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ENFORCING GROUNDWATER MONITORING REQUIREMENTS IN RCRA  
PART B PERMIT APPLICATIONS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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MEMORANDUM

SUBJECT: Enforcing Groundwater Monitoring Requirements in  
RCRA Part B Permit Applications

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TO: Regional Counsels  
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Existing regulations under the Resource Conservation and Recovery Act (RCRA) require owners and operators of hazardous waste land disposal facilities to conduct groundwater monitoring in order to obtain a Part B RCRA permit. (40 CFR 270.14(c)(4), (6), and (7); 40 CFR 264.98(h)(2) and 264.99(f)). To satisfy these requirements, owners and operators must, under certain circumstances, monitor for each constituent listed at 40 CFR Part 261, Appendix VIII.

Recently a number of Regional Offices, in response to inquiries from the regulated community, have questioned whether certain groundwater monitoring requirements might be waived in appropriate circumstances. Specifically questioned is the need to monitor for each and every constituent listed in Appendix VIII.

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There are essentially three arguments advanced to support selective waiver of the regulatory requirements:

- 1) certain constituents listed in Appendix VIII are unstable in water and therefore, will not be detected in groundwater using generally accepted analytical techniques;
- 2) EPA-accepted, standardized test procedures do not exist for some Appendix VIII constituents. Until such procedures are specified, EPA should not require facility owners to monitor for these constituents; and
- 3) certain constituents are not analyzable by a scan methodology. Testing for these constituents is difficult, and the individual chemical methods used are very expensive and should not be required unless there is some reason to believe that such constituents are actually present in the groundwater.

## DISCUSSION

Any request to waive or selectively enforce groundwater monitoring requirements runs counter to the high enforcement priority the Agency has assigned to groundwater monitoring violations and must be viewed carefully. Nevertheless, the Agency recognizes that there is technical merit to some of the contentions set forth above and is developing regulatory changes to correct these problems. Proposal of these changes by the Office of Solid Waste is expected in August 1984, and that Office plans to promulgate the changes as a final rule by early 1985.

Recognizing the problems created by existing regulations, we believe that it is permissible for Regional enforcement personnel to assign low priority to certain technical regulatory violations in appropriate circumstances. The first situation concerns the regulation which currently requires permit applicants to monitor for constituents which, because of their chemical properties, are not detectable in groundwater using generally accepted analytical techniques. The constituents that fall into this group are set forth at Attachment I to this memorandum. Because these constituents cannot be detected in groundwater, there is no conceivable environmental benefit

to be gained by requiring formal laboratory analysis.

The second situation which we believe merits low enforcement priority involves the failure to monitor for those constituents for which there are no EPA-approved test methods. These constituents are set forth at Attachment II to this memorandum. We believe that low enforcement priority is warranted in these cases because the absence of any approved test method makes meaningful analysis of any reported data difficult.

Unlike the first two situations, the last situation presented by permit applicants does not warrant any change in our enforcement priorities. This situation concerns the need to monitor for those constituents that are not analyzable by scan methodology. These constituents are listed in Attachment III to this memorandum. Applicants have argued that absent some indication that such constituents are present in the groundwater, no monitoring should be required.

This argument is not persuasive. The regulations clearly require analysis for these constituents. Unlike those constituents listed in Attachment II, accepted test procedures do exist for Attachment III constituents. The fact that such test procedures are expensive is legally irrelevant. Moreover, EPA has previously rejected the notion that facility owners can determine the hazardous constituents emerging from a land disposal unit from records detailing the wastes previously disposed of at the facility. Therefore, a facility owner's failure to monitor for these Attachment III constituents should ordinarily result in enforcement action.

Attachments

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## ATTACHMENT I

Acetyl chloride  
Aluminum phosphide  
Carbon oxyfluoride  
Dimethylcarbamoyl chloride  
Fluorine  
Methyl chlorocarbonate  
Methyl isocyanate  
Nitrogen dioxide  
Phosgene  
Toluene diisocyanate  
Zinc phosphide

## ATTACHMENT II

Cacasin

Ethylenebisdithiocarbamic acid

2-Fluoroacetamide

Iron dextran

Lasiocarpine

Mustard gas

Nitrogen mustard, N-oxide and HCl salts

Nitrogen mustard and HCl salts

Nitric oxide

Phosphine

ATTACHMENT III

Cyclophosphamide

Formaldehyde

Formic acid

Hexachlorohexahydrodimenthanonaphthalene

Hydroxydimethylarsine oxide

7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid

Selenourea

Streptozotocin

Strychine