

STORAGE OF HAZARDOUS WASTE AT TRANSFER FACILITIES AND THE  
AUTHORIZATION OF STATES REGULATING THIS STORAGE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
Office of Solid Waste and Emergency Response

August 17, 1994

Charles Dickhut  
Chemical Waste Transportation Institute  
4301 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20008

Dear Mr. Dickhut,

Thank you for your letter of June 3, 1994, in which you request that EPA clarify and reaffirm its interpretations and policies regarding the storage of hazardous waste at transfer facilities, the authorization of states for provisions regulating this storage, and the preemption of such provisions by the Department of Transportation (DOT) under the Hazardous Materials Transportation Act (HMTA).

In your letter you request that EPA reaffirm specific previous interpretations of the 10-day storage limitation for transfer facilities. RCRA regulations at 40 CFR 263.12 state that "a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under Parts 270, 264, 265, and 268 of this chapter with respect to the storage of those wastes." These regulations do not restrict the use of multiple transfer facilities for one shipment nor do they place further restrictions on the number of days available at each facility (i.e., they do not limit the total number of days spent at all transfer facilities to 10). Of course, each transfer facility must meet the definition found at 260.10.

A key element of the 260.10 definition is the "normal course of transportation." Storage of manifested shipments of hazardous waste at a transfer facility must be within the normal course of

transportation. As the Agency has stated in the past, EPA can envision situations in which hazardous waste may be stored at one transfer facility for 10 days, and then be stored at a second transfer facility for an additional 10 days, and remain within the normal course of transportation (see the attached June 7, 1990 letter from Sylvia Lawrence to Robert Duprey and the June 22, 1994, letter from Michael Petruska to Kevin Igli).

Your letter also asked for clarification of the phrase "normal course of transportation." The 10-day storage limitation at transfer facilities was based on information provided by the transportation industry, which indicated that shipments of hazardous waste normally take no longer than 15 days, including both the actual transportation and the temporary holding of the shipment (see 45 FR 86966, December 31, 1980). Individual circumstances, however, may prevent shipments from being completed within this time period. EPA believes that what constitutes "the normal course of transportation" depends on the particular facts of each case. Therefore, EPA does not believe it is appropriate to set a generic time limit beyond which a shipment would automatically be outside the normal course of transportation.

You next inquire whether the authorization of a provision affecting the storage of hazardous wastes at transfer facilities under 3006 of RCRA would make that provision no longer subject to preemption under the HMTA because it was "otherwise authorized by Federal law." (See 49 App. U.S.C. 1811(a).) EPA formulated its current position on RCRA state authorization and preemption under the HMTA during the 1992 authorization of California for the base RCRA program. EPA does not believe that it is appropriate to use the RCRA Subtitle C authorization process to make specific determinations of possible preemption under the HMTA. Pursuant to the HMTA, the DOT has established procedures both for making preemption determinations and providing waivers from preemption. A possible issue of preemption under HMTA would not affect the program's eligibility for RCRA authorization where the preemption concern is unrelated to RCRA authorities. (See 57 FR 32726, July 23, 1992, and the attached October 29, 1992, letter from Devereaux Barnes to Cynthia Hilton). Thus, EPA still believes that the RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges raised under the HMTA.

Finally, you ask whether EPA has the authority to review a

state's interpretation of an authorized provision. You cite the Arkansas Department of Pollution Control and Ecology's (DPC&E) interpretation of the 10-day transfer facility storage limitation as a cause for concern. According to your letter, the DPC&E enforces a 10-day storage limitation that applies to the total storage time at all transfer facilities, not the storage time at each one. Although EPA has a different interpretation than what you have described for the DPC&E, the state of Arkansas is authorized for the transporter requirements, and thus has primary authority for implementing them. EPA's response to a state's interpretation of an authorized provision would depend on how it was implemented in a particular situation, and factors such as any relevant state court decisions or an enforcement action. EPA is currently not aware of any instance where this differing interpretation has been implemented. Further, EPA believes that the question of whether Arkansas' interpretation deviates from national HMTA transportation standards should be addressed under the HMTA preemption process, rather than through RCRA state authorization.

