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CONTAMINATED SOIL AND DEBRIS TREATED REPLACEMENT UNDER A
TREATABILITY VARIANCE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 9 1990

MEMORANDUM

SUBJECT: Replacement of Contaminated Soil and Debris
Treated under a Treatability Variance

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: David Ullrich, Acting Director
Waste Management Division, Region V

This memorandum is in response to your correspondence of April 25, 1990, in which you requested guidance in relation to six specific questions dealing generally with how the RCRA land disposal restrictions may affect certain remedial situations. We offer the following response to those six questions:

1. Q: Can soil and debris which has been treated in a tank within the area of contamination (AOC) in accordance with a treatability variance be replaced within the area of contamination without meeting any additional 40 CFR Part 264 requirements?

A: If contaminated soil and debris is treated to meet standards specified in a treatability variance that has been approved by the Agency, the treated soil/debris may then be placed in any treatment, storage or disposal unit that is in compliance with RCRA Subtitle C. This could include an "area of contamination" (i.e., a RCRA landfill) that has been designated by the Regional Administrator for the purpose of remediating the facility or site. Thus, as a regulatory matter, there would be no real distinction between soil/debris that is treated to the standard(s) set in the treatability

variance and then placed in another unit, as opposed to "pure" hazardous wastes that are treated to the applicable Part 268 standards, and placed in another unit, except as discussed in the response to Question #5 (concerning contaminated media which no longer contains any waste).

By stating in your question that the treated wastes are to be redeposited into the AOC, we assume there is an implied question as to what design and operating standards would then be applicable to the AOC itself. This is discussed in our response to question #6, below.

2. Q: Has the policy set forth on Page 5.12 of the document Implementing the Land Disposal Restrictions, October 1989, been revised?

A: This policy has not been revised. The policy states that once an owner/operator receives a treatability variance, completes treatment, and has a treatment residual to be land disposed, the residue can be directed to any permitted or interim status unit.

3. Q: For the purpose of land disposal, is the residue of soil treated under a treatability variance to be distinguished from the residue of waste treated according to treatment standards?

A: No. See response to Question 1, above.

4. Q: For the purpose of land disposal, is the residue of soil treated under a treatability variance in a tank within the area of contamination to be distinguished from the residue of soil treated under a treatability variance in a tank outside of the area of contamination?

A: No. The location of the tank in relation to the "area of contamination" would not create a distinction as to how or where the treatment residuals could be land disposed. This assumes, of course, that the wastes have been treated to the standards specified in the treatability variance. A tank cannot be considered a part of the AOC (landfill), regardless of where it is physically located; thus, its location would have no

bearing on the standards that would apply to management of the contaminated soils (or other hazardous wastes, for that matter) after they have been treated in the tank.

5. Q: Is a treatability variance for soil and debris to be considered in effect a delisting? Do the principles of the "contained in" policy for the treatment of contaminated ground water have any applicability to the treatment of contaminated soil and debris?

A: A treatability variance for soil/debris does not have the effect of a delisting approved for the waste. The treated residuals typically will still contain hazardous wastes, and thus must be managed as such. In contrast, when wastes are delisted they are generally no longer subject to Subtitle C regulation.

The "contained in" policy applies to ground water and other contaminated media such as soil which are contaminated with listed hazardous wastes. Thus, if ground water or soil are treated such that concentrations of the listed wastes are at or below health based levels, the ground water or soil would no longer "contain" the hazardous wastes, and would therefore be no longer subject to Subtitle C regulation. Enclosed is a recent memorandum which provides a more detailed explanation of the contained-in policy.

6. Q: If an AOC can be considered a RCRA unit for the purpose of closure, would an AOC ever be considered equivalent to a RCRA compliant unit for the purpose of disposal? (See page 6 of OSWER Directive 9234.2-04FS RCRA ARARs: Focus on Closure Requirements.)

A: As outlined in the cited ARARs manual, the AOC is a concept which can be applied in the context of remediation under CERCLA response actions or RCRA corrective actions. It is in many ways analogous to situations where two or more regulated surface impoundments would be treated as one unit in the context of closure of the impoundments.

When applied in the context of RCRA corrective actions or CERCLA remedial actions, the AOC concept

would allow the Regional Administrator to designate a broadly contaminated contiguous area to be a RCRA "unit" (i.e., a landfill) for the purpose of implementing the remedy. In an existing landfill, the movement or consolidation of hazardous wastes within the designated area would not by itself trigger Subtitle C requirements (including the land disposal restrictions and the RCRA minimum technology requirements) since that movement or consolidation does not constitute "disposal" for Subtitle C purposes. If, however, wastes are excavated from the designated area, treated in another unit, and subsequently redeposited into the same area or unit, disposal has occurred, and the landfill would have to comply with applicable Part 264 or 265 requirements, including the LDRS, MTRS, closure standards (264.310), and the ground water monitoring requirements of Subpart F, Part 264 or 265.

The proposed Subpart S corrective action rule explains the AOC (described therein as the "corrective action management unit") concept in more detail. However, if you have more specific questions or issues regarding AOCs, we will be glad to work with you or your staff to resolve them.

If there are any questions on the above responses to your questions, please contact Dave Fagan (FTS 382-4497) or Judy Goldberg (FTS 382-4534).

Enclosure

cc: Regional RCRA Branch Chiefs
PSPD Branch Chiefs