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LAND BAN ISSUES - 1988 UPDATE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN 16 1988

Subject: Land Ban Issues

From: Sylvia K. Lowrance, Director
Office of Solid Waste

To: Hazardous Waste Division Directors, Regions I-X

The purpose of this memo is to alert you to a number of issues that may arise on the Land Ban. As you know, during the period from early August to mid-November of this year, the number of waste disposal activities affected by the land ban will increase substantially. In August, we will issue treatment standards for approximately 40 "F" and "K" waste codes. We expect the standards to be immediately applicable for at least 33 of these wastes; the remaining wastes will likely be subject to a two-year capacity variance. In November, the previously-granted capacity variances for under-1% solvent wastewaters, soil and debris, and small quantity generator wastes will expire. Because of a substantial increase in liquid incineration capacity, we also plan to rescind certain of the California list capacity variances in November, making those wastes subject to the ban earlier than expected.

Final policy decisions have not yet been made on many of these issues, but given the short deadlines on land ban rules, we wanted to apprise the Regions of potential issues that some facilities may face. There appear to be several areas in which the relationship between RCRA permit activities and aspects of the land ban program may not be well understood. In this memo, we are highlighting seven land ban issues which could affect permitting activities or considerations. Our intention is to alert regional permit staff to these issues and invite you to consult with the staff of the Land Disposal Restrictions Branch on these or any other issues.

Staff of the Land Disposal Restrictions Branch will be travelling to the Regions near the time of promulgation of the final First Third rule to discuss the content of the rule and any specific regional issues. In the meantime, if you have any questions about the application of the land ban to facilities you are dealing with, please call Barbara McGuinness or Steve Weil at FTS 382-4770.

1. Surface Impoundment Retrofit Waivers

After November 8, 1986, a non-minimum technology surface impoundment could not be used to treat a banned waste for which the effective date had passed unless the impoundment had a 3005(j)(2) or (j)(4) waiver. After August 8, 1988, "soft hammers" will apply to a number of First Third waste codes for which we will not set treatment standards; most notably, "soft hammers" will apply to 107 "P" and "U" waste codes and to all or part of 12 "F" and "K" waste codes. (See Attachment 1.) Surface impoundments cannot receive banned wastes or "soft hammer" wastes on the basis of (j)(3) or (j)(13) waivers alone. If an impoundment has received a (j)(3) or (j)(13) waiver and wishes to receive a banned waste or a "soft hammer" waste, a further equivalency demonstration under 3004(o)(2) is required. In the case of a (j)(13) impoundment which already has releases, this is likely to be a very difficult showing.*

2. Minimum Technology Requirement During Extensions

In the April 8, 1988 Notice (the "First Sixth"), we proposed to change our interpretation of the term "facility" in 3004(h)(4). This is the section which specifies that "facilities" receiving banned wastes during an extension of the effective date (i.e., a national capacity variance or a case-by-case extension) must meet minimum technology requirements. Previously, we had defined "facility" in the broad sense of property boundaries. Thus, as long as new, replacement or expansion units met minimum technology requirements (MTR), banned wastes with extensions of the effective date could go to existing, non-MTR units.

In the April proposal, we changed that interpretation to equate "facility" with "unit" for purposes of 3004(h)(4). As a result, after the effective date of the change (most likely November 8, 1988 to avoid short-term disruptions for surface impoundments), when banned wastes with capacity extensions are placed in landfills or surface impoundments, those units must meet MTR.

Note that here, as in Issue 1, 3005(j)(3) or (j)(13) waivers will not suffice unless the stricter 3004(o)(2) equivalency demonstration can also be made.

* Note that the equivalency demonstration required as part of the (j)(13) waiver and that required for 3004(o)(2) are quite different.

3. Closures of Surface Impoundments

The expected closures of numerous surface impoundments over the next several years could result in significant additional volumes of land-banned wastes requiring treatment and disposal. At this time, EPA HQ does not have a clear picture of how many impoundments will clean close (or require removal of at least some accumulated material), or the time frame in which closures will occur. As a result, it is difficult to assess whether adequate BDAT treatment and disposal capacity will be available to these wastes.

We know of several industries likely to product significant volumes of banned wastes when impoundments are closed. These include wood preservers (K001 sludges), metal platers (F006 sludges), chemical manufacturers (F001-005 solvent sludges). Some of these industries have expressed concern that there will not be adequate capacity to treat wastes generated from closing units. If this proves to be true, it may be necessary to delay closure, or to close in place.

