MEMORANDUM

SUBJECT: Interim Status Groundwater Monitoring Requirements

FROM: Bruce M. Diamond, Director  
Office of Waste Programs Enforcement

TO: Sylvia Lowrance, Director  
Office of Solid Waste

On August 31, 1990, OSW and OWPE briefed Don Clay on groundwater monitoring (GWM) issues associated with the TC rule (briefing package attached). The first of these issues concerns the unclear timing of certain interim status GWM requirements for newly regulated land disposal facilities; the second issue involves revising the GWM certification requirements.

Regarding the confusion over the timing of certain interim status GWM requirements (in §§ 265.90, 270.14(c), and 270.73), it was decided that a notice clarifying the requirements was needed as a short term solution for the newly regulated TC facilities. As a result, your office prepared a Federal Register notice (55 FR 39409, September 27, 1990; attached) which explains the GWM requirements for facilities affected by the TC rule and states that the Agency intends to codify its interpretation in a future rulemaking. We appreciate your prompt publication of this notice and believe that it will help our enforcement efforts considerably.

It was also decided at the Clay briefing that a regulatory fix to these GWM requirements was desirable in the long term for future listings and expansions of the characteristics. We feel that revising these requirements is still critical. We believe that these revisions will make these regulations more consistent and environmentally protective, and will clarify our intent to the regulated community. We would like to know what your plans are regarding these amendments.

The second interim status GWM issue discussed at the August briefing involved revising the LOIS owner/operator GWM certification requirements (under §270.73). At that time, Clay commented that he thought that these revisions were a good idea, but that he did not want them to hinder the pending TC clarification notice. As a result, the certification
requirements were not discussed in the TC clarification notice. The current certification form, signed by the owner/operator, simply states that the facility is in compliance with the GWM requirements. In the 1985 LOIS initiative, the Agency interpreted the certification as a statement that a well system had been installed that met the applicable requirements. The resulting systems were difficult to evaluate and often proved inadequate. We believe that if facilities are given an additional year to characterize their hydrogeology and install a GWM system, it is reasonable to require them to better describe and justify their systems. Revisions to this certification discussed at the Clay briefing included:

a) a short hydrogeological justification for the system, and

b) a signed statement from a professional geologist or engineer that the system meets the 265 Subpart F GWM requirements.

OWPE plans to begin drafting modifications to §270.73 to reflect the revisions discussed above, and would like to work with your office to promulgate them.

Attachments

cc: Dev Barnes, OSW
    Lisa Friedman, OGC
    Kathie Stein, OE
§ 186.2275 N,N-dimethyldipiperidinium chloride

(a) A tolerance of 6 parts per million (ppm) is established for residues of the plant growth regulator N,N-dimethyldipiperidinium chloride in the processed fraction raisins, resulting from application of the plant regulator to the growing crop groups. Such residues may be present therein only as a result of the application of the plant growth regulator to the growing grapes in accordance with an experimental use permit that expires June 30, 1991.

(b) Residues in or on raisins not in excess of 6 ppm resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the emergency use permit and food additive tolerance.

(c) BASF Corporation shall immediately notify the Environmental Protection Agency (EPA) of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration (FDA).

PART 186—AMENDED

2. In part 186:

SUPPLEMENTARY INFORMATION

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing EP toxicity characteristics, which are used to identify those wastes which are hazardous and subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The preamble to these regulations included implementation guidance to assist the regulated community in understanding their regulatory obligation for managing new TC wastes. This notice is intended to clarify for the regulated community the following issues: (1) The regulatory status of surface impoundments, (2) the status of surface impoundments managing newly regulated TC wastes, (3) ground-water monitoring requirements for newly regulated land disposal facilities, (4) section 3010 notification requirements, and (4) permit modification requirements.


FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-5541.

