



Department of Energy
Washington, DC 20585
December 5, 2001

RCRA Docket Information Center (5305W)
U. S. Environmental Protection Agency Headquarters (EPA)(5305G)
Ariel Rios Building
1200 Pennsylvania Avenue, NW.
Washington, D.C. 20460

Docket Number F-2001-AC2P-FFFFF

Dear Sir or Madam:

Re: 66 FR 58085; "Supplemental Proposal to the Corrective Action Management Unit Rule"; Proposed Rule

On November 20, 2001, the U.S. Environmental Protection Agency (EPA) supplemented its proposed amendments to the corrective active management unit (CAMU) rule which was issued on August 22, 2000 (65 FR 51080). This supplemental proposal expands upon the previously proposed waste management options. The supplemental proposal allows CAMU-eligible hazardous waste that has been treated to meet the proposed CAMU standards, in lieu of otherwise applicable land disposal restriction (LDR) standards, to be placed in hazardous waste landfills under limited circumstances. This increased flexibility is designed to promote more aggressive remediation by removing some of the disincentives associated with off-site management and disposal.

The following comments are provided for the Agency's consideration in finalizing the supplemental amendments to the CAMU proposed rule.

IV.B. Approval Procedures (p. 58091, col. 3 - p. 58092). The Department agrees that there are site conditions for which on-site redisposal of cleanup wastes will not be viable or will not be the preferred option. DOE, however, questions whether the use of RCRA permit modifications to incorporate CAMU-eligible waste into the facility permit will promote or impede the cleanups when hazardous waste landfilling of CAMU-eligible waste is the only viable waste management option.

As proposed, 40 CFR 264.555(a)(3) at 66 FR 58096 would limit hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits. More significantly, proposed 264.555(d) would require that the permit governing the receiving landfill be modified to incorporate CAMU-eligible waste. This permit modification requirement appears redundant considering the proposed Regional Administrator's public notice and comment obligations under 40 CFR 264.555(c). Furthermore, this requirement could prove to be onerous for landfill owners/operators that are in close proximity to, and likely to receive CAMU-eligible wastes from, more than one RCRA corrective action. As an alternative approach, the Department believes Subtitle C permitted landfills should be allowed to receive CAMU-eligible wastes that meet the landfill's waste acceptance criteria (WAC) *without* requiring the additional permit modification and public comment opportunity for the following reasons:

- First, permitted landfill facilities develop chemical/physical waste acceptance criteria (WAC) to ensure incoming waste shipments will not negatively impact design or operating components. The facility WAC identifies acceptable physical characteristics and compositions, EPA and state waste codes, maximum quantities of selected hazardous constituents that may be received at any one time, and maximum concentrations of RCRA Appendix VIII organics or metals in acceptable waste.¹ Project managers implementing/overseeing RCRA corrective actions, involving off-site shipment of hazardous waste to designated facilities, must be able to demonstrate that each waste stream, including CAMU-eligible waste, meets that facility's WAC. Facility-specific WAC are established in one or more attachments to the RCRA Part B permit application, are submitted for regulator review and approval, are subjected to public scrutiny during the public comment process, and are issued as enforceable conditions of the final RCRA permit. Thus, landfill owners/operators fulfilling their RCRA permit obligations can only accept hazardous wastes that comply with site-specific WAC and permit parameters.
- Second, it is the Department's understanding that existing hazardous waste landfills have been receiving hazardous wastes "managed for implementing cleanup" (i.e., wastes that fall within EPA's proposed definition of "CAMU-eligible waste" at 65 *FR* 51132) since the inception of the RCRA corrective action program. Historically, these landfills have *not* been required to obtain permit modifications prior to accepting these wastes, provided such wastes fell within the scope of the facility WAC and permit parameters. Based on the requirements outlined in the supplemental proposal at 40 *CFR* 264.555(d), however, these hazardous waste landfills *will be* required to request permit modifications to continue managing these waste types. Thus, the Department believes that requiring permit modifications could negatively impact their ability to process such wastes in a timely fashion or the likelihood that hazardous waste landfill owners/operators will be amenable to receiving such wastes.
- Third, proposed 40 *CFR* 264.555(c) states "The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before approving placement of the CAMU eligible waste in the permitted hazardous waste landfill The approval must be specific to a *single remediation*." [emphasis added] Based on this regulation, it appears the Regional Administrator would be soliciting public comment on whether a particular CAMU-eligible waste should be placed into a particular landfill, on a case-by-case basis.

