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LIABILITY REQUIREMENTS FOR FACILITIES ACTIVELY SEEKING A RCRA PERMIT

March 2, 1987

MEMORANDUM

SUBJECT: Liability Requirements for Facilities Actively Seeking a RCRA Permit

FROM: J. Winston Porter
Assistant Administrator

TO: Waste Management Division Directors
Regions I - X

As you know, before a treatment, storage, or disposal facility is issued a RCRA permit, §270.14(b)(17) requires that the facility demonstrate its ability to comply with the liability coverage requirements of §264.147.

We are aware that a number of facilities with Part B permit applications currently undergoing review by EPA and the authorized States do not have insurance coverage and cannot otherwise demonstrate compliance with the §264.147 liability coverage requirements. The permit applicant's inability to demonstrate compliance with this important financial responsibility requirement is grounds for permit denial under §270.10(e)(5).

The constrained insurance market which currently exists makes the 264.147 requirement difficult to meet. We are especially concerned about facilities that are actively seeking a permit and can satisfactorily demonstrate compliance with the other Part 264 regulations. some of these facilities face permit denial solely because of the limited availability of insurance.

As we agreed at the October, 1986 Division Director's Meeting, we believe it is appropriate to grant such facilities additional time prior to final action on the permit, to make concerted efforts to secure insurance or provide an alternative mechanism for lability coverage. Six months is suggested as sufficient extra time; however, facility-specific adjustments can

be made in order to be consistent with compliance orders issued pursuant to the October 29, 1986, memorandum of "Enforcement of Liability Requirements for Operating RCRA Treatment, Storage, and Disposal Facilities." Facilities that are close to either a Notice of Intent to Deny (NOID) or permit denial solely for failure to meet the §264.147 liability coverage requirements should be notified immediately that further permit processing

will be delayed for the duration of this final opportunity to demonstrate compliance with §264.147. Some of these facilities, for instance, may be able to take advantage of the recently promulgated corporate guarantee. Others may now find it easier to locate an insurer. At the end of the additional period of time, if the applicant still does not have an acceptable financial instrument in place, the permit is to be denied.

It should be understood that approving an additional few months for facilities to provide the necessary demonstration of compliance with our §264.147 liability coverage regulations does not justify delaying any land disposal facility's permit issuance/denial beyond the November 8, 1988 deadline.

To the extent facilities accorded this addition time are approaching NOID or permit denial during the next few months, I realize this policy may affect the Regions' abilities to meet quarterly SPMS targets. Regions should identify, on a facility-specific basis, the permitting targets for the second and third quarters of FY 19687 that will be missed due to the exercise of this policy. The revised schedules for draft and/or final permit determinations should also be provided. This information should be submitted in writing to Susan Bromm, Acting Director, Permits and State Programs Division, by March 30, 1987. The Office of Solid Waste (OSW) will use this information in the quarterly SPMS briefings for me and the Deputy Administrator. In this way, managers at both the Regional and national level will continue to focus on the liability coverage issue and the utility of this policy.

In addition to the near-term SPMS reporting information, OSWER also needs to be able to accurately characterize the problems that operating hazardous waste facilities are facing in regard to insurance for liability coverage. Whereas OSWER has previously relied upon informally-gathered or anecdotal information, it has become increasingly important for OSWER to

have more facts about the magnitude of the problem. I am, therefore, asking for an overall list of the land disposal facilities in your Region that are currently seeking an operating permit but are not in compliance with §264.147. Among these, you should identify the facilities which, in the judgment of the Region, will not qualify for RCRA permit due solely to their lack of liability coverage. This information should be submitted to Susan Bromm no later than March 17, 1987.

Please contact Matt Hale (FTS 382-4740) or Elizabeth Cotsworth (FTS 382--4746) if there are questions regarding this policy or the information being requested from each of you.

cc: Susan Bromm
Jim Michael
Kim Ogden
Susan Absher
Thad Juszczak
Jackie Terusak
Sue Gladek
Elizabeth Cotsworth
Matt Hale
Permit Section Chiefs, Regions I-X
RCRA Branch Chiefs, Regions I-X