

PPC 9483.1991(01)

SOLID WASTE MANAGEMENT UNIT (SWMU) DETERMINATION

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JAN 4 1991

MEMORANDUM

SUBJECT: Request for Solid Waste Management Unit
Determination

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

TO: David A. Ullrich, Director
Waste Management Division, Region V

We have reviewed your memorandum of July 10, 1990, and your follow-up memorandum of November 20, 1990, in which were requested a determination as to whether an area which formerly held a leaking product tank constitutes a solid waste management unit (SWMU) subject to corrective action under RCRA §3004(u).

The information provided in your correspondence describes the unit in question as a concrete chamber built into the floor beneath the chromium plating apparatus, which functioned to temporarily store chromium plating solution whenever the plater was drained for servicing. After the servicing, the contents of the chamber were returned to the plater. We further understand that releases have occurred from this tank, and that some remedial measures have been initiated.

Based on this information, it seems reasonably clear that the holding tank itself would not be considered a SWMU, since it appears that it was used exclusively to store product (i.e., plating solution), rather than solid or hazardous waste. However, the primary issue in this case is whether the area surrounding and underneath the holding tank, which was apparently contaminated from leakage from the tank, should be considered a SWMU.

The leakage from the tank which apparently caused contamination of soils and ground water at the facility was presumably the result of some type of defect in the tank's structure. Thus, the releases were in essence caused by the lack of physical integrity of the unit. As you may know, the Agency addressed the issue of "passive" leakage from product storage tanks in the preamble to the proposed Subpart S rule. Several policy memoranda (two of which we have enclosed) have also dealt with the issue. As you might expect, however, a substantial number of comments that were submitted on the Subpart S proposal also addressed this particular aspect of the definition of "solid waste management unit". We thus recognize this to be an important issue for further review in finalizing the Subpart S rulemaking.

In the meantime, however, we support Regions V's decision to use the §3005(c)(3) "Omnibus" provision to address the releases in question at the GM Delco facility. The contamination problem clearly appears to warrant further investigation and remedial action. Although GM has appealed the permit partly on the basis of this use of the Omnibus authority, we believe that its use by the Region in these circumstances is both appropriate and consistent with the mandate of §3005(c)(3). Several recent permit appeal decisions dealing with this same issue and under very similar fact patterns have consistently upheld the Agency's authority to deal with non-SWMU releases in this manner. We have enclosed copies of two of these appeal decisions.

If you have any further questions, please contact Dave Fagan (FTS 382-4497) or Judy Goldberg (FTS 382-4534).

Attachments

cc: Regional Branch Chiefs