I hope that this clarification is of assistance to you. Further guidance regarding the issues you have raised may be available in the future, as a result of EPA discussions with DOT. If you have further questions regarding the authorization of states for the regulation of hazardous waste transporters and transfer facilities, please contact Wayne Roepe of my staff at 703-308-8630. If you have further questions regarding the EPA regulations regarding the transportation of hazardous waste, please contact Ann Codrington of my staff at 202-260-4777.

Sincerely,

Michael Shapiro, Director  
Office of Solid Waste

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Attachments  
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June 3, 1994

Michael Shapiro  
Assistant Administrator for  
Solid Waste and Emergency Response  
OS-100  
U.S. Environmental Protection Agency  
401 "M" St, S.W.  
Washington, D.C. 20460

Dear Mr. Shapiro:

On behalf of the Chemical Waste Transportation Institute (CWTI), I thank you for your timely reply to our letter of April 27, 1994 concerning EPA's interpretation of the 40 CFR 263.12 ten day limitation on storage at transfer facilities (see footnote 1). We are compelled to write again because it did not respond substantively to all our concerns.

The CWTI is a not-for-profit association that represents companies that transport hazardous waste throughout the United States and Canada, and in Mexico.

In retrospect, we can see how your staff would have read our letter as a request to evaluate the Arkansas Department of Pollution Control and Ecology (DPC&E) authorized program pursuant to RCRA Section 3006 in terms of its administration of the 10-day transfer facility storage rule. In fact, our request concerning an interpretation of Section 3006 was only one of four related issues raised in our letter.

I am taking this opportunity to attempt to clarify our concerns and request your indulgence to respond. As a reference, I am attaching our April 27th letter. By way of background, you correctly pointed out in your letter that DPC&E's proposed rule revision limiting the time hazardous waste may be stored at one or more transfer facilities to ten days was not contained in the Department's April 22, 1994 published final rule (see footnote 2). However, the provision was not pulled because the DPC&E had reversed or otherwise rescinded their position on the merits of the 10-day aggregate storage limit. Instead, the entire section concerning

transfer facility regulation, including the 10-day aggregate storage limit, was pulled because DPC&E intends to address and clarify other aspects of the transfer facility provisions and republish the proposal later this summer. In the meantime, the DPC&E has affirmed to CWTI on two occasions that the Department's proposed 10-day aggregate storage limit is a restatement of internal interpretive guidance of 40 CFR 263.12 and that the Department enforces 40 CFR 263.12 based on that guidance (see footnote 3). In short, whether or not the 10-day aggregated storage language is in a published rule of the DPC&E, the 10-day aggregated transfer facility storage policy is currently being enforced.

#### Clarification of EPA's Interpretation of the 10-day Transfer Facility Storage Rule

Our primary reason for writing was to obtain reaffirmation of EPA's interpretation of 40 CFR 263.12 to the effect that the ten-day limitation begins anew at each transfer facility that a shipment may be stored at in the normal course of transportation. If EPA's policy has changed, we have had no notice of it. This issue was not addressed in the Agency's May 23rd letter.

#### EPA's Interpretation of the phrase "Normal Course of Transportation"

Closely related to our request that EPA reaffirm its interpretation of 40 CFR 263.12 as it pertains to the ability of a shipment to be held at multiple sites for up to ten days at each site is the matter of EPA's interpretation of the phrase "normal course of transportation" (see footnote 4). As explained in our letter of April 27, DPC&E cites EPA's preamble to the transfer facility rule to the effect that EPA "set a ten day period for in-transit holding of hazardous waste [and] that shipments of hazardous waste normally take no longer than fifteen days (including both the actual transportation and the temporary holding of the shipment)" (see footnote 5). In view of this statement that "normal" is "no longer than fifteen days," the DPC&E cannot fathom how EPA could interpret the 10-day transfer facility storage provision at 40 CFR 263.12 to begin anew at each such facility. In order for us to reopen discussions with DPC&E on the merits of their interpretation of the 10-day in-transit storage rule, we asked that EPA define what is meant by the phrase "normal course of transportation." This matter was not addressed in the Agency's May 23rd letter.

