2. Interim Status vs. Permit Modification for Newly Regulated Units

An owner or operator of a fully permitted facility manages RCRA non-hazardous waste in several surface impoundments. This waste will become subject to Subtitle C regulation if the Toxic Characteristic Leaching Procedure (TCLP) for waste identification becomes final and effective.

a) Will the surface impoundments qualify for interim status? If a permit modification is required, what modification class would be applicable?

   Newly regulated units at fully permitted facilities do not qualify for interim status. Interim status is granted to facilities and not to individual units per Section 3005(e) of RCRA. Instead, the permittee would follow the permit modification procedures in Section 270.42(g). First, as of the time the TCLP rule becomes effective, the Class 1 permit modification process must be followed for the permittee to continue managing the newly identified waste. Under these procedures, the permittee notifies EPA and the public. Six months after the TCLP rule's effective date, the permittee must then apply for a Class 2 or 3 permit modification, depending on the modifications necessary, and follow the appropriate procedures. Permittees that have not previously managed the newly identified waste may not use the process in Section 270.42(g) and must complete the applicable permit modification procedure prior to treating, storing, or disposing of the waste. (See 53 FR 37912, 37922.)

b) Section 3005(j)(6)(A) of RCRA states that surface impoundments that become subject to Subtitle C due to the promulgation of a new listing or characteristic for identifying a waste as hazardous will have four years from the date of such promulgation to meet the retrofitting requirements under Section 3004(o) of RCRA. Does this provision apply to existing surface impoundments which become newly regulated but are not authorized to operate under interim status?

   Yes. EPA currently interprets Section 3005(j)(6)(A) as being applicable to units at facilities requiring permit modification due to a new listing or characteristic for identifying a waste as hazardous.

Therefore, newly regulated units at fully permitted facilities will have four years from the date of promulgation of a new listing or characteristic to comply with the retrofitting requirements.

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