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BODILY INJURY/PROPERTY DAMAGE CLAIMS AT TSDFs

JAN 25 1990

MEMORANDUM

SUBJECT: Clarification of 40 CFR § 264.147(a)(7), (b)(7),
and §265.147(a)(7), (b)(7)

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste, (OS-300)

TO: RCRA Branch Chiefs, Regions I-X

This memorandum clarifies the regulations at 40 CFR §§264.147(a)(7), (b)(7) and 265.147(a)(7), (b)(7), which require an owner or operator of a hazardous waste treatment, storage, or disposal facility (TSDF) to report to the Agency claims for bodily injury or property damage that result from operation of the facility. We believe this clarification is necessary because the Agency has been asked what types of information owners and operators must report to comply with those provisions.

The reporting requirement in those sections was promulgated as part of a rulemaking related to liability coverage on September 1, 1988 and became effective on October 3, 1988. Those sections state that owners or operators must notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operations of a TSDF facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section, and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by this rule is reduced. We have been asked to define the extent of the first requirement, that is, the meaning of the language, "whenever a claim ... is made."

The purpose of the notification requirement is to provide the Agency with early warning of potential instrument failure due to pending claims and to provide the Agency with data concerning the incidence of valid third-party claims. To achieve these goals the Agency envisions that TSDF facilities will report to

the Regional Administrator whenever:

- 1) a claim results in a reduction in the amount of financial assurance for liability coverage provided by an authorized financial instrument, or
- 2) a certification of a valid claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered into between the owner or operator and a third-party claimant for liability coverage, or
- 3) a final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage or disposal facility is issued against the owner or operator or an instrument providing financial assurance for liability coverage.

The regulation is not intended to require owners or operators to report all types of claims that potentially could be filed against a facility. Section 264.151, a related provision promulgated in the same rulemaking, authorizes the payment of funds from the financial instruments only for valid third-party claims and expressly excludes payment for certain categories of damages or obligations such as claims under worker's compensation law or resulting from automobile accidents involving vehicles owned by the facility. Similarly, the Agency intended to require owners or operators to report only valid claims to the Regional Administrator.

The Agency did not intend that the reporting requirement extend beyond the three situations listed above and plans to clarify the regulatory language in the near future. This memorandum interprets the provision as it stands pending formal clarification in the Federal Register. It should be noted that the Agency is clarifying this provision in the interim through use of a memorandum because of the particular circumstances of this case.

If you have any questions about this issue, please contact Barbara Foster at 382-4696.