

9528.1985(11)

## RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 85

### Burning and Blending and Interim Status

7. A company blends listed hazardous waste (40 CFR Subparts C and D) and markets the blends as hazardous waste fuel. The company is neither the generator nor the burner of the hazardous waste derived fuel. The operator of a cement kiln currently uses virgin oil as fuel but plans to switch and use the hazardous waste fuel blends to power the kiln. Tanks which previously held virgin oil are being converted to store hazardous waste fuels. The cement kiln operator has asked if he must "physically" have the hazardous waste fuel in his storage tanks prior to the effective deadlines set in the November 29, 1985, Federal Register (50 FR 49164) for Part 266, Subpart D burning/blending, in order for the facility to obtain interim status for storage.

Currently, the hazardous waste fuel to be burned is exempt from any RCRA regulations because the fuel was obtained from a blender who neither generated nor burned the fuel (50 FR 667, §266.30 (a)). This exemption is pursuant to the redefinition of solid waste (50 FR 614). Per the November 29, 1985, final burning and blending regulations, which were promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), hazardous waste fuel will be regulated when blended by the company, (50 FR 49204, §266.30(a) and §266.34 as amended) and when the fuel is burned by the cement kiln operation (50 FR 49204, §266.30(a) as amended, 50 FR 49205, §266.35 as amended). Hence, the cement kiln operator needs interim status or a permit to store the hazardous waste fuel prior to burning.

To qualify for interim status, a facility owner/operator must meet the three criteria set out in Section 3005(e)(1) of RCRA as amended. First, the owner/operator must have an "existing Hazardous Waste Management (HWM) facility," defined as a facility which was in operation or for which construction commenced on or before November 19, 1980, (40 CFR 260.10), or a facility "in existence" on the effective date of statutory or regulatory amendments under the Act that render the facility subject to having a RCRA permit.

Second, the owner/operator must file a notification of hazardous waste activity per Section 3010 of RCRA; and third, submit a Part A application (50 FR 28753, §270.70). In order for the cement kiln operator to be "in

existence" for the purpose of obtaining interim status for converted tank storage, he should be storing hazardous waste fuel in his tanks on the effective date of the burning and blending regulations under Part 266, Subpart D (50 FR 49164).

However, a facility at which tanks are empty on the effective date but which are intended to store hazardous waste fuel may also qualify for interim status under certain conditions. To be in interim status such a facility must, by the effective date, have obtained all Federal, State, and local approvals or permits necessary to begin storage of hazardous waste fuel in the tanks and have objective evidence, such as contractual obligations which cannot be cancelled or modified without substantial loss, which clearly indicate the intent to begin storage of this waste in the tanks within a reasonable time.

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