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RCRA Corrective Action Permit Requirements and Modifications Under Subpart F Regulations

BACKGROUND: The ground water protection requirements under the Resource Conservation and Recovery Act (RCRA), 40 CFR 264, Subpart F, apply to surface impoundments, waste piles, land treatment units, and landfills that received hazardous waste after July 26, 1982 (i.e., regulated units). There are three phases to the Subpart F ground water protection requirements: detection monitoring, compliance monitoring, and corrective action. Subpart F corrective action applies to remediation of ground water contamination resulting from releases from regulated units at a treatment, storage, or disposal facility (TSDF). The TSDF owner or operator is responsible for complying with these requirements.

In general, upon initial regulation of a TSDF, the owner or operator submits a Part A permit application, notifying the regulatory agency of its waste management activities. The Part A consists of a form containing general information about the facility, the units affected, and the wastes managed in the units. Part B of the permit application provides detailed information regarding the facility, the units affected, and the waste managed. The Part B permit application may consist of several volumes of information. Subpart F ground water protection requirements for detection monitoring, compliance monitoring, and corrective action, for example, would be contained in the Part B permit application. The Part B permit application must be submitted by specified statutory deadlines; however, the Part B can be submitted voluntarily any time before the deadline. The Part B permit application proposes requirements and conditions intended to respond to the various RCRA requirements for regulated units. This submittal initiates the negotiation process for regulated units, whereby the requirements and conditions for unit operation are established. The term of the permit is typically 5 or 10 years, after which a permit renewal or issuance of a new permit is required. Permit modification may also be made during the term of the permit and may be initiated by either the facility or the regulatory agency.

This Information Brief provides information on the permit requirements under Subpart F. This Information Brief is one of a series on RCRA corrective action. A similar Information Brief has been prepared for proposed 40 CFR Part 264 Subpart S permit and permit modification requirements.

STATUTE: RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA)

REFERENCE:

1. "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD)," EPA (OSWER-9950.1), 1986.
2. "Public Participation in Environmental Restoration Activities," DOE Office of Environmental Guidance, RCRA/CERCLA Division, Guidance Document No. DOE/EH-0221, November 1991.
3. "Information Repository," DOE Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief No. EH-231-009/1191, November 1991.
4. "The Administrative Record," DOE Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief No. EH-231-010/1191, November 1991.

What are the steps in the RCRA permitting process for facilities required to comply with Subpart F requirements?

The first step in the permitting process is for the facility to determine the need for ground-water monitoring. The regulations found in 40 CFR 264 Sections 264.90 to 264.100 (Subpart F) apply to all regulated units. A "regulated unit" is defined as a surface impoundment, waste pile, landfill, or land treatment unit that received hazardous waste after July 26, 1982. Such units require a permit under RCRA.

Subpart F entails a three-phased program designed to detect, evaluate, and, if necessary, respond to ground water contamination. The ground-water protection standard, including identification of maximum contaminant levels (MCLs) under the Safe Drinking Water Act (SDWA) and alternate concentration limits (ACLs), is established with the permit application. Where MCLs and ACLs cannot be

established, the standard may be established at background levels. The Subpart F program is described briefly as follows:

- ☐ If monitoring during interim status has not revealed contamination, the facility will propose a detection monitoring program within the facility's Part B permit application (40 CFR 264.91(a)(4) and 270.14(c)(6)).
- ☐ If monitoring during interim status reveals the presence of hazardous constituents, the facility must propose a compliance monitoring program, within the permit application, which includes a study that establishes the engineering feasibility of proposed corrective action measures (40 CFR 264.91(a)(1) and 270.14(c)(7)).
- ☐ If constituent concentrations present in the ground-water exceed ground-water protection standards (e.g., MCL or ACL), the facility must propose a detailed plan for corrective action and a

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description of the monitoring program intended to demonstrate the adequacy of the applied corrective measures (40 CFR 264.91(a)(2) and (3) and 40 CFR 270.14(c)(8)).

In all three cases, the facility will also provide the location of the point of compliance (POC). The POC is defined as a vertical surface located at the hydraulic limit of the waste management area that extends into the uppermost aquifer underlying the regulated unit.

What are the permit requirements under Subpart F?

