

PPC 9528.1986(01)

CONSTRUCTION OF A NEW LANDFILL CELL
AND THE OMNIBUS PROVISION

MAR 3 1986

Susan Lubick
Room 2419
Rayburn House Office Building
Washington, D.C. 20515

Dear Ms. Lubick:

On October 28, 1985, you met with Clem Rastatter of my staff to discuss the CECOS International site in Niagara Falls, New York. As a result of the meeting, you requested the following additional information concerning: (1) administrative requirements and location standards applicable to the construction of the new Cell #6 at the CECOS facility; and (2) applicability of the "omnibus provision" of the Hazardous and Solid Waste Amendments of 1984 (HSWA) to the expansion of the facility.

As you know, the CECOS facility is currently operating under interim status standards. Facilities operating under interim status are normally required to submit a revised Part A application and meet the requirements of 40 CFR 270.72 for any change during interim status. Part 270.72 requires EPA's approval for: (1) any increase in design capacity not previously identified in the Part A of the permit application, and (2) any process change or the addition of processes not currently identified in the Part A. However, the construction of Cell #6 was detailed in CECOS' original Part A application. Therefore, the construction of Cell #6 is not considered to be a change under §270.72, and the facility can proceed with the construction of Cell #6 without any permitting action by EPA. The facility must also install in Cell #6 at least two liners and a leachate collection system above and between the liners as required by Section 3004(o) of RCRA. The design and installation of this liner system is not required to be reviewed or approved by EPA (or the State) before construction has begun. However, design specifications and other information on this system have been voluntarily submitted to EPA and the State of New York and are currently under review.

EPA Region II and the State of New York are jointly reviewing CECOS' Part B permit application for the entire landfill facility. In their review, EPA and the State will apply draft criteria EPA has developed for evaluating acceptable locations for hazardous waste land treatment storage and disposal facilities. Those criteria include:

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- (1) the inherent geologic, hydrologic, and pedologic features of the site;
- (2) ability of the site to provide a stable foundation for the engineered containment structure;
- (3) ability of the site to produce adequate ground-water monitoring data;
- (4) site compliance with Federal statutes and standards regarding protected lands.

These criteria are based on current regulations under 40 CFR Part 264, which specify design and operating requirements for hazardous waste facilities and establish ground-water monitoring and corrective action requirements. While Part 264 does not contain explicit location standards based on hydrogeologic considerations, the ground-water monitoring, corrective action and design and operating regulations contain performance standards that implicitly involve hydrologic and geologic factors.

Guidance on application of the four criteria has been issued in draft form. Guidance on a fifth topic (definition of areas of vulnerable hydrology) is currently being developed and will be issued in May 1986. In 1988, EPA intends to propose regulatory standards for the location of new and existing hazardous waste facilities. These last two activities are mandated by the HSWA.

You also inquired as to the applicability of Section 3005(c) (3) of RCRA to the construction of Cell #6. Section 3005(c) (3) (also called the "omnibus" provision) provides that individual RCRA permits "shall contain such terms and conditions as the Administrator (or State) determines necessary to protect human health and the environment." Given that CECOS does not require any EPA approvals before proceeding to construct Cell #6 while operating under interim status, the question you raised was whether the omnibus provision gives EPA the right, and thus the responsibility, to impose conditions (including denial of the right to construct) during interim status. The answer is that the omnibus provision applies only to permit conditions, and EPA has the legal basis under this provision to impose additional requirements (beyond the minimum technology requirements outlined in the statute) on the construction of Cell #6 during the interim status period.

At this time, we expect New York to receive authorization to issue RCRA permits in March 1986. As the processing of the CECOS permit application is not expected to be completed before that date, the final decision regarding issuance of the permit will rest with the State. We suggest, therefore, that you also

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contact the State agency regarding the status of the CECOS application. The appropriate contact in New York is:

Norman H. Nosenchuck, Director
Division of Solid and Hazardous Waste
Department of Environmental Conservation
50 Wolf Rd. Room 209
Albany, New York 12233
(518) 457-6603

If I can be of further assistance, please let me know.

Sincerely,

Marcia Williams, Director
Office of Solid Waste

cc: Norman Nosenchuck