

Exhibit 5

U.S. EPA Response to FOIA Online No. EPA-HQ-2017-003409 (Ex. 3(a))

Confirms that attempts to backdate a change of operational control in a RCRA Part A permit application 1) fail to comply with the advance request requirements of 40 CFR 270.72(a)(4), and 2) are null and void).

Ex. 5(a) – EPA Response to FOIA Request.

Ex. 5(b) – Attachment to FOIA Request (45 Fed. Reg. 33290).

Ex. 5(c) – Attachment to FOIA Request (EPA Instructions, Series 8700 Forms).

Exhibit 5(a)

U.S. EPA Response to FOIA Online No. EPA-HQ-2017-003409



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

MAR 01 2017

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE
NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

FOIA Request: EPA-HQ-2017-003409

Mr. Rodney Huerter
4760 World Houston Parkway
Houston, Texas 77032

Re: FOIA EPA-HQ-2017-003409

Dear Mr. Huerter:

Thank you for your FOIA request dated January 30, 2017, requesting copies of EPA guidance or policy documents that indicate "that a result for failure to comply with the advance notice requirements of section 270.72(a)(4) for change of owner or operational control of an interim status hazardous waste management facility is different from the result of a similar failure to comply with the advance notice requirements of section 270.40(b) for RCRA operating permits (i.e., not transferred)." We have no documents responsive to this request.

To the best of our knowledge, the Agency has not issued any guidance or policy statements specific to these notice requirements (to provide 90-day notice of transfer of ownership or operational control of permitted or interim status facilities) and potential enforcement consequences since the May 19, 1980 preamble included in your request.

The Agency strives to treat similar violations with parity. Given that the regulations for permitted and interim status hazardous waste management facilities each clearly require a notice within 90 days of the expected transfer of owner or operational control, if that requirement is not met, there would be potential enforcement consequences that would be determined in the context of the specific case.

In many instances, States have taken the lead role in implementation and enforcement of aspects of RCRA and they may also elect to adopt approaches that are more stringent than required by federal regulations. If the question has arisen as a result of specific circumstances, any relevant states should be consulted about potential enforcement responses.

This letter concludes our response to your request. You may appeal this response by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W.

If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202)566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; e-mail, ogis@nara.gov; telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.



Tricia Buzzell
Environmental Protection Specialist
U.S. EPA Office of Land and Emergency Management
Office of Resource Conservation and Recovery

Request Details**Tracking Number :** EPA-HQ-2017-003409

Submitted	Evaluation	Assignment
		Processing

Contact Information

Full Name :	Closed	Mailing Location :
Rodney Huerter		United States/U.S. Territories
Organization :	Veolia North America	Address Line 1 : 4760 World Houston Parkway
Email Address :	rodney.huerter@veolia.com	Address Line 2 : Suite 100
Phone Number :		City : Houston
Fax Number :		State/Province : Texas
		Zip Code/Postal Code : 77032

Request Information

Agency :	Office of Resource Conservation and Recovery	Request Phase :	Closed
Will Pay Up To :	\$25.00	Complex	Request Track :
Date Submitted :	01/30/2017	No records	Final Disposition :
Closed Date :	03/07/2017		

Description :

1733/2000

The instructions for the most current RCRA Part A permit application form states that facility "owners or operators with interim status are treated as having been issued a permit until the EPA reviews the Part B Permit Application and issues a RCRA hazardous waste permit ["RCRA operating permit"]." RCRA Hazardous Waste Part A Permit Application; Instructions and Form, EPA Form 8700-23 (Jan. 2015), at 19, 22–23 (the "Part A Instructions"). Changes in ownership and operational control of a facility "may only

Request a Fee Waiver

Made Request ? No

Request Expedited Handling

Made Request ? No

Supporting Files

Attached Files :

Attached File	Type	Size (MB)
8700-23 (Jan. 2015).pdf	PDF	0.97
Pages from 45 FR 33,290 (5.19.80).pdf	PDF	0.21

Payments

Date	Amount
03/07/2017	\$7.00
Total Invoice Amount	\$7.00
Total Amount Paid	\$7.00
Total Amount Owed	\$0.00

Invoice

Total Amount Billed : \$7.00

Date Sent : 03/07/2017

Title	Invoice Date	Amount
EPA-HQ-2017-003409 Invoice 20170301.pdf	03/01/2017	\$7.00

Correspondence with Requester

Subject	From	Date	Detail
Final Disposition, Request EPA-HQ-2017-003409	Valerie Ward	2017-03-07	

