

9487.1985(10)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

5 DEC 85

PROHIBITION ON PLACING LIQUIDS IN LANDFILL

Fred W. Bowditch, Ph.D.
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Detroit, Michigan 48202

Dear Dr. Bowditch:

This is in response to your letter dated October 25, 1985, requesting that the U.S. Environmental Protection Agency (EPA) clarify its interpretation of the prohibition of placing liquids in landfills as regulated under 40 CFR 264.314(b) and 265.314(B), as promulgated on July 15, 1985. You state that the EPA Resource Conservation and Recovery Act (RCRA) Hotline's interpretation of the above-mentioned regulations is in contradiction with the mandate of the Hazardous and Solid Waste Amendments (HSWA) of 1984 and the published EPA interpretation as shown in the July 15, 1985, Federal Register.

I will first respond directly to your concern over the RCRA Hotline's interpretation and, secondly, I will clarify points that you brought out in your letter.

In regard to the Hotline's interpretation that §§264.314(b) and 265.314(b) (bulk hazardous liquid prohibition) ban the placement in landfills of hazardous liquids to which absorbents have been added at non-landfill facilities, I believe this statement to be accurate. I have enclosed a copy of the Statutory Interpretive Guidance concerning the treatment of bulk hazardous liquids that the Agency has developed. This guidance states that the addition of an absorbent to a liquid hazardous waste that is intended to be disposed of in bulk form clearly violates Congress' intent behind the amendment. The Statutory Interpretive Guidance on page 7 states that the statute bans the placement in a landfill

of bulk liquid hazardous wastes if an absorbent was added to the waste regardless of where the absorbent was added. The Agency's published interpretation, as it appears in the July 15, 1985, Federal Register, also supports the Hotline's interpretation. In 50 FR 28705 (July 15, 1985) EPA states: "The statute makes it clear that the ban encompasses hazardous waste containing free liquids even if absorbents have been added to such waste."

Although these proposals typically include some design variation from what has been conventionally perceived as a landfill, we consider these variations to be relatively minor, and they have not altered our viewpoint that these "above-ground" facilities be considered landfills.

Although your letter does not describe specifically the design and operation of the above-ground land emplacement facilities that the Siting Commission is considering, for the purposes of this letter we assume that the facilities are similar to those above-ground facilities with which we are familiar. Therefore, we will answer your questions based on the assumption that the units you refer to are landfills.

You posed three questions in your letter:

1. "Do the land ban provisions of the 1984 Amendments, which prohibit the land disposal of toxic wastes, apply to New Jersey's so-called land emplacement facilities?"

Assuming that land emplacement facilities are deemed to be landfills, the land ban provisions would apply. RCRA Section 3004(k) expressly defines land disposal for purposes of the land disposal restrictions program to include "landfills." Moreover, even if it were to be determined that the New Jersey units did not constitute landfills for purposes of federal law, such units are still potentially subject to the land ban. We believe Section 3004(k) allows EPA to include within the definition of land disposal units other than those specifically enumerated, and the Agency has done so in its January 14, 1986, land ban proposal. There, we proposed to add any "concrete vault or bunker intended for disposal" to the list of facilities identified in the statute as land disposal. Thus, if the proposed land emplacement facilities are concrete vaults or bunkers, our

proposal would subject them to the land disposal restrictions whether or not they qualified as landfills. (See proposed 40 CFR §282.2 regarding the definition of land disposal (51 FR 1602, 1607 (preamble), 1741 (proposed rule)).)

2. "Has EPA developed any standards, guidelines or other criteria to assure the integrity of 'land emplacement facilities,' including 'above-ground, long-term storage' facilities?"

Again, assuming that New Jersey's land emplacement facilities would be deemed landfills under the federal RCRA scheme, EPA's operating standards in 40 CFR Part 264 Subparts F and N would apply. These include requirements for liners, leachate collection and removal systems groundwater monitoring, corrective action, final covers and post-closure maintenance.

3. "The 1984 Amendments establish a variety of minimum technological requirements for land disposal facilities. Would these regulations be adequate to ensure the safe disposal of hazardous wastes in a 'land emplacement facility'?"

If the New Jersey facility meets the federal definition of a landfill, then the Minimum technical requirements for land disposal facilities, introduced by the 1984 Amendments, would apply. The minimum technological requirements, together with other existing requirements such as the ground-water monitoring and corrective action standards, would ensure the safe disposal of hazardous waste in such facilities.

We wish to address one additional issue not raised explicitly in your letter, pertaining to the relationship between federal and state hazardous waste management programs. It is not possible to determine, on the basis of your letter, whether a New Jersey state permit for a land emplacement facility would constitute an authorization to operate under RCRA. New Jersey is currently authorized to allow permanent disposal of hazardous waste only in facilities that meet the definition of a disposal surface impoundment, landfill, injection well, or land treatment unit. If New Jersey regulations currently consider land emplacement units to the landfills, then they must be permitted as such in order to be considered an authorized RCRA facility. Any attempt to

permit the land emplacement units as other than landfills would be inconsistent with the State's RCRA authorization. Therefore, if New Jersey elects to permit these units as other than a landfill--either because it lacks authority under New Jersey law to permit them as a landfill or because it has decided, for other reasons, not to permit them as a landfill--then any authorization to operate would be effective only for state law purposes and would not constitute authorization to operate under RCRA. */

*/ EPA intends to issue separate permitting standards (under a new Subpart X to Part 264) for units that do not logically fit into any pre-existing facility management category. These may include standards for land disposal units that do not fit well under the land disposal unit categories discussed above. We anticipate the Subpart X standards will be issued in final by the end of this year.

If the Agency were to promulgate Subpart X rules that applied to certain above-ground land emplacement units in lieu of the landfill standards, New Jersey would have one or two years after the new rules were issued to apply to EPA for authorization to implement Subpart X. In the interim, such facilities would have to continue to be permitted as landfills if they are to be considered authorized RCRA units.

We appreciate the opportunity to provide you with information regarding the federal program for hazardous waste management facilities. Please feel free to contact Marcia Williams , Director of the Office of Solid Waste, if you have further questions on this matter.

Sincerely,

J. Winston Porter
Assistant Administrator