

9502.1987(06)

RCRA PERMITS WITH HSWA CONDITIONS - JOINTLY ISSUED PERMITS

June 30, 1987

MEMORANDUM

SUBJECT: RCRA Permits with HSWA Conditions

FROM: Bruce Weddle, Director
Permits & State Programs Division (WH-563)

TO: Sam Becker, Chief
Hazardous Waste Compliance Branch
Region VI

During my recent visit you raised two questions related to the issuance of RCRA permits with HSWA provisions. The first issue concerned the implications of a Region issuing the HSWA provisions of a permit before the State permit. The other question pertained to the status of the HSWA portion of a jointly issued permit if the State portion is appealed.

The Agency's policy on the timing of the State and Federal portions of the permit has been described in detail in a OSWER memorandum to the Regions by Jack McGraw (July 1, 1985; copy attached). EPA's policy is that joint RCRA permit should be issued simultaneously by EPA and the States. The memorandum describes several exceptions to joint permitting that may occur if the State has already issued the draft or final permit. However, no consideration was given to the Region issuing the HSWA conditions prior to issuance of the State permit.

Beyond the policy memo noted above, I believe it is inappropriate to issue the HSWA portion independent of the rest of the permit. First and foremost, a permit is not a complete RCRA permit unless both the State and Federal portions have been issued. Therefore, issuing only the Federal Portion of the permit would have no practical impact. Without a complete RCRA permit, new facilities cannot begin construction, nor can existing facilities expand beyond the limits allowed under interim status. Furthermore, without the State permit, it is likely that the HSWA corrective action requirements could not be effectively enforced because §3004(u) authorities are linked to issuance of the RCRA permit.

For many facilities, there may also be valid technical reasons to issue the Federal and State portions simultaneously. Certain HSWA requirements may utilize data submitted for the baseline program permit, e.g., HSWA corrective action conditions may require a variety of data submitted by the facility for the State permit. For example, any corrective action for contaminated groundwater required for regulated units under Subpart F could directly impact ground-water investigations required for SWMUs under HSWA.

I also foresee a potential problem arising in public perception if the Federal portion is issued before the State permit. This may lead the public to expect that corrective action investigations and clean-up activities will be initiated, even though such conditions could not be properly enforced as noted above. More generally, the public may be confused by the separation of corrective action activities and the operating permit. Therefore, public participation efforts would be more effective if the State and Federal portions are issued together.

Your other question pertained to the impact on the HSWA conditions of a complete RCRA permit if the State portion alone is appealed. If a request for review of a RCRA permit is granted all contested permit conditions will be stayed, including any uncontested conditions which are not severable from the conditions in dispute. Therefore, whether or not the HSWA conditions would be stayed depends on whether they could be properly implemented without the contested conditions in the State permit. In many cases, HSWA conditions will be severable from contested portions of the State permit. Corrective action requirements to investigate releases from SWMUs, for example, could presumably begin while unrelated portions of the State permit

-3-

are strayed.

I hope I have answered your questions. If I can be of any further assistance, please let me know.

Attachment

cc: Bill Honker, Region VI
Suzanne Rudzinski
Matt Hale
Bob Kaysor
Dave Fagan
Frank McAlister
Carrie Wehling