Although EPA indicates that in some cases (e.g., where the waste meets the waste acceptance criteria in the permit) a permit modification might not be required (p. 58091, col. 3), the Department believes distinguishing when a permit modification is required could become problematic absent further EPA guidance. Furthermore, the period of time required to complete the permit modification request and approval process could negatively impact previously executed contracts, agreements, enforceable schedules of compliance, and facility milestones. The proposed regulation could be interpreted as requiring a permit modification and public comment period for each and every CAMU-eligible waste shipment destined for disposal in a hazardous waste landfill. This could create a turnstile approach to RCRA permitting, with permit modification requests being submitted and approvals being issued on an ongoing basis.

¹ Source: *Technical Resource Document: Mixed Waste Characterization for Thermal Treatment Systems*, Energy and Environmental Research Corporation, May 24, 1997. Sponsored through an Interagency Agreement between EPA and DOE.

Because of the above conditions, imposition of permit modifications could prove to be counterproductive. Accordingly, DOE requests EPA reconsider the need for permit modifications as an element of landfill approval each time its plans to receive “CAMU-eligible waste.” The Department requests EPA clarify its position on whether a RCRA-permitted hazardous waste landfill can continue accepting CAMU-eligible wastes that fall within its administratively approved WAC and RCRA permit parameters without pursuing a permit modification. Finally, additional clarification is requested as to whether these supplemental requirements are prospective or will be applied retroactively to hazardous waste landfills that are already receiving CAMU-eligible waste.

IV.A.2. Treatment Requirements (p. 58090, cols. 2 - 3). With regard to the supplemental proposal provision that requires treatment of PHCs (principal hazardous constituents) in all cases, DOE recognizes that site-specific determinations that threats are minimized should not be based solely on the potential safety of land disposal units and their engineered structures, such as liners (63 *FR* 28607; May 26, 1998). However, DOE believes that, in certain situations, treatment of the principal hazardous constituents may not be warranted. For example, CAMU-eligible wastes may exist in a form (e.g., soil and debris that “contain” F-listed solvent residues such that the concentrations are just above health-based thresholds) such that short-term risks are minimal and long-term protection is ensured, given the receiving Subtitle C landfill’s engineering design and related engineering controls. Although such wastes, when destined for disposal in a CAMU, might not require treatment [40 *CFR* 264.552(e)(4)(v)(E)(2)], the supplemental proposal requires owners/operators of hazardous waste landfills to conduct further treatment for toxicity and mobility reduction, even in situations in which the waste’s toxicity and mobility clearly would be adequately controlled by the landfill design. DOE suggests EPA consider developing an option by which the Regional Administrator could accept a no-treatment “minimized risk” option for CAMU-eligible wastes satisfying the toxicity and mobility risk factors at a receiving Subtitle C landfill.

DOE appreciates EPA efforts to remove barriers to cleanup and to streamline the process by incorporating additional flexibility and reducing regulatory burdens. If you have any questions or need further clarification of our comments, please contact Jerry Coalgate of my staff at 202-586-6075 or jerry.coalgate@eh.doe.gov.

Sincerely,



Thomas T. Traceski
Director, RCRA/CERCLA Division
Office of Environmental Policy and Guidance

cc: B. Schoenborn, EPA HQ, Office of Solid Waste (5303W)