Subject	From	Date	Detail
EPA-HQ-2017-003409 has been processed with the following final disposition: No records.			
			<i>EPA-HQ-2017-003409 Invoice 20170301.pdf</i> , PDF , 0.01 MB
Re: R. Huerter letter	Rodney Huerter	2017-03-02	
<p>Thank you. The EPA's response is consistent with other EPA guidance that I did not reference in my request (due to the allowed number of characters), including: 1) a May 10, 1983 Federal Register preamble (48 FR 21103, 21105 (stating "Ninety days is the same amount of <u>advance</u> notice that is <u>required</u> by EPA for transfers of facilities during interim status. (See 40 CFR 270.72)," and "The Director <u>must</u> get actual notice of the transfer <u>before</u> the 90-days <u>advance notice period</u> begins. The permittee is therefore advised to send his notice by certified mail") (emphasis added); and 2) at least one RCRA Online document (RO 12200 (Apr. 1, 1984) ("changes in the ownership of a facility may be made if the <u>new</u> owner or operator submits a revised Part A permit application <u>no later than 90 days prior</u> to the scheduled change (270.72 (d))") (emphasis added).</p> <p>If non-compliance with the change in ownership or operational control requirements under section 270.72 would, counter to the EPA's position with respect to the same requirements under section 270.40, <i>not</i> be treated as a nullity / non-transfer, it would arguably result in an anomalous situation that treats owners and operators who had been issued a final RCRA operating permit differently than owners and operators of facilities in interim status (i.e., seeking to eventually obtain a final RCRA operating permit to allow their continued active management of hazardous waste). That would be counter to other related EPA guidance. Cf. 52 FR 30570, 30571 (Aug. 14, 1987). Further, were the EPA to treat non-compliance with the plain and clear requirements of section 270.72 differently from the same language set forth under section 270.40, that would appear to grant to owners and operators of interim status facilities a competitive advantage over owners and operators who successfully obtained a final RCRA operating permit associated with their hazardous waste management activities. Other agency guidance indicates that the EPA desires to eliminate such disparate competitive advantages. Cf. 50 FR 38946, 38948 (Sept. 25, 1985).</p> <p>Best wishes,</p> <p>R.G. Huerter</p>			

Subject	From	Date	Detail
R. Huerter letter	Valerie Ward	2017-03-01	
03/01/2017 02:11 PM			
FOIA Request: EPA-HQ-2017-003409			
<i>R. Huerter-003409 LT.pdf</i> , PDF, 0.43 MB			
FOIA Request EPA-HQ-2017-003409	Submitted	2017-01-30	
This message is to confirm your request submission to the FOIAonline application:			
<i>View Request</i> . Request information is as follows:			
<ul style="list-style-type: none"> • Tracking Number: EPA-HQ-2017-003409 			
<ul style="list-style-type: none"> • Requester Name: Rodney Huerter 			
<ul style="list-style-type: none"> • Date Submitted: 01/30/2017 			
<ul style="list-style-type: none"> • Request Status: Submitted 			
<ul style="list-style-type: none"> • Description: The instructions for the most current RCRA Part A permit application form states that facility "owners or operators with interim status are treated as having been issued a permit until the EPA reviews the Part B Permit Application and issues a RCRA hazardous waste permit ["RCRA operating permit"]." RCRA Hazardous Waste Part A Permit Application; Instructions and Form, EPA Form 8700-23 (Jan. 2015), at 19, 22–23 (the "Part A Instructions"). Changes in ownership and operational control of a facility "may only occur during the interim status period" in compliance with the regulatory provisions that govern such changes. See 45 FR 33290, 33324 (May 19, 1980) (emphasis on "only"). Specifically, a "revised Part A permit application is required 90 days prior to such a change . . ." Id. (emphasis on "required" and "prior"); see also 40 C.F.R. 270.72 (a)(4); Part A Instructions, at 10. Notably, with respect to transfer of RCRA operating permits, which includes the same 90-day advance request, the EPA states that failure to comply with the advance notice requirement results in the permit not being transferred, and the "new owner or operator of the facility will be subject to enforcement for operating without a permit." Id. at 33314. I request complete copies of currently applicable EPA policy or guidance records that indicate that a result for failure to comply with the advance notice requirements of section 270.72(a)(4) for change of owner or operational control of an interim status hazardous waste management facility is different from the 			

Subject	From	Date	Detail
result of a similar failure to comply with the advance notice requirements of section 270.40(b) for RCRA operating permits (i.e., not transferred).			

Released Records

No records have been released.

Exhibit 5(b)

Attachment to FOIA Online No. EPA-HQ-2017-003409

45 Fed. Reg. 33290 (May 19, 1980) (excerpted.

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Parts 122, 123, 124, and 125

[FR 1453-5]

Consolidated Permit Regulations: RCRA Hazardous Waste; SDWA; Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes consolidated permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) program and State Dredge or Fill ("404") programs under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act, for three primary purposes:

(1) To consolidate program requirements for the RCRA and UIC programs with those already established for the NPDES program.

(2) To establish requirements for State programs under the RCRA, UIC, and Section 404 programs.

(3) To consolidate permit issuance procedures for EPA-issued Prevention of Significant Deterioration permits under the Clean Air Act with those for the RCRA, UIC, and NPDES programs.

DATES: These regulations shall become effective as follows: All regulations shall become effective as to UIC permits and programs July 18, 1980, but shall not be implemented until the effective date of 40 CFR Part 146. All regulations shall become effective as to RCRA permits and programs November 19, 1980. Part 124 shall become effective as specified in § 124.21. All other provisions of the regulations shall become effective July 18, 1980. For purposes of judicial review under the Clean Water Act, these regulations will be considered issued at 1 p.m. eastern time on June 2, 1980; see 45 FR 26894, April 22, 1980. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before July 18, 1980. The effective

date will not be delayed by consideration of such comments.

