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LAND DISPOSAL RESTRICTIONS CLARIFICATIONS

January 20, 1987

Michael Edwards, Training Officer
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Dear Mr. Edwards:

Thank you for your letter of November 25, 1986, requesting confirmation of EPA's interpretation on several issues pertaining to the land disposal restrictions final rule (51 FR 40572, November 7, 1986). With a few exceptions, your interpretations of the regulation are correct. I have addressed each issue raised in your letter and provided the responses below:

1. "Only the RCRA and CERCLA contaminated soils are exempted for disposal at landfills."

   -- Congress provided a statutory exemption from the land disposal restrictions for contaminated soil and debris resulting from a response action taken under Section 104 or 106 of CERCLA or a corrective action under RCRA. The exemption is in effect until November 8, 1988, (48-months after the date of the Hazardous and Solid Waste Amendments enactment). This exemption does not apply solely to landfills; rather, it applies to all units defined as land disposal in 40 CFR 268.2.

   On November 7, 1986, the Agency promulgated a two-year delay of the effective date (ending November 1988) of the land disposal restrictions for solvent wastes from generators of 100-1000 kilograms of hazardous waste per month, CERCLA and RCRA corrective action solvent wastes (except solvent-contaminated soils), and solvent wastes containing less than 1 percent total F001-F005 solvents. In addition, the Agency granted a two-year exemption (ending November 1988) for certain dioxin-containing wastes, including dioxin-contaminated soils.

2. "Federally ordered cleanups are the only ones that have the extension for soils, State ordered cleanups are not exempt."

   -- This is correct. Only Federally ordered cleanups under CERCLA or RCRA are covered under the statutory exemption.

3. "Waste collected from small quantity generators can be collected at a TSDF and be remanifested by the TSDF and still go to the landfill for disposal under the small quantity generator extension."

   -- The Agency granted a two-year exemption for spent solvent wastes generated by small quantity generators of 100-1000 kilograms of hazardous waste per month. These wastes are exempt from the restrictions until November 1988. Wastes from these generators may go to land disposal even if collected and remanifested by a TSDF. However, each generator of the waste must forward a notice to the land disposal facility stating that his waste is exempt from the restrictions (see 40 CFR 268.7 (a)(3)).

4. "The ash from the incineration of F003 waste does not exhibit the characteristic of ignitability; so the ash is nonhazardous. This waste can be landfilled without meeting the CCWE standards."

   -- This is incorrect. According to the "delivered-from" rule in 40 CFR 261.3 (c)(2)(i), any waste generated from the treatment, storage, or disposal of hazardous waste is a hazardous waste. Therefore, although incineration of an F003 waste may render the waste nonignitable, the waste remains a hazardous waste and as such the residual is subject to the land disposal restrictions and cannot be landfilled without meeting the treatment standards in Table CCWE.

5. "F003 materials once changed from the ignitable state can be landfilled. (i.e., mixing the waste with an absorbent is an acceptable means of treatment.)"

-- According to the mixture rule in 40 CFR 261.3(a)(2)(iii) a mixture of a solid waste and a hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste is excluded from regulation provided that the mixture no longer exhibits any of the characteristics of hazardous waste. Thus, mixing of an F003 waste with a solid waste is an acceptable means of treatment.

6&7. "F001-F005 waste may be stored at a TSDF for a period of one year for the sole purpose of accumulation of such quantities of waste to facilitate proper disposal, recovery, or treatment."

"It will be acceptable to use the tank inventory as means of showing disposal of F-listed material in the one year time frame."

-- These two statements reflect a misconception about the storage provision. The statute prohibits storage of restricted wastes unless such storage is solely for the purpose of accumulating sufficient quantities to facilitate proper recovery, treatment, or disposal. Therefore, according to the provisions in 40 CFR 261.50, an owner/operator may store prohibited wastes if such storage is for the purpose defined above. Storage is not limited to 1-year. Rather, the 1-year period serves as a benchmark to determine who bears the responsibility of demonstrating whether or not the waste is being stored to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal. 40 CFR 268.50 (b) places the burden on the Agency to show that wastes being stored for up to 1-year are not being stored for reasons allowed under the statute. Under 40 CFR 268.50(c) the owner/operator bears the burden of showing that storage beyond 1-year is for the reasons allowed under the statute. It should be noted that the owner/operator is not required to notify the Agency that wastes are being stored for longer than 1-year.

8. "Solvent waste which is a solvent-inorganic sludge mixture or solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than one percent total F001-F005 solvent constituents may be landfilled."

   -- This statement is correct. These wastes are subject to the two-year extension of the effective date due to the lack of alternative treatment capacity. After November 8, 1988, these wastes are restricted from land disposal.

9. "F001-F005 contaminated soils may not be removed from the ground and be stock piled."

   -- This is correct. F001-F005 contaminated soils (i.e., non-CERCLA and non-RCRA corrective action) containing greater than 1% total F001-F005 solvents, are subject to the November 8, 1986, effective date. Once removed from the ground, these wastes only may be stored for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery, or disposal. Such storage must be in tanks or containers. F001-F005 contaminated soils containing less than 1% total F001-F005 solvents are subject to the two-year extension of the effective date may be stored or disposed in or on the land until November 8, 1988.

10. "When working with RCRA and CERCLA cleanups, it is acceptable to assume the best scenario when determining whether the waste is F-listed or not (i.e., do not assume a solvent is spent)."

   -- The Agency recognizes that situations occur in cleanup operations where the origin and type of waste is not known. When such cleanups involve F001-F005 constituents, it is the Agency's policy, when conducting Superfund cleanup operations, to consider such wastes as listed hazardous wastes.

I trust that this letter clarifies the issues raised in your letter. If you have additional questions, please contact me or Jacqueline Sales of my staff at (202) 382-4770.

Sincerely,

Stephen R. Weil, Chief
Land Disposal Restrictions Branch