For further information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-5541.
II. Surface Impoundments

The universe of newly regulated Toxicity Characteristic (TC) wastes includes (along with other wastes) both wastewaters and wastes generated from the treatment of wastewaters. Some of these wastewaters and wastewater treatment units are generated or managed in surface impoundments. Surface impoundments receiving, generating, or actively managing newly regulated TC wastes on or after September 23, 1990 are subject to all applicable regulations for surface impoundments managing RCRA hazardous wastes. Some of the factors that determine the regulatory status of these surface impoundments for permitting purposes and the various compliance options are discussed below.

1. Impoundments ceasing operation prior to effective date.

Facilities with impoundments in which newly regulated TC wastes currently are generated, stored, and/or disposed may cease operation of the units prior to the effective date of the TC (i.e., September 23, 1990). If these units have wastes in place but are not being used for waste management after the TC effective date, these inactive units would not be subject to regulation under 40 CFR parts 254 or 255. However, it should be noted that inactive units that are located at facilities otherwise subject to subtitle C's interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(h) of RCRA. All facilities, of course, may be subject to ERCLA cleanup authorities.

In some cases facilities will choose to remove some or all of the wastes from the impoundments. If the removed wastes are not managed or disposed on or after the effective date of the TC rule, they will not be subject to subtitle C. However, any TC waste contained in inactive impoundments that is removed (i.e., actively managed) after the effective date would subject to regulation. For example, if the TC waste was excavated for treatment and disposal, it would be regulated as hazardous waste at the time of excavation and would be required to be managed at a subtitle C facility. Such a removal activity in and of itself, however, does not subject the inactive impoundment to subtitle C.

2. Conversion to non-hazardous waste impoundment.

A facility with surface impoundments in which TC wastes have been generated and/or managed may choose to redesign or reconfigure the existing wastewater treatment system prior to the effective date such that only non-hazardous wastes are generated or managed in those units. If all units of the treatment train on or after the effective date of the rule. If all TC sludges are removed from the surface impoundments prior to the effective date of the rule, the units may continue to be used and will not be subject to subtitle C of RCRA (provided no other hazardous wastes are generated, managed, or disposed in the unit).

Under another scenario, there may be surface impoundments that (1) contain TC wastes deposited prior to the effective date, and (2) receive or generate only non-hazardous wastes by the effective date as a result of system reconfiguration or modification. The regulatory status of such units depends on how the residual TC waste is managed after the effective date of the rule. If (1) the TC wastes remain in the surface impoundment on or after the effective date of the rule, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the unit is not subject to subtitle C. Note that EPA does not consider once time removal of waste from a unit on or after the TC effective date, in and of itself, to make the unit a storage unit and thus subject to subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is also consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

3. Active hazardous waste management impoundments.

Facilities with units in which TC wastes are managed on or after the effective date of the rule may continue to use these units to manage TC wastes if all applicable subtitle C requirements are satisfied. These facilities are required to obtain interim status and apply for a permit (or submit a change in interim status or a permit modification, if appropriate) in accordance with the appropriate compliance dates. The units will be subject to the applicable requirements of 40 CFR parts 254 and 255 as of the effective date of the TC.

As described in section 2 above, facility owners or operators may elect to manage only non-hazardous wastes as surface impoundments so that the unit will not be subject to subtitle C. However, there are a number of scenarios where these impoundments could become regulated. For example, if any TC waste remains in the surface impoundment on the TC's effective date and the impoundment is not the final disposal site for the wastes, then the impoundment is considered to be actively managing (e.g., storing) hazardous wastes and therefore is subject to the Subtitle C requirements upon the effective date of the rule. If a facility plans to remove on a periodic basis all or some of the TC waste from the unit on or after the effective date of the TC rule, the unit would be subject to subtitle C (including permitting, facility-wide corrective action, financial responsibility) on the effective date of the rule.

A second example would be where the non-hazardous wastewater inflow to a unit causes a TC hazardous sludge (disposed prior to the effective date) to be scoured from the unit so that the effluent from the unit exhibits the TC on or after the effective date. In that case, the unit generating this TC wastewater and any surface impoundment receiving this hazardous effluent would be subject to the subtitle C management standards and would need to be under interim status or obtain a permit.

