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RCRA PERMIT REAUTHORIZATION ISSUES IN REGION III

SUBJECT: RCRA Permit Reauthorization Issue in Region III

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Steven R. Wassersug, Director
Hazardous Waste Management Division, Region III

This memorandum is in response to the series of questions raised in your memorandum of February 1, 1985, regarding issuance of RCRA permits in authorized States in light of the new reauthorization amendments. Several of the issues you raised have been addressed in the draft guidance on corrective action for continuing releases (dated January 30, 1985) and the draft guidance on joint permitting, which was distributed in early December. We are preparing additional guidance on EPA/State permitting, which should be distributed in draft very shortly.

It should be understood that most of the following responses to the specific questions raised in your memorandum reflect our current thinking, and are based on preliminary policy interpretations which have not completed the Agency's formal review and concurrence process. Our responses are as follows:

A. Aberdeen Proving Grounds. As stated in the 1/30/85 draft guidance on corrective action for continuing releases, the facility is the entire contiguous property under the control of the owner/operator, at which the hazardous waste management units are located. Thus, the entire army base must be taken into account when considering continuing releases for the purposes of this permit action.

   A permit issued after November 8, 1984, is not a fully effective RCRA permit unless it addresses all applicable provisions of the reauthorization amendments, as well as the regulations currently in place in the authorized State. However, the State may issue its

"State" permit to the facility, without the new requirements of the amendments having been addressed by EPA. Until the State receives authorization for the new amendments, its permits are State permits, and not RCRA permits. Region III should issue the Federal portion of the permit addressing the provisions of the new amendments as soon as practicable, consistent with the overall program priorities in the Region.. When this Federal portion of the permit is issued, it will combine with the State permit to become the RCRA permit. In this situation, provisions of the State permit would be reopened only if provisions of the State permit are affected by the Federal portion of the permit.

B. Spectron. Until the State is authorized for the continuing release provision, implementation of the provision must be done by EPA. We would urge that, if possible, a joint and a simultaneous RCRA permit be issued to this facility by EPA and the State. (see the 1/30/85 draft corrective action guidance).

If the Federal portion of the permit cannot be prepared within the State's timetable for the permit, the State may choose to issue the State permit to the facility without the Federal portion. Until the Federal portion is issued, Region III has the option of using an interim status corrective action order [§3008(h)] to require the owner/operator to begin any necessary remedial investigations at the facility.

D. Naval Shipyard. The fact that the facility notified under §103(c) of CERCLA does not affect EPA's ability to issue a RCRA permit to the facility. Any releases that may be at the facility can and should be addressed, either through a RCRA permit, a RCRA interim status corrective action order, or through State enforcement action, as appropriate.

E. Defense General Supply. As you may know, guidance is currently being developed on the Agency's policy toward RCRA facilities that are also listed on the National Priority List (NPL), in light of the new RCRA corrective action authorities. This policy guidance is expected to

be issued in the next few months. Until the guidance is issued, we would tentatively advise that if CERCLA remedial measures are already being conducted at a RCRA facility, those activities should continue under CERCLA If, on the other hand, the CERCLA remedial process is not yet underway at the facility (i.e., a RI/FS has not yet been done), it would be appropriate to use the RCRA permit or a RCRA §3008(h) order to provide for corrective measures.

E. Allied Bermuda-Hundred. The determination as to whether or not a release that poses a threat to human health and the environment has occurred, or is likely to have occurred, can only be made by EPA (or by the State when it is authorized for the continuing release requirements). This determination is based on information submitted to EPA by the owner/operator regarding the solid waste management units at the facility, and any available information on releases from those units (see Reauthorization Statutory Interpretation #3, February 5, 1985).

F. Dupont Edgemoor. Section 270.10(f)(l) requires that physical construction of a facility cannot begin until the facility has secured a "finally effective RCRA permit." Therefore, before construction of the hazardous waste storage tank can begin, a permit which addresses both the applicable State requirements and the new RCRA §3004(u) requirement must be issued to the facility. As explained in the January 30 guidance on continuing releases, investigations of releases from the solid waste disposal unit at the facility, and development of a program of corrective measures, can take place under a schedule of compliance after the permit is issued. However, the owner/operator cannot begin construction or operation until the Region issues its portion of the permit.

G. In regard to the hypothetical situation posed on page three of your memorandum, the State may issue the State permit to the facility and continue to require cleanup activities under a State compliance order. This will not of itself, however, constitute compliance with the §3004(u) requirements. Only EPA car implement

this provision (until such time as the State becomes authorized for it). When EPA issues its portion of the permit, any remaining remedial investigations and corrective measures will be carried out under the permit. If this scenario is followed, we would urge that Region III and the State coordinate to ensure that the investigations and corrective measures imposed under the State enforcement order would be consistent with those which EPA would require under the permit when it is issued.

The answers to your general question on how EPA and a State interact during joint permitting procedures are addressed, in part, in the guidance memoranda already mentioned. We also discussed these issues in some detail at the February 27-28 Division Directors' meeting. We expect to be issuing additional guidance on these various joint permitting issues within the next several weeks. Please let me know if there are any further questions or complaints.

cc: B. Weddle
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