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

March 31, 1987

MEMORANDUM

SUBJECT: Region III Issues on Section 3004(u) Authority

FROM: Marcia E. Williams, Director
Office of Solid Waste

TO: Robert L. Allen, Chief
Waste Management Branch, Region III

This memorandum is intended to respond to your memorandum of February 5, 1987, in which you raised several issues relating to the extent and nature of the corrective action authority under RCRA section 3004(u).

The first issue that you raised dealt with whether or not property that is owned and used by an owner/operator for waste disposal, but which is not contiguous to the facility at which regulated hazardous waste management units are located, can be considered to be part of that facility, for purposes of implementing corrective action under _3004(u). As explained in the July 15, 1985 codification rule, the term "facility" is meant to extend to all contiguous property under the control of the owner/operator. Since the property which you describe is separated from the facility property by land that is not under the control of the owner or operator, it cannot be considered "contiguous," and therefore cannot be addressed as part of the facility under _3004(u). Since this property is being used for waste disposal, however, enforcement authorities under RCRA (e.g., _7003) or other statutes may be used as appropriate to address environmental problems that may be occurring from that waste management operation.

The second issue which you raised involves process collection

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sewers, and whether they can be considered to be solid waste management units (SWMUs). Process collection sewers are typically designed and operated as a system of piping into which wastes and waste waters from production processes and other process-related activities are introduced, and which usually flow to a wastewater treatment system. We believe that there may be sound policy and legal reasons for considering process collection sewers to be SWMUs. However, we also recognize that such sewers do not perfectly fit the RCRA program's traditional concept of a waste management unit. Considering the substantial potential impacts of defining process collection sewers to be a type of SWMU, it is our intention to resolve this issue through the regulatory process. The comprehensive § 3004(u) rulemaking, which is scheduled for proposal later this calendar year, will specifically address the question of how to treat process collection sewers under the corrective action program. We will therefore be able to base the Agency's final decision on a more thorough consideration of the technical, legal and other implications of the issue.

The third issue in your memorandum deals with the question of the extent to which the § 3004(u) authority can be used to address potential or future releases at a facility. It has been the Agency's interpretation that the § 3004(u) authority does extend to addressing releases which occur in the future; i.e., after a permit has been issued. To the extent that releases occur or become known after a permit is issued, corrective action for such releases can be compelled, as necessary, under § 3004(u). Further, in some situations, it may be appropriate to use § 3004(u) to require an owner/operator to install certain monitoring devices at a unit, even though no releases have yet occurred from the unit. Such a requirement should be imposed, however, only where there is reasonably strong evidence indicating that such releases are likely during the term of the permit. The example that you cited in your memorandum involving buried drums that are deteriorating and thus are likely to release would seem to be a good example of the type of situation where a type of "detection monitoring" system could be appropriate. We do not envision, however, using the § 3004(u) authority to require owner/operators to install devices or take measures to protect against accidental releases (such as your example of installing steel posts around a container storage area). We do not believe that Congress intended this provision to be used to protect against all contingencies where releases could occur.

Your fourth question had to do with the applicability of _3004(u) to new facilities that are to be built on property where solid waste management units are located, and more specifically, where only a portion of the facility is to be leased to a new operator. As explained in the July 15, 1985 codification rule, the facility is the entire property under the control of the owner or operator. Therefore, in issuing a permit for the new facility, corrective action for any SWMU at the facility--including the unleased portion--must be addressed. The requirement to conduct any necessary corrective action at the facility, be it on the leased or unleased land, will be implemented through a permit jointly issued to the owner and operator.

If you have any further questions on these issues, please contact Dave Fagan at FTS 382-4740.

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