

1. Applicability of the Land Disposal Restrictions to CERCLA Wastes

Under section 268.30(a), found in the November 7, 1986 Federal Register (51 FR 40641), EPA has granted a two-year national capacity extension from the effective date of the land disposal restrictions for certain F001 through F005 solvent wastes. For example, the effective date for F001-F005 wastes generated from CERCLA response actions has been extended until November 8, 1988 under §268.30(a) (2). The provisions of this two-year national capacity extension do not apply to hazardous wastes that are contaminated soil and debris generated from CERCLA §104 or §106 response actions. These wastes are granted a separate statutory exemption from the land disposal restrictions until November 8, 1988, per §268.1(c) (3).

According to the National Contingency Plan (NCP), found in 40 CFR Part 300, private parties may take CERCLA response actions that are not pursuant to CERCLA §104 or §106. Specifically, private parties may take removal or remedial actions under 40 CFR 300.25(d) or 300.71. Does the two-year national capacity extension provided in §268.30(a) (2) apply to wastes generated in private party response actions, or only to wastes generated under CERCLA §104 or §106 authority?

The two-year national capacity extension granted under §268.30(a) (2) applies only to wastes generated pursuant to CERCLA §104 or §106 response actions and RCRA corrective actions. Although the regulation itself does not specify §104 and §106 actions, the preamble to the November 7, 1986 final rule (51 FR 40572) clarifies the limitations on page 40579. Allowing the variance only for CERCLA §104 and §106 actions is consistent with the statutory exemption for CERCLA contaminated soil and debris (40 CFR 268.1(c) (3)) provided under section 3004(e) (3) of RCRA. According to 51 FR 40584, response action wastes resulting from State-ordered, State-funded, or private party-funded responses do not fall under the 40 CFR 268.1(c) (3) exemption for CERCLA §104 and §106 wastes. Section 268.30(a) (2) also applies only to wastes generated under CERCLA §104 or §106 authority. Therefore, provided that other variances or exemptions do not apply, wastes from private party actions taken under §300.25(d) or §300.71 would not be subject to the exemption for CERCLA and RCRA wastes.

SOURCE: Bill Fortune (202) 475-6715
SPECIALIST: Jennifer Brock (202) 382-3112