

SCANNEDMEMORANDUM

TO: Hazardous Waste Permitting Section

FROM: David E. Wilson, Jr., P.E., Manager
Hazardous Waste Permitting Section
Division of Facility Engineering

RE: Surface Impoundments Containing TCLP Wastes

DATE: December 17, 1990

The following discussion is based on recent discussions with EPA, Region IV and a review of the TC Rule Clarification in the September 27, 1990 Federal Register. Surface impoundments which have ceased operation prior to the effective date of the TC (i.e., September 25, 1990) are not subject to the permitting requirements for impoundments managing RCRA hazardous wastes. The unit is considered to be an inactive unit. This is supported by the preamble of the May 19, 1980 Federal Register (40 CFR 264 and 265, page 33170) which states that the regulatory scheme of Subtitle C is prospective, i.e., it applies to hazardous waste management which takes place after the effective date of the Subtitle C regulations.

The above statement is also true even though the unit may continue to have wastes in place. If wastes remain in the impoundments, but the impoundments are not being used for waste management after the TC effective date, then these inactive units would not be subject to regulation under 40 CFR or R.61-79 parts 264 and 265.

However, TC wastes (wastewaters and nonwastewaters) excavated or removed from inactive impoundments (on or after September 25, 1990) are subject to all applicable regulations for managing RCRA hazardous wastes.

Finally, inactive units could be subject to RCRA 7003 enforcement, CERCLA cleanup, corrective action requirements under sections 3008(h) and 3004(u) of RCRA or the State Pollution Control Authority.

§ 185.2275 *N,N*-dimethylpiperidinium chloride

(a) A tolerance of 6 parts per million (ppm) is established for residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in the processed fraction raisins, resulting from application of the plant regulator to the growing crop groups. Such residues may be present therein only as a result of the application of the plant growth regulator to the growing grapes in accordance with an experimental use permit that expires June 30, 1991.

(b) Residues in or on raisins not in excess of 6 ppm resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be

considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the emergency use permit and food additive tolerance.

(c) BASF Corporation shall immediately notify the Environmental Protection Agency (EPA) of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration (FDA).

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.2275, by adding new paragraph (b), to read as follows:

§ 186.2275 *N,N*-dimethylpiperidinium chloride.

(b) A feed additive regulation is established permitting the combined residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in or on the following feeds resulting from application of the plant growth regulator to grapes in accordance with an experimental use program. The conditions set forth below shall be met.

Feeds	Parts per million	Expiration date
Grape pomace (wet and dry).....	3.0	6/30/91
Raisin waste.....	26.0	6/30/91

(1) Residues in the feed not in excess of the established tolerance resulting from the use described in this paragraph remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify EPA of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of EPA or FDA.

(3) These temporary tolerances expire June 30, 1991.

[FR Doc. 90-22905 Filed 9-26-90; 6:45 am]
BILLING CODE 5550-50-F

40 CFR Parts 261, 264, 265, 268, 271 and 302

[EPA/OSW-FR-90-020; SWH-FRL-3836-3]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Clarifications

AGENCY: EPA.

ACTION: Final rule; clarification.

SUMMARY: On March 29, 1990 (55 FR 11798), the Environmental Protection

Agency (EPA) promulgated the Toxicity Characteristics (TC) rule to revise the existing EP toxicity characteristics, which are used to identify those wastes defined as hazardous and that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The preamble to these regulations included implementation guidance to assist the regulated community in understanding their regulatory obligation for managing new TC wastes. This notice is intended to clarify for the regulated community the following issues: (1) The regulatory status of surface impoundments managing newly regulated TC wastes, (2) ground-water monitoring requirements for newly regulated land disposal facilities, (3) section 3010 notification requirements, and (4) permit modification requirements.

DATES: Effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT:

For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-8346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing EP toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of RCRA. The rule broadened and refined the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984.

