

PPC 9480.1996(01)

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY WASHINGTON, D.C. 20460

February 20, 1996

Barry L. Vedder  
2014 Austin Place  
Richland, WA 99352

Dear Mr. Vedder:

Thank you for your letter of January 11, 1996 requesting clarification on several aspects of the RCRA corrective action program. The following are responses to the four questions that you raised in your letter:

- 1) Are operating RCRA TSD units (e.g., hazardous waste tank systems, surface impoundments, etc.) considered solid waste management units?

Yes. RCRA regulated units are defined in 40 CFR 264.90 as surface impoundments, waste piles, land treatment units, and landfills that received hazardous waste after July 26, 1982. RCRA regulated units are a subset of the universe of solid waste management units (SWMUs).

- 2) Is RCRA corrective action authority applicable to such units in the event that the unit has had a release to the environment?

Yes. The 1984 HSWA amendments extended corrective action authority to all solid waste management units at TSDFs which received solid or hazardous waste at any time; as described above, the universe of SWMUs includes regulated units.

At the same time the HSWA corrective action provisions were enacted, corrective action for releases to ground water from RCRA regulated units was already provided for under 40 CFR 264 Subpart F. As specified in 264.90(a)(2), all regulated units must be in compliance with 264.91 through 264.100 in lieu of 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. In practice, cleanup of groundwater and other contamination (e.g., source materials or contaminated soils) at regulated units is often accomplished under one administrative vehicle. For example, a single Federal 3008(h) corrective action order, or 3004(u) corrective action permit condition, can

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compel cleanup of groundwater and other media at regulated units. However, in other cases, such as when a state is authorized for the RCRA groundwater requirements but not for corrective action, cleanup at a regulated unit may be undertaken under more than one administrative vehicle, with groundwater cleanup conducted under a state permit and other cleanup under a Federal corrective action permit or order.

- 3) Regulations at 40 CFR 270.72(b)(5) remove the reconstruction limit at interim status facilities with regards to changes necessary to comply with an interim status corrective action order. If corrective action is mandated at an operating RCRA TSD unit at an interim status facility, would changes necessary to comply with the order be exempt from the reconstruction limit?

Yes. The exemption listed at 270.72(b)(5) from the reconstruction limit applies to corrective action activities that originate within the boundaries of an interim status facility, including from within regulated or solid waste management units.

- 4) Application of corrective action authority to closing TSD units could result in significant overlap. Is it EPA's intent that corrective action requirements be spelled out in the closure plan for the unit, or will the closure activities be held in abeyance pending completion of corrective action?

EPA has long recognized the need to more effectively integrate corrective action and closure activities. Toward this end, the Agency proposed a rule entitled "Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement" (59 FR 55778, November 8, 1994). In this notice, the Agency proposed and sought comment on revisions to the current requirements applicable to facilities with closed and closing land disposal units, as well as revisions to the requirements for State authorization for corrective action. These provisions were proposed as part of the Agency's efforts to create a consistent approach to cleanup at RCRA facilities. EPA is completing its review of comments on these proposed provisions and plans to proceed with promulgation of the final rule in the near future. The current regulations at 40 CFR Part 270.1 require owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure after January 26, 1983 to obtain a post-closure permit for the facility, unless they demonstrate closure by removal at those units

(commonly referred to as "clean closure"). For facilities that did not receive an operating permit, and closed under interim status standards, this post-closure permit serves to impose several critical statutory and regulatory requirements, including the requirement for facility-wide corrective action.

At the present time, the agency does not intend that closure activities need be held in abeyance pending completion of corrective action activities in all cases, or that corrective action requirements need always be specified in a closure plan. Given the interrelationship of many closure and corrective action activities (e.g., both closure activities and corrective action at closing units typically involve removal of wastes or contaminated media), the agency encourages coordination between these activities that results in the most effective and expedient approach to cleanup and closure of regulated units. This coordination may take several forms, including specification of corrective action activities in closure plans, concurrent activities under closure and corrective action, or incorporation of closure activities into corrective action permits or orders. Which approach is taken depends upon site-specific factors including state authorization, extent of site contamination, and types of remedial activities.

I hope that this has helped to clarify the issues that you have raised. If you have any further questions, please contact Hugh Davis at (703) 308-8633.

Sincerely yours,

Michael Shapiro, Director Office of Solid Waste

cc: Dave Bartus, EPA Region X

Moses Jaraysi, Washington State Department of Ecology Joe

Witczak, Washington State Department of Ecology

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Attachment  
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2014 Austin Place  
Richland, WA 99352

January 11, 1996

Michael Shapiro  
Director, Office of Solid Waste  
U.S. Environmental Protection Agency  
401 M Street, SW 5301  
Washington, DC 20460

Dear Mr. Shapiro,

The purpose of this letter is to request clarification regarding EPA's interpretation of the RCRA corrective action authority. There seems to be some confusion in the regulated community regarding whether this authority applies to RCRA TSD units, or only to non-TSD solid waste management units (SWMUs) at a RCRA TSD facility. This confusion may result, in part, as a consequence of the pre-HSWA corrective action authority applicable to "regulated units." Indeed, the regulations indicate that there may be two corrective actions - one applicable to regulated units (including certain TSDs) promulgated at 40 CFR 264.100 and a second corrective action for all other SWMUs pursuant to 40 CFR 264.101. This appears to be clarified at 40 CFR 264.90(a)(2), which imposes the standards of 40 CFR 264.101 to all SWMUs, with the requirements of 40 CFR 264.91 through 264.100 applicable to regulated units with regards to releases to the uppermost aquifer. The discussion at 50 Federal Register 28714 (July 15, 1985) appears to support this interpretation.

In any event, your response to the following questions is requested in order to help clarify RCRA corrective action authority as applied to RCRA TSD units:

1. Are operating RCRA TSD units (e.g., hazardous waste tank systems, surface impoundments, etc.) considered solid waste management units?
2. If the answer to question 1 is "yes," does that mean that RCRA corrective action authority is applicable to such units in the event that the unit has had a release to the environment?
3. Regulations at 40 CFR 270.72(b)(5) remove the reconstruction limit at interim status facilities with regards to changes necessary to comply with an

interim status corrective action order. If corrective action is mandated at an operating RCRA TSD unit at an interim status facility, would changes necessary to comply with the order be exempt from the reconstruction limit? (This question and question 4 assume that questions 1 and 2 are answered in the Affirmative.)

4. Application of corrective action authority to closing TSD units could result in significant overlap. Is it EPA's intent that corrective action requirements be spelled out in the closure plan for the unit, or will the closure activities be held in abeyance pending completion of corrective action?

Your response to these questions will enhance my understanding of EPA's interpretation of the federal corrective action authority. I recognize that state requirements may impose additional scope or stringency to the corrective action requirements, and that the responses you provide will necessarily be based upon interpretation of the federal standards of 40 CFR 264 rather than any state "add-ons."

Thank you in advance for your time and consideration on the issues raised in this request.

Sincerely yours,  
Barry L. Vedder