



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

APR 21 1983

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Recurring Issues in Preparing RCRA Permits  
 FROM: *Bruce R. Weddle*  
 Bruce R. Weddle  
 Acting Director  
 State Programs & Resource Recovery Division (WH 563)  
 TO: Directors  
 Air & Hazardous Waste Management Divisions  
 Regions I - X

In reviewing the preparation of several of the first RCRA permits, the Office of Solid Waste has identified and resolved a number of recurring issues. For the purpose of ensuring consistent permits among the Regions, we ask that your staffs heed the decisions that have been reached in the analyses attached. Lisa Friedman and her staff in the Office of General Counsel concur in these decisions.

We will provide similar memoranda from time to time as more issues are identified and resolved in future permitting.

Please also note that a draft Model Permit for storage and incineration was distributed to your Hazardous Waste Branch Chiefs under a March 25, 1983 memorandum from Steve Levy, Chief of the Permits Branch in OSW. This memorandum should be used hand-in-hand with the draft Model Permit in preparing RCRA permits.

Attachment

cc: RCRA Permit Contacts: Regions I - X  
 RCRA Attorneys: ORCs Regions I - X  
 OSW Senior Staff  
 Susan Schmedes  
 Steve Levy

## Issue 2: Interpreting Regulatory Authority For RCRA Permit Conditions

Another issue that has arisen in the first permit reviews is how much discretion the permit writer has in interpreting regulatory authority to support including specific conditions in a RCRA permit. The answer to this question is tied to the three general types of provisions found in the regulations. Some are specific provisions which allow little or no interpretation by the permit writer because they are very explicit requirements (e.g., the requirements for administrative handling of manifests by facilities found in 40 CFR §§ 264.71, 264.72 and 264.76). Some are more general provisions which must be made more specific in permit conditions by the permit writer based on the information provided by the applicant (e.g., an applicant's proposed method for storing or treating ignitable or reactive waste that allows its placement in tanks in accordance with 40 CFR §264.198(a)).

\*\*\* [NOTE: Each module of the Model Permit attempts to identify where little or no interpretation of regulatory provisions is warranted (i.e., model language based on the regulation is provided) and where technical judgments must be made to specify permit conditions which will meet the more general minimum regulatory requirements.]

Finally, there are some regulatory provisions in Part 264 which are quite broadly stated (e.g., §264.31) and thus are potentially subject to wide interpretation by permit writers. Some general guidelines on making interpretations of regulatory authority in these instances have been developed during the first RCRA permit reviews and are provided below.

### Available Resources

First of all, if permit writers follow their own technical judgment and common sense they will usually be able to make their own interpretations of regulatory authority which will reasonably clarify the need for specific permit conditions. The permit writer should consult Regional Counsel after this initial analysis if doubt still remains as to whether certain permit conditions are required by the regulations. The permit writer can also consult with the Permit Assistance Team Program in the Office of Solid Waste for guidance or suggestions. Finally, supporting information to the regulations can be researched by the permit writer.

### Supporting Information

Supporting information can be found in the preambles to the regulations, the technical background documents, and the permit writers' guidance manuals. These materials set forth the considerations weighed by the Agency in making decisions on the content of the regulations; as such, they should be used by the permit writer as a guide to making interpretations of regulatory intent, especially where there is doubt as to whether general regulatory provisions

provide the authority necessary to support imposition of specific requirements in permit conditions. For example, in the preparation of one particular permit, these supporting materials served to justify a permit condition which explicitly required the permittee to use an X-ray measuring device with a specified procedure for examining the tanks' welded seams to assure that proper thickness was achieved during construction.

#### Specification of Authority in the Fact Sheet/Statement of Basis

Permit conditions based on the permit writer's interpretation of general regulatory provisions should be placed in the Administrative Record and summarized in the fact sheet or statement of basis, as necessary. The level of detail to which the fact sheet or statement of basis should address such conditions will vary case-by-case depending on whether they are considered to be significant issues in preparing the permit. (See Issue #5 in this memo for additional discussion concerning the level of detail in fact sheets.)

#### 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.