PPC 9521.1991(02)

UNDERGROUND INJECTION WELLS USED IN HYDROCARBON RECOVERY

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

AUG 30 1991

MEMORANDUM

SUBJECT: Permit Status of Underground Injection Wells Used in Certain Hydrocarbon Recovery Operations

FROM: Sylvia K. Lowrance
Director
Office of Solid

TO: James R. Elder
Director
Office of Ground Water and Drinking Water

On April 2, 1991, OSW promulgated a rule that extended the compliance date for the Toxicity Characteristic until January 25, 1993 for groundwater that is reinjected through injection wells during certain cleanup operations. More specifically, application to produced groundwater from free-phase hydrocarbon recovery operations at petroleum refineries, marketing terminals, and bulk plants was deferred at the point at which the groundwater is reinjected. Without this extension, most reinjected groundwater from these operations would have become a RCRA hazardous waste on September 25, 1990.

The basis for this compliance date extension was a regulatory "impossibility" situation encountered at these operations. In many cases, the cleanup/recovery operations were mandated under State orders but would be banned under both RCRA and UIC regulations unless they were, among other things, part of a cleanup under either RCRA or CERCLA. The two-year extension was intended to allow time for the Agency to develop a mechanism to permit these wells (as Class IV) upon the January 25, 1993 compliance date of the TC. The purpose of this memorandum is to ensure that our offices work together to resolve this situation before that date.

In a February 19, 1991 memorandum from Peter Cook to Jeffery Denit (copy attached), it was stated that ODW's policy is that Agency approval of these operations under RCRA or CERCLA constitutes "authorization by rule" for the Class IV wells involved in the cleanup. Since this may be crucial to establishing the mechanism to allow continued operation of these operations, we should ensure that the affected programs are comfortable with this policy and that it is legally defensible.

Key issues include the meaning of "approved under RCRA or CERCLA." It must be determined whether this "approval" is in the form of a permit, a written order, or some less formal endorsement of the operation. Likewise, the scope of the RCRA permit-by rule provisions of 40 CFR 270.60 (b), which afford a RCRA permit to a UIC-permitted injection well, should be discussed and clarified. There are also procedural issues to be addressed, including whether the policy has been subject to sufficient public notice and comment.

Depending upon the resolution of these issues, one of several options may be preferred. If additional notice and comment is not required, an explanation of the policy could be included in an upcoming TC clarification notice planned by OSW. Otherwise, notice and comment requirements could be satisfied through an OGWDW rulemaking to codify the policy into the UIC regulations.

We look forward to working with you on this issue to ensure that the purpose of the compliance-date extension is realized. The OSW lead for this project is Dave Topping, who can be reached at 382-7737. Please have the appropriate member of your staff contact him at your earliest convenience.