

9477.1994(04)

CLARIFICATION OF CERTAIN CLOSURE COST ESTIMATE REQUIREMENTS  
APPLICABLE TO FACILITIES SEEKING A PERMIT

United States Environmental Protection Agency  
Washington, D.C.  
Office of Solid Waste and Emergency Response

July 25, 1994

Ms. Ann Claassen  
Weinberg, Bergeson & Neuman  
1300 Eye Street, N.W.  
Suite 1000 West  
Washington, D.C. 20005

Dear Ms. Claassen:

This letter responds to your request of July 6, 1994 for clarification of certain closure costs estimate requirements applicable to facilities seeking a permit under 40 CFR 254. In your letter you request guidance on three approaches for developing a cost estimate for a containment building. As you know, containment buildings and other units subject top RCRA permit requirements must prepare cost estimates for closure as specified in 40 CFR 254.142.

In brief, Section 264.142 requires that cost estimates must equal the cost of closure of a facility at the point where closure would be most expensive. estimates must be based on the costs to an owner or operator of hiring a third party to close the facility. The cost estimate may not incorporate any salvage value for waste, equipment, land, or other assets associated wit the facility. Finally, the owner or operator may not incorporate zero cost for hazardous or non-hazardous wastes that might have economic value.

In the first approach you describe a situation where the costs to an owner or operator of performing part of the facility closure would be factored into the closure cost estimate. In 40 CFR 264.142(a)(2) the regulations specify that, "...the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility." Since this approach would base the closure cost estimate on the owner or operator performing part of the closure, the cost estimate would not reflect

the costs of a third party closing the facility. Therefore, this approach would not meet the requirements of 40 CFR 264.142.

The second approach describes a situation where an owner or operator would hire a third party to close the facility. The third party would complete closure as specified in the closure plan. Closure activities performed by the third party would include removing all waste and decontaminating the facility. Since the cost estimate in this approach would be based on the costs to an owner or operator of hiring a third party to close the facility, this approach would meet Part 264 requirements for closure cost estimates.

Finally you ask if the third party that provides the cost estimate could be the sister corporation of the closing facility. You define a sister corporation as a corporation that shares the same corporate parent as another corporation. According to 40 CFR 264.142(a)(2), a third party is defined as, "...a party who is neither a parent nor a subsidiary of the owner or operator." A parent corporation and subsidiary are defined in CFR 264.141(d) as, "...a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the later corporation is deemed a 'subsidiary' of the parent corporation." Therefore, a sister corporation would qualify as an acceptable third party under Section 264.142.

In summary, under 40 CFR 264.142 facilities that manage RCRA hazardous waste must provide a closure cost estimate that is based on a third party conducting the closure. The third party providing the estimate may be corporate sister of the facility requiring the closure cost estimate. Your letter describes a hypothetical situation only. Therefore, the actual cost estimate may vary depending on the circumstances at a specific facility.

Please be aware that under Section 3006 of RCRA (42 U.S.C. Section 6926) individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. When states are not authorized to administer their own program, the appropriate EPA Regional office issue the permit and is the appropriate contact for any case-specific determinations. Please also note that under Section 3009 of RCRA (42 U.S.C. section 6929) states retain authority to promulgate regulatory requirements that are more stringent than federal regulatory requirements. In this letter, we have answered your questions in terms of federal

requirements. To determine the status of specific facilities in an authorized state you should consult the appropriate state regulatory agency.

If you have any questions concerning this response, or would like to discuss the issue further, please contact Timothy O'Malley of the Permits and State Programs Division at (703) 308-8613.

Sincerely,

Michael Shapiro  
Office of Solid Waste

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Attachment  
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Weinberg, Bergeson & Neuman  
1300 Eye Street N.W.  
Suite 1000 West  
Washington, D.C. 20005

July 6, 1994

Via Hand Delivery

Mr. Michael H. Shapiro (5301)  
Director, Office of Solid Waste  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

RE: Closure Cost Estimate for Secondary  
Smelter Containment Building

Dear Mr. Shapiro:

We are writing to request clarification of certain closure cost estimate requirements under rules implementing the Resource Conservation and Recovery Act (RCRA) as applied to the hypothetical facts described below. Your expedited response to the questions set forth below would be greatly appreciated.

#### Hypothetical Facts

Assume that secondary smelter, which recovers the lead value from lead-acid batteries and other lead-bearing materials, has constructed a containment building. The facility has applied for a permit modification to include the containment building in its Part B permit, which is being processed.

After cracking, lead-bearing battery parts and other lead-bearing material would be temporarily staged in the containment building, prior to smelting into lead ingots. The lead ingots are sold as commodities. The total time period from the receipt of a batch of used batteries and other lead-bearing materials to the manufacture of lead ingots is approximately thirty days. The total maximum inventory of hazardous wastes in the containment building

is approximately 10,000 cubic yards.

## Regulations

The RCRA regulations for containment buildings provide that the closure plan for the building must comply with Subparts G and H of Part 264 (see footnote 1). Subpart G requires that, "[w]ithin 90 days after receiving the final volume of hazardous wastes...the owner or operator must treat, remove from the facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan" (see footnote 2). Subpart H requires that the owner or operator have a detailed written estimate of the closure cost, subject to the following: (see footnote 3)

- (1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan ...; and
- (2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator...;
- (3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes...;
- (4) The owner or operator may not incorporate a zero cost for hazardous wastes ... that might have economic value.

