

3/14/95
LJG

Mr. Al Nardone
Massachusetts Department of Environmental Protection
Division of Hazardous Materials
One Winter Street, 7th Floor
Boston, MA. 02108

Dear Mr. Nardone:

This letter responds to the questions you presented in a recent telephone conversation with Jim Gaffey of my staff concerning the permit renewal of a Massachusetts Laidlaw facility. Specifically, you requested EPA - New England's (EPA) position on dealing with permit conditions for base-program areas not currently a part of the state's authorized RCRA program. Examples included Air Emission Standards for Process Vents, Equipment Leaks and Tanks, Surface Impoundments and Containers (Subparts AA, BB, and the new CC), and the Toxicity Characteristic Rule (TCLP). The theme of your inquiry center around an important policy issue which warrants clarification by EPA. Since this issue is relevant to all authorized State programs, a copy of this response is being forwarded to the five other New England state program offices.

EPA encourages the incorporation of statutory standards into new permits and permit renewals in those instances where the state has adopted applicable regulations into law. For situations where the state has not yet adopted regulations, EPA recommends drafting permits without addressing such provisions in the permit. EPA, however, acknowledges that each facility's hazardous waste management operations must be attended to on a case-by-case basis. Situations may occur which warrant specifying permit conditions in areas where the state is not authorized and no state law exists. In those situations, we recommend using your omnibus provision to ensure protection of human health and the environment.

EPA's position relative to permit conditions for base-program areas not currently a part of the state's authorized RCRA program is based on the following points:

1. As a result of HSWA, self-implementing facility standards imposed by statute apply to all permitted facilities. (Note; the "permit as a shield" for Subparts AA and BB expires on June 5, 1995; the effective date for Subpart CC.)
2. Self-implementing provisions incorporated into a permit will act as a shield for those self-implementing requirements.
3. Permit writers will be called upon to negotiate permit conditions in new areas which may become resource intensive and focus attention away from other key permitting issues.

EPA also recommends describing the position taken in handling this permitting issue in the administrative record of a draft permit for the benefit of the general public and the permittee. You may also add a general facility standards-type permit condition mandating the permittee to comply with all applicable self-implementing provisions imposed by RCRA.

Thank you for bringing this matter to our attention. If you have any comments on this or other permitting matters, please contact James Gaffey of my staff at (617) 223-5542.

Sincerely,

Gary Gosbee, Chief
Permits and State Programs Section
Waste Management Division

cc:

Dave Sattler, CT DEP
Stacy Ladner, ME DEP
Pam Sprague, NH DES
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