

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response



DIRECTIVE NUMBER: 9541.06(84)

TITLE: Effect of Applicability Revision on Final Authorization Requirement

APPROVAL DATE: 6-27-84

EFFECTIVE DATE: 6-27-84

ORIGINATING OFFICE:

☒ **FINAL**

☐ **DRAFT**

STATUS:

REFERENCE (other documents):

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Key Words: Equivalency, State Authorization, Changing Federal Regulations

Regulations: 40 CFR 271.2, 265.1

Subject: **Effect of Applicability Revision on Final Authorization Requirement**

Addressee: Thomas P. Eichler, Regional Administrator, Region III

Originator: Lee M. Thomas, Assistant Administrator

Source Doc: #9541.06(84)

Date: 6-27-84

Summary:

On November 22, 1983, EPA issued a Clarifying Regulation stating that 40 CFR 265 applies to hazardous waste management facilities that failed to qualify for interim status as well as those that have qualified. The Amendment does not broaden the applicability of the Agency's interim status regulations.

When a State applies for final authorization, it must certify that the State interprets its regulations as clarified by the EPA amendment. If the State does not interpret its regulations as provided in the new §265.1, it must amend its regulations. The final authorized State is required by November 22, 1984 (or November 22, 1985, if it must amend or enact a statute in order to make the required revision) to: (1) establish equivalent control over these facilities; and (2) notify the Regional Administrator in writing that the controls are in effect.

The State is required under 40 CFR 271.21 to submit documentation which EPA deems necessary to assess and approve the State program revision.

JUN 27 1984

MEMORANDUM

SUBJECT: Amendment to "Applicability" Section of 40 CFR Part 265
/signed/ Lee M. Thomas
FROM: Lee M. Thomas
Assistant Administrator
TO: Thomas P. Eichler
Regional Administrator, Region III (3RA00)

On November 22, 1983, the Agency published a regulation clarifying the scope and applicability of our interim status standards. The amendment states that 40 CFR Part 265 applies to hazardous waste management facilities that failed to qualify for interim status as well as those that have qualified (see 48 Fed. Reg. 52718). This regulation is merely a clarification and does not broaden the applicability of our interim status regulations. However, as provided in 40 CFR §271.21, this promulgation may affect regulation development in Delaware and other States that receive final authorization.

States with final authorization must ensure control over this same universe of facilities. This may require State regulatory or legislative change or certification by the State Attorney General. If the State interprets its regulations as clarified by EPA on November 22, 1983, it need not amend its regulations. However, in an amended Attorney General's statement (or in the statement submitted with the final authorization application in the case of a State which is applying for final authorization) it must certify that the regulations are so interpreted. If the State does not interpret its regulations as provided in the new §265.1, it must amend its regulations. By November 22, 1984 (or by November 22, 1985, if the State must amend or enact a statute in order to make the required revision) the final authorized State is required to: (1) establish equivalent control over these facilities; and (2) notify the Regional Administrator in writing that the controls are in effect.

The Agency does not consider this program modification a "substantial" revision under 40 CFR §271.21(b). Therefore, neither the State nor EPA is required to provide for public comment or a hearing on the impact of this revision on the State's authorization.

Under 40 CFR §271.21, the State is required to submit documentation which EPA deems necessary to assess and approve the State program revision (if a revision is necessary). In this case, I suggest that Delaware's State Director need only submit a copy of the State legal authority (e.g., amended statute and/or regulations) which establishes control over these facilities and specify the effective date. You may approve Delaware's program revision, if one is necessary, by return letter to the State Director without Headquarters' concurrence. We would appreciate receiving a copy of the approval letter and revision documents. The letter and documents should also be filed in the Region's "Authorization File" (see page 1.4-14 of the Final Authorization Guidance Manual).

Should your staff have further questions on the amendment to 40 CFR §265.1, they should call Deborah Wolpe in the Office of Solid Waste at FTS 382-2210. Copies of the approval letter and revision documents discussed above should be sent to Chester Oszman of the Office of Solid Waste (mail code WH-563).

Since the granting of final authorization to Delaware, this is the second memorandum I have sent you concerning amendments to the hazardous waste program. For your reference a copy of the first, dated April 16, 1984, is attached. It addressed the addition of chlorinated aliphatic hydrocarbons to the list in 40 CFR §261.31.

Attachment

cc: Hazardous Waste Division Directors, Regions I-X
John Skinner
Bruce Weddle
State Programs Branch, OSW
Gail Cooper, OGC