

PPC 9477.1984(01)

CLOSURE COST ESTIMATES BASED ON THIRD PARTY COSTS

January 12, 1984

MEMORANDUM

SUBJECT: Closure Cost Estimates Based on Third Party Costs

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

TO: James H. Scarbrough, Chief
Residuals Management Branch
Region IV

This is in response to your memorandum of November 22, 1983, in which you raise the issue of whether a closure plan for a recycling facility can specify continuation of recycling in order to reduce waste inventory during closure. You raised this issue in the context of a statement made in the September 19, 1983 RCRA/Superfund Hotline report. The Hotline report stated that a closure cost estimate cannot be reduced to reflect planned recycling of waste at a facility or the planned sale of equipment or property after closure begins. The rationale given by the Hotline is that the cost estimate must reflect closure at the most expensive point in the facility's operating life, rather than some point after the facility's inventory is reduced by continued recycling of waste on site, or after sale of capital.

While the Hotline memo is correct, your memo raises a separate issue, which the Hotline report did not address. That issue is whether the closure cost estimate may reflect the cost of closure activities carried out by the owner/operator (who may use his own personnel and equipment if he desires), or whether the estimate must reflect the costs of closure activities carried out by a third party, such as the government or a private contractor.

You referenced several statements in the regulations and EPA guidance documents which you interpreted to mean that the first case is correct. In the context of recycling facilities, you

have interpreted the regulations and guidance to mean that 1) continued recycling at a recycling facility is a form of "treatment" and a legitimate closure activity, and 2) the closure cost estimate for a recycling facility may reflect the owner/operator's own costs of carrying out his closure plan.

I concur with these interpretations. With regard to your last point, please make note of an important requirement which lessens the likelihood of a large, abandoned stockpile of waste in the event of a forced closure. Under §264.113(a), and §265.113(a), the owner/operator has 90 days from the day closure activities begin in which to "treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with his approved closure plan". Therefore, acceptable cost estimates for recycling facilities could reflect labor and materials for up to 90 days of recycling plus the cost to dispose of the amount of waste which could not reasonably be recycled with existing throughput capacity during 90 days. This, in effect, ensures that recyclers do not stockpile more hazardous waste than they have the ability to recycle in 90 days, unless they have made provisions in their closure plans and cost estimates for disposing of the excess hazardous wastes, either on-site or off-site, by the end of the 90-day period.

cc: Bruce Weddle
Eileen Claussen
Carolyn Barley
Hazardous Waste Branch Chiefs, Regions I-III, V-X

Attachment

DATE: November 22, 1983

SUBJECT: Closure Plans and Cost Estimates-Treatment of Waste
Inventory as Part of Closure Activities

FROM: Chief, Residuals Management Branch
Region IV

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

The September 20, 1983 memo from Carolyn Barley transmitting Superfund hotline monthly status report for August contained a response with which we do not agree. On page six the following statement is made "The Agency has interpreted these two statements to not allow a Closure Plan to include recycling of waste or sale of equipment or property in order to reduce the closure cost estimate." Region IV does not totally agree with this response. We agree that the money gained from the sale of recycled hazardous waste equipment or property can not be included in the closure cost estimate as a credit. However we feel that the regulations and guidance are clear that a recycling facility can continue to treat its waste inventory as part of its closure operations.

The following citations from RCRA Regulations and Guidance Documents support this position:

| DOCUMENT CITED | SUPPORTING QUOTATION |
|---------------------------|--|
| 40 CFR 264.142 | Cost estimates for closure are to be based on the closure plan |
| Preamble to May 1980 Reg. | "Closure is the period after wastes are no longer accepted, during which the owners or |

operators complete treatment, storage and disposal operations, apply final cover to all cap landfills, and dispose of or decontaminate equipment"

40 CFR 264.112(a)(4)

"For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory.

40 CFR 264.113(a)

"Within ninety days after receiving the final volume of hazardous wastes, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan.

EPA Draft Guidance Closure and Post Closure: Interim Status Standards 40 CFR 265,

"The Plan (Closure) should also include a description of the procedures for treating or removing these wastes ..."

P. 2-8

"It does ensure that an owner or operator has prepared for treating, disposing or sending hazardous waste off-site in a timely fashion.

P. 2-9

"In most cases, it is likely that wastes awaiting disposal will require varying degrees of processing and treatment. At an incineration facility, for example, all wastes may be incinerated on-site and the residues hauled off-site."

- P. 2-11 "The schedule of closure activities should include: (e.g., dates for completing treatment and disposal of all wastes on-site,)
- P. 4-2 "An example would be the costs of treating or disposing of inventory on-site, which will normally be a simple continuation of the normal operating practices of the business.
- P. 5-5 "In the vast majority of cases at disposal facilities, the disposing or treating of inventory will take place on-site,"

From these documents we think the following conclusions can be clearly drawn. These conclusions reflect our Region's approach to Closure Plans and cost estimates for Hazardous Waste recycling facilities.

1. The Closure Cost Estimate is based on the Closure Plan.
2. The Closure Plan is based on a planned Closure that is carried out by the owner (who may use his own personnel and equipment if he desires). There is no regulatory basis for requiring the closure plan and cost estimate to be based on a third-party or contractor handling the closure activities.
3. The Regs and Guidance are clear that a facility that does treatment of Hazardous Waste may continue to provide treatment as part of its closure activities as a means of reducing its inventory on hand at the time closure begins. For a facility that recycles spent solvents through distillation this would mean that the facility could distill spent solvents on hand when closure begins as a means of reducing the costs of final disposal.

4. Once Closure begins the Closure Cost Estimate must reflect all operating costs, disposal costs, and clean-up costs incurred during the closure period including any costs associated with continued treatment during closure, such as all costs associated with the operation of the facility. The guidance manual indicates that the company should submit the previous years financial budget and put up the percentage of the year it will take for the treatment, ultimate disposal and decontamination in the closure fund.

There are many waste recycling facilities throughout the country that are subject to the RCRA permitting requirements. Because of the significant impact which the financial assurance requirements have on these facilities, it is important that EPA be consistent nationwide in our application of the RCRA regulations for Closure

Plans and Cost Estimates. We have issued and are about to issue several permits to recycling facilities using the above state guidance. If you disagree with our approach please call Douglas C. McCurry of my staff at FTS 257-3433 before December 15, 1983.

James H. Scarbrough

cc: Region IV State Directors
Hazardous Waste Branch Chiefs, Regions I-III, V-X