A third example is where a TC waste is generated within the unit from non-hazardous wastewater on or after the TC effective date. This could occur where the hazardous constituents in the wastewater become concentrated, or if a new TC sludge is formed by settling. In these examples, once the TC waste is generated and stored or disposed of in the unit, the unit is subject to subtitle C.

C. Ground-Water Monitoring Requirements

The Agency is aware of confusion regarding the timing of the subtitle C ground-water monitoring requirements as they apply to land disposal units or facilities that are newly regulated as a result of the final TC. Subpart F of 40 CFR part 254 describes the ground-water monitoring requirements for interim status land disposal facilities managing hazardous wastes. The applicability section of subpart F (see § 265.90) is not clear as to whether such units or facilities newly regulated under the toxicity characteristic must comply with the ground-water monitoring requirements on the effective date.
TC (i.e., September 25, 1990) or one year later on September 25, 1991.

In 1980, the Agency promulgated the interim status program, including the part 265, subpart F groundwater monitoring requirements. The Agency allowed affected facilities an additional year from the effective date of the regulations for compliance with the groundwater monitoring requirements as codified at 40 CFR 265.90(a): "within one year after the effective date of these regulations, the owner or operator must implement a groundwater monitoring program capable of determining the facility's impact on the quality of ground water." EPA provided this delayed compliance schedule for groundwater monitoring requirements in order to allow facilities sufficient time to properly plan and install groundwater monitoring systems.

The Agency believes that the rationale for allowing an additional year after the effective date of the initial regulations for full implementation of groundwater monitoring requirements is also applicable to newly regulated facilities. EPA believes that the 6-month effective date provided for RCRA regulations is insufficient to allow for proper site characterization and well placement. Thus, EPA interprets 265.90(a) to provide a one-year timeframe from the effective date of new listings or characteristics rules for the implementation of a complete groundwater monitoring program at newly regulated units or facilities. The Agency intends to codify this in future rulemaking by modifying the appropriate sections of the regulations.

Consistent with EPA's implementation of the loss of interim status requirement for disposal facilities in 1985 (50 FR 39294, September 25, 1985), land disposal facilities newly subject to the groundwater monitoring requirements must complete site characterization and design and installation of groundwater monitoring systems capable of determining the facility's impact on groundwater quality by September 25, 1991. Therefore, owner/operators who have not already done so should immediately commence characterizing their facility's hydrogeology and designing and installing their groundwater monitoring systems to meet this deadline. As in 1985, EPA intends to rigorously enforce both the part 265 subpart F requirements and the loss of interim status requirements.

To certify compliance with these requirements, facilities must submit a groundwater monitoring system certification, certifications of financial responsibility and part B permit applications by September 25, 1991.

D. Section 3010 Notifications

In the preamble to the TC final rule (55 FR 11849), the Agency indicated that, pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify the Agency of their hazardous waste management activity within 90 days after the wastes are identified as hazardous. For the TC rule, the notification date was June 27, 1990. However, the Agency waived the notification for those facilities that already have notified EPA of their hazardous waste activity under section 3010 of RCRA and have obtained an EPA identification number. Based on inquiries received by various EPA offices concerning the notification requirements, and a review of the preamble language, the Agency believes that a significant number of regulated facilities may have been confused by certain language in the notification section of the TC preamble. As a result, the Agency is today clarifying the notification requirements for generators and TSDFs, and is also providing additional time for such notification.

