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LOSS OF FINANCIAL RESPONSIBILITY COVERAGE ON INTERIM STATUS
AND PERMIT ISSUANCE

Mr. Robert D. Chesler
Lowenstein, Sandler, Brochin, Kohl
Fisher, Boylan & Meanor
65 Livingston Avenue
Roseland, New Jersey 07068

Dear Mr. Chesler:

Thank you for your letter of November 15, 1985 regarding storage and treatment facilities and the Loss of Interim Status Provision. While the essence of your letter is correct, there are a few misunderstandings I would like to clarify.

Your letter states that storage and treatment facilities would not lose their Part A interim status if they lost their sudden and accidental coverage and if those facilities could demonstrate that they were making and continued to make good faith efforts to purchase such insurance coverage. It is correct that the Loss of Interim Status provision in §3005(e)(2) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, applies only to land disposal facilities. Generally, it does not apply to storage and treatment facilities. However, EPA published a notice of implementation and enforcement policy regarding this provision on September 25, 1985. The notice states:

For the purpose of section 3005(e), the Agency interprets the term "land disposal facilities" to encompass the following types of facilities: landfills, land treatment units, surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells.

All such facilities which did not certify compliance on November 8, 1985, with financial responsibility requirements (among other aspects) have lost interim status.

A distinct issue from loss of interim status is the continuing obligation of all interim status treatment, storage, and disposal facilities to comply with the RCRA insurance requirements. EPA's Enforcement Guidance for a Constrained Insurance Market, issued on April 12, 1985, stated that EPA would not enforce against those who made good faith efforts to comply with the insurance requirements. However, that notice, by its terms, was in effect only until November 8, 1985.

Your letter also states that loss of sudden and accidental insurance would not prevent a treatment and storage facility from being granted "final authorization". It goes on to say that in such a situation, EPA can approve "final authorization" and place the facility on a schedule of compliance for the insurance requirements. I am assuming that when you use the term "final authorization" you mean the issuance of a Part B permit. Compliance with the financial regulations is required before a Part B permit can be issued. The Agency has not yet developed its policy on implementing these requirements for facilities seeking a permit. For information regarding the status of this policy, you may wish to contact David Fagan of the Permits Branch on 382-4457.

I hope this clarifies your understanding of the Loss of Interim Status Provision regarding storage and treatment facilities.

Sincerely,

Carole J. Ansheles
Manager, Financial Responsibility
Program (WH-562B)

cc: Dave Fagan (OSW)
Jackie Tenusak (OWPE)
Joe Freedman (OGC)