

April 30, 2004

SUBJECT: Clarification of 40 CFR 258.21, (Daily) Cover Material Requirements.

FROM: Robert Springer, Director /s/
Office of Solid Waste

TO: Jeff Scott, Director
Waste Management Division
USEPA Region IX

You recently raised some questions about the daily cover material requirements at municipal landfills which operate on a continuous basis, specifically, regarding landfills that do not shut down at the end of each day. The federal regulations at 40 CFR §258.21 require that the owner/operator place daily cover on the disposed solid waste at the end of each operating day or at more frequent intervals if necessary. We received extensive comments on the proposed frequency for the daily cover requirement. Many rural communities argued for a weekly cover requirement. Others suggested that we design the daily cover requirements based on the length of time the waste is exposed (e.g., 6 to 24 hours). In the final rule, we retained the proposed language regarding cover placement at the end of each operating day. [The final rule can be found at 56 Fed. Reg. 50978, 51050-51 (Oct. 9, 1991) and the later clarification at 62 Fed. Reg. 40709-10 (July 29, 1997).]

You have mentioned an issue where large commercial landfills operate continuously over a number of days. These large commercial landfills argue that they operate “around the clock” and therefore their “operating day” is something beyond a 24-hour period. It is our view, however, that the Federal regulations at 40 CFR §258.21 did not contemplate an “operating day” longer than 24 hours. Any waste placed in a landfill must be covered with cover material within 24 hours of placement, regardless of the operating hours of the landfill.

The use of the last load of municipal waste as a daily cover material, in our view, does not meet the performance standard in the regulations. The regulations at 40 CFR §258.21 require that “all MSWLF units must cover disposed solid waste with six inches of earthen material (or approved alternative material) at the end of each operating day or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter and scavenging.”

The Federal daily cover requirements apply nationally, including in States with approved programs. Owners and operators of MSWLF units in approved States, therefore, must comply with the Federal daily cover requirement, even if the State requirements appear to differ. However, under the Federal rules, approved States may grant temporary waivers from the daily cover requirements if the owner or operator demonstrates that there are extreme climatic conditions that make meeting such requirements impractical, and they may also establish alternative frequencies for daily cover for MSWLFs that dispose of 20 tons of municipal waste per day or less. (See §258.21(c) and (d)).