

9453.1986(03)

United States Environmental Protection Agency  
Washington, D.C. 20460  
Office of Solid Waste and Emergency Response

June 17, 1986

MEMORANDUM

SUBJECT: On-site Treatment

FROM: Marcia Williams, Director  
Office of Solid Waste

TO: Harry Seraydarian, Director  
Toxics and Waste Management Division,  
Region IX

The purpose of this memo is to respond to your April 9, 1986, request for clarification of a recent statement with respect to permitting of treatment activities occurring in a generator's accumulation tanks or containers.

As noted in your memo, the preamble to the final small quantity generator regulations promulgated on March 24, 1986, states that "... no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of Section 262.34 and J or I of Part 265." This interpretation is applicable to all generators subject to Section 262.34.

This statement is based upon a legal interpretation of what the existing rules allow at this point in time rather than a deliberate and significant shift in Agency policy with respect to accumulation or treatment. The preamble discussion continues, "Nothing in Section 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision (emphasis added)." The interpretation is predicated on the fact that the Agency has allowed certain types of storage to occur at generation sites (i.e., accumulation for periods of 90, 180, or 270 days, depending on generator type) without the requirement for permitting or interim status. Since the Agency has

never developed standards specific to treatment in tanks and containers, the same technical standards applicable to such storage (i.e., Subpart I or J of Part 265) would also be applicable to treatment.

In choosing to communicate this legal interpretation in the small quantity generator final rule, OSW sought to avoid forcing small firms to stop conducting beneficial treatment of small quantities of hazardous waste in their accumulation tanks and containers by requiring them to either cease treatment or expend significant resources to obtain a RCRA permit. We do not believe that allowing some treatment to occur while wastes are being accumulated prior to subsequent management, in full compliance with applicable tank or container standards, is currently prohibited under the existing regulatory scheme.

With respect to the limits of treatment which may occur without a permit on-site, this legal interpretation only applies to treatment occurring in a generator's own accumulation tanks or containers subject to, and in compliance with, Section 262.34. This means that the tank or container in which treatment occurs must be appropriately marked with the date the accumulation period began, the tank or container must be completely emptied every 90 days (or 180/270 days for generators of 100-1000 kg/mo), and must be operated in strict compliance with Subparts I or J of Part 265. Any amendments to these Subparts which may be promulgated in the future would also apply. Treatment in other than tanks or containers (e.g., incineration, land treatment or treatment in surface impoundments) would continue to require a permit.

We would expect that generators that treat hazardous waste on-site in tanks or containers and who have obtained interim status, a full permit, or have a Part 3 application pending might wish to exit the permit process on the basis of this interpretation. Since such on-site treatment without a permit has never been legally precluded under RCRA, those who now wish to avail themselves of this interpretation may do so, provided they comply with all applicable rules respecting withdrawal of permit applications. If however, a unit that now qualifies for Section 262.34 has, in the past, been subject to regulation because it did not qualify for the Section 262.34 exemption, the Region should determine whether the unit has residual obligations under Part 264 or 265 (e.g., closure requirements). In addition, the fact that such a unit was once under interim status provides a basis for

action under Section 3008(h), where appropriate.

However, we would caution these generators, as well as those who may wish to alter their accumulation practices in order to conduct treatment without a permit, not to rely upon the continued existence of this legal interpretation in making process changes requiring substantial capital outlays. Specifically, OSW is now considering publication of an advanced notice of proposed rulemaking that would seek comment on a number of issues related to the 90/180/270 day accumulation provisions. Should the Agency decide at some time in the future to either modify the 90 day accumulation rule in some manner or to write specific standards for treatment, the obligations of generators with respect to treatment in accumulation tanks could change.

cc: Regional Division Directors; Eileen Claussen; Bruce Weddle; Jack Lehman