Comments on the scope and applicability of Executive Order 11990 and Executive Order 11988 to RCRA, UIC, and NPDES permits must be submitted on or before July 18, 1980.

Comments on requirements for Class IV wells must be received by July 15, 1980.

There will be a hearing on the requirements for Class IV wells on July 8, 1980, from 9 a.m. to 5 p.m.

ADDRESSES: Comments of a technical and nonsubstantive nature, as well as the comments concerning the scope and applicability of Executive Order 11990 and Executive Order 11988, should be addressed to: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460.

Comments on requirements for Class IV wells should be addressed to: Alan Levin, Director, State Program Division (WH-550), Office of Drinking Water, Environmental Protection Agency, Washington, D.C. 20460.

The Public Hearing on Class IV wells will be held at: HEW Auditorium, 330 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:
Background

These final regulations consolidate requirements and procedures for five EPA permit programs. These regulations represent the major product of the Agency's permit consolidation initiative that began in the fall of 1978. They are based on the proposed consolidated permit regulations that were published in the *Federal Register* for comment on June 14, 1979 (44 FR 32854).

EPA program requirements and State program requirements are established for three programs:

- The Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA);
 - The Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA);
 - The National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA); and
- State program requirements only are established for:
- State section 404 "Dredge or Fill" programs under the CWA.

In addition, procedures for permit decisionmaking are established for the above four programs, and for

- The Prevention of Significant Deterioration (PSD) program under the Clean Air Act, where this program is operated by EPA or a delegated State agency under 40 CFR 52.21(v); these procedures do not apply to PSD permits issued by States to whom administration of the PSD program has been transferred. (See preamble to Part 124, Subpart C.)

These regulations are an important element of an Agency-wide effort to consolidate and unify procedures and requirements applicable to EPA and State-administered permit programs.

The Agency has also developed a single set of permit application forms for the programs covered by these regulations. These consolidated application forms are published elsewhere in today's *Federal Register*. They consist of a single general form to collect basic information from all applicants, followed by separate program-specific forms which collect additional information needed to issue permits under each program. The application forms in today's *Federal Register* include the general information form and the additional forms for certain water discharges under NPDES and for hazardous waste permits under RCRA.

When the draft consolidated application forms were published for public comment, they appeared along with a set of proposed NPDES regulations which were closely related to the contents of the application forms. Those accompanying regulations have now been integrated with the final NPDES regulations which appear as part of these consolidated permit regulations, and are summarized in the proper places in the preamble discussion. For a more thorough discussion and response to comments on those portions of the NPDES regulations, see the preamble to the consolidated application forms published elsewhere in today's *Federal Register*. Because the draft application forms and accompanying proposed NPDES regulations were originally published together, commented upon together, and are closely related, the detailed discussion of both forms and accompanying regulations has been retained in one place.

Many of the requirements in these regulations apply both to EPA programs and to State programs that receive EPA approval to operate in lieu of a Federal program in a particular State. These common requirements are intended to ensure that State permit programs satisfy minimum statutory and

to reflect the new ownership or operational control of the facility, although EPA has attempted to draft these requirements to achieve the least possible burden on property transactions consistent with adequate transfer of permit responsibilities.

First, EPA has retained the essential features of the proposal for NPDES facilities and UIC wells not injecting hazardous waste. Permits for these facilities may be transferred automatically, without requiring any affirmative act by the Director, but only if a written agreement for transfer of permit responsibilities is sent to the Director. The agreement no longer requires specific provisions as to liability for events occurring before and after the transfer, but only an agreement as to liability between the parties. For UIC facilities, the notice to the Director must also demonstrate that the requirements for financial responsibility will be met by the new permittee. Finally, the director must have the opportunity to require that the permit be modified to reflect the change in ownership or operation. In many cases the Director may feel that it is desirable to require the prospective new permittee to submit a permit application; see preamble to § 122.15(b).

For permits that are automatically transferred under this provision, the transfer-based cause for modification or revocation and reissuance (§ 122.15(b)(2)) survives the transfer, so that the Director can later modify the permit to reflect the new realities of the operation without holding up the transfer. However, after an automatic transfer is effective the permit will not be reopened to revoke and reissue the permit unless the permittee requests or agrees. Otherwise, the new permittee would be subject to having its entire permit rewritten at any time regardless of its relevance to the change brought about by the transfer. This is contrary to the certainty which these regulations attempt to give permittees during their fixed-term permits. Of course, the transferred permit may also always be terminated for cause, such as violation of the financial responsibility requirements.

