CertainTeed

Certainteed Corporation
Lak Charles Polymer Plant

To: Bruce Brocka	LCH =283	From: C. A. Gellner	LCH =283
Subject: TCLP CLARIFICATIONS AND FORM R		Date:October 23, 1990	

Attached is a copy of correspondence received from The Vinyl Institute on October 9, 1990. Please respond to this by October 26, 1990. I believe that the TCLP Clarification is an issue which we just need to be aware of. On the Form R, be sure that we reported our 1989 data in the manner that they spell it out.

Again, they have requested that we respond by October 26, 1990.

Attachment

The Vinyl Institute

A Division of The Society of The Plastics Industry, Inc.

October 9, 1990

TO: VI Health, Safety and Environment Committee

RE: TCLP Clarifications and Form R - Response By October 26, 1990

As follow-up to discussions at the September 26th committee meeting:

1. TCLP Clarifications - EPA published in the September 27th Federal Register clarifications to its toxicity characteristic rule which are intended to clarify a) the regulatory status of surface impoundments managing newly-regulated TC wastes, b) groundwater monitoring requirements, and c) notification and permit requirements. I assume you have probably already seen the Federal Register notice, but a copy is attached in the event you have not.

2. Form R - Please send me copies of your calendar year 1989 Form R's by October 26th, so that I can compile a complete VI member data sheet. Or, for each of your facilities give me the vinyl chloride releases in pounds for the following:

   a) fugitive
   b) stack
   c) to land
   d) to water
   e) to POTW
   f) offsite

If any of you already have the appropriate numbers for the non-VI members, I will be glad to add the information to the data sheet.

Thanks for your help on this project.

Sincerely yours,

Meredith

Meredith N. Scheck
Assistant Director

MNS/pmb

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Wayne Interchange Plaza II • 155 Route 46 West • Wayne, NJ 07470 • (201) 890-9299 • Fax # (201) 890-7029

40 CFR Parts 261, 264, 265, 268, 271 and 302

[EPA/OSW-FR-90-020; SWH-FRL-3836-3]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Clarifications

AGENCY: EPA.

ACTION: Final rule; clarification.

SUMMARY: On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA) promulgated the Toxicity Characteristics (TC) rule to revise the existing EP toxicity characteristics, which are used to identify those wastes defined as hazardous and that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The preamble to these regulations included implementation guidance to assist the regulated community in understanding their regulatory obligation for managing new TC wastes. This notice is intended to clarify for the regulated community the following issues: (1) The regulatory status of surface impoundments managing newly regulated TC wastes, (2) ground-water monitoring requirements for newly regulated land disposal facilities, (3) section 3010 notification requirements, and (4) permit modification requirements.

DATES: Effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing EP toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of RCRA. The rule broadened and refined the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984.

Today's notice provides clarification regarding four implementation issues brought to the Agency's attention since the publication of the final rule. First, this notice provides clarification regarding the compliance options for surface impoundments managing newly regulated TC wastes. Secondly, this notice addresses the ground-water monitoring requirements that owner/operators of land disposal facilities managing newly regulated TC wastes must meet. Third, the Agency is providing additional clarification regarding § 3010 notification responsibilities for generators and owner/operators of treatment, storage, and/or disposal facilities (TSDFs) managing newly regulated TC wastes. Finally, the Agency is clarifying the permit modification requirements for hazardous waste management facilities with newly regulated wastes under the TC.

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B. Surface Impoundments

The universe of newly regulated Toxicity Characteristic (TC) wastes includes (along with other wastes) both wastewaters and wastes generated from the treatment of wastewaters. Some of these watewaters and wastewater treatment wastes are generated or managed in surface impoundments. Surface impoundments receiving, generating, or actively managing newly regulated TC wastes on or after September 25, 1990 are subject to all applicable regulations for surface impoundments managing RCRA hazardous wastes. Some of the factors that determine the regulatory status of these surface impoundments for permitting purposes and the various compliance options are discussed below.

