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

MEMORANDUM

SUBJECT: Requirement That State-Permitted Hazardous  
Waste Facilities Have "Interim Status"

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TO: PIGS Addressees

ISSUE

If a State agency in a State with Phase I authorization issues a facility permit after November 19, 1980 but the State program has not been authorized for Phase II interim authorization:

- a) Does the facility have interim status?
- b) If the facility does not have interim status, can it begin operation?

DISCUSSION/DECISION

a) For a facility to obtain interim status it must meet three requirements as stated in Section 3005(e) of RCRA. . These are:

- The facility must have been "in existence" on the date of enactment of RCRA (October 21, 1976), or on the date specified by any amendments passed by Congress; and
- The facility must have complied with the notification requirements specified in Section 3010(a); and
- The facility must have applied for a permit as required under Section 3005(a).

If a facility meets all three of these requirements, it has interim status for the purposes of RCRA until a RCRA permit has been issued or denied by EPA or a State authorized for Phase II.

b) Assuming that a facility does not qualify for interim status and has not been issued a RCRA permit, facility construction and operation are precluded until a RCRA permit is issued. Because EPA is not authorizing State permit programs during Phase I interim authorization, a facility permit issued by a State with Phase I authorization is not a RCRA permit. For the same reason, Phase I authorization of a State program does not suspend the RCRA Section 3005 requirement that in order to operate lawfully a facility must have a RCRA permit or interim status. Because neither EPA nor any States will be issuing RCRA permits during Phase I, only facilities with interim status may operate during that period.