Second, for RCRA facilities and UIC wells injecting hazardous wastes, EPA has determined that in all cases it will be necessary to modify the permits upon transfer of ownership or operational control of a permitted facility or activity. This provision is also applicable to 404 permits. This is necessary because these permits, unlike NPDES permits or certain UIC permits (other than the provisions for financial responsibility),

contain conditions which are personal to the permittee and which necessarily must change when the permittee changes. These include such conditions of the permit as the closure and post-closure plans, the contingency plan, and provisions for financial responsibility. In addition, because some of these conditions are incorporated in the permit on the basis of information which is submitted as part of the permit application, in most of these transfers a new permit application will be necessary as well. A new application will always be required when the permit is revoked and reissued. However, there may be some instances, such as a corporate-subsidiary transfer, where the modification would require no substantive changes in permit conditions but merely an updating to reflect the identity of the new owner or operator. In these cases, the transfer could be processed as a minor modification under § 122.17(d) if the Director receives an agreement for transfer of permit responsibilities. EPA believes that such an agreement is necessary even in these situations in order to assure adequate continuity of permit responsibilities.

This provision does not cover transfers of facilities under RCRA interim status. Provisions for such transfers may be found in § 122.23.

Because permittees need to know what provisions apply to permit transfers, final § 122.7(l)(3) now states that "this permit is not transferable to any person except after notice to the Director." The Director shall then proceed under the provisions of § 122.14.

Under this scheme, transfer in itself will no longer be a cause for termination of a permit. Rather, the permit will either be automatically transferred; transferred after a required modification or revocation and reissuance; or the permit will not be transferred but will remain with the prior owner or operator of the facility, and the new owner or operator of the facility will be subject to enforcement for operating without a permit.

EPA believes that in some instances final § 122.14 may be less burdensome than would have been possible in the proposal. For example, in the proposal an agreement for transfer of permit responsibilities was necessary in every instance of a transfer of a RCRA permit. In the final version, this is not necessary unless the transfer is to be handled as a minor modification. Also, in the proposed provision for automatic transfers, a new application was required whenever the Director objected to the transfer. Under these final

regulations, a permit may be modified without requiring a new application.

§ 122.15 Modification or revocation and reissuance of permits.

EPA has rewritten the permit modification section in two ways as part of the effort (see also §§ 122.9 and 122.13 and accompanying preamble) to provide greater certainty to permittees during the period when they hold permits and thereby make it easier to make business decisions and obtain financing. First, EPA has narrowed the circumstances under which a permit may be modified during its fixed term. Second, EPA has narrowed the scope of the changes that can be made when a permit of fixed but not lifetime duration is reopened during its term.

(1) The causes for modification have been narrowed. Normally, a permit will not be modified during its term if the facility is in compliance with the conditions of the permit. The list of causes for modifying a permit is narrow; and absent cause from this list, the permit cannot be modified. (However, State programs may always be more stringent than these requirements and an approved State program could provide additional causes.) In addition, certain "minor" modifications (§ 122.17) can be made, with the consent of the permittee, absent cause from the list in § 122.15.

First (see § 122.15(a)(1), proposed § 122.9(e)(1)), a permitted facility may change its operations in ways that were not contemplated in the original permit but which require regulation. This is one instance where compliance with a permit should not insulate the permit from modification. While in many cases a change in operations will violate the permit (giving rise to cause for modification under § 122.15(b)(1)), in other cases activities not limited in the permit will arise after the permit was issued. If permits could not be modified for such reasons then permits would have to be written to prohibit all activities not specifically limited in the permit. With such a requirement permittees would never be sure what the scope of permissible activities is under their permits. (State 404 permits, however, authorize only a specific activity for what is normally a short period of time and activities not authorized in the permit are prohibited; see § 123.97(b).) For NPDES, see the related causes for modification discussed below under § 122.15(a)(5)(viii) and (ix). Permittees have a duty to report all changes in the physical facility, and all other changes that may result in noncompliance, under § 122.7(l).

1. The owner and operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and

2a. A continuous on-site, physical construction program has begun or

2b. The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for construction of the facility to be completed within a reasonable time.

It is intended that the continuous on-site, physical construction program include physical site preparation. Design and other non-physical and non-site specific preparatory activities alone would not constitute on-site, physical construction. Furthermore it is intended that structures or equipment constructed from a permanent part of the facility that are to be used in its own operation, and represent a substantial commitment to construction.

In general if the amount an owner or operator must pay to cancel construction agreements or stop construction exceeds 10% of the total project cost, the loss would be deemed "substantial". Options to purchase or contracts for feasibility, engineering, and design studies would not constitute contractual obligations.

EPA believes this provides an equitable and reasonable approach to facilities constructed prior to the promulgation of the RCRA regulations. A substantial commitment of resources by owners and operators in a period of uncertainty to provide for treatment, storage, and disposal of hazardous waste will not be penalized. All facility construction commenced after promulgation of the new RCRA hazardous waste regulations would be subject to the RCRA permit process.

