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May 6, 1985

MANAGEMENT OF WASTES NEWLY REGULATED UNDER HSWA

SUBJECT: Applicable Management Standards for Waste Newly
Regulated Pursuant to HSWA

FROM: Bruce R. Weddle, Director
Permits and State Programs Division (WH-563)

TO: Kenneth Feigner, Chief
Waste Management Branch (M/S 533)
Region X

This is in response to your memorandum of April 4, addressing the question of which standards (EPA's or an authorized State's) apply to the management of wastes which become regulated in authorized States as a result of EPA rulemaking pursuant to HSWA.

We agree with your conclusion that when EPA promulgates additions to Part 261 pursuant to HSWA, it is EPA's standards which are applicable to handlers affected by the new regulations. This situation continues until the State revises its program pursuant to 40 CFR 271.21 to add the wastes to its regulated universe and receives EPA's approval.

You are also correct in that, while States may participate in implementing the Federal requirements through agreements with EPA, EPA retains ultimate responsibility for the Federal program. Only EPA can issue RCRA permits with respect to the new wastes. While EPA may defer to authorized States that are taking timely and appropriate enforcement actions against violations with respect to the new wastes, EPA also retains ultimate enforcement responsibility.

We appreciate your raising this issue, and it will be discussed in the RCRA Reauthorization Statutory Interpretation memorandum (RSI) on joint permitting.

cc: Hazardous Waste Branch Chiefs, Regions I-IX
State Programs Branch
Gail Cooper, OGC

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