal EPA staff at a meeting on September 5, 1985, by several Department of Defense (DoD) personnel.

A "totally enclosed treatment facility" under RCRA is defined in 40 C.F.R. §260.10 as:

> ... a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

The CAMDS facility does not meet this definition for two reasons. First, the objective of CAMDS is to destroy obsolete chemical munitions; this activity constitutes treatment as defined in §260.10 and is not directly connected to an industrial production process. Second, this treatment involves incineration of hazardous waste, thus releasing emissions of hazardous constituents to the environment. These emissions (e.g., byproducts of the combustion process during normal operation and during upset conditions before the wastefeed is shut off) are inherent in the normal operation of a hazardous waste incinerator. Even a highly efficient incinerator will not destroy 100 percent of all constituents of the hazardous wastes that are fed into it. The regulatory exclusion of a totally enclosed treatment facility pertains only to treatment that prevents releases of both hazardous wastes and their constituents.

We realize that DoD may soon be mandated to completely destroy 90 percent of the military stockpile of lethal chemical agents and munitions by September 30, 1994 (H.R. 1872, 131 Cong. Rec., No. 87, June 26, 1985). Consequently, DoD intends to use the CAMDS facility to develop and demonstrate the incineration technology to accomplish this proposed statutory objective. In view of the structural modifications and/or operating changes necessary to provide DoD and Congress with information about the effectiveness of incineration to demilitarize chemical agents and munitions at the CAMDS facility, we recommend that the U.S. Army apply for a research, development, and demonstration (RD&D) permit under 40 C.F.R. §270.65; a full RCRA incinerator permit issued under 40 C.F.R. Part 264, Subpart O would not provide flexibility in modifying the design and operation of the facility.

All intended modifications to the facility must be identified in the RD&D permit. However, unlike a Subpart O permit, a trial burn for each modification is not required to demonstrate compliance with §264 requirements since this would be counter to the intent of an RD&D permit. You should note, however, that before the facility may be operated outside the conditions specified in the RD&D permit (i.e., structural or operational modifications) the RD&D permit must be re-drafted to reflect the modifications required and must be made available for public notice and comment for 45 days (§270.41). Therefore, I recommend that attention be given to planning the project so that it is not delayed for this reason.

RD&D permits are limited to one year of operation (365 days of actual operation treating hazardous wastes), may be renewed three times, and must specify the type and quantities of hazardous waste intended for treatment (§270.65(a)(1) and (2)). The Congress and EPA intend to limit these quantities of hazardous waste to the minimum necessary to demonstrate the feasibility of the incinerators. In order to expedite the review and issuance of the RD&D permit, the EPA Regional Office can tailor the RCRA permit application and procedural requirements of 40 C.F.R. Parts 124 and 270 (except for the public participation procedures and financial assurance requirements) to the research objectives of the CAMDS facility (§270.65(b)).

Until the RD&D permit is issued, the CAMDS facility can continue to operate under interim status, providing it continues to operate according to the requirements of §270.71. During the RD&D testing, CAMDS could apply for a full RCRA incinerator permit if you intend to continue using the incinerators to demilitarize stockpiles of chemical agents and munitions following the term of the RD&D permit; in this case, data from the RD&D activity may be submitted in lieu of a trial burn (see enclosure 1, Research Plan "B").

To assist the Regional Office, we reviewed the information in the Technical Document and made a preliminary determination about the additional type of information necessary to prepare a complete RD&D application (see enclosure 1). We also described the type of performance data, which would be necessary in lieu of conducting a trial burn, thereby accelerating the permitting of similar hazardous waste incinerators based upon the RD&D demonstrations. Also, we are enclosing a copy of the draft Guidance Manual for Research, Development, and Demonstration Permits, dated October 3, 1985, to assist you in preparing an RD&D application (see enclosure 2).

The Agency is encouraging the development and demonstration of new and alternative technologies and processes to treat and minimize hazardous wastes. We recognize the critical need for DOD to demilitarize chemical agent munitions, particularly in view of the limited technical data on processes and technologies and the lack of facilities to treat these wastes.

You should contact Mr. Larry Wapensky at (303) 293-1662, Chief, RCRA Permits Section, EPA-Region VIII about processing the RD&D application.

Sincerely,

Original Signed By
Marcia D. Williams

Marcia E. Williams
Director
Office of Solid Waste

Enclosures

cc: Bruce Weddle
Peter Guerrero
Truett DeCeare
Art Glazer
Nancy Pomerleau
Robin Anderson
Bob Weitman (LE-132S)
Ken Gray (LE-132S)
Jack Lehman
Warren Hull (A-104)
Larry Wapensky, Region VIII
Dale D. Parker, Ph.D., State of Utah
Regional Hazardous Waste Branch Chiefs, Regions I-X

UNITED STATES ENVIRONMENTAL PR
WASHINGTON, D.C. 20460

9527.1986(01)

JUN 5 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Philip E. Hoffman
House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Mr. Hoffman:

Thank you for sharing your concerns about the detonation of a hazardous explosive within Waterloo Township in your May 15, 1986, letter. Lee Thomas, the present Administrator of the Environmental Protection Agency (EPA), has asked me to respond.

In accordance with our regulations (40 CFR §270.61), EPA's Region V office issued an "Emergency Permit" to the Drug and Laboratory Disposal Inc. facility to detonate 50 pounds of hazardous explosives. The permit was effective from April 14 to May 14, 1986. This permit was issued only after the facility had conducted an extensive search for alternative methods of disposal. Because there was no feasible alternative, and due to the unstable nature of the material, EPA decided that this permit procedure was the proper course of action. Our regulations do not require us to provide a 45-day public notice when issuing emergency permits. However, we are required to provide public notice. Region V provided this notice by making public announcements through the local newspaper and radio station.

In addition, you raised a concern about EPA's possible violation of Waterloo Township's ordinance #5. In issuing any permit, EPA includes a clause requiring that the permittee obtain all State and local approvals. If the permittee failed to do so, EPA could take an enforcement action to address the violation. It is my understanding that Region V will discuss this matter with the State to determine if an enforcement action is warranted.

If you should have any additional questions concerning this matter, please contact Richard Traub of our Region V office in Chicago. Mr. Traub can be reached at (312) 886-6135.

Sincerely,

J. Winston Porter
Assistant Administrator

bcc: Richard Traub, Region V
Alexander Wolfe, OSW
Cindy Byron, OWPE

AUG 3 1987

Mr. Dic Olsen, Sales Manager
Fenton Company, Inc.
1608 N. Beckley
Lancaster, Texas 75134

Dear Mr. Olsen:

Thank you for your letter of June 30, 1987, in which you requested information on the regulatory status of sludge dehydration equipment which is part of a wastewater treatment facility.

Your understanding of the requirements contained in 40 CFR 270.1(c)(2)(v) is correct. Sludge dehydration equipment that is part of a wastewater treatment system is excluded from the need to obtain a RCRA permit provided the equipment meets the definition of wastewater treatment unit as defined in 40 CFR 260.10, and actually is used to evaporate water from the sludge.

It is important to note that the exclusion provided by §270.1(c)(2)(v) does not apply to conventional incinerators. Such devices are subject to Subpart O of Parts 264 or 265 even when part of a wastewater system.

I must caution you that various States have requirements that are different from the Federal standards. Under their own authorities, States can establish requirements that are more stringent than the Federal requirements. In this instance, the owner or operator is required to comply with the more restrictive requirements. Thus, I encourage you to contact an appropriate State official to determine what the requirements will be for a specific unit.

If you have any further questions regarding the Federal requirements, please contact Mary Cunningham of my staff at (202) 382-7935.

Sincerely,

DP for MW

Marcia E. Williams
Director
Office of Solid Waste

cc: Mary Cunningham
Steven Silverman, Esq.

bcc: R. Holloway
B. Weddle
S. Rudzinski
R. Dellinger
M. Hale
G. Garland
D. Perla

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

AUG 11 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Phillip C. McGuire
Associate Director, Law Enforcement
Department of the Treasury
Bureau of Alcohol, Tobacco, and Firearms
Washington, DC 20226

Dear Mr. McGuire:

This letter is in response to the issues raised recently by the Bureau of Alcohol, Tobacco, and Firearms (BATF) with respect to compliance with the Resource Conservation and Recovery Act (RCRA). Specifically, your staff has requested EPA guidance for two situations: (1) when a BATF agent is called to a location where there is an immediate safety threat, and (2) when explosives or explosive related materials that do not present an immediate safety threat are stored in BATF secured lockers for analysis and possible use in law enforcement proceedings.

The guidance given below for these two situations is based on the federal RCRA program as administered by EPA pursuant to 40 CFR Parts 260-271. In authorized States (which are 43 in number), EPA has delegated the hazardous waste program to the States pursuant to statutory provisions in RCRA. Although each authorized State program must be consistent with and at least as stringent as the Federal program, a State is free to be more stringent. Hence, any guidance given below must be followed up by a BATF analysis of any different provisions that an authorized State may have chosen to enact.

1. <u>Explosives That Present an Immediate Safety Threat</u>

According to our discussions, this scenario involves identification by a trained BATF agent of explosives that create an immediate safety threat, removal of those explosives from the original location to a safe area (often a local law enforcement agency's bomb disposal site or a nearby military installation), and immediate destruction, normally by detonation or open burning.

Under current RCRA regulations (40 CFR Sections 264.1(g)(8), 265.1(e)(1)(i), and 270.1(c)(3)), all activities taken in

immediate response to a discharge of hazardous waste, or an imminent and substantial threat of discharge of a hazardous waste, are exempt from the RCRA permitting and substantive requirements. Since the explosives in question would be hazardous by virtue of their reactivity and ignitability, any BATF actions taken to eliminate the imminent and substantial danger would qualify under this exemption. If the response actions involve transportation to a remote site for destruction, then the transportation as well as the destruction would be exempt. However, the transportation is exempt only to the extent necessary to respond to the immediate threat. Hence, we expect the transportation would normally cover a relatively short distance.

Should there be any question about the exempt or nonexempt status of the BATF action, the RCRA emergency permit regulations (Section 270.61) can be used for destruction activities. As these regulations provide, an emergency RCRA permit can be issued by an EPA Regional Office or by an authorized State official via telephone or in writing. These permits may be issued when the Region or State finds that an imminent and substantial endangerment to human health or the environment exists, according to the requirements of Section 270.61. This permit can address both treatment and storage of hazardous waste. (Under RCRA, open detonation or burning of explosives waste qualifies as thermal treatment.) If necessary, transportation can also be authorized by a provisional identification number, obtainable by telephone. To reiterate, however, no permit is necessary when a BATF agent determines that an immediate safety threat exists.

2. Explosives Material Storage During Analysis and Law Enforcement Proceedings

When a hazardous material (such as explosives and certain types of explosives-related material) is discarded, it becomes a hazardous waste and therefore subject to RCRA. Although the situation may vary, we believe that explosives and explosive material become waste when the court (or BATF) no longer has any use for them (i.e., when no longer needed for evidence, referred to as "judicial forfeiture" by your staff in our discussions). When explosives are stored pending judicial proceedings, they are not subject to the hazardous waste regulations. However, when they are to be discarded, they become waste. At that point, RCRA requirements pertaining to waste generation, transportation, and treatment, storage, and disposal (40 CFR Parts 260-271) become applicable.

Under 40 CFR Section 262.11, generators of solid waste must determine if their wastes are hazardous. "Generator" is defined by person and by site. Thus, for example, each of your storage locker areas would be a generator site. Except for generators who meet the conditional exemption in Section 261.5, generators of hazardous waste are subject to all applicable Sections of Part 262. [In the case where a BATF field office generates less than 100 kilograms (kg) per month, Section 261.5 allows the disposal of the explosive waste at a permitted or interim status hazardous waste facility, or at a facility permitted, licensed or registered by a State to manage municipal or industrial solid waste.] Among other requirements, generators of hazardous waste must have EPA ID numbers (40 CFR Section 262.12). Each BATF field office must apply for an EPA ID number for each site at which hazardous waste is generated in excess of 100 kilograms per calendar month. This is a simple process involving the submittal of one short form for each generator site. These forms can be obtained from EPA Regional Offices or we at Headquarters will be glad to supply them to you.

We note that, under 40 CFR Section 262.34, hazardous waste may be stored in tanks or containers without a permit for up to 90 days. So, even after a material becomes a waste (i.e., an intent to discard is present), the generator has 90 days to make necessary arrangements for transportation, treatment, or disposal, according to applicable regulations in 40 CFR Section 262.34, and Parts 264, 265, 266, 268, and 270. As a general matter, we believe the Bureau should consider a policy that would require removal of explosive material stored in BATF lockers within 90 days from the time the material becomes a waste. Otherwise, RCRA storage permits may be required.

BATF may transport hazardous waste explosives themselves, or may hire a transporter. In either case, the transportation is subject to the requirements in 40 CFR Parts 262 and 263. Transportation of hazardous waste off the site of generation is subject to manifest requirements (40 CFR Section 262.20). The generator must designate on the manifest a facility that has the proper RCRA permit or interim status to receive the waste.

In general, destruction of explosive waste by open detonation/open burning is thermal treatment that must be conducted at a RCRA interim status or permitted facility in compliance with Parts 264, 265, and 270. In the event that the destruction is being done under court order or under directions from the U.S. Attorney's office, RCRA is not automatically waived. The Bureau should therefore locate facilities nearest to its field offices that have the appropriate RCRA permits or

interim status for open detonation/open burning of explosives wastes. Some of the military facilities already used by the Bureau may have the necessary permits or interim status, and these facilities may accept BATF explosives wastes, under the terms of their permit or under the provisions of Part 270, Subpart G, without any special permission from EPA. Other facilities with RCRA permits or interim status could handle the open detonation/open burning of BATF explosive materials via permit modifications (Section 270.41-270.42) or changes during interim status (Section 270.72). In those cases where a permit modification or change during interim status is needed by a facility that agrees to manage BATF wastes, these must be approved by the appropriate State agency (or EPA Regional office) in advance of the initial receipt of the BATF wastes.

Finally, we understand that stored explosives material sometimes deteriorates to the point where a safety hazard exists. In this type of situation, the discussion on emergency response activities in Section 1., above, would apply.

I trust that this letter provides you with guidance helpful to the Bureau's efforts to comply with RCRA requirements. I understand that my staff has provided BATF with a list of facilities that may have the appropriate permits or interim status and a list of EPA Regional contacts for your field offices. If you need additional assistance, please do not hesitate to call me or have your staff call Michael Petruska (475-9888).

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

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

25 NOV 87

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Interim Status Expansion to Add an Incinerator

FROM: Marcia Williams, Director
Office of Solid Waste (WH-562)

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

This is in response to your memo of October 22, 1987 regarding a request from U.S. Pollution Control Incorporated (USPCI) to the State of Oklahoma for approval of an interim status expansion to add an incinerator at its Lone Mountain, Oklahoma facility. You requested an opinion on the question of whether an incinerator may be added to a facility as a change in interim status under the authority of 40 CFR 270.72(c).

Section 270.72(c) allows EPA or an authorized State to approve the addition of a new unit at an interim status facility if the change is determined to be necessary to comply with a Federal, State, or local requirement. On its face, this provision authorizes the addition of an incinerator as a change in interim status; however, section 270.72 allows the Director to exercise discretion in approving or disapproving changes under that section. Generally, we have significant concerns about new incinerators being added as changes in interim status without the benefits of a trial burn and public participation. While we do not believe that the Director may be arbitrary in deciding to approve or disapprove a change in interim status, we believe that it is important to consider protection of human health and the environment and the rights of the public, and that it is generally unwise to allow operation of a new incinerator without a trial burn and opportunity for public comment.

As an authorized State, Oklahoma may implement its own hazardous waste program and interpret its own regulations. While the State of Oklahoma has the authority under section 270.72(c) to allow addition of this incinerator as a change in interim status, we believe that the preferable approach would be to include the proposed incinerator in the ongoing permit process for USPCI. Since the facility's permit is scheduled for issuance in 1988, the incinerator activity could be pursued as

a subsequent permit modification. Although the proposed incinerator would not be subject to the 1989 permitting deadline for incinerators, I would recommend that the Regional Office work closely with the State to establish a priority for developing the incinerator portion of the permit.

If you have any questions about this issue, please contact Frank McAlister (FTS 382-2223) or Barbara Foster (FTS 382-4751) of the Permits Branch.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
ALLIED BANK TOWER AT FOUNTAIN PLACE
1445 ROSS AVENUE
DALLAS, TEXAS 75202

OCTOBER 22, 1987

MEMORANDUM

SUBJECT: Interim Status Expansion to Add an Incinerator

FROM: Allyn M. Davis, Director
Hazardous Waste Management Division (6H)

TO: Marcia Williams, Director
Office of Solid Waste (WH-562)

Attached is a recent request from U.S. Pollution Control Incorporated (USPCI) to the State of Oklahoma for approval of an interim status expansion to add an incinerator at its Lone Mountain, Oklahoma facility. The Oklahoma State Department of Health (OSDH) requested EPA's opinion on this issue. Since this appears to be an issue of national importance and precedence, Region VI requests your opinion on USPCI's request, as well as the issue in general.