(2) *Changes in the Facility During Interim Status.* A number of commenters raised questions as to whether a facility could be modified during interim status. Comments stated that facilities should be able to make such modifications during interim status as are: (1) needed to keep the facility in operations, (2) necessary in order to meet the section 3004 standards or (3) needed to insure full beneficial use of the facility. On the other hand is the concern that allowing such changes during interim status would provide a loophole to avoid the requirements for obtaining a permit (as would occur if the modification of an existing HWM facility was tantamount to construction of a new facility), or for submitting less major, but significant changes to a facility to the kind of review and cross-check that a fully effective permit would provide. In response to these comments the final

regulation sets forth the following approach to making changes in a facility during the interim status period.

Part A of the permit application basically defines the process which will be used for treatment, storage or disposal of hazardous wastes and the hazardous wastes to be handled at a facility during interim status. In order to make any changes in such items the owner or operator of the facility must submit a revised Part A permit application and in some instances such changes must be approved by the Director.

New hazardous wastes (not previously specified on the Part A permit application) may be handled if the application is revised prior to such a change. No approval of the Director is required in this instance. Furthermore additional quantities of hazardous waste (already specified on the permit application) may be handled at any time within the design capacity of the facility without revising the application.

Increases in design capacity or changes in the processes used at the facility may only be made upon submittal of a revised application and with Director approval. The Director may approve additional processes if he or she finds that they (1) are necessary because of an emergency situation; or (2) are necessary to comply with Federal, State or local laws. The Director may approve increases in the design capacity of the facility if he or she finds that this is necessary because of lack of available capacity at other facilities. In any of these instances the Director may inspect a facility prior to or after such a change and may disapprove a change that would result in a violation of the interim status standards.

Changes in ownership and operational control of a facility may only occur during the interim status period in accordance with the requirements of 40 CFR § 265.150. A revised Part A permit application is required 90 days prior to such a change so that the Director has an opportunity to determine whether such requirements are completed.

Finally, EPA will prohibit any changes to an existing facility during interim status which are so extensive as to amount to the construction of a new facility. Failure to do this would allow avoidance of the requirement that all sources which are in fact physically new go through the full permitting process before construction begins. For this purpose EPA has adopted the practice under the Clean Air Act of designating as a new facility any change that when completed would amount to more than 50% of the capital value of the facility.

The Agency believes that this approach to changes in a facility during interim status will allow reasonable modifications in existing facilities without creating a situation in which the requirements for obtaining a permit are nullified.

EPA believes that this approach represents a legally acceptable resolution to a question which the statute does not address.

Nothing in the statute provides that applicants are bound by their Part A application, and it has never been the practice when Congress requires existing facilities to come under permits to freeze their present patterns of operations until final agency action. Any such rule could have drastic consequences which Congress presumably did not intend, particularly since Congress explicitly recognized that several years might be necessary to process all RCRA permit applications. In addition, those consequences would be predominantly suffered by facilities which, because they are small or well operated, are low on the priority list of the permitting authority. To require affirmative action before such facilities could change their operations would not only be burdensome on them, but would divert the resources of the permitting agency toward such facilities and away from more urgent tasks.

At the same time, EPA does not believe that facilities which have not yet received a RCRA permit should be completely free of specific regulatory requirements. The existence of interim status standards grounded in the statute indicate that Congress intended such facilities to be subject to at least the outlines of the general RCRA scheme. In addition, the requirement to file a permit application as the price of interim status can only mean that the permitting agency can require updating of that application if it ceases to be accurate. Where the updated application indicated that the facility might cease to conform to the general RCRA regulatory scheme, EPA would be free to take enforcement action as these regulations provide.

(3) *Commencement and Termination of Interim Status.* The proposal provided that interim status began at the time the Director advised the applicant that his or her Part A application had been received. Commenters pointed out that under section 3005(e) of RCRA interim status is not granted by the Director, but begins at the time an application is submitted (and after notification under section 3010). EPA agrees with this interpretation and did not intend a different effect under these regulations. The acknowledgment was not an

Exhibit 5(c)

Attachment to FOIA Online No. EPA-HQ-2017-003409

EPA Instructions, Series 8700 Forms (excerpted).



United States
Environmental Protection
Agency

January 2015

RCRA Hazardous Waste Part A Permit Application

Instructions and Form

EPA Form 8700-23
(OMB #2050-0024; Expires 01/31/2017)

* * * *

[pages omitted]

INSTRUCTIONS FOR FILLING OUT THE RCRA SUBTITLE C SITE IDENTIFICATION FORM (SITE ID FORM)

WHO MUST SUBMIT THIS FORM

All sites required to submit any of the following must submit the RCRA Subtitle C Site Identification Form (Site ID Form):

- Initial Notification of Regulated Waste Activity;
- Subsequent Notification of Regulated Waste Activity;
- First RCRA Hazardous Waste Part A Permit Application;
- Revised RCRA Hazardous Waste Part A Permit Application;
- Hazardous Waste Report;
- Notification for eligible academic entities opting into or withdrawing from managing laboratory hazardous wastes pursuant to 40 CFR Part 262 Subpart K (if in an eligible State); and
- Notification for facilities managing hazardous secondary material pursuant to 40 CFR 260.42 (if in an eligible State).

Some States have requirements in addition to, or that are different from the Federal requirements. To obtain the appropriate forms or ask questions, refer to a list of contacts at:

<http://www.epa.gov/epawaste/inforesources/data/form8700/contact.pdf>.

