

9528.1990(02)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 11 1990

Richard E. Hill, Director  
Operations, Planning and Development  
USPCI  
515 West Greens Road  
Suite 500  
Houston, Texas 77067

Dear Mr. Hill:

In your May 11, 1990, letter concerning the Toxicity Characteristic (TC) you requested clarification on certain issues raised in the March 29, 1990, Federal Register notice. The following is a response to those issues and I hope it will assist you in resolving some of USPCI's concerns.

Your first question asks whether facilities (exclusive of incinerator and land disposal facilities) managing newly identified TC hazardous wastes would lose interim status unless they have been granted a permit by November 8, 1992. EPA believes that these facilities are not subject to the November 8, 1992, loss of interim status deadline. As you point out, this deadline applies only to facilities that had interim status on November 8, 1984. Thus, such facilities managing newly identified hazardous waste as a result of the TC will not automatically lose interim status on November 8, 1992.

The only facilities that are potentially subject to loss of interim status are newly regulated interim status land disposal facilities or interim status land disposal facilities with units that become newly regulated because of the Toxicity Characteristic. These land disposal facilities must comply with the certification and Part B submission deadlines in 40 CFR 270.73(d) and 270.73(e) or interim status will terminate twelve months after the TC effective date. This documentation must be received by the appropriate EPA Regional Office no later than September 29, 1991. In addition, under 40 CFR 270.42(g)(1)(v), newly regulated land disposal units at permitted facilities will lose authority to operate if the facility fails to comply with the appropriate certification requirements.

Second, you inquire about whether Federal or State interim status standards apply to newly regulated facilities. A facility which has gained interim status for the new TC waste is subject to the Federal requirements under 40 CFR Part 265 until such time as the State is authorized for the TC. (See table V-2 at 55 FR 11848, March 29, 1990.) If the facility wants to modify its operations during interim status, then it must follow the procedures in 40 CFR 270.72, and submit all Part A revisions to EPA. If prior approval is required for a particular change, then EPA would be the approving agency.

In authorized States, EPA directly implements only those aspects of the Federal RCRA program that, by statute or regulation, take effect in all States. Such Federally-implemented provisions are generally limited to HSWA requirements and prohibitions such as land disposal restrictions, minimum technology requirements, and HSWA waste identifications. For example, an interim status facility regulated by EPA because of the TC rule could apply to EPA for: 1) additional TC waste codes not on the original Part A; 2) other HSWA waste codes that the State is not authorized for; 3) capacity increases or process changes for TC or other HSWA wastes; or 4) other HSWA-related facility change (e.g., new process needed to provide BDAT treatment).

Of course the addition of a new, non-HSWA waste code would be subject to regulation by the authorized State and not by EPA. Note that if the State has not yet adopted the TC rule and a facility with Federal interim status due only to TC wastes wants to make changes to add non-HSWA wastes regulated under the authorized State program, this may be viewed as a "new" hazardous waste operation since the facility would not have interim status under State law. In this case, the State might require a RCRA permit prior to receipt of the waste.

Finally, if a facility commences treatment, storage, or disposal activity after June 27, 1990, but before September 25, 1990, that facility is not prohibited from qualifying for interim status because it did not or could not notify prior to June 27, 1990. In such a case, a Section 3010 notification is not required for obtaining interim status, see 40 CFR 270.70(a)(1) and the preamble discussion provided at 45 FR 76631, November 19, 1980. However, the facility would be required to submit a Part A permit application in accordance with the deadline specified in 40 CFR 270.10(e).

-3-

If you have any questions or would like to discuss these issues further, please contact Steve Cochran at (202) 475-8551, or Frank McAlister at (202) 382-2223 of my staff.

Sincerely,

Original Document signed

Sylvia K. Lowrance  
Director  
Office of Solid Waste