If you believe that a facility or industry will have a problem finding treatment and disposal capacity for wastes from closures (particularly if there is an indication of environmental damage that may be exacerbated by a lengthy delay in closure or closure in place), please alert us to this situation.

4. Case-By-Case Extensions

In instances where capacity to treat banned wastes is determined to be available (i.e., there is sufficient capacity on a national basis), but where BDAT treatment capacity is not actually available to a specific facility, a generator or owner/operator may apply for a case-by-case extensions of the effective date. A total of two one-year extensions may be granted.

For a successful case-by-case extension petition, the generator or owner/operator must show that BDAT treatment is not available in fact and must have a binding contractual commitment to build or acquire access to the necessary capacity within the period of the extension. The first showing cannot be based on cost or inconvenience, but rather must be based on actual infeasibility of obtaining treatment. It must be supported by evidence that the generator or owner/operator has attempted to obtain treatment capacity but has been unable to do so. An example could be a facility with a very large volume of material requiring incineration to meet BDAT. Commercial incinerators have rejected the material because of its volume and because the form of the waste requires special loading and feed equipment which is not now in place. A case-by-case extension can be granted while the company (or a waste treatment facility) completes construction of the needed facilities.

The Land Disposal Restrictions Branch is now preparing guidance on case-by-case extensions; the draft guidance will be distributed to the Regions for review and comment. Please note that the review and notice processes for case-by-case extensions will require at least four to six months. After the deadlines, facilities must comply with BDAT treatment standards until case-by-case extension applications are approved.

The deadline for First Third wastes is August 8, 1988. Capacity variances for three solvent waste groups (under 1-% solvent wastewaters, small quantity generator wastes and non-soil and debris solvent wastes from RCRA and CERCLA actions) will be subject to land disposal restrictions. Also, after November 8, restrictions may apply to RCRA and CERCLA soil and debris, and to many California list wastes. At this point, it is not possible to process a case-by-case extension of the August deadline by August 8. If any facilities plan to seek a case-by-case extension of the August deadline, they should recognize that they will be required to comply with the standards for at least some period while the petition is reviewed and processed. Facilities seeking case-by-case extensions of the November 8, 1988 deadlines should submit petitions as soon as possible.

5. New Treatment Capacity Information

The May 17, 1988 proposal (the "Second Sixth") contains new capacity data from the comprehensive survey of treatment, disposal and recycling facilities. In general, there is significantly more treatment capacity available than had previously been assumed. This means that BDAT for most waste codes is likely to go into effect August 8, 1988, and few national capacity extensions will be granted. In particular, there is a large amount of liquid injection incineration capacity available at both incinerators and cement kilns and other industrial furnaces. Also, stabilization capacity is commercially available in virtually every area of the country; stabilization is also relatively easy to bring on line, given the availability of materials and technology (lime or cement dust and mixing apparatus).

There has also been a significant increase in the amount of rotary kiln and fluidized bed combustion capacity, although incineration capacity for solids and sludges is still considerably more limited than for liquids. We expect that only a few of the First Third waste codes (principally the petroleum refinery wastes) will receive a two-year capacity extension.

6. Contaminated Soil and Debris

The May 17, 1988 Notice proposed a two-year national capacity variance for RCRA and CERCLA contaminated soil (and possibly debris) which required solids

incineration. It now appears possible that there will be adequate solids incineration capacity and that the variance will not be finalized. If this proves true, soil and debris contaminated by First Third wastes will be required to meet BDAT treatment standards as of August 8, 1988. Soil and debris from Superfund and RCRA corrective actions contaminated with solvents and dioxins or California list wastes would be required to meet BDAT treatment standards as of November 8, 1988.

Guidance on treatment of contaminated soil and debris at RCRA and CERCLA sites will be available soon. This will include guidance on obtaining a site-specific, administrative treatability variance in cases where the basis for BDAT is inappropriate for soil and debris.

OSW and OERR have been working for the past few months to develop interim treatment levels for soil and debris; the interim treatment levels are for use during the next several years while BDAT treatment testing for soil and debris is conducted. When a treatability variance for contaminated soil and debris is necessary, the interim treatment levels provide guidance on the range of constituent concentration levels that can be achieved by well-designed and well-operated technologies. The treatment levels were derived from Superfund site data on constituent concentrations after treatment. Generally, several alternative types of treatment can achieve the concentration levels within the range.

The attached memo to Regional Superfund staff explains the purpose of the interim levels and requests comments on the levels. We will be interested in receiving comments from RCRA staff as well.

