

9551.1990(04)

LAND DISPOSAL OF UNTREATED HAZARDOUS WASTE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCTOBER 3, 1990

Mr. Joseph J. Zimmerman
Sachs & Taylor
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036-4002

Dear Mr. Zimmerman:

Thank you for your recent correspondence dated August 20, 1990 concerning the prohibitions on land disposal of untreated hazardous waste and the prospect of a "no migration" variance for your client, Giant Industries Arizona, Inc. (Giant).

In that letter, you correctly stated that the land disposal prohibitions become effective for refinery hazardous wastes (KO48-KO52) on November 8, 1990, after being extended from the original effective date of August 8, 1990. You also correctly reiterated EPA's advisory that the processing of "no migration" petitions, from the date of receipt by EPA, through internal review, notification of any petition deficiencies, statutorily mandated publication of a proposed decision in the Federal Register, and public comments, to publication of the final decision in the Federal Register, is likely to take approximately 12-18 months. (EPA records indicate that Mr. Jim Michael of my staff discussed this issue with Mr. John Stokes of Giant in a December 13, 1989 telephone conversation.) Finally, your correspondence refers to EPA's policy, where a national lack of BDAT treatment, recovery, or disposal capacity can be demonstrated, for granting a one-year, case-by-case extension to the land disposal prohibition effective date, for provision of alternative protective treatment, recovery, or disposal. (See 40 CFR 268.5.) However, you should be aware that the statutory provisions under RCRA Section 3004(h)(3) require that the applicant make several demonstrations, among them that a binding contractual commitment has been made to construct or otherwise provide alternative treatment, recovery, or disposal capacity that protects human health and the environment. In order to

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address this requirement, the Agency has indicated that this provision may be satisfied by a Federal Register notice wherein the Agency proposes to grant either a "no migration" or a treatability variance. (See 55 FR 22673-4, June 1, 1990.) The Agency believes that once we have proposed to grant either a treatability or "no migration" petition, the petitioner has made a good faith effort to commit to obtaining alternative protective

disposal capacity. In addition, the Agency's action in proposing to grant the petition serves as a preliminary determination that the disposal unit is protective; the mere filing of a treatability or "no migration" petition provides no such indication of protectiveness and thus, cannot be deemed to satisfy the statutory requirement.

However, contrary to statements in your letter, regulations and draft guidance on the content and evaluation criteria for "no migration" petitions are currently available to the public, and have been for some time. Regulations currently exist at 40 CFR 268.6 describing the requirements for petitioning EPA to receive a "no migration" variance. These regulations were promulgated on November 7, 1986, and June 4, 1987, and since have been amended on July 8, 1987 and August 17, 1988. EPA also anticipates proposal of another "no migration" rule in 1990 that would further define "no migration" and would create new procedural and substantive petition requirements. Furthermore, a draft guidance document entitled "No Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners" has been available to the public upon request during the past two years. It also is available from the National Technical Information Service (NTIS, telephone number 703-487-4650), document number PB90204736. EPA records indicate that Mr. Michael of my staff responded to a January 16, 1990 request from Ms. Kim Bullerdick of Giant for a copy of this draft guidance. A copy of the latest draft of this guidance, dated March 1990, also is attached for your convenience.

EPA recognizes the situation land disposers face as the land disposal prohibitions become effective. However, the prohibition of land disposal of K048-KO52 hazardous wastes prevents the continued land disposal of these wastes past November 8, 1990. Land disposal is prohibited until the "no migration" variance has received final approval.

Although a "no migration" variance could be granted to Giant after November 8, 1990, Giant is advised to be actively arranging for other treatment or disposal after November 8, 1990. Should Giant decide to petition EPA for a "no migration" variance, that petition should be submitted to: U.S. Environmental Protection Agency, Permits and State Programs Division, 401 M Street S.W., Washington, D.C. 20460. As Mr. Michael discussed previously with Mr. Stokes of Giant, EPA strongly recommends that potential petitioners meet with the Agency prior to development and submittal of "no migration" petitions. You may contact Mr. Michael of my staff at 202-382-2231 to arrange such a meeting, or if you have specific questions concerning the "no migration" petition process.

Sincerely,

Original Document Signed

Sylvia K. Lowrance, Director
Office of Solid Waste

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