2. Land Disposal Restriction, Dioxins, and 90-Day Accumulation

The land disposal restriction rule, published in the November 7, 1986 Federal Register (51 FR 40572) allows generators to store their restricted wastes on-site beyond the 90-day limit set forth in 40 CFR 262.34 provided that the waste is being accumulated to "facilitate proper recovery, treatment, or disposal" (40 CFR 268.50(a)(1)). Generators of the restricted wastes are eligible for interim status provided that they are in existence on the effective date of the new regulations (40 CFR 270.70(a)) and the new requirements will subject them to storage periods longer than 90 days. A generator who stores the waste for more than 90 days must submit a Part A application no later than 30 days after the generator becomes subject to the new regulations (40 CFR 270.10(e)). Are generators of the restricted dioxin wastes, which received a two year extension for compliance with land disposal restrictions, eligible for interim status and, therefore, able to store their wastes on-site for more than 90 days between November 8, 1986 and November 8, 1988?

No, the provision in 40 CFR 268.50(a) and under section 3005(e), that makes generators eligible to apply for interim status and subsequently able to store their restricted waste on-site for longer than 90 days applies only to those generators whose waste is currently subject to land disposal restrictions and who are accumulating to recover, treat, or dispose of the waste. The dioxin generator would not yet be eligible for interim status since he was not in existence on the date of regulatory changes which affect his operation (RCRA (§3005(e)(l)(ii)) since the effective date of the land disposal restrictions that applies to the dioxin waste was deferred until November 8, 1988 (40 CFR 268.31). The dioxin generator would have been eligible for interim status for the storage of his dioxin wastes on July 15, 1985, the effective date of the listing of the dioxin-containing wastes. Interim Status would have to have been applied for within 30 days after the generator became subject to the new regulations (40 CFR 270.10(e)(l)).

If a dioxin generator did not apply for interim status pursuant

to the July 15, 1985 Dioxin Rule the generator of dioxin wastes would not currently be eligible for interim status. The dioxin generator could however, apply through the state or region for a full permit as a new facility. The generator may also be able to obtain an informal compliance agreement with the state or region. This agreement could only be obtained if the generator has not previously applied for interim status. It could include enforcement orders and may grant the generator some immunities.

The specifics would have to be determined by the Regional Administrator or the state. The dioxin generator should be physically in compliance with applicable regulations under 40 CFR 265. He should also notify the state or region of his activities and submit a Part A Permit Application. Although he could not technically obtain interim status, the proper steps should be taken to show a "good faith effort" on his part. The compliance agreement with EPA, or other authority, could include promises not to enforce against the facility as long as all applicable regulations were complied with.

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