

Interoffice Communication

(To Attendees of RCRA Hazardous Waste
Management "Work Session"

From Mary Ann Chance

Date September 29, 1980

Subject FOLLOW-UP RCRA INFORMATION

As you are well aware, the Part A Permit Application required by the Resource Conservation and Recovery Act (RCRA) is due November 19, 1980, for all Hazardous Waste Treatment, Storage, and Disposal Facilities. For your information, review, and possible assistance in completing this form, we plan to distribute a copy of the complete Ponca City Site Permit Application by October 17, 1980.

This will be completed by Richard Thorstenberg from the Ponca City Refinery and will include a copy of the Contingency Plan and Inspection Schedule, which must be completed by the November 19, 1980, deadline and held in the file to be submitted with Part B of the Application when it is requested by EPA. A copy of the Closure Plan and Post-Closure Plan for the Ponca City Site, which must be completed by November 19, 1980, and kept at the facility will also be distributed for your review. Part A required maps, facility drawings, etc. will also be included.

A Waste Analysis Plan, which also must be completed by the November 19, 1980, deadline and submitted with Part B of the application will be completed by Mike Alden for the Ponca City Site and included with this distribution.

For your information, I have enclosed:

1. A copy of the August 19, 1980, Federal Register concerning EPA's intent to publish Regulatory Interpretation Memoranda (RIM's).
2. A BNA Report on EPA receipt of notices.
3. A copy of the pamphlet: "An exclusive analysis of...The Resource Conservation and Recovery Act."

We have purchased the slide/tape presentation from Sun Gas Company, Inc. simply titled "RCRA - The Resource Conservation and Recovery Act of

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1976." I have attached a copy of the presentation outline. The program is advertised as being designed "to alert management and train employees in the proper procedures for the handling of wastes from generation to transportation, storage, treatment, or disposal in accordance with RCRA." We will make this 32-minute slide/tape presentation available to anyone for viewing or presentation-- just let me know the date if you would like to reserve the presentation.

We also have on order the slide presentation from EPA "Attack on Hazardous Waste" (365 slides) which was shown at many of the hearings. The presentation, in combination with the Sun presentation, may be combined and rearranged to meet individual needs. Please contact me in this regard if you would like to put together a presentation using these two. I would be happy to send a script of the EPA presentation upon your request.

Mary Ann

Mary Ann Chance
Environmental Administrator
Environmental Conservation

mt
Enc(4)

CCR 000040899

federal register

**Tuesday
August 19, 1980**

Part V

Environmental Protection Agency

Hazardous Waste Management System

CCR 000040900

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 122-124 and 260-265**

(FRL-1574-4)

Hazardous Waste Management System; Intent to Issue Amendments to Interpretations of and Answers to Questions on Final Regulations**AGENCY:** United States Environmental Protection Agency.**ACTION:** Notice of intent to issue amendments to, interpretations of and answers to questions on final regulations.

SUMMARY: The Environmental Protection Agency (EPA) intends to begin issuing amendments to, interpretations of and answers to questions on its February 26, and May 19, 1980, hazardous waste regulations within the next several weeks. These were promised by EPA in the preamble to its May 19th regulations (see 45 FR 33089) and in the subsequent public meetings on the new hazardous waste regulations. Because of the complexity and breadth of the Resource Conservation and Recovery Act of 1976 (RCRA) subtitle C regulations, it is important for EPA to systematically provide the regulated community and interested public with clarifications and additional details regarding the coverage of the regulations.

ADDRESSES: Requests for the issuance of amendments and interpretive memoranda should be sent to Filomena Chau, whose address appears below. Requests for EPA's question-and-answer book and copies of amendments or interpretive memoranda should be sent to Edward Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 W. Saint Clair Street, Cincinnati, Ohio 45268, (513) 684-5362.

FOR FURTHER INFORMATION CONTACT: Filomena Chau, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9173.

SUPPLEMENTARY INFORMATION:
I. Introduction

On February 26, and May 19, 1980, EPA published its initial regulations implementing sections 3001 through 3006 and 3010 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended; see 45 FR 12722, 12746 and 33066. These regulations represent the first step in the development of a comprehensive Federal and State regulatory program to control the

transportation, treatment, storage and disposal of hazardous waste.

Since their promulgation, the Agency has received thousands of questions from the regulated community and the States concerning the applicability of these regulations. In the majority of cases, the questions can be answered by a careful reading of the regulations. In others, the answers either do not appear in the regulations or are not clear.

