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WASTE MINIMIZATION: PERMIT CERTIFICATION AND JOINT PERMITTING

SUBJECT: Waste Minimization: Permit Certification and Joint Permitting

FROM: Bruce R. Weddle, Director
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TO: Hazardous Waste Division Directors
Regions I-X

The purpose of this memorandum is to provide guidance to permit writers for incorporating the §3005(h) waste minimization certification requirement of the Hazardous and Solid Waste Amendments of 1984 (HSWA or the Amendments) into RCRA permits. It is also intended to clarify joint permitting of this requirement. Waste minimization has a unique effect on the joint permitting process which was described in RCRA Statutory Interpretation (RSI) #5 dated July 1, 1985, because it does not mandate any technical efforts or substantive judgements.

Permit Certification

RCRA §3005(h), as amended by HSWA §224, requires that all RCRA permits for on-site treatment, storage or disposal issued after September 1, 1985, include a condition requiring the permittee to certify in the facility operating record that:

> The generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable, and
>
> The proposed method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

The legislative history of these provisions clearly indicates that HSWA waste minimization requirements are not meant to impose a significant new burden to generators, nor are they meant to form the basis for specific waste minimization standards or regulations at this time. Rather, Congress intended that the substantive judgments as to what is "economically practicable" and what is the most "practicable method currently available" are to be made by the generator in light of his or her own particular circumstances.

In addition, RCRA §8002 requires that the Administrator submit a Report to Congress by October 1, 1986, on the feasibility of establishing standards or taking other actions to ensure that hazardous waste generators are taking steps to minimize the waste they produce.

The new waste minimization permit certification requirements are intended to be an interim measure pending delivery of the Report to Congress in October, 1986. The conclusions reached in the Report will in large part determine whether specific, substantive waste minimization standards or regulations are necessary or feasible.

Permit Writers' Guidance

The Final codification Rule published in the Federal Register on July 15, 1985, added a new provision to §264.73(b) requiring the permittee to record at least annually a waste minimization certification statement in the written operating record kept at the facility. Pursuant to this requirement, permit writers should incorporate into any on-site treatment, storage or disposal permit issued after September 1, 1985, a condition requiring that a waste minimization certification statement be included in the facility operating record.

We recommend incorporating this condition into the permit by adding to Module II(L)(1) (General Facility Conditions, Recordkeeping and Reporting, Operating Record) the language "and (9 [on-site only])". The revised model permit condition will read as follows:

MODULE II--GENERAL FACILITY CONDITIONS

L. Recordkeeping and Reporting

1. Operating Record. The Permittee shall maintain a written operating record at the facility in accordance with 40 CFR 264.73(a), (b)(1), (2), (3), (4), (5), (6), (7 [off-site only]), (8), and (9 [on-site only]).

Joint Permitting

The joint permitting guidance (RSI #5) states that where facilities are affected by HSWA, joint Federal-State permits will be issued for those provisions for which the State has not yet been authorized. This implies that there are some facilities that will not be affected by HSWA at all. However, the waste minimization certification is required for all on-site facilities even where no other provisions of the Amendments apply. This leads to the question of how the waste minimization requirement will be addressed in permits.

The guidance states that in those cases where permits are not issued simultaneously (see RSI #5 for those exceptions), EPA must issue a public notice when it determines the applicability of HSWA. The State-issued permit will become a full RCRA permit only after EPA issues a permit addressing the waste minimization requirement and any other applicable HSWA requirements.

In all other permitting situations, EPA and the State will issue permits simultaneously. However, when it is clearly determined that §3005(h) is the only applicable HSWA requirement, and the State has the authority to impose permit conditions requiring this certification, EPA does not intend to issue a separate Federal permit (or offer separate public notice).

The procedure for implementing this approach is for EPA to write a generic letter to the State on how to proceed whenever this situation occurs. Specifically, the letter must explain that the State has authority to address §3005(h) and that the State will sue its authority to include this requirement. This letter will apply to waste minimization only; where other HSWA requirements are applicable to a particular facility a joint Federal-State permit must still be issued. Finally, the letter must explain that EPA always has the

authority to insert additional permit conditions as necessary to protect human health and the environment. Where information becomes available to EPA which demonstrates the need for such additional permit conditions, EPA will exercise that authority.

The State should place a copy of EPA's generic letter in the public docket of each facility permit for which this approach is used. In this way, the public will have access to information about EPA;'s decision. Following those procedures will allow for States to issue RCRA permits by incorporating the waste minimization requirements without the need for a separate Federal permit.

If you have questions or require further information regarding waste minimization, please contact Dave Fagan of the Permits branch at FTS 282-4497.

cc: Hazardous Waste Branch Chiefs, Regions I-X
Hazardous Waste Permits Section Chiefs, Regions I-X