

9441.1987(57)

REGULATORY STATUS OF FACILITIES PREVIOUSLY GRANTED TEMPORARY  
EXCLUSIONS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 31 1987

MEMORANDUM

SUBJECT: Regulatory Status of Facilities Previously  
Granted Temporary Exclusions

FROM: Marcia Williams, Director  
Office of Solid Waste

TO: Regional Division Directors, Hazardous Waste  
Management Divisions

Between 1980 and 1982 the Environmental Protection Agency issued 150 temporary and informal exclusions for delisting petitions. The Hazardous and Solid Waste Amendments of 1984 (HSWA) established a November 8, 1986 statutory deadline for taking final action on these petitions. If a final decision was not promulgated by the November deadline, the exclusions were automatically revoked effective November 9, 1986. This memorandum summarizes, by Region, the status of all previous temporary exclusions in light of the November 8, 1986 statutory deadline. Only three (Lederle Laboratories, NY; Faultless Hardware, KY; and Rock Island Refining, IN) of the 150 temporary exclusions were not issued final decisions by the HSWA statutory deadline of November 8, 1986. These three facilities automatically lost their exclusions as of November 9, 1986 and should be handling their petitioned wastes as hazardous until a final delisting decision is promulgated. It should also be noted that the effective date of the final denial decisions for all temporarily excluded wastes has now passed and, therefore, all facilities that had temporary exclusions for their wastes and that were denied final exclusion, should be handling the petitioned wastes as hazardous unless the unit closed prior to the effective date of the final decision.

The attached status list indicates whether petitions with temporary or informal exclusions were issued final grant or denial

decisions or whether the petition was withdrawn, moot, or is still being processed. The list also provides the effective date for each final decision. These dates vary depending on: the type of decision made, the basis for the decision (i.e., failure to submit necessary information or results of the technical evaluation), and the date that the final decision was published in the Federal Register. The Federal Register citations for proposed and final decisions are also given.

The Agency notes that all final decisions that have been promulgated pertain only to the waste(s) cited in the promulgation notice. Any other waste management activities not included in the delisting decision are still subject to RCRA Subtitle C or authorized State requirements.

As a general rule, the petitioned wastes generated before the granting of a temporary exclusion were considered hazardous and, therefore, subjected the units handling the wastes to Subtitle C control. The granting of a temporary exclusion for the waste only temporarily removed the waste unit from Subtitle C regulation. It should also be noted that the petitioned wastes (that had been granted a temporary exclusion, but then denied final exclusion), that were generated during the time the temporary exclusion was in effect, are now considered hazardous wastes. However, if these wastes remain in the disposal unit identified in the petition, the wastes are not subject to Subtitle C management requirements unless they are disturbed in such a way so as to trigger Subtitle C regulation (e.g., removed, excavated, or mixed with other wastes). The following discussions clarify the regulatory status of wastes that were previously granted temporary exclusions.

#### Final Exclusion Granted

The facility may continue to handle the petitioned waste as non-hazardous within the constraints of the granting notice and any other applicable requirements.

Final Exclusion Denied Based on the Results of the Technical Evaluation (i.e., the petitioner failed to show the waste to be non-hazardous)

If the waste is disposed off-site:

The effective date of the revocation of the temporary exclusion is six months after publication of the Agency's final decision in the Federal Register.

Starting on the effective date, new waste that is generated, as described in the petition and that would have previously been included under the temporary exclusion, is subject to all applicable RCRA Subtitle C or authorized State program requirements (e.g., the facility must insure that the waste is shipped to a RCRA hazardous waste management facility).

While a temporary exclusion was in effect, the petitioner was not liable for compliance with hazardous waste regulations. Petitioned wastes generated while the temporary exclusion was in effect could have been disposed of off-site as non-hazardous. All wastes in the off-site unit must

be handled in accordance with Subtitle c requirements if, at a later date, they are managed in such a way as to trigger Subtitle C regulation (e.g., removed from the unit or considered to be "stored" rather than "disposed").

If the waste is managed on-site:

The effective date of the revocation of the temporary exclusion is six months after publication of the Agency's final decision in the Federal Register.

Starting on the effective date, new waste that is generated, as described in the petition and that would have been included under the temporary exclusion, is subject to all applicable RCRA Subtitle C or authorized State program requirements.

Between 1980 and the granting of a temporary exclusion, there was some period of time that the waste was considered to be hazardous. Therefore, all units covered by temporary exclusions have or should have interim status.

If an on-site land disposal unit that received wastes covered by a temporary exclusion, continues to receive hazardous waste after the effective date of the final decision, Attachment 1 provides guidance on compliance requirements for those units.

If an on-site land disposal unit that received wastes covered under a temporary exclusion stops receiving all wastes prior to the effective date of the final decision, (and receives no other hazardous wastes), Part 265 closure must be initiated within 90 days of the revocation of the temporary exclusion.

If an on-site land disposal unit that received wastes covered under a temporary exclusion stops receiving hazardous waste prior to the effective date of the final decision but continues to receive solid waste, Part 265 closure must be initiated within 90 days, and completed within 180 days, of the revocation of the temporary exclusion. However, the Agency intends to propose, in the near future, a rule which may change these requirements.

If prior to the effective date of the final decision, waste covered under a temporary exclusion is disposed in an on-site solid waste<sup>1/</sup> unit, the solid waste unit is not subject to hazardous waste regulations other than would typically apply to a solid waste management unit. All

1/ "Solid waste" is defined in 40 CFR 261.2(a)(1).

wastes in that unit are considered hazardous and must be handled in accordance with Subtitle C requirements if they are managed in such a way as to trigger Subtitle C regulation at a later date (e.g., they are removed and are shipped off-site or receive further on-site treatment).

