

PPC 9525.1986(02)

AMENDED DEFINITION OF SOLID WASTE-  
PERMIT MODIFICATIONS

MAR 27 1986

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Robert T. Stewart  
Jones, Day, Reavis and Pogue  
2300 LTV Center  
2001 Ross Avenue  
Dallas, Texas 75201

Dear Mr. Roberts:

Thank you for your letter of February 10 concerning RCRA permit modifications. In that letter, you requested advice as to whether a facility with a RCRA permit would need to have its permit modified because of the amended definition of solid waste. Your letter described two separate scenarios, each of which is addressed below.

In the first case, a facility had received a RCRA permit and a unit at that facility was handling an unregulated material described in the Part B application. Through the redefinition of solid waste, the material is now defined as a hazardous waste. In this instance, the need for a permit modification would have to be determined on a case-by-case basis. If the handling of the previously unregulated material was not detailed in the draft permit that received public comment, or if conditions contained in the permit specifically exempted that unit from RCRA standards, then a permit modification would be required. If the unit and the waste was fully detailed in the draft permit and was subject to full RCRA standards, then a permit modification would not be required.

In the second case, a facility had received a RCRA permit which included a unit that was handling an unregulated material, however, the material was not described in the Part B application. The applicable law in this case is Section 3005(e)(1) of RCRA which provides that any facility in existence on the effective date of RCRA statutory or regulatory changes that render the facility subject to the requirement to have a permit or interim status may qualify for interim status. Section 3005(e)(1), however, is limited to facilities which become subject to the requirement to have a permit. Units at facilities described above are not eligible for interim status since interim status terminated upon issuance of the permit. In order for these units to handle a newly regulated waste, a facility must apply for a permit modification before the effective date of the statutory or regulatory amendment mandating such change.

Your letter also stated that allowing newly regulated units to obtain interim status would be consistent with 40 CFR 270.1(c)(4) which allows partial permitting of a facility. We disagree with your interpretation, however, that the section also extends to eligibility for interim status. Finally, your letter stated that requiring permit modifications would put permitted facilities at an unfair disadvantage with interim status facilities. We agree that the procedures for adding new wastes are less burdensome for interim status facilities. However, newly regulated units at such facilities are not automatically eligible for interim status. Under 40 CFR 270.72, a revised Part A permit application must be submitted prior to any change during interim status. If the change results in an increase in the design capacity of the facility, approval may only be granted because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities. In no event can a change during interim status exceed fifty percent of the capital cost of a comparable new facility.

We recognize that current requirements for adding new hazardous wastes at permitted facilities place a difficult burden on both the owner/operator and the permitting authority to submit and process modification applications in a timely manner. We are currently exploring regulatory alternatives that would provide some relief in this area.

If you have any further questions on this subject, please contact Peter Guerrero, Chief Permits Branch, at 382-4470.

Sincerely,

Original Document signed

Marcia E. Williams  
Director  
Office of Solid Waste