

PPC 9528.1986(11)

DEC 10 1986

MEMORANDUM

SUBJECT: Permitting Units or Facilities That Have lost  
Interim Status

FROM: Gene A. Lucero, Director  
Office of Waste Programs Enforcement (WH-527)

Marcia E. Williams, Director  
Office of Solid Waste (WH-562)

TO: Allyn M. Davis, Director  
Hazardous Waste Management Division (6H)  
Region VI

Your letter of October 15, 1986, raises several issues -- some generic and some specific to the Eagle Picher Electro-Optic Materials (EOM) Loss of Interim Status (LOIS) case.

The first specific issue is whether the EOM surface impoundment has lost interim status. Your letter indicates that an enforcement action asserting that the EOM unit lost interim status may not be resolved for many months. If the result of the enforcement action is that the EOM surface impoundment has lost interim status, then the appropriate injunctive relief and penalties will be imposed through the enforcement action.

A second, broader issue is what actions should be taken, and in what priority, for land disposal units or facilities that are seeking operating permits and are closing under the HSWA LOIS provision. In the case of EOM, the unit's loss of interim status has not finally been determined. Therefore, review of the permit application should proceed in a manner similar to other land disposal permit applications. In cases where loss of interim status has been determined, an owner or operator still has the right to pursue a permit. Where that option is pursued, the Agency is obligated to review the permit application. These cases present a special challenge, however, since the facility is also required to have submitted an interim status closure plan 15 days after the loss of interim status. The Agency may be in the position of concurrently evaluating a closure plan (submitted as a result of the facility or unit's loss of interim status) and permit application for the same facility or unit.

Review, approval, and implementation of the closure plan should proceed without regard for any pending permit application, according to priorities outlined in the RCRA Implementation Plan and Regional or State Strategies and facility management plans. The Agency considers it good practice to close hazardous waste land disposal units or facilities after they lose interim status in order to minimize the likelihood of environmental and human health damage. Therefore, units that are required to close should be closed expeditiously. In like manner, permit applications for LOIS facilities or units should be reviewed in accordance with established land disposal permitting priorities. Within the overall priority scheme, several considerations should be kept in mind during the closure plan/permit application review process:

- (1) The statutory loss of interim status provision requires that the affected unit or facility stop receipt of hazardous waste. Resumption of waste receipt cannot occur unless and until a final RCRA permit is issued.
- (2) The LOIS unit or facility must begin closure activities according to the schedule provided in Part 265 Subpart G. Extensions to the time allowed for closure at LOIS units or facilities under §265.113(a)(1)(ii) and (b)(1)(ii) should not be granted solely on the basis of a pending permit application, or on the basis of future capacity to receive hazardous waste since the loss of interim status abrogates the legal authority to continue to receive waste.
- (3) In some cases, final closure activities may need to be delayed for physical reasons or to increase the effectiveness of closure (e.g., delay of final cover placement to allow for waste settlement). Other closure activities (e.g., control of run-on/run-off, treatment of waste, freeboard maintenance, etc.) will still need to be implemented, according to the routine closure schedule.
- (4) If a final RCRA permit is issued before completion of all closure activities, the terms of that permit (including the permit's closure plan under Part 264) may supercede the interim status closure plan. (See §265.1(b).) In reviewing the proposed Part 264 closure plan, permit writers should attempt to ensure technical consistency between it and the interim status closure plan.

- (5) After a facility or unit loses interim status future activities may be governed by new HSWA requirements. Closure activities conducted at units subsequent to loss of interim status may, in some cases, require implementation of the HSWA minimum technological requirements if a permit is subsequently issued for reuse of that unit, since closure activities could, in some cases, cause the unit to be defined as a "replacement" unit under §3004(o)(1)(A) (e.g., where all or substantially all of the waste in the unit is removed). However, for the purposes of section 3004(o), units that have lost interim status will not be considered new units unless they first received hazardous waste after November 8, 1984.

cc: Hazardous Waste Division Directors  
Regions I-V and VII-X (with incoming)  
Hazardous Waste Permit Section Chiefs  
Regions I-X (with incoming)  
Bruce Weddle  
Lloyd Guerci