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TITLE PERMIT POLICY QUESTION AND ANSWER QUARTERLY REPORT: USE OF HO-DAY E.  
GENCY PERMIT

ORIGINATOR TERRY GROGAN

OFFICE OSW

BRANCH PSPD/SPE

PHONE NO 382-2224

APPROVED BY BRUCE WEDDLE

TITLE DIRECTOR, PSPD

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## SUMMARY

This Directive is the first in a series of quarterly reports summarizing permit policy questions answered by FSPD staff. The purpose of the summary is to ensure national consistency in dealing with these frequently asked questions. The answers provide the best interpretation or application of the RCRA regulations to a given situation.

Question #5 under "Design and Operating Standards" deals with Part 264 technical standards and issuance of a 90-day emergency permit.



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

SEP 10 1984

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

Subject: Permit Policy Question and Answer Quarterly Report  
From: *Bruce Weddle*  
Bruce Weddle, Director  
Permits and State Programs Division  
To: Regional Hazardous Waste Management Directors  
Region I-X

Attached is the first in a series of quarterly reports summarizing permit policy questions answered by my staff over the past few months. The purpose of this summary is to ensure national consistency in dealing with these frequently asked questions. Each question has been given careful consideration by the Permits Branch, the Waste Management and Economics Division (WMED) and OGC. The answers provide the best interpretation or application of the RCRA regulations to a given situation.

Many of these questions were raised during telephone conversations between Regional personnel and the Permits Branch Regional Liaisons. Other issues were raised during Permit Assistance Team reviews of individual applications. In either case, where such questions and answers have policy implications for RCRA permitting and are likely to arise in other Regions, they have been summarized here.

In addition to the questions and answers summarized on the following pages, we have provided written guidance on a variety of specific issues in the past few months. Each Region received copies of these guidance memoranda. To assist you in locating these memos, a list identifying the subjects, the signatory, and the point of contact, is attached.

We are now preparing a number of memoranda for issuance in the near future which cover other significant concerns to permitting. A list of these, including subject and contact, is also attached.

When confronted with permit issues, your staff should contact the appropriate Regional Liaison in the Permits Branch, or the PAT coordinator for the technology involved. A list of these individuals is attached. The Regional Liaisons and the PAT coordinators will ensure that answers to their questions represent headquarters' current policy and include input from technical and legal staff, as necessary. Centralizing referral of permit questions to the Permits Branch will enable OSW to provide complete and consistent responses to similar questions, and summarize these answers in subsequent permit policy reports for all Regions.

Attachments

cc: Hazardous Waste Branch Chiefs  
Permit Contacts  
Ken Shuster  
Mark Greenwood  
Permit Branch Staff

Permits Branch  
Regional Liaisons

| <u>Region</u> | <u>Name</u>     | <u>Number</u> |
|---------------|-----------------|---------------|
| I             | Art Glazer      | 382-4692      |
| II            | Dave Fagan      | 382-4497      |
| III           | Doug Ruby       | 382-4499      |
| IV            | Rich Steimle    | 382-4754      |
| V             | Chaz Miller     | 328-4535      |
| VI            | Nancy Pomerleau | 382-4500      |
| VII           | Susan Mann      | 382-4498      |
| VIII          | Chaz Miller     | 382-4535      |
| IX            | Randy Chrismon  | 382-4691      |
| X             | Jeff Detlefsen  | 382-4422      |

Permit Assistance Team  
Coordinators

|                |               |          |
|----------------|---------------|----------|
| Terry Grogan   | Chairman      | 382-2224 |
| Randy Chrismon | Incineration  | 382-4691 |
| Dave Fagan     | Storage       | 382-4497 |
| Amy Mills      | Land Disposal | 382-4755 |
| Chris Rhyne    | Land Disposal | 382-4503 |
| Rich Steimle   | Land Disposal | 382-4754 |

