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FACILITY'S OPERATING LIFE, DETERMINATION OF
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

DEC 3 1984

MEMORANDUM

SUBJECT: Determination of a Facility's Operating Life

FROM: George A. Garland, Chief Original Document signed
Financial Responsibility and Assessment Branch (WH-562B)

TO: William H. Taylor, Chief
Enforcement Section, Region 6

This memo addresses the questions raised by the State of Oklahoma in their letter to Region 6 dated September 6, 1984. Most of these questions concern how one determines the operating life of a facility for the purpose of calculating the trust fund pay-in-period. As requested, I also address the separate issue of how to treat recycling in the closure cost estimate.

1. How does one calculate a facility's operating life for determining the pay-in-period for the trust fund?

For permitted facilities, "payments into to trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter" (§§264.143(a)(3) and .145(a)(3)). For interim status facilities, "payments into the trust fund must be made annually by the owner or operator over the 20 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter" (§§265.143(a)(3) and .145(a)(3)).

For purposes of this requirement, the operating life of a facility must be presumed to end in that year in which the owner or operator currently expects to close his facility. His expected year of closure should be identified in his closure plan.

EPA should be able to determine, after reviewing the facility's operating record, whether the owner or operator's estimate of the year he expects to close his facility is reasonable. If EPA believes that the facility's operating life is less than that stated, we may require the owner or operator to change the closure plan.

2. Should a facility's operating life be determined based on existing, permitted unbuilt, or unpermitted unbuilt capacity?

The capacity of both permitted and interim status facilities to store or dispose of wastes for the purposes of determining the facility's operating life should be based on "the maximum extent of operation which will be unclosed during the life of the facility" as required in the closure plan under §§ 264.112(a)(1) and 265.112(a)(1).

Thus, for permitted facilities, operating life should be based on permitted capacity which may include unbuilt capacity. Operating life will not be based on unpermitted capacity. If the owner or operator later decides to increase capacity at a permitted facility by building additional units or expanding existing units, he must modify his permit.

For interim status facilities, operating life should be based on the capacity described in Part A of the facility's permit application. If the owner or operator later decides to increase capacity beyond what is stated in the Part A, the owner or operator must modify his Part A and his closure plan.

3. Are payments to the trust fund based on each individual unit or the facility as a whole?

Sections 264.143(a)(3), 264.145(a)(3), 265.143(a)(3), and 265.145(a)(3) state that the payments into the trust fund must be made over the remaining operating life of the facility (if less than the permit life or 20 years.) We cannot interpret "facility" as it is used here to mean "unit". Thus, the pay-in-period to the trust fund must be calculated for the facility as a whole. If the facility has more than one unit, the end of the facility's operating for purposes of calculating the trust fund pay-in period will be that year when the owner or operator expects to

close the last unit (assuming this period is less than the permit life or 20 years).

4. How does one determine the operating life of a tank or surface impoundment which can be refilled? How do treatment processes affect operating life?

During the operating life, the level of waste in a tank or an impoundment may vary. Filling and emptying is part of a tank or impoundment's normal operating life. Wastes may be treated, sludges may settle out, liquids may evaporate or be drained off, sludges may be dredged out and disposed of. While the level of waste in a tank or impoundment may fluctuate, the facility is still operating until the year the owner or operator has indicated he expects to close the facility.

Prior to the time the facility receives its final volume of waste, the owner or operator should be able to determine the year he expects to close based on the treatment or other storage and disposal processes he employs. If he plans to operate longer than he originally intended, he must modify his closure plan.

5. Should waste stored in tanks prior to recycling be considered a salable asset or liability for disposal?

Section 265.142(1) states that the cost estimate "must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive". Since EPA has no guarantee that there will be a market for wastes stored prior to recycling and that these wastes will be in a salable condition when recycled, such wastes should be considered a liability.

As discussed in the January 12, 1984 memo from John Skinner to James Scarbrough on closure cost estimates based on third party costs, the owner or operator of a recycling facility may continue to recycle wastes during the closure period as a legitimate closure activity. While the owner or operator need not include the cost of disposing of that inventory of waste that he anticipates will be eliminated because of recycling during closure, his cost estimate must reflect the labor and materials necessary for recycling that waste. It is important to point out that recycling may only continue for 90 days after the final

receipt of waste unless an extension of the closure period is granted by the Regional Administrator. The cost estimate must also include a reasonable estimate of the cost to dispose of that amount of waste which cannot be recycled with existing treatment capacity in the 90 days of closure.

If you have any further questions, please contact Alyce Ujihara of my staff at 382-4784.