

December 16, 1998

MEMORANDUM

SUBJECT: Landfill Leachate Recirculation Policy

FROM: Robert W. Dellinger, Director (5306W)
Municipal and Industrial Solid Waste Division

TO: Maria Parisi Vickers, Associate Director for RCRA
Waste and Chemicals Management Division (3-WC20)

At our recent meeting in Richmond, Virginia, you requested a clarification of OSW's policy for leachate recirculation in municipal solid waste landfills (MSWLFs). Under the current 40 CFR Part 258 requirements, leachate recirculation is allowed in MSWLF units that meet §258.40(a)(2), i. e., units that are constructed with a composite liner. Leachate recirculation is not allowed in MSWLF units that meet §258.40(a)(1), i. e., units that are constructed with alternative liner designs.

This regulatory policy was misunderstood because the "Solid Waste Disposal Facility - Technical Manual" contains a statement that indicated that the "director of an Approved State" could allow leachate recirculation in MSWLF units constructed with alternative liner designs. The guidance document is incorrect. It is inappropriate for guidance to supercede the plain language of a regulation. Thus, the landfill criteria require that a landfill be constructed in conformance with §258.40(a)(2) if leachate is being recirculated.

Let me describe the process that would lead to a regulatory revision. There are at least four ways to initiate the process of revising a rule. Frequently, the first step is to issue an Advanced Notice of Proposed Rulemaking (ANPRM). This notice announces to the general public that EPA is considering a rule change and invites the submission of data on the subject area. An alternative is for the Agency to independently gather data on the subject. A third way is for interested parties to formally petition the Agency for a rule change by submitting data that supports the requested rule revision. Yet another possibility is to have the courts establish an

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agenda for rule revisions as a result of a lawsuit on the regulations. After the data that would justify the rule change is accumulated, EPA proposes a regulatory revision and invites public comment. Public comment is reviewed and addressed in a final rule.

Our operating plan for Fiscal Year 1999 includes a project to review and evaluate the technology of leachate recirculation. If sufficient data is found to justify a change in the regulations, we will propose to revise Part 258 to allow leachate recirculation in units constructed with alternative liner designs. The process of revising rules would also include accepting public comment on the proposed change before issuing a final revision. Depending on the nature of the comments on a proposed rule change, the process can become quite involved and take as long as a year after the initial proposal. It is our intention to propose a rule change in FY 99.

If you have any questions, please contact Allen Geswein of my staff on (703) 308-7261.