## Reaffirmation of EPA's Interpretation of Section 3009 Authorize

Again to help frame the parameters of our discussion with the DPC&E and options we may use to pursue to resolve our differences of opinion, we requested that EPA advise us whether or not RCRA Section 3009 "authorizes", within the meaning of 49 U.S.C. App. 1811(a), as opposed to "does not prohibit" a state's more stringent interpretation of EPA's "10-day, in-transit storage" and "normal course of transportation" language. The U.S. Department of Transportation, under authority of 1811(a), has found that the fact RCRA does not prohibit a state from imposing more stringent regulations does not protect those regulations from preemption under the Hazardous Materials Transportation Act (see footnote 6). We had hoped to obtain a reaffirmation of DOT's and prior EPA interpretations. The Agency's May 23rd letter did not address this request.

## RCRA Section 3006 Implications

We did ask if DPC&E's interpretation of the 10-day in-transit aggregate storage limitation was acceptable within its authority pursuant to RCRA Section 3006. The Agency's letter did address this issue stating that it was premature to ask the question prior to the Department formally adopting the policy as a rule. However, it begs the question presented by the situation in Arkansas of a state that, not by rule but by "interpretation," enforces policies that are at odds with EPA's implementation of RCRA. Please elaborate on EPA's authority to review a state's requirements in terms of such requirements' acceptability as part of a state's authorized program when such requirements are imposed and enforced not by regulation but by interpretation.

## Conclusion

Aside from written response to these issues, we are not asking, at this time, for EPA to engage in any action or to assess whether action should or could be taken against DPC&E's 40 CFR 263.12 10-day aggregate transfer facility storage limitation. Our only intent at the moment is to use EPA's response to further our discussions with the DPC&E on the in-transit storage issue.

Again your attention to this issues is appreciated. Please contact me or Cynthia Hilton, CWTI, if further clarification is needed.

Charles Dickhut, Chairman

- 1 Letter to Stephen C. Hansen, CWTI, from Michael Shapiro, EPA, dated May 23, 1994.
- 2 Enclosed is the text from the DPC&E final rule and responsiveness summary that explains the Department's interpretation of the 10-day transfer facility storage limitation. See specifically page 55. The rules cover page is enclosed as a dated reference and page 54 because it begins the Department's discussion of transfer facility issues.
- 3 Telephone conversations between Tom Ezell, Hazardous Waste Division, DPC&E, and Cynthia Hilton, CWTI, April 22, 1994, and May 31, 1994.
- 4 40 CFR 260.10.
- 5 45 FR 86967 (December 31, 1980).
- 6 57 FR 58843, 58855 (December 11, 1992) and 50 FR 28913, 18920 (June 3, 1994). Also see EPA discussion of this matter citing "EPA agrees that a regulation preempted by any other Federal Law is invalid." 57 FR 32726, 32728 (July 23, 1992).

enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
Office of Solid Waste and Emergency Response

May 23, 1994

Mr. Stephen C. Hansen  
Chemical Waste Transportation Institute  
4301 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20008

Dear Mr. Hansen,

Thank you for your letter of April 27, 1994. In your letter, you raise concerns regarding a recent state of Arkansas rule notice that would place an aggregate 10-day limit on the time hazardous waste may be stored at one or more transporters transfer facilities (April 6, 1994, Arkansas Department of Pollution Control and Ecology (DPC&E) Regulations No. 23, page 61). In your letter, you request EPA to confirm or clarify its interpretation of the transfer facility storage time limits under the federal regulations, and whether Arkansas may be authorized under RCRA to implement this provision.

