

PPC 9528.1992(01)

REGULATORY INTERPRETATION OF LOSS OF INTERIM STATUS PROVISIONS AS IT APPLIES TO OB/OD FACILITIES

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

October 15, 1992

Lewis D. Walker
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I,L and E)
Department of Army
Office of the Assistant Secretary
Washington, D.C. 20310-0110

Dear Mr. Walker:

The purpose of this letter is to follow up our June 30th meeting by providing you, as you requested, with a written regulatory interpretation of the loss of interim status provisions in the Resource Conservation and Recovery Act (RCRA) that affect your open burning/open detonation facilities.

It is the Agency's interpretation that Section 3005(c)(2)(C) of RCRA provides a deadline of November 8, 1988, for treatment and storage facilities (other than incinerators) and/or units that were in interim status on November 8, 1984 to submit their Part B permit applications. We also believe that this section of RCRA provides that if any of these interim status facilities, or units, did not submit their Part B applications by the 1988 date, they would lose interim status on November 8, 1992 unless a permit determination is made prior to that date.

As discussed during the meeting, our interpretation of RCRA divides your facilities that were in operation before November 8, 1984 into two groups: those that submitted applications on time and those that did not. For those units submitting applications on time, interim status will continue after November 8, 1992. In relation to this interpretation on continued operation, we stated that we do not believe there will be any legal challenge to deprive

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the Agency of its discretionary authority to process permits after November 8, 1992.

Facilities that did not submit applications by November 8, 1988 will lose interim status on November 8, 1992 (unless final permit determinations are made by that date). This relates to all units that were in existence prior to November 1984, including units that properly notified the Agency of their activities and units that should have notified but did not. However, note that a unit handling temporarily excluded interim status facility after that date through a change in interim status, is not subject to the 1988 application deadline.

We will continue to discuss with your staff our efforts to minimize the impact from the loss of interim status. If you have any further questions, please contact Chester Oszman at (202) 260-4499.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

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