## Questions

In light of the above hypothetical facts and the regulations, we request your guidance on whether any of the following three approaches to preparing a closure plan and closure cost estimate would be acceptable to EPA.

1. May the closure plan include the provision that, after receipt of the final volume of hazardous waste (i.e., used lead-acid batteries and other lead-bearing materials), the owner or

operator will continue to process its inventory into lead ingots which will be sold as commodities? As stated above, complete processing of batteries usually can be accomplished in a thirty-day period, and it certainly can be accomplished within a ninety-day period, even for the maximum possible inventory under the hypothetical facts set forth above. Thus, within ninety days of receipt of the final volume of hazardous waste, no lead-bearing materials used as feedstock in the manufacture of lead would remain in the containment building. The closure cost estimate for the containment building would be the costs to the facility to process the inventory into lead ingots, plus the costs for a third party to remove or decontaminate all hazardous waste residues, contaminated structures, contaminated equipment, and so forth.

Memoranda written in 1983 and 1984, and included in the RCRA Permit Policy Compendium, indicate that this would be an acceptable approach to the closure plan and the closure cost estimate (see footnote 4). Copies of these memoranda are appended.

This approach (reduction of the waste inventory during closure by the owner or operator) is not contrary to the prohibition against incorporating salvage value into the closure cost estimate, because the continued processing and reclamation of the lead battery parts and lead-bearing materials is not "salvage" of the parts, but merely constitutes the continued and legitimate recycling of those materials, and the value of any lead ingots sold from the facility after receipt of the final volume of hazardous waste is not being used to offset closure costs. Rather, the closure cost estimate is based on the closure costs associated with the facility processing the batteries into commodity lead ingots, plus necessary decontamination after these recycling activities are complete. For the same reasons, this approach does not involve setting a zero cost for hazardous wastes.

This approach, wherein the estimated costs of continued recycling would be those of the owner/operator, may no longer be acceptable, however, in light of the 1986 amendments to the RCRA regulations requiring that closure cost estimates be based on third-party costs (see footnote 5). We would appreciate clarification of whether the 1984 memoranda are still valid interpretations.

2. As an alternative to the above approach, could the closure plan for the containment building specify that, upon receipt of the

final volume of hazardous waste, the existing inventory of lead batteries, battery parts, and lead-bearing materials will be removed within ninety days by the owner operator of a separate (i.e., third party) secondary smelter which will then reclaim the materials at their smelter? Under this scenario, the closure cost estimate would be based on the amount charged by the third-party smelter to remove the lead battery and lead-bearing materials, plus the costs necessary to remove or decontaminate waste residues, building equipment, and so forth. The closure plan could include a fully executed contract between the facility and the third-party smelter that would obligate the latter to remove all lead battery and lead-bearing materials whenever closure occurs and that would specify the cost to be charged by the third party for this service.

Again, this approach would not involve using salvage costs or economic value to offset closure costs. Rather, it involves removal of the hazardous waste from the facility within ninety days, in accordance with the closure plan and the requirements of 40 C.F.R. 264.113(a). The closure cost estimate is then the costs charged by the third-party smelter to take the wastes (as specified in an enforceable contract), plus costs to remove or decontaminate all waste residues and contaminated materials remaining after waste inventory has been reduced during closure.

3. Assuming the second approach is acceptable, may the third-party smelter be a sister corporation of the facility? That is, assume the facility, XYZ, is wholly-owned subsidiary of corporation ABC. ABC has a separate wholly-owned secondary smelter, PQR. Thus, XYZ and PQR are sister corporations, with the common parent of ABC. May the closure plan specify that, upon receipt of the final volume of hazardous waste at XYZ, PQR will remove all existing inventory within ninety days?

Thank you in advance for your assistance with these matters. We request an expedited reply. If you have any questions, please call me at (202) 962-8547.

Sincerely,  
Ann Claassen

Attachments

cc: Mr. David Hockey (5301)  
OSW Special Assistant

Mr. Tim O'Malley (5303W)  
Financial Responsibility section  
Permits Branch

- 1 40 C.F.R. §264.1102(a)
- 2 40 C.F.R. §264.113(a) (emphasis added).
- 3 40 C.F.R. §264.142(a)
- 4 The memoranda are: John H. Skinner, Director, Office of Solid Waste, to James H. Scarbrough, Chief, Residuals Management Branch, Region IV, "Closure Cost Estimates Based on Third Party Costs" (January 12, 1984); Chief, Residuals Management Branch, Region IV, to John Skinner, Director Office of Solid Waste, "Closure Plans and Cost Estimates-Treatment of Waste Inventory As Part of Closure Activities" (November 22, 1983); Inventory As Part of Closure Activities" (November 22, 1983); and George A. Garland, Chief, Financial Responsibility and Assessment Branch, to William H. Taylor, Chief, Enforcement Section, Region 6, "Determination of a Facility's Operating Life" (Dec. 3, 1984).

These memoranda are contained in: U.S. EPA, Solid Waste and Emergency Response (OS-343), RCRA Permit Policy Compendium, Volume 7, EPA/530-SW-91-062G, (1991). In the compendium, the memoranda are numbered 9477.1984(01), 9477.1984(01) Attachment, and 9477.1984(07), respectively.

- 5 See 51 Fed. Reg. 16422, 16436-37 (May 2, 1986).