We have contacted the state of Arkansas regarding their transfer facility regulations and have been informed that the provisions of concern to you did not appear in the applicable final rule published on April 22, 1994 (DPC&E Regulations No. 23, page 170). However, we understand that Arkansas may promulgate regulations regarding transfer facilities in the future. If Arkansas adopts rules that go beyond the Federal requirements and submits them for authorization, EPA will then make a determination as to whether the rules may be authorized as requirements that are more stringent than Federal program requirements.

Although the Arkansas transfer facility provisions you referred to in your letter were not finalized, EPA will continue to coordinate with the Department of Transportation and the states to discuss issues that have been raised regarding hazardous waste transporters and transfer facilities. I am particularly aware that RCRA regulation of transfer facilities has become a contentious issue, and we are examining the matter closely. If you have further questions regarding the authorization of states for the



regulation of transporters and transfer facilities, please contact  
Wayne Roepe of my staff at 703-308-8630.

Michael Shapiro, Director  
Office of Solid Waste

Chemical Waste Transportation Institute  
4301 Connecticut Avenue, N.W.  
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Washington, D.C. 20008

April 27, 1994

Michael Shapiro  
Assistant Administrator for  
Solid Waste and Emergency Response  
OS-100  
U.S. Environmental Protection Agency  
401 "M" St., S.W.  
Washington, D.C.

Dear Mr. Shapiro:

On behalf of the Chemical Waste Transportation Institute (CWTI), I am writing to reaffirm EPA's interpretation of the 40 CFR 263.12 as it relates to the ten-day limitation of storage at transfer facilities.

The CWTI is a not-for-profit association that represents companies that transport hazardous waste throughout the United States and Canada, and in Mexico. The Institute works to promote professionalism and performance standards to minimize risks to the environment, public health and safety; to develop educational programs to expand public awareness about the industry; and to contribute to the development of effective laws and regulations governing the industry. The CWTI is the only North American organization that exclusively represents companies engaged in hazardous waste transportation.

Since 1980, federal regulations at 40 CFR 263.12 have provided that shipments of hazardous waste may be temporarily stored at a transfer facilities for a period of ten days or less without triggering the need for a RCRA Subpart C treatment, storage, or disposal permit. EPA has clarified that the ten-day limitation begins anew at each transfer facility that the shipment may be stored at in "the normal course of transportation" (see footnote 1). EPA's guidance acknowledges that repeated, extended delay in the transport of hazardous waste from the point of generation to the designated management site as a result of "storage" at transfer facilities may not be consistent with the normal course of

transportation. However, such determination would have to be made on a case by case basis. In addition, this issue was discussed at the recently concluded Regulatory Negotiation on the Uniform Manifest. At that time, EPA officials reaffirmed the 10-day per transfer facility storage allowance interpretation.

In spite of this guidance, the Arkansas Department of Pollution Control and Ecology (DPC&E) recently finalized revisions to regulations affecting the management of hazardous waste. As part of that revision, the DPC&E has placed an aggregated 10-day limit on the time a shipment of waste may be held at any number of transfer facilities. For example, the rule would hold a transfer facility responsible for illegal storage of hazardous waste if a drum of hazardous waste from California bound for South Carolina was held 5 days in California to consolidate drums from other locations, then held 3 days in Texas to change tractors, then held more than 2 days at the subject site in Arkansas (or any other State prior to delivery) to break/bulk the van's load for transport on other trucks to various permitted facilities.

After hazardous waste has been held at transfer facilities for more than 10 days while in transit, the DPC&E claims that the waste is outside the scope of normal circumstances regarding its transportation and the exemption from RCRA permitting requirements is not longer applicable. This assertion is based, according to the State, on EPA's preamble to the transfer facility rule which provided that "... the amended regulations set a ten day period for in-transit holding of hazardous waste [and] that shipments of hazardous waste normally take no longer than fifteen days (including both the actual transportation and the temporary holding of the shipment)" (see footnote 2) (emphasis added). The DPC&E claims that at the time the ten day rule was promulgated that EPA gave no consideration to "the concept of multiple in transit holdings of waste at different transfer facilities..." (see footnote 3). Thus, it rests its case on what it believes EPA intended by the phrase the normal course of transportation.