The list will tell you whether the Federal form or a State form is used, who to contact, and where to mail the completed form.

PURPOSE OF THIS FORM

The Site ID Form provides site-specific information about your facility and is used to obtain an EPA Identification Number under the RCRA Program. The Site ID Form also provides updated information for items that have changed at your site and verifies the information for those items that remain unchanged.

HOW TO FILL OUT THIS FORM

Complete the following Site ID Form items, as applicable to your facility:

- Item 1 - your reason for submitting the form
- Item 2 - your site's EPA Identification Number
- Item 3 - the name of your site
- Item 4 - the physical location of your site
- Item 5 - the land type of your site

- Item 6 - the North American Industry Classification System (NAICS) code(s) for your site
- Item 7 - the mailing address for your site
- Item 8 - name, title, address, phone number, fax, and e-mail of a contact person at your site
- Item 9 - name, address, and phone number of the legal owner(s) and name of the operator(s) of your site
- Item 10 - your site's regulated waste activities (enter all that apply)
- Item 11 - the description of hazardous waste
- Item 12 - your site's hazardous secondary material activity, if you manage any
- Item 13 - additional comments on Items 1 – 12
- Item 14 - certification that the information you provided throughout the form is truthful, accurate, and complete
- Addendum to the Site Identification Form – notification of hazardous secondary material activity

Type or print, in black ink, all items except the Signature box in Item 14. In Item 14, provide the required ink signatures. Signatures must be original. Stamped or photocopied signatures are not acceptable. Enter your site's EPA Identification Number in the top left-hand corner on all pages of the form; for an Initial Notification for this site, leave the EPA identification Number blank. Use Item 13 – Comments to clarify or provide additional information for any entry. When entering information in the comments section, enter the item number and box letter to which the comment refers. If you must use additional sheets for comments, enter your site's EPA Identification Number in the top left-hand corner of each sheet.

ITEM-BY-ITEM INSTRUCTIONS

ITEM 1 – REASON FOR SUBMITTAL

Place an “X” in the appropriate box(es) to indicate whether this form is your Initial Notification (i.e., this is your first time submitting site identification information / to obtain an EPA Identification Number for this location); a Subsequent Notification (to update your site identification information); a component of a First or a Revised Hazardous Waste Part A Permit Application; or a component of the Hazardous Waste Report.

TO PROVIDE AN INITIAL NOTIFICATION (FIRST TIME SUBMITTING SITE IDENTIFICATION INFORMATION / TO OBTAIN AN EPA IDENTIFICATION NUMBER FOR THIS LOCATION)

- If your waste activity is regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) and the rules promulgated pursuant to the Act (specifically 40 CFR Parts 260-299), you must submit this form to notify the appropriate State or EPA Regional Office of your regulated waste activities and obtain an EPA Identification Number.
- If you are an eligible academic entity opting into 40 CFR Part 262, Subpart K for managing laboratory hazardous wastes **AND** you have never before submitted site identification information, you must submit this form to notify the appropriate State or EPA Regional Office of your activities. Note: You must check with your State to determine if you are eligible to manage laboratory hazardous waste pursuant to 40 CFR Part 262, Subpart K in order for you to notify.

- If you will begin managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23), (24), or (25) **AND** you have never before submitted site identification information, you must submit this form, pursuant to 40 CFR 260.42, to notify the appropriate State or EPA Regional Office of your activities. Note: You must check with your State to determine if you are eligible to manage hazardous secondary material under these exclusions in order for you to notify.

TO PROVIDE A SUBSEQUENT NOTIFICATION (TO UPDATE SITE IDENTIFICATION INFORMATION FOR THIS LOCATION)

- You must use this form to submit a subsequent notification if your site already has an EPA Identification Number and you wish to change information (e.g., generator status, new site contact person, new owner, new mailing address, new regulated waste activity, etc.).
- If you have previously submitted site identification information and are an eligible academic entity opting into or withdrawing from 40 CFR Part 262, Subpart K for managing laboratory hazardous wastes, you must use this form. Note: You must check with your State to determine if you are eligible to manage laboratory hazardous waste pursuant to 40 CFR Part 262, Subpart K in order for you to notify.
- If you have previously submitted site identification information and are notifying (or re-notifying) that you will begin managing, are managing, or have stopped managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23), (24), or (25), you must submit this form, pursuant to 40 CFR 260.42, to notify the appropriate State or Regional Office of your activities. Note: You must check with your State to determine if you are eligible to manage hazardous secondary material under these exclusions in order for you to notify.

AS A COMPONENT OF A FIRST RCRA HAZARDOUS WASTE PART A PERMIT APPLICATION

If your site is planning to treat, store, or dispose of hazardous waste on-site in a unit that is not exempt from obtaining a hazardous waste permit, you must submit this form as part of the Part A Permit Application. Also, if the activity at this site (treatment, storage, or disposal) became newly regulated under RCRA Subtitle C and the rules promulgated pursuant to the Act (specifically 40 CFR Parts 260-299), you must submit this form as part of the Part A Permit Application.

