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## RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JULY 86

### 5. Land Disposal Prohibition

Will the EPA prohibit the land disposal of all hazardous waste?

Section 3004(d), (e) and (g) of RCRA prohibit the land disposal of untreated hazardous waste beyond specified dates. For the purposes of the land disposal restrictions program, Section 3004(k) specifically defines land disposal to include, but not be limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome salt bed formation, or underground mine or cave.

Paragraphs (d), (e) and (g) do not impose an absolute ban on the land disposal of hazardous waste. A waste may be excluded from the ban under the following circumstances:

- (1) When wastes residues meet treatment standards established by EPA under Section 3004(m). On January 14, 1986, EPA proposed regulations to implement this provision at 40 CFR 268.40 (51 FR 17262).
- (2) When EPA grants a site-specific variance that demonstrates that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous, under Section 3004(d)(l), (e)(l) or (g)(l). On January 14, 1986, the EPA proposed regulations to implement this provision at 40 CFR 268.5 (51 FR 1762); and
- (3) Untreated waste may be treated in a surface impoundment under Section 3005(j)(11) if the impoundment complies with minimum technological requirements and if the treatment residues which are hazardous are removed within a year of entry. The EPA proposed regulations implementing this provision on January 14, 1986 at 40 CFR 268.1(e) (51 FR 1760).

Sections 3004(d)(3) and (e)(3) create an exemption lasting until November 8, 1988 for soil or debris resulting from

response actions taken under Sections 104 or 106 of CERCLA or corrective action taken under Subtitle C of RCRA. (see proposed 40 CFR 268.1(f)(2)).

Land disposal prohibitions are effective immediately upon promulgation unless EPA sets another effective date (no more than two years beyond the statutory deadline) based on the earliest date on which alternative protective treatment, recovery, or disposal capacity would be available under Sections 3004(h)(2) and (h)(4); (see proposed 40 CFR 268.4). EPA may grant up to two, one-year, case-by-case extensions under Sections 3004(h)(3) and (h)(4) when an applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide alternative capacity, but due to circumstances beyond the control of the applicant, such alternative capacity cannot reasonably be made available by the effective date. The procedures for these extensions were proposed on January 14, 1986 at 40 CFR 268.4 (51 FR 17611) (see also June 24, 1986, 51 FR 22948).

Treatment standards established under Section 3004(m) can take the form of prescribed methods of treatment, or they can be performance standards based on concentration levels of Appendix VIII constituents in the waste itself or in extracts from the wastes. EPA proposed to use technology-based levels in conjunction with risk-based standards (screening levels) (see 51 FR 1602, January 14, 1986). Screening levels would be based on a comprehensive modeling approach to assess potential adverse effects to human health and the environment through release of contaminants from land disposal units to ground water, surface water, and air. However, after evaluating comments received on the proposed rule, EPA may consider not using a risk-based methodology but rather to implement Section 3004(m) by solely relying on technology-based standards.

Treatment standards may be established by identifying all available and demonstrated technologies for a waste group and evaluating the performance of these technologies in order to identify the best demonstrated available technology (BDAT). According to the January proposal, BDAT are technologies that achieve the lowest concentration of constituents in either the treatment effluent or in the extracts from treatment residual. BDAT will only consider treatment technologies that are found through comparative risk assessments to not pose a greater risk than land disposal. The EPA prefers achieving BDAT by setting performance standards

based on a concentration level associated with a technology or a series of technologies because the resulting regulation does not inhibit innovation or least cost compliance efforts.

If EPA fails to promulgate treatment standards for solvents and hazardous dioxin waste addressed in Section 3004(f) by November 8, 1986, the statute would ben the placement of all solvent and hazardous dioxin wastes addressed Section 3004(f) in a land disposal unit.