



*California Environmental Protection Agency
Department of Toxic Substances Control
Hazardous Waste Management Program*

PERMITTING DIVISION ADVISORY

Advisory No. PA 01-01

(Supersedes Management Memo EO-94-003-MM)

Date of Issuance: June 7, 2001

Title: Delayed Closure of Hazardous Waste Management Units at Permitted and Interim Status Hazardous Waste Facilities that Convert to Generator Accumulation

Purpose: To provide guidance, to be applied on a case-by-case basis, regarding the procedure for delayed closure of hazardous waste management units that convert to generator accumulation only. The implementation of delayed closure is intended to be limited to facilities that cannot implement closure without shutting down the facility or seriously disrupting the facility's operations.

Background:

In 1994, the Department of Toxic Substances Control (DTSC) developed Management Memo # EO-94-003-MM ("Guidance for Delayed Closure of Hazardous Waste Management Units at Permitted and Interim Status Hazardous Waste Facilities") which, in effect, mirrored the text in Federal Register, 57 FR 37254 (August 18, 1992). According to the Federal Register, closure requirements are triggered by the final receipt of hazardous wastes, not conversion to generator status, in accordance with 40 CFR section 264.113(a) or 265.113(a). The Federal Register pointed out that in some cases, closure of a storage or treatment tank that converted to storing hazardous waste for 90 days or less in accordance with 40 CFR section 262.34 (generator accumulation) would result in shutdown or serious disruption of facility operations. In these cases, a treatment or storage facility could delay closure until the facility ceased using the unit as a generator for hazardous waste accumulation. The facility seeking delayed closure needed to meet financial responsibility (closure cost assurance and liability coverage) requirements and to close in accordance with the requirements for a permitted or interim status facility. DTSC, in accordance with Management Memo # EO-94-003-MM, required any facility seeking delayed closure to obtain a variance allowing a permitted or interim status facility (or unit) to delay closure of the unit until the facility ceased storing hazardous waste in the unit(s) or the variance expired. The variances required that during the delayed closure period, the owner or operator needed to comply with the technical and financial responsibility provisions found in Title 22, California Code of Regulations (CCR), Division 4.5, Chapter 14 (permitted facilities) or Chapter 15 (interim status facilities). The Management Memo also stated that the variance relieved the delayed closure facility from the annual facility fee requirement during the delayed closure period. There have been numerous regulatory changes affecting the subject matter of Management Memo # EO-94-003-MM.

Advisory:

This permit advisory is intended to provide current guidance on the topic of delayed closure for a facility that converts an authorized hazardous waste storage or treatment unit to generator accumulation only. The implementation of delayed closure is intended to be limited to facilities that cannot implement closure without shutting down the facility or seriously disrupting the facility's operations.

The procedure for delayed closure, to be applied on a case-by-case basis, is as follows:

1. The permit writer should evaluate whether the delayed closure procedure is applicable to the facility. Delayed closure is limited to permitted or interim status facilities that convert authorized storage or treatment unit(s) to generator accumulation only and would need to shut down or face significant disruption of the facility's core operations in order to conduct closure.
2. The facility may submit a request, to the Permitting Branch Chief, for a Class I* permit modification (Class I permit modification that requires prior DTSC approval) for a change of the closure schedule of the unit, in accordance with Title 22, CCR, section 66270.42. The permit modification request should have sufficient evidence for DTSC to evaluate the facility's claim that closure would result in facility shutdown or serious disruption of its operations. In general, the delayed closure should be for a period of two years or less, depending upon facility circumstances and site-specific conditions. Upon completion of the two-year time period, the facility may request a one-time extension which shall be for another period of up to two years or the remaining term of the permit, whichever is shorter. The extension request must demonstrate why additional time is required before closure is implemented.
3. The facility should provide the following items with its request for the permit modification for the delayed closure or for any subsequent extension,: a) an updated closure cost estimate and financial assurance for closure (and post-closure cost estimate and financial assurance, as applicable); b) demonstration of liability coverage; c) current certified professional engineer's certifications for assessment of tank system integrity in accordance with Title 22, CCR, section 66264.191(f), or 66265.191(f) for interim status facilities, and certification of the adequacy of secondary containment subject to the delayed closure in accordance with Title 22, CCR, section 66264.175(c), or 66265.175(c) for interim status facilities; and d) demonstration that the proposed delayed closure will not affect the facility's ability or responsibility to fully comply with all applicable statutory and regulatory requirements, and that the proposed delayed closure will not affect any required or ongoing investigation or remediation of any release of hazardous waste at or from the facility. The updated closure cost estimate (and post-closure cost estimate, as applicable) should consider results of the sampling in the vicinity of the delayed closure unit(s) and other pertinent available data. As of the date of this permit advisory, RACER is the mechanism used to evaluate a facility's closure and post-closure cost estimates.
4. The facility may also be required, prior to DTSC's decision on or extension of the permit modification for delayed closure, to conduct and/or provide results of environmental sampling, similar to a Preliminary Endangerment Assessment (PEA), in the vicinity of the proposed delayed closure unit(s) to evaluate whether there is any hazardous waste

contamination. If the data indicate there is or has been a release to the environment, the request for delayed closure may be denied and/or the facility may need to conduct corrective action. The facility will be notified that the data gathered during environmental sampling may be used as part of the evaluation when DTSC proceeds with corrective action assessment at the site.

5. Upon expiration of the term of the permit modification or any extension, closure must be completed in accordance with the provisions of Title 22, CCR Division 4.5, Chapter 14 (permitted facilities) or Chapter 15 (interim status facilities).
6. In accordance with Health and Safety Code (HSC) section 25205.2(d)(2), a facility that has an approved delayed closure for all interim status or permitted units is required to pay facility fees for one additional reporting period immediately after the facility converts to generator accumulation-only status. For a delayed closure facility with other units that continue to be operated for treatment, storage or disposal subject to the facility's hazardous waste permit or interim status, the facility fees may be reduced accordingly.
7. A permitted or interim status facility that has delayed closure remains subject to the provisions of Title 22, CCR Division 4.5, Chapter 14 (permitted facilities) or Chapter 15 (interim status facilities), until DTSC approves the certification of closure. A facility that has delayed closure is subject to compliance inspections by DTSC or local agencies. During the delayed closure period, DTSC should evaluate the facility's closure plan to ensure its adequacy for technical details and the financial assurance mechanism, so that the closure process may be initiated promptly when the permit modification for delayed closure expires, and the closure may be adequately completed in accordance with the closure plan.
8. A facility that has a variance for delayed closure that was issued in accordance with former management memo #EO-94-003-MM may continue operation in accordance with the variance until the variance expires. Upon expiration, the facility must conduct closure in accordance with the provisions of Title 22, CCR Division 4.5, Chapter 14 (permitted facilities) or Chapter 15 (interim status facilities) or apply for a one-time reissuance of the variance.
9. DTSC shall comply with the requirements of the California Environmental Quality Act (CEQA) for all discretionary decisions pertaining to delayed closure. Actions subject to CEQA include, but are not limited to, approval of a permit modification for delayed closure and closure plan approval.

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/signed by/
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