

Memorandum

Florida Department of Environmental Protection

TO: District Waste Program Administrators
District Solid Waste Engineers

FROM: Richard B. Tedder, Administrator
Solid Waste Section

Chris McGuire, Senior Assistant General Counsel
Office of General Counsel

DATE: November 16, 2001

SUBJECT: Operator and Spotter Training Requirements, Part 2

On September 13, 2001, we circulated a memo concerning operator and spotter training requirements. At the Annual Workshop in St. Augustine we had a discussion about some ambiguous interpretations of our rules, and came to a agreement about how the rules should be read. Since then, however, we have done a more thorough legal analysis, and have come to a somewhat different conclusion.

Rule 62-701.320(15)(d) specifies that the training requirements for operators and spotters at waste processing facilities, and the training requirements for spotters at land clearing debris disposal facilities, shall be effective on July 1, 2001. In our September 13 memo, we said that these training requirements would be enforced only after December 1, 2001. However, Rule 62-701.710(1)(b) states that a person operating a materials recovery facility (MRF) or transfer station under a permits issued prior to May 27, 2001, may continue to operate that facility under the terms of the existing permit until it expires. Since the existing permits for transfer stations and materials recovery facilities did not require trained operators or spotters, there has been some confusion over how to interpret these two apparently conflicting rules.

We originally thought that Rule 62-701.320(15)(d), because it specifically refers to training requirements for operators and spotters at waste processing facilities being in effect on a particular date, might be controlling in this case. However, this rule refers to operators and spotters at waste processing facilities. An existing MRF or transfer station does not have to meet the requirements applicable to waste processing facilities until the time for permit renewal, and thus is not regulated as a waste processing facility while it operates under its existing permit. Therefore, the training requirements for waste processing facilities cannot possibly apply, since the existing facility is not considered a waste processing facility.

It is therefore our position that a waste processing facility which applies for a new permit after December 1, as well as a MRF or transfer station which applies for a waste processing facility permit after December 1, must meet the new training requirements. However, existing MRFs and transfer stations are not required to meet the new training requirements until they become waste processing facilities, at the time of permit renewal or modification. We recognize that this is a different interpretation than you have been given in the past, and for that we apologize. However, we also feel that this is the most

legally defensible position to take, and since we have not yet approved courses for all of the training that will be required, this is also a practical solution.

Caveat

This guidance memorandum does not constitute a policy or rule of the Department. It is intended solely as internal guidance to District permit review staff, and is not intended to create additional requirements for the regulated community or to affect the rights of substantially affected parties to contest any agency decision. Please do not cite any part of this memorandum as though it were a standard, rule, or requirement.