DPC&E's interpretation of the ten-day rule has the potential to disrupt, delay and otherwise frustrate the transportation of hazardous waste. Consequently, we request a letter reaffirming and clarifying EPA's interpretation of the 10-day per transfer facility storage rule, including a definition of or response to the State's interpretation and use of the phrase "normal course of transportation." Additionally, please advise us if the DPC&E's

action is acceptable within its authority pursuant to RCRA Section 3006 or if under RCRA the State's regulation would "be viewed as 'broader in scope' and, therefore, not part of the authority program" (see footnote 4). Finally, please advise us whether or not RCRA Section 3009 "authorizes", within the meaning of 49 U.S.C. App. 1811(a), as opposed to "does not prohibit" the State's more stringent interpretation of EPA's "10-day, in-transit storage" and "normal course of transportation language."

Your attention to this matter is appreciated. If you require further elaboration on the issues raised above, please contact me or Cynthia Hilton, CWTI.

Sincerely,  
Stephen C. Hansen  
Chairman

- 1 See attached memoranda from Sylvia Lowrence, former Associate Administrator for Solid Waste and Emergency Response, U.S. EPA, and Robert L. Duprey, Director, Hazardous Waste Management Division, Region VIII, U.S. EPA, dated June 7, 1990; and David Ullrich, Acting Director, Waste Management Division, U.S. EPA, dated October 30, 1990. The terminology "normal course of transportation" occurs in the definition of "transfer facility" at 40 CFR 260.10.
- 2 45 FR 86967 (December 31, 1980).
- 3 Arkansas Department of Pollution Control and Ecology Regulations No. 23, Final Rule and Responsiveness Summary, April 6, 1994, page 61.
- 4 57 FR 32728 (July 23, 1992) (citing EPA's response to a CWTI challenge of various requirements imposed by the State of California on the transportation of hazardous waste).

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Enclosures  
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Arkansas Department of Pollution Control and Ecology Regulation No.  
23

1993 Revision

April 6, 1994

DEPARTMENT: Pollution Control and Ecology,  
Hazardous Waste Division

ACTION: Final Rule and Responsiveness  
Summary

SUMMARY: The Arkansas Department of Pollution Control  
and Ecology is today revising ADPC&E  
Regulation No. 23 (Hazardous Waste  
Management).

This revision of Regulation 23 changes from a format of "incorporation by reference" to "verbatim adoption" in most cases. In the past, the Department has relied heavily upon incorporating by reference the federal rules incorporated in Title 40, Code of Federal Regulations (40 CFR) Parts 260-266, 268, 270 and 124. This made it extremely difficult to determine when a specific rule went into effect, or was revised, without researching the original state and Federal rulemaking packages. It was not a simple task to determine whether a Federal provision or a substituted state rule was in effect without cross-checking both documents. The additional burden of needing to cross-check two separate regulations, each of different format, created additional confusion as to the exact wording of the rules in effect. Most of the specific rules in 40 CFR were thus invisible to the public and the regulated universe, many of whom did not take time to obtain or research the Federal rules.

As of December 4, 1992, the Department has final Federal authorization for all rules and changes to the RCRA program promulgated as of June 30, 1991. Since in an authorized State such as Arkansas the state hazardous waste management program applies to the majority of situations in lieu of the Federal requirements, a single-source reference is acutely needed to minimize conflict and

confusion between the two sets of requirements. In this revision to Regulation No. 23, the Federal rules as previously incorporated by reference and Federally authorized have been reprinted in their entirety as previously adopted. References to the Director (vice the EPA Administrator) and the Department (vice EPA) have been made where necessary, and specific Department requirements and points of contact listed where appropriate. Where a state rule applies and has been implemented and/or authorized in place of a Federal rule, the state rule is shown in its proper place in the full text of the regulatory requirements with the applicable Federal rule, or in lieu of the Federal language it replaces.

The Department's intent behind this revision and its full-text format is to provide a stand-alone, easily accessible single-source reference for the Arkansas hazardous waste regulations and requirements currently in effect. Once this revised regulation is in place, one should have only limited need to purchase and/or refer to a separate copy of 40 CFR to find the current requirements pertinent to his hazardous waste activities in Arkansas.

