

PPC 9504.1984(02)

GWM DEFICIENCIES IN PART Bs, RESPONSES TO AND MECHANISMS TO PREVENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV 29 1984

MEMORANDUM

SUBJECT: Part B Permit Applications with Insufficient  
Ground-Water Monitoring Data

FROM: Lee M. Thomas  
Assistant Administrator for Solid Waste and  
Emergency Response

Courtney M. Price  
Assistant Administrator for Enforcement and  
Compliance Monitoring

TO: Regional Administrators, Regions I-X  
Regional Counsels, Regions I-X  
Air and Hazardous Materials Division  
Directors, Regions I-X

BACKGROUND

Regional personnel have raised questions as to how to deal with RCRA Part B permit applications containing insufficient ground-water monitoring (GWM) data. (This includes hydrogeological data, specifications on well construction, sampling methodology, past monitoring results, and other aspects of ground-water protection as required by 40 CFR §270.14(c).) The GWM data submitted in Part Bs is often insufficient to satisfy the informational requirements of §270.14(c). The failure of many facilities to generate appropriate GWM data prior to the Part B due date has resulted in a number of incomplete Part Bs, as well as complications and delays in the permitting process.

While general guidance on responding to late and incomplete

Part B applications is set out in a memo dated September 9, 1983, the deficiency of a Part B with respect to GWM data presents a special case. This type of deficiency is often the result of a facility's failure to comply with Part 265 requirements and can be addressed (or if detected early can be avoided) through enforcement of the Part 265 requirements. Further, Part Bs with inadequate GWM data are often submitted by facilities that have been suspected of presenting substantial hazards to human health or the environment through ground-water contamination. If Orders issued under RCRA 3013 are used to require such facilities to gather appropriate ground-water data, that data may also satisfy the Part 270 informational requirements and thus ensure that such facilities submit adequate Part Bs.

The purpose of this memorandum is to provide EPA Regional Offices with guidance on which mechanisms can be used to prevent GWM deficiencies in Part Bs, and to discuss what mechanisms are available to respond to deficiencies when they occur.

This memorandum was prepared before RCRA reauthorization, and therefore does not reflect the new provisions regarding ground water protection or permitting. Guidance on implementation of those provisions will be provided separately.

## I. GWM Information Needed in Part Bs

Section 270.14(c) lists the requirements for GWM information in Part Bs. In essence, the permit applicant must characterize the uppermost aquifer, describe any existing contamination, and provide all information necessary for EPA to establish either a detection, compliance, or corrective action program in the facility's permit.

Data generated during a facility's interim status period may or may not fulfill the Part B information requirements. In general, if a facility has fully complied with the GWM requirements of Part 265, including well placement, sampling frequency, and sampling methodology, the results of interim status monitoring should be deemed conclusive evidence of the presence or absence of contamination. In a majority of cases, however, facilities have not complied fully with 265 requirements. This category includes facilities which have installed only three downgradient wells, where a minimum of four or more is necessary to meet the standard

of §265.91. Facilities which have not fully complied with 265 requirements may need to do substantially more work, in some cases including hydrogeological investigations and well installations, before they can successfully meet Part 270 requirements.

EPA's Permit Applicant's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities, and the RCRA Permit Writers' Manual for Ground-Water Protection, provide descriptions of specific information needed from applicants.

Prior to or upon calling in a facility's Part B, Regional personnel should examine any available interim status data from the facility, and determine what additional data the facility must generate in order to produce a complete Part B. This determination should be coordinated with the joint permit writer/inspector site visit conducted when the Part B is called in. This initial review of the facility, and early setting of expectations by EPA, is essential to expediting the Part B process.

If EPA makes clear to the facility what types of data are expected in the Part B, and the initial Part B does not provide this data, the Region should respond in accordance with the "Late and Incomplete Part B Policy". In such cases, conservative deadlines should be set for the facility's response to a Notice of Deficiency.

It should be noted that §270.14(c) requires more and different GWM data than does Part 265. In particular, §270.14(c)(2) and (4) to require facilities to investigate hydrogeological conditions at the site, including any plume of contamination that has entered ground water from a regulated unit at the facility. In addition, in order to satisfy §270.14(c)(6) - (8), facilities must provide information to support a determination of whether hazardous constituents (i.e., compounds listed in Part 261 Appendix VIII) are present in the ground water. Regional personnel should explain to facility owners and operators as early as possible what kinds of data (e.g., piezometric, resistivity, pump-test, sampling for Appendix VIII compounds, etc.) will be necessary to meet the Part B requirements.

