



DIRECTIVE NUMBER:

9481 00-8

TITLE:

Region III Issues on Section 3004(u) Authority

APPROVAL DATE

EFFECTIVE DATE:

3/31/87

ORIGINATING OFFICE:

OSW

☒ **FINAL**

☐ **DRAFT**

STATUS:

- ☐ A- Pending OMB approval
- ☐ B- Pending AA-OSWER approval
- ☐ C- For review &/or comment
- ☐ D- In development or circulating

REFERENCE (other documents):

headquarters

OSWER OSWER OSWER
/E DIRECTIVE DIRECTIVE D



OSWER Directive Initiation Request

Internal Directive Number

9481.00-8

Originator Information

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WH563

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Lead Office

Approved for Review

☐ OERR☐ OUST☒ OSW☐ OWPE☐ AA-OSWER

Signature of Office Director

Date

Title

Region III Issues on Section 3004(u) Authority

Summary of Directive

This memorandum responds to the memorandum of February 5, 1987, in which several issues were raised relating to the extent and nature of the corrective action authority under RCRA section 3004(u).

Key Words:

contiguous property, process collection sewers, potential and future releases, leased

Type of Directive (Manual, Policy Directive, Announcement, etc.)

Status

☐ Draft☐ New☒ Final☐ Revision

memorandum to regional office

Does this Directive Supersede Previous Directive(s)?

☐ Yes☒ No

Does it Supplement Previous Directive(s)?

☐ Yes☒ No

If "Yes" to Either Question, What Directive (number, title)

Review Plan

☐ AA-OSWER☐ OUST☐ OECM☐ Other (Specify)☐ OERR☐ OWPE☐ OGC☒ OSW☐ Regions☐ OPPE

This Request Meets OSWER Directives System Format

Signature of Lead Office Directives Officer

Date

Signature of OSWER Directives Officer

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY • 0038 •
WASHINGTON, D.C. 20460

MAR 31 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Region III Issues on Section 3004(u) Authority

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

TO: Robert L. Allen, Chief
Waste Management Branch, Region III

This memorandum is intended to respond to your memorandum of February 5, 1987, in which you raised several issues relating to the extent and nature of the corrective action authority under RCRA section 3004(u).

The first issue that you raised dealt with whether or not property that is owned and used by an owner/operator for waste disposal, but which is not contiguous to the facility at which the regulated hazardous waste management units are located, can be considered to be part of that facility, for purposes of implementing corrective action under §3004(u). As explained in the July 15, 1985 codification rule, the term "facility" is meant to extend to all contiguous property under the control of the owner/operator. Since the property which you describe is separated from the facility property by land that is not under the control of the owner or operator, it cannot be considered "contiguous," and therefore cannot be addressed as part of the facility under §3004(u). Since this property is being used for waste disposal, however, enforcement authorities under RCRA(e.g. §7003) or other statutes may be used as appropriate to address environmental problems that may be occurring from that waste management operation.

The second issue which you raised involves process collection sewers, and whether they can be considered to be solid waste management units (SWMUs). Process collection sewers are typically designed and operated as a system of piping into which wastes and waste waters from production processes and other process-related activities are introduced, and which usually flow to a wastewater treatment system. We believe that there may be sound policy and legal reasons for considering process collection sewers to be SWMUs. However, we also recognize that such sewers do not perfectly fit the RCRA program's traditional concept of a waste management unit. Considering the substantial potential impacts

of defining process collection sewers to be a type of SWMU, it is our intention to resolve this issue through the regulatory process. The comprehensive §3004(u) rulemaking, which is scheduled for proposal later this calendar year, will specifically address the question of how to treat process collection sewers under the corrective action program. We will therefore be able to base the Agency's final decision on a more thorough consideration of the technical, legal and other implications of the issue.

The third issue in your memorandum deals with the question of the extent to which the §3004(u) authority can be used to address potential or future releases at a facility. It has been the Agency's interpretation that the §3004(u) authority does extend to addressing releases which occur in the future; i.e., after a permit has been issued. To the extent that releases occur or become known after a permit is issued, corrective action for such releases can be compelled, as necessary, under §3004(u). Further, in some situations, it may be appropriate to use §3004(u) to require an owner/operator to install certain monitoring devices at a unit, even though no releases have yet occurred from the unit. Such a requirement should be imposed, however, only where there is reasonably strong evidence indicating that such releases are likely during the term of the permit. The example that you cited in your memorandum involving buried drums that are deteriorating and thus are likely to release would seem to be a good example of the type of situation where a type of "detection monitoring" system could be appropriate. We do not envision, however, using the §3004(u) authority to require owner/operators to install devices or take measures to protect against accidental releases (such as your example of installing steel posts around a container storage area). We do not believe that Congress intended this provision to be used to protect against all contingencies where releases could occur.

