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REGULATORY STATUS OF CONTAMINATED GROUNDWATER

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 11 1987

MEMORANDUM

SUBJECT: Regulatory Status of Contaminated Ground Water

FROM: Jack McGraw, Deputy Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Robert Duprey, Director
Waste Management Division
Region VIII

Thank you for your February 17, 1987, memorandum regarding applicable requirements for units in which ground water contaminated with hazardous waste is to be treated as part of a corrective action program.

Your first question centered on whether a treatment system at an interim status facility can operate without a permit if 270.14 and Part 264 standards are incorporated into a 3008(h) order. Since the facility in question is operating under interim status, the treatment system should be handled as a change during interim status during 270.72(c) in conjunction with issuance of the 3008(h) order. The Part 264 standards for permitted facilities or 270.14 permit application information requirements are not applicable unless the changes at the facility amount to reconstruction under 270.72(e). If the change would amount to reconstruction, a permit would be required for the treatment system.

Your second question concerned the leakage of hazardous waste compounds from process areas, and whether such leakage met the definition of "discarded" definition of 261.34. Such activity does meet the "discarded" definition of 261.33, as long as the leaked material was not being beneficially

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used or reused, or legitimately recycle or reclaimed (_261.2, _261.3).

-2-

The last question focused on whether a hazardous waste treatment unit which is to be constructed for the purpose of treating contaminated ground water at a facility without interim status would be required to obtain permit. Sections 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for "treatment and containment activities during immediate response" to hazardous waste discharges and imminent and substantial threats of discharges. The effect of this exemption is to promote hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threat of discharges from time consuming requirements.

If the activity in question could be considered an "immediate response," the exemption from permitting and interim status standards for the treatment units would be appropriate. Once the immediate response is over, however, the units would have to comply with permit requirements under Parts 270 and 264. It should also be noted that if the treatment system in question were to meet the definition of a "wastewater treatment unit" in _260.10, the system would not require a permit nor be required to meet Part 264 standards (_270.1(g)(6)). Please note that, in any case, Part 264 standards would not be imposed under a Section 3008(h) order. Rather, as described in our response to your first question, interim status standards would apply.

If you have any further questions regarding these issues, please contact George Faison at FTS 382-4422.

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