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IMMEDIATE IMPLEMENTATION OF NEW CORRECTIVE ACTION
REQUIREMENTS

SUBJECT: RCRA Reauthorization Statutory Interpretation #3:
Immediate Implementation of New Corrective Action
Requirements

FROM: Jack W. McGraw
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TO: Addressees

BACKGROUND

One of the most important early-enactment provisions of the RCRA reauthorization is the new authority for corrective action for continuing releases [Section 3004(u)]. As you know, this provision is applicable to all permits issued after November 8, 1984. This memorandum provides preliminary guidance on the new information to be submitted with Part B applications to satisfy the new requirements. The guidance applies to those facilities whose Part B applications have been requested, and for which final determinations were not made prior to November 8, 1984.

The new continuing release provision in effect requires that each facility seeking a RCRA permit must (a) identify all solid waste management units at the facility; (b) identify releases of hazardous wastes or constituents that have occurred from those units; and (c) perform corrective action for those releases. Virtually all regulated facilities will be affected by this provision, since it applies to inactive and closed units at such facilities, as well as to the operating units subject to permitting.

Much of the implementation of the continuing release provision is subject to interpretations which have not yet been made by the Agency. An effort is currently underway to clarify the full impact of this provision on the RCRA permit program.

Policy guidance on implementation of the new §3004(u) authority, including the requirement for financial assurance for corrective

action, is expected to be issued in draft within a month. Separate guidance is being developed on how to determine whether or not a facility has a release that may pose a threat to human health and the environment. Additional guidance on the technical aspects of different types of corrective action programs, and on the issues of interim status corrective action orders, will also be issued.

ACTION

Several actions can be taken to implement this new corrective action requirement prior to issuance of the above mentioned guidance packages. Specifically, we recommend that a notice be sent to each facility whose Part b has been requested and for which a final determination was not made prior to November 8, 1984. This notice should provide a general explanation of the new corrective action provision, and the fact that additional information must be submitted to satisfy the new requirement. In general, EPA will need to obtain the following information in order to determine whether a facility is in compliance with section 3004(u):

(a) Identification of each unit at the facility that might fall within the definition of solid waste management unit, that has not already been described in the Part B application. Although no final decision has yet been made on the definition, a solid waste management unit may include any landfill, surface impoundment, waste pile, land treatment unit, injection well, incinerator, tank (including wastewater treatment units, elementary neutralization units, and tanks used in reuse/recovery operations), container storage area, transfer station, or waste recycling operation at the facility. The applicant should also understand that EPA views the "facility" as not limited to the area where wastes are managed, but includes the entire contiguous property under the control of the owner or operator. For each unit, the following information should be supplied:

- Type of unit
- Location of each unit at the facility on a topographic map
- General dimensions
- Whether the unit is currently operating, and if not, when the unit closed or ceased operating
- Description of the wastes that were placed in

the unit (where available)

- (b) All information available to the owner/operator on whether or not releases have occurred from any of the solid waste management units (including the hazardous waste units) at the facility. Releases to ground water, as well as to other media (e.g., soils, surface water, air) should be described. Such information would include available ground or surface water monitoring data, results of soil sampling, spill reports, inspection records, etc.

We recommend that in most cases, applicants who have already submitted their Part B application should be given no more than 30-45 days in which to submit this information.

It should be understood that there is currently no provision in 40 CFR Part 270 which requires submission of the above information in Part B applications. In a sense, therefore, submittal of the information by permit applicants is "voluntary." However, section 3005(c) of the Act provides that permits can be issued to facilities only upon a determination that the facility is in compliance with the requirements of Section 3004 of the Act. Therefore, failure to submit information to demonstrate a facility's compliance with the §3004(u) requirement would be grounds for denial of the permit.

The above information, when submitted by the permit applicants, will allow the permit writer to make an assessment as to which facilities are likely to require corrective action programs, and how permitting and enforcement priorities might subsequently be realigned.

Some States may have existing regulatory requirements analogous to the new RCRA continuing release provision. Such States may already have gathered substantial information on solid waste management units and releases at their facilities. In preparing the notices to be sent to permit applicants, Regional Offices should coordinate with their States to avoid requesting such information that has already been collected by a State agency.

Some facilities may contain only units with a relatively low likelihood of having caused a release (e.g., indoor container storage areas, above-ground tanks, etc.). In such cases, the

Region/State may consider going forward with issuing the permit, providing that:

- The owner/operator has indicated that there is no information indicating a release from any of the units; and
- An assessment of the facility, based on a site inspection and other available information, confirms that a release that poses a threat to human health and the environment is unlikely to have occurred.

For many facilities, the absence of a release will not be so easily established. Further, some facilities will already have determined that such a release(s) has occurred. For these facilities further information will have to be developed to identify and/or characterize releases. As noted earlier, guidance on these issues will be forthcoming.

Any questions or comments on procedural aspects of implementing this corrective action authority should be directed to Dave Fagan (382-4497). For information on the guidance packages being developed, please contact Art Day (382-4658), or George Dixon (382-4494).

Addressees:

Regional Administrators, Regions I-X
Regional Waste Management Division Directors, Regions I-X
Hazardous Waste Branch Chiefs, Regions I-X
Regional Counsels, Regions I-X
State Hazardous Waste Program Directors
Assistant Administrator for Enforcement and Compliance Monitoring
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