1. Impoundments ceasing operation prior to effective date.

Facilities with impoundments in which newly regulated TC wastes currently are generated, stored, and/or disposed may cease operation of the units prior to the effective date of the TC (i.e., September 25, 1990). If these units have wastes in place but are not being used for waste management after the TC effective date, these inactive units would not be subject to regulation under 40 CFR parts 264 or 265. However, it should be noted that inactive units that are located at facilities otherwise subject to subtitle C's interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA. All facilities, of course, may be subject to CERCLA cleanup authorities.

In some cases facilities will choose to remove some or all of the wastes from the impoundments. If the removed wastes are not managed on or after the effective date of the TC rule, they will not be subject to subtitle C. However, any TC waste contained in inactive impoundments that is removed (i.e., actively managed) after the effective date would be subject to regulation. For example, if the TC waste was excavated for treatment and disposal, it would be regulated as hazardous waste at the time of excavation and would be required to be managed at a subtitle C facility. Such a removal activity in and of itself, however, does not subject the inactive impoundment to subtitle C.

2. Conversion to non-hazardous waste impoundment.

A facility with surface impoundments in which TC wastes have been generated and/or managed may choose to redesign or reconfigure the existing wastewater treatment system prior to the effective date such that only non-hazardous wastes are generated or managed in some or all units of the treatment train on or after the effective date of the rule. If all TC sludges are removed from the surface impoundments prior to the effective date of the rule, the units may continue to be used and will not be subject to subtitle C of RCRA (provided no other hazardous wastes are generated, managed, or disposed in the unit).

Under another scenario, there may be surface impoundments that (1) contain TC wastes deposited prior to the effective date, and (2) receive or generate only non-hazardous wastes by the effective date as a result of system reconfiguration or modification. The regulatory status of such units depends on how the residual TC waste is managed after the effective date of the rule. If (1) the TC wastes remain in the surface impoundment on or after the effective date of the rule, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the unit is not subject to subtitle C. Note that EPA does not consider one time removal of waste from a unit on or after the TC effective date, in and of itself, to make the unit a storage unit and thus subject to subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is also consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

3. Active hazardous waste management impoundments.

Facilities with units in which TC wastes are managed on or after the effective date of the rule may continue to use these units to manage TC wastes if all applicable subtitle C requirements are satisfied. These facilities are required to obtain interim status and apply for a permit (or submit a change in interim status or a permit modification, if appropriate) in accordance with the appropriate compliance dates. The units will be subject to the applicable requirements of 40 CFR parts 264 and 265 as of the effective date of the TC.

As described in section 2 above, facility owners or operators may elect to manage only non-hazardous wastes in surface impoundments so that the unit will not be subject to subtitle C. However, there are a number of scenarios where these impoundments could become regulated. For example, if any TC waste remains in the surface impoundment on the TC's effective date and the impoundment is not the final disposal site for the wastes, then the impoundment is considered to be actively managing (e.g., storing) hazardous wastes and therefore is subject to the Subtitle C requirements upon the effective date of the rule. If a facility plans to remove on a periodic basis all or some of the TC waste from the unit on or after the effective date of the TC rule, the unit would be subject to subtitle C (including permitting, facility-wide corrective action, financial responsibility) on the effective date of the rule.

A second example would be where the non-hazardous wastewater influent to a unit causes a TC hazardous sludge (disposed prior to the effective date) to be scoured from the unit so that the effluent from the unit exhibits the TC on or after the effective date. In that case, the unit generating this TC wastewater and any surface impoundment receiving that hazardous effluent would be subject to the subtitle C management standards and would need to be under interim status or obtain a permit.

A third example is where a TC waste is generated within the unit from non-hazardous wastewater on or after the TC effective date. This could occur where the hazardous constituents in the wastewater become concentrated, or if a new TC sludge is formed by settling. In these examples, once the TC waste is generated and stored or disposed of in the unit, the unit is subject to subtitle C.

