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

MEMORANDUM JUN 14 1990 OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: RCRA Waste Classification of Laboratory Standards

FROM: David Bussard, Director
Characterization and Assessment Division (OS-330)

TO: Howard Wilson, Manager
Environmental Compliance Program
Environmental Health and Safety Division (PM-273)

This is in response to your memorandum of March 1, 1990, in which you requested that we provide clarification for the classification of wastes generated in laboratories. Specifically, you presented examples relevant to the preparation of laboratory standards using substances regulated under 40 CFR 261.33(e) and (f) (the P and U lists).

1) QUESTION: In the preparation of performance evaluation (PE) samples containing P or U-listed chemicals, an aliquot of the sample is taken and diluted 100 - 1000 fold to a final volume of one liter of water or solvent before analysis. The first question related to this scenario is whether the PE sample is a commercial chemical product (CCP) or is eligible for exclusion as a sample. Second, if the PE sample is indeed considered a commercial chemical product, you inquired whether the dilution of the PE sample before analysis is considered "use."

For example, organic semi-volatile PE samples to be analyzed for SDWA and NPDES certification will contain toxaphene (P123). Would the disposal of excess analytical solution be considered P123, D015 (if over 0.5 mg/L), D002 (if pH < 2), or a combination of the above?

ANSWER: Such samples are regulated as commercial chemical products provided that they have only one active ingredient. In the example you provided, the formulation consists of water plus the CCP as the sole active ingredient and,

therefore, the excess analytical solution is correctly classified as EPA Hazardous Waste No. P123.

2) QUESTION: In the preparation of laboratory standards, P and U-listed chemicals are mixed with water, acids, bases, or solvents. The resulting standard solutions are disposed of when there is an excess, when they have exceeded their shelf life, or when they have been contaminated (not through use). The disposal of these waste standard solutions bring about several waste classification questions.

2A) QUESTION: Are these waste standard solutions P or U-listed wastes in cases in which the P/U listed solute is dissolved in water, acidic/basic solutions, organic solvents, or homogeneously mixed in an inert medium such as soil?

ANSWER: The answer in all these situations is "yes." Dissolving or diluting these chemical products to make laboratory standards (in lieu of buying such solutions) does not constitute use of these chemicals. The Federal Register notice which describes the sole active ingredient rule (§261.33(d)) refers to the fact that many of the compounds listed under §261.33(e) and (f) are frequently dissolved in solvents, preservatives, and the like, but this fact does not detract from the material's meeting the listing description (see 45 FR 78529, November 25, 1980). Assuming that there is a sole active ingredient (or, in this case, analyte), the mixtures you describe in your question meet the listing description in 40 CFR 261.33 even if the solvent(s) used are also listed in §261.33.

2B) QUESTION: If in the preparation of standards an acid or base is used as the solvent for a P or U-listed chemical and the final solution is corrosive, is the solution, upon disposal, D002 or D004 - D017 if it exceeds the EP Toxicity criteria, or a P/U-listed waste? For example, the atomic absorption analysis of arsenic requires the preparation of a standard with arsenic trioxide. Specifically, 1.32 g of As_2O_3 (P012) (analytical reagent grade) is dissolved in one liter of distilled water, and several milliliters of concentrated nitric acid are added for preservation. Would the correct waste classification be P012, D004, or D002 (if pH < 2) or a combination thereof?

ANSWER: This situation is similar to the previous question. The solution you describe definitely meets the listing description for P012. Even if the waste is classified as a listed waste, waste generators should furnish information regarding whether the waste also exhibits any hazardous waste characteristics. There are several reasons for this: 1) Safety of personnel at these facilities; 2) There are restrictions in §§264 and 265 regarding various characteristic wastes (e.g., reactivity and ignitability) in landfills or surface impoundments; and 3) The Land Disposal

Restrictions program requires such knowledge to comply with Part 268 standards. (See 55 FR 22520 - 22720, June 1, 1990.) Although Federal law does not require that all applicable waste codes be placed on the hazardous waste manifests, Land Disposal Restrictions regulations will require that all waste codes be reported for the purposes of meeting LDR provisions. (See 40 CFR 268.7.) In addition, many state agencies may have more stringent rules concerning proper manifesting of wastes in which listing and characteristic waste codes apply.

2C) QUESTION: In the preparation of quality control solutions, commercial chemical products (either in liquid or solid form) are dissolved in an organic solvent. Because the organic solvent is used for its solvent properties (i.e., to solubilize, mobilize, or dissolve other chemical substances), any excess or expired solutions should be disposed of with the spent solvent hazardous waste identification number. Is this correct?

