

PPC 9481.1986(06)

USE OF ACLs UNDER THE RCRA AND CERCLA PROGRAMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Honorable Bob Dole
United States Senator
444 S.E. Quincy
Topeka, Kansas 66683

Dear Senator Dole:

Thank you for your June 24, 1986, letter on behalf of Ms. Sharilyn Dienst. Ms. Dienst expressed concern about the use of alternate concentration limits at RCRA/CERCLA sites. Specifically, Ms. Dienst raised questions regarding the RCRA/CERCLA consent orders on the N.I.E.S. facility in Kansas.

The ground-water protection standard (GWPS) under Subpart F of 40 CFR Part 264 requires a concentration limit for each hazardous constituent entering the ground-water from a RCRA regulatory unit. This concentration limit is established in the facility permit and serves as a concentration limit beyond which degradation of ground-water quality will not be allowed. These concentration limits determine when corrective action is required.

There are three possible concentration levels that can be used to establish the GWPS:

1. Background levels of the hazardous constituent;
2. Maximum concentration limits listed in Table 1 of Section 264.94(a) of the regulations; or,
3. Alternate concentration limits (ACLs).

The first two levels are established in the facility permit unless the facility owner or operator applies for an ACL.

To obtain an ACL, a permit applicant must demonstrate that the hazardous constituents detected in the ground-water will not pose a substantial present or potential hazard to human health or the environment. The factors used to evaluate ACL requests are nineteen specific items related to potential adverse effects on ground-water quality or hydraulically-connected surface water quality.

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An ACL demonstration is essentially a risk assessment and risk management process in which a determination of acceptable ground-water contamination is made. If the ACL demonstration relies on a showing that adverse effects on human health and the environment will be delayed rather than prevented, then the ACLs will not be granted. The permit applicant must provide evidence that the adverse impacts will be prevented.

The Agency has a draft ACL guidance which includes six case studies; including the case study which Ms. Dienst requested. The draft guidance is subject to change and is not EPA's official policy. The guidances, when finalized will serve to elaborate on the ACL criteria and to provide examples of acceptable ACL arguments through case study examples. We expect to finalize the guidance by the end of October, 1986.

EPA's Region VII office in Kansas City, Kansas, has the lead role in reviewing the NIES facility ACL application and making the final decision on the concentration limits.

Regarding Ms. Dienst's question about appeal rights, I suggest she call Mr. Lloyd Guerci, Director of EPA's RCRA Enforcement Division. His telephone number is (202) 382-4808. The process for orders under RCRA is presently under review. However, the RCRA process is expected to operate in the same manner as that for CERCLA orders. Under the CERCLA order process, public comment is sought by the respective EPA Regional Office. Once corrective action alternatives have been agreed upon by EPA and the responsible party, a draft consent order is usually published for public comment. Based on public comments EPA may renegotiate the order. In this way the public's views are taken into account. There often are ongoing discussions, such as public meetings, with the public involved throughout the process.

ACLs are usually granted through the permit process. Nationally, neither EPA nor authorized States have approved any ACL applications to date. However, Region IV, with Headquarter's concurrence, has given tentative approval for an ACL for nickel at a facility in Alabama. This ACL is awaiting permit issuance. The CERCLA program has made ACL-like decisions at one site: Sylvester, NH.

I hope this letter addresses Ms. Dienst's concerns. If I can be of any further assistance, please let me know.

Sincerely,

Original Document signed

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J. Winston Porter
Assistant Administrator