USPCI wishes to add an incinerator to its Lone Mountain facility as an expansion under interim status. As stated in the attached argument, USPCI claims this expansion is necessary to satisfy requirements of the land disposal restrictions. The August 14, 1987, preamble to the proposed changes to 40 CFR 270 appears, to some extent, to support this position.

However, such a change would be a drastic departure from USPCI's historical waste disposal practices at the Lone Mountain facility. USPCI has never had an incinerator at the facility, and has not included a planned incinerator in its Part B application. Allowing such an expansion under interim status would allow USPCI to construct and to operate a hazardous waste incinerator with no permit, no public participation, and no trial burn. In fact, such an incinerator would not appear to be subject to the 1989 permitting deadline. (The land disposal permit for USPCI is expected to be public noticed in July 1988 with final determination in the fall of 1988.)

The Region views this as a vitally important issue, since there are other commercial disposal facilities which would like to avoid the permitting process by adding interim status incinerators. The Region is not aware of any cases in which such an expansion at a commercial facility has been approved in the past.

Your immediate attention to this issue is requested since OSDH must respond to USPCI soon. If you need further information, please contact me, or have your staff contact Bill Honker at FTS-255-6785.

Attachment

Joan K. Leavitt, M.D.
Commissioner

Board of Health
[illegible] M.D.
[illegible] M.D.
[illegible] D.D.
John B. Carmichael, D.D.S.
James A. Cox, Jr. M.D.
Linda M. Johnson, M.D.
Ernest D. Martin
Walter Scott Mason
Ann Tate Taylor

OKLAHOMA STATE
DEPARTMENT OF HEALTH

P.O. BOX 53551
1000 N.E. TENTH
OKLAHOMA CITY, OK 73152

September 22, 1987

Mr. Sam Becker, P.E., Chief
EPA Region VI
1445 Ross Avenue
Dallas, TX 75202-2733

Dear Sam:

Attached is an application for a proposed modification at the USPCI Lone Mountain facility. I need your assistance in evaluating this proposal.

In reading the cover letter, the argument offered sounds reasonable. Please advise me of EPA's position.

In the interest of responding promptly to this issue, I have taken the liberty of prescheduling a conference call for Thursday, September 24 at 3:00 p.m., at which time I will initiate the call to your office. If the time is inconvenient, please let me know.

Thank you for your assistance.

Sincerely,

Robert A. Rabatine

Robert A. Rabatine
Programs Manager
Waste Management Service

RAR/lp

U.S.
POLLUTION
CONTROL, INC.

RECEIVED
SEP 22 1987
Waste Management Service

September 21, 1987

Dr. Dwain Farley
Chief of Waste Management Services
Oklahoma State Department of Health
P. O. Box 53551
Oklahoma City, Oklahoma 73152

Subject: Changes Under Interim Status
Incinerator at Lone Mountain Facility

Dear Dr. Farley:

U. S. Pollution Control, Inc. requests that the Oklahoma State Department of Health approve the revision to the Part A application for the Lone Mountain Facility which would allow the installation of an incinerator. Authority for this action is found under 40 CFR 270.72(c):

> "...additional processes may be added if the owner or operator submits a revised Part A application prior to such change (along with a justification explaining the need for the change) and the Director approves the change because:
>
> (2) It is necessary to comply with Federal regulations (including interim status standards at 40 CFR Part 265) or State or Local laws."

The land disposal restrictions (40 CFR 268) for solvent wastes published in the November 7, 1986 Federal Register (pages 40572-40654) require the incineration of F001-5 solvent wastes prior to landfill disposal. Lone Mountain Facility received in excess of 2000 tons of F001 through F005 wastes in calendar year 1986. Allowing the adjustment of 1986 volumes to reflect the land restriction applicability in November and December, maintenance, startup, debugging, and waste volume variability, U. S. Pollution Control, Inc. has chosen a small 2-ton per hour incinerator as the necessary unit for compliance with the land disposal restriction for solvent wastes F001-F005.

The State's authority to approve this change was confirmed by telephone with Mr. Matt Hale who is the Chief of the Permits Branch, Office of Solid Waste, U.S. EPA Headquarters (telephone 202-382-4740). The approach was also discussed at length with

2000 Classen Center • Suite 400 South • Oklahoma City, OK 73106-6078 • 405/528-8371

and confirmed by Mr. Lee Haze of U.S. EPA Region VI (telephone 204-655-6750).

Attached to this letter is a booklet titled, "Questions and Answers on Land Disposal Restrictions for Solvents and Dioxins" (EPA/530-SW-87-020 May, 1987). The following rhetorical question is raised and answered on page 31.

Q: Can a new treatment process be employed under interim status?

A: Yes, a new treatment process can be introduced at an interim status facility as long as the conditions of Section 270.72 are met. Prior to such change, the facility must submit a revised Part A application and a justification for the change to EPA for approval. EPA may approve the change if the facility has demonstrated that it is necessary to comply with Federal, State, or local requirements. However, the extent of changes to an interim status facility is limited in that capital expenditures may not exceed 50% of the cost of a new facility.

The cost of this small incinerator will not exceed three million dollars ($3,000,000). The book value of Lone Mountain facility including depreciation is over thirteen million dollars ($13,000,0000). Replacement value for Lone Mountain considering minimum technology requirements for units 1 through 8 is far in excess of original cost.

USPCI does not anticipate that the final Part B permitting of this incinerator will interfere with permitting of the rest of the facility. The permitting of individual units of a facility is allowed under 40 CFR 270.1(c)(4), which states:

(4) Permits for less than an entire facility. EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

Accordingly, USPCI anticipates that the Part B permit application will be called for shortly after the approval for the change in interim status. Allowing 180 days for preparation of the application would leave more than eighteen (18) months for permit review prior to the statutory deadline for permit issuance of incinerators by November 1989.

Some confusion may have been raised by a proposed rule change published in the Federal Register on August 14, 1987. That article proposed eliminating the currently effective fifty percent (50%) reconstruction rule for interim status changes involving tanks and containers. That proposal should not be confused with eliminating interim status changes for incinerators which is not proposed. The fifty (50%) reconstruction rule governing treatment processes other than tanks will remain intact under the proposal.

In way of further buttressing of our request, the August 14, 1987 Federal Register article observed on page 30572 that the current regulations

> "provide important flexibility in allowing changes in or additions to processes necessary to comply with Federal or other requirements, such as ..... land disposal restrictions ....."

A copy of that article is attached for your reference.

We need to make the decision to proceed on this project by September 30, 1987 in order to secure equipment and adequate professional staffing. Your expeditious handling of this matter is appreciated.

Sincerely,

U. S. POLLUTION CONTROL, INC.

Ken Jackson

Ken Jackson
President

KJ/cam

Attachment

9528.1982(01)

MAY 28 1982

MEMORANDUM

SUBJECT: Changes to Hazardous Waste Management Facilities During Interim Status; Current and Proposed Regulations

FROM: John H. Skinner
Director, State Programs and
Resource Recovery Division (WH-563)

TO: Stephen R. Wassersug
Director, Air, Toxic, and
Hazardous Materials Division
Region III

At our meeting on May 19, 1982 you asked for a status report on the regulations governing changes to hazardous waste management (HWM) facilities during interim status. In response, I am outlining what the regulations currently require; what changes we agreed to propose under the settlement agreement in the NRDC lawsuit, (NRDC v. EPA, No. 80-1607 and consolidated cases (D.C. Cir., filed June 2, 1980)); and on what provisions of the settlement of this issue we have reopened settlement discussions with the litigants in the NRDC lawsuit.

Current Regulations: 40 CFR Part 122.23

Section 122.23(c) now regulates four types of changes during interim status. These regulated changes may only be made for the reasons listed in the regulations, as follows:

1. New hazardous wastes may be added for treatment, storage, or disposal if the owner or operator submits a revised Part A permit application prior to adding the new waste.

2. The design capacity of processes used at a facility may be increased if:

(a) the owner or operator submits a revised Part A permit application prior to the change, along with a justification explaining the need for the change; and

(b) the Director approves the change because:

WH-563:DLWolpe:aff:Rm.S203:382-4754:5/24
Ikette No. 11 - Item No. 7
Changes:5/27/82

(i) of a lack of available treatment, storage, or disposal capacity at other HWM facilities;

(ii) it is necessary to prevent a threat to human health or the environment because of an emergency situation; or

(iii) it is necessary to comply with Federal regulations (including Part 265) or State or local laws.

3. Additions of new processes or changes in processes may occur only if:

(a) the owner or operator submits a revised Part A permit application prior to the change and a justification explaining the need for the change; and

(b) the Director approves the change because:

(i) it is necessary to prevent a threat to human health and the environment because of an emergency situation; or

(ii) it is necessary to comply with Federal regulations (including Part 265) or State or local laws.

4. Changes in the ownership or operational control of a facility may be made if:

(a) a revised Part A is submitted 90 days before the change; and

(b) the new owner or operator can demonstrate compliance with the financial responsibility requirements.

In addition, there is an overriding reconstruction cost limit. Section 122.23(c)(5) states that no change shall be made to an HWM facility which amounts to reconstruction of the facility, i.e., when the capital investment in the changes exceeds fifty percent of the capital cost of a comparable entirely new HWM facility.

Changes to §122.23 agreed to under the settlement agreement

Section 122.23 was challenged by the litigants in NRDC v. EPA as being too restrictive. The Agency negotiated and signed a settlement agreement in November, 1981, which requires EPA to propose amendments to this section, among others. It is important to note that we have not yet proposed these changes. Furthermore, any actual change in the regulation would have to follow such proposal and a public comment period.

The amendments we agreed to propose to §122.23 would allow more changes during interim status than the current regulations allow. As §122.23 appears in the settlement agreement:

1. New hazardous wastes may be added by submitting a revised Part A permit application prior to adding the new waste. (No change to this section is proposed.)

2. The design capacity of processes may be increased:

(a) up to 10% if the owner or operator submits a revised Part A permit application prior to making the change;

(b) from 10-50% if the owner or operator submits a revised Part A permit application at least 180 days before increasing the capacity;

(c) any amount if the process increased is storage or treatment in containers or tanks, if a revised Part A permit application is submitted at least 60 days before increasing the capacity.

(d) any amount if it isnecessary to comply with Federal, State, or local laws or regulations (including Parts 264 and 265).

3. New processes may be added if:

(a) the owner or operator submits a revised Part A prior to the change; and

(b) (i) the Director approves the addition because it is necessary to comply with Federal, State, or local laws or regulations (including Parts 264 and 265); or

(ii) the addition or change is storage or treatment in containers or tanks.

4. Units may be replaced if:

(a) it is replacement of tanks or containers for storage or treatment, or units replaced at exactly the same location, without submitting a revised Part A;

(b) for any other process, or units replaced at a different location, a revised Part A is submitted 60 days before construction begins.

5. The section on changes in the ownership or operational control of a facility has not been changed.

6. The overriding reconstruction cost limit has been eliminated; and

7. A provision has been added that all advance notice periods may be shortened for good cause shown.

Renegotiation of the settlement agreement

Since signing the settlement agreement in November, 1981, there have been some changes in EPA's ability to issue permits. EPA will be in a position to issue permits to existing land disposal facilities six months after promulgation of the Part 264 standards. In addition, the Agency will have the ability to permit existing incinerators when the technical standards for existing incinerators are reevaluated. Both of these developments are imminent and encourage a change in the settlement agreement on this issue.

We have reopened settlement discussions on this issue. The position we currently favor would allow increases in design capacity up to 10% of the capacity of a process as reflected in the facility's initial Part A. Any increase above 10% would require a permit. All other provisions of the proposal specified in the settlement agreement would remain the same.

I realize that the existing regulations are difficult to work with. Since we have not yet made any amendments to §122.23, we cannot recommend as a general matter that you allow changes which would not be allowed under the current regulations. In the memorandum from Christopher Capper of November 20, 1981 on the settlement of the RCRA-related issues in the NRDC v. EPA lawsuit, however, we suggested that the Agency may exercise its enforcement discretion in dealing with situations which may be handled differently should EPA promulgate the amendments. All situations where enforcement discretion is considered should be handled at Headquarters by the Office of Legal and Enforcement Counsel. For further information concerning the use of enforcement discretion in individual cases, call Kathy Summerlee at 382-3110. If you have further questions concerning 40 CFR §122.23 or the settlement of this issue call Deborah Wolpe at 382-4754.

cc: Kathy Summerlee
Dotz Darrah
Deborah Wolpe
Directors, Air & Hazardous Materials Division, Regions I - X

9528.1982(02)

July 20, 1982

Honorable Barbara A. Mikulski
House of Representatives
Washington, D.C. 20515

Dear Ms. Mikulski:

Administrator Anne Gorsuch appreciates your June 22 letter requesting clarification of the requirements under the Resource Conservation and Recovery Act (RCRA) for expansion of existing hazardous waste management facilities. The Administrator has asked me to reply.

Specifically, you asked for an interpretation of the provisions of 40 CFR §122.23(c)(5). That section provides that "In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes exceeds fifty percent of the capital cost of a comparable entirely new HWM facility" (emphasis added).

Your questions and our responses are:

1. Question: If a State-owned site is expanding, would the cost computations for a comparable new facility assume no land-purchase cost since a comparable new facility would also presumably be built on a State-owned site?

   Response: The cost computations for a comparable entirely new HWM facility would include the fair market value of the land necessary for such a facility, whether or not the expanding site is State-owned. Land has value whether or not it is State-owned. Therefore, EPA would use the fair market value of necessary land in its cost computations.

2. Question: If a site is expanded, would construction of off-site access to a freeway concurrent with the expansion be included in the capital costs of expansion?

   Response: No. Off-site access to a freeway is not part of the hazardous waste management (HWM) facility, as defined in 40 CFR §122.3 of the regulations. A HWM facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste . . ." (emphasis added). Off-site access roads would not be included, therefore, in the capital cost of the changes to the facility.

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3. Question: If a site is expanded more than once, would the cumulative costs of expansions since November 19, 1981, be used for a determination of what constitutes a reconstruction under 40 CFR §122.23(c)(5)?

   Response: Yes. The cumulative costs of capital investments in the changes since November 19, 1981, are used to determine what constitutes a reconstruction. Any other interpretation would allow facilities to spread out the costs of expansion over several different changes at different times, defeating the purpose of this regulation.

4. Question: If a site is to be considered for expansion, what criteria will be applied by EPA in determining the relationship of the capital costs of a comparable facility on the following matters: acquisition of land, acquisition of construction materials, transportation of materials and structuring of the site, construction of groundwater monitoring and control features, and construction of access to the site?

   Response: The capital cost of a "comparable entirely new HWM facility" is the cost in today's dollars of building a hypothetical facility comparable to the facility which qualified for interim status in both area and capacity, but using current state-of-the-art technology.

   Acquisition of land: The fair market value of necessary land would be included in the cost of a comparable entirely new facility.

   Acquisition of construction materials: The fair market value would be included.

   Transportation of materials: These costs would be included in the cost of acquiring construction materials.

   Structuring of the site: The construction costs would be included.

   Construction of groundwater monitoring and control features: The costs of such features would be included.

   Construction of access to the site: These costs would not be included in the cost of a comparable facility, for the reasons stated in the Response to Question 2.

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5. Question: If a site is to be considered for expansion, what criteria will be applied by EPA in determining the relationship of the capital costs of a comparable facility in the relocation of adjacent communities including selling of homes and adjacent properties; moving expenses for both residents and community institutions, and repurchase of new homes?

   Response: The calculation of costs for a comparable, entirely new facility would not include the cost of relocating the residents of adjacent communities. As explained before, "facility" means the land, etc., used for treating, storing, or disposing of hazardous waste. Adjacent communities are not part of an HWM facility.

6. Question: Under the provisions of 40 CFR §122.23(c)(5), what alternatives must be considered for purposes of establishing that no alternatives to the proposed expansion exist? Must any of the following be considered: incineration; shipment to other facilities in the region or the nation; recycling programs to promote at-source recovery; some combination of these or other alternatives?

   Response: EPA may approve requests for increasing the design capacity of existing facilities because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities. This determination is made by the EPA Regions on a case-by-case basis. The Agency would consider all of the above-mentioned factors in evaluating the technical feasibility and cost constraints of the alternatives available within the time that the capacity is needed. EPA would explore issues such as: How far are similar volumes of waste shipped? Would the additional cost of shipment to an alternative facility be so great that it would not be practical or reasonable to do so? Does the waste require specially designed vehicles, e.g., is the waste extremely flammable or dangerous? Would at-source recovery be feasible and practical within the time that the additional capacity is needed? Is incineration or alternate treatment at other facilities technically or economically feasible?

