Response to Rep. Xavier Becerra (CA) Inquiry

Thank you for seeking EPA feedback regarding facilities operating under interim status under the Resource Conservation and Recovery Act (RCRA) and for information regarding denying a RCRA permit. Below are our responses to the two questions posed to EPA Headquarters and EPA Region 9.

1. *"One issue staff are looking at legislation wise is putting a timeline of how long a facility can operate under interim status, and* ***would appreciate some feedback from EPA as to where EPA think that might be helpful or if EPA already has that authority.*** *Below is the link to the report from the Inspector General. https://www.epa.gov/sites/production/files/2015-10/documents/20061204-2007-p-00005.pdf" (Sent via email to EPA Headquarters)*

Answer: The utility of such changes would be minimal as EPA has been working closely with state partners over the past several years to reduce the total number of interim status operating facilities still needing a RCRA permit to twelve.

Other facilities in interim status are choosing to close rather than obtain a RCRA permit. These facilities will close under interim status in compliance with requirements in 40 CFR part 265. Part 265 requirements are enforceable and contain regulatory oversight provisions for review and approval of activities related to closure, post-closure, and financial assurance, as well as public notice and comment requirements before finalization of the closure and post-closure plans. Some of these facilities may have to conduct post-closure activities and so may be issued a post-closure permit (or other enforceable document) governing the post-closure care.[1]

2. *"What are the circumstances under which you would deny a permit?" (Asked by Rep. Becerra staff during a conference call with EPA Region 9.)*

Answer: RCRA requires a permit for the treatment, storage, and disposal of any RCRA hazardous waste. A permit application provides information on the nature and extent of an applicant's hazardous waste activities. The permit application process normally takes several years because RCRA regulations require a great deal of information to enable the permitting agency (typically an authorized state) to determine whether the facility is designed and operated in a manner protective of human health and the environment and compliant with the regulations, and to establish permit controls to ensure the facility's continued compliance and protectiveness. It is often a process of submittal, review, and resubmittals in response to agency requests related to compliance with legal requirements.

RCRA regulations identify the following actions by a facility as potential causes for denial of a permit: noncompliance with any condition of the permit; failure to correct deficiencies in the permit application; failure to fully disclose relevant facts or misrepresentation of any relevant

[1] EPA published in 1998 its Post-Closure Rule modifying the requirement for a post-closure permit to allow EPA and the authorized states the flexibility to use a variety of authorities to impose requirements on non-permitted land disposal units requiring post-closure care. (63 FR 56710)

facts during the permitting process; or a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination. RCRA permit decisions are subject to administrative appeals and judicial review.

Permit denial, while an important authority, is relatively rare because the rigorous application process generally either leads to an acceptable permit or a decision by a facility unwilling or unable to meet the regulatory requirements to close.