

OSWER Directive No. 9476.00-16

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 1 1988

MEMORANDUM

SUBJECT: Effective Dates for Characteristic and Listed Wastes
per March 19, 1987 Clean Closure Regulation

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (WH-562)

TO: Waste Management Division Directors
Regions I-X

Several regions have raised questions about the effective date of the Clean Closure Conforming Changes Rule of March 19, 1987 (52 FR 8704) and, in particular, have asked whether the clean closure standards discussed in the preamble to the rule (52 FR 8705) apply in authorized states. The purpose of this memorandum is to clarify the applicability of the March 19, 1987 rule.

As you know, the Clean Closure Conforming Changes rule made several conforming changes to the Part 265 closure and post-closure regulations for surface impoundments. Additionally, the Agency set forth its interpretation of these regulatory requirements in the preamble to this rule. In particular, the rule changed the closure by removal standards under Part 265 to be consistent with Part 264 standards. A key feature of this change was to amend the 265 closure by removal standards for characteristic wastes. Under the old closure by removal standard, "clean closure" could be achieved if the owner or operator demonstrated that remaining materials did not exhibit the characteristic that first brought the unit under control. Under amended §265.228(a), however, surface impoundments containing characteristic wastes as well as those containing listed wastes must "remove" all waste residues, including hazardous waste constituents derived from the waste. The preamble to the Conforming Changes rule provides guidance on determining when "removal" of waste residues has been achieved.

According to the preamble (52 FR 8706), "removal" under §265.228(a)(1) means removal of all wastes and liners, and the removal of leachate and materials contaminated with the waste or leachate (including ground water) to levels that are protective of human health and the environment. Owners/operators must

demonstrate that any hazardous constituents left in the soils, subsoils or groundwater would not cause unacceptable risks to human health or the environment. these demonstrations must document that the contaminants do not contaminate any environmental media in excess of Agency-recommended limits. The Agency-recommended limits include water quality standards and criteria and health-based limits based on verified reference doses (RfDs) and Carcinogenic Potency Factors (CPFs). If no Agency-recommended limits exist for a hazardous constituent, then the owner/operator must remove the constituent down to background levels, submit data of sufficient quality for the Agency to determine the environmental and health effects of the constituent, or follow landfill closure and post-closure requirements.

The March 19, 1987 rule became effective in unauthorized states on September 15, 1987. The date on which the clean closure policy outlined in the preamble may be applied in authorized states will depend on whether the wastes in question are listed or characteristic. For characteristic wastes, the policy would not apply until the authorized state had adopted the new regulation at §265;228(a)(1) - - until that time facilities could continue to clean close by demonstrating that remaining materials did not exhibit the characteristic that brought the waste into the system (i.e., the demonstration required under the former rule). The deadline by which authorized states must incorporate the March 19, 1987 regulatory changes is July 1988. For listed wastes, on the other hand, the policy may be applied in authorized states immediately, since the preamble interprets regulations that should already be adopted as part of the authorized state program.

Regardless of whether a specific state has adopted these regulatory changes, owners and operators should be reminded of the statutory requirements of §3005(i) of HSWA. Units which clean close pursuant to Part 265 standards will not be relieved of post-closure care obligations until they demonstrate "equivalency" with Part 264 clean closure standards (see 52 F.R. 45788). Accordingly, owners and operators of facilities who wish to clean close should be encouraged to perform such closures in accordance with Part 264 standards.

If you have any questions, please call Sharon Frey at FTS 475-6725.

cc: Region Counsel, Regions I-X