



DIRECTIVE NUMBER: 9432.02 (83)

TITLE: Recent Court Decisions on RCRA Applicability to
Storage Facilities

APPROVAL DATE: 11-29-83

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☒ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

- ☐ A — Signed by AA or DAA
- ☐ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

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PART 260 SUBPART B - DEFINITIONS

DOC: 9432.02(83)

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Key Words: Storage, Regulated Wastes

Regulations: 40 CFR 260.10

Subject: Recent Court Decisions on RCRA Applicability to Storage Facilities

Addressee: Hazardous Waste Division Directors, Regions I-X

Originator: John Skinner, Director, Office of Solid Waste

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Summary:

The United States Court of Appeals declared that a person in control of a site where drummed hazardous wastes are held is engaged in "storage" of hazardous waste under RCRA even though all the wastes were placed at the site before November 19, 1980. Environmental Defense Fund v. Lamphier, 714 F.2d 331 (4th Cir.). The Court, citing the definition of storage in §260.10, held that the fact that no wastes had been placed in storage after November 19, 1980 was "immaterial" because the defendant had continued to store wastes deposited before that date.

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MEMORANDUM

SUBJECT: Recent Court Decision on RCRA Applicability to
Storage Facilities

FROM: John Skinner, Director
Office of Solid Waste (44-563)

TO: Hazardous Waste Division Directors, Regions I-X

In a recent decision, Environmental Defense Fund v. Landonier, -
714 F.2d 331, the United States Court of Appeals, Fourth Circuit,
declared that a person in control of a site where drummed
hazardous wastes are held is engaged in "storage" of hazardous
waste under RCRA even though all the wastes were placed at the
site before November 19, 1980. The defendant had argued he was
not covered by the RCRA regulations because he had not placed
any wastes in storage after the date the regulations went into
effect. [The court, citing the definition of storage in 40 CFR
260.10, held that the fact that no wastes had been placed in
storage after November 19, 1980, was "immaterial" because the
defendant had continued to store wastes deposited before that
date.]

This decision supports previous guidance we have issued on
this subject (attached). It is particularly significant because
it was delivered by a court which has traditionally taken a
narrow view of EPA's authority. Please note this decision and
ensure that both technical staff and Regional Counsel are aware
of it.

Attachments

cc: SW Branch Chiefs
Permits Contacts
Mark Greenwood

WH-563:CMiller:CM:rm.S243D:382-4692:11/25/83:Miller's disk #5