Your fourth question had to do with the applicability of §3004(u) to new facilities that are to be built on property where solid waste management units are located, and more specifically, where only a portion of the facility is to be leased to a new operator. As explained in the July 15, 1985 codification rule, the facility is the entire property under the control of the owner or operator. Therefore, in issuing a permit for the new facility, corrective action for any SWMU at the facility--including the unleased portion--must be addressed. The requirement to conduct any necessary corrective action at the facility, be it on the leased or unleased land, will be implemented through a permit jointly issued to the owner and operator.

If you have any further questions on these issues, please contact Dave Fagan at FTS 382-4740.

SUBJECT: Permitting Authority Under Section 3004(u) of HSWA

DATE: FEB 5 1987

FROM: Robert L. Allen, Chief
Waste Management Branch (3HW30)

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

Control (P&P)

In the process of conducting RCRA Facility Assessments and HSWA Corrective Action Permits, several issues relating to the extent of EPA authority under Section 3004(u) of HSWA have surfaced. There already has been general discussion on some of these issues at both the Region and at Headquarters. However, in order to include enforceable requirements in Corrective Action Permits, definitive national policies need to be established by EPA Headquarters. Your response to the following issues will direct our decisions on the Corrective Action Permits being prepared by Region III.

1. Under what circumstances, if any, can nonadjacent property be considered as part of the facility? The definition of "facility" in Part 260 uses the term "all contiguous land". The issue is whether or not this definition can be extended to nearby property that is owned by the facility, and is or has been used for the management of solid waste generated at the facility. Since Section 3b of the HSWA Preamble (50 Fed. Reg. 28712 (July 15, 1985)) further describes a "facility" as "... the entire site that is under the control of the owner or operator engaged in hazardous waste management", the inclusion of nearby nonadjacent property may be appropriate. The particular case under consideration involves a landfill area that is owned by the facility, but is separated from the facility by a strip of land under other ownership. The landfill has been and is currently being used for the disposal of solid waste that is generated at the facility. No other use of the landfill property is apparent. A clear definition of "contiguous" would help clarify the confusion.
2. Is a process collection sewer a solid waste management unit (SWMU)? Although it was suggested that process collection sewers be considered SWMUs during a RCRA Facility Assessment (RFA) training course given in Region 3, recent debate over this issue has been less clear. Several industrial facilities in the permitting process have voiced strong objections to including process sewers in the RFA or the Corrective Action Permit. Unless

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process sewers are explicitly included in the definition of SWMUs, we can expect resistance to investigations of the systems and appeals to permits that include corrective action for the systems.

3. Under what circumstances, if any, can a permit require action to prevent potential future releases? There have been discussions that under Section 3004(u) we do not have the authority to require facilities to take measures to prevent potential future releases. Rather, our authority is limited to investigating and correcting releases that have already occurred.

Two different types of potential future releases are of concern. The first case involves accidental releases at unprotected solid waste management units. Steps to prevent such accidental releases could be as simple as installing steel posts around an accumulation drum or repairing a secondary containment dike and/or pad around a tank, or as extensive as requiring flood-proofing of units located within the 100-year flood limit.

The second case involves the investigation of potential future releases from prior disposal actions. For instance, buried drums that are currently in fair structural condition may not be releasing stored material at the time of the RCRA Facility Investigation (RFI). These drums, however, could deteriorate over time and release their contents in the future. In such a case, short-term monitoring for releases to the ground water would not show potential future releases. A more direct method of investigation would be needed to assess the potential for future releases, such as uncovering and inspecting a sampling of drums. As an alternative, long-term ground-water "detection" monitoring could be required in cases where adequate sampling would be impractical.

4. What corrective action requirements apply to a new facility built on property containing closed hazardous waste management units? The particular site in question was used for the treatment and disposal of hazardous waste. It was closed in accordance with Part 265 standards in 1982; however, ground-water monitoring and cap maintenance have been required by the State regulatory agency. The proposed new facility plans to lease a portion of the property and construct a commercial storage and treatment facility. Could corrective action be required for the unleased portion of the facility by either the lessee or the property owner if the new facility is permitted?

A timely response to these questions would be appreciated. If you need additional details on these issues, please call me at 597-0980 or John Humphries at 597-0320.

cc: RCRA Branch Chiefs, Region I, II, and IV-X