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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 23 1990

MEMORANDUM

SUBJECT: Splitting a Federal RCRA Permit

FROM: Dev Barnes, Director
Permits and State Programs Division

TO: James Scarbrough, Chief
RCRA and Federal Facilities Branch, Region IV

This memorandum is in response to your correspondence, dated May 1, 1990, in which you requested guidance concerning the proper procedure for "splitting" RCRA permits which were originally issued for a non-authorized State, when the State has subsequently become authorized and has issued a "base" permit identical to the non-HSWA portion of the Federal permit. We offer the following suggestions:

One procedure, which may have some advantages, would be for EPA to modify the Federal permit and specify an accelerated expiration date (e.g., 30 days hence) for the entire permit. Simultaneously, EPA would modify the State permit to incorporate explicitly the HSWA provisions which were originally in the Federal permit. This portion of the State permit would remain Federally administered. If the permittee requests the modifications, both could be Class I modifications according to 40 CFR Part 270.42. Accelerated expiration is a specifically listed Class I modification, and the addition of already existing HSWA permit conditions to a State permit would qualify as Class I under 270.42(d), since it would not constitute a substantive change. The advantage to this procedure would be that only one permit would remain, thereby reducing any potential confusion.

Another possible alternative would be simply to modify the Federal permit to allow for accelerated expiration of the non-HSWA portion. the Region would have to be careful to make sure that only the base portions of the permit were identified and allowed to expire, and not the HSWA elements. This would achieve

in effect the same result as the previous option. However, two separate permits would continue to exist, at least until the State is authorized for corrective action, at which time the Federal permit could be eliminated and the State permit modified to incorporate a State-implemented HSWA portion.

Under either procedure, actual termination of the permit or portions thereof, according to 40 CFR Part 124, would be unnecessary. Although we believe there is a potential advantage to using the first procedure (that is, having a single consolidated permit), either option would be legally acceptable and should be relatively straightforward administratively.

We have consulted with the Office of General Counsel concerning this issue, and this memorandum reflects our joint wisdom. If you have any questions, please call Dave Fagen of my staff (382-4497) or Carrie Wehling of OGC (382-7703).

cc: Pat Tobin

RCRA Hazardous Waste Branch Chiefs, Regions I-III & V-X