2. Corrective Action and Permits

If a release of hazardous waste or hazardous constituents from a solid waste management unit (SWMU) is identified after the issuance of a permit, can EPA reopen the permit and modify it to include additional investigation and/or corrective measures? Does the "permit as a shield" provision in 40 CFR 270.4(a) protect the facility from such action until the permit comes up for reissue?

Permits issued prior to November 8, 1984, the date of enactment of the Hazardous and Solid Waste Amendments, cannot be reopened to establish a Section 3004(u) corrective action program until reissuance. Permits issued after November 8, 1984, address releases from all solid waste management units (SWMUs) at the facility. During the permitting process EPA conducts a RCRA Facility Assessment (RFA) to determine whether there has been a release from any SWMU located within the facility's boundaries. The RFA also determines whether any further investigation or corrective measures are necessary. EPA will then develop a custom-made corrective action program which will be incorporated into the permit. Most permits currently being issued contain a reopener clause for newly identified releases after permit issuance. Absent such a reopener clause, if the Director receives information about a new release, then the authority under Section 270.41(a)(2) could be employed. Section 270.41(a)(2) states that when the Director has received new information that "was not available at the time of permit issuance (other than revised regulations [see Section 270.41(a)(3)], guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance" the permit may be modified during its term.

The "permit as a shield" provision in Section 270.4 does not provide a shield when new information such as mentioned above is obtained after permit issuance. The "permit as a shield" provision applies to standards that are established in the permit which cannot be arbitrarily changed by the Director during the term of the permit. Section 270.41(a)(3) allows a permit to be modified during its term due to amended standards or regulations at the request of the permittee (see 52 FR 45793). Section 270.41(a)(3) also allows the Director

2. Corrective Action and Permits (Cont'd)

to "modify the permit when the standards and regulations on which the permit was based have been changed by statute or amended standards or regulations" such as the land disposal restrictions in 40 CFR Part 268.

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