Notification requirements for large quantity generators (those that generate more than 1,000 kg per month of total hazardous waste) and TSDFs, as specified in the TC final rule, required notification by June 27, 1990 unless they had already notified EPA of hazardous waste activity and obtained an EPA identification number. Based on inquiries received by various EPA offices, it is apparent that many people did not understand that in order to have the notification requirement waived, a generator must have met two criteria: (1) They must have previously notified the Agency of hazardous waste management activity; and (2) they must have received an EPA identification number (see 262.12). Some persons interpreted this section to mean that any previous notification under any Agency program (rather than under the RCRA program) was sufficient. Others took the interpretation that if they had an EPA identification number for any Agency program, that was sufficient to take advantage of the notification waiver. Both interpretations are incorrect. Due to this apparent confusion, the Agency is today clarifying the notification requirements by extending the additional time to notify the appropriate EPA Regional Office of their hazardous waste activity. Large quantity generators and TSDFs have until October 28, 1990 to notify the Agency of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700-12, dated 7/90; see 55 FR 31386, August 2, 1990 for a copy of the form) and sending it to the appropriate EPA Regional Office. It is important to note that this extension applies only to the notification requirement, and does not provide an extension for any other requirement under TC rule, including the date by which an EPA ID number must be obtained.

For newly regulated TSDFs, RCRA specifies that in order for a newly regulated TSDF to be granted interim status, three conditions must be met: (1) The facility/unit must be in existence on the effective date of the rule; (2) the facility must submit a section 3010 notification (if required by the Agency) within the required time frame (for the TC the date was June 27, 1990); and (3) the facility must submit a Part A by September 25, 1990. As indicated above, the Agency is today clarifying the language by which TSDFs must notify the Agency in order to be eligible for interim status to October 28, 1990. This is done by completing a section 3010 notification form (EPA Form 8700-12 as above) and sending it to the appropriate EPA Regional Office. This extension of the section 3010 notification date does not affect the date part A applications are due, which remains September 25, 1990. It also does not affect the compliance date for any other requirement other than the section 3010 notification.

Notification requirements for small quantity generators (generators of between 100 and 1,000 kg of total hazardous waste per month) newly regulated as a result of the TC were already clarified in a TC correction notice published in the Federal Register on August 2, 1990 (see page 31387; see also editorial correction notice dated August 10, 1990, page 32783). Small quantity generators that are newly regulated by the TC are required to notify their respective EPA Regional Office by November 2, 1990 of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700-12 as above) and sending it to the appropriate EPA Regional Office.

E. Permit Modifications

The Toxicity Characteristic (TC) rule is expected to cause many permitted facilities to seek modifications to their permits. The TC is the first major expansion of regulated wastes under part 261 since the new permit modification rule was promulgated on September 28, 1988 (53 FR 37912) in the Federal Register / Vol. 55, No. 188 / Thursday, September 27, 1990 / Rules and Regulations 39411
FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This amendment updates and displays the Office of Management and Budget (OMB) control numbers assigned by OMB for collections of information contained in, or authorized by, FEMA regulations. The update is necessary to make corrections to parts and sections and control numbers listed incorrectly, add new requirements, and delete requirements no longer needed or controlled.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Linda S. Borror, (202) 646-2623.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recordkeeping requirements/collections of information and give public notice of such clearance numbers. This rule amends 44 CFR part 2, subpart C to update and display the control numbers assigned by OMB to FEMA's collections of information which are contained in, or authorized by, FEMA regulations.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551-553 et seq.) requiring advance notice and comment.

FEMA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not significant for the purposes of Executive Order 12896; that a regulatory analysis is not required; that environmental impact documents under the National Environmental Policy Act of 1969 are not required since the action is administrative and categorically exempt from 44 CFR part 10c; and that the updated cumulative list of assigned OMB control numbers is not subject to further review and clearance by OMB under the Paperwork Reduction Act of 1980.

List of Subjects in 44 CFR Part 2

Authority delegations (government agencies), Organization and functions (government agencies), Reporting and recordkeeping requirements.

Accordingly, title 44, chapter I, subchapter A of the Code of Federal Regulations, part 2, subpart C is amended as follows:

PART 2—(AMENDED)

Subpart C—(Amended)

1. The authority citation for part 2, subpart C continues to read as follows:


2. Section 2.51 is amended by revising the cumulative list of parts and sections in 44 CFR which identifies or describes FEMA's information collection requirements that have been assigned OMB control numbers as follows:

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