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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT RCRA Regulatory Status of Contaminated Ground Water

FROM: Marcia E. Williams, Director
Office of Solid Waste

TO: Patrick Tobin, Director
Waste Management Division, Region IV

This is in response to your memorandum of September 18, 1986, regarding the regulatory status of ground water contaminated with hazardous waste leachate. To answer this question, one first has to determine the status of ground water. Under the regulations, ground water contained in the aquifer is not considered a solid waste, since it is not "discarded" in the sense of being abandoned, recycled, or inherently waste-like as those terms are defined in the regulations. See 40 CFR 261.2(a)-(d). Therefore, contaminated ground water cannot be considered a hazardous waste via the mixture rule (i.e., to have a hazardous waste mixture, a hazardous waste must be mixed with a solid waste; see 40 CFR 261.3(a)(2)(iv)). Nevertheless, ground water contaminated with hazardous waste leachate is still subject to regulation since it contains a hazardous waste. Therefore, the treatment, storage, or disposal of ground water contaminated with hazardous waste leachate must be handled as if the ground water itself were hazardous since hazardous waste 1/ leachate is subject to regulation under Subtitle C of RCRA. However, if the ground water is treated such that it no longer contains a hazardous waste, the ground water would no longer be subject to regulation under Subtitle C of RCRA.

1/ This memo more precisely explains the position on ground water contamination presented in John Skinner's memo dated December 26, 1984.

Taking this interpretation and applying it to the example in your memorandum, the ground water containing a listed hazardous waste, once collected, is subject to regulation under the hazardous waste regulations. However, if as a result of treatment, the ground water no longer contains the hazardous waste leachate, the ground water would no longer be subject to the hazardous waste rules.

Your letter also raises the question of treatment of ground water within the context of corrective action. If the corrective action is taken at an interim status facility in compliance with a §3008(h) order, treatment can take place. We are considering the possibility of amending the regulations to clarify the relationship between corrective action and the reconstruction ban (§270.72(e)). More broadly, the Agency is currently examining the issue of whether permits should be required for any corrective actions. We are also developing rules for corrective action under RCRA §3004(u). Until this analysis is completed, if the corrective action takes place at a permitted facility, it can be handled as a permit modification.

Please feel free to call Matt Straus, of my staff, if you have any further questions; his telephone number is 475-8551 (FTS).

cc: Hazardous Waste Division Directors,
Regions I-III and V-X
Gene Lucero, OWPE
Lloyd Guerci, OWPE
Mark Greenwood, OGC
Steve Silverman, OGC