Clearly, the exact type and extent of testing and information gathering will vary considerably from facility to facility due to such site-specific factors as geology and contaminant behavior. Also, as a technical matter, Regional personnel initially may not

know exactly what types of data gathering are necessary from each facility. Experience has shown that initial ground-water investigations often uncover problems which require further investigations. Even under the best conditions of Regional attention to facility Part B preparation, applicants may have to submit several Part B documents before the application can be deemed adequate. Although we understand that some delays of this nature are inevitable, certain delays can be avoided through early involvement between the Regions and applicants.

## II. Facilities for which the Part B Due Date Has Passed

In general, the most appropriate response to a facility that has submitted an incomplete or inadequate Part B is enforcement action under RCRA §3008. The action should cite violations of 40 CFR Part 270. The "RCRA Civil Penalty Policy" should be used to determine appropriate penalty amounts.

## III. Facilities for which the Part B is Not Yet Due, and where a Hazard May Exist

Some facilities with significant deficiencies in Part 265 ground-water data may also be presenting hazards to human health or the environment through ground-water contamination. EPA's authority under RCRA §3013 can be used to gather data at facilities for which the Administrator determines that the presence or release of a hazardous waste may present a substantial hazard to human health or the environment. A §3013 Order may be used to require such monitoring, testing, analysis and reporting as the Administrator deems reasonable to ascertain the nature and extent of such a hazard. Revised Guidance on writing §3013 Orders was issued on September 26, 1984, and supersedes previous Guidance.

Data generated by facilities in response to §3013 Orders could be used to satisfy Part B informational requirements. Therefore, activities required by §3013 Orders should be consistent with monitoring activities required for compliance with Part 270, as well as with Part 264 requirements that will be applied in the future.

## IV. Facilities for which the Part B is Not Yet Due, and which are in Violation of Interim Status Standards

A major category of GWM deficiencies involves owners and operators who are subject to but have not complied with interim status ground-water monitoring requirements in Part 265. There are a variety of Part 265 violations at facilities, ranging from no monitoring wells in place to inappropriate sampling techniques. The result may be insufficient data from which the facility can respond to §270.14(c).

In some cases, prompt enforcement of Part 265 violations may be sufficient to ensure the development of adequate GWM data to meet the Part B requirements. For instance, if the Part 265 violation is an insufficient number of monitoring wells, the specified remedy (installing additional wells) may be sufficient to provide data for the §270.14(c) requirements for information regarding possible ground-water contamination and for a proposed well network.

Alternatively, where a Part 265 remedy will not provide usable or sufficient information to satisfy a Part B requirement, and where a substantial hazard may exist, it may be more appropriate to use EPA's broader authority under RCRA §3013 to obtain data. Also, where a Part 265 remedy will not satisfy Part B requirements, and the Part B will be due shortly, enforcing the Part 265 requirements may be counterproductive. In that case it may be more practical to wait for the Part B due date and enforce the requirements of Part 270. Of course, it is generally appropriate to assess penalties for past violations of the Part 265 requirements, regardless of whether future compliance with Part 265 is sought.

#### V. Facilities Not Currently in Violation of Interim Status GWM Standards

There is a range of situations where an applicant is not in violation of Part 265, but has not generated complete Part 265 data either. These facilities' Part Bs do not include enough Part 265 data to address the §270.14(c) requirements properly. This category of facilities includes:

- neutralization surface impoundments;
- facilities operating under a §265.90(c) waiver which was evaluated by EPA or an authorized state;
- facilities located in states which prohibited

- well installation prior to state approval, and the state issued its approval late (or has not yet done so); and
- facilities in early stages of Part 265 ground water "assessment", and where contamination data is not yet available.

In addition, new facilities often present little or no existing data from which to evaluate compliance with §270.14(c).

The foregoing are complex situations and the appropriate response may vary. We intend to develop further guidance on the information-gathering mechanisms that may be applicable to these categories. As mentioned in Section I of this memorandum, Regional personnel should notify facilities as early as possible prior to or upon calling in their Part Bs (or upon knowledge of a planned new facility submittal) of the types of data that must be submitted in the Part B in order to satisfy §270.14(c). These informational requirements should be further clarified during the EPA joint permit writer/inspector site visit when the Part B is called in.

cc: John Skinner  
Fred Stiehl  
Gene Lucero  
Tony Montrone  
Bruce Weddle  
Jack Lehman  
Eileen Claussen  
Peter Guerrero  
Ken Shuster