The permitting regulations found in 40 CFR 270.14(c) require the permit applicant to establish the nature of the facility's impact on the ground water, the hydrogeologic characteristics at the facility, and the extent of the waste management area. At a minimum, the permit application must include:

- ☐ a summary of the ground-water monitoring data obtained during the interim status period, where applicable,
- ☐ an identification of the uppermost aquifer, the hydraulically connected aquifers beneath the facility property, and the ground water flow direction(s),
- ☐ a delineation of the waste management area, property boundary, proposed POC, and the uppermost aquifer and other aquifers on a topographic map, and
- ☐ a description of any plumes of contamination that have entered the ground water, including the nature and extent of such contamination.

When must permit requirements for facilities required to comply with Subpart F be modified?

TSDFs with regulated units subject to ground-water monitoring requirements under Subpart F will have very detailed permit conditions. For example, the permit must include a description of the hazardous constituents to be monitored, the POC, the concentration limits of hazardous constituents that trigger subsequent actions, and the number, location, depth, and design specifications for the monitoring wells.

A permit may be modified at the discretion of EPA or the authorized State, or upon the request of the permittee. The regulations allow EPA or authorized States to make minor changes in RCRA permits with the consent of the permit holder and, in some cases, without triggering the public participation procedures of 40 CFR 124. There are three classes of permit modifications initiated by the permittee. Class 1 modifications cover routine changes, such as upgrading plans and records maintained at the facility. Class 2 modifications apply to common variations in the type or quantity of waste managed, a technical advancement, or a change necessary to comply with new regulations without substantial change to design specifications or management practices. Class 1 and 2 modifications that are requested by the permittee do not substantially alter existing permit conditions or the operation of the facility. Class 3 modifications requested by the permittee cover major changes that substantially alter the facility or its operations. All three classes of modifications require that the permittee send a notice of the modification to all persons on the facility mailing list. Class 2 and 3 modifications trigger requirements for public notice, solicitation of comments, and, in some cases, a public meeting.

EPA has included eight items describing anticipated changes in permitted ground-water protection programs requiring a permit modification (Section C of Appendix I to 40 CFR 270.42). The items include changes to:

- ☐ wells
- ☐ ground-water sampling and analysis procedures, and monitoring schedules, with prior approval of the regulatory agency,
- ☐ statistical procedures for determining whether a statistically significant change in ground-water quality between upgradient and downgradient has occurred, with prior approval of the regulatory agency,
- ☐ POC
- ☐ indicator parameters, hazardous constituents, or concentration limits (including ACLs),
- ☐ the detection monitoring program,
- ☐ the compliance monitoring program, and
- ☐ the corrective action program.

Who is responsible for establishing permit requirements for facilities that are required to comply with Subpart F requirements?

TSDFs are required to submit a comprehensive permit application covering all aspects of the design, operation, and maintenance of the facility, including corrective action requests. The application provides EPA or the authorized State with information needed to evaluate compliance and to develop a facility-specific permit. EPA or the authorized State reviews the application and, if information is missing or inadequate, issues a notice of deficiency (NOD) letter. Based on the NOD, the facility submits a revised permit application, which is reevaluated. If no more NODs are issued, a tentative decision is made either to issue or deny the permit. Permit requirements, therefore, are determined through a negotiation process, whereby requirements and conditions are established and agreed upon mutually. Although the facility initiates the process by submitting the permit application and has input in establishing permit requirements and conditions, EPA or the authorized State has ultimate responsibility for ensuring that the permit protects human health and the environment.

How is the public involved in the permitting process?

Once the draft permit is completed, EPA or the authorized State is required to provide public notice and 45 days for written comments. In certain cases, a public hearing may also be held during this time. Along with the public notice, EPA or the authorized State also issues either a Fact Sheet or a Statement of Basis to inform concerned parties about the ongoing permitting process. If information submitted during the initial comment period raises substantial new concerns about the permit, EPA or the authorized State must reopen or extend the comment period. After the comment period closes, EPA or the authorized State prepares a written response to all public comments received during the comment period. Consult "Public Participation in Environmental Restoration Activities," DOE/EH-0221 guidance for further details.

Questions of policy or questions requiring policy decisions will not be addressed in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the material covered in this Information Brief to Jerry Coalgate, RCRA/CERCLA Division, EH-231, (202) 586-6075.

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