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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

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1. LDR Requirements During National Capacity Variances

During a corrective action removal, a RCRA permitted treatment facility generates a contaminated soil that is characteristic for arsenic (D004). The generator determines that the waste has a treatment standard established in 40 CFR 268.41 of the Land Disposal Restrictions (LDR) Third Third Final Rule. (55 FR 22520) However, Section 268.35(e) of the final rule also establishes a 2-year variance from the land prohibitions for D004 nonwastewaters due to insufficient treatment capacity. What LDR requirements remain in effect during the period in which a waste is granted a national capacity variance?

Section 3004(h)(2) of RCRA provides EPA with the authority to grant national capacity variances from the statutory effective dates upon which land disposal prohibitions become effective if there is insufficient alternative treatment, recovery or disposal capacity for the wastes subject to the prohibition. In determining whether a variance is warranted, EPA compares the nationally available treatment capacity that will be in operation on the prohibition effective date with the volume of wastes generated. If a significant shortage exists, an alternate effective date will be established based on the earliest date such capacity will become available. (55 FR 22.526)

1. LDR Requirements During National Capacity Variances (Cont'd)

Although a national capacity variance temporarily extends prohibition effective dates, it does not supersede the requirements applicable to hazardous wastes that are "restricted". (see 33 FR 22592) Effective May 8, 1990, all hazardous wastes, except those identified or listed after the enactment of ESWA, are restricted" and therefore subject to certain provisions. (55 FR 22521) These include three major requirements. First, generators of such restricted wastes must comply with applicable waste analysis and recordkeeping requirements established in Section 268.7, including the special notifications found at 268.7(a)(3) for wastes subject to a national capacity variance that are sent off-site for treatment, storage or disposal. (53 FR 31208)

Second, in addition to fulfilling relevant recordkeeping requirements, generators of hazardous wastes subject to a national capacity variance

must evaluate their waste against the California List prohibitions. (55 FR 22529) The California List establishes treatment standards and land disposal restrictions for certain liquid wastes containing free cyanides, metals, corrosives and PCBS, and for HOCs in either solid or liquid form [See Section 268.32 and RCRA Section 3004(d)]. In the interim period in which a national capacity variance is in effect, the California List requirements apply. (53 FR 31118)

Finally, if the generator determines that no other land disposal prohibitions are applicable, the waste may be managed in a landfill or surface impoundment provided the waste is placed in a unit that meets the minimum technology requirements set out in 268.3(h)(2). After the national capacity variance has expired, such restricted hazardous waste may be land disposed only if the applicable treatment standard is attained or disposal occurs in a unit that satisfies the "no migration" demonstration found at 40 CFR 268.6. (53 FR 22521)

Please note, however, for wastes that are subject to more than one treatment standard, that during a national capacity variance for one of the wastes, the treatment standards for any of the other waste codes that have not received such a variance must be met (55 FR 22660)

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