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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

APRIL 86

5. Delisting

A petroleum refinery obtained interim status in 1980 for a surface impoundment used to treat and store K051. The facility manages no other hazardous waste. In 1981, the EPA granted a delisting for the K051 waste because the owner/operator proved that the refining process waste did not contain lead and hexavalent chromium, the constituents for which K051 was listed. Does the K051 delisting effectively mean that the facility never managed a listed hazardous waste? How would the delisting affect the facility's interim status?

A person may submit a petition to EPA, pursuant to 40 CFR §§260.20 and 260.20, to have a waste at a particular facility delisted. Prior to September 21, 1985, EPA granted only "informal" or temporary exclusions. "Informal" exclusions were suggestions to the Regions that enforcement discretion be used when a tentative decision to grant a temporary exclusion had been made. Temporary exclusions removed a waste at a particular facility from regulation, pursuant to 260.22(m) (then in effect, see 50 FR 28727-28, July 15, 1985). EPA follows the procedures set forth in 40 CFR §260.20 to grant final exclusions, which are regulatory amendments.

Wastes which were informally excluded were technically still hazardous wastes. An impoundment holding informally excluded K051 waste subject to the Loss of Interim Status provisions on November 8, 1985.

For temporarily excluded wastes, the facility's status depends on the scope of the temporary delisting granted. If only the waste generated after the date of the temporary exclusion was delisted, waste placed in the impoundment prior to that date would still be hazardous (K051) waste. The impoundment would have had interim status and should have met Part 265 standards. The Loss of Interim Status provision applied to the impoundment on November 8, 1985

If the temporary exclusion covered the waste already in the impoundment as well as K051 waste generated after the exclusion date, then the facility would still have interim status, but none of the Part 265 interim standards would apply to that surface impoundment. The facility would technically have been subject to the Loss of Interim Status provision, but not required to certify compliance with financial responsibility or ground water monitoring requirements, since none of these Part 265 requirements were "applicable," or to submit a Part B permit application on November 8, 1985, (50 FR 38947, September 25, 1985).

If EPA revokes the temporary exclusion, or it ceases to be in effect by operation of law, e.g., if the Agency does not make a final decision on the petition by November 8, 1986, (RCRA §3001(f)(2)(b)), the facility will become subject to the Part 265 interim status requirements. The facility must then certify compliance with financial responsibility and ground water monitoring requirements and submit a Part B permit application within 12 months or lose interim status (RCRA §3005(e)(3)).

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