Incorporation by reference has been retained to a limited extent in the case of 40 CFR 261 Appendices IX and X Appendix IX of 40 CFR-Part 266, and portions of 40 CFR 124, Subpart A. Future Federal rule changes will be adopted and incorporated verbatim as they are applicable, or in specific cases may be incorporated by reference in a rule-by-rule manner.

The reformatting of the regulation also dictated a major change in the organization of the previous section and paragraph numbers. Federal rules adopted from 40 CFR Parts 260 through 266, 268, 270, and 279 have been kept together to the maximum extent possible. To minimize impact in cross-referencing these rules, the entire text was adopted in the same format as it appears in 40 CFR. 40 CFR Part numbers for the Federal rules were changed to Regulation 23 Section numbers; and all subparagraph numbers (e.g. paragraph citations following the right of the decimal point in the citation) were left unchanged. 40 CFR Parts 260-266, 268, 270, and 279 were renumbered as Regulation 23 Section numbers 7 through 17 respectively as described below. Any reference to an adopted provision of the adopted portions of 40 CFR may be converted to a reference in this revision of Regulation 23 simply by facility on the appropriate transporter permit and to assist in tracking compliance with the regulatory requirements for transporters and transfer facilities listed in § 10.12.

PUBLIC COMMENTS: None received.

STAFF RESPONSE TO COMMENT:

In light of the revised means of annotating which subsidiaries, facility, or locations affiliated with a specific transporter are addressed under a transporter permit, the proposed revisions at § 10.1 I(c) are withdrawn, and the original Federal language restored in its place.

(21) Section 10.12 originally proposed to expand the operating requirements for hazardous waste transfer facilities. This revision would have established basic requirements for the operation of transfer facilities or transportation terminals which are similar to the 40 CFR 262 standards for generators in order to provide increased safety and protection for human health and the environment by more closely controlling the manner in which these facilities may be operated.

The proposed changes would require transporters who operate transfer facilities where hazardous wastes are temporarily held for short periods of time during the normal course of transportation to meet minimal notification, recordkeeping, preparedness and prevention, personnel training, contingency planning and emergency procedures necessary to protect human health and the environment at these facilities. The proposed changes would affect the activities of transfer facilities only and do not alter or affect current transporter requirements regarding, among other things permitting, manifesting, labeling, marking, placarding, using proper containers, and reporting and response to discharges. Additionally, the proposed rule would elucidate current regulations by clarifying the limitations of storage and treatment activities allowed at transfer facilities which do not hold storage or treatment permits.

The Department asserts that these changes do not, in any way, alter or restrict the movement, management, handling, or transportation of manifested shipments of hazardous waste in a way different or inconsistent with current EPA and DOT regulations for hazardous wastes which are transported and are not stored in transfer facilities during transit. For manifested shipments of hazardous wastes which are stored for a period of ten days or less in transfer facilities during transit, these proposed rules only affect activities related to such temporary storage and do not alter or restrict current requirements related to the movement of

such shipments. The Department further asserts that the proposed rules are necessary to provide adequate protection of human health and the environment at transfer facilities and that the proposed changes, while having no impact on transporters who do not own or operate transfer facilities, does not significantly increase the economic, recordkeeping, and reporting impacts on transporters who do own or operate transfer facilities in that the proposed changes clarify current rules, add only "common sense" management requirements that prudent and well maintained facilities should already be conducting, and requires the minimum amount of recordkeeping and reporting necessary for the Department to locate, identify, and monitor compliance at transfer facilities.

