

A.T. Kearney, Inc.  
One Tabor Center, Suite 950  
1200 Seventeenth Street  
Denver, Colorado 80202  
303 572 6175  
Facsimile 303 572 6181

Management  
Consultants

ENTERED

ENTERED

**ATKEARNEY**

To Steve Zappe

Date 9/29/95

Company DMED

Fax Number \_\_\_\_\_

From Bonnie Walker

Number of Pages (Including this Page) \_\_\_\_\_

Telephone Number (303) 572-6175

Charge Number \_\_\_\_\_

**Message**

FBI - here are two letters to support our  
B, D, E, I issue memo

**Confidentiality Notice**

The information in this facsimile message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this facsimile or an agent responsible for delivering it to the recipient note than any disclosure, copying, distribution or action taken on this information is not permitted. If you received this transmission in error, please notify the sender immediately.



9524.1984(01)

OCT 5 1984

MEMORANDUM

**SUBJECT:** Use of Compliance Schedules in RCRA Permits

**FROM:** Bruce R. Weddle  
Division Director  
Permits and State Programs Division

**TO:** Hazardous Waste Directors, Region I-X

Many Regions have requested guidance on the appropriate use of compliance schedules in RCRA permits. In response to those requests, the Permits Branch has developed the attached guidance.

To summarize the main points, compliance schedules in RCRA permits cannot be used to satisfy, after the permit has been issued, the information requirements of Part 270. Compliance schedules can be used to allow facilities to come into compliance with Part 264 standards that are not required under Part 265.

Please distribute this guidance to your respective staffs. Any questions regarding when compliance schedules can be used in RCRA permits should be referred to Elizabeth Cotsworth at FTS 382-4751.

Attachment

WH-563:RChrisnon:srm:S243:24691:8/12/84:Randy's disk "Memos"

## USE OF COMPLIANCE SCHEDULES IN RCRA PERMITS

A number of Regions have asked about the appropriate use of compliance schedules in RCRA permits. The following explains Agency policy on this issue.

### Compliance Schedules in Permits

In general, compliance schedules in permits should be used to allow the construction or installation of equipment that is not required under Part 265 but that is required to comply with Part 264 standards. To be acceptable, compliance schedules must be specific, enforceable, allow for public notice and comment on the detailed permit condition, and allow the applicant additional time only where that time is legitimately needed.

Specificity means that the compliance schedule must set forth, in detail, what the applicant is supposed to do, when the applicant is supposed to do it, and when the work is to be completed. Thus, the schedule should include the design and construction specifications, interim milestones for construction, and a specific date for completion. The schedule must also require the applicant to notify the Director within 14 days of each interim date and the final completion date.

Enforceability means that the requirements imposed by the compliance schedule on the owner/operator can be achieved and that the Agency can confirm that the owner/operator has successfully met his responsibilities. It also means the scheduled activities must comply with the technical standards of Part 264. The permit writer must have an opportunity to evaluate the details of design, construction, and operation to assure their adequacy in light of Part 264 requirements.

The complete compliance schedule must be included in the draft permit so the public will have an opportunity to comment on its content. The compliance schedule must be complete as to the details of what is to be done, when, and by whom.

### Suggested Uses of Compliance Schedules in RCRA Permits

1. Should a compliance schedule in a RCRA permit be used to bring a facility into compliance with Part 265 standards?

No. A facility should be in compliance with Part 265 standards at the time a RCRA permit is issued. In situations where the facility is not in compliance with the requirements of Part 265, especially when compliance problems will prevent development of a draft permit, the permit writer should refer the case to the enforcement staff. The enforcement staff will make decisions as to the appropriate enforcement action to pursue. When enforcement actions result in administrative orders, a compliance schedule may be included in the order.

2. Can a compliance schedule be used to allow a facility additional time to provide Part B application information after the permit is issued?

No. Use of a compliance schedule for this purpose is unacceptable and may be illegal. For example, the RCRA regulations provide that the Director must specify detailed ground-water monitoring conditions in the facility permit. To develop these permit conditions, information on ground-water monitoring at the facility is necessary and, generally, should be drawn from the Part B permit application. Without adequate ground-water monitoring data, it is impossible to know whether a facility should be conducting detection or compliance monitoring or corrective action. In addition, there may be no information that would support the details of a ground-water monitoring plan, such as number, location and design of wells. Without this information, the Agency cannot develop a permit that complies with the Subtitle C regulations. Additionally, the public is not given adequate notice or opportunity to comment on the ground-water monitoring program. Because the Agency does not have adequate information on these items, it cannot issue a permit.

