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

May 28, 1993

Mr. Benito J. Garcia
Bureau Chief, Hazardous and Radioactive Materials Bureau
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502

Dear Mr. Garcia:

This responds to your letter of December 14, 1992, to Devereaux Barnes, requesting clarification of RCRA regulations related to closure of hazardous waste management facilities. Specifically, you noted that there is a minor difference between the wording of section 264.112(b)(3), which applies to permitted facilities, and the analogous provision applicable to interim status facilities, section 265.112(b)(3). You expressed concern that a literal reading of these provisions would result in less stringent management of hazardous wastes at permitted facilities than at interim status facilities, and asked whether the difference in wording was an unintended omission.

Section 264.112(b)(3) requires that closure plans of permitted facilities provide "...identification of the type(s) of the off-site hazardous waste management units to be used...." However, section 265.112(b)(3) requires interim status closure plans to include the "...identification of and the type(s) of off-site hazardous waste management units) to be used...." As you noted in your letter, the result of this difference is that owners and operators of facilities seeking a permit are required to identify only the type of off-site unit that will manage waste removed from the unit at the time of closure, whereas interim status facilities must identify the specific off-site unit that will be used.

We believe that this distinction in the regulations is reasonable because of the difference between the timing of closure

plan submittal for owners and operators of interim status units and owners and operators seeking a permit. Owners and operators of interim status units are not required to submit closure plans to the Agency until immediately prior to closure (see section 265.112(d)). Facilities seeking a permit, on the other hand, must submit a closure plan as part of the permit application, which is typically submitted many years prior to closure. In the case of an interim status unit, where closure is imminent, the owner or operator can reasonably be expected to know the specific destination for the waste, whereas an owner or operator seeking a permit will typically be unable to identify a specific unit that will be available 10 or more years in the future.

The explanation above, of course, reflects EPA's interpretation of the Federal RCRA regulations. As you know, authorized States may have more stringent requirements. If you have any questions concerning this response, please contact Barbara Foster of the Permits and State Programs Division at (703) 308-7057.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste