

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

JULY 19, 1988

MEMORANDUM

SUBJECT: Effect of Land Disposal Restrictions on Transfer of Waste During Facility Closure

FROM: Bruce Weddle, Director
Permits and State Program Division (WH-563)
Office of Solid Waste

TO: Rich Vaille, P.E.
Assistant Director, Waste Programs
Toxics and Waste Management Division
Region IX

This is in response to your June 22, 1988 memorandum regarding the effect of the land disposal restriction on the transfer of waste during facility closure. After consulting with the Land Disposal Restrictions Branch, Characterization and Assessment Division, OSW, and the Office of General Counsel our conclusion is that the Congressional definition of "land disposal" for the purposes of land disposal restrictions does not recognize a difference between closure and normal operation whether it be interim status or permitted.

While we recognize your concerns about the application of the land disposal restrictions in some situations involving closure, we believe that the language of the statute is clear. Section 3004(k) of HSWA defines land disposal as ". . . any placement. . . in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation or underground mine or cave".

Removal of restricted waste from the unit and subsequent placement of the waste, either back into the unit or into another unit, is therefore, subject to the restrictions in 40 CFR Part 268. Specifically, the preamble to 40 CFR 268.1 states:

"If, however, wastes subject to land disposal restrictions are removed from either a storage or land disposal unit after the effective date, subsequent placement of such wastes in or on the land would be subject to the restrictions and treatment provisions." (Federal Register, Vol. 51, No. 216, Page 40577, Friday, November 7, 1986).

Transferring waste between units whether at the same operating facility or during closure would, therefore, subject the wastes to the land disposal restrictions¹. Waste may be transferred between units only under the following conditions: (1) if it is treated in compliance with Section 3004(m) or is subject to a successful petition under Section 3004 (d) , (e) (f) , or (g) ; or (2) the waste has been granted a variance under Section 3004 (h) , or is a soft hammer waste under Section 2004 (g) (6) and, if being sent to a surface impoundment or landfill, that such landfill or impoundment unit is in compliance with Section 3004(o).

In situ treatment or movement of waste within the same unit does not constitute “placement” and does not subject the waste to the land ban restrictions.

Should you have any questions with respect to the specifics of this memorandum, please call Chris Rhyne of my staff at FTS 382-4695.

cc: Waste Management Division Directors, Regions 1-VIII and X
RCRA Branch Chiefs, Regions I-X
Permits Section Chiefs, Regions I-X

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¹ For purposes of clarity, it is important to note that the land disposal restrictions would apply to any listed or identified waste placed in a land disposal unit after the effective date of the applicable restrictions, not just to waste transferred from another unit.