AS A COMPONENT OF A REVISED RCRA HAZARDOUS WASTE PART A PERMIT APPLICATION

If you must submit a Revised Part A Permit Application to reflect changes that have occurred at your site, you must submit this form as part of your Revised Part A Permit Application. Examples of site changes requiring a Revised Part A Permit Application include managing new wastes not identified in the first submission of the form or changes to existing waste treatment processes. When submitting a Revised Part A Permit Application, please include the Amendment Number in the appropriate space.

AS A COMPONENT OF THE HAZARDOUS WASTE REPORT (IF MARKED, SEE SUB-BULLET BELOW)

If you are required to submit a Hazardous Waste Report indicating the amount of hazardous waste you generate, treat, recycle, dispose, ship off-site, or receive from off-site, you must fill out this form. A Site ID Form submitted with a Hazardous Waste Report is equivalent to a Subsequent Notification.

SITE WAS A TSD FACILITY AND/OR GENERATOR OF \geq 1,000 KG OF HAZARDOUS WASTE, > 1 KG OF ACUTE HAZARDOUS WASTE, OR > 100 KG OF ACUTE HAZARDOUS WASTE SPILL CLEANUP IN ONE OR MORE MONTHS OF THE REPORT YEAR (OR STATE EQUIVALENT LQG REGULATIONS)

The purpose of this check box is to distinguish between sites that meet the criteria and are required to file a report versus those who file voluntarily or by State-only requirement but were not a treatment, storage, and disposal facility (TSDF) or a Large Quantity Generator (LQG) during the report year. Sites required to file the report should place an "X" in this box, while non-LQG/TSD sites should not. For more information about who must file a report, refer to "WHO MUST FILE THE 2015 HAZARDOUS WASTE REPORT" section of the 2015 Hazardous Waste Report Instructions and Form booklet.

ITEM 2 – SITE EPA ID NUMBER

Provide your EPA Identification Number in Item 2 **for this site**. The first two characters of the EPA Identification Number must be a valid State postal code. Be sure to include your EPA Identification number at the top of all pages of the form (as well as on any attachments to the Site ID Form).

NOTE

If this is your Initial Notification for this site, leave the EPA Identification Number blank and proceed to Item 3.

ITEM 3 AND 4 – SITE NAME AND LOCATION

Provide the legal name of your site and a complete location address. Please note that the address you give for Item 4, Site Location, must be a physical address, not a post office box or route number. Only foreign hazardous waste transporters, with their headquarters located outside the U.S., may provide a Site Location Country outside of the U.S.

NOTE

A new EPA Identification Number is **required** if you change the location of your site.

ITEM 5 – SITE LAND TYPE

Place an “X” in the box that **best describes** the land type of your site. Select only one type: Private, County, District, Federal, Tribal (see below), Municipal, State, or Other. If your site’s Land Type could be described as Municipal **and** another Land Type, such as County, District, or Tribal, do not place an “X” in Municipal. Instead, choose the other appropriate Land Type. (For example, if your site’s Land Type is both Municipal and County, you would place an “X” in the box for County.) You may explain this in Item 13 – Comments.

Tribal - A member of one of the tribes/entities on the list of Federally recognized American Indian tribes and Alaskan Native entities located at: <http://www.epa.gov/tribal/wherelyoulive/tribes-a-z.htm>.

ITEM 6 – NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE(S)

Box A must be completed. Completing Boxes B-D is recommended, if applicable.

BOX A

Provide the North American Industry Classification System (NAICS) code that best describes your site’s primary business production process for your products or services. Referencing the latest NAICS codes, use the 6-digit code (most specific description) if available for your business; if not, use the 5-digit code; do not enter any four (4) or less digit codes.

BOXES B – D

List other NAICS codes that describe the other business production processes for your site. Referencing the latest NAICS codes, use the 6-digit code (most specific description) if available for your business; if not, use the 5-digit code; do not enter any four (4) or less digit codes.

Check with your accounting or business staff to determine your NAICS code(s); the NAICS code is used in tax reporting and other business reports. You can obtain additional information about NAICS codes at <http://www.census.gov/eos/www/naics>.

NOTE

Significant changes were made to the NAICS codes in 2012. All sites should confirm their NAICS codes in the new 2012 NAICS code table prior to completing Item 6 – NAICS Codes. You can obtain additional information about the 2012 NAICS codes at <http://www.census.gov/eos/www/naics>.

ITEM 7 – SITE MAILING ADDRESS

Please enter the Site Mailing Address. If the Mailing Address and the Location of Site (Item 4) are the same, you can enter “Same as Item 4” in the box for Item 7.

ITEM 8 – SITE CONTACT PERSON

Enter the name, title, business address, telephone number, extension, fax number, and e-mail address of the individual who should be contacted regarding the information submitted in the Site ID Form. A Subsequent Notification is recommended when the Site Contact Person changes. **Do not** enter other contact persons here; if there are other persons, who may be contacted about this submission, list them and their other contact information in Item 13 – Comments. If the person completing the Hazardous Waste Report is not the primary site RCRA hazardous waste contact, enter the primary site RCRA hazardous waste contact here and add the contact information for the person completing the Hazardous Waste Report in Item 13 – Comments.

