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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

AUG 21 1986

4PM-EA/JLH

Colonel Tom Dalzell
Assistant Chief of Staff, Facilities
United States Marine Corps
Marine Corps Base
Camp Lejeune, North Carolina 38542

ATTN: Bob Alexander
Base Environmental Engineer

Dear Colonel Dalzell:

The Regional Office Staff and I wish to thank you for the hospitality extended to us during our visit of July 31 and August 1, 1986. We were able to provide you with updated information on the status of some of the environmental programs administered by EPA particularly those related to the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA). The ensuing discussions pinpointed 3004(u) of those amendments and the applicability of the provisions to your facility. During the discussions your staff requested copies of some of the information being addressed. We are happy to provide it (see enclosures). In addition, I am enclosing staff comments on the scope of work (SOW) for round two sampling of your NACIP confirmation study. The impact of some of the provisions we discussed need review and clarification. We will respond to these as soon as possible.

Sincerely yours,

Arthur G. Linton, P.E.
Regional Federal Facilities Coordinator
Environmental Assessment Branch
Office of Policy and Management

Enclosures

cc: Naval Facilities Engineering Command
Norfolk, VA
Attention: Cheryl Barnett

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Parts 260, 261, 262, 264, 265,
266, 270, 271, and 280

[FRL-2978-3]

**Hazardous Waste Management
System; Supplement to Preamble to
Final Codification Rule**

AGENCY: Environmental Protection
Agency.

ACTION: Notice of policy and
interpretation.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. EPA today is supplementing that preamble by explaining the resolution of three issues of statutory interpretation concerning federal agency compliance. In a separate notice also published today EPA is announcing its intent to propose rules addressing three related issues.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. Also, Denise Hawkins, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid

waste management unit at the facility regardless of when waste was placed in the unit.

On July 15, 1985 (50 FR 28702) EPA promulgated a final rule codifying statutory changes to its hazardous waste regulations. In the preamble to this rule, EPA presented its view on the meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Today EPA is supplementing the preamble to the codification rule by giving notice of its views on three issues of statutory interpretation concerning federal compliance with section 3004(u). In a separate notice published elsewhere in today's **Federal Register** EPA is also announcing that it intends to address three additional issues through rulemaking.

As a result of the promised review, EPA has concluded that section 3004(u) subjects federal facilities to corrective action requirements to the same extent as any facility owned or operated by private parties. Furthermore, EPA has determined that the statute requires federal agencies to operate under the same property-wide definition of "facility." These results are consistent with section 6001 of RCRA, 42 U.S.C. 6961, which generally requires each department, agency and instrumentality of the federal government to comply with RCRA requirements to the same extent as any other person.

The federal agencies, however, have raised several issues that merit special consideration. These issues involve the scope of federal ownership interests and the need to set priorities for the use of federal cleanup funds.

EPA is resolving the first of these issues as a matter of statutory interpretation. The federal agencies have pointed out that the United States could be considered the "owner" of a federal hazardous waste facility. Under EPA's interpretation of the definition of

"facility" for section 3004(u), contiguous tracts of federal lands owned by the United States but administered by different federal agencies could be considered a single "facility" for corrective action purposes. A permit for a hazardous waste unit located anywhere on this collective federal "facility" would trigger corrective action requirements for every solid waste management unit found within its boundaries. In the western half of the United States, contiguous federal lands cover large portions of several states. Moreover, the agency that operates a hazardous waste unit might not have authority to require or manage cleanup of solid waste units on lands administered by other agencies. The size of the facility and the administrative limitations could make corrective action very difficult.

EPA believes that Congress did not intend section 3004(u) to require such wide-ranging cleanups on federal lands. Congress has consistently expected individual federal departments and agencies to obtain RCRA permits and manage hazardous waste. For example, section 6001 of RCRA specifically requires "departments, agencies and instrumentalities of the Federal government" to comply with RCRA requirements. The legislative history of this provision also requires "federal agencies" to comply with RCRA. S. Rept. 94-938, 94th Cong., 2d Sess. at 24 (1976). Congress could easily have referred to the "United States" if it intended the entire federal government to respond together. Consequently, EPA is today interpreting the concept of ownership for the purposes of section 3004(u) as referring to individual federal departments, agencies, and instrumentalities.