You have also requested information on any applications for the expansion of existing hazardous waste sites which are pending, or have been approved or rejected by EPA, under the provisions of 40 CFR §122.23(c). As mentioned earlier, these decisions are made at the Regional level. We are collecting this information from our Regional Offices and will forward the results to you.

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In addition, you have requested information on any lawsuits brought under the provisions of §122.23(c). There have been no lawsuits challenging the use of §122.23(c) in specific circumstances. There has been a generic challenge to the provisions of §122.23(c). In NRDC v. EPA, No. 80-1607 and consolidated cases (D.C. Cir., filed June 2, 1980), several industry associations and other groups challenged this provision as too restrictive. EPA entered into a settlement agreement in which the Agency promised to propose some changes to §122.23. EPA recently reopened settlement discussions on §122.23(c) with the petitioners and, to date, has not issued a proposal.

We appreciate your interest in these matters, and I hope this information will be helpful to you.

Sincerely yours,

Rita M. Lavelle
Assistant Administrator

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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 83

3. Question: An interim status facility wishes to add a new hazardous waste management unit. Is this new unit subject to the 264.18 seismic standards if the unit can be added according to 122.23(c) (3) and (5)? Is the new unit subject to 264.18 if the owner/operator has exceeded reconstruction costs and has to submit a full permit application for the unit?

Answer: (1) If the change can be made during interim status, the unit is not subject to the seismic standards. The definition of existing facility is satisfied, and a facility can have several units. (2) Part 264.18 applies to new facilities, and this unit is still part of an existing facility.

Source: David Fagan and David Sussman
Research: Irene Horner

RCRA/SUPERFUND HOTLINE SUMMARIES

SEPTEMBER 83

13. One company leases a site and has interim status to store hazardous waste in containers at that site. The operator has submitted a closure plan to the Regional Administrator but the plan has not been approved. Can the owner of the site lease the property to someone else for their use prior to certification of closure?

Yes, the site can be used by the second leasee prior to certification of closure as long as the owner, current operator, or original operator assumes responsibility for carrying-out closure.

Source: Carole Ansheles and Dov Weitman

PERMIT POLICY Q & A REPORT

IMPROVEMENTS TO SURFACE IMPOUNDMENTS UNDER INTERIM STATUS

SEPTEMBER 10, 1984

4. Question: At the time an ISS facility has its Part B application called, storage surface impoundments are being rebuilt with clay liners. Does this constitute an increase in design capacity or a change in process under 270.72(b) and (c)? If so, can the RA refuse to allow the change under ISS and require the surface impoundments to meet the Part 264 standards? 40 CFR 270.72.

Answer: No. If the capacity of the surface impoundments is not enlarged and no new units are being added, improvements to the surface impoundments are a permissible change under ISS as long as the reconstruction provision of 270.72(e) is not violated. This is not a change in process. Re-built surface impoundments will be treated as existing units for purposes of compliance with Part 264 standards. At the time these existing units are permitted, however, only the existing portions, i.e., the land surface area upon which wastes are placed prior to permit issuance, will be exempt from Part 264 requirements to install liners and leachate collection systems.

The owner/operator should be informed of all appropriate Part 264 technical standards and should be encouraged to voluntarily adopt those standards as part of reconstruction.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 8~~4~~5

An interim status facility has a surface impoundment for storing a hazardous waste. This facility wants to build another storage surface impoundment for a new product line which will produce a hazardous waste that was not designated on the facility's Part A application. Would building such a storage surface impoundment for accepting a generated hazardous waste new to the facility be considered an increase in design capacity (§270.72(b)) or a process change (§270.72(c))?

Adding a new storage surface impoundment would be an increase in design capacity. This would not be considered a process change since the process is not changing; the new unit is also a storage surface impoundment (designated S04 on a Part A). An increase in design capacity requires the owner/operator to submit a revised Part A application, which includes a justification for the change, and to obtain approval from the Regional Administrator or State Director (§270.72(b)). Also, the owner/operator must comply with §270.72(e) concerning reconstruction of the facility.

Source: Debbie Wolpe (202) 382-4754
Research: Tom Gainer

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

SEPTEMBER 85

Loss of Interim Status

4. The 1984 HSWA Amendments require that interim status land disposal facilities tha wish to continue operation after November 8, 1985, must submit Part B applicat and certify compliance with groundwater monitoring and financial responsibilit requirements by November 8, 1985. Which types of facilities are required to cert that they are in compliance with all applicable groundwater monitoring and financial responsility requirements? Is there a specific form for certifying compliance?

   In the September 25, 1985 Federal Register (50 FR 38947), the Agency interprets the term "land disposal facility" to encompass: landfills; land treatment units; surface impoundments for disposal, treatment or storage; waste storage; waste piles; and Class I hazardous waste underground injection wells.

   On July 15, 1985, §270.73 was changed to reflect the certification requirements of the HSWA Amendments. The certification should be submitted in addition to and not as part of the Part B application. The certification statement was published in the September 25, 1985 Federal Register (50 FR 38949). The certification requires that the facility be in compliance with all groundwater monitoring and financial responsibility requirements of 40 CFR Parts 265 Subparts F and H or all State ground-water monitoring and financial responsiblity requirements which are analagous to Part 265 as part of the State's authorized hazardous waste program under section 3006 of RCRA. Copies of a facility's certification and Part B or State final operating permit application must be submitted to both the EPA Regional office and the State in which the facility is located. Facilitie in a State with a federally run RCRA prgram need only submit these documents to the Region.

   Source: Jackie Tenusak (202) 475-8729

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 85

7. Changes During Interim Status

A hazardous waste storage facility operating under RCRA interim status standards (40 CFR 265) undergoes a corporate reorganization in which the original company becomes a parent holding company with five subsidiaries. There is no change in ownership or operation of the facility. In effect, the company changes in name only. Must the owner/operator notify the U.S. EPA of the change? If so, what procedures should the owner/operator follow?

40 CFR 270.72 and 270.10 address the changes during interim status which require the submission of a revised Part A permit application. Because name changes are not included under these sections, the facility would not need to submit a revised Part A in this situation. Rather, the facility should notify the Administrator or Director of the clerical change in the permit application using any reasonable method. For example, the owner/operator could send a letter to the Regional Administrator to make the appropriate correction on the Part A application. Note that if the owner/operator name change involves a facility located in a State that has interim or final authorization to manage the hazardous waste program in lieu of the Federal RCRA program, the owner/operator should contact the State on this issue. The State program authorized by U.S. EPA may include additional requirements that are stricter or broader than those of the Federal program (e.g., the State may require submission of a revised Part A application).

Source: Carrie Wehling (202) 475-8070

9528.1985(09)

NOV 27 1985

Mr. Robert D. Chesler
Lowenstein, Sandler, Brochin, Kohl,
Fisher, Boylan & Meanor
65 Livingston Avenue
Roseland, New Jersey 07068

Dear Mr. Chesler:

Thank you for your letter of November 15, 1985 regarding storage and treatment facilities and the Loss of Interim Status Provision. While the essence of your letter is correct, there are a few misunderstandings I would like to clarify.

Your letter states that storage and treatment facilities would not lose their Part A interim status if they lost their sudden and accidental coverage and if those facilities could demonstrate that they were making and continued to make good faith efforts to purchase such insurance coverage. It is correct that the Loss of Interim Status provision in §3005(e)(2) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, applies only to land disposal facilities. Generally, it does not apply to storage and treatment facilities. However, EPA published a notice of implementation and enforcement policy regarding this provision on September 25, 1985. The notice states:

> For the purpose of section 3005(e), the Agency interprets the term "land disposal facilities" to encompass the following types of facilities: landfills, land treatment units, surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells.

All such facilities which did not certify compliance on November 8, 1985, with financial responsibility requirements (among other aspects) have lost interim status.

A distinct issue from loss of interim status is the continuing obligation of all interim status treatment, storage, and disposal facilities to comply with the RCRA insurance requirements. EPA's Enforcement Guidance for a Constrained Insurance Market, issued

on April 12, 1985, stated that EPA would not enforce against those who made good faith efforts to comply with the insurance requirements. However, that notice, by its terms, was in effect only until November 8, 1985.

Your letter also states that loss of sudden and accidental insurance would not prevent a treatment and storage facility from being granted "final authorization". It goes on to say that in such a situation, EPA can approve "final authorization" and place the facility on a schedule of compliance for the insurance requirements. I am assuming that when you use the term "final authorization" you mean the issuance of a Part B permit. Compliance with the financial regulations is required before a Part B permit can be issued. The Agency has not yet developed its policy on implementing these requirements for facilities seeking a permit. For information regarding the status of this policy, you may wish to contact David Pagan of the Permits Branch on 382-4457.

I hope this clarifies your understanding of the Loss of Interim Status Provision regarding storage and treatment facilities.

Sincerely,

Carole J. Ansheles
Manager, Financial Responsibility
Program (WH-562B)

cc: Dave Pagan (OSW)
Jackie Tenusak (OWPE)
Joe Freedman (OGC)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 85

Burning and Blending and Interim Status

7. A company blends listed hazardous wastes (40 CFR Subparts C and D) and markets the blends as hazardous waste fuel. The company is neither the generator nor the burner of the hazardous waste derived fuel. The operator of a cement kiln currently uses virgin oil as fuel but plans to switch and use the hazardous waste fuel blends to power the kiln. Tanks which previously held virgin oil are being converted to store hazardous waste fuels. The cement kiln operator has asked if he must "physically" have the hazardous waste fuel in his storage tanks prior to the effective deadlines set in the November 29, 1985, Federal Register (50 FR 49164) for Part 266, Subpart D burning/blending, in order for the facility to obtain interim status for storage.

Currently, the hazardous waste fuel to be burned is exempt from any RCRA regulations because the fuel was obtained from a blender who neither generated nor burned the fuel (50 FR 667, §266.30 (a)). This exemption is pursuant to the redefinition of solid waste (50 FR 614). Per the November 29, 1985, final burning and blending regulations, which were promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), hazardous waste fuel will be regulated when blended by the company, (50 FR 49204, §266.30(a) and §266.34 as amended) and when the fuel is burned by the cement kiln operation (50 FR 49204, §266.30(a) as amended, 50 FR 49205, §266.35 as amended). Hence, the cement kiln operator needs interim status or a permit to store the hazardous waste fuel prior to burning.

To qualify for interim status, a facility owner/operator must meet the three criteria set out in Section 3005(e)(1) of RCRA as amended. First, the owner/operator must have an "existing Hazardous Waste Management (HWM) facility," defined as a facility which was in operation or for which construction commenced on or before November 19, 1980, (40 CFR 260.10), or a facility "in existence" on the effective date of statutory or regulatory amendments under the Act that render the facility subject to having a RCRA permit.

Second, the owner/operator must file a notification of hazardous waste activity per Section 3010 of RCRA; and third, submit a Part A application (50 FR 28753, §270.70). In order for the cement kiln operator to be "in existence" for the purpose of obtaining interim status for converted tank storage, he should be storing hazardous waste fuel in his tanks on the effective date of the burning and blending regulations under Part 266, Subpart D (50 FR 49164). However, a facility at which tanks are empty on the effective date but which are intended to store hazardous waste fuel may also qualify for interim status under certain conditions. To be in interim status such a facility must, by the effective date, have obtained all Federal, State, and local approvals or permits necessary to begin storage of hazardous waste fuel in the tanks and have objective evidence, such as contractual obligations which cannot be cancelled or modified without substantial loss, which clearly indicate the intent to begin storage of this waste in the tanks within a reasonable time.

Source: Carrie Wehling (202) 475-8067

9528.1986(01)

Susan Lubick
Room 2419
Rayburn House Office Building
Washington, D.C. 20515

Dear Ms. Lubick:

On October 28, 1985, you met with Clem Rastatter of my staff to discuss the CECOS International site in Niagara Falls, New York. As a result of the meeting, you requested the following additional information concerning: (1) administrative requirements and location standards applicable to the construction of the new Cell #6 at the CECOS facility; and (2) applicability of the "omnibus provision" of the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the expansion of the facility.

As you know, the CECOS facility is currently operating under interim status standards. Facilities operating under interim status are normally required to submit a revised Part A application and meet the requirements of 40 CFR 270.72 for any change during interim status. Part 270.72 requires EPA's approval for: (1) any increase in design capacity <u>not previously identified in the Part A</u> of the permit application, and (2) any process change or the addition of processes <u>not currently identified in the Part A</u>. However, the construction of Cell #6 was detailed in CECOS' original Part A application. Therefore, the construction of Cell #6 is not considered to be a change under §270.72, and the facility can proceed with the construction of Cell #6 without any permitting action by EPA. The facility must also install in Cell #6 at least two liners and a leachate collection system above and between the liners as required by Section 3004(o) of RCRA. The design and installation of this liner system is not required to be reviewed or approved by EPA (or the State) before construction has begun. However, design specifications and other information on this system have been voluntarily submitted to EPA and the State of New York and are currently under review.

EPA Region II and the State of New York are jointly reviewing CECOS' Part B permit application for the entire landfill facility. In their review, EPA and the State will apply draft criteria EPA has developed for evaluating acceptable locations for hazardous waste land treatment storage and disposal facilities. Those criteria include:

(1) the inherent geologic, hydrologic, and pedologic features of the site;

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(2) ability of the site to provide a stable foundation for the engineered containment structure;

(3) ability of the site to produce adequate ground-water monitoring data;

(4) site compliance with Federal statutes and standards regarding protected lands.

These criteria are based on current regulations under 40 CFR Part 264, which specify design and operating requirements for hazardous waste facilities and establish ground-water monitoring and corrective action requirements. While Part 264 does not contain explicit location standards based on hydrogeologic considerations, the ground-water monitoring, corrective action and design and operating regulations contain performance standards that implicitly involve hydrologic and geologic factors.

Guidance on application of the four criteria has been issued in draft form. Guidance on a fifth topic (definition of areas of vulnerable hydrology) is currently being developed and will be issued in May 1986. In 1988, EPA intends to propose regulatory standards for the location of new and existing hazardous waste facilities. These last two activities are mandated by the HSWA.

You also inquired as to the applicability of Section 3005(c)(3) of RCRA to the construction of Cell #6. Section 3005(c)(3) (also called the "omnibus" provision) provides that individual RCRA permits "shall contain such terms and conditions as the Administrator (or State) determines necessary to protect human health and the environment." Given that CECOS does not require any EPA approvals before proceeding to construct Cell #6 while operating under interim status, the question you raised was whether the omnibus provision gives EPA the right, and thus the responsibility, to impose conditions (including denial of the right to construct) during interim status. The answer is that the omnibus provision applies only to <u>permit</u> conditions, and EPA has the legal basis under this provision to impose additional requirements (beyond the minimum technology requirements outlined in the statute) on the construction of Cell #6 during the interim status period.

At this time, we expect New York to receive authorization to issue RCRA permits in March 1986. As the processing of the CECOS permit application is not expected to be completed before that date, the final decision regarding issuance of the permit will rest with the State. We suggest, therefore, that you also contact the State agency regarding the status of the CECOS application. The appropriate contact in New York is:

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Norman H. Nosenchuck, Director
Division of Solid and Hazardous Waste
Department of Environmental Conservation
50 Wolf Rd. Room 209
Albany, New York 12233
(518) 457-6603

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

Sincerely,

Marcia Williams, Director
Office of Solid Waste

cc: Norman Nosenchuck

This has been retyped from the original document.

9528.1986(03)

January 3, 1986

Senator Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for forwarding Mr. Gary Jaehnel's letter of November 26, 1985, concerning the Kiowa Corporation's transfer of its hazardous waste storage operations to a new site. Outlined below is our understanding of how regulations under the Resource Conservation and Recovery Act (RCRA) apply to Mr. Jaehnel's facility.

RCRA requires that hazardous waste storage facilities obtain permits to ensure that the wastes are managed in an environmentally protective manner. RCRA regulations also allow facilities that were in existence on May 19, 1980 to continue operation in "interim status" until decisions are made as to whether or not to permit the facility (Kiowa is an interim status facility). Regulations prohibit, however, changes to an existing facility during interim status which are so extensive as to amount to reconstruction of the facility [see 40 CFR 270.72(e)].

The proposed transfer of the Kiowa storage facility would, in effect, amount to reconstruction of the facility. As such, it must be treated as a new facility. In order to begin construction of a new facility, it must first be issued a permit, as provided by 40 CFR 270.10(f). In addition, closure of the existing Kiowa facility must be done in accordance with interim status closure standards (contained in Subpart G of 40 CFR Part 265).

