

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

October 25, 2010

Certified Mail No. 70033110 000619981519

BY FAX AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul Turek
Chemical Waste Management, Inc.
35251 Old Skyline Road
P.O. Box 471
Kettleman City, Ca 93239

RE: Facility acceptability under the CERCLA Off-Site Rule

Dear Mr. Turek:

This letter addresses the Off-Site Rule (OSR) status for Chemical Waste Management Inc. (CWM), Kettleman Hills Facility. As you know, on July 15, 2010, EPA issued CWM a Notice of Violation and a 60-day notice of unacceptability under the Off-Site Rule (40 C.F.R. § 300.440) for a PCB release adjacent to CWM's PCB storage building. After receiving CWM's cleanup plan on August 25, 2010, EPA extended the notice period on September 13, 2010 for an additional 45 days, and on September 24, 2010, EPA approved CWM's clean-up plan, subject to conditions.

Under 40 C.F.R. § 300.440(b)(2)(ii)(D) of the Off-Site Rule, a release will not affect a unit's eligibility for receipt of CERCLA waste if the release is "controlled by an enforceable agreement for corrective action under an applicable Federal or State authority." On October 14, 2010, the California Department of Toxic Substances (DTSC) finalized a Corrective Action Consent Order (DTSC Docket HWCA P1-10/11-001) with CWM that will address cleanup of the PCB release under both State and federal requirements. Accordingly, CWM's compliance with the terms of the DTSC Consent Order satisfies the requirements of 40 C.F.R. § 300.440(b)(2)(ii)(D) and the release is deemed controlled for purposes of the OSR. *See also* 40 C.F.R. § 300.440(f)(3)(v).

Because the cleanup under the Order may not be complete by the current OSR deadline of October 28, 2010, however, it will not be possible for CWM "to show that the facility is operating in physical compliance with respect to the relevant violations cited in the initial [July 15] notice of unacceptability" by that date. *See* 40 C.F.R. § 300.440(d)(6). Therefore EPA is extending the notice period to allow time for CWM to submit data demonstrating physical compliance pursuant to the State order, and for EPA to review the submittal. This extension will also provide EPA an opportunity to review

CWM's compliance with the DTSC Order. Under 40 C.F.R. § 300.440(b)(2)(D), the release only remains "controlled as long as the facility is in compliance with the order...and enters into subsequent agreements for implementation of additional corrective action measures when necessary." 40 C.F.R. § 300.440(f)(3)(v). We will issue a final determination under the OSR based upon our review of the confirmatory samples and compliance with the DTSC Order.

If you have questions concerning the off-site rule, please contact Kandice Bellamy, Region 9 CERCLA Off-Site Rule Coordinator, at (415) 972-3304. Legal questions should be directed to Rebecca Sugerman, Assistant Regional Counsel, at (415) 972-3893.

Sincerely,



Jeff Scott, Director
Waste Management Division

cc: Jane Diamond, Region 9 Superfund Division Director
Gale Filter, Department of Toxic Substances Control
Andrew Kenefick, Senior Legal Counsel, Chemical Waste Management, Inc.