Casey Coles
Hogan and Hartson, L.L.P.
555 Thirteenth Street, NW
Washington. D.C. 20004

Dear Ms. Coles:

This letter is in response to your telephone inquiry of June 17, 2003, to James Michael of my staff, in which you requested that the Office of Solid Waste (OSW) affirm that the April 10, 1990 letter from Sylvia K. Lowrance, Director, Office of Solid Waste to Richard Stoll of Freedman, Levy, Kroll and Simonds is OSW's policy on the management of rinsate from empty containers.

Specifically, you asked that OSW affirm that the April 10, 1990 letter supercedes two previously written letters dated on December 12, 1985 and June 5, 1989. The December 1985 and June 1989 letters state that rinse waters from empty containers are exempt from Subtitle C regulation if they do not exhibit one or more of the characteristics of hazardous waste (i.e., ignitability, toxicity, reactivity or corrosivity). The April 1990 letter states that rinse water from an "empty" container is exempt from Subtitle C regulation, including the requirement to determine whether the rinse water exhibits a hazardous characteristic under Part 261 Subpart C. After a close review of the record, the Office of Solid Waste today is rescinding that portion of the April 1990 letter.

Even though rinse water from an "empty" container may often times be non-hazardous, 40 CFR 261.7 does not exempt rinse water from Subtitle C regulation because rinse water is not a waste "remaining in" an "empty" container. Indeed, while 40 CFR 261.7 clearly exempts residue remaining in an "empty" container from Subtitle C regulation, the Agency also has made it clear that when residue is removed from an "empty" container the residue is subject to full regulation under Subtitle C if the removal or subsequent management of the residue generates a new hazardous waste that exhibits any of the characteristics identified in Part 261, Subpart C (see 45 FR 78529, November 25, 1980, where it states "[C]ontainer cleaning facilities which handle only "empty" containers are not currently subject to regulation unless they generate a waste that meets one of the characteristics in Subpart D.").

Finally, it also should be noted that if the rinsing agent includes a solvent (or other chemical) that would be a listed hazardous waste when discarded, then the rinsate from an "empty" container would be considered a listed hazardous waste. This is not due to the nature of the waste being rinsed from the "empty" container, but rather, because of the nature of the rinsing agent.

Thank you for bringing this matter to our attention. If you have any further questions please do not hesitate to contact Robert Dellinger at (703) 308-8252.

Sincerely,

Robert Springer, Director
Office of Solid Waste

cc: Robert Dellinger, OSW
Katherine Nam, OGC