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RCRA CORRECTIVE ACTION PROCEDURES AND AUTHORITIES

January 31, 1986

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. Richard C. Fortuna  
Hazardous Waste Treatment Council  
1919 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Fortuna:

I am pleased to respond to your letter of December 30, 1985, in which you posed several questions regarding the Environmental Protection Agency's current policy approach to implementing the new RCRA corrective action authorities provided by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The following are our responses to the specific questions which you raised in your letter.

Q: Can a facility terminate interim status simply by withdrawing its Part A application?

A: A facility cannot simply withdraw its Part A application with the intention of terminating interim status and thereby absolve itself of any future RCRA responsibilities. As provided by 40 CFR 270.73, interim status is terminated when (a) final administrative disposition of a permit application is made; or (b) interim status is terminated as provided in §270.10(e)(5). Termination of interim status must take place according to the procedures specified in 40 CFR Part 124. Thus, a facility such as the one mentioned in your letter cannot terminate its interim status by simply withdrawing its Part A application. Interim status will additionally be terminated if a facility failed to certify under the Loss of interim Status provisions of HSWA, and may be terminated pursuant to an enforcement order. In any case, however, the termination of interim status does not terminate the facility's obligation to comply with interim status requirements, including groundwater monitoring and closure, permitting requirements or corrective action requirements.

Q: Are all land disposal units that received hazardous wastes after July 26, 1982, subject to the §3004 corrective action requirements, even if such a unit is closing? What if such units did not take hazardous wastes, but are releasing hazardous constituents?

A: Yes, all land disposal units that accepted hazardous

waste after July 26, 1982, are potentially subject to RCRA corrective action authorities. First, EPA would consider all such units to fall within the scope of its authority to issue corrective action orders to interim status facilities under Section 3008(h). EPA believes that Section 3008(h) applies not only to facilities operating under interim status, but also to all facilities that terminate interim status and facilities that accepted hazardous waste after November 1980, but never formally qualified for interim status. In addition, 40 CFR §270.1(c) currently requires units that receive hazardous waste after January 26, 1983, to obtain either operating permits or post-closure permits. These permits will require corrective action under 40 CFR 264.100 and Section 3004(u). Also, new Section 3005(i) requires all units receiving hazardous waste after July 26, 1982, to meet the requirements of Subpart F to 40 CFR Part 264. This includes requirements for corrective action for releases to groundwater under 40 CFR §264.100. To implement this requirement, EPA is in the process of amending §270.1(c) to extend permit applicability to units that received hazardous waste after July 26, 1982. These permits will also require corrective action under 40 CFR 264.100 and Section 3004(u). A land-based unit that does not receive hazardous waste, but releases hazardous constituents may fall under these corrective action requirements. We will assume for the purposes of answering your question that the unit accepted solid waste and is a solid waste management unit. All releases of hazardous constituents from solid waste units located within the boundaries of a facility that contains any hazardous waste unit subject to the Section 3008(h) interim status order authority or subject to permit requirements will fall within the scope of the new corrective action requirements. Section 3008(h) allows EPA to order cleanup of releases from solid waste units at facilities within the scope of the interim status corrective action authority; Section 3004(u) requires cleanup at facilities that obtain permits.

Q: When is a facility or unit that undertakes closure subject to corrective action for continuing releases, and under which authorities: §3005(c) post-closure permits, §3004(u), §3008(h), or §3005(i)? Under what circumstances would different or dual authorities be used at the same facility? Which units would be subject to post-closure permits, and which units subject to other corrective action mechanisms?

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A: As explained above, if a closing unit has caused a release requiring corrective action, that corrective action can be required through either a post-closure permit (using the authority of §264.100 or §264.101, depending on the type of unit and the type of corrective action required), or through an enforcement order. (We are assuming that, by referring to closure, you are describing a facility that has at least one unit that accepted hazardous waste.) Section 3005(i) of RCRA does not of itself provide a separate mechanism for corrective action; rather, it simply establishes the applicability of Part 264 standards to regulated units.

The exact mechanism(s) which will be used to require corrective action will depend on the specifics of the situation at the facility. The scope of the corrective action authorities under §3008(h) and §3004(u) are similar. Regions and States are in the process of preparing plans for environmentally significant facilities to determine which authority, or combination of permitting and enforcement authorities, may be appropriate and yield most effective environmental results. An example of a situation where a mix of authorities might be used to implement corrective action could be a facility where a serious release situation is known to exist, but where a permit for the operating units at the facility will not be issued for a substantial period of time. A §3008(h) enforcement order could be issued to compel the owner/operator to begin the necessary investigations and/or implement required corrective actions, while the permit is being prepared. When the permit is issued, the remaining corrective action activities would be conducted under the permit.

As explained in the previous response, the facilities currently subject to post-closure permits include all of those facilities that had an operational land disposal unit as of January 26, 1983. If a facility is subject to a post-closure permit, all solid waste management units at that facility are covered by that permit.

Q: What monitoring requirements are or will be imposed at such facilities to determine the nature and scope of the required corrective action?

A: Regulated units which close under interim status are subject to the applicable ground water monitoring requirements of Subpart F of Part 265. The adequacy of existing ground water monitoring systems will be evaluated as part of the closure process, and if

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necessary, will be required to be upgraded. If ground-water contamination is detected, the owner/operator is required under §265.93 to make an assessment of the nature and extent of contamination. In addition, the units are subject to other authorities, including post-closure permits and orders under Sections 3013 and 3008. Upon issuance of a post-closure permit, the applicable requirements for ground water monitoring, including compliance monitoring and corrective action, must be complied with. As indicated by the preamble of the final codification rule, the Agency will generally look to the protection standards of Subpart F for clean up levels for releases to ground water at solid waste management units. EPA is developing technical guidances for investigations at solid waste management units.

Q: Would units that stored or managed fuels deemed to be hazardous under State law also be considered solid waste management units? Under what circumstances, if any, would such units not be solid waste management units?

A: The question of whether or not a unit which stores or manages a fuel would be classified as a solid waste management unit depends, in part, on whether or not that fuel is considered to be a solid waste under Part 261 RCRA regulations. If the fuel is a solid waste, the unit would be a solid waste management unit.

Q: How does EPA Headquarters plan to interact with the States and EPA Regional Offices to ensure that closures of interim status facilities address the corrective action requirement?

A: The Office of Solid Waste and Emergency Response currently is examining a number of issues relating to closing RCRA facilities and integration of corrective action at those facilities. We expect to be issuing guidance to the Regions and States addressing the specific issues which you have raised, and others, in the future.

Please let me know if you have any questions.

Sincerely,

Original Document signed

J. Winston Porter  
Assistant Administrator

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