MEMORANDUM Oct. 4, 1982

SUBJECT: Applicability of Interim Status Standards, 40 C.F.R. Part 265, to Small Quantity Generators Who Have Notified and Filed a Part A Permit Application

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TO: Robert Schaefer
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ISSUE

A March 29, 1982, memorandum from your office requested guidance on the problems created by small quantity generators who submit "protective" RCRA section 3010 notifications and Part A permit applications. We appreciate your concern that different positions may have been taken on this issue by several Regions. This memorandum will provide guidance on the following question:

> Do the special requirements for hazardous waste generated by small quantity generators (i.e., that the waste is not subject to regulation under 40 C.F.R. Parts 262 - 265, if the generator complies with the requirements of §261.5(g)) remain in effect if those small quantity generators "file protectively," i.e., notify under RCRA section 3010(a), and submit a Part A permit application under 40 C.F.R. §122.22(a)?

We conclude that the special requirements remain in effect and that only the requirements of §261.5 apply to such generators. For the reasons discussed below, such generators never achieved interim status. Accordingly, small quantity generators who have "filed protectively" should be sent written notification explaining EPA's interpretation of the law as applied to them.

DISCUSSION

The owner or operator of a hazardous waste management facility[1/] who meets three conditions achieves interim status under RCRA section 3005(e), and implementing regulations. Such owner or operator is treated as having been issued a permit until EPA makes final administrative disposition of his permit

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[1/] "Facility" is defined in §260.10 and means "all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments or combinations of them)." This definition of "facility" clearly would include any areas used by a generator for the treatment, storage, or disposal of hazardous waste.

application. The three conditions for achieving interim status are:

a. the facility was in existence on November 19, 1980, and is required to have a RCRA permit;

b. the owner or operator complied with the preliminary notification requirements of RCRA section 3010; and

c. the owner or operator submitted a Part A permit application under 40 C.F.R. §122.22(a).

The owner or operator of a facility which qualifies for interim status must comply with the interim status standards of 40 C.F.R. Part 265.

Under 40 C.F.R. §261.5, a conditional exclusion from the requirements of Parts 262 - 265 was granted to generators of 1000 kg/month or less of hazardous waste. Some of these small quantity generators, otherwise conditionally excluded from interim status requirements, have "filed protectively," i.e., notified under RCRA section 3010 and submitted a Part A permit application under 40 C.F.R. §122.22(a), in an attempt to secure additional rights for themselves in case they sometime in the future exceed the terms of their exclusion.

This "protective filing" does not create additional rights for the generators involved because the "protective filing" does not cause the generator's facility to achieve interim status when the generator is not required to have a RCRA permit. (See the first condition that must be met for the owner or operator of a facility to achieve interim status.) Therefore, Region V should advise those small quantity generators who have notified or submitted Part A permit applications, or both, that EPA does not consider them to have achieved interim status because they are not owners or operators of facilities required to have a RCRA permit. Region V should also advise small quantity generators that the Region will retain the notification because the EPA I.D. number is often necessary for proper disposal of small quantities of hazardous wastes. (Even facilities which are excluded from interim status have found that disposal facilities require them to have an EPA I.D. number.) In addition, Region V should advise small quantity generators that their Part A permit applications are regarded by EPA as having no effect, but that when a small quantity generator has a change in operation which causes loss of his exclusion he should submit a Part A within 30 days after the date he first becomes subject to the 262-265 standards (i.e., he loses the exclusion).

CONCLUSION

A "protective filing" by a small quantity generator does not cause that generator's facility to achieve interim status. Thus the small quantity generator is not subject to interim status standards.

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cc: Regional Counsels, Regions I-IV, VI-X
Director, Office of Solid Waste

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