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STATUS OF FACILITY WHERE A TEMPORARY DELISTING EXCLUSION
WAS NEVER GRANTED

FEB 24

MEMORANDUM

SUBJECT: Regulatory Status of Temporarily and Informally
Delisted Wastes

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562)

TO: Solid Waste Branch Chiefs
Regions (I-X)

A number of questions have arisen regarding the status of informally excluded wastes (i.e., those facilities that submitted delisting petitions and were informed via letter that their wastes would be delisted). After discussions with Enforcement personnel, the Office of General Counsel, and Congressional staff, we have determined that informal exclusions are no longer effective. This memorandum sets our current policy with regard to informal exclusions.

First, however, I would like to review where we stand with regard to petitioners with temporary exclusions. As you are aware, those facilities that were granted temporary exclusions are those that were noticed in the Federal Register (see attached list). These exclusions terminate on November 8, 1986, unless the Agency grants a final exclusion before that date. Petitioners with temporary exclusions, that have outstanding data requests, have been notified by letter that if a complete petition is not received by a certain date, we will propose to deny their petition based on insufficient data. The first notice of this kind was published at 51 FR 2526, January 17, 1986.

Informal exclusions, on the other hand, are those previous decisions where the staff of the delisting program evaluated the petition, and decided to grant the exclusion; however, the decision was never published in the Federal Register, as required under 5260.22(m). (See attached list.) The Agency informed the

petitioners and Regional enforcement counsel of the anticipated delisting. We requested that the Regions exercise discretion with regard to these facilities until the decision was published in the Federal Register as a temporary exclusion. While the Agency informed petitioners and enforcement counsel that this interim period should be short, no specific time period was mentioned.

It was ultimately decided, however, not to publish the decisions in the Federal Register due to the anticipated changes in delisting criteria as a result of the Amendments (i.e., the consideration of other factors in evaluating the hazards posed by the waste). Instead, these petitioners were asked to submit the additional information, as would be required under HSWA, to evaluate the petition.

Since notices were never published in the Federal Register, legally, informal exclusions were limited to the exercise of enforcement discretion, and these wastes are still considered hazardous. Since the provisions under Section 3005 (e)(2) apply to hazardous wastes, any person who manages hazardous waste in a land disposal facility, including petitioners with informal exclusions, lost interim status on November 8, 1985, unless the requirements of the loss of interim status provision, 42 U.S.C. §6925(e)(2) are satisfied. Petitioners with informal exclusions will receive a letter very shortly clarifying this issue, and requesting that they contact you regarding the specific concerns of their facility. A copy of any letter sent to a facility in your Region will be sent to you. In addition, those facility that manage their waste off-site must transport it to a Subtitle C facility (i.e., a facility that has been fully permitted or one that has interim status).

For those facilities with an active petition still on file with us, we are processing their petitions in an expedited manner. When a decision is made on these petitions, it will be proposed in the Federal Register as soon as possible.

If you have any questions or need any further information on delisting, please contact Matthew A. Straus or Myles Morse of my staff, at (202) 475-8551. Please direct any questions on enforcement to Lloyd Guerci at (202) 382-4808.

Attachment