RECENTLY ISSUED PERMIT GUIDANCE

1. Subject: Extent of Permit Conditions  
Contact: Terry Grogan  
From: Bruce Weddle  
To: Hazardous Waste Management Division Directors  
Date: January, 1984
2. Subject: Closure Cost Estimates Based on Third Party Costs  
Contact: ~~Dave Fagan~~ *Andy Miller*  
From: John Skinner  
To: Jim Scarbrough, Region IV  
Residuals Management Branch  
Date: January, 1984
3. Subject: Guidance on Tank Storage  
Contact: Dave Fagan  
From: John Skinner  
To: Regional Hazardous Waste Management Branch Chiefs  
Date: February, 1984
4. Subject: Inadequate Part B Permit Application  
Contact: Jeff Detlefsen  
From: John Skinner  
Gene Lucero  
To: Jim Scarbrough, Region IV  
Residuals Management Branch  
Date: May 1984
5. Subject: Permit Policy for Decanning and Crushing Operations  
Contact: Dave Fagan  
From: John Skinner  
To: Jim Scarbrough, Region IV  
Residuals Management Branch  
Date: April 1984
6. Subject: Transfer of Federal RCRA Permits to Authorized States and Compliance with 40 CFR §124.10(e)  
Contact: Debbie Wolpe, Chaz Miller  
From: Truett DeGeare  
To: Regional Hazardous Waste Branch Chiefs  
Date: June 1984
7. Subject: National (RCRA) Permits Strategy  
Contact: Elizabeth Cotsworth  
From: U.S. EPA - Office of Solid Waste  
To: General Publication - EPA/530-SW-84-007  
Date: August 1984
8. Subject: National (RCRA) Permits Strategy  
Contact: Chaz Miller  
From: John Skinner  
To: Regional Division Directors  
Date: July 1984

UNDER DEVELOPMENT  
PERMIT GUIDANCE

1. Subject: Schedules of Compliance  
Contact: Randy Chrismon
2. Subject: Post Closure Permits  
Contact: Chaz Miller
3. Subject: Policy on CERCLA Compliance with other  
Environmental Laws  
Contact: Randy Chrismon, Terry Grogan
4. Subject: Guidance on Processing Part Bs with Insufficient  
Groundwater Monitoring Data  
Contact: Amy Mills
5. Subject: Department of Defense Signatories for  
Permit Applications  
Contact: Jeff Detlefsen

PERMIT POLICY QUESTION & ANSWER  
QUARTERLY REPORT

Groundwater Protection Standards

1. Question: Do the definitions of "uppermost aquifer" and "aquifer" include the top most saturated clay layer even though that stratum is not used as a groundwater resource? 40 CFR 260.10.

Answer: The 26 July 1982 preamble suggests that "significant yield" of groundwater is determined on a case by case basis, depending on site specific factors. Significant yield in the Southwest is likely to be a much lower quantity than significant yield in the East. In addition, the flow from a number of well systems can be totaled in order to reach the level of significance. Thus, if the saturated clay layer can produce a significant yield of groundwater from a single well or from a combination of wells, then that layer may meet the definition of an aquifer. If that layer is also the formation nearest to the natural ground surface or is hydraulically interconnected to such a surface, it meets the definition of uppermost aquifer.

2. Question: Can EPA declare a Part B application complete even though the applicant has not submitted ground-water monitoring (GWM) data? 40 CFR 264 Subpart F and 40 CFR 270.14(c)

Answer: No. The Agency cannot declare a permit application complete without ground water monitoring data. The Agency can use enforcement to secure facilities' compliance with Part 265 ground water monitoring requirements, §3013 orders if a substantial hazard is suspected, and the authority of 40 CFR 270.14(c) to obtain the necessary ground water monitoring information. More detailed guidance on this issue will be issued shortly.

DESIGN AND OPERATING STANDARDS

1. Question: Can a facility comply with the liner requirements by placing waste below the saturated zone so that ground water flows into the cell, thus preventing waste migration out of the cell. 40 CFR 264.301(a).

Answer: No. The regulatory intent is that compliance with 264.301(a) is to be achieved by construction of a liner rather than reliance on hydrogeologic forces.

2. Question: Can an applicant receive a variance from a specific design or operating requirement when the regulations do not contain a variance provision for that standard?

Answer: No. The regulations have no general provision for waiving specific sections on a case by case basis. There are, however, instances where the regulations provide alternative means for complying with, or waiving, a specific section.



3. Question: Can a land disposal facility achieve compliance with the double liner requirement by installing a synthetic membrane over a clay liner or must both liners be synthetic? 40 CFR 264.301, 264.302.

Answer: Both liners must be synthetic. The land disposal regulations provide an exemption from Subpart F requirements for landfills if they meet certain requirements, one of which is that the landfill must be underlain by 2 liners, both of which meet the liner design and operating standards. Liners for landfills must be constructed of materials that prevent wastes from passing into the liners. Clay liners do not meet this standard.

4. Question: At the time an ISS facility has its Part B application called, storage surface impoundments are being rebuilt with clay liners. Does this constitute an increase in design capacity or a change in process under 270.72(b) and (c)? If so, can the RA refuse to allow the change under ISS and require the surface impoundments to meet the Part 264 standards? 40 CFR 270.72.