C. Ground-Water Monitoring Requirements

The Agency is aware of confusion regarding the timing of the subtitle C ground-water monitoring requirements as they apply to land disposal units or facilities that are newly regulated as a result of the final TC. Subpart F of 40 CFR part 265 describes the ground-water monitoring requirements for interim status land disposal facilities managing hazardous wastes. The applicability section of subpart F (see § 265.90) is not clear as to whether such units or facilities newly regulated under the toxicity characteristic must comply with the ground-water monitoring requirements on the effective date of the

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TC (*i.e.*, September 25, 1990) or one year later on September 25, 1991.

In 1980, the Agency promulgated the interim status program, including the part 265, subpart F ground water monitoring requirements. The Agency allowed affected facilities an additional year from the effective date of the regulations for compliance with the groundwater monitoring requirements as codified at § 265.90(a): "within one year after the effective date of these regulations, the owner or operator * * * must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water. * * *" EPA provided this delayed compliance schedule for groundwater monitoring requirements in order to allow facilities sufficient time to properly plan and install groundwater monitoring systems (45 FR 33161, May 19, 1980). EPA believes that the rationale for allowing an additional year after the effective date of the initial regulations for full implementation of groundwater monitoring requirements is also applicable to newly regulated facilities. EPA believes that the 6 month effective date provided for RCRA regulations is insufficient to allow for proper site characterization and well placement. Thus, EPA interprets § 265.90(a) to provide a one year timeframe from the effective date of new listings or characteristics rules for the implementation of a complete groundwater monitoring program at newly regulated units or facilities. The Agency intends to codify this in a future rulemaking by modifying the appropriate sections of the regulations.

Consistent with EPA's implementation of the loss of interim status requirement for land disposal facilities in 1985 (50 FR 38946, September 25, 1985), land disposal facilities newly subject to the ground-water monitoring requirements must complete site characterization and design and installation of groundwater monitoring systems capable of determining the facility's impact on ground water quality by September 25, 1991. Therefore, owner/operators who have not already done so should immediately commence characterizing their facility's hydrogeology and designing and installing their groundwater monitoring systems to meet this deadline. As in 1985, EPA intends to rigorously enforce both the part 265 subpart F requirements and the loss of interim status requirements.

To certify compliance with these requirements, facilities must submit a ground-water monitoring system certification, certifications of financial responsibility and part B permit applications by September 25, 1991.

D. Section 3010 Notifications

In the preamble to the TC final rule (55 FR 11849), the Agency indicated that, pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify the Agency of their hazardous waste management activity within 90 days after the wastes are identified as hazardous. For the TC rule, the notification date was June 27, 1990. However, the Agency waived notification for those facilities that already have notified EPA of their hazardous waste activity under section 3010 of RCRA and have obtained an EPA identification number.

Based on inquiries received by various EPA offices concerning the notification requirements, and a review of the preamble language, the Agency understands that a significant number of regulated facilities may have been confused by certain language in the notification section of the TC preamble. As a result, the Agency is today clarifying the notification requirements for generators and TSDFs, and is also providing additional time for such notification.

Notification requirements for large quantity generators (those that generate more than 1,000 kg per month of total hazardous waste) and TSDFs, as specified in the TC final rule, required notification by June 27, 1990 unless they had already notified EPA of hazardous waste activity and obtained an EPA identification number. Based on inquiries received by various EPA offices, it is apparent that many persons did not understand that in order to have the notification requirement waived, a generator must have met two criteria: (1) They must have previously notified the Agency of hazardous waste management activity, and (2) they must have received an EPA identification number (see § 262.12). Some persons interpreted this section to mean that any previous notification under any Agency program (rather than under the RCRA program) was sufficient. Others took the interpretation that if they had an EPA identification number for any Agency program, that was sufficient to take advantage of the notification waiver. Both interpretations are incorrect. Due to this apparent confusion, the Agency is today allowing large quantity generators and TSDFs newly regulated by the TC additional time to notify the appropriate EPA Regional Office of their hazardous waste activity. Large quantity generators and TSDFs have until October 29, 1990 to notify the Agency of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700–12, dated 7/90; see 55 FR 31389, August 2, 1990 for a copy of the form) and sending it to the appropriate EPA Regional Office. It is important to note that this extension applies only to the notification requirement, and does not provide an extension for any other requirement under TC rule, including the date by which an EPA ID number must be obtained.

