9524.1988(01)

REPORTING REQUIREMENTS SECTION 270.30(1)(10)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

FEB 23 1988

Ms. M. Therese Yasdick
Environmental Counsel
Chemical Waste Management, Inc.
3303 Butterfield Road
Oak Brook, Illinois 60521

Dear Ms. Yasdick:

This is in response to your letter of November 24, 1987 in which you requested clarification of the reporting requirements of section 270.30(1)(10) of the RCRA regulations. As you know, that section, on its face, requires permittees to report all instances of non-compliance not reported under other paragraphs of section 270.30.

In your letter, you raised the concern that this requirement, read literally, would require owners and operators to notify EPA of every instance of non-compliance, however trivial. You suggested, instead, that the Agency adopt three specific criteria for when reporting would be required under section 270.30(1)(10). You expressed concern that, if the Agency failed to adopt those criteria, the result would be an unnecessary burden on industry and a chilling effect on internal environmental audit programs. After careful review of your suggestions and concerns, we agree that there are certain instances of non-compliance with permit conditions that do not warrant reporting under section 270.30(1)(10). However, we believe these are limited to minor facility recordkeeping, reporting, and similar oversights that are immediately corrected once discovered. We further agree that the reporting requirements of this section are limited to non-compliance only with permit conditions and not to other Federal, State, or local requirements. We have addressed individually below the criteria you suggested and the concerns you raised about application of the reporting requirements of section 270.30(1)(10).

First, you suggested that reportable instances of non-compliance should be limited to violations of 40 CFR Part 264. We do not believe, however, that reporting requirements should be limited in this way. RCRA permits may contain provisions that do not extend from the regulations of Part 264 yet are extremely significant. For example, the omnibus provisions of section 3005(c)(3) of RCRA allows the Agency to impose such permit conditions as it determines are necessary to protect human health and the environment. Conditions imposed under this provision might fall outside of the scope of Part 264 but would also, by definition, be significant. Violations of those provisions would likely be significant as well and would require reporting under section 270.30(1)(10). Similarly, violations of air emissions standards, which have been proposed under 40 CFR Part 269, also may be significant. On a related point, you asked whether section 270.30(1)(10) requires reporting of any non-compliance with any other Federal or State requirements that are not part of the RCRA permit. We do not believe that is the intent of section 270.30(1)(10). Other subsections of section 270.30(1) refer to reporting of non-compliance with permit requirements. For example, section 270.30(1)(2) requires reporting of anticipated activities that might result in "non-compliance with permit requirements." The reference to "non-compliance" in section 270.30(1)(10) is intended to be the same; that is, it refers to non-compliance with the permit requirements.

Second, you suggested that instances of non-compliance reportable under section 270.30(1)(10) should be limited to instances that "significantly and adversely affect the sound environmental operation of the facility." We disagree with this suggestion on the grounds that the standard is overly subjective. Furthermore, the purpose of the reporting requirement is not simply to identify specific instances of non-compliance leading to actual harm, but rather to indicate overall records of compliance and patterns of non-compliance. this end would not be served if reporting were limited to instances of non-compliance that met the suggested standard.

Finally, you suggested that all reportable instances of other non-compliance should exclude matters discovered and addressed by an internal environmental audit program. You expressed concern that a literal interpretation of section 270.30(1)(10) would have a chilling effect on internal

environmental audit programs and pointed out that the Agency's policy on environmental audits acknowledges industry's need to "self-evaluate environmental performance with some measure of privacy" (51 FR 25004). However, that policy also states that "audit reports may not shield monitoring, compliance, or other information that would otherwise be reportable and/or accessible to EPA" (id). Further, it explicitly states that the policy "does not alter regulated entities'...obligations to monitor, record, or report information required under environmental statutes, regulations, or permits..."(id). Therefore, while the Agency encourages and supports environmental auditing, it does not support the use of environmental audits to shield otherwise reportable violations. At the same time, the Agency believes that its enforcement policies do in fact provide a strong incentive for environmental audits by facility owners or operators. In the Federal Register notice announcing its policy on environmental auditing, the Agency noted that while environmental auditing cannot substitute for regulatory oversight, it can help facilities become subject to less regulatory action by helping them improve their performance. For this reason, we do not believe that the reporting requirements of section 270.30(1)(10) will have a chilling effect on environmental auditing.

Although the Agency believes that the specific criteria that you suggest are inappropriate, we acknowledge that requiring notification for every instance of permit non-compliance, however trivial, could be extremely burdensome, both to the facility owner or operator and to EPA, without providing significant benefits. The Agency did not intend such a result in section 270.30(1)(10). Instead, we believe that this reporting requirement should not apply to minor recordkeeping, reporting, and similar oversights that are immediately corrected once discovered. Under this interpretation, violations such as the example you cited in your letter, that is, failure to put the time of an inspection on an inspection form, need not be reported. Also fitting into this category would be failure to maintain all aspects of personnel training plans up to date and minor deviations from time deadlines, such as time for submission of biennial reports. The Agency believes, however, that even seemingly insignificant violations become significant if repeated. Therefore, it should be noted, that if a violation meeting the above criteria is part of a repeating pattern, reporting is required.

I hope this clarification of the reporting requirements of section 270.30(1)(10) answers your questions about its application and alleviates your concerns about unnecessary burden to industry imposed by that section. If you have any questions on this issue, please contact Frank McAlister of the Office of Solid Waste (202) 382-2223.

Sincerely,

Original Document signed

Jeffery D. Denit
Acting Director
Office of Solid Waste