Today's notice provides clarification regarding four implementation issues brought to the Agency's attention since the publication of the final rule. First, this notice provides clarification regarding the compliance options for surface impoundments managing newly regulated TC wastes. Secondly, this notice addresses the ground-water monitoring requirements that owner/operators of land disposal facilities managing newly regulated TC wastes must meet. Third, the Agency is providing additional clarification regarding § 3010 notification responsibilities for generators and owner/operators of treatment, storage, and/or disposal facilities (TSDFs) managing newly regulated TC wastes. Finally, the Agency is clarifying the permit modification requirements for hazardous waste management facilities with newly regulated wastes under the TC.

B. Surface Impoundments

The universe of newly regulated Toxicity Characteristic (TC) wastes includes (along with other wastes) both wastewaters and wastes generated from the treatment of wastewaters. Some of these wastewaters and wastewater treatment wastes are generated or managed in surface impoundments. Surface impoundments receiving, generating, or actively managing newly regulated TC wastes on or after September 25, 1990 are subject to all applicable regulations for surface impoundments managing RCRA hazardous wastes. Some of the factors that determine the regulatory status of these surface impoundments for permitting purposes and the various compliance options are discussed below.

1. *Impoundments ceasing operation prior to effective date.*

Facilities with impoundments in which newly regulated TC wastes currently are generated, stored, and/or disposed may cease operation of the units prior to the effective date of the TC (i.e., September 25, 1990). If these units have wastes in place but are not being used for waste management after the TC effective date, these inactive units would not be subject to regulation under 40 CFR parts 264 or 265. However, it should be noted that inactive units that are located at facilities otherwise subject to subtitle C's interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA. All facilities, of course, may be subject to CERCLA cleanup authorities.

In some cases facilities will choose to remove some or all of the wastes from the impoundments. If the removed wastes are not managed on or after the effective date of the TC rule, they will not be subject to subtitle C. However, any TC waste contained in inactive impoundments that is removed (i.e., actively managed) after the effective date would be subject to regulation. For example, if the TC waste was excavated for treatment and disposal, it would be regulated as hazardous waste at the time of excavation and would be required to be managed at a subtitle C facility. Such a removal activity in and of itself, however, does not subject the inactive impoundment to subtitle C.

2. *Conversion to non-hazardous waste impoundment.*

A facility with surface impoundments in which TC wastes have been generated and/or managed may choose

to redesign or reconfigure the existing wastewater treatment system prior to the effective date such that only non-hazardous wastes are generated or managed in some or all units of the treatment train on or after the effective date of the rule. If all TC sludges are removed from the surface impoundments prior to the effective date of the rule, the units may continue to be used and will not be subject to subtitle C of RCRA (provided no other hazardous wastes are generated, managed, or disposed in the unit).

Under another scenario, there may be surface impoundments that (1) contain TC wastes deposited prior to the effective date, and (2) receive or generate only non-hazardous wastes by the effective date as a result of system reconfiguration or modification. The regulatory status of such units depends on how the residual TC waste is managed after the effective date of the rule. If (1) the TC wastes remain in the surface impoundment on or after the effective date of the rule, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the unit is not subject to subtitle C. Note that EPA does not consider one time removal of waste from a unit on or after the TC effective date, in and of itself, to make the unit a storage unit and thus subject to subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is also consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

3. *Active hazardous waste management impoundments.*

Facilities with units in which TC wastes are managed on or after the effective date of the rule may continue to use these units to manage TC wastes if all applicable subtitle C requirements are satisfied. These facilities are required to obtain interim status and apply for a permit (or submit a change in interim status or a permit modification, if appropriate) in accordance with the appropriate compliance dates. The units will be subject to the applicable requirements of 40 CFR parts 264 and 265 as of the effective date of the TC.

