

OSWER Directive 9489.00-2

APR 22 1987

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Issues Relating to Miscellaneous Units

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: RCRA Division Directors, Regions I to X

The purpose of this memorandum is to provide implementation guidance on the newly promulgated Subpart X regulations for miscellaneous units published in the Federal Register (52 FR 46946, December 10, 1987). A more detailed explanation of these issues will be contained in an upcoming Federal Register correction notice to the December 10th rule. This memorandum will briefly cover the major points to be clarified.

Regional Authority to Implement Miscellaneous Units Standards (Subpart X) in RCRA Authorized States

There has been confusion about EPA's authority to implement Subpart X in authorized states. This issue was originally discussed in section VIII(b) of the preamble to the December 10th rule.

As you know, Subpart X requirements are not HSWA requirements. Therefore, we are not relying on HSWA authority to support EPA implementation in authorized states. Rather, other RCRA authority exists for direct EPA implementation. The Agency is making use of the authority provided under 40 CFR 264.1(f)(2) to implement the Subpart X program in all states at the same time, regardless of their authorization status. This authority was created to avoid a gap during which permits could not be issued in those states which had obtained RCRA program authorization but had not been authorized for new Part 264 standards for specific facility/unit types (such as Subpart X). The Regions will, therefore, implement the program and issue Subpart X permits until the states revise their programs in accordance with 40 CFR 271.21.

In this regard, EPA's authority to issue permits extends both to new and existing facilities. Prior to Subpart X, many existing miscellaneous units had interim status and operated under 40 CFR 265, Subpart P for thermal treatment, and Subpart Q for chemical, physical, and biological treatment units. These interim status units will now be subject to EPA permit authority to apply Subpart X standards until the state receives authorization to permit these types of units.

Permitting Deadlines for Subpart X facilities

The 1984 HSWA Amendments in section 3005(c) contain the statutory permit deadlines applicable to Subpart X facilities. The permit application deadline of November 8, 1988 and the permit issuance deadline of November 8, 1992, are relevant to Subpart X units. The only Subpart X facilities subject to the permit application filing and permit issuance deadlines of section 3005(c), however, are those that had interim status by November 8, 1984. Furthermore, the permit application due by November 8, 1988 need only cover those units that were identified in (or that needed to be identified in) the Part A as of November 8, 1984. Submission of the Part B application for these units by November 8, 1988 will secure the continuation of interim status for the unit in the event that the Agency is not able to make a final determination on the application by November 8, 1992. Note that any unit added during interim status after November 8, 1984 or any facility receiving interim status after that date, is not subject to the 1988 Part B application deadline. Note also that any final determination by November 8, 1992 on the application may take the form of a partial permit, since the determination only has to cover units under interim status on November 8, 1984.

None of the foregoing requires the Regions to initiate a call-in of Part B applications for Subpart X. The upcoming Federal Register correction notice will generally notify hazardous waste management facilities owners and/or operators of these HSWA deadlines and the impact upon their Subpart X units. In addition, however, Regions are encouraged to notify interim status facilities in order to give them the opportunity to meet the November 8, 1988 deadline.

Since Open Burning/Open Detonation (OB/OD) is one of the most common miscellaneous units, OSW is working on a guidance document for OB/OD of military waste explosives. A separate guidance for commercial explosive waste is under initial development.

Technical Corrections to Subpart X

Several mistaken citations of regulations have been detected in the December 10th final rule. They are on page 46965 or the Federal Register, and should be corrected as follows:

- i) in 270.14(b)(5): change the citation "264.194" to "264.193(i) and 264.195", and,
- ii) in 270.14(b)(13): the citation should read "the post-closure plan required by 264.112, 264.118 and 264.197".

These issues will be discussed in more detail in the upcoming correction notice in the Federal Register. If you have any questions, please contact Nestor J. Aviles at FTS 382-2218, Chester Oszman at FTS 382-4499, or Frank McAlister at FTS 382-2223.

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