EPA has concluded that it would be more appropriate to resolve the remaining issues through rulemaking. EPA intends to propose rules in the near future to resolve these issues, which are described in greater detail in a separate notice published in today's **Federal Register**.

Dated: February 28, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-4754 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

WHAT
CONSTITUTES
A FEDERAL
FACILITY
FOR
PURPOSES
OF 3004(u)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271 and 280

[FRL-2978-4]

Hazardous Waste Management System; Intent To Propose Rules for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to propose rules.

SUMMARY: In November 1984 Congress comprehensively amended the Resource Conservation and Recovery Act (RCRA) of 1976. The amendments include a new section 3004(u) requiring corrective action for releases of hazardous waste and constituents at hazardous waste management facilities seeking RCRA permits. On July 15, 1985 (50 FR 28702) the Environmental Protection Agency (EPA) published a final rule codifying statutory changes to its hazardous waste management program. In the preamble to this final codification rule, EPA announced that it needed to resolve legal and policy issues concerning the applicability of the new corrective action program to federal hazardous waste facilities. Elsewhere in today's *Federal Register* EPA is supplementing that preamble by stating its views on three issues of statutory interpretation. In this notice EPA announces its intent to propose rules addressing three additional issues related to federal agency compliance.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. Also Denise Hawkins, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: In November 1984 Congress amended RCRA by enacting the Hazardous and Solid Waste Amendments of 1984. The amendments include a new section 3004(u), 42 U.S.C. 6924(u), requiring any permit issued to a hazardous waste management facility after November 8, 1984 to require corrective action for all releases of hazardous waste or hazardous constituents from any solid waste management unit at the facility regardless of when waste was placed in the unit:

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meaning of "facility" in section 3004(u). EPA took the position that Congress intended "facility" to include the entire site under control of the owner or operator engaged in hazardous waste management (50 FR 28712). EPA added, however, that it had not resolved various legal and policy questions regarding the extent to which Congress intended this definition to apply to hazardous waste "facilities" owned or operated by federal agencies. EPA gave a commitment to make its best efforts to resolve these issues within 60 days.

Elsewhere in today's *Federal Register* EPA is publishing a policy notice that supplements the preamble to the codification rule by giving notice of EPA's views on three issues of interpretation concerning federal compliance with section 3004(u). In this notice EPA is announcing that it intends to address three additional issues through rulemaking. This notice is not a proposal and EPA is not yet requesting comments on these issues.

In the policy notice published separately today, EPA is announcing that it interprets the concept of on "ownership" for the purposes of defining facility boundaries under section 3004(u) as referring to individual departments, agencies and instrumentalities. In some cases EPA believes that "ownership" should refer to major departmental subdivisions that exercise independent management authorities. For example, within the Department of Defense, EPA believes that the term should be viewed as referring separately to the separate branches of the Armed Services. Similarly, within the Department of the Interior, EPA believes that "ownership" should refer to major subdivisions such as the National Park Service and the Bureau of Land Management. If ownership is not defined in terms of these smaller units, the logistical problems described in the other notice will continue to hamper federal corrective actions. EPA therefore believes that recognition of these subdivisions is consistent with Congressional intent. EPA will propose a rule to clarify position and explain more fully the rationale for recognizing specific subdivisions. In the interim, EPA intends to recognize principal subdivisions as a matter of statutory interpretation on a case-by-case basis in individual permit proceedings.

The Department of the Interior has expressed concern that federal agencies might be considered "owners" of hazardous waste facilities on federal lands operated by private parties with partial property interests such as leases or mineral extraction rights. The Department urges that the federal

government should not be held responsible for releases from such operations. Furthermore, it believes that the federal agency should not have to clean up releases on contiguous federal land when such a private party applies for a RCRA permit for its hazardous waste facility.

