

PPC 9541.1986(13)

AUTHORIZATION OF STATE PROGRAMS TO IMPLEMENT
LAND DISPOSAL RESTRICTIONS PROGRAMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUN 24 1986

Richard C. Fortuna
Hazardous Waste Treatment Council
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. Fortuna:

Thank you for your letter of May 21, 1986, expressing your concerns over the uniform application and enforcement of land disposal restriction regulations. I will answer your specific questions in the order in which they were presented.

Regarding uniform application of the Federal requirements in States which have established or are establishing their own pre-treatment levels:

As you know, Congress intended that the RCRA program be ultimately implemented at the State level. We have established a very detailed and comprehensive process for delegation of our Federal authority to qualified States. Through that process, States are required to prove their eligibility to receive delegation. Part of that proof involves a showing by the State that its enabling legislation, the rules which are promulgated under that authority, and the programs which are established to implement and enforce those rules are all equivalent to the Federal program. Only after our determination of overall program equivalency will we award the State the authority to operate its program in lieu of the EPA program. State programs may differ from the Federal program in only two respects. They may contain elements which are more rigorous or limiting than the Federal analog (more stringent programs), or they may contain elements of control and regulation which have no Federal counterpart program. As you know, we will be promulgating the land disposal restriction regulations under the authority of the Hazardous and Solid Waste Amendments of 1984 (HSWA). One unique aspect of that statute is that the agency will be responsible for implementing

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and enforcing its rules on their effective dates in all states, unless and until authority for implementation has been delegated to the States. Once a State program is authorized, EPA will guarantee continued consistent application of Federal requirements through annually negotiated program grants and memoranda of understanding with authorized States and also through oversight activities and overfilling when necessary. For your review, I have attached a copy of our Draft State Consolidated RCRA Authorization Manual which discusses the State authorization process in greater detail. Finally, the agency plans to develop guidance manuals for permit writers in the EPA Regional Offices and the States and will also be offering training opportunities to those individuals to guarantee universal understanding and consistent interpretation of Federal regulations.

Regarding a State's ability to establish treatment levels separate and apart from the land disposal restrictions:

Nothing and in the Federal program of the delegation process described above prevents a State from establishing its own standards. Indeed, State rulemaking is governed and directed by authorities bestowed on each State agency by its legislature. However, for the State to become federally authorized, those standards must be at least as restrictive as their Federal analogs. Where they are not, authorization will not be granted and, as noted above, the Federal standards will take effect immediately in the State, regardless of any less stringent or absent State requirements and will be implemented by EPA (see 50FR 28729, July 15, 1985).

Regarding specific steps to be taken to guarantee that Kansas maintains adequate control over hazardous wastes:

Neither EPA Headquarters nor Region VII was aware of Mr. Murphy's letter prior to its being sent. Since then, our Regional Office has had conversations with Kansas officials regarding the letter, and we will have more in-depth discussions in the near future. We will continue to support the State of Kansas in the implementation of their hazardous waste program since no Federal requirements have as yet been promulgated. However, when Federal regulations are effective, either those rules or equivalent rules promulgated by the State will govern hazardous waste activities in Kansas.

Regarding the criteria which will guide the process of evaluating the volume of waste generated by a small generator:

First, let me note that determinations of what is to be considered to be the volume (or weight) of hazardous waste are the same for any generator and small quantity generator requirements are considered only after the waste generation rate is established. Secondly, let me point out that the final determination of what exactly constitutes the waste is made by that agency operating the Federal program, either the appropriate EPA Regional office or the authorized State wherein the generator is located. Regarding the specific question of cartridge weights, EPA has consistently specified that the weight of the cartridge as well as the weight of the filter be included in the weight of the waste.

Regarding the effort of Federal land disposal restrictions in generators in States with more stringent or broader in scope programs:

In those instances where a more restrictive or broader in scope state program has received Federal authorization those states requirements will prevail. (Please note that in those situations where EPA finds it necessary to take enforcement actions against generators located in these States, EPA will enforce the more restrictive State requirement.) Where State programs have not been authorized, EPA is required by HSWA to implement and enforce the Federal standards. However, in these instances, nothing precludes the State from imposing its more restrictive requirements as well. Generators should consult their State officials directly to determine if such State standards are additionally in effect. Finally, in those instances where State and Federal requirements are in conflict or mutually exclusive, HSWA dictates that the Federal requirements will prevail.

Regarding the applicability of the Federal land disposal restrictions to residues from Totally Enclosed Treatment Facilities (TETFs):

Your interpretation is correct. There is no relationship between the source of a waste and that waste's acceptability for land disposal. Acceptance disposition of such residues is determined solely on the basis of that waste's characteristics and chemical composition. Finally, regarding applications for

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TETF determinations which the agency may have received, I am sorry but we at EPA Headquarters cannot satisfy your request. Such applications are submitted to the appropriate EPA Regional Office or authorized State. I recommend you contact the RCRA Branch Chiefs in our Regional Offices to secure that information. For your convenience, I have included the name, addresses, and telephone numbers of those individuals.

I trust this adequately addresses your concerns. Feel free to contact Mr. Bruce Weddle, Director, Permits and State Programs Division at (202)382-4746 if you have additional questions on the State authorization process or the procedures in place which guarantee consistent application of the Federal program.

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste

Enclosures

cc: Bruce Weddle
Michael Sanderson

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