We contacted Mr. Gene Evans, the EPA Region VII staff member assigned to this project, who provided additional background information. Mr. Evans reviewed the revised closure plan submitted by the Kiowa Corporation, and advised Mr. Jaehnel that the revised closure plan was not acceptable as submitted. Mr. Evans offered to amend the submitted plan as provided for in the regulations. Mr. Jaehnel preferred to amend the plan himself and requested a letter detailing the deficiencies in the plan. This letter was prepared and sent on November 20, 1985.

We wish to apologize for any lack of responsiveness Mr. Jaehnel may have encountered. As an "interim" authorized State, the Iowa Department of Water, Air, and Waste Management had been implementing certain portions of the RCRA program, including

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closure activities, in lieu of the Federal hazardous waste management program. The Iowa State legislature voted to end funding of the State's hazardous waste management program, effective July 1, 1985. On that date, the State's hazardous waste management program ceased operating and EPA Region VII assumed responsibility for the entire hazardous waste management program, including closure activities. This transfer of responsibility may explain some of the problems Mr. Jaehnel experienced. Again, we apologize for any lack of responsiveness he may have encountered and regret any inconvenience.

If you or Mr. Jaehnel have any additional questions or require further information, please call Mr. Gene Evans at (913) 236-2888. Thank you for your interest in this matter.

Sincerely,

J. Winston Porter
Assistant Administrator

cc: Region VII
Congressional Liaison/Deremer

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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JANUARY 86

4. Obtaining Interim Status

A hazardous waste management facility has received a final permit, pursuant to Section 3005 of RCRA to store and treat hazardous wastes. The facility also has solid waste management units (SWMU) on-site. If the solid wastes in the SWMUs become RCRA hazardous waste because EPA lists them as hazardous wastes, can the facility obtain interim status for these newly-regulated units?

Interim status, under Section 3005(e) of RCRA, is granted to facilities. Interim status is not granted on a unit-by-unit basis. Therefore, fully permitted facilities may not receive interim status for newly regulated units.

Fully permitted facilities will be allowed to treat, store, or dispose of wastes covered by new hazardous waste listings if the owner/operator submits an amended permit application pursuant to 40 CFR 124.5 and the permit has been modified pursuant to 40 CFR 270.41 or 270.42.

Source: Carrie Wehling (202) 475-8067

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JULY 86

A. RCRA

1. Interim Status for Receiving SQG Waste

A facility owner/operator (o/o) would like to obtain interim status to receive wastes from small quantity generators (SQGs) that generate between 100-1000 kg. of hazardous waste per month. These SQGs will be subject to new requirements effective September 22, 1986. Under the new regulations, these SQGs are subject to notification, manifest requirements, recordkeeping and special generator accumulation requirements (see the March 24, 1986 Federal Register, 51 FR 10146). In addition, 100-1000 kg/month generators will no longer be allowed the disposal options of 40 CFR §261.5(g)(3), but must send their wastes destined for disposal to permitted or interim status RCRA facilities.

(a) If a facility is currently permitted under TSCA to manage PCB waste, but intends to receive hazardous wastes from SQGs, can it be considered an "existing facility" on September 22, 1986 for interim status purposes?

Yes. A facility that is "in existence" on the date of regulatory changes which first subject it to the RCRA permit requirement may qualify for interim status under Section 3005(e). A facility is "in existence" if it is in operation or "under construction" as defined in 40 CFR 260.10. Thus a facility which is managing SQG wastes on or before September 22, 1986 may qualify for interim status because it will be newly subject to the requirement to obtain a RCRA permit on that date (40 CFR 270.70(a), 50 FR 28753). The fact that this facility is also managing PCBs has no bearing on the RCRA interim status of this facility. The PCB wastes must continue to be managed at the facility according to the terms of the TSCA permit.

(b) If a facility receives interim status to manage SQG waste, may it then begin to accept full-generator hazardous waste also?

A facility which is "in existence" on the effective date of regulation subjecting it to the RCRA permit requirement must also submit a Part A permit application and file a RCRA Section 3010 notification (if applicable) in order to obtain interim status. The type and amount of waste for which the facility obtains interim status depends on the Part A application. An interim status facility must submit a revised Part A application and comply with the requirements of 40 CFR 270.72 in order to manage wastes not identified by the Part A or to increase the capacity of the facility. Therefore, if the facility was not accepting full-generator waste before September 22, 1986, it is not automatically covered by its newly-acquired interim status to handle waste from SQGs, but must submit a revised Part A and comply with 40 CFR 270.72.

Source: Nancy Pomerleau (202) 382-4500
Bob Axelrad (202) 382-5218
Research: Jennifer Brock

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 9528.1986(07)

SEP 19 1986

MEMORANDUM

SUBJECT: Interim Status of the Freeman Chemical Incinerator

FROM: Arthur Glazer, Chief
Incineration/Storage PAT Section

TO: Wladimir Gulevich, Director
Virginia Bureau of Hazardous Waste Management

This memorandum is in response to your request for assistance in determining whether the incinerator constructed by Freeman Chemical Corporation in Chatham, Virginia has interim status. As our staffs have discussed, this determination was complicated by two facts. First was Freeman Chemical's reference to the regulatory amendment to changes during interim status which EPA was considering as a result of the settlement of NRDC v. EPA, but which has not been proposed. Secondly, Freeman Chemical would like to resume incineration of reaction water which was previously mistakenly classified (initially by Freeman Chemical and subsequently by EPA) as nonhazardous.

The NRDC vs. EPA case cited by Freeman Chemical was concluded by a settlement agreement under which EPA would propose certain amendments to the regulations covering changes during interim status. The proposal was to contain specific provisions on replacement units. However, since no such changes to the regulations have been made to date, the NRDC v. EPA case has no bearing on this issue.

Under federal regulations at 40 CFR 270.73, interim status terminates when final administrative disposition of a permit application is made, when action is taken to terminate interim status due to late or incomplete submittal of Part B information, or when a facility loses interim status under the new Loss of Interim Status (LOIS) provisions. Because none of these situations has occurred, the facility has interim status. Thus, because replacement is a change during interim status, the construction of a new unit must comply with the State's analogy to §270.72.

The question of whether construction of the new waste/fume incineration unit is allowable as a change during interim status depends on whether or not the reconstruction cost limit of $270.72 is exceeded. This subsection prohibits changes amounting to reconstruction of a hazardous waste management facility during interim status. "Reconstruction" occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility. As no financial information has been supplied to us, we have made no attempt to make such an evaluation. Your office should apply the "50% rule" to determine whether the construction of the new incinerator is allowable as a change during interim status.

If you have any questions on our response or on application of the 50% rule, feel free to contact Sonya Stelmack of my staff at (202) 382-4500.

cc: Ken Shuster
Gary Gross
Sonya Stelmack

9528.1986(08)

November 20, 1986

MEMORANDUM

SUBJECT: Permitting Units or Facilities That Have Lost Interim Status

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

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

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

Your letter of October 15, 1986, raises several issues -- some generic and some specific to the Eagle Picher ElectroOptic Materials (EOM) Loss of Interim Status (LOIS) case.

The first specific issue is whether the EOM surface impoundment has lost interim status yet. Your letter indicates that a final Agency decision concerning whether or not the EOM unit did lose interim status may not be made for many months. This is important in this case, because if, in fact, the Agency has not made a decision, then we cannot demand that receipt of hazardous waste at the unit in question be halted under LOIS provisions. If you find that the EOM surface impoundment has lost interim status, then the appropriate penalties can be imposed through an enforcement action.

A second, broader issue is what actions should be taken, and in what priority, for land disposal units or facilities that are also closing under the HSWA LOIS provision. In the case of EOM the unit's loss of interim status has not finally been determined. Therefore, review of the permit application should proceed in a manner similar to other land disposal permit applications. In cases where loss of interim status has been determined, an owner or operator still has the right to pursue a permit. Where that option is pursued, the Agency is obligated to review the permit application. These cases present a special challenge, however, since the facility is also required to have submitted an interim status closure plan 15 days after the loss of interim status. The Agency may be in the position of concurrently evaluating a closure plan (submitted as a result of the facility or unit's loss of interim status) and permit application for the same facility or unit.

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Review, approval, and implementation of the closure plan should proceed without regard for any pending permit application, according to priorities outlined in the RCRA Implementation Plan and Regional or State Strategies and facility management plans. In like manner, permit applications for LOIS facilities or units should be reviewed in accordance with established land disposal permitting priorities for new facilities or units. Within the overall priority scheme, several considerations should be kept in mind during the closure plan/permit application review process:

(1) The statutory loss of interim status provision requires that the affected unit or facility stop receipt of hazardous waste. Resumption of waste receipt cannot occur until and unless a final RCRA permit is issued.

(2) The LOIS unit or facility must begin closure activities according to the schedule provided in Part 265 Subpart G. Extensions to the time allowed for closure at LOIS units or facilities under §265.113(a)(1)(ii) and (b)(1)(ii) should not be granted solely on the basis of a pending permit application, or on the basis of future capacity to receive hazardous waste since the loss of interim status abrogates the legal ability to continue to receive waste. The Agency should expedite closure and (where applicable) deny permits for units or facilities that present environmental threats and units that continue to fail to comply with financial and ground-water monitoring requirements.

(3) In some cases, final closure activities may need to be delayed for physical reasons or to increase the effectiveness of closure (e.g., delay of final cover placement to allow for waste settlement). Other closure activities (e.g., control of run-on/run-off, treatment of waste, freeboard maintenance, etc.) will still need to be implemented, according to the routine closure schedule.

(4) If a final RCRA permit is issued before completion of all closure activities, the terms of that permit (including the permit's closure plan under Part 264) will supersede the interim status closure plan. (See §265.1(b).) In reviewing the proposed Part 264 closure plan, permit writers should attempt to ensure technical consistency between it and the interim status closure plan.

(5) When a facility or unit loses interim status it loses all associated privileges. Therefore, permits for units or facilities that have lost interim status are permits for <u>new</u> units or facilities and require

compliance with all applicable HSWA requirements for new units (e.g., minimum technological requirements). This may require extensive modification to existing permit applications and physical reconstruction of affected LOIS units.

cc: Hazardous Waste Division Directors
Regions I-V and VII-X (with incoming)
Hazardous Waste Permit Section Chiefs
Regions I-X (with incoming)
Marcia Williams
Bruce Weddle
Lloyd Guerci

bcc: Ken Shuster
Matt Hale
Anne Allen
Sylvia Lowrance
Ginny Steiner
Terry Grogan
Chris Rhyne
Jackie Tenusak
Steve Botts
Amy Svoboda

This has been retyped from the original document.

9528.1986(09)

October 27, 1986

Mr. Frank L. Deaver
Corp. Environmental Services Mgr.
Tektronix, Inc.
Tektronix Industrial Park
P.O. Box 500
Beaverton, Oregon 97077

Dear Mr. Deaver:

Thank you for your letter of October 1 bringing to my attention the problems you have encountered in trying to comply with the RCRA interim status standards (40 CFR Part 265) while simultaneously developing a permit application to address the permit requirements of 40 CFR Part 264. Mr. Ken Feigner in EPA's Regional Office in Seattle, Washington is responding to your questions regarding the particular circumstances of the permitting efforts at your facility and the inspection conducted last February by EPA and the State of Oregon.

As you are aware, interim status facilities must comply with the Part 265 standards (or State counterparts, in authorized States) until final disposition of the RCRA permit. If some of the common elements of Parts 264 and 265 are improved in the process of developing a permit application (e.g., waste analysis plan), then it may benefit the facility to replace or append the interim status document with the newer version. I agree with you that the problem of trying to meet both sets of standards is probably shared by other existing facilities that are pursuing RCRA permits. I will relate your experience to others in the Agency who are involved in enforcing the RCRA program. My office will also continue to ensure that enforcement activities are coordinated with any concurrent permitting work at a facility.

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

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste

cc: Ken Feigner, EPA Region 10
Fred Hansen, Oregon DEQ
Gene Lucero, EPA OWPE w/copy of incoming
Lloyd Guerci, EPA OWPE w/copy of incoming

Regional H.W. Branch Chiefs w/copy of incoming

This has been retyped from the original document.

9528.1986(1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D C 20460

NOV 13 1986

OFFICE OF
GENERAL COUNSEL

Richard G. Stoll
Karen M. Wardzinski
Freedman, Levy, Kroll & Simonds
Washington Square - 1050 Connecticut Ave., N.W.
Washington, D.C. 20036

Dear Karen and Dick:

This letter is in response to your request of September 25, 1986 for a written interpretation of the interim status qualification requirements as they apply to hazardous waste fuel (HWF) storage facilities. Specifically, you have asked whether in order to qualify for interim status an HWF storage facility must 1) submit a 3010(a) notification by January 29, 1986 even where the facility does not begin hazardous waste activities until after that date or 2) begin actual storage of hazardous waste fuels by May 29, 1986, the effective date of the HWF regulations. As discussed below, we believe that the answers to both questions is "no".

Under RCRA Section 3005(e)(1), a facility may qualify for interim status if it 1) is in existence on November 19, 1980 or on the effective date of regulatory changes which render the facility subject to the requirement to have a RCRA permit, 2) is in compliance with applicable 3010(a) notification requirements, and 3) submits Part A of the two-part RCRA permit application. Section 3010(a) of RCRA, as amended in 1984, requires the owner or operator of any facility which produces, burns, or markets hazardous waste fuel to file a notification of hazardous waste activity by February 8, 1986. On November 29, 1985, EPA issued final rules regulating hazardous waste fuels. The requirements for HWF storage facilities became effective on May 29, 1986.

Your first question concerns the application of the 3010(a) notification requirement to facilities which begin hazardous waste fuel storage activity after January 29, 1986, which is 60 days after the promulgation of the HWF regulations. The November 29,

1985 HWF rule did not distinguish between the statutory 3010(a) notification requirement and regulatory notice requirements. Nor did the rule explicitly address HWF storage facilities which begin operation after the promulgation of the HWF regulations. Both of these issues require clarification in order to answer your question.

First, the November 29 HWF rule implies that the applicable date for HWF storage notification under the statute is January 29, 1986. This is incorrect. The applicable date for HWF storage notification under 3010 is February 8, 1986, and this date is unaffected by the November 29 rule. The notification requirement under Section 3010(a) of RCRA for HWF facilities is self-implementing. See H.R. Rep. No. 198, 98th Cong., 1st Sess. 40 (1983). Under that provision, all facilities which produce, burn or market hazardous waste fuel must submit a notification of their hazardous waste activity by the date 15 months after the enactment of HSWA, i.e. February 8, 1986. Although the HWF regulations promulgated in November, 1985 contain several notification requirements, those notices are in addition to, not in replacement of, the February 8 notification requirement under Section 3010(a). However, a notification under the rule, by January 29, would satisfy the 3010(a) requirement to notify by February 8.

Second, under Section 3010(a), the February 8 notification requirement is not applicable to any facility for which the Administrator waives this requirement. The November 29, 1985 HWF rule does not require 3010(a) notification from any facility not in existence on that date and was intended to waive the statutory notification requirement for all such facilities.

Because HWF storage facilities not in existence on November 29, 1985 were exempted from the 3010(a) notification under the November 29, 1985 HWF rule, no 3010(a) notification requirement is applicable to facilities which came into existence after November 29, 1985. Thus, to answer your specific question, an HWF storage facility which begins storage of hazardous waste fuel after January 29, 1986 was not required to submit a notification of hazardous waste activity in order to qualify for interim status on May 29, 1986.

Your second question concerns the interpretation of the requirement that a facility be "in existence" on the date of a regulatory change subjecting it to the RCRA permit requirement in order to qualify for interim status. This question was not addressed in the November 29, 1985 HWF rule, and in fact, is not directly addressed in any of the RCRA regulations. The federal RCRA regulations do define "existing facility", but only with respect to facilities "in existence" on November 19, 1980. See 40 CFR 260.10. Moreover, the "existing facility" definition does not specifically address the situation of a facility which

intends to handle hazardous waste but for which no physical construction is necessary.

However, as we indicated to you in our earlier conversations, we believe that the question of whether storage facilities intending to convert to hazardous waste fuel storage are "in existence" on May 29, 1986 should be resolved by analogy to the "existing facility" regulations. In order to be an "existing facility" for the purposes of qualifying for interim status prior to 1984, a facility had to be "in operation" or under construction on November 19, 1980. A facility is "in operation" if it is actually managing hazardous waste. Thus by analogy, a facility is "in existence" on the effective date of a regulatory change which subjects it to the RCRA permit requirement if it is actually managing hazardous waste on the effective date of the regulations.

