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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

February 17, 1995

MEMORANDUM

SUBJECT: CAMU at U.S.S. Lead Facility

FROM: Devereaux Barnes, Director  
Permits and State Program Division, OSW

TO: Norm Niedergang, Director  
Office of RCRA, Region V

Recently we have had several discussion with your staff regarding the approval of a corrective action management unit (CAMU) at the U.S.S. Lead Refinery facility in East Chicago, Indiana. In those discussions we were asked to provide the Agency position on the specific question of whether a 3008(h) enforcement order is an appropriate mechanism for approving a CAMU at this facility. As you know, interim status for this facility was terminated under the provisions of RCRA 3005(e).

It is the Agency's position that 3008(h) orders are an appropriate mechanism for approval of CAMUs at facilities that have lost interim status pursuant to 3005(e). Other types of hazardous waste management units (e.g., tanks, piles) that may be needed to implement remedial actions at facilities like U.S.S. Lead may also be approved under 3008(h) orders. This interpretation of the scope of 3008(h) authority is supported by the broad language of 3008(h) (providing for "corrective action or such other response measure as...necessary to protect human health or the environment"). The legislative history supports this interpretation in that the conference report indicates that the intent was to allow EPA to address ongoing problems without a permit. In addition, EPA's longstanding interpretation is that 3008(h) applies to LOIS facilities as well as facilities that are currently operating under interim status, and the CAMU rule itself imposes no limits on this interpretation. See memo from J. Winston Porter, "Interpretation of Section 3008(h) of the Solid Waste Disposal Act" (Dec. 16, 1985).

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We believe that this is a reasonable reading of the statute. Based on this interpretation, RCRA permits are not necessary for such units as long as they are part of the selected remedy (or interim measure), and they are specifically authorized under the 3008(h) order. Furthermore, we believe that from a policy perspective, permits would generally be inappropriate in these circumstances, since they would likely have the effect of delaying cleanup and adding to procedural costs without increasing environmental protection. As explained in the preamble to the CAMU rule (58 FR 8676, February 16, 1993), public participation procedures similar to those for Class III permit modifications should be followed in approving CAMUs under 3008(h) corrective action orders.

If you or your staff have more specific questions about the use of orders to approve CAMUs and other types of units, you may wish to contact Barbara Pace of the Office of General Counsel, at (202) 260-7713, or Dave Fagan of my staff at (703) 308-8620. Please let us know if we can be of any further assistance.

cc: Joe Boyle  
Kevin Pierard  
Barbara Pace  
Larry Starfield