For example, if a solution of 0.01 g aldrin (P004) and 0.01 g dieldrin (P037) dissolved in 100 mL of methanol is to be disposed of, would the waste be classified as F003 and P037 and P004? The methanol, in this case, is used to solubilize the pesticide constituents, and the waste, therefore, meets the spent solvent listing.

ANSWER: The above statements are NOT correct. The answer to these questions is just like the answer to question 2A. Assuming that there is only one active ingredient (i.e., analyte or solute), the excess or expired solutions should be given the applicable commercial chemical product hazardous waste identification number under §261.33 no matter how many solvents are used (even if the solvents themselves are listed in §261.33). In the above example, more than one active ingredient exists, therefore the solution does not meet any listing description at this time. Additionally, when a solvent is used to formulate a compound or product (such a CCP), neither the solvent nor the formulated product meets the listing description for spent solvents. (See 50 FR 53315, December 31, 1985.) The disposed solution would have to be tested for hazardous waste characteristics, and would probably fail the ignitability (D001) characteristic.

3) QUESTION: Laboratories prepare many reagents with P and U-listed chemicals. During the analysis of polychlorinated dibenzo-p-dioxins and dibenzofurans, a reagent containing methylene chloride/methanol/benzene (75:20:5) is used. Upon disposal of excess reagent, would the mixture be identified as U080 (methylene chloride/CCP), U154 (methanol/CCP), U019 (benzene/CCP), F002 (methylene chloride/solvent), F003 (methanol/solvent), or F005 (benzene/solvent)?

ANSWER: None of the above. If any one P or U-listed chemical is dissolved in this reagent for the purpose of analysis, the discarded unused reagent would carry the waste code of that particular solute. (See answers to 2A and 2C.) From the description of the reagent you provided above, the unused reagent would be hazardous only if it exhibits a hazardous characteristic. This particular reagent would probably exhibit the characteristic of ignitability (D001). Please note that this waste also would be EP toxic for benzene when the newly promulgated organic Toxicity Characteristic becomes effective in September, 1990.

Thank you for your inquiry. If you have any further questions, please contact Ron Josephson of my staff at 475-6715.

cc: Waste Management Division Directors, Regions I - X
Susan Bromm, OWPE (OS-520)

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

JUN 28 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Classification of Solvent and Commercial Chemical Product Waste Streams

FROM: Devereaux Barnes, Director
Characterization and Assessment Division (OS-330)

TO: Howard Wilson, Manager
Environmental Compliance Program
Environmental Health and Safety Division (PM-273F)

This memorandum is in response to an inquiry you sent to Ron Josephson of my staff, dated June 8, 1989, and to questions presented at a meeting on June 14, 1989. Specifically, you request a definitive classification of solvent-contaminated wastestreams in order to prepare a guidance document for EPA laboratories. We will answer each of your concerns point by point in order to ensure clarify.

1) During organic liquid-liquid extractions, solvents (e.g. methylene chloride) are used, which are minimally (<2%) soluble in water. Thus, after the extraction, the aqueous phase contains trace amounts of solvent. Does this aqueous phase need to be disposed of as F002 spent solvent, since the "before use" solvent concentration was greater than 10%?

The aqueous phase from this separation is considered to be analogous to a process stream which has become contaminated with solvent constituents; this waste is not a spent solvent stream and would therefore not be classified as F002.

2) In other analyses, the extraction of an organic analyte is performed with solvents contained only in the F003 listing, such as methanol. Should the aqueous waste be classified as F003 spent solvent even if it is not ignitable?

Again, the scope of the listing did not include aqueous process waste streams contaminated with solvent constituents. Therefore, the waste in this example would not be classified as F003.

3) In a memorandum dated December 6, 1988, the Agency states that solvent-contaminated aqueous streams resulting from liquid-liquid extractions are not spent solvent and need be managed as a hazardous waste only if they exhibit one of the four characteristics defined in 40 CFR 261.21 - 261.24. Is this still true and is this applicable to the above situations?

Yes. The memorandum you reference pertained to processes at a pharmaceutical production facility. However, sufficient analogies exist among these situations that the process waste interpretation may be used in these cases.

4) A laboratory buys a commercial chemical product in order to formulate standards for quality assurance (QA) purposes. The QA standards are then sent to other laboratories for analysis. If excess standard solutions existed which were not needed for analysis but need to be disposed, would these formulations be considered commercial chemical product wastes under 40 CFR 261.33 (assuming that there is a sole active ingredient)?

Yes. Dilution of a commercial chemical product with water is not considered use of a commercial chemical product in this case. Thus, the excess QA standards intended for disposal would be listed hazardous wastes under 40 CFR 261.33.

