8. Storage of Restricted Wastes

When is the storage of restricted wastes not prohibited?

In section 3004(j) of RCRA, Congress expressly prohibited the storage of any hazardous waste restricted from land disposal "unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal."

In the final rule (51 FR 40572, §268.5), EPA has incorporated this language directly into provisions for generator accumulation and storage by owners or operators of treatment, storage, or disposal facilities. "The Agency believes that a storage limit of up to one year should generally provide sufficient time for an owner/operator to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal of restricted hazardous wastes while meeting the intent of Congress to prohibit long-term storage as a means of avoiding the land disposal restrictions. The burden is on the Agency to demonstrate that storage of restricted waste for periods less than or equal to one year is not in compliance with the storage provisions. The Agency also recognizes that there may be instances where one year does not provide sufficient time to accululate such quantities. Therefore, the Agency will allow an owner/operator to store restricted wastes beyond one year. Although, the owner/operator is not required to submit any data or application to EPA, in the event of an enforcement action, the burden of proving compliance with §268.50(b) is on the owner/operator. The Agency believes that this is reasonable because the record for this rulemaking indicates that less than one year should be sufficient. This provision does not apply to situations where back-ups at treatment or recovery facilities, operational difficulties, and repairs and maintenance result in additional delays" (51 FR 40583).