NOTE

This is NOT the Facility Permit Contact information. The Facility Permit Contact information should be entered on the RCRA Hazardous Waste Part A Permit Application.

ITEM 9 – LEGAL OWNER AND OPERATOR OF THE SITE

This section should be used to indicate all owners and operators of this site.

A. NAME OF SITE'S LEGAL OWNER

Provide the name of your site's legal owner(s). This includes owner(s) of the building(s) and land. Please review these definitions:

Owner – The person who owns a RCRA site or part of a RCRA site. Note: This includes the owner(s) of the building(s) and/or land. This may be an individual, company, or business name. See **Person**.

Person – An individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

DATE BECAME AN OWNER

Indicate the date on which the above entity became the owner of your site. Enter dates as in this example: For April 22, 2015, enter 04/22/2015. This is a required field and a date must be reported.

OWNER TYPE

Place an "X" in the box that **best describes** the owner type for your site. Select only one type: Private, County, District, Federal, Tribal (see below), Municipal, State, or Other. If your site's Owner Type could be described as Municipal **and** another Owner Type, such as County, District, or Tribal, do not place an "X" in Municipal. Instead, choose the other appropriate Owner Type. (For example, if your site's Owner Type is both Municipal and County, you would place an "X" in the box for County.) You may explain this in Item 13 – Comments.

Tribal - A member of one of the tribes/entities on the list of Federally recognized American Indian tribes and Alaskan Native entities located at: <http://www.epa.gov/tribal/wherelyoulive/tribes-a-z.htm>.

LEGAL OWNER ADDRESS

Enter the address of the legal owner. If the address and the Location of Site (Item 4) are the same, you can enter "Same as Item 4" in the box for Item 9.

Use the Comments section in Item 13 to list any additional owners, their names, the dates they became owners, owner type, mailing address, and which owner(s), if any, are no longer owners since your last submission of this form. If necessary, attach a separate sheet of paper. Remember to enter your site's EPA Identification Number in the top left-hand corner of each sheet.

B. NAME OF SITE'S OPERATOR

Provide the name of your site's operator. Please review these definitions:

Operator – The person responsible for the overall operation of a RCRA site. Note: This is the legal entity which controls the RCRA site operation rather than the plant or site manager. This is usually a company or business name, but may be an individual. See **Person**.

Person – An individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

DATE BECAME AN OPERATOR

Indicate the date on which the above entity became the operator of your site. Enter dates as in this example: For April 22, 2015, enter 04/22/2015. This is a required field and a date must be reported.

OPERATOR TYPE

Place an "X" in the box that **best describes** the operator type for your site. Select only one type: Private, County, District, Federal, Tribal (see below), Municipal, State, or Other. If your site's Operator Type could be described as Municipal **and** another Operator Type, such as County, District, or Tribal, do not place an "X" in Municipal. Instead, choose the other appropriate Operator Type. (For example, if your site's Operator Type is both Municipal and County, you would place an "X" in the box for County.) You may explain this in Item 13 – Comments.

Tribal - A member of one of the tribes/entities on the list of Federally recognized American Indian tribes and Alaskan Native entities located at: <http://www.epa.gov/tribal/wherelyoulive/tribes-a-z.htm>.

Use the Comments section in Item 13 to list any additional operators, their names, the dates they became operators, operator type, mailing address, and which operator(s), if any, are no longer operators since your last submission of this form. If necessary, attach a separate sheet of paper. Remember to enter your site's EPA Identification Number in the top left-hand corner of each sheet.

NOTE

A subsequent notification is recommended when the owner or operator of a site changes. Because an EPA Identification Number is site-specific, the new owner will keep the existing EPA Identification Number for that location. If your business moves to another location, the owner or operator must notify the State or EPA Regional Office of this change. Since your business has changed locations, a new EPA Identification Number will be assigned.

ITEM 10 – TYPE OF REGULATED WASTE ACTIVITY

Mark box “Yes” or box “No” as appropriate for all **current** activities (**as of the date submitting the form**) at this site; complete any additional boxes as instructed. **Current** activities mean activities that are in effect when the form is submitted or those that the site plans to begin after EPA Identification Number assignment. The information you provide in Item 10 will be considered current as of the date you certify the form. If the site is no longer a generator as of the date you certify the form, you should mark the “No” (not a generator) box for Generator of Hazardous Waste.

NOTE

You must report your current regulated waste activities as of the date of submitting the Site ID Form. For the Hazardous Waste Report, your current status may be different than the status requiring the report during the calendar year.

A. HAZARDOUS WASTE ACTIVITIES (COMPLETE ALL PARTS 1 THROUGH 10)**NOTE**

Listed below are the Federal generator status definitions. If, however, the State where your site is located has definitions different from the Federal definitions, you must use the State definitions.

* * * *

[pages omitted]