A facility could also qualify for interim status as an "existing facility" if it "commenced construction" by November 19, 1980. Under 40 CFR 260.10, "commenced construction" is further defined to mean a facility which has obtained all necessary preconstruction permits and either 1) has begun continuous onsite construction or 2) has entered into construction contracts that cannot be cancelled without substantial loss. Although not directly addressed by the regulation, EPA has interpreted "commenced construction" to also include facilities which have obtained all necessary preconstruction permits and completed construction prior to November 19, 1980. 46 FR 2344 (Jan. 9, 1981). Thus a facility converting to hazardous waste storage would be "in existence" on November 19, 1980 if by that date the owner or operator has obtained any necessary preconstruction permits required for modification of the facility and can objectively demonstrate an intent to handle hazardous waste within a reasonable time. Id. We believe that this interpretation is equally applicable to facilities intending to convert to hazardous waste management on the effective date of regulatory changes which would subject it to the permit requirement. Thus a storage facility may be "in existence" for the purposes of qualifying for interim status if by May 29, 1986 it was actually storing hazardous waste fuel, under physical construction as a HWF storage facility, or is converting to hazardous waste fuel storage.

If I can be of further assistance to you on these issues, please do not hesitate to call.

Sincerely,

Mark A. Greenwood
Assistant General Counsel for RCRA
Solid Waste & Emergency Response
Division

9528.1986(11)

DEC 10 1986

MEMORANDUM

SUBJECT: Permitting Units or Facilities That Have Lost Interim Status

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

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

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

Your letter of October 15, 1986, raises several issues -- some generic and some specific to the Eagle Picher Electro-Optic Materials (EOM) Loss of Interim Status (LOIS) case.

The first specific issue is whether the EOM surface impoundment has lost interim status. Your letter indicates that an enforcement action asserting that the EOM unit lost interim status may not be resolved for many months. If the result of the enforcement action is that the EOM surface impoundment has lost interim status, then the appropriate injunctive relief and penalties will be imposed through the enforcement action.

A second, broader issue is what actions should be taken, and in what priority, for land disposal units or facilities that are seeking operating permits and are closing under the HSWA LOIS provision. In the case of EOM, the unit's loss of interim status has not finally been determined. Therefore, review of the permit application should proceed in a manner similar to other land disposal permit applications. In cases where loss of interim status has been determined, an owner or operator still has the right to pursue a permit. Where that option is pursued, the Agency is obligated to review the permit application. These cases present a special challenge, however, since the facility is also required to have submitted an interim status closure plan 15 days after the loss of interim status. The Agency may be in the position of concurrently evaluating a closure plan (submitted as a result of the facility or unit's loss of interim status) and permit application for the same facility or unit.

Review, approval, and implementation of the closure plan should proceed without regard for any pending permit application, according to priorities outlined in the RCRA Implementation Plan and Regional or State Strategies and facility management plans. The Agency considers it good practice to close hazardous waste land disposal units or facilities after they lose interim status in order to minimize the likelihood of environmental and human health damage. Therefore, units that are required to close should be closed expeditiously. In like manner, permit applications for LOIS facilities or units should be reviewed in accordance with established land disposal permitting priorities. Within the overall priority scheme, several considerations should be kept in mind during the closure plan/permit application review process:

(1) The statutory loss of interim status provision requires that the affected unit or facility stop receipt of hazardous waste. Resumption of waste receipt cannot occur unless and until a final RCRA permit is issued.

(2) The LOIS unit or facility must begin closure activities according to the schedule provided in Part 265 Subpart G. Extensions to the time allowed for closure at LOIS units or facilities under §265.113(a)(1)(ii) and (b)(1)(ii) should not be granted solely on the basis of a pending permit application, or on the basis of future capacity to receive hazardous waste since the loss of interim status abrogates the legal authority to continue to receive waste.

(3) In some cases, final closure activities may need to be delayed for physical reasons or to increase the effectiveness of closure (e.g., delay of final cover placement to allow for waste settlement). Other closure activities (e.g., control of run-on/run-off, treatment of waste, freeboard maintenance, etc.) will still need to be implemented, according to the routine closure schedule.

(4) If a final RCRA permit is issued before completion of all closure activities, the terms of that permit (including the permit's closure plan under Part 264) may supercede the interim status closure plan. (See §265.1(b).) In reviewing the proposed Part 264 closure plan, permit writers should attempt to ensure technical consistency between it and the interim status closure plan.

(5) After a facility or unit loses interim status future activities may be governed by new HSWA requirements. Closure activities conducted at units subsequent to loss of interim status may, in some cases, require implementation of the HSWA minimum technological requirements if a permit is subsequently issued for reuse of that unit, since closure activities could, in some cases, cause the unit to be defined as a "replacement" unit under §3004(o)(1)(A) (e.g., where all or substantially all of the waste in the unit is removed). However, for the purposes of section 3004(o), units that have lost interim status will not be considered new units unless they first received hazardous waste after November 8, 1984.

cc: Hazardous Waste Division Directors
Regions I-V and VII-X (with incoming)
Hazardous Waste Permit Section Chiefs
Regions I-X (with incoming)
Bruce Weddle
Lloyd Guerci

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JANUARY 87

4. Does the authority granted under RCRA section 3008(h) extend to facilities that have lost interim status (RCRA §3005(e))?

EPA has interpreted section 3008(h) to apply to the following: 1) facilities that have applied for and are now operating under interim status; 2) facilities that treat, store, or dispose of hazardous waste but have not obtained interim status because they did not fully comply with section 3010 notification requirements or submit a timely Part A; and 3) units or facilities at which active operations have ceased and interim status has been terminated pursuant to 40 CFR 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. Accordingly, Section 3008(h) can be used to compel responses to releases at facilities that lost interim status prior to a section 3008(h) action. EPA believes this approach to be consistent with Congressional intent to assure that significant environmental problems are addressed at facilities that treat, store, or dispose of hazardous wastes but do not have a final RCRA operating or post-closure permit. H. Rep. No. 1133, 98th Congress, 2d. Sess. 110-112 (1984). (from "Interpretation of Section 3008(h) of the Solid Waste Disposal Act", J. Winston Porter, December 16th, 1985.)

Source: Susan O'Keefe (202) 475-9320
Ginny Steiner (202) 475-9329

Research: Deborah McKie (202) 382-3112

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

9528.1987(02)

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MAR 11 1987

MEMORANDUM

SUBJECT: Regulatory Status of Contaminated Ground Water
/s/ Jack W. McGraw

FROM: Jack McGraw, Deputy Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Robert Duprey, Director
Waste Management Division
Region VIII

Thank you for your February 17, 1987, memorandum regarding applicable requirements for units in which ground water contaminated with hazardous waste is to be treated as part of a corrective action program.

Your first question centered on whether a treatment system at an interim status facility can operate without a permit if §270.14 and Part 264 standards are incorporated into a §3008(h) order. Since the facility in question is operating under interim status, the treatment system should be handled as a change during interim status under §270.72(c) in conjunction with issuance of the §3008(h) order. The Part 264 standards for permitted facilities or §270.14 permit application information requirements are not applicable unless the changes at the facility amount to reconstruction under §270.72(e). If the changes would amount to reconstruction, a permit would be required for the treatment system.

Your second question concerned the leakage of hazardous waste compounds from process areas, and whether such leakage met the definition of "discarded" in §261.33 and §261.34. Such activity does meet the "discarded" definition of §261.33, as long as the leaked material was not being beneficially used or reused, or legitimately recycled or reclaimed (§261.2, §261.3).

The last question focused on whether a hazardous waste treatment unit which is to be constructed for the purpose of treating contaminated ground water at a facility without interim status would be required to obtain a permit. Sections 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for "treatment

and containment activities during immediate response" to hazardous waste discharges and imminent and substantial threats of discharges. The effect of this exemption is to promote hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threats of discharges from time consuming requirements.

If the activity in question could be considered an "immediate response," the exemption from permitting and interim status standards for the treatment units would be appropriate. Once the immediate response is over, however, the units would have to comply with permit requirements under Parts 270 and 264. It should also be noted that if the treatment system in question were to meet the definition of a "wastewater treatment unit" in §260.10, the system would not require a permit nor be required to meet Part 264 standards (§270.1 (g)(6)). Please note that, in any case, Part 264 standards would not be imposed under a Section 3008(h) order. Rather, as described in our response to your first question, interim status standards would apply.

If you have any further questions regarding these issues, please contact George Faison at FTS 382-4422.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 87

7. Construction During Interim Status

A facility obtained interim status for container storage. It later completely closed all storage units. Can the owner/operator now build a treatment unit under interim status or is a full permit required?

Once a facility has been granted interim status, the facility will retain its interim status until either 1) the final disposition of a permit application by that facility has been made, 2) the interim status is terminated per 40 CFR 270.10(e)(5) or under Section 3008(h), or 3) the facility loses interim status under 40 CFR 270.73(c)-(f). (see 40 CFR 270.73). If the owner/operator of the facility in question wanted to build and operate a treatment unit after all of the container storage units had been closed, the owner/operator would have to comply with the following RCRA regulations. First, the cost of the construction of the treatment unit could not exceed 50% of the cost of building a container storage area similiar to the one for which interim status was originally granted according to 40 CFR 270.72(e). Second, the owner/operator would have to submit a modified Part A and have the activity approved by the Director (40 CFR 270.72(c)). If the cost to build a new treatment unit exceeds the 50% reconstruction threshold, then the owner/operator would need a RCRA permit prior to starting construction of the new treatment unit.

Source: Matthew Hale 382-4740
Research: Deborah McKie 382-3112

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 87

6. Construction During Interim Status

A facility owner/operator obtained interim status for several different units. Some of the units were later closed. The owner/operator now wants to build another unit. 40 CFR 270.72(e), prohibits any construction during interim status that would cost more than 50% of the cost of building the existing facility. Do these provisions apply to the facility as it originally was when it was granted interim status and all units were open, or does it apply to the facility as it is now, with only a portion of the original units open?

The provisions governing construction activities at a facility operating under interim status (40 CFR 270.72(e)) apply to the facility as it was when its Part A was first submitted and interim status was granted. Also any construction costs are additive. For example, if there is some reconstruction at the facility which costs the equivalent of building 25% of the existing facility, any additional construction could cost no more than 25% of rebuilding a new facility. Construction costs are based on current estimates in current dollars.

Source: Matthew Hale 382-4740
Research: Deborah McKie

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

AUGUST 87

1. Changes at Interim Status Tank Facilities

According to 40 CFR 270.72, an owner/operator who wishes to make changes in an interim status facility must submit a revised Part A permit application and a justification for the change to the Regional Administrator (or State Director). The revised Part A application is required for management of new hazardous waste at the facility, increases in design capacity, changes in the facility's process for treatment, storage or disposal, and changes in ownership or operational control at the facility.

An interim status tank storage facility plans to upgrade its tanks to meet the new secondary containment standards of Section 265.193 (see 51 FR 25422). Does upgrading a tank to meet secondary containment requirements constitute a "change during interim status" under Section 270.72?

Yes. Upgrading a tank to meet the hazardous waste tank secondary containment requirements does constitute a change subject to Section 270.72. According to Section 270.72(c), an owner/operator who wishes to make a change at an interim status facility must submit the revised Part A application and the justification for the change prior to making the change.

In general, Section 270.72(e) does not allow a change under interim status where costs exceed fifty percent (50%) of the capital cost of construction of a comparable new facility. Nevertheless, Section 270.72(e) contains an exception to this prohibition for tanks that must be retrofitted to comply with Section 265.193 (see 51 FR 25486). Therefore, the cost of retrofitting a tank to comply with Section 265.193 would be allowed to exceed fifty percent (50%) of the cost of constructing a new tank facility. Retrofitting to meet the secondary containment standards of Part 265 Subpart J is still considered to be a change requiring submittal of a revised Part A application and justification.

Source: Carrie Wehling (202) 382-7706
Research: Jennifer B. Planert

9528.1987(10)

SEP 3 1987

Mr. Grant Trigger
Clark, Klein & Beaumont
1600 First Federal Building
1001 Woodward Avenue
Detroit, MI 48226-1962

Dear Mr. Trigger:

This is in response to the April 1, 1987 request on behalf of the St. Mary's Peerless Cement Company of Detroit, Michigan (St. Mary's) for an opinion on whether the St. Mary's cement kiln qualifies for interim status to burn hazardous waste fuels under section 3005(e) of the Resource Conservation and Recovery Act, (RCRA) as amended. This letter also responds to the arguments raised on behalf of Petro-Chem Processing, Inc. (Petro-Chem), opposing any interpretation of section 3005(e) that would allow St. Mary's to begin operation prior to receiving a RCRA permit.

Conclusion

On the basis of the information submitted by St. Mary's, we believe that St. Mary's may qualify for interim status under section 3005(e). The remainder of this letter discusses our interpretation of the section 3005(e) requirements as they pertain to the St. Mary's facility and the conditions under which St. Mary's may obtain interim status.

Background

Under section 3005(a) of RCRA, no facility may treat, store, or dispose of hazardous waste without a permit after November 19, 1980. However, under section 3005(e), a facility may be treated as if it had a permit for the interim period pending review of its permit application. To operate under this "interim status," a facility must meet three conditions: (1) the facility must be "in existence" either on November 19, 1980 or on the effective date of statutory or regulatory changes under RCRA that subject it to the permit requirement, (2) the facility must comply with applicable notification requirements under section 3010(a) of RCRA, and (3) the facility must submit a Part A permit application. Section 3004(q)(2)(C) requires that any cement kiln located within a municipality of greater than 500,000 population that burns fuel containing any hazardous waste after November 8,

1984 must be treated as a hazardous waste incinerator. Such kilns were not subject to RCRA permit requirements prior to November 8, 1984.

St. Mary's is a cement kiln located within the boundaries of the city of Detroit, Michigan, a city of greater than 500,000 population. In 1982, St. Mary's conducted a trial burn of waste-derived fuels as part of its developing secondary fuels program. Between 1982 and 1986, St. Mary's and the fuel supplier who had provided fuels for the 1982 test burn continued to discuss the prospect of future burning of hazardous waste fuels. In early 1987, St. Mary's contracted for waste-derived fuels from that waste fuel supplier. To burn hazardous waste fuels, St. Mary's does not need to process or store the fuels on-site, and no modification of the facility is necessary. St. Mary's has not submitted a Part A permit application or a 3010(a) notification.

Discussion

1. Interim Status under Section 3004(q)(2)(C)

The basis for St. Mary's argument that it qualifies for interim status for its fuel-burning operations is that it was "in existence" on November 8, 1984, the date of the statutory amendment adding section 3004(q) to RCRA, which was the statutory change subjecting the cement kiln to RCRA permit requirements as a hazardous waste incinerator.

Although the language of section 3004(q)(2)(C) appears only to require big city cement kilns to comply with incinerator standards, whether as an interim status or permitted facility, comments by the author of this amendment on the floor of the House indicate that the intent of this paragraph was to prevent cement kiln operation in big cities until permitted as a hazardous waste incinerator. 129 Cong. Rec. H 8154 (daily ed. October 6, 1983) (statement of Congressman Frost). Petro-Chem thus argues that under section 3004(q)(2)(C), St. Mary's may not operate under interim status.

However, on its face, section 3004(q)(2)(C) only requires that big city cement kilns burning hazardous waste fuels "fully compl[y] with regulations....which are applicable to incinerators. Incinerators may operate under interim status standards. Nothing in the statutory language suggests any limitation on the ability of big city cement kilns to operate pursuant to interim status, as would any other existing hazardous waste incinerator.

Because the statutory langage is unambiguous with respect to this issue, we believe that it is inappropriate in this context to imply limitations solely on the basis of legislative history.

Therefore, section 3004(q)(2)(C) does not prevent St. Mary's from operating pursuant to section 3005(e).

2. Interim Status Requirements - "In Existence"

The first of three interim status requirements is that St. Mary's must have been in existence on the date of a statutory or regulatory change that subjects it to RCRA permit requirements. St. Mary's argues that the change that rendered St. Mary's subject to RCRA permitting and thus eligible for interim status, was the enactment of section 3004(q)(2)(C) on November 8, 1984 which made certain kilns hazardous waste incinerators.

Under 40 C.F.R. 260.10, EPA defines "in existence" to mean that either the facility is "in operation" (i.e., actually "treating, storing, or disposing of hazardous waste") or a facility "for which construction has commenced" on the relevant date. 1/ Because St. Mary's was not burning hazardous waste on November 8, 1984, it must be a facility for which construction had commenced on that date in order to qualify as an existing facility.

Under section 260.10, a facility is "under construction" if it has received all hazardous waste control approvals necessary for physical construction and either a continuous, on-site construction program has begun or the facility has accepted substantial contractual obligations for such construction, to be completed within a reasonable time. St. Mary's did not need to undertake any modification of its facility to convert to hazardous waste fuels. Although not directly addressed by the regulations, EPA has interpreted "under construction" also to include facilities that have completed construction on the relevant date. See 46 Fed. Reg. 2344 (January 9, 1981). Under this interpretation, since no modification of the facility was necessary, St. Mary's

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1/ Section 260.10 only defines "existing facility" in terms of facilities in existence on November 19, 1980, the only relevant date for interim status prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA). HSWA amended section 3005(e) to allow facilities also to obtain interim status if they were in existence on the date of statutory or regulatory changes which subject them to RCRA permitting. Although the Agency has not yet made the conforming change to its regulations defining "existing facility" to reflect the HSWA change to section 3005(e), EPA interprets the same definitions to apply to all facilities "in existence" under section 3005(e)(1)(A)(ii).

may qualify as an "existing facility" if it can objectively demonstrate an intent to handle hazardous waste within a reasonable time after November 8, 1984. See id.