To date, EPA has been responding to individual questions orally. Recognizing that this is not an effective way of communicating interpretations of the regulations to the public, the Agency has devised the following approach for dealing with the many issues which have been raised regarding these regulations.

A. Questions Which Can Be Answered by A Careful Reading of the Regulations

Many questions have been raised which could have been answered by a careful reading of the regulations or accompanying preamble. Because the Agency believes that those raising such questions either have not had an opportunity to read the regulations and preambles thoroughly or simply wish to confirm their own reading of the regulations, EPA does not feel it is necessary to issue specific written responses to them. However, the Agency will make available to the public during September 1980, upon request, a question-and-answer document which addresses many of questions in this category. EPA hopes that this document will assist persons reading the regulations for the first time to understand some of the more basic requirements of the hazardous waste program. Requests for this document should be sent to Edward Cox, whose address appears above.

B. Questions Which the Regulations Do Not Answer or Do Not Answer Clearly

In promulgating its February 26, and May 19, 1980, regulations, EPA recognized that it would probably not be able to adequately address every hazardous waste management situation, due to the large number of individual transportation, treatment, storage, and disposal situations to be addressed. To appropriately address these classes of situations, EPA sought comment on those sections of the regulations which it thought might require some additional refinement (see 45 FR 33084 and 33154). The Agency also requested the public to advise it of situations in which a literal application of the regulations would lead to an inappropriate result (45 FR 33088-33089). Finally, three public

meetings were held to answer questions about the regulations (45 FR 33084).

EPA intends to initiate rulemaking to expand, correct or clarify the regulations as appropriate for these situations. Many of these changes will be promulgated in the Federal Register as technical amendments, with explanation, but without opportunity for public comment. Others will be published in interim final form or proposed, as appropriate.

It will not be possible for EPA to respond to all these issues immediately, due to their complexity. Also, the Agency must complete several other major priority tasks in the next six months. Such tasks include reviewing State hazardous waste programs for interim authorization, finalizing the interim final portions of the May 19, 1980, regulations and proposals, and developing permitting standards for hazardous waste management facilities. Therefore, EPA will deal first with issues which identify those persons subject to the regulations and those facilities which can qualify for interim status. Those issues the Agency intends to address in the next several weeks are outlined in section II, below.

C. Questions for Which Interpretive Guidance Would be Helpful

Questions have been raised whose answers require a fairly sophisticated understanding of the regulations. For this category of questions, EPA intends to begin issuing interpretive memoranda to explain how the regulations will apply in particular situations. These interpretive memoranda will be referred to as Regulatory Interpretation Memoranda (RIMs).

RIMs will be issued by EPA's Deputy Assistant Administrator for Solid Waste, with the concurrence of its Deputy Assistant Administrator for Water Enforcement and Associate General Counsel for Water & Solid Waste. Each memorandum will be assigned a three-part number. The first part will correspond to the CFR Part it interprets ("260" will be used for memoranda which address several regulations or general issues). The second part will identify the calendar year in which it is issued. The third part will reflect the sequential order in which the memorandum is issued (e.g., RIM 260-80-01). Each RIM will be published in the Federal Register, will be available at EPA Regional Offices and State agencies regulating hazardous waste management, and will be mailed to individuals on request. All such requests should be sent to Edward Cox, whose address appears above and should specify whether the requestor wishes (1)

to obtain a specific memorandum (identified, for instance, as, "RIM 260-80-01") or (2) to be placed on a mailing list to receive all memoranda in a particular series (identified, for instance as, "RIM Series 262 and 123" memoranda).

For the reasons stated in Section I.B., EPA will not be able to issue interpretive memoranda responding to all the questions in this category immediately, but will set priorities along the lines outlined above. Issues which the Agency intends to address in the next several months are outlined below.

II. Issues to be Addressed in August, September, and October 1980

EPA is currently developing RIMs or amendments to the regulations on the following issues.

1. *When is a hazardous waste first subject to regulation?* Many hazardous wastes are created in pipes, tanks or closed vessels, which are an integral part of a manufacturing, product storage, or waste treatment process. Examples are: sludges formed in raw material or product storage tanks (such as petroleum storage tanks, distillation residues created in distillation units) and sludges formed in treatment facilities where the wastewater itself is not a hazardous waste. We expect to be issuing an amendment to Part 261 in August which will clarify when these wastes become subject to regulation under Subtitle C.

2. *Clarification of the definition of "totally enclosed treatment facility."* A large number of questions have been asked about this definition, which appears in § 260.10(a)(70). Most of these questions relate to the definition of the term "totally enclosed" from an engineering standpoint (e.g., does the term cover a vented tank, a tank in a building or a tank with a floating cover). We will address these in a RIM or an amendment to the regulations to be published in August.