As described in section 2 above, facility owners or operators may elect to manage only non-hazardous wastes in surface impoundments so that the unit will not be subject to subtitle C. However, there are a number of scenarios where these impoundments could become regulated. For example, if any TC waste remains in the surface impoundment on the TC's effective date and the impoundment is not the final disposal site for the wastes, then the impoundment is considered to be actively managing (e.g., storing) hazardous wastes and therefore is subject to the Subtitle C requirements upon the effective date of the rule. If a facility plans to remove on a periodic basis all or some of the TC waste from the unit on or after the effective date of the TC rule, the unit would be subject to subtitle C (including permitting, facility-wide corrective action, financial responsibility) on the effective date of the rule.

A second example would be where the non-hazardous wastewater influent to a unit causes a TC hazardous sludge (disposed prior to the effective date) to be scoured from the unit so that the effluent from the unit exhibits the TC on or after the effective date. In that case, the unit generating this TC wastewater and any surface impoundment receiving that hazardous effluent would be subject to the subtitle C management standards and would need to be under interim status or obtain a permit.

A third example is where a TC waste is generated within the unit from non-hazardous wastewater on or after the TC effective date. This could occur where the hazardous constituents in the wastewater become concentrated, or if a new TC sludge is formed by settling. In these examples, once the TC waste is generated and stored or disposed of in the unit, the unit is subject to subtitle C.

C. Ground-Water Monitoring Requirements

The Agency is aware of confusion regarding the timing of the subtitle C ground-water monitoring requirements as they apply to land disposal units or facilities that are newly regulated as a result of the final TC. Subpart F of 40 CFR part 265 describes the ground-water monitoring requirements for interim status land disposal facilities managing hazardous wastes. The applicability section of subpart F (see § 265.90) is not clear as to whether such units or facilities newly regulated under the toxicity characteristic must comply with the ground-water monitoring requirements on the effective date of the

TC (i.e., September 25, 1990) or one year later on September 25, 1991.

In 1980, the Agency promulgated the interim status program, including the part 265, subpart F ground water monitoring requirements. The Agency allowed affected facilities an additional year from the effective date of the regulations for compliance with the groundwater monitoring requirements as codified at § 265.90(a): "within one year after the effective date of these regulations, the owner or operator . . . must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water. . . ." EPA provided this delayed compliance schedule for groundwater monitoring requirements in order to allow facilities sufficient time to properly plan and install groundwater monitoring systems (45 FR 33161, May 19, 1980). EPA believes that the rationale for allowing an additional year after the effective date of the initial regulations for full implementation of groundwater monitoring requirements is also applicable to newly regulated facilities. EPA believes that the 6 month effective date provided for RCRA regulations is insufficient to allow for proper site characterization and well placement. Thus, EPA interprets § 265.90(a) to provide a one year timeframe from the effective date of new listings or characteristics rules for the implementation of a complete groundwater monitoring program at newly regulated units or facilities. The Agency intends to codify this in a future rulemaking by modifying the appropriate sections of the regulations.

Consistent with EPA's implementation of the loss of interim status requirement for land disposal facilities in 1985 (50 FR 38948, September 25, 1985), land disposal facilities newly subject to the ground-water monitoring requirements must complete site characterization and design and installation of groundwater monitoring systems capable of determining the facility's impact on ground water quality by September 25, 1991. Therefore, owner/operators who have not already done so should immediately commence characterizing their facility's hydrogeology and designing and installing their groundwater monitoring systems to meet this deadline. As in 1985, EPA intends to rigorously enforce both the part 265 subpart F requirements and the loss of interim status requirements.

To certify compliance with these requirements, facilities must submit a ground-water monitoring system certification, certifications of financial responsibility and part B permit

applications by September 25, 1991.

D. Section 3010 Notifications

In the preamble to the TC final rule (55 FR 11849), the Agency indicated that, pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify the Agency of their hazardous waste management activity within 90 days after the wastes are identified as hazardous. For the TC rule, the notification date was June 27, 1990. However, the Agency waived notification for those facilities that already have notified EPA of their hazardous waste activity under section 3010 of RCRA and have obtained an EPA identification number.