If a unit containing only a waste covered under a temporary exclusion prior to the effective date of the final decision, the unit is not subject to hazardous waste regulation unless later disturbed (e.g., removed, excavated).

#### Final Exclusion Denied Based on the Failure to Provide Information Needed to Evaluate the Petition

The effective date of the revocation of the temporary exclusion was November 9, 1986. As of this date, the waste must be managed in accordance with applicable RCRA Subtitle C or authorized State program requirements.

Attachment 1 provides guidance regarding LOIS compliance requirements for petitioners with on-site land disposal units that contain wastes once covered by a temporary exclusion.

Starting on the effective date, new wastes that are generated, as described in the petition and that would have previously been included under the temporary exclusion, that are disposed off-site must be shipped to a RCRA hazardous waste management facility.

The status list also shows petitions that have been withdrawn or are considered moot.

Petitioners that have withdrawn (i.e., the facility has submitted a letter to the Agency requesting that its petition be withdrawn) have lost their temporary exclusions and should have handled their waste(s) as hazardous as of the date the petition was withdrawn.

Petitions that are considered moot may be moot for a variety of reasons, including: disposal of a specific volume of waste under a previously granted "one-time" exclusion; cessation of production activities that generated the waste being petitioned for delisting; or reclassification of a particular listing. The status list identifies the reasons a petition is considered "moot" and the date that the petition was determined to be moot by the Agency.

I hope that the attached status list and regulatory compliance guidance is useful in coordinating the ongoing efforts of both the Regional and State programs. Should you have any questions regarding the attached material or require more information on the Federal delisting program activities, please feel free to contact Suzanne Rudzinski of the Office of Solid Waste at FTS 382-4206. If guidance is needed in determining appropriate compliance actions, please contact Steve Heare of the Office of Waste Programs Enforcement at FTS 382-2207.

#### Attachments

cc: RCRA Branch Chiefs, Regions I-X            Jeff Denit (OSW)  
Enforcement Section Chiefs, Regions I-X    Bruce Weddle (PSPD)  
Permit Section Chiefs, Regions I-X        Susan Bromm (PSPD)

Jack McGraw (OSWER)  
Gene Lucero (OWPE)  
Suzanne Rudzinski (PSPD)  
Steve Heare (OWPE)

Steve Hirsch (OGC)  
Ed Reich (SSCD)  
Myles Morse (PSPD)  
Delisting Staff (PSPD)

-----

## ATTACHMENT 1

### Guidance On Compliance Requirements For Facilities That Lost Their Temporary Exclusion But Continue To Manage The Waste On-Site

- I. Requirements for facilities that had interim status, and had other units that handled hazardous waste during the time that the temporarily excluded waste was handled:
  - If the facility filed a Part A application, and did not modify it to exclude the unit handling the temporarily excluded waste, and the facility has not filed Part B permit application, and no decision on its permit has been made, no further action is required by the facility.
  - If the facility revised its Part A permit application to exclude the unit handling temporarily excluded waste (which should mean that that unit handled no other hazardous waste) then the facility must make the necessary change during inte?? status to include this unit, under Section 270.72 or its sta?? analog.
  - If the facility has filed a Part B permit application, but no decision on its permit has yet been made, no further action required. The facility may need to revise its Part b permit application, however, if the units containing the petitioned waste were not included as part of their permit application. It must also request a change in interim status as described above.
  - If the facility received its permit, it must file for a major permit modification for the unit handling the temporarily excluded waste under Section 270.41 or its state analog. Under the existing regulations, the facility may not handle that waste until the permit is modified. However, the Agency intends to propose, in the near future, a rule that will simplify the procedures for obtaining approval to handle new hazardous wastes.
  - If the petitioned waste is disposed of in an on-site surface impoundment, and that impoundment continues to receive the petitioned waste four (4) years after the date of promulgation of the final denial decision, the petitioner must comply with Section 3005(j)(6) of RCRA which requires that the impoundment be retrofitted to meet minimum technological requirements of Section 3004(o)(1)(A) of RCRA. Accordingly the deadline for complying with the minimum technological

requirements for surface impoundments is four (4) years after the date of promulgation of the final decision.

II. Requirements for facilities that may have lost interim status because of failure to certify compliance:

- If other units handling hazardous waste at the facility required certification on November 8, 1985, but did not certify, those units lost interim status. However, if a unit handled only temporarily excluded wastes, that unit did not lose interim status. (See 50 FR 38946, September 25, 1985.) We recommend that you inspect these units to verify that they are in compliance with all applicable regulations.

III. Requirements for facilities that handled only temporarily excluded wastes:

- If the facility had interim status and has filed Part A permit application, and did not modify its Part A to exclude the unit handling the temporarily excluded waste, no further action is required by the facility.
- If the facility withdrew its Part A permit application, the facility still has interim status, however, the facility must reinstate its Part A under Section 270.10(a) and (e) or their state analogs.
- If the facility has filed a Part B permit application, but no decision on its permit has yet been made, no further action is required by the facility. The facility may need to revise its Part B permit application, however, if the units containing the petitioned waste were not part of their permit application (i.e., if the permit application addresses only new units that are yet to be constructed). We do not believe that any facilities which handled only temporarily excluded wastes have received a permit.
- If the facility handled only temporarily excluded waste, it was not required to do anything to retain interim status under Section 3005(e)(2) of RCRA. (See 50 FR 38946, September 25, 1985.) The facility is not subject to Section 3005(e)(3) of RCRA.