



TO: DIVERSITECH POLYMERS DIVISION
ATTENTION: H. S. Wheeler
FROM: R. W. Frase
DATE: May 29, 1985
SUBJECT: SALE OF ASHTABULA FACILITY -
Environmental Disclosures

MEMO

I have reviewed again the environmental regulations as they apply to transfer of ownership and found one more point we may not have covered. This requirement is a part of the interim hazardous waste regulations that apply to owners of TSD facilities.

Per the requirements of 40 CFR 265 Subpart 265.12(b) (highlighted copies attached). as owners of Ashtabula we also must notify a new owner in writing that the facility must meet the requirements of Title 40 Code of Federal Regulations Parts 265 and 270.

This is rather straightforward except that buried in 40 CFR 270.72(d) is a statement which in essence says that we are required to maintain financial responsibility for the hazardous waste practices of the new owners until the new owner meets one of the responsibility tests.

As I interpret this regulation, we still owe a new owner this letter of notification.


Ronald W. Frase

xd
Attachment

cc w/attachments:

H. B. Thompson
✓ W. J. Henrick
R. P. DeTorre

GENC 26161

immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subpart C and D of this Part are applicable to owners and operators of treatment, storage and disposal facilities otherwise subject to this Part. [Comment: This paragraph only applies to activities taken in immediate response to a spill. After the immediate response activities are completed, the regulations of this Chapter apply fully to the management of any spill residue or debris which is a hazardous waste under Part 261.]

[The second 265.1(c)(11) added by 48 FR 2511, January 19, 1983. See editor's note above.]

(11)(i) Except as provided in paragraph (c)(11)(ii) of this Section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this Part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Part and Parts 122-124 of this chapter for those activities.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR §262.30 at a transfer facility for a period of ten days or less.

(13) The addition of absorbent material to waste in a container (as defined in §260.10 of this chapter) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and §§265.17(b), 265.171, and 265.172 are complied with.

[265.1(c)(13) added by 47 FR 8306, February 25, 1982]

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this Part.

(1) EPA Hazardous Waste Nos. FO20, FO21, FO22, FO23, FO26, or FO27 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of § 264.250(c) as well as all other applicable requirements of Subpart L of this Part;

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in § 265.352; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in § 265.383.

[265.1(d) added by 50 FR 1999, January 14, 1985]

§§ 265.2-265.3 [Reserved]

§ 265.4 Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 7003 of RCRA.

§§ 265.5-265.9 [Reserved]

Subpart B—General Facility Standards

§ 265.10 Applicability

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.11 Identification number.

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures (45 FR 12746).

§ 265.12 Required notices.

[Interim final]

(a) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date

of the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and Part 270 of this Chapter. (Also see §270.72 of this Chapter.)

[265.12(b) amended by 48 FR 14153, April 1, 1983]

[Comment: An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

[Approved by the Office of Management and Budget under control number 2050-0013]

[265.12 amended by 50 FR 4513, January 31, 1985]

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this Part.

(2) The analysis may include data developed under Part 261 of this Chapter, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

[Comment: For example, the facility's record of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this Section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by paragraph

[Sec. 265.13(a)(2)]

the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 124.15(b).

(3) If modifications under § 270.41(a)(2) are necessary, the second phase of the permit will become effective only after those modifications have been made.

§ 270.64 Interim permits for UIC wells.

The Director may issue a permit under this part to any Class I UIC well (see § 144.6 injecting hazardous wastes within a State in which no UIC program has been approved or promulgated. Any such permit shall apply and insure compliance with all applicable requirements of 40 CFR Part 264, Subpart R (RCRA standards for wells), and shall be for a term not to exceed two years. No such permit shall be issued after approval or promulgation of a UIC program in the State. Any permit under this section shall contain a condition providing that it will terminate upon final action by the Director under a UIC program to issue or deny a UIC permit for the facility.

[270.64 amended by 48 FR 30113, June 30, 1983]

§§ 270.65—270.69 [Reserved]

Subpart G—Interim Status

§ 270.70 Qualifying for interim status.

(a) Any person who owns or operates an "existing HWM facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the requirements of Section 3010(a) of RCRA pertaining to notification of hazardous waste activity.

[Comment: Some existing facilities may not be required to file a notification under Section 3010(a) of RCRA. These facilities may qualify for interim status by meeting paragraph (a)(2) of this section.]

(2) Complied with the requirements of § 270.10 governing submission of Part A applications;

(b) Failure to qualify for interim status. If EPA has reason to believe upon examination of a Part A application that it fails to meet the requirements of § 270.13, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for EPA's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his Part A application. If, after such notification and opportunity for response, EPA determines that the application is deficient it may take appropriate enforcement action.

[270.70(b) revised by 49 FR 17718, April 24, 1984]

§ 270.71 Operation during interim status.

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) Employ processes not specified in Part A of the permit application; or

(3) Exceed the design capacities specified in Part A of the permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards at 40 CFR Part 265.

§ 270.72 Changes during interim status.

(a) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change;

(b) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities;

(c) Changes in the processes for the treatment, storage, or disposal of haz-

ardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(2) It is necessary to comply with Federal regulations (including the interim status standards at 40 CFR Part 265) or State or local laws.

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Director that it is complying with that Subpart. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with that Subpart, the Director shall notify the old owner or operator in writing that it no longer needs to comply with that part as of the date of demonstration.

(e) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility.

§ 270.73 Termination of interim status.

Interim status terminates when:

(a) Final administrative disposition of a permit application is made; or

(b) Interim status is terminated as provided in § 270.10(e)(5).

[Sec. 270.73 (b)]