9476.1988(04)

DEADLINES APPLICABLE TO PROPOSED DELAY OF CLOSURE REGULATION, GUIDANCE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 31 1988

MEMORANDUM

SUBJECT: Guidance on Deadlines Applicable to Proposed Delay of Closure Regulation.

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

TO: Hazardous Waste Regional Division Directors
Regions I-X

Attached you will find a copy of the "Delay of Closure" regulation, to be published in the Federal Register in about two weeks. Many questions have been received, both from the Regions as well as industry, on how this proposed rule might affect facilities which will cease the receipt of hazardous wastes to comply with the November 8, 1988 statutory requirement for retrofitting of surface impoundments.

The purpose of this memorandum is to provide guidance on these issues, particularly the timing for closure plan submittals and approvals in light of the proposed Delay of Closure regulation.

Statutory and Regulatory Requirements

According to statute, interim status surface impoundments that have not been retrofitted or have not received a retrofit waiver must cease the receipt of hazardous waste by November 8, 1988. By current Federal regulation the final receipt of hazardous waste triggers initiation of the closure process for the unit (40 CFR 264/265.113). Furthermore, under current regulations, a facility owner/operator without an approved closure plan who intends to close an interim status surface impoundment rather than retrofit must submit a closure plan to

the Regional Administrator by no later than June 13, 1988 (180 days before the "expected date" of closure -- which is December 8, 1988, i.e., 30 days after the last receipt of hazardous waste). See 40 CFR §265.112(d)(1) and (2). An owner/operator with an approved closure plan who intends to close a permitted or an interim status surface impoundment must notify the Regional Administrator 60 days prior to the time closure is expected to begin. Since the "expected date" of closure must be no later than December 8, 1988, notification must occur by October 10, 1988. See §§264.112(d)(1) and (2) and 265.112(d)(1) and (2).

There requirements and timeframes are more fully described in OSWER Policy Directive #9484.00-5-a, October 15, 1987. These requirements are currently unaffected by the proposed Delay of Closure rule, since the existing regulations remain in effect until the proposal is finalized and adopted in authorized States. However, once finalized, this rule would allow landfills, and in more limited circumstances, surface impoundments to postpone closure to receive non-hazardous wastes after the November 8, 1988 retrofitting deadline. Some owner/operators of these types of units may wish to avail themselves of this alternative. However, such units are still subject to all closure plan submission deadlines.

Synopsis of Proposed Regulation

Briefly, the proposed rule allows owner/operators to delay closure of surface impoundments and landfills to receive non-hazardous waste after they cease receiving hazardous waste. (Units which have lost interim status are ineligible.) The rule contains general requirements imposing a set of conditions that are applicable to all owners/operators who wish to defer the closure process, regardless of the unit type. These general requirements are basically the same for permitted and interim status facilities. There is also an additional set of requirements for surface impoundments that do not satisfy the minimum technology requirements. The proposed regulation is not a means for facilities to circumvent closure; rather, it is designed to allow units with existing capacity which are operating in an environmentally protective manner to use their remaining disposal capacity. The proposed requirements are stringent and we believe that most existing, non-MTR surface impoundments will find it difficult to meet the criteria to

delay closure to receive only non-hazardous wastes. We emphasize that all units that meet the criteria for delaying closure will remain subject to Subtitle C requirements, including final closure requirements when they stop receiving non-hazardous waste.

General Requirements

All units wishing to delay closure must obtain a Subtitle C permit and comply with applicable permit requirements. As part of the permit modification or Part B permit application, the owner/operator must include demonstrations showing that the unit has the existing design capacity to manage non-hazardous wastes and that the non-hazardous wastes are not incompatible with any remaining wastes in the unit. The permit modification or the Part B permit application must include revised facility plans, including waste analysis, ground-water monitoring, and closure and post-closure plans, and, if necessary, closure and post-closure cost estimates and financial assurances to reflect changes associated with operating the unit to receive only non-hazardous waste.

Specific Requirements for Surface Impoundments

An additional set of requirements will apply to surface impoundments that do not satisfy the HSWA double liner and leachate collections system requirements or have not received a waiver from these requirements. For these units, we are proposing a combination of source control, accelerated corrective measures, and limitations on continued operations following a detected release to ground water. (See attachment). At the time the decision is made to delay closure, owner/operators must choose one of three alternatives: (1) to leave the wastes in place (i.e., disposal impoundments' (2) to remove the waste from the impoundment; or (3) to remove sludges and flush the impoundment with non-hazardous wastes. Alternative 1 is available only to impoundments which have not had a release at the time of conversion to receipt of only non-hazardous waste. If such an impoundment begins releasing, closure is triggered. If a unit that has undergone waste removal is leaking at the time it converts to receipt of non-hazardous waste, this receipt may not begin until corrective measures are implemented. On the other hand, if a unit that has undergone waste removal begins leaking after the

conversion to the receipt of non-hazardous waste, corrective action must be implemented within one year of this conversion. Any impoundment that has converted to receiving only non-hazardous waste must show substantial progress in meeting cleanup standards. If neither of these requirements are met, the unit must close.

Regional Procedures

As noted above, we believe that the proposed rule establishes stringent requirements for those wishing to remain open to receive non-hazardous waste. Accordingly, we expect that while many owners and operators may be initially interested in exploring this regulatory option if finalized and adopted in authorized States, relatively few units will be able to meet the regulatory requirements. In light of the upcoming November 8, 1988 deadline we offer the following implementation questions and answers concerning closure plan review and approval procedures to assist you in responding to inquiries from interested owners and operators:

Q. Can a unit postpone submission of the closure plan on the grounds that the owner/operator intends to delay closure?

A. No. Units remain subject to the closure plan submission deadlines despite this proposal. Enforcement authorities should be used if necessary to ensure that closure plans are submitted. (OSWER Policy Directive No. 9900.0-1A, Oct. 1, 1987).

Q. May interim status units which cease receiving hazardous waste on November 8, 1988 continue to receive non-hazardous wastes under the current regulations?

A. Yes, in certain cases. Interim status units are not required to initiate closure until the closure plan is approved. Units awaiting closure plan approval may continue to receive non-hazardous waste. Further, units may continue to receive non-hazardous wastes during the closure period provided the receipt of non-hazardous waste does not impede the timely and effective closure of the unit. The timeframes for closure are set forth in 40 CFR 265.113. (See OSWER Policy Directive No. 9484.00-5-a Oct. 15, 1987)

Q. If a large number of closure plans are received in June 1988, how should Regions and States set priorities?

A. The regulations set a 180-day timeframe for review of closure plans. However, we recognize that it will be difficult to meet these timeframes if a large number of closure plans are submitted on June 13. The RIP provides guidance on establishing priorities for review of closure plans. Environmentally significant facilities should be addressed first.

Q. Which units are affected by this proposal?

A. The option would be available only to a permitted and interim status facilities which submit a Part B application or amended application. Facilities that have lost interim status (including LOIS facilities) would not be eligible to delay closure.

Q. Will the rule be effective in authorized States?

A. Authorized States will have the discretion on whether or not to adopt the rule since the rule is less stringent than the 1986 amendments to the closure regulations. (Please note that authorized States are required to adopt conforming changes to implement the May 1986 changes no later than January 1, 1989. See 53 FR 7740, March 10, 1988). The final rule will be effective in unauthorized States.

Q. What affect does the proposal have on ongoing enforcement actions?

A. None. Enforcement actions underway will not be affected by the regulation when it is finalized; the regulation will not be retroactive.

We will keep you updated on the rule development and schedule. If you have any further questions, please contact Sharon Frey at FTS 475-6725.