Based on inquiries received by various EPA offices concerning the notification requirements, and a review of the preamble language, the Agency understands that a significant number of regulated facilities may have been confused by certain language in the notification section of the TC preamble. As a result, the Agency is today clarifying the notification requirements for generators and TSDFs, and is also providing additional time for such notification.

Notification requirements for large quantity generators (those that generate more than 1,000 kg per month of total hazardous waste) and TSDFs, as specified in the TC final rule, required notification by June 27, 1990 unless they had already notified EPA of hazardous waste activity and obtained an EPA identification number. Based on inquiries received by various EPA offices, it is apparent that many persons did not understand that in order to have the notification requirement waived, a generator must have met two criteria: (1) They must have previously notified the Agency of hazardous waste management activity, and (2) they must have received an EPA identification number (see § 262.12). Some persons interpreted this section to mean that any previous notification under any Agency program (rather than under the RCRA program) was sufficient. Others took the interpretation that if they had an EPA identification number for any Agency program, that was sufficient to take advantage of the notification waiver. Both interpretations are incorrect. Due to this apparent confusion, the Agency is today allowing large quantity generators and TSDFs newly regulated by the TC additional time to notify the appropriate EPA Regional Office of their hazardous waste activity. Large quantity generators and TSDFs have until October 29, 1990 to notify the Agency of their hazardous waste management activity. This is done by completing a

section 3010 notification form (EPA Form 8700-12, dated 7/90; see 55 FR 31389, August 2, 1990 for a copy of the form) and sending it to the appropriate EPA Regional Office. It is important to note that this extension applies only to the notification requirement, and does not provide an extension for any other requirement under TC rule, including the date by which an EPA ID number must be obtained.

For newly regulated TSDFs, RCRA specifies that in order for a newly regulated TSDF to be granted interim status, three conditions must be met: (1) The facility/unit must be in existence on the effective date of the rule; (2) the facility must submit a section 3010 notification (if required by the Agency) within the required time frame (for the TC the date was June 27, 1990); and (3) the facility must submit a part A by September 25, 1990. As indicated above, the Agency is today extending the time by which TSDFs must notify the Agency in order to be eligible for interim status to October 29, 1990. This is done by completing a section 3010 notification form (EPA Form 8700-12 as described above) and sending it to the appropriate EPA Regional Office. This extension of the section 3010 notification date does not affect the date part A applications are due, which remains September 25, 1990. It also does not affect the compliance date for any other requirement other than the section 3010 notification.

Notification requirements for small quantity generators (generators of between 100 and 1,000 kg of total hazardous waste per month) newly regulated as a result of the TC were already clarified in a TC correction notice published in the *Federal Register* on August 2, 1990 (see page 31387; see also editorial correction notice dated August 10, 1990, page 32733). Small quantity generators that are newly regulated by the TC are required to notify their respective EPA Regional Office by November 2, 1990 of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700-12 as described above) and sending it to the appropriate EPA Regional Office.

E. Permit Modifications

The Toxicity Characteristic (TC) rule is expected to cause many permitted facilities to seek modifications to their permits. The TC is the first major expansion of regulated wastes under part 261 since the new permit modification rule was promulgated on September 28, 1988 (53 FR 37912). In the

preamble to the TC rule, the Agency generally described the implementation of the permit modification procedures for newly regulated wastes (see 55 FR 11849, March 29, 1990). However, the Agency has received questions asking for clarification of certain provisions of the new modification rule.

Under the new permit modification procedures, permitted facilities that manage TC wastes must submit Class 1 permit modifications to the appropriate EPA Regional Office by the TC rule effective date, September 25, 1990, if they are to continue managing the newly regulated TC wastes in units that require a permit (see § 270.42(g)). A number of people have expressed confusion about the type and extent of information permitted facilities must submit with these Class 1 permit modifications. This confusion stems from the fact that § 270.42(g) does not clearly define what information must be contained in the Class 1 submission. The rule language for Class 1 modifications in § 270.42(a) suggests that facilities must also submit the detailed part B application information specified in §§ 270.13 through 270.21, 270.62 and 270.63. However, this is not the intent of the requirements under § 270.42(g) because there would be insufficient time for facilities to develop the necessary data by the effective date. Furthermore, the more extensive information requirements under § 270.42(a) are intended for facility changes initiated by an owner/operator, not for changes under § 270.42(g) resulting from new regulatory requirements imposed by the Agency.

