

9432.1983(02)

STORAGE FACILITIES, RCRA APPLICABILITY TO

NOV 29

MEMORANDUM

SUBJECT: Recent Court Decision on RCRA Applicability to
Storage Facilities

FROM: John Skinner, Director
Office of Solid Waste (WH-563)

TO: Hazardous Waste Division Directors, Regions I-X

In a recent decision, *Environmental Defense Fund v. Lampnier*, 714 f.2d 331, the United States Court of Appeals, Fourth Circuit, declared that a person in control of a site where drummed hazardous wastes are held is engaged in "storage" of hazardous waste under RCRA even though all the wastes were placed at the site before November 19, 1980. The defendant had argued he was not covered by the RCRA regulations because he had not placed any wastes in storage after the date the regulations went into effect. The court, citing the definition of storage in 40 CFR 260.10, held that the fact that no wastes had been placed in storage after November 19, 1980, was "immaterial" because the defendant had continued to store wastes deposited before that date.

This decision supports previous guidance we have issued on this subject (attached). It is particularly significant because it was delivered by a court which has traditionally taken a narrow view of EPA's authority. Please note this decision and ensure that both technical staff and Regional Counsel are aware of it.

Attachments

cc: SK Branch Chiefs
Permits Contacts
Mark Greenwood

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