



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

APR 11 2014

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Land Disposal Restriction (LDR) Requirements

FROM: Barnes Johnson, Director
Office of Resource Conservation and Recovery

A handwritten signature in black ink that reads "Barnes Johnson".

TO: Regional RCRA Division Directors
Regional Superfund Division Directors
Regional Enforcement Division Directors

Questions have been raised on whether hazardous wastes that are prohibited from land disposal can be temporarily put or placed in or on a landfill (or on synthetic material in or on a landfill) before it is confirmed that the waste meets the applicable LDR treatment standards. In short, the answer is prohibited wastes (wastes that do not meet the applicable treatment standard) cannot be placed in or on land disposal units unless the unit satisfies the statutory no-migration standards. Thus, if a prohibited waste is placed in or on a land disposal unit before it is confirmed that the waste meets the treatment standard, and it turns out that the waste did not meet the standard, then the disposal is illegal unless the disposal unit is an approved no migration unit.

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, largely prohibit land disposal of hazardous wastes. After a waste is prohibited from land disposal, the statute provides two options: before land disposal occurs, comply with a specified treatment standard which minimizes threats to human health and the environment, or, dispose of the waste in an approved "no migration" unit.¹ Land disposal is the placement of waste in or on the land and includes, but is not limited to, any placement of hazardous waste into a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004 (k); 42 U.S.C. section 6924 (k). The statute draws no distinction in the duration of disposal. 'Temporary' placement in a land disposal unit is "land disposal" just as much as is permanent disposal. See RCRA Section 3004(k) and implementing regulations at 40 CFR Part 268.2 (c) (defining "land disposal" as including "any placement").

Since 1984, the EPA has developed LDR treatment standards for all hazardous wastes listed or identified at the time HSWA was enacted and for all hazardous wastes that EPA subsequently identified or listed (e.g., the toxicity characteristic (TC) wastes). See 40 CFR Part 268, Subpart D for a list of

¹ A no-migration unit is a unit from which there will be no migration of hazardous constituents for as long as the waste placed in the unit remains hazardous. See RCRA Sections 3004(d),(e),(g)(5); 42 U.S.C. §§ 6924(d),(e),(g)(5). The standard for determining whether to grant a no migration petition is a separate issue, and is not discussed in this memorandum.

prohibited hazardous wastes and their respective treatment standards. Thus, all hazardous wastes are prohibited from land disposal unless they either meet the EPA-established treatment standard, or are disposed in a no-migration unit.

These requirements are clear on the face of the statute, and have been reiterated many times by EPA in Federal Register preambles, guidance,² and of course in the applicable regulations in Part 268. Courts have likewise confirmed that prohibited wastes must meet the treatment standards before being placed in a land disposal unit, even if treatment occurs in the unit. *API v. EPA*, 906 F 2d 726, 734-36 (D.C. Cir 1990). Again, the sole exception is if the unit is an approved no migration unit.

Treatment of hazardous wastes occurs in non-land based units before a prohibited waste is land disposed. Thus, hazardous wastes are typically treated in units such as incinerators, tanks, containers, and containment buildings before they are land disposed. Note, however, that storage areas in or on a landfill are defined in the statute and the Part 268 rules as land disposal. RCRA section 3004 (k); 40 CFR section 268.2(c). Containers located in or on a landfill are also considered land disposal.

So in regards to the legality of disposing of prohibited wastes before verifying that the treatment standards are satisfied, if the wastes in fact meet the treatment standards, then the disposal is legal. If the wastes do not meet the treatment standards, then the disposal is illegal-- unless the disposal unit is an approved no-migration unit.

If you have any questions, please contact our LDR program leads Mary Jackson or Elaine Eby. Mary can be reached at jackson.mary@epa.gov or at (703) 308-8453 and Elaine may be reached at eby.elaine@epa.gov or at (703) 308-8449.

cc: James Woolford
Reginald Cheatham
Susan Shinkman

² See, e.g. the RCRA Training Module “Introduction to Land Disposal Restrictions (40 CFR Part 268),” Office of Solid Waste and Emergency Response, EPA 530-K-05-013, September 2005, <http://www.epa.gov/wastes/inforesources/pubs/training/ldr05.pdf>, (“Wastes that do not meet treatment standards cannot be land disposed unless EPA has granted a variance, extension, exclusion, or the waste is managed pursuant to an approved “no migration” petition).