

PPC 9551.1996(04)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

November 27, 1996

Mr. William L. Warren
Drinker Biddle & Reath
1009 Lenox Drive
Building 4
Lawrenceville, New Jersey 08648

Dear Mr. Warren,

I am writing in response to your letter of October 23, 1996, in which you requested clarification on when permitting and land disposal requirements are not required for management of contaminated soil which is hazardous or contains hazardous waste. I have outlined several alternatives that are potentially available below. Applicability of these alternatives at any site depends upon certain state requirements and site-specific circumstances, such as the form of treatment that is most appropriate at a site. I encourage you to coordinate closely with state officials as you pursue these matters.

Question 1: "If a company is undertaking a remediation of a site under state auspices, and the site is not being addressed under either the CERCLA or RCRA programs, does the company require a RCRA permit if as part of the remediation program it intends to treat at the site location contaminated soil which has been excavated from the site and which is or contains hazardous waste, or can it be governed by the requirements and guidance of the state environmental agency."

As a general matter, treatment of hazardous waste, or media containing hazardous waste, requires a RCRA permit. However, at the federal level, there are a number of exceptions allowing for limited treatment on site without triggering the requirement for a RCRA permit. For example, 40 CFR 262.34 allows generators to

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accumulate hazardous waste on site in certain tanks, containers, drip pads and containment buildings for up to 90 days without a permit or interim status, as long as certain conditions, including compliance with certain tank, container or drip pad standards of 40 CFR part 265, are met. EPA interprets this authority to allow generators to treat hazardous waste in units covered by this provision during the accumulation period. See 51 FR 10146, 10168 (March 24, 1986). Other activities that are generally exempt from RCRA permitting requirements include treatment of hazardous wastewater in exempt wastewater treatment units, and treatment of certain wastes in exempt elementary neutralization units (see 40 CFR 264.1(g)(6)).

Non-exempted activities involving treatment of hazardous waste or media that contain hazardous waste are subject to the hazardous waste permitting requirements. However, some states have permit waiver authorities analogous to 7003 of RCRA or 121(e) of CERCLA. States with these waiver authorities may have the authority to waive RCRA permit requirements for cleanups so long as the state waiver authority is used in a manner no less stringent than that allowed under Federal permit waiver authority. The attached November 16, 1987 memorandum from J. Winston Porter to EPA Regional Administrators explains the use of state waiver authorities in more detail.

Without site-specific details, it is difficult to anticipate whether these approaches would apply to your site. Decisions on the applicability of permit exemptions, waivers or use of other authorities are generally made at the state level. I recommend that you consult with the state in question to determine the best approach for your site-specific needs.

Question 2: "Also, if this company treats the contaminated soil so as to reduce the contamination in the soil to a level below the soil remediation standards utilized by the state, may it return the treated soil to the site even though the remediation standards utilized by the state are less stringent than the RCRA treatment standards which would apply to the contaminant found in the soils were it being sent off site."

No, unless a variance from RCRA Land Disposal Restriction (LDR) treatment requirements is obtained. Where excavated soil contains a hazardous waste (as we understand it does in your

case), LDR treatment requirements must be met prior to land disposal. See RCRA section 3004(d), (g), (k), (m). The RCRA land disposal treatment standards apply equally to on-site and off-site disposal of contaminated soil which is hazardous waste or contains a hazardous waste; if state remediation standards are less stringent than the RCRA treatment standards, the RCRA treatment standards must be met prior to placement. However, in certain cases, site specific treatability variances under 40 CFR 268.44(h) may be used to approve alternative land disposal treatment standards. If alternative levels approved under the variance process are more stringent than state remediation levels, the alternative levels must be attained prior to placement. The Administrator has delegated the variance approval authority to the EPA Regional Administrators; in addition, some states have been authorized for 268.44(h) variance determinations.

In addition, there are several ways under the federal program to manage cleanup wastes in a manner that does not trigger the LDRs in the first instance. If a corrective action management unit (CAMU) is designated at your site, remediation waste placed into the CAMU on site would not be not subject to LDRs, and the state or EPA Region may establish site-specific treatment standards for remediation waste managed in a CAMU that vary from the otherwise applicable land disposal standards. See 40 CFR 264.552. Also, depending on specific site circumstances, management of remediation waste within an "area of contamination" (AOC) may not trigger LDRs. The attached March 13, 1996 memorandum provides more details on AOCs and on the use of CAMUs for management of remediation wastes.

Please note that states may have their own policies and regulations which may be more stringent than federal regulations and policies. As discussed above, decisions which may be more stringent than federal regulations and policies. As discussed above, decisions on the issues that you raise are dependent upon site-specific circumstances and are generally made at the state level. We suggest that you contact the state in question to address any site-specific issues. For the state of New Jersey, please call Frank Faranca at (609)984-4071. We hope that this is of assistance to you. If you have any further questions, please contact Hugh Davis, of my staff, at (703)308-8633.

attachments

cc: Frank Faranca, NJDEP
Barry Tornick, EPA Region 2

ATTACHMENT

LAW OFFICES
DRINKER BIDDLE & REATH

October 23, 1996

Michael Shapiro, Director
Office of Solid Waste
United States Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20406

RE: Applicability Of RCRA Requirements to Non-RCRA Remedial
Activities

Dear Mr. Shapiro:

If a company is undertaking remediation of a site under state auspices, and the site is not being addressed under either the CERCLA or RCRA programs, does the company require a RCRA permit if as part of the remediation program it intends to treat at the site location contaminated soil which has been excavated from the site and which is or contains hazardous waste, or can it be governed by the requirements and guidance of the state environmental agency. Also, if this company treats the contaminated soil so as to reduce the contamination in the soil to a level below the soil remediation standards utilized by the state, may it return the treated soil to the site even though the remediation standards utilized by the state are less stringent than the RCRA treatment standards which would apply to the contaminant found in the soil were it being sent off site.

Yours very truly,

William L. Warren

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