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JUL 25 1985

INTERPRETATION OF SECTION 3005(J)(1)

SUBJECT: Interpretation of Section 3005(j)(1)

FROM: John H. Skinner, Director  
Office of Solid Waste

TO: James H. Scarbrough, Chief  
Residuals Management Branch  
Region IV

This is in response to your memorandum of June 26, 1985, requesting an interpretation of Section 3005(j)(1) of the Hazardous and Solid Waste Amendments (HSWA) of 1984.

Section 3005(j)(1) requires that interim status surface impoundments not receive, store, or treat hazardous wastes after November 8, 1988, unless the impoundment in question is in compliance with the minimum technological standards or the impoundment has obtained one of the four exemptions listed in the provision.

You asked what has to be done by the November 8, 1988, deadline by the owner/operator of an interim status surface impoundment who seeks a storage permit but does not intend to retrofit with the minimum technological standards, and who does not seek and obtain a waiver. You ask if the owner or operator of such a facility by that date had to:

- 1) cease placing hazardous waste in the surface impoundment,
- 2) certify closure, or
- 3) conduct some other step in the closure process.

You proposed issuing RCRA permits to the owners or operators of such units with a condition to stop placing hazardous wastes in the impoundment on or before November 8, 1988, thus triggering closure.

The statute requires, in the case of a storage impoundment, that the impoundment not receive or store hazardous waste after November 8, 1988.

The most direct way to demonstrate compliance with section

3005(j)(1) is to provide a certification of closure by November 8, 1988. If the owner or operator has obtained a certification of closure, the Agency can be sure that the impoundment is not storing hazardous waste after November 8, 1988.

If, however, a certification of closure is not presented by November 8, 1988, an owner or operator may still show compliance with section 3005(j)(1) by demonstrating compliance with the technical closure requirements in §§264.228(a)(1) or 265.228(a) and (b) to the satisfaction of the Regional Administrator. If the owner or operator has complied with the technical requirements of these sections, as appropriate, then the impoundment would be considered to be no longer storing hazardous wastes. This second approach is necessary because it may not be possible to present a certification of closure for the surface impoundment in question by November 8, 1988.

Therefore, what is required by November 8, 1988, is either a certification of closure or a demonstration by the owner or operator that the technical closure requirements have been complied with.

The Agency is examining what the statutory language requires concerning the addition of non-hazardous wastes to an impoundment after November 8, 1988.

If you have additional concerns regarding this issue, please contact Mr. Paul Cassidy (FTS 382-4682) of my staff. Thank you for your interest in this matter.

cc: RCRA Division Directors, Regions I-III and V-X  
Jack Lehman, OSW  
Ken Shuster, OSW  
Paul Cassidy, OSW  
Barbara Pace, OGC