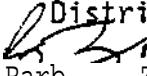


CORRESPONDENCE/MEMORANDUM

DATE: May 31, 1994 FILE REF:

TO: District Program Supervisors
 District HW and ER Unit Leaders

FROM: Barb Zellmer - SW/3

SUBJECT: Definition of "Land Disposal" and Activities that Constitute
"Placement"

Introduction and Applicability

The Wisconsin Hazardous Waste Management Program, in conjunction with the Emergency and Remedial Response Section, have been evaluating EPA guidance that refines the definition of "land disposal". The EPA guidance, originally developed by the EPA CERCLA (Superfund) Program, is found in the National Contingency Plan (NCP, 55 FR 8759, March 8, 1990) and various Superfund guidance documents. It had been unclear in the past if the EPA RCRA Program had adopted the CERCLA guidance, but we recently learned that the EPA RCRA Program also adopted this guidance.

This guidance applies to any site, facility or activity where hazardous waste is present and will be managed as part of a remedial action, including hazardous waste closures, corrective action facilities under s. NR 635.17, Wis. Adm. Code, spill sites (discharges) responded to under s. 144.76, Stats., environmental repair sites under s. 144.442, Stats., and Superfund sites.

What is "Placement"

According to the EPA guidance, "placement" of waste must occur in order for land disposal to take place. EPA describes certain activities as placement, while others are not. The attached copy of Superfund LDR Guide #5 contains these descriptions (see pages 1 and 2).

Since the EPA guidance could be more specific, we have developed the attached list of activities we believe do not constitute placement, provided they are conducted in a way that is protective of human health and the environment. Any activities not specifically described probably are "placement" and should be regulated as land disposal. Responsible persons should contact District or Central Office staff assigned to their site or facility to determine if an activity is protective and, if not exactly described on the list, constitutes "placement". Please contact Ed Lynch of my staff or Gary Edelstein of the ER Section if you need help making a determination.

We believe the EPA guidance as refined by the attached examples provide a workable and environmentally sound approach for dealing with these situations. Therefore, to ensure consistency across all cleanup programs, including the federal lead programs, this guidance should be used when making determinations of whether "placement", and hence land disposal, occurs.

A number of activities we regulated as disposal facilities in the past, where simple consolidation is taking place within a single "area of contamination" (AOC), will no longer be required to obtain a hazardous waste license, variance or waiver, nor will they have to occur in units that meet the standards for hazardous waste land disposal facilities. Certain investigative waste management activities conducted as part of a remedial action or a corrective action also do not constitute placement under this memo. Since some of those activities are described as being fully regulated in Paul Didier's January 14, 1993 memo "General Interim Guidelines for the Management of Investigative Waste", we intend to revise those guidelines in accordance with this memo.

This guidance is not intended to excuse responsible persons or owners and operators from their obligations under state statutes and rules to remediate contamination. Hazardous waste treatment, storage and disposal facility owners and operators are still subject to the corrective action requirements in s. 144.735, Stats, and s. NR 635.17, Wis. Adm. Code, for any solid waste management units at their facilities. However, certain activities undertaken as part of a remedial action at such units may not constitute "placement", and should not be regulated as land disposal.

Applicability to Non-Remedial Actions

For circumstances that do not initially constitute remedial actions, such as the installation of utility trenches, the guidance may be applied on a case-by-case basis, provided that:

1. The contamination is first discovered during construction activities and the Department is notified immediately upon discovery;
2. No viable alternatives for avoiding the contamination are available, such as rerouting a trench; and
3. A management plan is developed for contaminated materials that will be protective of human health and the environment, or it can be definitely shown that the contamination will be remediated as part of another action (e.g., by the RPs who originally created the contamination) that will also be protective. If the material can't be managed in a protective manner or will not be remediated as part of another protective action, then the person constructing the trench should manage the contamination in another way that meets Department requirements, such as treatment and disposal at a licensed or permitted facility.

In any situation where contamination is known to be present prior to construction, the person responsible for the construction has a responsibility to approach the Department prior to construction and present a plan to manage the contamination in accordance with Department requirements, even if that person didn't originally cause the contamination.

CAMU Rule

EPA promulgated the "Corrective Action Management Unit" (CAMU) rule for RCRA Corrective Action Sites on February 16, 1993. The Hazardous Waste Management Section has incorporated this regulation into proposed revisions to the ch. NR 600, Wis. Adm. Code, series. We anticipate this rule will become effective in

early 1995, and once enacted will allow more remediation activities to occur, in addition to those allowed under the guidance in this memo, without triggering land disposal requirements. This rule will apply to situations where RCRA or CERCLA authorities are being used to compel a cleanup. We are currently evaluating if the rule can be used by our program without first adopting a parallel ch. NR 600, Wis. Adm. Code, series rule and how CAMU could be applied to State spill and ER sites. Depending on the results of these efforts, we may be able to use the CAMU rule rather than the guidance in this memo when evaluating hazardous waste management activities at sites undergoing remediation.

Please contact Ed Lynch or Mark Gordon of my staff or Gary Edelstein of the ER Section if you have any questions about this guidance.

BJZ:GAE
Attachs.

cc: HW, ER and SW Section Chiefs and Unit Leaders - SW/3
Paul Didier - SW/3
Kevin Kessler - SW/3
Chuck Leveque - LC/5
Pete Flaherty - LC/5
Edwina Kavanaugh - LC/5
Linda Meyer - LC/5
Deb Johnson - LC/5
Norm Niedergang - EPA Region 5
Jodi Traub - U.S. EPA Region 5

Examples of Actions That Do NOT Constitute Placement

1. Any in-situ treatment where waste or contaminated material is not picked up and managed, including in-situ bioremediation, in-situ vapor extraction (ISVE) and in-situ solidification.

2. Installation of a cap or cover system where waste or contaminated material is not picked up and managed. This includes sediment containment measures such as river armoring.

3. Regrading or consolidating a landfill where in-place waste is picked up and reconsolidated in a different area under a new cover system. The waste being picked up must be reconsolidated in the same disposal unit from which it came. The waste may not be held in an intervening unit, such as containers, lugger storage or waste piles. Generally, the waste must be picked up and moved to the new area within the same disposal unit in the same day without any intervening storage or treatment.

4. For the installation of remediation systems such as gas or leachate collection trenches, vertical gas or leachate extraction wells or cut-off walls, the spoils from the installation of these systems may be replaced in the same disposal unit from which it came. The waste may not be held in an intervening unit, such as containers, lugger storage or waste piles. Generally, the waste must be picked up and moved to the new area or returned to the original excavation in the same day without any intervening storage or treatment. The material should be placed under an existing or new cover system.

5. Contaminated trench spoils from the installation of an ISVE or groundwater collection system may be returned to the same trench on the same day, provided that the system is intended to remediate the spoils as well as the other surrounding soils adjacent to the trench. Again, the waste may not be held in an intervening unit, such as containers, lugger storage or waste piles. Spoils or waste should be kept near the trench opening, and if necessary, on top of temporary liners (like plastic sheeting) if held during the day over an uncontaminated or less contaminated area.