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POTENTIALLY CONFLICTING REGULATION OF INFILTRATION  
GALLERIES BY THE OGWDW AND OSW

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 27 1991

MEMORANDUM

Subject: Potentially Conflicting Regulation of Infiltration  
Galleries by the Office of Ground Water and Drinking  
Water and the Office of Solid Waste

From: Sylvia K. Lowrance  
Director  
Office of Solid Waste

To: Frederick F. Stiehl  
Enforcement Counsel for Water

This is in response to your July 26 memorandum regarding potential conflicts in the regulation of infiltration galleries by OGWDW and OSW as a result of our April 2, 1991 Federal Register notice extending the Toxicity Characteristic compliance date for certain injection wells. Apparently, since the compliance date was not extended for infiltration galleries, our discussion was construed to indicate that injection wells and infiltration galleries are mutually exclusive unit types. As is explained below, this was not our intention.

The intent of the extension was to provide relief to operators of injection wells used in certain hydrocarbon recovery operations since application of the TC would cause these Class V wells to become Class IV wells, these beneficial cleanup operations would be halted in cases where the Class IV wells do not have UIC permits and where the cleanup operations do not meet the conditions of Section 3020 of RCRA. We believed that owners/operators of these units were in an impossibility situation--that is, their operation would be in violation of RCRA, but the continuation of the cleanup was ordered by the State. Where the unit was not an injection well, this impossibility did not exist, since they could continue to operate

the unit under interim status. For such units (i.e., units other than injection wells), the extension was not provided. In distinguishing between units to which the extension was applicable vs. other units, we noted that if the infiltration gallery met the definition of an injection well, then the extension would apply. That is, we recognized that some of the units identified by the industry as "infiltration galleries" may meet the UIC program's definition of an injection well and, if they did, they were included in the extension. On the other hand, certain units that could conceivably be identified as "infiltration galleries" (e.g., leaking surface impoundments) were not injection wells and thus were not included in the extension.

We believe that this approach is consistent with that of OGWDW and the Department of Justice, as described it in your memorandum. In order to clarify this matter, there are two apparent options: we could either issue a clarifying memorandum to the Regions or publish a short clarification notice in the Federal Register. We would be pleased to work with you to develop appropriate language to ensure consistency between our offices. Should you wish to pursue either of these options, or discuss another course of action, please contact Dave Topping of my staff at 382-7737.