ADPC&E Regulation No. 23 currently incorporates by reference most of 40 CFR 260-266, 268, and 270. The provisions of 40 CFR 263.12 Transfer Facility Requirements, as incorporated, state, "A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, and 268 of this chapter with respect to the storage of those wastes." EPA first proposed this rule, prior to its adoption into Regulation 23, at 45 FR 86968, December 31, 1980. This rule was promulgated to clarify when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit and specifically provides that transporters be allowed to store hazardous waste in approved containers at transfer facilities for short periods without first complying with standards applicable to hazardous waste storage facilities. At the time EPA promulgated and ADPC&E adopted this rule, all available information regarding transfer facility operations and activities were considered in determining that these transfer facility requirements were sufficient to allow protection of human health and the environment. However, ADPC&E has become aware of additional transfer facility activities which are beyond the scope of those activities considered by EPA and ADPC&E at the time this rule was promulgated and adopted. The Department contends that because these activities may result in hazardous waste being managed at transfer facilities on a continuing basis, rather than the incidental basis as considered by EPA, additional requirements are necessary to adequately protect human health and the environment at these facilities.

In determining that the current transfer facility requirements were sufficient to protect human health and the environment, EPA based



its opinion on two criteria. First, EPA considered "Transporters have a natural incentive to move shipments quickly and efficiently; their business, in most cases, is the movement of hazardous waste rather than the storage of such waste." Secondly, EPA believed that requiring the use of DOT containers minimized the potential for release. Therefore, EPA allowed that such short term storage (less than 10 days) at a transfer facility if conducted to facilitate normal transportation activities and the waste was held in DOT containers did not pose a substantial threat to human health or the environment because of the minimal residency time waste would be held at transfer facilities. However, the Department believes that EPA did not consider that transfer facilities would operate in such a manner as to cause substantial quantities of hazardous waste to be present on-site on a continuing basis and that such activity poses the same management concerns as do similar activities at facilities which accumulate hazardous waste on-site (i.e., less-than-90-day generator accumulation) or which store hazardous waste received from off-site. The Department has reason to believe that many transporters maintain large volumes of hazardous waste on-site continually at transfer facilities. Although specific shipments of hazardous waste may enter and leave the transfer facility with a short residency time, the large volume of waste being processed through such facilities allow that, at any given time, substantial volumes of hazardous wastes may be present on-site. Moreover, the Department believes that EPA failed to anticipate that many transporters would operate transfer facilities in close coordination with generators, brokers, and treatment, storage, and disposal facilities for the purpose of using transfer facilities to supplement the storage activities of those facilities rather than to support the transportation-related activities of the transporter.

The Department, therefore, believes that the present transfer facility requirements are insufficient to protect human health and the environment at such facilities and additional management requirements are necessary to insure the protection of transfer facility personnel as well as the health and safety of persons working or living in the vicinity of such facilities and to protect and prevent the accidental release of hazardous waste or hazardous waste constituents into the environment. While the Department disagrees with EPA that current transfer facility requirements are adequately protective of human health and the environment, it agrees with EPA's position that transfer facility activities should allow for limited in-transit storage without a RCRA permit or

interim status. In order to clarify these limitations, the proposed rule includes requirements which explicitly state the period of time that transfer facilities may hold a shipment of hazardous waste in transit, clearly defining the term "in transit".

The proposed rule clarified that the requirements would apply only to transporters who own or operate transfer facilities. None of the requirements would affect or alter the activities of transporters not engaged in the management of hazardous waste at such facilities.

The proposed rule attempted to more clearly state the currently effective storage time limitations applicable to transfer facilities which do not have RCRA permits or interim status for storage. Although this interpretation does not change the current requirements pertaining to the period of time waste may be held at transfer facilities, the Department seeks to define in more precise terms that a shipment of waste may be held at transfer facilities only 10 days while in transit. The Department is aware that the wording of the current requirement has been frequently misinterpreted by some transporters to mean that a shipment of waste may be held at a number of transfer facilities for a period of 10 days at each transfer facility.

The Department proposed to add additional requirements for the management of hazardous waste while stored at transfer facilities. For the reasons previously stated, the Department believes these requirements are necessary to be adequately protective of human health and the environment for waste which is held at transfer facilities. Sections 12.31, 12.32, 12.33, 12.34, 12.37 are equivalent to generator and TSD facility Preparedness and