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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

September 26, 1990

MEMORANDUM

SUBJECT: Consultation with Region V on ARAR Waiver for Moss American Site

FROM: Henry L. Longest II, Director Office of
Emergency and Remedial Response

TO: Norman Niedergang, Associate Director, Waste
Management Division, Region V

Purpose

The purpose of this memorandum is to follow-up the consultation held with Region V on August 28, 1990, on the Moss American Site in Milwaukee, Wisconsin. The purpose of the consultation was to discuss a waiver of the Subtitle C impermeable cap required for on-site containment of RCRA K001 (wood preserving wastes) treatment residues. Based on our discussion, Region V will waive the Subtitle C cap because a permeable cap will enhance ground-water treatment.

Another issue raised by Region V during the consultation concerns whether disposal of treated wastes from the Northeast Landfill area of the site must occur in a unit meeting the minimum technological requirements of RCRA. This memorandum clarifies that these wastes may be disposed in the existing unit (area of contamination) across the river from the Northeast Landfill, which, after receipt of the treated wastes will be closed, and RCRA standards that are applicable or relevant and appropriate requirements (ARARs) will be attained (unless a statutory waiver is justified). Such consolidation does not trigger the minimum technological requirements of RCRA.

Background

Region V is seeking a waiver from the requirement to install a Subtitle C impermeable cap on a landfill that will contain K001 RCRA wastes treated to meet the treatment standards under the land disposal restrictions (through a treatability variance). A permeable cap will enhance ground-water treatment while preventing direct contact with treatment residues. The permeable cap will enable ground-water treatment to occur in a period of seven to ten years rather than 200 years, the estimated timeframe necessary if an impermeable cap is installed. Because of the unique site characteristics and the remedy selected, installation of a Subtitle C impermeable cap, therefore, would result in greater risk to health and the environment by preventing natural flushing and significantly delaying and reducing the effectiveness of ground-water remediation. The Region should include performance standards in the Record of Decision (ROD) to verify the protectiveness of the remedy.

During the consultation, Region V also raised a question related to disposal of K001 waste from the Northeast Landfill area of contamination. The Region intends to move these wastes (approximately 1000 cubic yards) across the Little Menomonee River, treat them in compliance with the land disposal restrictions (through a treatability variance), dispose of them on-site in an existing unit (the area of contamination (AOC) southwest of the river), and clean close the Northeast Landfill area. Based on its understanding of the RCRA closure requirements, the Region had proposed disposing of these wastes in a unit meeting the minimum technological requirements of RCRA in the Proposed Plan for the site.

The Region questioned this requirement during the consultation due to the resulting effect: a hazardous waste landfill meeting the minimum technological requirements of RCRA would be constructed in a previously uncontaminated area of the site, next to an existing unit meeting RCRA ARARs, and both units would contain K001 wastes treated to the same levels. Specifically, the Region's question concerns whether disposal of the Northeast Landfill waste must occur in a minimum technological unit under the RCRA closure requirements, or whether the waste may be disposed in the existing unit/AOC, which, upon closure, will attain (or waive) RCRA ARARs.

Since the consultation, it has been determined that the

Northeast Landfill waste may be disposed in the existing unit/AOC without triggering the minimum technological requirements of RCRA. Such disposal may occur because the AOC is an existing unit¹ and does not meet the definition of any of the following units which must meet the minimum technological requirements: a new unit, a unit that has been laterally expanded, or a replacement unit. It is clear that the original area of contamination is not a new unit, nor is it being laterally expanded. The question, then, is whether the unit would be considered a replacement unit.

A replacement unit is defined as a unit "that is taken out of service and emptied by removing all or substantially all waste from it." (50 FR 28706, July 15, 1985)². The existing unit/AOC at the Moss American site would only be considered a replacement unit if all or significantly all of the waste had been removed from the unit and new waste subsequently disposed there. The intent of a replacement unit is that once a unit has been taken out of service and the waste removed, before the unit may be put back into service, the unit must be retrofit to meet the minimum technological requirements.

The existing unit/AOC at the Moss American site, therefore, does not fit the definition or intent of a replacement unit. Rather, the waste in the existing unit/AOC will be treated in batches using bioremediation (in compliance with the land disposal restrictions) and returned to the unit which will later be closed, and RCRA ARARs will be attained (or waived). Wastes from the Northeast Landfill area will also be treated and consolidated with the wastes in the existing unit/AOC. This consolidation will occur in an existing unit (the original area of contamination), without lateral expansion of the unit. Furthermore, this AOC will not fit the definition of a new or replacement unit, as discussed above. The status of the existing unit/AOC will not change, and therefore will not be required to meet the minimum technological requirements.

¹ See preamble to 1990 NCP, 55 FR 8760 (March 8, 1990). ("EPA believes that it is appropriate generally to consider CERCLA areas of contamination as a single RCRA land-based unit or 'landfill'.")

² CERCLA guidance defines as a replacement unit, an existing unit where: "(1) the unit is taken out of service; (2) all or substantially all of the waste is removed; and (3) the unit is reused, which does not include removal and replacement of waste into the same unit." OSWER Directive No. 9234.2-04FS (October 1989), "RCRA ARARs," page 6.

Implementation

Based on our discussion, the Region will waive the requirement to install a Subtitle C impermeable cap based on greater risk to health and the environment, and will emphasize in the Record of Decision that the permeable cap actually acts as part of the treatment system, enhancing its effectiveness.

The Region will also state in the ROD that the Northeast Landfill wastes will be disposed in the original area of contamination in compliance with the land disposal restrictions.

cc: John Kelley (Region V, RERB); Jon Dikinis (Region V, MI/WI Section); Doug Ballotti (Region V, Unit 39); Betty Lavis (Region V, RPM); Paul Nadeau (HSCD); Bill Hanson (ROGB); Tim Mott (OWPE); Robin Anderson (ROGB); Steve Golian (ROGR); Andrea McLaughlin (ROGB); Ernest Watkins (OWPE)