3. *Application of regulation to certain neutralization processes.* Several questions have been raised about application of the regulations to the neutralization of process wastes that are hazardous only because they exhibit the characteristic of corrosivity, and where the neutralization treatment is an integral part of the manufacturing process. We hope to publish an amendment on this matter in August.

4. *Clarification of the exclusion for wastes generated in the combustion of coal and other fossil fuels and in the exploration, development and production of crude oil, natural gas or geothermal energy.* We anticipate

issuing a RIM to clarify the scope of these exclusions in August.

5. *Clarification of the application of regulations to surface coal mining wastes.* There is an inconsistency between the preamble to EPA's Section 3004 regulations and the regulations themselves concerning the applicability of the regulations to coal mining wastes which are regulated under the Surface Mining Control and Reclamation Act. We hope to clarify this issue during August.

6. *Clarification of small generator special requirements.*

A large number of questions have been raised regarding the requirements in § 261.5 for hazardous wastes generated by small quantity generators. We hope to publish a RIM and regulatory amendment dealing with these questions in August.

7. *Clarification of the regulation of commercial products listed under § 261.33.* Many questions have been raised about when the commercial products listed in § 261.33 become "wastes." The most frequent question is whether manufacturing wastes that contain the chemicals listed in § 261.33 are hazardous wastes. Other questions relate to the regulation of commercial products that are used, re-used, recycled or reclaimed. We intend to address these and other questions in a RIM to be published in August.

8. *Clarification of the term "sometimes discarded" in the definition of solid wastes which are by-products in § 261.2(b)(3).* Many persons have asked the meaning of this term and asked how they can show that their by-product is never discarded and therefore is not a solid waste. We hope to publish a RIM or amendment addressing this issue in August.

9. *Application of the regulation to inactive facilities.* EPA's regulations do not apply to "inactive" facilities. Questions have been raised as to whether this exclusion includes inactive storage facilities and whether the regulations apply if inactive facilities are reactivated. We hope to publish a RIM or an amendment to the regulations dealing with these questions in late September.

10. *Application of the regulations to NPDES and pretreatment wastewater treatment facilities that treat or generate hazardous wastes.* Numerous comments have been received about the appropriateness of applying the requirements of Parts 264 and 265 to these facilities and requiring them to have RCRA Subtitle C permits. We hope to address this issue in late September.

11. *Clarification of and possible amendments to the delisting procedures*

in § 260.22. Many questions and comments are being received on these procedures, one of which is the status of a delisting petition during the period between a favorable tentative decision to grant the petition and a final decision (see § 260.22). We are considering these questions and comments and hope to address them in November.

12. *Application of the regulations to spills of listed chemicals and hazardous wastes.* Questions have been raised about the applicability of the regulations to spills of listed chemicals and hazardous wastes (both at facilities and during transportation). They include the following: Is a permit required for clean-up activities, particularly those involving treatment, storage or disposal? Is a manifest required for emergency transport of spilled material? Who is the generator—the transporter or the clean-up firm? How do the hazardous waste spill regulations relate to the spill regulations issued by EPA under Section 311 of the Clean Water Act? We hope to address these and related questions in RIMs and amendments to the regulations in October.

13. *Application of the regulations to dredged materials which are hazardous wastes because they exhibit any of the characteristics of hazardous wastes.* Questions have been raised about the application of the hazardous waste regulations to dredged materials and the interrelationship between these regulations and those issued by EPA under Section 404 of the Clean Water Act. We hope to address these questions in a RIM and, where appropriate, amendments to the regulations in October.

14. *The circumstances under which a facility can obtain interim status after November 19, 1980.* We have been asked whether an existing facility which does not now handle hazardous waste can obtain interim status in the future if, for example, EPA amends its hazardous waste list to add a waste which the facility now handles. We hope to address this issue in a RIM in September.

15. *Clarification of "existing facility."* A number of persons have asked us to clarify the definition of "existing facility," particularly whether the definition of "commenced construction" pertains to an entire manufacturing site or only the hazardous waste facility located on the site. We intend to deal with this issue in a RIM or an amendment in September.

16. *The Office of Management and Budget's (OMB) review of EPA's Parts 264 and 265 reporting requirements under the Federal Reports Act.* OMB recently approved EPA's Parts 264 and

265 reporting requirements under the Federal Reports Act on the condition that EPA extend, until May 19, 1981, the deadline by which landfills, landfarms and surface impoundments which intend to close as landfills must prepare a closure and post-closure monitoring and maintenance plan. EPA will be issuing an amendment to its regulations to reflect this change in August.

