

OSWER DIRECTIVE # 9476.00-13

FEB 8 1988

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Regulatory Interpretation of the Closure
Performance Standard

FROM: Marcia Williams, Director
Office of Solid Waste

TO: William Miner, Chief
Solid Waste Branch, Region V

In your memorandum of December 31, 1987 you requested our views on whether the closure performance standard (264.111 and 265.111) could be used to require source control at two particular surface impoundments which the owner/operator wishes to close as landfills. Our response to your question first addresses the issue in a general way and then turns to your specific question concerning the two surface impoundments.

The general performance standards and the technical standards complement each other, and both must be complied with (See 51 FR 16424). Where the unit-specific technical standards provide detailed instructions, those procedures should be followed. In exceptional cases where unit-specific standards may not be enough to minimize or eliminate post-closure escape of hazardous constituents, you should look to the closure performance standard for authority to require additional control measures.

In addition, the preamble to the March 19, 1985 Proposed Rule for Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (a Final version of the Rule was published on May 2, 1986) states, in 51 FR 11070, that

"the amendment explicitly requires owners or operators of TSDFs to comply with both the general performance standard and the applicable process-specific standards. Owners or operators must close their facilities in a manner that complies with applicable process-specific requirements where specified; the general performance

standards apply to activities that are not otherwise addressed by the process-specific standards but are necessary to ensure that the facility is closed in a manner that will ensure protection of human health and the environment."

The final rule for Closure, Post-Closure and Financial Responsibility Requirements (May 2, 1986) further states, in 51 FR 16424, that TSDFs must "comply with both the general performance standard and the applicable process-specific standards."

These authorities support your position that the closure performance standard can be used as a basis for requiring source control when necessary to achieve this standard. 40 CFR Subpart G, Sections 264.112 and 265.112 requires a description of how each unit and facility will be closed in accordance with Sections 264.111/265.111 (see Sections 264.112/265.112(b)(1) and (2)). Section 265.112(b) in particular, requires that the closure plan include "a detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control."

Your memorandum indicates that hazardous constituents may migrate into ground water because the water table may come into contact with the bottom of the unit. The closure requirements at 264.228/265.228 were designed to minimize infiltration through the cap. Therefore the problem identified in this case is not addressed by the design-specific requirements, and the 264.111/265.111 performance standard can be invoked to require additional actions.

It is also important that the closure process is consistent with any corrective action process that may be required in the future. In the case of these two surface impoundments, your memorandum indicates that releases are currently occurring and that these releases would not be minimized if closure were performed with significant amounts of waste in place. Corrective action to address such releases could necessitate removal of the waste. If this occurred after capping, the action would be seriously complicated and substantial resources would have been wasted on the cap.

An alternative approach to using the closure performance standard as a tool for obtaining environmentally sound closure and to address releases, would be to use a post-closure permit and/or a 3008(h) order issued in conjunction with closure plan approval.

In conclusion, it is the Region and/or the state's choice (depending on which level of government is authorized to implement RCRA) as to which tool is used. Clearly the regulations allow the use of the general performance standards, post-closure permits or 3008(h) orders to ensure that facilities close in a way that is protective of human health and the environment.

cc: Robert Swale, Region V
Lee Tyner, OGC
Chris Rhyne, OSW
Jim Bachmaier, OSW
Lauris Davies, OSW
Regional Division Directors

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: 31 DEC 1987

SUBJECT: Regulatory interpretation of the Closure Performance Standard
For Surface Impoundments At GMC Harrison Radiator, Dayton, Ohio

FROM: William Miner, Chief
Solid Waste Branch

TO: Marcia Williams, Director
Office of Solid Waste

The Closure Performance Standard under 40 CFR Part 265.111(b) calls for the Owner/Operator to close the facility in a manner that "Controls, minimizes or eliminates....post closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters..." GMC Harrison Radiator has proposed the closure as a landfill option for their regulated surface impoundments; which, we contend, will not meet the closure performance standards as defined above. We believe that proposed method of closure will not provide adequate protection against the release of hazardous constituents to the groundwater underlying the facility; and, as such, does not provide adequate protection for human health and the environment, as called for under the Closure Performance Standard.

The facility has two surface impoundments which receive a variety of hazardous wastes beginning with the "South Lagoon" constructed in 1966, and the "North Lagoon" which was constructed in 1972. Both lagoons accepted wastewaters containing halogenated solvents, which in the case of the North Lagoon, has compromised groundwater quality to a significant degree.

Recent groundwater quality assessment data for the North Lagoon has revealed concentrations of halogenated solvents which exceed the Maximum Concentration Limits for drinking water by an average of twenty times. It is also believed that the South Lagoon is affecting groundwater quality as well, but it is unknown at this time the concentrations of any specific hazardous constituents.

The Exposure Information Report (EIR), completed for the regulated units at the GMC facility, concluded that the proposed method of closure may not minimize the production of leachate which will occur as a result of groundwater infiltration into the stabilized wastes. In particular, page 47 of the EIR states, "It is assumed that water levels will rise when pumping of (the) county wells is discontinued, with gradients and water levels returning to near historic (prepumping) conditions. Water levels may rise to elevated above those of the bottoms of the lagoons..."

As such, it is possible that some of the recompacted sludges contained within the closed facilities may be below the water table. This could result in leaching of the wastes..."

We do not believe that GMC can adequately demonstrate that they can minimize or eliminate the post-closure escape of hazardous constituents to the groundwater (as required by the Closure Performance Standard) simply due to the expectation that the stabilized wastes will lie within the aquifer after closure has been completed. Also, the presence of groundwater contamination from the impoundments leads us to believe that simply capping the impoundment will not alleviate the problem. We propose that GMC has only two options for the regulated impoundments: 1) GMC must remove the wastes presently in the impoundments and dispose of them off-site or; 2) Remove the wastes from the present units and construct a doubly-lined landfill unit in its place, and construct the unit at least one meter above the highest expected groundwater elevation. We believe that these methods of closure will adequately meet the closure performance standard, since they will demonstrate that the post-closure escape of hazardous constituents to the groundwater has been thoroughly minimized.

We request that a determination be made by your office concerning our argument that the intent of the closure performance standard precludes closure as a landfill. In any event, we will be pursuing corrective action either in a postclosure permit or with a 3008(h) order. However, if we can require excavation through the closure process, appropriate action can be started much more quickly. Approval of this closure plan is a 3rd Quarter FY '88 commitment by the Region, and we have tentatively scheduled a meeting with GMC to discuss these closure concerns for mid-January 1988. Therefore, we request that you respond to this memo by January 10, 1988, so that we can be prepared when we meet with the facility.

Specific questions concerning the facility can be answered by Robert Swale, the closure plan reviewer for this facility. Mr. Swale can be reached at FTS 886-6591.

cc: Anthony Sasson, OEPA
Randy Meyer, OEPA
Richard Robertson, OEPA-SWDO

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