UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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September 6, 2007

Alan R. Batcheller, Director
Remediation Division
Texas Commission on Environmental Quality
MC 225
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Batcheller:

It has recently come to my attention that the Detrex Corporation facility (Detrex), a solvent recycler located in Arlington, Texas, has applied for a Municipal Settings Designation (MSD) with the City of Arlington, and the application is currently under review by your Agency. Detrex, as you are aware, is a Resource Conservation and Recovery Act (RCRA) permitted treatment storage and disposal (TSD) facility that is performing corrective action activities pursuant to its permit.

Because it is important that states maintain nationally consistent RCRA programs, the U.S. Environmental Protection Agency (EPA) has significant concerns with the establishment of an MSD for this facility because it has a RCRA permit issued pursuant to the Texas Commission on Environmental Quality's federally authorized RCRA program. There are specific requirements in 40 Code of Federal Regulations Part 264, Subpart F regarding monitoring, investigation, and remediation of releases for the protection of human health and the environment. EPA has also established guidance on how groundwater contamination should be addressed at RCRA facilities in order to be protective. (*See* "Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action.") These requirements and guidelines should be incorporated into site-specific permits in order to establish protective and nationally consistent groundwater corrective action. Accordingly, a RCRA facility should adhere to the corrective action requirements in its permit for investigation, cleanup and monitoring of contaminated groundwater.

Part of the corrective action obligation under Detrex's RCRA TSD permit includes delineation and remediation of releases from solid waste management units that have contaminated onsite and offsite groundwater. Limited sampling information indicates very high levels of trichloroethylene (up to 800 ppm) are present in shallow groundwater. These concentrations are also indicative of a potentially significant non-aqueous phase liquid source below the facility that would likely contribute to continuing long-term contamination of groundwater if left unaddressed. Without remedy selection and ground water monitoring associated with the remedy, the MSD would not be appropriate.

An MSD could be possibly associated with a RCRA permitted facility as an institutional control for the prevention of ingestion as part of a remedy; however, it would be expected that the RCRA permit would still require monitoring of the groundwater to ensure that the corrective action response is consistent with the remedy.

I have attached for your consideration comments that outline some of our previous and ongoing concerns regarding the implementation of MSDs.

If you have any questions, please feel free to contact me.

Sincerely,

Troy C. Hill, P.E.
Associate Director for RCRA
EPA Region 6

Enclosure

cc: Jacqueline S. Hardee, P.E.
Director, Waste Permits Division
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Enclosure

EPA Issues and Concerns Regarding the Implementation of MSDs

During the drafting of the MSD legislation, EPA had numerous concerns regarding the protectiveness of the designations without associated implementing regulations or substantive additional guidance issued by TCEQ. TCEQ has established a guidance document (GI-326, dated March 2005) for cities considering MSD requests, but no regulations were ever promulgated. Following are several of EPA's most significant previous and ongoing concerns with MSDs:

1) Not any, or only limited, evaluation, delineation, and cleanup of groundwater contamination is required, depending on the applicability of exposure concerns other than ingestion, if there are no potable wells within 0.5 miles of the MSD. The potential for migration of contaminated groundwater outside the MSD appears to be a real possibility and inadequately addressed. Because there are no controls or monitoring required outside the MSD, some level of evaluation should be in place to ensure that the contamination within the MSD remains in that zone.

2) Detailed contaminant behavior information is not required at the time of submitting an MSD application. This may result in the TCEQ having little or no technical information regarding contaminant conditions at the property at the time of processing the application. If the eligibility requirements are met, the application is complete, and there is a determination of no current or future impacts to regional water needs, then TCEQ appears to be required under the statute to approve the application. With little or no data available for some applications, how does TCEQ determine if there is an impact to current or future water resource needs, and that there will be no impact to human health and the environment inside or outside the MSD?

3) Only wells on the state registry are required to be evaluated and notified. Numerous wells exist where there are no state records. There is a real potential for unidentified wells to be present within an MSD and for their users to be exposed to groundwater contamination.

4) Use of groundwater within the MSD for non-potable uses is not prohibited. Therefore, groundwater use for irrigation of lawns and gardens, watering livestock, use for cooling water, etc., may not be protective. The potential for human exposure may be significant depending on the contaminant and its concentration. In addition, the pumping of groundwater for non-potable purposes could spread contamination beyond its original boundaries.

5) An MSD does not prohibit installation of groundwater wells outside the MSD boundary. New owners would be unaware of potential current or future contamination impacts to their wells.

6) There is no requirement for vertical migration assessment to underlying groundwater aquifers. What mechanism exists to ensure protection of deeper, higher-quality aquifers from contamination migration from shallow MSDs?

7) Municipalities may not have the technical staff to adequately determine if an MSD is best for its citizens, i.e., to properly evaluate the potential for impacts to local receptors and to determine if the MSD will effectively protect future groundwater beneficial uses. At one time, MSDs were limited to municipalities with populations of 20,000 or greater; however, the population limitation has since been removed.