7. Soft Hammer Provisions

If the Agency does not set treatment standards for a First or Second Third waste by the statutory effective date, the waste may continue to be land disposed in a landfill or surface impoundment only if the generator has investigated the availability of treatment capacity and certified to the Regional Administrator that the use of the surface impoundment or landfill is the only practical alternative to treatment currently available. Other forms of land disposal are not affected.

The proposed rule also allowed certification for disposal of wastes that have been treated but for which no further "meaningful" treatment is practically available. This was done to allow the generators of wastes for which treatment standards have not been set to continue to operate, as we believe that Congress intended them to use the available treatment rather than shut down.

Several commentors have raised concerns as to how the Agency will define treatment. In the proposed rule, the Agency asked for comment on how to define treatment for the purposes of the soft hammer, discussing concepts such as requiring "meaningful" treatment, or specific percent reductions. Owners and operators of disposal facilities tell us they will not accept wastes if there is a chance that the RA will disallow the certification and subject them to enforcement action. They feel that we need a firmer definition. In the final rule, we are planning to discuss a hierarchy of treatment technologies that should be investigated before certification. For example, removal/reclamation is preferable to destruction which is preferable to stabilization. Is this a workable approach from your perspective? Is there a way to make this approach even more concrete?

We are looking for ideas on how to make the certification meaningful, and yet not bring the land disposal of all soft hammer wastes to a grinding halt due to uncertainty regarding the criteria.

At this time, we expect to publish the First Third Final Rule around August 8. Attachment 1 gives the expected status of all restricted wastes (except those covered by UIC rules), assuming promulgation of the final First Third rule by the August 8 deadline. The "Second Sixth" comment period closes June 16, 1988. It is possible that, given the short timeframe, it may be several weeks after August 8 before the final rule is signed and published. If this happens, the "soft hammer" goes into effect for all non-UIC First Third wastes.

As noted earlier, all of the policy calls on these issues have not been made. Some of those we have indicated may change. However, we wanted to give you an early alert on these potential issues. We will keep you posted on developments.

Attachments

cc: RCRA Branch Chiefs, Regions I-X
RCRA Section Chiefs, Regions I-X
Bruce Weddle, PSPD
Joe Carra, WMD
Dev Barnes, CAD
Elaine Stanley, OWPE, RCRA
Jon Cannon, OWPE

Attachment 1

Expected Status of Restricted Wastes* as of August 8, 1988

1. Wastes with BDAT in Effect

Solvents and Dioxins

- o Over 1-% Solvents -- F001-005 (11/8/86)
- o Listed Dioxin Wastes -- F020-023 and F026-028 (11/8/86)

California List

- o Liquids or Free Liquids Containing Free Cyanides (7/8/87)
- o Liquids or Free Liquids Containing Arsenic, Cadmium, Chromium, Lead, Mercury, Nickel, Selenium, Thallium (7/8/87)
- o Liquids or Free Liquids Containing Corrosives with pH \hat{U} 2 (7/8/87)
- o Liquids or Free Liquids Containing PCBs \hat{U} 50 ppm (7/8/87)
- o Halogenated Organic Compounds: Dilute Wastewaters \hat{U} 1,000 mg/l (7/8/87)

First Third

- o F006 (8/8/88)
- o K001, 004, 008, 015, 016, 018, 019, 020, 021, 022, 024, 025, 030, 036, 037, 044, 045, 046, 047, 060, 062, 069, 073, 083, 086 (solvent washes only), 087, 099, 100, 101, 102, 103, 104, 106 (8/8/88)

2. Wastes with BDAT, with Capacity Extension in Effect

Solvents and Dioxins

- o Small Quantity Generator Solvents (11/8/88)
- o RCRA and CERCLA Corrective Action Wastes (11/8/88)
- o RCRA and CERCLA Soil and Debris (11/8/88)
- o Under 1-% Solvent Wastes (11/8/88)

California List

- o Other Halogenated Organic Compounds (11/8/88)
- o RCRA and CERCLA Soil and Debris (11/8/88)

First Third

- o K048, 049, 050, 051, 052, 061, 071 (8/8/90)

3. No BDAT Established, "Soft Hammer" in Effect

First Third

- o F007, 008, 009, 019
- o K011, 013, 014, 017, 031, 035, 084, 085, 086 (solvent sludges and wastewaters)
- o First Third "P" and "U" Wastes

* Other than UIC.