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HSWA APPLIED TO FEDERAL FACILITIES AT DOE-OAK RIDGE

FROM: Marcia Williams
Director
Office of Solid Waste

TO: James H. Scarbrough
Chief, Residuals Management Branch
Waste Management Division, Region IV

Your July 25, 1985, letter asked several questions regarding the applicability of HSWA requirements to the DOE Y-12 facility at Oak Ridge. The first provision you asked about is §3004(u), which is invoked only when a facility is seeking a RCRA permit. HWDMS indicates that the Y-12 facility is seeking a permit, which triggers the corrective action authority to address releases from solid waste management units (SWMUs). However, Oak Ridge is a Federal facility. The applicability of §3004(u) has been called into question for Federal facilities, and EPA is involved in on-going negotiations with other Federal agencies on this issue. Specifically, the final codification rule states that:

The extent to which the above interpretation applies to Federal facilities raises legal and policy issues that the agency has not yet resolved....Permit applications for Federal facilities will continue to be processed, but recognizing that final Federal facility permits may not be issued where these unresolved issues exist, EPA will make its best efforts to resolve these issues in the next 60 days.
50 Fed. Reg. 28712 (July 15, 1985).

If the facility is seeking a RCRA permit and it has no SWMUs or if it has SWMUs that it agrees to address, the permitting process can move forward and corrective action pursuant to §3004(u) can progress accordingly. However, if the facility is not willing to address SWMUs, the permitting process for this facility becomes more complex. For further information on

§3004(u), please contact Dave Fagan of the Permits Branch at FTS 382-4751.

The final codification rule does not set standards for implementation of §3004(v) and states that in the interim decisions to issue orders for this section shall be done on a case-by-case basis. This section of HSWA provides that:

As promptly as practicable after the date of enactment...the Administrator shall amend the standards...regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste...to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment....

If you are interested in pursuing such an order for this facility, you should contact Ginny Steiner of the Office of Waste Programs Enforcement at FTS 475-9320.

We are as yet unsure what mechanism to use in applying §3008(h) to Federal facilities due to our dispute resolution policy for such facilities. Normally, however, if a facility is operating under interim status, the authorities in §3008(h) can be used to deal directly with on-going environmental problems. The trigger for issuing such orders and initiating civil referrals is the existence of a release. However, because of the nature of the §3008(h) provision, it is subject to limitations. Your question is not entirely clear, however, in terms of what units are leaking and their permitting status. You state that the pond is a RCRA unit and then state that it has no ground-water monitoring system. If the pond is operating pursuant to the interim status requirements, it must have a ground-water monitoring system. If you have specific questions on this process or how it should be implemented, please call Ginny Steiner at the number listed above.

In addition, you have asked whether it is significant in determining the applicability of RCRA corrective action that one or more contaminants being released through the NPDES point are not specified in the permit. This factor is not significant in determining RCRA's applicability to the

release. The key question is whether the release from an out-fall addressed in the NPDES permits is within the exemption for NPDES discharges found in §1004(27) of RCRA. We are currently developing guidance covering RCRA jurisdiction and NPDES discharges.

You have also asked whether a release which occurred prior to the date of the NPDES permit could be addressed by corrective action measures pursuant to §3004(u). Corrective measures could apply to a release which occurred prior to the issuance of a NPDES permit. As a matter of policy EPA has decided to rely on the NPDES program to address releases, otherwise within the scope of §3004(u), that are addressed by that program. See 50 Fed. Reg. 28714 (July 15, 1985). In keeping with that policy it may become necessary to distinguish between releases which occurred prior to the issuance of a NPDES permit and any subsequent releases. As a practical matter this may be difficult if not impossible to do; therefore, EPA policy is that where such a distinction cannot be made and the existence of a prepermitted release is clear, the entire contaminated area is subject to clean up.

Please feel free to contact Chaz Miller, our Federal Facilities Coordinator, at FTS 382-2210 if you have any further questions on these issues; we are developing the policies for these new statutory authorities as quickly as possible.

cc: Thomas W. Devine, Director, Waste Management Division,
Region IV
RCRA Branch Chiefs, Regions I-X
State Programs Branch, OSW
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