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SURFACE IMPOUNDMENT CLOSURE, APPLICABILITY OF 3005(I) OF RCRA TO CLOSURE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

June 9, 1987

MEMORANDUM

SUBJECT: Applicability of Section 3005(i) of RCRA to Surface Impoundment Closed by Blue Bird Midwest Pursuant to 40 CFR §265.228(b)

FROM: Marcia Williams, Director  
Office of Solid Waste (WH-562)

TO: David A. Wagoner, Director  
Waste Management Division  
Region VII

This is in response to your May 13, 1987 request for a statutory interpretation regarding the applicability of Section 3005(i) to closure conducted at the Blue Bird Midwest facility pursuant to 40 CFR §265.228(b).

We have reviewed the information accompanying your request and concur with Region VII's interpretation that unless Blue Bird Midwest can demonstrate compliance with the standards for closure by removal in 40 CFR §265.228(a), a post-closure permit implementing applicable Part 264 standards, including Subpart F ground-water monitoring and corrective action, is required. The post-closure permit is required regardless of whether Blue Bird has satisfied the closure requirements of 40 CFR §265.228(b).

Your information indicates that Blue Bird has not clean closed the swale and has not demonstrated through an adequate ground-water monitoring system that all contaminated subsoils have been removed or decontaminated, as required by §264.228(a).

Therefore, it appears that RCRA Section 3005(i) applies to the closed surface impoundment at Blue Bird. Your memorandum did not include information indicating that Blue Bird Midwest upgraded the ground-water monitoring system in accordance with comments in the Region's December 29, 1986 letter.

For your information, we expect the final codification rule based on the March 28, 1986 proposed rule to be issued within the next two months. The draft final rule now in Red Border states that the requirements of Section 3005(i) (i.e., ground-water monitoring, unsaturated zone monitoring and corrective action requirements applicable to new units) are applicable to all land disposal units which received waste after July 28, 1982 or had

not closed by January 26, 1982. The rule clarifies that land disposal units that close by removal under interim status are subject to post-closure permitting.

An exception to the post-closure permit requirement would be the case where surface impoundments closing by removal or decontamination met the requirements of §264.228(a). the forthcoming rule will allow the owner/operator to submit a petition to demonstrate to the Regional Administrator that a post-closure permit is not required for units that closed according to Part 265 standards. The petition must contain ground-water and soil analytical data and other information sufficient to demonstrate the applicable Part 264 standards for closure by removal or decontamination can be met. If the "equivalency" of Part 264 closure by removal can be demonstrated, a post-closure permit would not be required. Public notice of Agency actions on these petitions will follow the closure plan public notice procedures of §265.112.

If you have additional questions about this memorandum or the codification rule language, please contact Matthew Hale, Chief, Permits Branch at FTS 382-4740.

cc: Terry Grogan OSW