3. Can compliance schedules be used to bring a facility into compliance with Part 264 standards not required under Part 265?

Yes. Where a facility, which is in compliance with Part 265, must undertake new construction or installation of equipment in order to comply with Part 264, a RCRA permit should be issued with an attached compliance schedule.

For example, although an interim status storage facility does not require secondary containment, secondary containment is required under Part 264. Accordingly, the permit applicant must submit design, construction and operating specifications for a secondary containment system in his application. The permit writer may then approve those specifications and make them part of the draft RCRA permit. A compliance schedule would be included in the draft permit, setting forth milestones for various tasks, a final completion date for construction and a requirement for the permittee to notify the Director within 14 days of complying with each interim date and the final date. See §270.33. Incorporation of the compliance schedule in the draft permit would provide the public with notice of the details of the proposed design, construction, and operation of the secondary containment

system, and also the proposed schedule for completion of the work. After addressing the public comments, the permit writer can issue the final permit and attached compliance schedule.

Note the important factors of this scenario:

A. All information requirements of Part 270 are satisfied before the draft permit is written.

B. The permit writer has an opportunity to assess the adequacy of the design, construction, and operation details.

C. The compliance schedule is specific as to what is to be done, who is responsible for seeing that activities are completed, and when those activities are to be completed.

D. The public has a full opportunity for notice and comment.

4. Should a compliance schedule be used to issue a permit and allow modifications to an existing incinerator that has failed the trial burn?

No. The Agency should not issue a permit to a facility which has failed to demonstrate, in accordance with Part 270, compliance with the Part 264 performance standards.

This scenario appears to be similar to the secondary containment situation described previously. There is, however, a fundamental difference between the two situations. With respect to secondary containment, it can be ascertained from the applicant's proposed designs and specifications that the containment structure will comply with the Part 264 technical standards. With respect to an incinerator, however, there is a much higher level of uncertainty that proposed modifications will result in the incinerator achieving compliance with the performance standards in Part 264, Subpart O. The Agency cannot issue a permit to an incinerator that cannot demonstrate its ability to comply with the regulations.

Generally, the permit writer has several options. The Agency can delay any final action, send a letter to the applicant saying that we will deny the permit unless we get trial burn results demonstrating compliance with the Part 264 performance standards within a specified time period. The Director could also issue an administrative order to achieve the same results. The applicant, of course, can submit a new trial burn plan using different operating parameters or modify the facility and submit a new trial burn plan incorporating the new modifications. This order likely would contain a compliance schedule. Finally, in some circumstances, it may be appropriate to deny the permit.

5. For incinerators, should a RCRA permit be issued with an attached compliance schedule to bring an existing incinerator into compliance with Part 264 monitoring requirements necessary for an adequate trial burn?

No. All continuous monitoring instrumentation should be installed for the trial burn. Under §§270.19(d) or 270.62(b)(5), the Director must find that the trial burn will allow him to set operating conditions for the unit before he can approve the trial burn plan. If the continuous monitoring equipment is not installed during the trial burn, the Director cannot set operating conditions. Therefore, under the authority of Part 270, the Director can require continuous monitors to be installed before the trial burn is conducted and the permit issued.

6. Should permits with compliance schedules be used to correct deficiencies in interim status ground-water monitoring data?

Where the ground-water monitoring data are lacking or questionable due to poor sampling and analytical techniques, improper well placement, or lack of monitoring, the Agency cannot issue a RCRA permit with an attached compliance schedule to develop adequate data. Rather, the permit writer should refer the case to the enforcement office for action. Close coordination between the permits and enforcement staffs will, of course, be necessary to ensure that the relief sought through enforcement action will be consistent and compatible with the Part B information requirements.

7. May the permit writer develop permit conditions in areas where the Part B is deficient? For example, if an applicant fails to specify information regarding fire prevention and control can the permit writer still draft permit conditions in that area?

Yes. It should be kept in mind that the applicant is not the sole source of information available to the permit writer. For example, the permit writer's knowledge of safety codes, such as the National Fire Protection Association Code, can provide the basis for permit conditions. The permit writer can impose draft permit conditions on necessary fire prevention and control measures based on the NFPA code, even though the applicant has failed to specify this information in the Part B application. The permit writer, in essence, is completing the application for the applicant by drawing on his own knowledge and best engineering judgment.