In addition to the foregoing, we expect to publish a RIM or an amendment to the regulations, as appropriate, on each of the following issues during the next three months:

1. Definition of empty container
2. Clarification of "empty tank" as it applies in the accumulation of hazardous wastes
3. Application of regulations to samples of hazardous wastes being transported to and processed in laboratories
4. Application of the regulations to pipelines transporting hazardous wastes to off-site facilities
5. Application of regulations to run-off from non-hazardous waste storage piles and raw materials storage piles
6. Clarification of the regulations as they apply to ocean disposal of hazardous wastes

III. Effect of Technical Amendments and Interpretive Memoranda on Compliance Deadlines

This notice does not suspend any requirements in EPA's February 26, and May 19, 1980, regulations. Until an amendment or interpretive memorandum is published on a particular issue, those regulations will remain in effect and individuals should use their best judgment in interpreting them. It is EPA's intent to resolve the issues outlined above prior to the November 19, 1980, effective date of the February 26, 1980 and May 19, 1980 regulations. Should a number of outstanding major issues not be addressed by November 19, 1980, EPA will consider whether the adoption of a temporary special enforcement policy would be appropriate to deal with these situations.

IV. Requesting Amendments or Interpretive Memoranda

As explained in the preamble to EPA's May 19, 1980, regulations any person may submit a petition to amend EPA's hazardous waste regulations (45 FR 33069-33070). Sections 260.20 through 260.22 of the regulations prescribe the information which should be contained in such petitions and describe the procedures which EPA will follow in acting on them.

EPA will also issue interpretive memoranda (if appropriate) on written request. Persons wishing to file such a request should follow the general requirements for rulemaking petitions in § 260.20, except that in lieu of describing their proposed amendment and the justification for it, they should indicate the particular factual situation or regulation for which a regulatory interpretation is requested.

For the reasons stated in I. B., it may be many months before EPA can act on rulemaking petitions or requests for interpretive memoranda. However, requests will be acknowledged within 10 days after receipt. To the extent feasible, the Agency will address first those issues having the most immediate and wide-ranging impact. It should be noted that the filing of a petition or request for interpretation does not stay the compliance date for any regulation.

Dated: August 5, 1980.

Eckardt C. Beck,

Assistant Administrator for Water & Waste Management.

(FR Doc. 80-23158 Filed 8-15-80; 1:31 pm)

BILLING CODE 6560-01-M



Solid Wastes

EPA RECEIVES 55,778 NOTIFICATIONS; NON NOTIFIERS SUBJECT TO ENFORCEMENT

As of Sept. 4, the Environmental Protection Agency had received 55,778 notifications required under the Resource Conservation and Recovery Act from firms handling hazardous wastes, according to EPA officials.

Now the agency plans to begin enforcement actions against those who did not notify EPA by Aug. 18 that they generate, transport, treat, store, or dispose of hazardous wastes, EPA officials said (Current Developments, June 20, p. 270).

Within the next two or three weeks, EPA plans to complete processing all the 55,778 notifications received so far, according to Arthur Glazer, program manager for EPA's hazardous waste permits program. Glazer Sept. 10 told Environment Reporter that based on the notification data reviewed and summarized through Sept. 4, about 66 percent of the notifications are from hazardous waste generators, 50 percent of all notifications involve treatment, storage, and disposal activities, 15 percent are from hazardous waste transporters, several hundred regard underground injection wells, and a small portion are from federal facilities handling hazardous wastes. Glazer said, in some cases, handlers checked more than one box, adding that it appears a large portion of hazardous waste generators also have on-site treatment, storage, and disposal facilities, something EPA expected all along.

Glazer said about 150 notifications so far involve confidentiality requests, which EPA regional counsels are reviewing to see whether the notifications should be kept confidential.

After the notifications are completely processed by computers, Glazer said EPA plans to make available to the public in early October a report listing all notifications received, except those that will be kept confidential.

Non-notifier Enforcement Plan

EPA has informed its regional offices to proceed drawing up a list of targeted companies for immediate enforcement action for not notifying the agency by the August deadline (Aug. 15, p. 571). "There is no grace period for non-compliance and we intend to find those who are handling hazardous wastes and who did not notify us," according to Sarah Compton, EPA deputy assistant administrator for water enforcement. Compton Sept. 8 told Environment Reporter that EPA headquarters will make up a list of "priority" companies involved in the hazardous waste processes identified in EPA's new hazardous waste regulations, while EPA regional offices will put their own priority lists together from information in their abandoned hazardous waste site inventory files, their national pollutant discharge elimination system permit files under the Clean Water Act, and other unrelated efforts. Compton said then EPA headquarters and regional offices will compare their lists to the list of notifications received and those who notified will drop off the potential enforcement list while those who did not notify will be investigated and subject to possible enforcement action. Compton said after the initial enforcement effort, EPA will start assessing other information sources for possible hazardous waste handlers, including citizen complaints and state notification lists.

