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☐ **B — Signed by Office Director**

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Subject: Clarification of "Existing Units" Under HSWA

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Washington, D.C. 20036

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

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Summary:

This letter clarifies EPA's interpretation of HSWA §3015 requiring new units, lateral expansions of existing units and replacements of existing units to comply with the minimum technological requirements of §3004(o). An above-ground portion of a landfill in which waste is placed only within the lateral boundaries of the unit may be classified under certain circumstances as a new unit, and under other circumstances as part of an existing unit. In the latter case, the above-ground area may be exempt from the §3004(o) requirements.



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

AUG 30 1985

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

Mr. John Quarles  
Morgan, Lewis & Bockius  
1800 M Street, N.W.  
Washington, D.C. 20036

Dear John:

This is in response to your letter of June 25, 1985, requesting clarification as to whether above-ground portions of landfills in which waste is placed only within the lateral boundaries of the unit are considered to be "existing units" under the Hazardous and Solid Waste Amendments (HSWA) of 1984.

Section 3015 of HSWA requires new units, lateral expansions of existing units, and replacements of existing units, to comply with the minimum technological requirements set out in Section 3004(o). The Environmental Protection Agency (EPA), has interpreted Section 3015 to provide that for a unit to qualify as an existing unit, it must have received waste by November 8, 1984, and must also have been fully "operational" by that date. In order to be considered operational, the unit must have been constructed to comply with all federal, State, and local requirements, including licenses and permits, in effect prior to November 8, 1984, so that as of that date there was no legal impediment to the operation of the unit. See 50 Fed. Reg. 28707 (July 15, 1985).

Your June 25, 1985, letter suggests that while under some circumstances an above-ground area must be classified as a new unit, such an area may be exempt from the new requirements if it is part of an existing unit. We agree that the statute provides for such a distinction.

The boundaries of an existing unit are limited by the specifications in operating or closure plans, permits, etc., that were applicable on November 8, 1984, that describe a final elevation or maximum capacity of the unit. The elevation or capacity limitation will restrict the maximum allowable height of the existing unit. If a State permit, for example, placed an interim restriction on the height of the unit, only the height

allowed in the permit on November 8, 1984, is included in the existing unit. Additional placement of waste would constitute a new unit.

An above-ground area must also be considered a new unit if a new or modified State or local permit would be required prior to receipt of waste in that area after November 8, 1984. We believe that such areas do not qualify as existing units nor as portions of existing units. This is because such vertical expansions do not meet the existing unit criterion of being "operational" on November 8, 1984, since there was a legal impediment to the operation of the unit on that date.

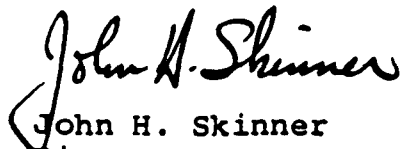
On the other hand, an above-ground portion will be considered part of an existing landfill unit if (1) the owner or operator, prior to November 8, 1984, had been granted the legal authority to expand vertically, i.e., all required permits and licenses for the vertical expansion had been obtained by that date, and (2) no further State or local approval is needed for such vertical expansion after November 8, 1984. Placement of waste vertically in such existing landfill units, including vertical expansions that involve additional construction of berms, liners, leachate collection systems, or other physical structures or appurtenances, constitute portions of existing units provided that the additional waste is placed only above waste placed within the lateral boundaries of the existing landfill unit; i.e., there must be no lateral placement of waste. If required construction features added after November 8, 1984, would result in expanded lateral placement of waste (i.e., would result in a lateral expansion), Section 3015 would require that this expanded area be in compliance with the new minimum technological requirements.

We will very shortly clarify to our Regional Offices that the minimum technological requirements are applicable to above-ground landfill areas if such areas constitute new units, as described above.

We have not yet completed a detailed review of the information we have received regarding your client's facility in Deer Park, Texas. In fact, we have not yet received from you all of the information I requested in my letter of August 9, 1985. Specifically, as requested in my previous letter, we need drawings that clearly identify which portions of the unit were constructed and where the liner and leachate collection system were located on November 8, 1984. In addition, it is possible that we will need even more information regarding this unit before a final determination can be made. Hence, we express no opinion here about whether your client's unit would qualify as an existing unit under the definition and guidance set out above.

I hope that the information contained herein is helpful to you, and look forward to receiving the information we are requesting regarding your client's facility.

Sincerely yours,

A handwritten signature in cursive script that reads "John H. Skinner". The signature is written in black ink and is positioned above the printed name and title.

John H. Skinner  
Director  
Office of Solid Waste