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ORIGINATING OFFICE: Office of Solid Waste

FINAL

DRAFT

STATUS:

- [] A- Pending OMB approval
- [] B- Pending AA-OSWER approval
- [] C- For review &/or comment
- [] D- In development or circulation

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Key Words: Alternate Concentration Limits, Appendix VIII, Closure

Regulations: 40 CFR 264.94

Subject: Agency Policy on ACL Determinations

Addressee: James H. Scarborough, Chief, Residuals Management Branch,
Region IV

Originator: John H. Skinner, Director, Office of Solid Waste

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Summary:

The memo is in response to three issues: guidance and assistance in making ACL determinations; allowable concentrations in soil at closure; and national concentration limits for all Appendix VIII constituents.

OSW provides technical guidance to the Region on making ACL determinations through permit writers training programs and guidance manuals. OSW also provides case-by-case assistance to the Regions on individual ACL reviews. Headquarters has asked that all requests for ACLs be sent in for review.

OSW will address the second issue through a regulatory package that contains amendments to §265.228 to make that provision conform to §264.228.

The Office of Drinking Water established maximum allowable concentration limits for the 14 constituents listed in §264.94. It is unrealistic to expect that OSW will be able to set limits for the remaining 380 constituents promptly.

According to the preamble on ACLs, "EPA will not allow consideration of ACL demonstrations to unreasonably delay the establishment of a ground-water protection standard for a facility." Regions should require corrective action when site circumstances dictate such actions.

MAR 2 1984

MEMORANDUM

SUBJECT: Issues in RCRA Land Disposal Permitting Program

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

TO: James H. Scarbrough, Chief
Residuals Management Branch
EPA Region IV

I am writing in response to your letter of January 26, 1984, in which you raised three issues in the RCRA permitting program. As your letter noted, these issues have been discussed by OSW managers and staff in a number of meetings with Regional permit personnel. I would like to restate our current policy and plans in each of the areas you mentioned:

(1) OSW has provided technical guidance to the Regions on making Alternate Concentration Limit (ACL) determinations, through several permit writer's training programs and guidance manuals. For example, the draft Permit Writer's Manual on Part 264 Ground-Water Protection provides guidance on evaluating the potential migration of contaminant plumes and the health and environmental impacts of alternate limits, as well as guidance on establishing monitoring programs to validate predictions. We intend to provide additional assistance as follows.

OSW will provide case-by-case assistance to the Regions on individual ACL reviews. We have asked that all requests by permit applicants for ACLs be sent to Headquarters for review. Peter Guerrero of the OSW Permits Branch emphasized the importance of such national review in his January 10, 1984, memorandum to Regional Branch Chiefs. OSW will examine ACL requests for compliance with §264.94 and provide our assessment to the Region.

ACL reviews are necessarily site-specific determinations which entail the exercise of best engineering, hydrogeological, and toxicological judgements. OSW participation will ensure that the approach used in making such judgements and the results of ACL reviews are consistent nationally. We will share these findings with all Regions as they are developed.

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Control No.: OSW-010
Due Date: 2/17/84

(2) OSW plans to address the issue of allowable concentrations of hazardous constituents in soil at closure through a regulatory package now being reviewed by the Assistant Administrator. This package contains amendments to the closure provisions of §265.228 to make those interim status requirements conform to the language of §264.228. The preamble to these amendments will expand upon EPA's policy regarding levels of contamination.

The regulatory package addressing this issue will be sent to the Regions this spring for comment. Our current schedule anticipates publication in the Federal Register this summer.

(3) You recommend that EPA establish ground-water protection standards for all Appendix VIII constituents. Maximum allowable concentrations have already been established by the Office of Drinking Water (ODW) for the fourteen constituents listed in §264.94. The task of establishing national concentration limits for the remaining 180 or so Appendix VIII constituents is enormously complex, time-consuming, and expensive. Neither ODW nor OSW has the data, resources, or multi-disciplinary expertise to even begin such a massive undertaking, much less to promise valid results in a reasonable period of time.

The Office of Research and Development is conducting extensive research on health effects of hazardous constituents as a major objective of the Agency's research program. They have offered to work with us on reviewing specific requests for Alternate Concentration Limits and similar activities. As health and environmental data are obtained, OSW can move to establish additional limits through regulatory modifications and ACL demonstrations. But it is unrealistic to expect prompt rule-making which sets limits for hundreds of constituents, given the difficulties EPA has experienced over the past decade in determining acceptable levels for even a small number of substances across all of the environmental programs and given the current status of the research program.

The overall scenario described at the end of your letter suggests that many facilities will request ACLs. It has been our expectation from the start that few ACLs will be requested and granted, due to the extensive data required by such requests, the high costs of developing such data, and the difficult regulatory standard established in §264.94. I also call your attention to the preamble discussion on ACLs, which notes that "EPA will not allow the consideration of such a demonstration to unreasonably delay the establishment of the ground-water protection standard for a facility" (47 FR 32298, July 26, 1982). Regions should therefore press forward to require corrective action when site circumstances so dictate.

I understand your desire for more detailed guidance and regulatory standards in the areas you raised. Unfortunately, we are not able at this time to go beyond the policies and assistance described above. We do plan to provide additional information to you through the mechanisms I've outlined as our experience grows.

cc: Hazardous Waste Branch Chiefs
Regions I-III, V-X
Bruce Weddle
Jack Lehman