For newly regulated TSDFs, RCRA specifies that in order for a newly regulated TSDF to be granted interim status, three conditions must be met: (1) The facility/unit must be in existence on the effective date of the rule; (2) the facility must submit a section 3010 notification (if required by the Agency) within the required time frame (for the TC the date was June 27, 1990); and (3) the facility must submit a part A by September 25, 1990. As indicated above, the Agency is today extending the time by which TSDFs must notify the Agency in order to be eligible for interim status to October 29, 1990. This is done by completing a section 3010 notification form (EPA Form 8700–12 as described above) and sending it to the appropriate EPA Regional Office. This extension of the section 3010 notification date does not affect the date part A applications are due, which remains September 25, 1990. It also does not affect the compliance date for any other requirement other than the section 3010 notification.

Notification requirements for small quantity generators (generators of between 100 and 1,000 kg of total hazardous waste per month) newly regulated as a result of the TC were already clarified in a TC correction notice published in the Federal Register on August 2, 1990 (see page 31387; see also editorial correction notice dated August 10, 1990, page 32733). Small quantity generators that are newly regulated by the TC are required to notify their respective EPA Regional Office by November 2, 1990 of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700–12 as described above) and sending it to the appropriate EPA Regional Office.

E. Permit Modifications

The Toxicity Characteristic (TC) rule is expected to cause many permitted facilities to seek modifications to their permits. The TC is the first major expansion of regulated wastes under part 261 since the new permit modification rule was promulgated on September 28, 1988 (53 FR 37912). In the

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preamble to the TC rule, the Agency generally described the implementation of the permit modification procedures for newly regulated wastes (see 55 FR 11849, March 29, 1990). However, the Agency has received questions asking for clarification of certain provisions of the new modification rule.

Under the new permit modification procedures, permitted facilities that manage TC wastes must submit Class 1 permit modifications to the appropriate EPA Regional Office by the TC rule effective date, September 25, 1990, if they are to continue managing the newly regulated TC wastes in units that require a permit (see § 270.42(g)). A number of people have expressed confusion about the type and extent of information permitted facilities must submit with these Class 1 permit modifications. This confusion stems from the fact that § 270.42(g) does not clearly define what information must be contained in the Class 1 submission. The rule language for Class 1 modifications in § 270.42(a) suggests that facilities must also submit the detailed part B application information specified in §§ 270.13 through 270.21, 270.62 and 270.63. However, this is not the intent of the requirements under § 270.42(g) because there would be insufficient time for facilities to develop the necessary data by the effective date. Furthermore, the more extensive information requirements under § 270.42(a) are intended for facility changes initiated by an owner/operator, not for changes under § 270.42(g) resulting from new regulatory requirements imposed by the Agency.

The new waste provision of § 270.42(g) is analogous to the procedures required for interim status facilities or newly regulated facilities, where a facility can continue to manage newly regulated wastes by submitting basic information about the affected waste streams and units and then complying with the part 265 management standards for any newly regulated units until final permit conditions are developed. Therefore, the Class 1 submission would comprise a revised part A form clearly indicating all activities that are newly regulated as a result of the TC rule, and any other description that will clarify which units at the facility are managing the new wastes. This Class 1 permit modification serves as a notification to the Agency and the public of the newly regulated activities.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the TC effective date (i.e., March 24, 1991), and it is at this time that the detailed part B information must be submitted. It is expected that a Class 2 for 3 permit change will be necessary for virtually every facility that has wastestreams which are newly regulated as hazardous under the TC. In situations where a wastestream was already regulated as hazardous under the permit but now has additional waste codes associated with it due to the TC rule, only a Class 1 modification may be required.

Dated: September 24, 1990.

Henry L. Longest II,

Acting, Assistant Administrator, Office of Solid Waste and Emergency Response.

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