Answer: No. If the capacity of the surface impoundments is not enlarged and no new units are being added, improvements to the surface impoundments are a permissible change under ISS as long as the reconstruction provision of 270.72(e) is not violated. This is not a change in process. Re-built surface impoundments will be treated as existing units for purposes of compliance with Part 264 standards. At the time these existing units are permitted, however, only the existing portions, i.e., the land surface area upon which wastes are placed prior to permit issuance, will be exempt from Part 264 requirements to install liners and leachate collection systems.

The owner/operator should be informed of all appropriate Part 264 technical standards and should be encouraged to voluntarily adopt those standards as part of reconstruction.

5. Question: (1.) Can a facility handling RCRA waste build and operate a new process which is not covered under the Part 264 technical standards and is, therefore, an unpermitted activity? (2.) Can a facility in this case build and operate a new process if a State with final authorization issues it a permit under State law, even though there are no comparable EPA standards? 40 CFR 264.1(f), RCRA §§3005(a) and (c).

Answer: (1.) No. Assuming the facility cannot fit within the terms of a defined process in the regulations, a facility cannot treat, store, or dispose of hazardous wastes without a RCRA permit based on RCRA technical standards. Where EPA has not issued technical standards, no permit can be issued. This is true because EPA has not made a judgment as to whether the new process protects public health and the environment. EPA, however, is developing Subpart X of Part 264, which should impose general environmental performance standards for processes for which RCRA technical standards do not exist. Once Subpart X

is effective, EPA can issue permits for these technologies. The RA can, however, issue a 90 day emergency permit for activities not covered by Part 264 technical standards, such as open burning, if he finds that an imminent and substantial endangerment to human health and the environment exists.

(2.) No. The permit issued by the State for the new process is not a RCRA permit. The State's authority under final authorization only extends to the portion of its program which EPA has found to be equivalent and has, therefore, authorized to operate in lieu of the federal program. The State's program in regard to the new process cannot be considered a RCRA program until (A) EPA has issued standards in that area, and (B) the State's program has been explicitly authorized in that area. The facility must wait to begin construction of its new process until EPA promulgates standards and a RCRA permit (or permit modification) is issued.

5. Question: Can an applicant submit information along with his Part B, for potential expansions to his facility and obtain a permit for those expansions when he has no definite expansion date. 40 CFR 270.10(f).

Answer: Yes. The applicant, however, must submit information at the same level of detail as if construction were to begin immediately upon receipt of a RCRA permit or at a later date, consistent with a schedule of compliance specified in the permit. The Part B application must be in such detail that the permit writer can draft an enforceable permit and so that there can be meaningful public participation and review of the proposed facility and permit conditions. In other words, he must fully satisfy all the information requirements of a Part B application and the Part 264 standards for a new facility. This is difficult to do in the absence of specific plans. In addition, when the applicant does finally decide to undertake the expansion, he must conform exactly to the plans and specifications contained in the permit. Applicants without firm expansion plans should be encouraged to restrict their permit application to the existing facility and to request a major modification when the expansion plans and schedule are definite. The applicant, however, should be warned that a major modification of this nature could, in effect, constitute a new application. The applicant should also be advised of any relevant regulations regarding the procedures for expanding the capacity of a permitted facility.

### Trial Burns

1. Question: Has the Agency issued any RCRA permits for incineration on the basis of data submitted in lieu of a trial burn? 40 CFR 270.19(c) and (d).

Answer: The Agency has not yet issued any RCRA incineration permits on the basis of data obtained from other incinerators in lieu of a trial burn. In order for data submitted in lieu of a trial burn to be acceptable, the incinerators and the wastes must be sufficiently similar so that the permit writer can confidently

establish incinerator operating conditions for the second incinerator without the benefit of a trial burn.

### General Standards

1. Question: For a new facility, can information for the contingency plan, such as arrangements with local authorities, be submitted at a date later than submission of the rest of the Part B? 40 CFR Subpart D, §270.14(b)(7).

Answer: No. If the applicant has done enough planning to support obtaining a RCRA permit, he should have sufficient information to attempt to make arrangements with local authorities and draft an adequate contingency plan. Only those arrangements agreed to by local authorities need to be described in the contingency plan. If the applicant's efforts were unsuccessful, these must be documented separately, according to §264.37(b), and, in this case, the contingency plan does not need to address arrangements with local authorities. Also, under §264.51(d), information regarding the specific emergency coordinators may be submitted after the time of application. → for new fac.l.