



1 of 1



RCRA Corrective Action Permit Requirements and Modifications Under Proposed Subpart S Rule

BACKGROUND: Corrective action is required under the authority of the Resource Conservation and Recovery Act (RCRA) Sections 3004(u) and (v) which were added by the Hazardous and Solid Waste Amendments of 1984 (HSWA). In response to HSWA, the U.S. Environmental Protection Agency (EPA) proposed a comprehensive corrective action program under 40 CFR 264 Subpart S [55 FR 30798, July 27, 1990]. Although Subpart S is still only proposed, it is being implemented by the EPA Regions until the rule is finalized. Proposed Subpart S corrective action applies to releases to any media from any solid waste management unit (SWMU) at a treatment, storage, or disposal facility (TSDF). Corrective action requirements under proposed Subpart S are imposed through permit conditions or, for interim status facilities, through a RCRA Section 3008(h) order.

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 unit(s) affected, and the wastes managed in the units. Part B of the permit application provides detailed information on the facility, the units affected, and the waste managed. The Part B permit application may consist of several volumes of information. Proposed Subpart S requirements, would be contained in the Part B permit application. The Part B permit application proposes requirements and conditions intended to respond to the various RCRA requirements for permitted units. This submittal initiates the negotiation process for regulated SWMUs, 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 and process under proposed Subpart S.

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

STATUTE: RCRA as amended by HSWA.

REGULATIONS: 40 CFR 264.101 and Proposed 40 CFR 264 Subpart S [55 FR 30798, July 27, 1990].

REFERENCE:

1. "Public Participation in Environmental Restoration Activities," DOE Office of Environmental Guidance, RCRA/CERCLA Division, Guidance Document No. DOE/EH-0221, November 1991.
2. "Information Repository," DOE Office of Environmental Guidance, RCRA/CERCLA Division, Information Brief No. EH-231-009/1191, November 1991.
3. "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 permitting process under proposed RCRA Subpart S?

Before a permit is issued, EPA or the authorized State (and in some cases DOE) conducts a RCRA Facility Assessment (RFA) to determine whether there is a potential or an actual release of hazardous waste or hazardous waste constituents from SWMUs at the facility.

If the RFA indicates evidence of a release or threat of a release, the permit would be issued with corrective action conditions, including conducting a RCRA Facility Investigation (RFI) to characterize the nature, extent, and rate of contaminant migration. Also, EPA may initiate interim measures to respond to immediate threats, such as contamination of drinking water supplies. If the RFI does not find evidence of a release or threat of a release, the owner or operator would request a Class 3 modification of the permit, thus ending the RCRA corrective action process.

If the RFI identifies the need for corrective measures, the owner or operator would then be responsible for performing a Corrective Measures Study (CMS). During this step, the owner or operator would identify and develop corrective measures and alternatives, evaluate the alternatives, and recommend and justify a remedy. Once the remedy is selected, the facility permit would be amended to require implementation of the selected corrective measures, an action that would require a Class 3 permit modification as described in 40 CFR 270.42. The remedy would then be implemented through the Corrective Measures Implementation (CMI) phase. When the remedy is completed, a Class 3 permit modification would be required to end corrective action.

What are the permit requirements under proposed Subpart S?

HSWA requires that any permit issued to a TSDF must address corrective action for releases of hazardous wastes or hazardous constituents from any SWMU at the facility. The permit would establish



requirements for conducting an RFI, evaluating potential corrective measures, selecting final corrective measures, and performing CMI.

Under proposed 40 CFR 270.30(12)(i)(A), the permittee would also be required to submit the following information on each newly identified SWMU within 30 days:

- ☐ location,
- ☐ type,
- ☐ general dimensions,
- ☐ operating history,
- ☐ specification of all hazardous and/or solid wastes that have been managed in the unit, and
- ☐ all available data pertaining to any release of hazardous waste (including hazardous constituents) from the unit to any environmental medium.

