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ACLs APPLIED TO SURFACE IMPOUNDMENT RETROFITTING PROVISION
3005(j)(3)

July 14, 1987

MEMORANDUM

SUBJECT: Alternate Concentration Limit (ACL) Policy for HSWA Provisions

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

TO: Robert E. Greaves, Acting Chief
Waste Management Branch (3HW30)
Region III

This is in response to your June 19, 1987, memorandum concerning the applicability of alternate concentration limits (ACLs) to the surface impoundment retrofitting provision under §3005(j)(3). The facility in question is located in West Virginia, which has a ground-water nondegradation policy under a delegated RCRA program (pre-HSWA).

The retrofitting exemption in §3005(j)(3) for aggressive biological treatment surface impoundments requires that the interim status impoundment be in compliance with ground-water monitoring requirements that are generally applicable to permitted facilities. For facilities that have not been issued a final Part B permit, we have interpreted this requirement, in the July 1986 guidance entitled "Interim Status Surface Impoundments Retrofitting Variances," to mean compliance with 40 CFR Parts 264 and 270.

Facility permits must include either a detection, compliance, or corrective action monitoring program. Facilities that have detected leakage of contaminants to the ground water must propose concentration limits, which could include ACLs, for each hazardous constituent detected in the ground water. The ACLs, like the other concentration limits, are used to determine which ground-water monitoring program (i.e., compliance or corrective action) should be included in the facility permit. Therefore, ACLs should be considered part of the ground-water

monitoring requirements that are generally applicable to permitted facilities.

Section 3005(j)(7)(C) states that if a qualified wastewater treatment impoundment is found to be leaking, the impoundment must retrofit unless EPA determines retrofitting is not necessary

to protect human health and the environment. One way for an owner/operator of a leaking surface impoundment to demonstrate protection of human health and the environment is to obtain an ACL. Generally, ACLs are applicable and should be reviewed to determine compliance with §3005(j)(7)(C).

For a facility in a State authorized for RCRA, the applicability of ACLs in EPA's evaluation of an exemption request under §§3005(j)(3) and (j)(7)(C) is governed by State law and regulations. As previously stated, the statutory language under §3005(j)(3) states that to qualify for this exemption the facility must be "in compliance with generally applicable ground-water monitoring requirements for facilities with permits . . ." The retrofitting exemption should be reviewed based on West Virginia's ground-water monitoring permit requirements, which include a nondegradation standard (i.e., they do not provide for the setting of ACLs). As a result, ACLs would not be applicable under the §§3005(j)(3) and (j)(7)(C) provisions for this specific case.

Should you have any questions on this matter please contact either Paul Cassidy of the Land Disposal Branch at 8-382-4682 or Mark Salee of the Technical Assistance Branch at 8-382-4755.

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