

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

April 6, 1990

MEMORANDUM

SUBJECT: CERCLA Response Activities and the Land Disposal Restrictions Program's Applicability at Plattsburgh Air Force Base

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Stephen D. Luftig, Director
Emergency and Remedial Response Division, Region II

In a memorandum of February 12, 1990, Region II raised several questions about the applicability of the Land Disposal Restrictions (LDRs) program to a remedial action at a DDT spill site. In summary, Plattsburgh Air Force Base had stockpiled high-grade DDT pesticide on a storage pad, beginning in 1970. By 1972, all of the drums had corroded and either spilled or leaked onto the ground, adjacent to the pad. As a result, the soil is currently contaminated with DDT, a halogenated organic compound (HOC), in excess of 1000 mg/kg in some areas. The facility has been listed on the National Priorities List.

In completing the study of the site, several cleanup options are being evaluated. However during this consideration, questions arose as to whether the options would satisfy the LDRs. Specifically, you ask for clarification on capacity variances. Treatability variances, and whether the treated waste can be redeposited on-site.

Capacity Variances

In the Third proposal, a national capacity variance is not proposed for U061 (DDT); the Agency believes that sufficient incineration capacity exists for treatment of halogenated organic wastes. However, the proposal further states that where soil and debris are contaminated with First, Second or Third wastes with a BDAT treatment standard based on incineration, a two-year national capacity variance will be granted.

During a national capacity variance, if the waste is not treated in compliance with the BDAT treatment standard and is disposed of in a landfill or surface impoundment, the landfill or surface impoundment must meet the minimum technological requirements (MTRs) of 40 CFR 264 Subpart N.

In addition, during a national capacity variance the waste must meet any applicable standard (e.g., California list prohibition) that normally would be superseded by a more waste-specific standard such as that for U061.

Soil containing HOCs in excess of 1000 ppm is subject to the LDRs via the California list prohibitions. (See Part 268, Appendix III.) At CERCLA/RCRA corrective action sites, this soil has a national capacity variance that expires on November 8, 1990. As a result, soils containing HOCs above the prohibition level may currently be disposed of in landfills or surface impoundments that meet the MTRs. After November 8, 1990, the soil must be incinerated in accordance with 40 CFR 268.42 (a) (2), or meet any alternative standard established through a treatability variance.

Treatability Variances

Superfund's guidance document, "Obtaining a Soil and Debris Treatability Variance for Remedial Actions," outlines the process to be followed for establishing alternative treatment levels for RCRA hazardous waste. In this particular case, if a treatability variance is granted for the California list HOCs and not U061, the treated waste can be placed in a landfill or a surface impoundment only if it meets the minimum technological requirements. This is due to the fact that California list prohibitions are a minimum requirement, and U061 is a First Third "soft hammer" waste that will remain a restricted waste after May 8, 1990 (assuming that a national capacity variance is granted to soils containing a waste with a BDAT treatment standard based on incineration). See 53 FR 31188.

If a treatability variance is granted for U061, once the alternative treatment level is satisfied, disposal may occur in any Subtitle C unit. This results from the fact that the alternative treatment standard established for U061 will supersede the treatment standard for the California list HOCs. For more detailed information on obtaining a treatability variance, you can contact Marc Turgeon of my staff at 382-7917.

On-site Units

Your final question was whether waste that has been treated in compliance with the applicable Part 268 standard can be redeposited on-site in the unit from which it was removed. The answer, while not entirely clear, is in most cases "yes." In the National Oil and Hazardous Substances Pollution Contingency Plan final rule (signed February 2, 1990), page 267 states: "EPA believes that it is appropriate generally to consider CERCLA areas of contamination as a single RCRA land-based unit or 'landfill'." Furthermore, in most cases these areas of contamination (AOCs) are not subject to the design and operating requirements for Subtitle C landfills (40 CFR 264.301) because they are existing portions of the landfill. Any lateral expansion of the existing unit, however, would trigger the minimum technological requirements of 40 CFR 264.301 (c).

Given these facts, the design requirements are not applicable when soil that has been treated in compliance with the applicable part 268 treatment standard is redeposited on-site in the existing AOC.

However, as noted in Superfund Directive 9234.2-04FS, "RCRA ARARS: Focus on Closure Requirements":

RCRA requirements that are not applicable may, nonetheless, be relevant and appropriate, based on site-specific circumstances. . . .For example, minimum technology [sic] requirements may be considered relevant and appropriate for one area receiving waste because of the high potential for migration of contaminants in hazardous levels to ground water, but not for another area that contains relatively immobile waste.

A related question pertinent to on-site disposal is whether redeposition of the waste into the AOC would cause the AOC to be considered a replacement unit and thereby trigger the MTRs. In short, the MTRs would not apply because the AOC is not receiving "new" waste, and thus, is not being reused. (See attached memorandum from Marcia Williams, Director, Office of Solid Waste, to James Scarbrough, April 12, 1986, response #3.)

Finally, although the design and operating requirements contained in Subpart N may not be applicable, there may be other requirements that will be applicable. For example, RCRA closure requirements must be met.

I hope this memorandum clarifies these issues. Some of the issues that you raised regarding capacity extensions are not fully resolved at the Third final rule is still under development. If you have any further comments or questions, please contact Debbie Wood at FTS 382-4770.

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