

RCRA APPLICABILITY TO RELEASES OF HAZARDOUS WASTE

April 2, 1987

MEMORANDUM

SUBJECT: Interpretations of RCRA Applicability to Releases of
Hazardous Waste

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562)

Gene A. Lucero, Director
Office of Waste Programs Enforcement (WH-527)

TO: Kenneth D. Feigner, Chief
Waste Management Branch, Region X

This memorandum responds to your memoranda of December 25, 1986 and January 20, 1987, in which you raised several issues regarding applicability of RCRA corrective action authorities, and the implications of termination of interim status by authorized States in regard to implementing _3004(u) corrective action.

The first general concern which you raised relates to the applicability of RCRA to releases from less-than-90-day accumulation units. The Hotline report that you cited and which stated that such releases "are not generally covered by RCRA regulations," requires clarification. It is clearly possible to address releases from less-than-90-day accumulation units by using the imminent and substantial endangerment authorities of RCRA _7003 or CERCLA _106. The alternative theory which you suggest presents a number of policy and legal issues which we believe merit further consideration.

The other concept which you raised in your 12/29/86 memorandum dealt with the applicability of _3004(u) to facilities which are closing but which are not subject to post-closure permits. You assert that _3004(u) could be applicable to closing interim status facilities which are not subject to post-closure permits. This interpretation is based on the fact that certification of closure

does not terminate interim status in the absence of a final administrative disposition. You suggest that until a permit is denied, or interim status is otherwise terminated, the facility

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remains "subject" to a permit and is, therefore, subject to _3004(u). There are several legal limitations to this approach, and the Agency has no plans at this time to develop requirements such as those you have suggested.

If closure for the entire facility has been certified and is, in fact, in compliance with 40 CFR Part 265 and no post-closure permit is required, there should be no wastes or units at the facility which would be subject to a RCRA permit. If the same facility later wishes to resume operation, the Region may request a Part B, thereby bringing the facility into the universe subject to _3004(u) requirements. Absent such actions, however, _3004(u) does not apply. Agency interpretation of the applicability of _3004(u) has consistently been limited to facilities seeking a permit.

While _3004(u) could be construed to mean that corrective action can be required either by promulgation of standards or by issuing permits, Agency interpretation, as supported by the legislative history, has consistently been that any standards promulgated under this Section will be standards for facilities in the process of being permitted. Although the corrective action standards will not be applicable as self-implementing interim status (Part 265) standards, we anticipate that they will generally be applied in _3008(h) actions. As discussed at the Branch Chiefs' meeting in January, we intend to include language to this effect in the preamble to the regulation to be proposed in the Fall of 1987.

As summarized in your 1/20/87 memorandum, there was some discussion during the RCRA Branch Chiefs' meeting of whether EPA could act to "preserve" interim status at the facility which is denied a permit by an authorized state. The discussion suggested that such an action might be desirable for the purpose of implementing _3004(u) corrective action, if necessary, at such facilities.

An authorized state's denial of a base program permit is a final administrative disposition of the permit application. A facility's

authorization to operate pursuant to interim status terminates upon such denial (see _3005(e)(1)(C)). Interim status is granted by statute and cannot be "preserved" by EPA. It will not, therefore, be possible to extend interim status after a permit has been denied for the purpose of imposing corrective action requirements. The Agency has taken the position, however, that _3008(h) will still apply since

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the facility previously had interim status.

We understand that the Regions were reluctant to exercise 3008(h) authorities in the absence of administrative hearing procedures. Since guidance on the hearing procedures has been signed by the Assistant Administrator for Enforcement and Compliance Monitoring and the Assistant Administrator for Solid Waste and Emergency Response and has been distributed, we assume that this is no longer an issue.

If you have questions concerning these interpretations, you may contact Michele Anders (for corrective action and permitting issues) at 382-4534, or Susan O'Keefe (for enforcement questions) at 475-9313.

cc: RCRA Branch Chiefs, Regions I through IX

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