

PPC 9521.1984(01)

INADEQUATE PART B PERMIT APPLICATION

2 - MAY 1984

MEMORANDUM

SUBJECT: Inadequate Part B Permit Application

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

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

You have requested guidance on whether the use of Section 3008 administrative orders is appropriate to compel RCRA permit applicants to submit "technically adequate" information after an application has been determined "complete."

A determination that an application is complete is not necessarily a determination that the application is free of deficiencies. During the detailed review of the application and the drafting of permit conditions, it may become necessary to clarify, modify or supplement previously submitted material before progressing to a draft permit or a decision to deny.

The regulations specifically provide the Regions authority for gathering information after an application has been determined complete. "After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material." 40 CFR 124.3(c).

If applicants do not supply the requested information, the Regions may compel them to do so. If the information is not forthcoming, the Regions may deny the permit. "If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be

taken under the applicable statutory provision including RCRA Section 3008..." 40 CFR 124.3(d).

You are correct in concluding that the enforcement guidance dated September 9, 1983, speaks only to "late or incomplete" applications. That guidance was intended to apply to the period before the application is determined complete. After the finding that the application is complete, supplemental information may be needed. You have several options for obtaining this additional information.

If you believe written or verbal attempts to get additional information will not be successful, you may: issue a warning letter (leading to a Section 3008 administrative order), go directly to a Section 3008 order, or issue a notice of intent to deny the permit. The specific mechanism used is an area of discretion and requires case by case judgments by Regional offices. The regions should select the administrative or enforcement mechanisms that will most efficiently expedite the development of information necessary for RCRA permit decisions. The office of Waste Programs Enforcement is currently working on guidance which will assist you in selecting among enforcement responses. This guidance should be available midsummer.

cc: Branch Chiefs, Regions I-III, V-X
Regional Directors, Regions I-X