#### For More Information

The above examples cover the situations where use of compliance schedules has been suggested. Headquarters will be working with the Regions to establish a national clearing house for sharing "model" permits, permit conditions, NODs, and compliance schedules. In the meantime, any questions regarding when compliance schedules can be used should be referred to Elizabeth Cotsworth at FTS-8-382-4751.

11/09/94 13:09  
NOV-9-94 WED 14:58

P.01



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 7 1994

OFFICE OF  
AIR AND RADIATION

Mr. George Dials, Manager  
Carlsbad Area Office  
U.S. Department of Energy  
P.O. Box 3090  
Carlsbad, NM 88221-3090

Dear Mr. Dials:

I appreciate the effort by the Department of Energy (DOE) in your presentation of the October 24-26, 1994 technical exchange on the Salado Formation, the Disposal Room Model, and long-term repository seals. I feel that it was informative for our staff. The presenters were helpful and knowledgeable on the topics, and they addressed questions with the detail we need.

From discussions with my staff, I have become aware of a significant issue related to engineered barriers and the status of the long-term repository seals that are comprised of the shaft seals and backfill. I believe that this issue is so important that I wanted to raise it with you immediately.

As you have stated in the latest performance assessment, the Compliance Status Report and elsewhere, long-term repository seals that will isolate the waste are an integral part of the engineering barrier system at Waste Isolation Pilot Plant (WIPP). The seal closure system should be designed to prevent liquids from entering the repository from the surface and units overlying the repository, and prevent the migration of radionuclides and RCRA waste out of the repository.

Based on the information we have received, it appears that you must accomplish considerable work on the seal closure system and its final design before the Compliance Certification application and RCRA No-Migration Petition are submitted.

From the information presented to my staff at the October 24-26 technical exchange, it is our understanding that the uncertainty surrounding the design of the seal closure system has limited the types and numbers of tests and experiments that could be conducted on seals, and the testing that has been done

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

# of pages 4

To <i>John Danabasakis</i>	From <i>R. S. ...</i>
Dept Agency <i>F. J. K.</i>	Phone # <i>308-8758</i>
Fax <i>308-572-6181</i>	Fax #

NSN 7540-01-317-7350

5039 101

GENERAL SERVICES ADMINISTRATION

Recycled/Recyclable.  
Printed with Soy/Carbena Ink on paper that  
contains at least 50% recycled fiber

11/09/94 13:10  
NOV- 9-94 WED 14:59

P.02

2

may not be applicable to the needs of the performance assessment group. At the October meeting, my staff expressed concern that the tentative nature of the seal design, apparent current lack of supporting information on the seals, and short time to your scheduled application submittal could preclude you from submitting complete information in the application.

In general for the WIPP, and specifically for any engineered barrier, the compliance application should include the complete design and support for the credit claimed by DOE or the application will be considered incomplete. With respect to the seal closure system, the compliance application will, in addition to other requirements, need to include: the specific design for seals, the materials and methods of construction, material-property parameters such as permeability and porosity, and supporting information to show that the designs can be implemented. (For additional comments on this topic see RCRA notice of proposed decision, 55 FR 13084, April 6, 1990.)

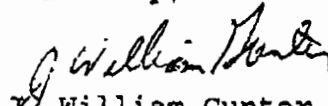
The Land Withdrawal Act and 40 CFR 191 require that the disposal system use engineered barriers, and DOE has stated that seals are planned as the major engineered barrier at WIPP. However, if the use of seals as a low permeability feature cannot be defended, then seals would not be considered an engineered barrier. If this were the case, DOE would have to use another engineered barrier or the WIPP would not be in compliance with 40 CFR 191.

The engineered barrier system is a critical aspect of the WIPP and needs to be designed and characterized before you submit your application. We are prepared to discuss these issues with you in an effort to outline the types of information related to the seal system you will need to produce in the application.

I continue to believe that the kind of technical exchange meetings our staffs have been having are extremely helpful. In this case, the October 24-26 meeting served to identify a critical issue. I would suggest that for future meetings it would be beneficial for everyone if we received the meeting information earlier.

If you have any comments, please contact me at 202-233-9290.

Sincerely,

  
William Gunter, Director  
Criteria and Standards Division