Where an actual or potential release is found, the permit would contain a schedule of compliance for investigation and cleanup. This schedule of compliance would be an enforceable part of the permit and a major tool used for imposing corrective action requirements.

The proposed 40 CFR 270.36 would also give EPA the authority to require that the permittee establish an information repository. The repository would allow interested parties access to reports, findings, and other information relevant to corrective action activities.

The proposed Subpart S rule adds language to the existing 40 CFR 270.1(c) to define the period during which TSDFs must maintain a permit. Facilities would be required to operate under a RCRA permit for the entire length of time required to comply with Part 264 requirements. Therefore, a permit would be necessary for the duration of the corrective action activities, even if other waste management activities have ceased.

When must proposed Subpart S permit requirements be modified?

The proposed Subpart S rule identifies several conditions for permit modification. For example, when a preliminary selection of the remedy is made, the permit would have to be modified. The proposed 40 CFR 264.526(b) specifies that the following seven elements would have to be described in the permit modification when a preliminary remedy selection is made:

- ☐ a description of the remedy's technical features,
- ☐ the clean-up standards that must be achieved,
- ☐ the standards that must be met to demonstrate compliance with the media clean-up standards,
- ☐ the standards applicable to the management of corrective action wastes,
- ☐ the requirements for removal, decontamination, closure, or post-closure care of units or devices employed during remedy implementation,
- ☐ the schedule of compliance, and
- ☐ the requirements for reporting.

When a permittee is not able to meet the schedule of compliance imposed in the permit, the permittee would be required to initiate a Class 1 permit modification according to the procedures specified in proposed 40 CFR 270.34 prior to becoming non-compliant.

In addition, there are five other proposed regulations that would require permit modification. The proposed 40 CFR 264.514(a) would require a permit modification to terminate the schedule of compliance if the permittee determines no further action is necessary. The proposed 40 CFR 264.530(c) would require that the permit be modified to terminate corrective action. Under the proposed 40 CFR

264.540(c) the EPA Regional Administrator would be directed to modify the permit schedule of compliance, if necessary, to require implementation of an interim measure. Finally, proposed 40 CFR 264.550 and 264.551 would require the EPA Regional Administrator to modify permit requirements for units in which hazardous and non-hazardous wastes derived from corrective action would be managed.

Who has the responsibility for establishing proposed Subpart S permit requirements?

EPA or the authorized State initiates corrective action under an administrative order [i.e., RCRA 3008(h)], or as part of the RCRA Part B permitting process. While the RCRA permit application is required to identify SWMUs and disclose data describing any releases, requirements to conduct an RFI are not proposed by the facility; rather, the permitting agency identifies such requirements in the draft permit, as well as requirements for subsequent actions up to the point at which a remedy is selected for implementation at a particular SWMU. However, the facility is typically provided the opportunity to discuss conditions with the permitting agency prior to permit issuance.

How is the public involved in the permitting process for proposed Subpart S?

Once the draft permit or a substantial permit modification is completed, EPA is required to provide public notice and 45 days for written comments. In certain cases, a public meeting may also be held during this time to give the public the opportunity to present concerns. Along with the public notice, EPA also issues either a Fact Sheet or a Statement of Basis to inform concerned parties about the ongoing 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 will prepare a written response to all public comments and issue the permit. Consult "Public Participation in Environmental Restoration Activities," DOE/EH-0221 guidance for further details.

How does a RCRA 3008(h) corrective action order differ from a permit under the proposed Subpart S?

RCRA Section 3008(h) allows EPA to issue an order requiring corrective action at an interim status facility when there is evidence of a release of hazardous waste or hazardous waste constituents into the environment. Corrective action can be required regardless of when waste was placed at the facility. RCRA 3008(h) orders are one of the few administrative orders that the Department of Justice believes can be issued by one executive branch agency to another. EPA has interpreted its RCRA 3008(h) authority broadly, stating in the regulations that it can address all media, can require corrective action beyond the facility boundary, and can require corrective action even if a release is not related to or identified as coming from a particular SWMU. EPA also has broad authority to establish permit conditions.

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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