EPA intends to propose a rule that limits Federal agency responsibility for facilities operated by private parties with legal ownership interests by identifying a "principal owner" for the purpose of defining the "facility" boundary under section 3004(u). The "principal owner" probably would be the person most directly associated with operation of the hazardous waste facility. Only property within the scope of the "principal owner's" legal interest would be considered the "facility" for corrective action purposes. The federal agency that administers the same land for the United States would not be responsible for complying with section 3004(u) within the principal owner's "facility." To determine whether a private party on federal lands should be treated as a "principal owner", EPA might consider factors such as the degree of control the federal agency exercises over the private party's actions, or the amount of benefit the agency derives from the private party's waste management operation. EPA will also need to consider the impact of this concept on private lands where one private party has granted legal ownership interests to a second private party that operates a hazardous waste "facility."

Finally, all of the federal agencies that discussed these issues with EPA have advocated the establishment of national priorities for cleaning up hazardous releases at federal facilities under section 3004(u). EPA agrees that it is rational as a matter of public policy to address the most seriously contaminated facilities first. Moreover, since the funding for corrective action is not unlimited, priorities would help maximize the use of available funds. EPA also recognizes that states, which will have the authority to issue hazardous waste permits requiring corrective action after EPA authorizes them to exercise this new authority, may not share the same national perspective or have the same priorities.

EPA intends to develop rules that would allow federal agencies, subject to EPA approval after consultation with the states, to set priorities for correcting releases from solid waste management units at facilities that they own or operate. These rules would also assure a state's full participation in establishing

the priorities as a part of the authorization process. Further, EPA would ensure that any priority setting scheme would not disturb the authorized state's traditional role as the primary issuer of RCRA permits. After a State obtains authorization to implement 3004(u) the State would issue the corrective action portion of a hazardous waste permit in authorized state. EPA is not proposing any specific rules on these issues today, but it intends to propose rules soon.

EPA has resolved three of the basic issues concerning federal compliance with section 3004(u): The applicability of

section 3004(u) to Federal agencies; the definition of "facility"; and the concept that the United States is not the "owner" for the purpose of defining RCRA facilities.

EPA will work as quickly as possible to resolve the remaining issues concerning the "principal owner" and national priorities. In the interim, EPA and the states will proceed to review and issue RCRA permits, and EPA will implement 3004(u) requirements at federal facilities. EPA will address issues not yet resolved by rulemaking on a case-by-case basis.

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" or "minor" rule as defined by the Order and to submit all regulations to OMB for review. Since this notice does not propose or promulgate any rules, EPA has not assessed its impacts or classified it as a "major" or "minor" rule under E.O. 12291. EPA, however, did submit this notice to OMB for review.

Dated: February 28, 1986.

Lee M. Thomas,
Administrator.

[FR Doc. 86-4755 Filed 3-4-86; 8:45 am]

BILLING CODE 6560-50-M

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 14 1986

DATE: NACIP Confirmation Study, Scope of Work for Round Two Sampling
and Characterization/Feasibility, Marine Corps Base, Camp Le Jeune
North Carolina

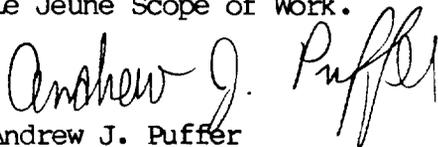
FROM: Geologist, Remedial Review Team, ERRB

TO: Arthur G. Linton, Federal Facilities Coordinator

We have completed our review of the Scope of Work (SOW), and the activities scheduled for this effort appear to address all areas of concern. Specific comments are provided below.

- 1) We understand that PVC materials are being used in the construction of all monitor wells. A brief discussion of the rationale for using PVC (versus other materials) should be included in the report summarizing this round of sampling.
- 2) Please refer to item 1 (v) in the SOW. While composite sampling of water supply wells is cost effective, it provides little specific information about the groundwater contamination problem. We recommend that all wells in the area around the contaminated Hadnot Point wells be sampled individually. This will make it possible to pinpoint wells that are contributing contaminants to the water supply system, and such information could assist in tracking the movement of contaminants through the shallow aquifer.
- 3) It is not clear if there will be two two-week soil gas investigation efforts carried out or if one soil gas investigation is intended to have a dual-fold purpose.

We appreciate being given the opportunity to provide input to this Camp Le Jeune Scope of Work.


Andrew J. Puffer

