

PPC 9453.1986(04)

PERMITTING OF TREATMENT ACTIVITIES IN A GENERATOR'S
ACCUMULATION TANKS OR CONTAINERS

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Dear Mr. Lehner:

Thank you for your letter of April 4, 1986, requesting clarification of the Agency's recent statement with respect to permitting of treatment activities occurring in a generator's accumulation tanks or containers.

As noted in your letter, 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." Although this statement did appear in the small quantity generator regulations, it is applicable to all generators who accumulate waste in compliance with Section 262.34.

The following information may help to place this interpretation in context and assist you in advising your clients as to the most appropriate course of action. First, you should be aware that this statement is based upon an 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. As the preamble states, "Nothing in Section 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision." 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, the same technical standards applicable to such storage (i.e., Subpart I or J of Part 265) would also be applicable to treatment.

Thus, we do not believe that allowing treatment to occur while wastes are being accumulated prior to subsequent management, in full compliance with all 262.34 requirements,

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including applicable tank or container standards, is currently prohibited under the existing regulatory scheme.

Since the term "accumulation" is not defined in the regulations, the Agency would not distinguish between accumulation for handling other than treatment and accumulation for the sole purpose of on-site treatment. Thus, each of your process descriptions do not appear to be subject to permitting at this time, provided all of the Section 262.34 requirements are met.

With respect to the limits of treatment which may occur without a permit on-site, this interpretation only applies to treatment occurring in a generator's 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. 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 B 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 precluded under RCRA, those who now wish to avail themselves of this exemption may do so, provided they comply with all applicable rules respecting withdrawal of permit applications. Specifically, these facilities will need to comply with Part 264 or 265 facility closure requirements unless they can demonstrate that their treatment tank or container has always been operated in strict conformance with the requirements of Section 262.34. In addition, these generators would also be subject to Section 3008(h) corrective action provisions.

Finally, we would also caution those generators 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 exemption, particularly where making process changes requiring substantial capital outlays may be involved. Specifically, EPA has recently published an advance notice of proposed rulemaking that discusses eliminating the accumulation exemption for large quantity generators. Should the Agency decide at some time in the future to either modify the 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.

If I can be of any further assistance, or if you have additional questions, please do not hesitate to contact me.

Sincerely,

Marcia E. Williams
Director
Office of Solid Waste