

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

APRIL 24, 1989

MEMORANDUM

SUBJECT: Clarification and Possible Modification of the 90-Day Generator Rule

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Waste Management Division Directors Regions I-X

This memorandum is to inform you of an OSW effort to clarify and examine the "90-day generator rule", 40 CFR Section 262.34, and to request comments on the attached documents: (1) an Advanced Notice of Proposed Rule-Making (ANPRM) of July 14, 1986, regarding generators; and (2) [REDACTED]

These documents present the major issues surrounding "90-day generators." In addition, we request that you appoint a representative from the Region to sit on the workgroup which will be forming shortly to deal with these topics. Please submit any comments you have on the documents, and the names of workgroup representatives, to Emily Roth (OS-332) by April 28, 1989. Questions on this request may be addressed to Matthew Straus at FTS-382-4637 or your staff may contact Ms. Roth at FTS-382-4777.

A. Background.

Generators may accumulate hazardous wastes on-site for 90 days or less before shipping the waste off-site (or moving it on-site) to interim status or permitted hazardous waste units provided they comply with the requirements of Section 262.34(a). Section 262.34(a) stipulates that the waste must be held in containers or tanks, and that the interim status requirements for containers and tanks be met (Section 265, Subparts I and J), as well as certain other requirements.

The 90-day generator rule was promulgated in 1980 in response to a concern that the new RCRA waste management requirements would interfere with a facility's manufacturing processes. A 90-day time period was thought to be sufficient for the accumulation of the waste quantities necessary for economical and efficient off-site shipments of waste (45 FR 12730).

Small Quantity Generators (SQG) of between 100-1000 kilograms of hazardous waste in a calendar month were brought in under the rule in March of 1986 (Section 262.34 (d-f)). SQGs may accumulate their wastes for 180 days (or 270 days if the waste must be shipped 200 miles or more) provided the quantity of waste accumulated on-site never exceeds 6000 kilograms.

Many tanks at interim status facilities have been found to leak resulting in the release of contaminants into the environment. The Agency believes that generators' tanks are as susceptible to episodes of failure as tanks at interim status facilities. The belief that leaks from tanks may be a common and widespread occurrence led EPA to publish, on July 14, 1986, an ANPRM (51 FR 25487) that requested comment on the problems posed by 90-day generators.

The ANPRM describes in detail the issues involved and is attached. Comments received in response to the ANPRM have favored retaining the Section 262.34 rules, without change. Comments were received from 118 industries and industry-related associations, six Federal agencies, one university, and two states (Missouri and Virginia). Because the comments on the ANPRM were predominately from the regulated community, we are

particularly interested in the view of the various regulating entities, i.e., the States and EPA Regions, regarding problems posed by 90-day accumulators and the adequacy of Section 262.34.

Since the publication of the ANPRM, OSW has decided to initiate an effort to: (1) clarify the applicability of the 90-day accumulator exemption as it presently exists, and (2) evaluate the adequacy of the rule in light of problems which may exist at 90-day accumulator sites. Modification of the rule could be considered as a remedy for the environmental problems revealed by this examination.

B. Clarification of 40 CFR 262.34.

In order to evaluate whether problems exist with the current rule, it is important to understand the rule as it currently exists. [REDACTED]

[REDACTED] EPA discussed this policy in the Federal Register of March 24, 1986 (51 FR 10168). Since that time, one Region and one State have asked EPA to reevaluate this interpretation. The Agency maintains that treatment, with the exception of thermal treatment, is not precluded; and, therefore, is allowed under Section 262.34.

C. Evaluation of 40 CFR 262.34.

The requirements governing the storage of hazardous waste in tanks and containers promulgated in 1980 were deemed adequate for protecting the environment at generator sites. However, based on our experiences over the past several years, the Agency now believes that generators may be subject to the following problems:

- o Corrective Action - Ninety-day generators, because they are non-permitted, non-interim status facilities, are not subject to the corrective action authority of RCRA Sections 3004(u) or 3008(h). Consequently, in response to environmental problems at 90-day generator sites, there is little corrective action authority available under RCRA beyond that of emergency response where imminent and substantial endangerment exists (RCRA Section 7003).
- o Leaky tanks - As mentioned above, EPA believes that 90-day tanks are as susceptible to failure as interim status tanks, which have been shown to suffer a significant rate of tank failure. Tank failure can result in soil and groundwater contamination which could, therefore, be prevalent at generator facilities.
- o CERCLA/RCRA sites - Information on problems at generator-only sites is provided from the CERCLA program. Seventy-one of the 229 sites proposed for listing on the National Priorities List (NPL) in Update 7 are RCRA sites. Fifty-five, or one-quarter of the proposed NPL sites, are current or former generator sites.
- o Compliance Monitoring - Generators are inspected very infrequently, and, therefore, environmental problems which exist or occur, may not be discovered.
- o Treatment - Generators are allowed to treat hazardous waste in their tanks without permits or interim status. The potential for inadvertent release to the environment may be increased during treatment.

As described above, there may be environmental problems at 90-day generator sites which are not adequately addressed by Section 262.34. A range of options to deal with these problems will be explored, including requiring permits for subcategories of generators, as appropriate, based on factors that might include waste volumes managed, compliance history, or relative hazard posed by the waste. In lieu of requiring a permit, non-permitted facilities could be subject to new financial responsibility requirements and expanded cleanup and/or closure standards.

In an effort to define the extent of environmental problems at generator sites, OSW will be:

- Obtaining information from the States and Regions regarding problems at 90-day generator sites, and examining current State regulatory practices. States may already be utilizing effective regulatory mechanisms that EPA could choose to adopt.
- Working with OERR to examine case studies of generator facilities proposed for the NPL; i.e., examining what goes wrong at generator sites that causes them to become CERCLA sites.
- Analyzing data from the recent OSW generator survey for information regarding the generator universe. Knowledge of volumes, waste types, and contamination at generator sites should help define the problems.

OSW welcomes your comments on this memorandum and the two attachments, and looks forward to your participation in the decision-making process regarding 90-day generators.

Thank you very much for your assistance and cooperation.