For those suspected of handling hazardous wastes, the agency will seek further information on their activities un-

der Section 3007 of RCRA, which allows EPA to inspect facilities or upon request of an EPA office, require facilities to furnish copies of company records relating to hazardous wastes. "We will, either through correspondence or physical inspection, ascertain others who failed to notify EPA," Compton said.

For those sources which EPA "knows for certain handle hazardous wastes" and did not notify, the agency may issue a notice of violation, the first step in an enforcement action under Section 3008 of the Act. Under the existing law, after a notice of violation is issued, EPA cannot issue an order assessing administrative penalties or require any further action unless the violation extends beyond the 30th day after the notice of violation has been issued, according to Compton. She noted, however, that amendments to RCRA pending in Congress would eliminate this 30-day waiting period and allow the agency to issue a notice of violation and later assess administrative penalties for any period out of compliance after August 18.

"Our effort here is to bring people into the system and not be heavy handed," Compton told Environment Reporter. She said EPA's game plan is to identify non-notifier candidates and spend resources to bring enforcement actions against them, which should encourage others to notify and become part of the hazardous waste management system.

Compton said, however, that after Nov. 19 when the new hazardous waste regulations take effect, those facilities which failed to notify EPA, failed to meet interim status facility standards, or failed to file Part A of their permit applications, may be subject to closure orders.

Meanwhile, "our policy will be to assess administrative penalties for failing to notify. We intend to find those out there who aren't playing with us yet," Compton said. Those failing to notify can be subject to penalties of up to \$25,000 per day.

CCR 000040904

"RCRA"

The Resource Conservation
and Recovery Act
of 1976

A program for Employees

Disclaimer: Sun Company, Inc. hereby disclaims responsibility for any interpretation of the RCRA regulations in the accompanying slides and manual which may differ from the interpretation finally determined by the EPA or authorized state.

Prepared by the
Environmental Affairs/
Energy Conservation Department
Sun Company, Inc.
Philadelphia, Pennsylvania 19103

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CCR 000040905

Presentation Outline

The audio/cassette slide presentation lasts approximately thirty-two minutes and is designed to be the primary portion of the training session. To create the desired interest from the various groups, each presenter should provide opening and closing remarks to aid as a reminder of key points to emphasize. Each presenter should review the cassette/slide presentation detailed in the script section of this brochure.

This program can be presented in a variety of ways. Listed are some of our suggested modes based on the complexity of regulations and time allotted for the training session:

- Slides 1-140 This mode is recommended for one-time viewers.
- Slides 31-140 This mode skips the introduction and is recommended for managers who are familiar with the Resource Conservation and Recovery Act.
- Slides 32-118 This mode skips both the introduction and dramatization. It is recommended for all those who need a review in the fundamentals of the Resource Conservation and Recovery Act.

After viewing this program, you will discover there are other possible ways to present the program depending on individual needs.

Please note it is necessary to advance the carousel and tape to the desired slide and audio portion in order for the program to run in synchronization (consult the script section for proper visual and audio orientation).

The following outline is a suggested guide for presenting the program "RCRA". Naturally each presenter will tailor comments to his audience and the available time.

I. Opening Remarks

5 minutes
Approximately

- A. Welcome the group.
- B. Comment on purpose of the session.
 - 1. To alert management and train employees in the RCRA regulations for handling wastes.
 - 2. To provide the RCRA definition of solid and hazardous waste.

C. Discuss the problems associated with generation-transportation-storage-treatment or disposal.

1. Dispel the stigmas associated with wastes and inculcate an appreciation of normally occurring wastes in our operations.

2. List the problems associated with find available sites.

D. Recognize why waste management is important (i.e. prevention of ground water pollution).

E. Review your state's role in waste disposal.

II. Introduce and show the audio cassette/slide presentation.

32 minutes
Approximately

III. Closing Remarks

5 minutes
Approximately

A. Review key points of the cassette/slide program.

1. Cradle-to-grave controls.

2. Definition of waste.

3. Important dates.

B. Stress the uniqueness of RCRA Subtitle C regulations which require interim status pending final permit approval.