St. Mary's demonstration of intent primarily includes a 1982 test burn of hazardous waste fuels as part of a secondary fuels program at the facility and verbal agreements with the fuel supplier, beginning prior to the test burn and continuing through 1986 when they were reduced to a written contract, signed in early 1987. Based on this information, St. Mary's has objectively demonstrated an intent to handle hazardous waste within a reasonable time after November 8, 1984, and thus was an "existing facility" on that date.

3. Interim Status Requirements - Submission of 3010(a) Notice

The second condition for interim status is that a facility must comply with any applicable notification requirements under RCRA section 3010(a). Because there are no 3010(a) notification requirements applicable to St. Mary's, the facility has complied with this requirement.

Petro-Chem argues that St. Mary's was required to file a notification under the 1984 amendment to section 3010(a). Section 3010(a) requires notification by February 8, 1986 for any facility that produces, burns, or distributes hazardous waste fuel. However, this requirement applies only to facilities actually handling hazardous waste fuel on November 8, 1984 (and continuing to handle such wastes on February 8, 1986; see 52 Fed. Reg. 11,819 (April 13, 1987)).

This section 3010(a) notification is intended to be a "snapshot" of current hazardous waste fuel production, distribution, and burning. H.R. Rep. No. 198, 98th Cong., 1st Sess 40 (1983). Contrary to Petro-Chem's suggestion, EPA did not intend to imply in the April 13, 1987 notice clarifying this requirement that "under construction" facilities must provide such notices. Rather, the purpose of this notice was to clarify that the hazardous waste fuel notification requirement should be interpreted consistent with earlier section 3010(a) notifications, and thus that the requirement applied only to facilities actually handling the hazardous waste on the relevant date. See 45 Fed. Reg. 76,631 (November 19, 1980).

4. Interim Status Requirements - Submission of Part A

The final condition for interim status is that the facility submit a Part A permit application. Under 40 C.F.R.

section 270.10(e), existing facilities must submit the Part A no later than six months after the publication of regulations requiring compliance with technical standards, or thirty days after they first become subject to the technical standards, whichever is first.

Because St. Mary's has not filed a Part A permit application, the facility does not now qualify for interim status. However, the regulations under section 270.10(e) are unclear about when the submission of the Part A should have been made. In fact, a possible reading of the regulations suggests that the Part A would not be due until 30 days after St. Mary's actually begins burning hazardous waste fuels. Although we believe that the permit application was due within 30 days after St. Mary's became subject to RCRA requirements on November 8, 1984, we acknowledge that there could be substantial confusion for cement kilns subject to RCRA under section 3004(q)(2)(C) and that the confusion may be attributable to serious ambiguities in the interim status and hazardous waste fuels regulations with respect to these facilities.

As a result, EPA has decided to exercise its discretion under section 270.10(e)(2) of its regulations to extend the date for Part A submission by Federal Register notice for cement kilns subject to section 3004(q)(2)(C). Because St. Mary's has met all of the other requirements for interim status, the facility will be able to operate pursuant to section 3005(e) if it complies with the Part A submission requirements in the Federal Register notice, to be published in the next few days.

As a matter separate from the ability of St. Mary's to obtain interim status, the Agency believes that recycling, reuse, recovery, and treatment of hazardous wastes are the preferred management alternatives. Cement kilns have demonstrated that they can effectively recover energy from certain hazardous wastes and fuels containing hazardous waste while, at the same time, greatly reducing the quantity of waste materials. Therefore, the Agency believes that if St. Mary's obtains interim status, environmental benefits will result from the energy recovery and waste treatment that will be performed, and the operation of the facility will be held to the relevant interim status and state standards for incinerators.

Thank you for the information you provided to the Agency regarding the situation of St. Mary's cement kiln. If you have any further questions or comments on this issue, please contact Frank McAlister of the Office of Solid Waste (202-382-2223) or Caroline Wenling of the Office of General Counsel (202-382-7706).

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9528.1987(12)

SEP 18 1987

Honorable Martin Frost
House of Representatives
Washington, D.C. 20515

Dear Mr. Frost:

The Environmental Protection Agency (EPA) has made a final decision regarding St. Mary's Peerless Cement Company. The company requested an opinion on its qualification for interim status to burn hazardous wastes as a secondary fuel source in its cement kiln located in Detroit, Michigan. In your April 20, 1987, letter you expressed interest in the Agency's decision and offered important background information regarding the "Frost" amendment to the Resource Conservation and Recovery Act (RCRA).

The Agency has decided to extend the date for submission of RCRA Part A permit applications for cement kilns subject to Section 3004(q)(2)(C) of RCRA (i.e., those kilns burning hazardous waste fuels in municipalities of greater than 500,000 population). As a result of this extension, cement kilns subject to Section 3004(q)(2)(C) will be able to file Part A permit applications and, if they comply with the other requirements of Section 3005(e), will qualify for interim status. Based on the information we have received, we believe that St. Mary's will qualify for interim status if the company files a Part A permit application before the new submission date.

The Agency is taking this action pursuant to its authority under 40 CFR 270.10(e)(2) because of confusion under EPA regulations concerning whether and when the affected cement kilns were required to file Part A applications. In about one week, EPA will announce its decision in a Federal Register notice (copy enclosed). The new Part A submission deadline will be six months from the date of publication of the notice.

In your letter, you raise the issue of whether, based on legislative history, Section 3004(q)(2)(C) should be interpreted to prohibit cement kiln operations in large cities until they receive a final permit as hazardous waste incinerators. However, on its face, Section 3004(q)(2)(C) only requires that large city cement kilns burning hazardous waste fuels "fully compl[y] with regulations...which are applicable to incinerators." The EPA regulations provide that incinerators may operate under interim status standards. Nothing in the statutory language suggests any limitation on the ability of these cement kilns to operate pursuant to interim status, as is provided for any other existing hazardous waste incinerator.

Because the statutory language is unambiguous with respect to this issue, we believe that it is inappropriate in this context to imply limitations solely on the basis of legislative history. Therefore, we do not interpret Section 3004(q)(2)(C) as preventing St. Mary's from operating pursuant to Section 3005(e).

As a matter separate from the ability of St. Mary's to qualify for interim status, the Agency believes that recycling, reuse, recovery, and treatment of hazardous wastes are the preferred management alternatives. This preference was embodied in the 1984 amendments to RCRA. Cement kilns have demonstrated that they can effectively recover energy from certain hazardous wastes and fuels containing hazardous waste while, at the same time, greatly reducing the quantity of waste materials.

I appreciate the background information that you provided regarding the "Frost" amendment. I assure you that the Agency carefully considered your information when it reviewed St. Mary's request. If I can be of further assistance, please let me know.

Sincerely,

J. Winston Porter
Assistant Administrator

Enclosure

9528.1987(14)

12 1987

MEMORANDUM

SUBJECT: Regulation of Radioactive Mixed Waste at Department of Energy Facilities

FROM: J. Winston Porter /s/ Jack W. McGraw
Assistant Administrator

TO: Lee A. DeHihns, III
Acting Regional Administrator, Region IV

I received your memorandum of October 23, 1987, in which you requested Headquarters' assistance on two issues pertinent to the regulation of mixed waste.

You have requested Headquarters' opinion on whether or not interim status will be made available to owners and operators of facilities handling mixed waste. Currently, we are developing a notice for publication in the Federal Register which will outline the applicability of interim status for owners or operators of treatment, storage and disposal facilities (TSD's) that manage mixed waste because they are now subject to the Resource Conservation and Recovery Act. This Notice will give owners and operators of TSD's in authorized states six months from the date of the state's authorization for mixed waste to submit a Part A in order to qualify for interim status. Similarly, owners and operators of TSD's in unauthorized states will have six months from the date of publication of the Notice to submit Part A permit applications and qualify for interim status.

You also questioned the applicability of the totally enclosed treatment unit and the wastewater treatment exemptions to the Department of Energy's Savannah River Plant radioactive mixed waste operations. Headquarters staff are currently reviewing the intent and applicability of these two exemptions. I anticipate the assessment will not be completed by November 15, 1987. However, it is our objective to provide you with a final Headquarters opinion by November 30, 1987. If you need further details, please contact Betty Shackleford, of my staff, on FTS 382-2221.

9528.1987(15)

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

Nov 25 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Interim Status Expansion to Add an Incinerator

FROM: Marcia Williams, Director
Office of Solid Waste (WH-562)

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

This is in response to your memo of October 22, 1987 regarding a request from U.S. Pollution Control Incorporated (USPCI) to the State of Oklahoma for approval of an interim status expansion to add an incinerator at its Lone Mountain, Oklahoma facility. You requested an opinion on the question of whether an incinerator may be added to a facility as a change in interim status under the authority of 40 CFR 270.72(c).

Section 270.72(c) allows EPA or an authorized State to approve the addition of a new unit at an interim status facility if the change is determined to be necessary to comply with a Federal, State, or local requirement. On its face, this provision authorizes the addition of an incinerator as a change in interim status; however, section 270.72 allows the Director to exercise discretion in approving or disapproving changes under that section. Generally, we have significant concerns about new incinerators being added as changes in interim status without the benefits of a trial burn and public participation. While we do not believe that the Director may be arbitrary in deciding to approve or disapprove a change in interim status, we believe that it is important to consider protection of human health and the environment and the rights of the public, and that it is generally unwise to allow operation of a new incinerator without a trial burn and opportunity for public comment.

As an authorized State, Oklahoma may implement its own hazardous waste program and interpret its own regulations. While the State of Oklahoma has the authority under section 270.72(c) to allow addition of this incinerator as a change in interim status, we believe that the preferable approach would be to include the proposed incinerator in the ongoing permit process for USPCI. Since the facility's permit is scheduled for issuance in 1988, the incinerator activity could be pursued as

a subsequent permit modification. Although the proposed incinerator would not be subject to the 1989 permitting deadline for incinerators, I would recommend that the Regional Office work closely with the State to establish a priority for developing the incinerator portion of the permit.

If you have any questions about this issue, please contact Frank McAlister (FTS 382-2223) or Barbara Foster (FTS 382-4751) of the Permits Branch.

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 87

1. Section 270.72 Changes in Interim Status

A container storage facility has interim status. The owner wishes to sell one-half of the container storage facility to a person who wishes to set up a solvent recovery operation on the site. The solvent recovery operator wishes to gain interim status for storage by doing this. The old owner will have no operational control or interest in the half of the facility that is sold. The area will now be two facilities under completely separate ownership and operational control. Is this allowed under Section 270.72, changes during interim status?

Yes. There is nothing in the regulations to preclude an existing facility with interim status from selling off part of the facility and transferring interim status for that part of the facility. The new owner operator will have to come into compliance with Part 265, and among other things develop its own closure plan, meet all of the financial responsibility requirements and submit a new Part A for his part of the facility. Any changes the new owner/operator wishes to make at the interim status facility will have to satisfy Section 270.72, which restricts both the types of changes that can be made and the dollar amounts of such changes (i.e., the 50% reconstruction limit).

Source: Fred Chanania (202) 382-7706
Research: Randy Eicher

UN D STATES ENVIRONMENTAL PROTEC. AGENCY

9528.1988(02)

MAY 11 1988

MEMORANDUM

SUBJECT: Redesignation of Surface Impoundments as Landfills During Interim Status

FROM: Bruce Weddle, Director
Permits and State Programs Division (WH-563)

TO: Robert Greaves, Chief
Waste Management Branch (3HW30)
Region III

This memorandum is in response to your request of April 4, 1988 for Headquarters policy on a proposal by Union Carbide to redesignate as a landfill a unit that is operating as an interim status surface impoundment.

As we understand, the unit at the Sistersville facility in West Virginia has been operating as a surface impoundment since 1978, and has a bottom liner system that does not comply with minimum technology requirements. As such, under 3005(j)(1) of RCRA, the unit must either retrofit or stop receiving hazardous wastes by November 8, 1988. Facilities that cease to receive hazardous wastes in order to comply with 3005(j) must comply with the applicable closure requirements of 40 CFR Part 264 or 265. Union Carbide, however, proposes to stabilize the liquids in the impoundment, allow the stabilized wastes to remain, redesignate the unit as an interim status landfill, and continue to receive hazardous wastes.

40 CFR 270.72(c) allows for changes during interim status in the processes for the treatment, storage, or disposal of hazardous waste only under the following two circumstances:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or;

(2) It is necessary to comply with Federal regulations or State or local laws.

We agree with the previous evaluation of the Union Carbide proposal (Humphries letter of February 5, 1988 to Robert Jelacic of the West Virginia DNR), that neither change in interim status criterion is satisfied. As you point out, however, West Virginia's authorized regulations [West Virginia Administrative regulations, section 11.3.3.c] allow a change in a process during interim status if either of the two Federal criteria are met or if "proposed changes are demonstrated to result in safer or environmentally more acceptable processes." Because West Virginia is an authorized state, Union Carbide could theoretically change the process in the affected unit if such a demonstration is made to the satisfaction of the authorized State agency.

In order to comply with the requirement of section 11.3.3.c, Union Carbide would have to demonstrate that a hazardous waste landfill operating with a liner system that does not meet minimum technology requirements is safer or more environmentally acceptable than a closed or retrofitted surface impoundment. We do not believe that such a demonstration is possible, and that the facility could not therefore meet the State requirements.

If you should have any further questions, please call Dave Eberly of my staff on (FTS) 382-4691.

cc: Suzanne Rudzinski, PSPD
Matt Hale, PSPD
Frank McAlister, PSPD
Alex Wolfe, PSPD
Les Otte, WMD
Fred Chanania, OGC
Dave Eberly, PSPD
Mike Freiheiter, Region III

5. Retrofitting Interim Status Surface Impoundments

Section 3005(j) requires surface impoundments that were in existence on November 8, 1984 and eligible for the authorization to operate under interim status to meet the minimum technological requirements of Section 3004(o)(1)(A) by November 8, 1988. The minimum technological requirements consist of the installation of double liners and leachate collection systems. These requirements must be met unless an exemption was requested and approved under Section 3005(j) or Section 3004(o)(2).

The owners or operators of interim status surface impoundments without approved exemptions who do not retrofit per Section 3005(j) by November 8, 1988 must cease the receipt of hazardous wastes into those impoundments by November 8, 1988. The closure of these impoundments must then proceed in accordance with 40 CFR Part 264/265 Subpart G.

An owner of three interim status surface impoundments does not wish to retrofit the units. He therefore plans to cease receiving wastes on November 8, 1988 and proceed with the closure. As part of closure activity, the owner proposes to remove the liquid waste from two of the impoundments, stabilize the waste, and dispose of it in the third impoundment. This third impoundment would then be closed as a landfill and provided with post-closure care while the other two impoundments will be "clean-closed" per Section 265.228.

Can the owner change the facility process and convert the impoundment to a landfill?

If the process can be changed, would the landfill be considered an existing unit, replacement unit, or a new unit?

The owner of the facility may change the facility process and convert the third impoundment to a landfill under limited circumstances. However in order to do so, the requirements in Section 270.72(c) must be met. Under Section 270.72(c), an owner of an interim status facility may change the treatment, storage or disposal processes of the facility if he submits a revised Part A application, along with the justification explaining the need for the change. The change may be approved under only two limited circumstances: (1) It is necessary to prevent a threat to human health or the environment because of an emergency situation; or (2) It is necessary to comply with Federal regulations or State or local laws.

