

9524.1994(01)

INTERPRETATION OF THE REPORTING REQUIREMENTS OF 40 CFR
270.30(1)(10)

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

July 19, 1994

Mr. Keith E. Coltrain
Ogletree, Deakins, Nash, Smoak & Stewart
4101 Lake Boone Trail, P.O. Box 31608
Raleigh, North Carolina 27622

Dear Mr. Coltrain:

This is in response to your letter of June 21, 1994 addressing EPA's current interpretation of the reporting requirements of 40 CFR 270.30(1)(10), as discussed in Jeffery Denit's February 23, 1988 letter to Chemical Waste Management, Inc. Your letter also presents five scenarios, and asks whether these situations involve reportable non-compliance pursuant to 270.30(1)(10).

Mr. Denit's letter remains as the current Agency interpretation regarding a permittee's obligation to report non-compliance with RCRA permit conditions as specified in 270.30(1)(10), which requires the permittee to "report all instances of non-compliance not reported under paragraphs (1), (4), (5), and (6) of this section". We believe that this regulation generally does not apply to minor recordkeeping, reporting, and similar oversights that are immediately corrected once discovered. The Agency believes, however, that even seemingly insignificant violations become significant if repeated. Therefore, it should be noted that if a violation meeting the above criteria is part of a repeating pattern, reporting is required. The non-compliance reports under this provision do not have to be submitted immediately, but are to be included the next time the facility submits monitoring reports to the regulatory agency.

We have reviewed the five scenarios presented in your letter (see attachment). Because each instance of non-compliance must be addressed on a case-by-case basis in view of all the facts, a final

decision as to whether these situations constitute reportable non-compliance cannot be made without additional information. With the information you provided, it is difficult to tell if the described incidents are one-time occurrences of minor significance, or if they are a part of a larger pattern of non-compliance. In addition, such site-specific issues are more appropriately made by the State or EPA Regional permitting authorities. However, based on the limited information provided, our judgment is that the scenarios 1, 2, 4, and 5 probably involve reportable non-compliance.

The situations presented in scenarios 1, 2, and 5 appear to directly involve hazardous waste management activities. These situations might indicate potential flaws in waste handling procedures. The requirement to report non-compliance assures that the Agency is notified of and can assess compliance problems at a particular facility. In addition, reporting non-compliance creates a strong incentive on the part of the permittee to institute mechanisms to prevent recurrence of non-compliance. It is important that these mechanisms be developed, especially for substantive waste management requirements. The scenarios presented do not appear to fit within the narrow exception for "minor recordkeeping, reporting, and similar oversights."

Scenario 4 raises questions regarding on-site safety. No information is provided about the identity of missing items, but if items identified in a contingency plan are missing, it may not be possible to implement the contingency plan fully. The failure to have on-site all equipment required in a permittee's contingency plan does not appear to be a minor recordkeeping or reporting oversight. Note that contingency plans are often written to allow replacement and maintenance of emergency equipment, and such routine maintenance would not trigger reporting requirements.

Scenario 3 involving a fallen sign appears to be a general facility maintenance concern. Unless this is a recurring situation, and assuming this problem was immediately corrected, this probably would not be reportable non-compliance.

I would like to reemphasize that additional information would be necessary to make a complete evaluation. Overall, we believe that the exception from the requirement to report all non-compliance is a narrow one for rare individual instances of non-substantive violations. When in doubt, a facility should report

any non-compliance.

Thank you for the opportunity to respond to your requests concerning reportable non-compliance. If you have any questions, please contact Jeffrey Gaines at (703) 308-8655.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

Attachment

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June 21, 1994

Michael Shapiro
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United States Environmental Protection Agency
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RE Scope of Duty to Report Noncompliance
Under 40 CFR 270.30(1)(10)

Dear Mr. Shapiro:

I am writing to request EPA's current interpretation of the reporting requirements of 40 CFR 270.30(1)(10). That regulation requires permitted facilities "to report all instances of noncompliance not reported under other paragraphs."

To date, I have found only a 1988 letter (copy attached) from Jeffery D. Denit, Acting Director, Office of Solid Waste, addressing the scope of 40 CFR 270.30(1)(10). In that letter, Mr. Denit states that Section 270.30(1)(10) should not apply to minor oversights that are immediately corrected once discovered.

I am seeking your confirmation that the 1988 letter still reflects EPA's current interpretation of 40 CFR 270.30(1)(10). I would also appreciate copies of any more recent EPA guidance documents or letters interpreting the requirement to report other instances of noncompliance. Specifically, has EPA defined in any way what instances of noncompliance are not reportable because they were "immediately corrected once discovered?" Has EPA defined what constitutes "immediate correction?"

In order to put this request in more concrete terms, I have

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drafted five (5) questions for you to consider. We request the Agency's position on whether any of these situations would be reportable noncompliance pursuant to 40 CFR 270.30(1)(10).

Thank you for your attention to this matter. I look forward to hearing from you.

Yours truly,

Ogletree, Deakins, Nash, Smoak and Steward
Keith E. Coltrain

Enclosure

Attachment

QUESTIONS

1. 40 CFR 264.315 requires that containers must be crushed, shredded or similarly reduced in volume to the maximum practical extent before burial in a landfill. The landfill operator deposits a bulk load of waste directly into the landfill and then discovers several containers entrained in the load. Those containers were empty and had not been crushed or shredded. The operator removes the containers, crushes them or fills them with inert material and returns them to the landfill. Is this reportable noncompliance?
2. 40 CFR 264.314 requires that placement of bulk liquids containing free liquids in a landfill is prohibited. The landfill operator deposits a bulk shipment directly into the landfill and observes a small amount of liquids. The operator immediately absorbs the liquids. Is this reportable noncompliance?
3. 40 CFR 264.14 requires a warning sign to be posted at various locations. The facility operator posts such signs but later discovers that one sign is not visible because it has fallen to the ground. The operator replaces the sign. Is this reportable noncompliance?
4. 40 CFR 264, Subpart D requires the owner or operator of a hazardous waste facility to have a contingency plan for his facility. In reviewing the contingency plan, the operator discovers that certain items listed in the plan have been used and are not on-site. The owner orders and obtains replacement items before the contingency plan is implemented. Is this reportable noncompliance?
5. 40 CFR 264.173 requires that containers holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. The owner inspects the container storage area daily. On Monday he notes all containers are closed. On Tuesday, he discovered a partially opened container and

immediately closes it. Is this reportable noncompliance under 40 CFR 270.30(1)(10)?