

RCRA REGULATORY STATUS OF CONTAMINATED GROUNDWATER

DATE: DEC 26, 1984

SUBJECT: RCRA Regulatory Status of Contaminated Groundwater

FROM: John Skinner, Director
Office of Solid Waste (WH-562)

TO: James Scarbrough, Chief
Residuals Management Branch, Region IV

The memo dated July 20, 1984, which you retransmitted December 7, 1984, explores the regulatory status of contaminated ground water. Actually, the issue is not whether groundwater that contains Appendix VIII constituents is a hazardous waste, because generators do not use Appendix VIII to identify hazardous waste. Rather, EPA designates solid wastes that contain Appendix VIII constituents as listed hazardous waste after considering the criteria listed in 40 CFR §261.11(a). Then a generator identifies hazardous waste using the criteria listed in 40 CFR §261.3(a) and the decision matrix of 40 CFR §262.11.

Thus, to answer the question: "Is ground water contaminated by hazardous waste considered to be hazardous waste?" one uses the criteria in §261.3 to see if the water was a solid waste, and either derived from listed waste or hazardous by characteristics identified in Subpart C. Note that §261.3(c)(2) says that any solid waste generated from the treatment, storage or disposal of a hazardous waste is a hazardous waste, and §261.3(d) says a waste is no longer hazardous when it no longer exhibits the characteristics of hazardous waste identified in Subpart C or until a listed waste (or waste derived from listed waste) has been excluded under the petitioning process.

Therefore a contaminated groundwater that is "collected" and derived from listed waste or hazardous by characteristic is a hazardous waste and subject to Subtitle C regulation. However, the reauthorization bill allows underground injection of contaminated ground water that has been treated to substantially reduce the hazardous constituents.

Of course, the implications on permitting, interim status compliance order corrective actions, and treatment of ground water will need to be studied. If you have any further questions, do not hesitate to contact Irene Horner of my staff at 382-4804.

cc Hazardous Waste Branch Chiefs, Regions I-III and V-X
Gene Lucero, Enforcement