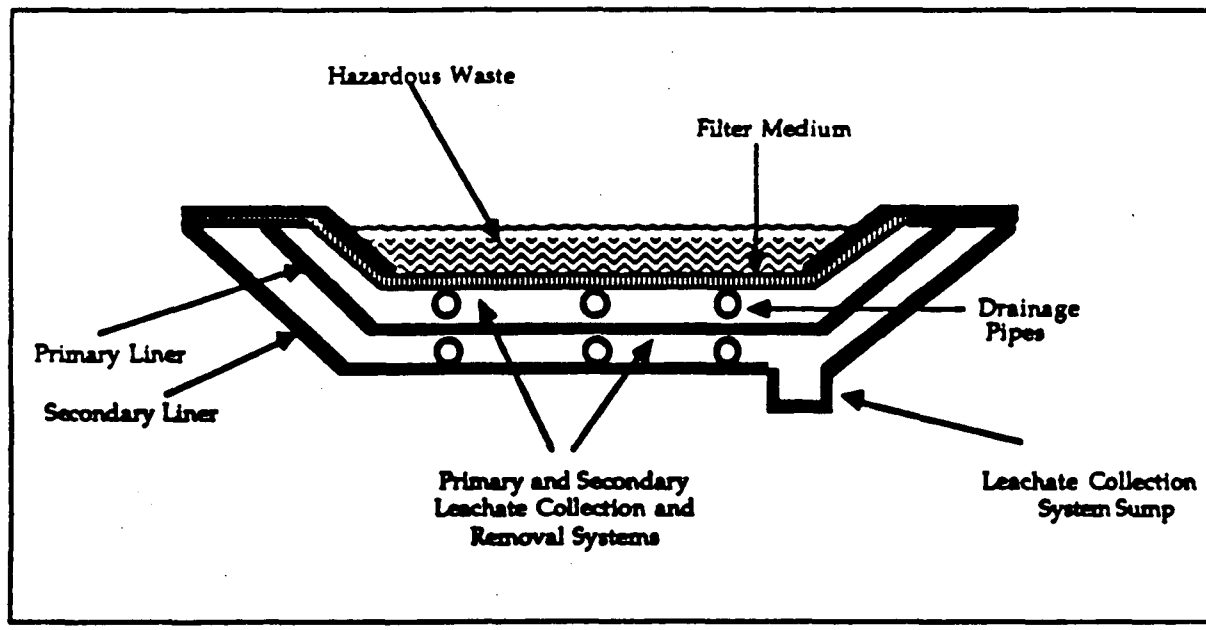
Furthermore, if this "conversion" amounts to reconstruction, Section 270.72(e) would prohibit the change. Reconstruction is defined in Section 270.72(e) as occurring when the capital investment in the changes exceeds fifty percent (50%) of the capital cost of a comparable entirely new hazardous waste management facility.

5. Retrofitting Interim Status Surface Impoundments (Cont'd)

For circumstances that allow a process change under this very restrictive requirement, Reauthorization Statutory Interpretation #5D states that the impoundment/landfill would be considered an existing unit.

However, if the owner of the unit removes the waste that is already in the impoundment stabilizes the waste, and places it back into the impoundment/landfill along with the waste from the other two impoundments, the unit would be considered a replacement unit. As such, the landfill would need to be in compliance with the minimum technology standards of Section 3004(o) (RCRA/Superfund Hotline Monthly Report, December 1985). Also if the addition of waste into the unit exceeds the level designated in the facility's Part A application, that portion of the impoundment/landfill would be considered an expansion of an existing unit and would be subject to the requirements of Section 3004(o) (Section 265.301(a)).

Source:	Pamela Savage	(202) 382-7700
	Dave Eberly	(202) 382-4691
	Alex Wolfe	(202) 382-2227
Research:	Chris Bryant	



RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 88

1. Changes During Interim Status (Revised Question/Answer from September 1988 Report)

An interim status facility owner or operator wants to retrofit his hazardous waste tank system in order to comply with the secondary containment requirements in 40 CFR Section 265.193. Is this retrofitting activity considered a change during interim status and thus prohibited if the cost exceeds 50 percent of what a new facility would cost (under the 50% reconstruction limit in Section 270.72)?

According to 40 CFR Section 270.72(e) (as amended in the July 14, 1986 Federal Register, 51 FR 25486) changes made solely for the purpose of complying with the requirements of Section 265.193 for tanks and ancillary equipment are not subject to the reconstruction limit in Section 270.72(e). However, Section 270.72(e) was also amended in the July 8, 1987 final rule (see 52 FR 25792, July 8, 1987 Federal Register) to include changes solely for purposes of complying with the land disposal restrictions in 40 CFR Part 268 or RCRA Section 3004. When Section 270.72(e) was amended, the original language regarding changes made in order to comply with Section 265.193, was inadvertently left out. The Agency will correct this inadvertent omission in the near future.

Source: Chester Oszman (202) 382-4499
Research: Joe Nixon

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

9528.1989(06)

APR 19 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Call-in of Storage and Treatment Applications

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

TO: 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 (or unit) intends to continue operating after November 8, 1992. If the facility (or unit) plans to close prior to November 8, 1992, 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 requests 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

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JULY 89

4. Changes to Interim Status Facilities

An interim status disposal facility with an existing incinerator wants to build a new incinerator. Can this be done and if so what changes would have to be made to the Part A permit application?

Amendments to the RCRA regulations governing changes during interim status were promulgated in the March 7,1989 Federal Register (54 FR 9596). An increase in design capacity of processes, which includes the addition of new units of the same type that are already present at the facility, is possible if the owner or operator of the facility complies with the requirements of Section 270.72(a)(2) and the change is not otherwise prohibited by the reconstruction limit of Section 270.72(b). The owner or operator must submit a revised Part A permit application along with a justification explaining the need for the change and receive the Director's approval. The Director can approve the change if there is a lack of available treatment, storage or disposal capacity at other hazardous waste management facilities or the change is necessary to comply with a Federal, State or local requirement. (Section 270.72(a)(2))

The changes described above may not be made if prohibited by the 50% reconstruction limit. (40 CFR Section 270.72(b)) EPA anticipates that the construction of most incinerators will be prohibited by the reconstruction limit and facilities will have to obtain permits in order to make these changes. Additionally, the Agency has significant concerns about new incinerators being added as changes in interim status without the benefits of a trial burn and public participation. Therefore, EPA prefers that such units be subject to public hearings and comply with the incinerator standards of Part 264 Subpart 0.

Source:	Barbara Foster	(202) 382-4751
Research:	Reneé LaValle	(202) 382-3112

9528.1989(13)

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OCT 15, 1989

Subject: Clarification of Interim Status Qualification Requirements for NRC Licensees Managing Radioactive Mixed Waste

Dear NRC Licensee:

I am writing this letter to you because as a NRC licensee it is possible that your facility generates or otherwise handles radioactive mixed wastes (i.e., wastes that are both radioactive and chemically hazardous). Facilities that handle mixed wastes are subject to regulation by both the NRC (or the Department of Energy) and the U.S. Environmental Protection Agency (EPA). Consequently, your facility may need to comply with EPA standards and requirements, including obtaining a permit granted by EPA.

The permit process can be quite lengthy. As a result, EPA has created provisions and requirements for facilities awaiting final decision on their permit application. The main provision is one of qualifying for interim status. Under interim status, you may continue your hazardous waste (i.e., mixed waste) activity until a final decision is made on the permit. Applying for a permit and gaining interim status is an important step in complying with EPA regulations regarding mixed waste.

Below, I describe the requirements for obtaining interim status in unauthorized States. Please read this material to determine if and how your facility may need to comply with interim status requirements.

Background

On July 3, 1986, EPA issued a notice in the Federal Register (51 FR 24504) clarifying the applicability of the Resource Conservation and Recovery Act (RCRA) to the management of radioactive mixed waste. (Mixed waste is defined as waste that satisfies the definition of radioactive waste subject to the Atomic Energy Act (AEA) and contains hazardous waste that either (1) is listed as a hazardous waste in Subpart D of 40 CFR Part 261 or (2) exhibits any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261. The hazardous component of mixed waste is regulated under RCRA.)

Since that time, EPA has become aware that many handlers of radioactive mixed waste have been substantially confused about the regulatory status of

their facilities, because EPA's Federal Register notice addressed only RCRA's applicability to treatment, storage, or disposal facilities (TSDF's) handling radioactive mixed waste, and not the issue of interim status. Consequently, many owners and operators of these facilities are uncertain about how to qualify for interim status if they are handling radioactive mixed waste.

Therefore, EPA issued another notice in the Federal Register on September 23, 1988, (53 FR 37045) that clarified the requirements for facilities that treat, store, or dispose of radioactive mixed waste to obtain interim status pursuant to Subtitle C of RCRA. I have enclosed a copy of that notice with this letter and summarized below its key points.

EPA Identification Number

All treatment, storage, and disposal facilities and persons generating or transporting radioactive mixed wastes must obtain an EPA Identification Number. This number is obtained by completing an EPA Notification Form 8700-12 and forwarding it to the Regional EPA Office serving the area in which the relevant hazardous waste activity is located (see enclosed map and list). TSDF's, in addition, must obtain interim status to continue handling mixed waste until a final permit is received.

Interim Status

Section 3005(a) of RCRA prohibits treatment, storage, or disposal of hazardous waste without a RCRA permit after November 19, 1980. This same section of RCRA, however, allows a facility to continue treatment, storage, or disposal under interim status pending a final decision on its permit application.

State Authorization

The RCRA program is designed to be implemented by the States, and EPA has established an authorization process by which individual State agencies may take responsibility for the RCRA program in their State. Currently, 44 States and Territories are authorized for EPA's base RCRA Program.[1] Authorized State regulations must be at least equivalent to the Federal RCRA regulations, and may be more stringent. For States that are not authorized to implement the

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[1] The authorized States and Territories are: AL, AZ, AR, CO, DC, DE, FL, GA, Guam, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, MN, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WI, and WV. Also, four of these States, CO, SC, TN, and WA, have authorization for their mixed waste programs.

RCRA program, EPA implements the Federal RCRA program directly.[2] Consequently, requirements may be different for facilities in authorized and non-authorized States.

NRC licensees in RCRA authorized States need to check with their State authorities to determine the exact requirements they must comply with in order to initiate a permit application and obtain interim status. The interim status requirements facing NRC licensees in non-authorized States are summarized below.

Interim Status Requirements for Facilities in Non-Authorized States and Trust Territories

- Facilities must be in existence as of July 3, 1986. (EPA considers any facility in operation or under construction to be in existence.)
- Owners and operators of treatment, storage, and disposal facilities must submit Part A of their permit applications (as described in the Code of Federal Regulations, Title 40, Part 270, Sections 270.10 to 270.73) or a modification to an existing Part A permit application no later than March 24, 1989, in order to obtain interim status.
- Owners and operators of land disposal facilities handling radioactive mixed waste must submit Part B of their permit applications as well as a certificate of compliance with applicable RCRA ground-water monitoring and financial assurance requirements by September 24, 1989.
- Facilities other than land disposal facilities must comply with their Regional EPA Office's deadline to submit Part B of their permit applications.

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2 Currently, 12 States and Territories do not have authorization by EPA for their hazardous waste program: AK, American Samoa, CA, CT, HI, IA, ID, Marianna Islands, OH, PR, VI, and WY.

I hope this letter eliminates much of the confusion regarding interim status requirements for TSDFs handling radioactive mixed waste. I encourage each of you to read the enclosed Federal Register notice carefully, as it explains each of the above requirements in detail. Please do not hesitate to contact EPA with any questions regarding this matter. Questions should be addressed to your EPA Regional Office or Ms. Betty Shackleford, Office of Solid Waste (OS-342), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-2210.

Sincerely yours,

Joseph Carra, Director
Permits and State Programs Division

Enclosures

Frank

9528.1990(01)

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

APR 2 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

TO: Patrick M. Tobin, Director
Waste Management Division

FROM: Joe Carra, Director
Permits And State Programs Division

SUBJECT: Changes During Interim Status

In your memorandum of March 2, 1990, you recommend that §270.42.72(a)(1), which addresses the addition of new waste streams at interim status facilities, should be amended to require a justification of need and approval by the Director because of a lack of available capacity or the change is necessary to comply with a federal, state, or local requirement. We appreciate your concern regarding this matter in light of the recent waste listings and the new Toxicity Characteristic.

Frank McAlister in my Division recently spoke with Betty Willis of your staff regarding the specific concerns of Region 4. The Region has been receiving inquiries from consultants and facilities who are investigating the possibility of constructing units that would manage nonhazardous waste that shortly thereafter would be listed or characterized as hazardous. Those facilities then would be able to gain interim status as an "existing facility". Under the current regulations (§270.42(a)(1)), the facility could then amend its Part A permit application to treat any other hazardous waste without first gaining approval from the Agency as long as no additional capacity or a change in process is involved. Betty Willis expressed concern over this particular situation and the lack of an Agency role in approving such requests.

We appreciate the concern you have expressed regarding this situation. OSW will be considering amendments, such as the one you have recommended, to the permitting regulations, and will contact you for additional information at that time. In any case, it should be noted that authorized states have the discretion to amend their hazardous waste management regulations to make them more stringent if they believe there is a programmatic need to do so.

Thank you for bringing this matter to our attention. If you have additional questions or observations on this subject, please have your staff contact Wayne Roepe (FTS-475-7245) or Frank McAlister (FTS-382-2223).

cc: Denise Keehner
Frank McAlister
Wayne Roepe
Betty Willis, Region 4

9528.1990(02)

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

JUL 11 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Richard E. Hill, Director
Operations, Planning and Development
USPCI
515 West Greens Road
Suite 500
Houston, Texas 77067

Dear Mr. Hill:

In your May 11, 1990, letter concerning the Toxicity Characteristic (TC) you requested clarification on certain issues raised in the March 29, 1990, Federal Register notice. The following is a response to those issues and I hope it will assist you in resolving some of USPCI's concerns.

Your first question asks whether facilities (exclusive of incinerator and land disposal facilities) managing newly identified TC hazardous wastes would lose interim status unless they have been granted a permit by November 8, 1992. EPA believes that these facilities are not subject to the November 8, 1992, loss of interim status deadline. As you point out, this deadline applies only to facilities that had interim status on November 8, 1984. Thus, such facilities managing newly identified hazardous waste as a result of the TC will not automatically lose interim status on November 8, 1992.

The only facilities that are potentially subject to loss of interim status are newly regulated interim status land disposal facilities or interim status land disposal facilities with units that become newly regulated because of the Toxicity Characteristic. These land disposal facilities must comply with the certification and Part B submission deadlines in 40 CFR 270.73(d) and 270.73(e) or interim status will terminate twelve months after the TC effective date. This documentation must be received by the appropriate EPA Regional Office no later than September 29, 1991. In addition, under 40 CFR 270.42(g)(1)(v), newly regulated land disposal units at permitted facilities will lose authority to operate if the facility fails to comply with the appropriate certification requirements.

Second, you inquire about whether Federal or State interim status standards apply to newly regulated facilities. A facility which has gained interim status for the new TC waste is subject to the Federal requirements under 40 CFR Part 265 until such time as the State is authorized for the TC. (See table V-2 at 55 FR 11848, March 29, 1990.) If the facility wants to modify its operations during interim status, then it must follow the procedures in 40 CFR 270.72, and submit all Part A revisions to EPA. If prior approval is required for a particular change, then EPA would be the approving agency.

In authorized States, EPA directly implements only those aspects of the Federal RCRA program that, by statute or regulation, take effect in all States. Such Federally-implemented provisions are generally limited to HSWA requirements and prohibitions such as land disposal restrictions, minimum technology requirements, and HSWA waste identifications. For example, an interim status facility regulated by EPA because of the TC rule could apply to EPA for: 1) additional TC waste codes not on the original Part A; 2) other HSWA waste codes that the State is not authorized for; 3) capacity increases or process changes for TC or other HSWA wastes; or 4) other HSWA-related facility change (e.g., new process needed to provide BDAT treatment).

Of course the addition of a new, non-HSWA waste code would be subject to regulation by the authorized State and not by EPA. Note that if the State has not yet adopted the TC rule and a facility with Federal interim status due only to TC wastes wants to make changes to add non-HSWA wastes regulated under the authorized State program, this may be viewed as a "new" hazardous waste operation since the facility would not have interim status under State law. In this case, the State might require a RCRA permit prior to receipt of the waste.

Finally, if a facility commences treatment, storage, or disposal activity after June 27, 1990, but before September 25, 1990, that facility is not prohibited from qualifying for interim status because it did not or could not notify prior to June 27, 1990. In such a case, a Section 3010 notification is not required for obtaining interim status, see 40 CFR 270.70(a)(1) and the preamble discussion provided at 45 FR 76631, November 19, 1980. However, the facility would be required to submit a Part A permit application in accordance with the deadline specified in 40 CFR 270.10(e).

If you have any questions or would like to discuss these issues further, please contact Steve Cochran at (202) 475-8551, or Frank McAlister at (202) 382-2223 of my staff.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

9528.1990(03)

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

JUL 11 1990

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Richard E. Hill, Director
Operations, Planning and Development
USPCI
515 West Greens Road
Suite 500
Houston, Texas 77067

Dear Mr. Hill:

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The only facilities that are potentially subject to loss of interim status are newly regulated interim status land disposal facilities or interim status land disposal facilities with units that become newly regulated because of the Toxicity Characteristic. These land disposal facilities must comply with the certification and Part B submission deadlines in 40 CFR 270.73(d) and 270.73(e) or interim status will terminate twelve months after the TC effective date. This documentation must be received by the appropriate EPA Regional Office no later than September 29, 1991. In addition, under 40 CFR 270.42(g)(1)(v), newly regulated land disposal units at permitted facilities will lose authority to operate if the facility fails to comply with the appropriate certification requirements.