The new waste provision of § 270.42(g) is analogous to the procedures required for interim status facilities or newly regulated facilities, where a facility can continue to manage newly regulated wastes by submitting basic information about the affected waste streams and units and then complying with the part 265 management standards for any newly regulated units until final permit conditions are developed. Therefore, the Class 1 submission would comprise a revised part A form clearly indicating all activities that are newly regulated as a result of the TC rule, and any other description that will clarify which units at the facility are managing the new wastes. This Class 1 permit modification serves as a notification to the Agency and the public of the newly regulated activities.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the TC effective date (i.e., March 24, 1991), and

it is at this time that the detailed part B information must be submitted. It is expected that a Class 2 or 3 permit change will be necessary for virtually every facility that has wastestreams which are newly regulated as hazardous under the TC. In situations where a wastestream was already regulated as hazardous under the permit but now has additional waste codes associated with it due to the TC rule, only a Class 1 modification may be required.

Dated: September 24, 1990.

Henry L. Longest II,
Acting Assistant Administrator, Office of
Solid Waste and Emergency Response.

[FR Doc. 90-22981 Filed 9-28-90; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This amendment updates and displays the Office of Management and Budget (OMB) control numbers assigned by OMB for collections of information contained in, or authorized by, FEMA regulations. The update is necessary to make corrections to parts and sections and control numbers listed incorrectly, add new requirements, and delete requirements no longer needed or controlled.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT:
Linda S. Borrer, (202) 646-2825.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recordkeeping requirements/collections of information and give public notice of such clearance numbers. This rule amends 44 CFR part 2, subpart C to update and display the control numbers assigned by OMB to FEMA's collections of information which are contained in, or authorized by, FEMA regulations.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551-553 *et seq.*) requiring advance notice and comment.

FEMA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not significant for the purposes of Executive Order 12291; that a regulatory analysis is not required; that environmental impact documents under the National Environmental Policy Act of 1969 are not required since the action is administrative and categorically exempt from 44 CFR part 10; and that the updated cumulative list of assigned OMB control numbers is not subject to further review and clearance by OMB under the Paperwork Reduction Act of 1980.

List of Subjects in 44 CFR Part 2

Authority delegations (government agencies), Organization and functions (government agencies), Reporting and recordkeeping requirements.

Accordingly, title 44, chapter I, subchapter A of the Code of Federal Regulations, part 2, subpart C is amended as follows:

PART 2—[AMENDED]

Subpart C—[Amended]

1. The authority citation for part 2, subpart C continues to read as follows:

Authority: 49 FR 38503, Sept. 18, 1984; as amended at 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986

§ 2.81 OMB control numbers assigned to information collections.

2. Section 2.81 is amended by revising the cumulative list of parts and sections in 44 CFR which identifies or describes FEMA's information collection requirements that have been assigned OMB control numbers as follows:

	Current OMB Control No.
44 CFR part or section where identified or described:	
7 Subpart E.....	3067-0177
11.36.....	3067-0122
11.54.....	3067-0122
11 Subpart D.....	3067-0167
59.22(a).....	3067-0020
59.22(b)(2).....	3067-0018
60.3, 60.4, 60.5.....	3067-0022
61, 61 App. A(1), 61 App. A(2).....	3067-0022
62 Subpart C, 62 App. A, 62 App. B.....	3067-0169
63 Subpart B.....	3067-0196
64.3(c).....	3067-0020
65.....	3067-0147
66, 67.....	3067-0148
70.....	3067-0147
71.....	3067-0120
75 Subpart B.....	3067-0127
80, 81, 83.....	3067-0031
151 Subpart B.....	3067-0141