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In authorized States, EPA directly implements only those aspects of the Federal RCRA program that, by statute or regulation, take effect in all States. Such Federally-implemented provisions are generally limited to HSWA requirements and prohibitions such as land disposal restrictions, minimum technology requirements, and HSWA waste identifications. For example, an interim status facility regulated by EPA because of the TC rule could apply to EPA for: 1) additional TC waste codes not on the original Part A; 2) other HSWA waste codes that the State is not authorized for; 3) capacity increases or process changes for TC or other HSWA wastes; or 4) other HSWA-related facility change (e.g., new process needed to provide BDAT treatment).

Of course the addition of a new, non-HSWA waste code would be subject to regulation by the authorized State and not by EPA. Note that if the State has not yet adopted the TC rule and a facility with Federal interim status due only to TC wastes wants to make changes to add non-HSWA wastes regulated under the authorized State program, this may be viewed as a "new" hazardous waste operation since the facility would not have interim status under State law. In this case, the State might require a RCRA permit prior to receipt of the waste.

Finally, if a facility commences treatment, storage, or disposal activity after June 27, 1990, but before September 25, 1990, that facility is not prohibited from qualifying for interim status because it did not or could not notify prior to June 27, 1990. In such a case, a Section 3010 notification is not required for obtaining interim status, see 40 CFR 270.70(a)(1) and the preamble discussion provided at 45 FR 76631, November 19, 1980. However, the facility would be required to submit a Part A permit application in accordance with the deadline specified in 40 CFR 270.10(e).

If you have any questions or would like to discuss these issues further, please contact Steve Cochran at (202) 475-8551, or Frank McAlister at (202) 382-2223 of my staff.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

AUG 7 1991

Samuel I. Gutter
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Gutter,

This letter is in response to your letter of June 27, 1991 to Sylvia Lowrance, in which you seek clarification of the application of the Boiler and Industrial Furnace (BIF) rule to newly regulated units at interim status facilities. In your letter, you ask questions regarding the criteria a unit must meet to gain interim status as a newly regulated unit. First, you ask what constitutes a "newly regulated" unit under §270.72(a)(6). Then you ask what requirements a unit must meet to qualify for interim status as a newly regulated unit. Finally, you ask if construction may commence after the effective date of the rule.

The criteria for a unit to gain interim status are the same for an interim status facility and a newly regulated facility. A "newly regulated" unit under §270.72(a)(6) is one which is subject to the RCRA permitting requirements for the first time as a result of a rulemaking. An example of a newly regulated unit is a boiler or industrial furnace that will become subject to the RCRA permitting requirements on the effective date of the BIF rule.

To obtain interim status under §270.72(a)(6), a newly regulated unit such as a BIF must meet the definition of an "existing hazardous waste management facility" as defined under §260.10. This definition does not necessarily require that physical construction of a unit be underway before the effective date of the BIF rule. However, if construction of a BIF unit has not begun by August 21, 1991, the facility must meet the criteria in the definition of "existing facility," including (1) have obtained the Federal, State and local approvals or permits necessary to commence construction and (2) have entered into contractual obligations -- which cannot be canceled or modified without substantial loss -- for physical construction of the facility (or unit) within a reasonable time.

For the BIF rule, EPA Regional offices will be making the determinations regarding interim status. These decisions are necessarily made on a case-by-case basis, considering the

specific facts of a particular site. Therefore, I recommend that you contact the appropriate EPA Regional office to discuss specific facilities that may be subject to the BIF rule.

I hope that this response answers your questions. If you require further clarification, please call Wayne Roepe (202) 475-7245 of my staff.

Sincerely,

Frank McAlister

Frank McAlister, Chief
Permits Branch

9528.1991(02)

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

FEB 27 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. George Sullivan
Chairman, Recycling Sciences
International, Inc.
30 South Wacker Drive
Suite 1420
Chicago, Illinois 60606

Dear Mr. Sullivan:

This letter responds to the inquiry made by you and your company's legal counsel whether several hazardous waste treatment facilities that employ a single mobile treatment unit may qualify for interim status. Your firm, Recycling Sciences International, Inc. (RSI) owns several waste storage and treatment facilities at different locations, but employs only one mobile treatment unit among these various facilities, transporting the treatment unit from one facility to another. You also indicated that RSI's mobile treatment unit accepts only organic-contaminated soils that are newly regulated as hazardous waste under the revised toxicity characteristic (TC) rule (55 FR 11798, March 29, 1990), and that RSI has applied for interim status to EPA for facilities in Arizona, Pennsylvania, Michigan, and Mississippi.

As you are aware, the TC rule was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and therefore is implemented by EPA in all states (until the states become authorized for the TC rule). I have addressed your specific questions below:

1. How does a facility qualify for interim status under the TC rule?

There are three basic prerequisites for obtaining interim status pursuant to § 3005 of RCRA:

(a) The facility must be in existence on the effective date of statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit (§ 270.70(a));

(b) The facility must have complied with the notification requirements of § 3010(a) of RCRA (§ 270.70(a)(1)); and

(c) The facility must comply with the requirements in 40 CFR 270.10 for the submission of the Part A permit application (§ 270.70(a)(2)).

A facility must meet all of the above criteria to qualify for interim status. Note that for a facility to be "in existence", it may either be in operation or under construction. See § 270.2 for the definition of "existing hazardous waste facility".

2. Can a mobile treatment unit qualify for interim status at each facility where it is operated?

Yes, a single MTU may qualify for interim status at more than one location. At each site the MTU must meet the three interim status criteria described in question one above. The fact that the treatment unit is a mobile unit instead of a stationary unit does not diminish the opportunity to gain interim status. After the effective date of the TC rule (September 25, 1990), the unit must meet all applicable interim status standards.

3. Does routine movement of the MTU from site to site constitute a change in interim status that has to be approved by EPA?

No, such movement is not a change in interim status under Federal regulations as long as the unit is always operated within the constraints identified on the Part A permit application (e.g., the types and quantities of hazardous waste, and the unit process types and design capacity). Simply moving the unit to or from the site does not in itself constitute a change in interim status. However, any change to the unit or to the operation that results in an "increase in design capacity", a "change in process", or an "addition of process" would require a revised Part A and prior approval by EPA before the change could be implemented (see § 270.72(a)).

4. If a facility in an authorized state obtains interim status for TC wastes from EPA, can the company amend interim status without prior approval to treat and store hazardous waste not previously identified in the Part A?

An interim status facility located in an authorized state but regulated by EPA because of the TC rule can apply to EPA for additional TC waste codes not on the original Part A and other HSWA waste codes that the State is not authorized for. The addition of a new, non-HSWA waste code would be subject to regulation by the authorized State and not by EPA. Note that if the State has not yet adopted the TC rule and a facility with Federal interim status due only to TC wastes wants to make changes to add non-HSWA wastes regulated under the authorized

State program, this may be viewed by the state as a "new" hazardous waste operation since the facility would not have interim status under State law. In this case, the State might require a RCRA permit prior to receipt of the wastes.

If you have any questions, please contact me (202-382-2223) or Wayne Roepe of my staff (202-475-7245).

Sincerely,

Frank McAlister
Acting Chief, Permits Branch

9528.1991(03)

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

AUG 19 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

TO: James J. Scherer
Regional Administrator

FROM: Don R. Clay, Assistant Administrator
Office of Solid Waste and Emergency Response

SUBJECT: Interim Status under the Boiler and Industrial Furnace Rule

Thank you for your memoranda of April 16 and May 2, 1991, in which you described your strategy for addressing boilers and industrial furnaces (BIFs) seeking interim status as "existing facilities" under EPA's BIF rule.

I appreciate your concern about BIFs seeking interim status without any history of hazardous waste management, or any documented commitment to such activities. Further, I commend your efforts to ensure that interim status is reserved for those facilities that, under the regulations, are legitimately entitled to such status. At the same time, our decision on whether a specific facility has met the standard should be consistent with our past decisions and with our established regulatory interpretations.

In an attachment to this memorandum, I address the specific points you raised in some detail. In any decision on a particular facility, however, you need to keep in mind what we believe is the general intent of both the statute and our implementing regulations: that facilities with a history of handling hazardous waste at the time the waste becomes subject to regulation, or that have made a substantial commitment to handle the waste in the near future, be allowed to continue their activities under interim status. Where a facility has actually handled hazardous waste before the effective date of the regulation (that is, August 21, 1991, for the BIF rule), the facility is clearly eligible for interim status. Where the waste has not yet been handled by the effective date, we agree that the case becomes more complex, and its resolution depends on the

ability of a facility to demonstrate a substantial commitment to hazardous waste management within the near future. Criteria for making this decision are discussed in more detail in the attachment to this memorandum. Clearly, these criteria must be applied on a case-by-case basis considering the particular circumstances at each facility.

In your April 16 memorandum, you made an important point: that BIFs seeking interim status may be underestimating the potential costs for corrective action. We agree that the costs could be high and that BIFs may not have adequately taken them into account. I suspect that if the potential liabilities are clearly pointed out to BIF owner/operators, those who have not already made a substantial commitment to managing hazardous waste may have second thoughts about entering the business. Additionally, BIF facilities should clearly understand that gaining interim status, by itself, does not convey the right to burn hazardous waste. It is likely that other federal, state, and local requirements must also be met, and the conferring of interim status does not extinguish any other legal obligations.

I trust that the attached response will assist you in implementing the BIF rule in your region. If you have any questions regarding these criteria, please feel free to contact Devereux Barnes at (202) 475-7276.

Attachment

ATTACHMENT

Clarification of Interim Status Criteria for BIF Facilities

Background

The basic requirements for obtaining interim status were established by section 3005(e) of RCRA, as amended by HSWA, which specifically grants interim status to "any person who is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit." In the legislative history accompanying this provision, Congress indicated that "existing facilities" would include types of facilities that were previously exempted from certain RCRA requirements but subsequently became subject to those requirements. (See 50 FR 28723, July 15, 1985.) We have consistently taken this position in the case of new waste identifications (e.g., see the Toxicity Characteristic rule, 55 FR 11798). EPA has also acknowledged on several occasions that non-hazardous waste management facilities that are converting to hazardous waste management but have not yet begun hazardous waste management by the effective date of a regulation could qualify for interim status (see 46 FR 2346).

One of the three basic prerequisites for obtaining interim status pursuant to §3005 of RCRA is for a facility to be "in existence" on the effective date of any statutory or regulatory amendments that render the facility subject to the requirement to have a RCRA permit (§270.70(a)). Two kinds of facilities are deemed to be "in existence": (1) a facility that is "in operation" on the effective date of a regulatory or statutory change that renders a facility subject to the permit requirement (i.e., treating, storing, or disposing of hazardous waste), or (2) a facility that is "under construction" on the effective date of such a change. For a facility to be considered "under construction," §260.10 (under the definition of "existing facility") requires that the facility must have all permits and approvals necessary for physical construction and either: (1) an on-site construction program has begun, or (2) the facility has accepted substantial contractual obligations for such construction, to be completed within a reasonable time.

We understand that several BIFs in Region VIII have already been constructed and may wish to begin hazardous waste operations after the August 21 date. EPA has interpreted the term facilities "under construction" also to include facilities that have completed construction on the relevant date if they can demonstrate the intent to commence hazardous waste operations within a reasonable period of time (i.e., through a trial burn or agreements with suppliers to receive hazardous waste derived fuels), and if the facility meets the other relevant standards for "in existence." The Agency's interpretation of what

constitutes being "under construction" is discussed in detail in the January 9, 1981, Federal Register (46 FR 2344).

1. What State and local approvals or permits are necessary to meet the definition of "existing facility"?

One requirement for a facility to be considered "under construction" is that it possess "the Federal, State, and local approvals or permits necessary to begin physical construction." As defined in §260.10 (under the definition of "Federal, State, and local approvals or permits necessary to begin physical construction"), these permits or approvals are those required under hazardous waste control statutes, regulations, or ordinances. Air pollution control permits that must be obtained prior to facility construction or modification under Federal or state laws would not be needed for interim status if the purpose of the legislative provision is to regulate air emissions in general, and not specifically to regulate the treatment, storage, or disposal of hazardous waste, or the siting of a hazardous waste management facility. Similarly, state or local building or zoning permits would be included only if they specifically address hazardous waste management. Of course, the facility remains responsible under state or local law for obtaining relevant building and zoning permits and approvals, even though the failure to obtain them will not prevent a facility from obtaining interim status.

It is important to recognize that the requirement relating to approvals and permits refers to approvals or permits necessary to begin physical construction. Since the Region VIII BIFs have already been constructed, the requirement should be read to apply to approvals for any physical modification needed to receive hazardous waste. Of course, if the physical modification has already been completed, the need for preconstruction permits would not arise as an issue (unless it could be argued that the construction took place illegally in the absence of a necessary permit).

2. What constitutes a "substantial loss due to a contractual obligation"?

To be considered "in existence," a facility not already handling hazardous waste and not yet under construction must have "entered into contractual obligations -- which cannot be canceled or modified without substantial loss -- for physical construction of the facility to be completed within a reasonable period of time." As one way of demonstrating substantial loss, EPA has in the past used cancellation contract clauses. Thus, EPA has interpreted "substantial loss" as being at least 10 percent of the total project cost for physical construction. Physical construction means fabrication, erection, installation, or modification of a facility. The term does not refer to all costs

that may be associated with a construction project; for example, options to purchase, contracts for feasibility, or engineering or design studies would not constitute an eligible contractual obligation. (See 46 FR 2346, January 9, 1981.) In the case of BIFs that have not burned hazardous wastes before, the total project cost for physical construction refers to the modifications necessary for the BIF to manage hazardous waste. Although the 1981 preamble does not specifically address when meeting the 10 percent threshold would not be sufficient, we believe that if the loss to the facility of canceling the construction were minimal, the loss could not be considered substantial, even though it exceeded 10 percent. For example, if the total cost of kiln modification were $5,000, a 10 percent loss ($500) would not be viewed as substantial. In contrast, for a project that would exceed $250,000, we believe that 10 percent would represent a substantial amount.

Of course, contract cancellation clauses with higher percentages, or other approaches to a demonstration of substantial loss, could be considered by the Regions as well. In that regard, we note the unique circumstances presented by the BIF rule for cement kilns that will be modified to burn hazardous waste. Even though the contractual cost of installing such modifications can be relatively low, the Regions can take into account other economic factors and actions showing substantial loss insofar as they provide evidence of a bona fide substantial commitment to managing hazardous waste in the near future.

You should also note that the "substantial loss" criterion must be met only at facilities where construction (i.e., facility modifications to receive hazardous waste) has not begun. Where physical construction is underway or completed, a facility is not required to show "substantial loss," but rather objective indications of a bona fide intent to manage hazardous waste.

3. What constitutes a "reasonable time to complete construction"?

The regulations do not define the term "reasonable time to complete construction," nor do they define a "reasonable time" to begin management of hazardous waste, in the case of an already constructed facility. To determine what is a reasonable time, Regions must make a case-by-case decision. Generally, if a facility is undergoing a continuous process to initiate or complete construction activities, and arrangements are in place to ensure that such construction can be carried out on a schedule that is typical of similar construction activities, then completion of construction should be considered to be within a "reasonable time." The same rule of thumb applies to the definition of a "reasonable time" to begin management of hazardous waste.

4. Effect of a state moratorium.

In your memorandum of April 16, 1991, you discuss the possible effect of the Utah moratorium on the ability of cement kilns in the state to qualify for interim status. Since the Utah moratorium only prohibits the burning of hazardous wastes in cement kilns, it is still possible for a facility to meet the fundamental criteria for gaining interim status. Of course, gaining interim status does not affect the legal status or applicability of Utah's moratorium. In contrast, there could be other situations where a moratorium could prevent a facility from meeting one of the "in existence" criteria. For example, if the facility were unable to obtain a required approval for construction due to a moratorium on hazardous waste preconstruction permitting, interim status would be precluded.

5. Section 3010 notification requirements for BIFs.

It is likely that very few BIFs were required to submit a section 3010 notification on May 22, 1991. One reason is that this notification requirement only applied to facilities actually handling hazardous waste fuel on February 21, 1991. (See 45 FR 76631, November 19, 1980.) This section 3010(a) notification is intended to be a "snapshot" of hazardous waste management practices at the time a rule is promulgated. Therefore, if a facility is "under construction" a Section 3010 notice is not required. (See H.R. Rep. No. 198, 98th Cong., 1st Session, 40 (1983).) Another possibility is that the facility might have already submitted a notification previously either for the burning of hazardous waste fuel under §266.35, or for some other hazardous waste activity, in which case the BIF is not required to renotify.

6. Pre-Compliance certification.

The BIF rule does not require facilities to submit a pre-compliance certification by August 21, 1991, to attain interim status. Once a facility meets the statutory and regulatory requirements, interim status follows automatically. However, if a facility fails to submit such a certification (or if the facility fails to comply with subsequent interim status compliance schedule requirements), it loses its ability to manage hazardous waste in the BIF unit, unless and until it receives a Part B permit.