5) A laboratory synthesizes a chemical to be used as a QA standard. The lab then distributes this chemical (or diluted QA standards) to other laboratories for analysis. Would excess quantities of these materials be considered hazardous wastes under section 261.33 (assuming that there is a sole active ingredient)?

Yes. Materials synthesized in a laboratory in lieu of buying a commercial product (because of cost savings or because the product is difficult to obtain) are equivalent to commercial chemical products, and therefore would be regulated under 40 CFR 261.33 when disposed. Again, excess QA standards made by diluting these compounds are also covered by the listings, when disposed.

Thank you for your inquiry. If you have any other questions on these topics, please contact Ron Josephson at 475-6715.

261

federal register

Monday
March 24, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 263, 270, and 271

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), on Site Storage, etc.; Final Rule

40 CFR Part 262

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), Waste Minimization; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 270, and 271

[SWH-FRL-2966-2(b)]

Hazardous Waste Management System: General; Identification and Listing of Hazardous Waste; Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; EPA Administered Permit Programs; Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). Based in large measure on the existing hazardous waste regulatory program, the proposed rules represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum.

EPA is today promulgating final regulations for these generators which modify certain aspects of the proposal. These modifications relate to the "small quantity generator" provisions of § 261.5 and the use of the multi-copy manifest in lieu of the proposed single copy system. Exemptions from exception and biennial reporting as well as from the manifest system for certain reclamation shipments and from certain of the requirements applicable to on-site accumulation have been retained in the final rules. The effect of this rule would be to subject generators of between 100 kg and 1000 kg of hazardous waste in a calendar month to the hazardous waste regulatory program.

DATES: *EFFECTIVE DATE:* September 22, 1986.

Compliance Dates: The Part 262 standards will become applicable to 100–1000 kg/mo generators on September 22, 1986.

The Part 264 and 265 standards will become applicable to 100–1000 kg/mo generators treating, storing, or disposing of hazardous waste on-site using non-exempt management practices on March 24, 1987.

For off-site facilities managing wastes from 100–1000 kg/mo generators, the Part 264 or 265 standards will apply to the wastes from generators of 100–1000 kg/mo on September 22, 1986.

For off-site facilities managing wastes exclusively from generators of less than 1000 kg/mo, the requirement to obtain interim status as a hazardous waste facility for wastes from 100–1000 kg/mo generators will become applicable on September 22, 1986.

Off-site facilities managing waste from both large quantity generators and generators 100–1000 kg/mo will need to modify their Part A permit applications (as well as Part B if already submitted) by September 22, 1986 to reflect these newly regulated wastes from 100–1000 kg/mo generators.

ADDRESSES: The public docket for this rulemaking is located in Rm S-212-C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The RCRA Docket is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424-9346, (in Washington, DC, call 382-3000), the Small Business Hotline, (800) 368-5888, or Robert Axelrad, (202) 382-5218, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background and Summary of Final Rule
A. The Hazardous and Solid Waste Amendments of 1984
1. Codification Rule
2. Minimum Rulemaking Requirements
3. March 31, 1986 Hammer Provisions
4. August 1, 1986 Proposal
B. Summary of Final Rule
III. Response to Comments and Analysis of Issues
A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators
B. Applicability Issues
1. Definition of "Small Quantity Generator"
2. Generator Category Determination
a. Counting Amendment to section 261.5
b. Generators of Acutely Hazardous Waste
c. Generators of Non-Acutely Hazardous Waste in Quantities of Less than 100 kg/mo
d. Determination of Generator Status
C. Part 262 Generator Responsibilities
1. Notification and Identification Number Requirements—section 262.12
2. The Hazardous Waste Manifest System—Part 262, Subpart B
a. Number of Copies and Use of Manifest
b. Manifest Exemption for Certain Reclamation Shipments
c. Waste Minimization
3. Recordkeeping and Reporting—Part 262, Subpart D
a. Recordkeeping—section 262.40
b. Exception Reports—section 262.42
c. Biennial Reports—section 262.41
4. On-site Accumulation—section 262.34
a. Time and Quantity Limitations
b. Standards Applicable to On-site Accumulation
i. Standards for Preparedness and Prevention—Part 265, Subpart C
ii. Standards for Contingency Plans, Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements
iii. Standards for Accumulation in Containers—Part 265, Subpart I
iv. Standards for On-site Accumulation in Tanks—Part 265, Subpart J
5. International Shipments
D. Transportation Issues
E. Part 264/265 Facility Standard Issues
1. Activities Requiring Permits
2. Applicability of Permitting Requirements to Recycled Wastes
3. Permit by Rule
4. Modifications to Part A Permit Applications
IV. Delayed Effective Dates
V. Impact on Authorized States
A. Applicability in Authorized States
B. Effect on State Authorizations
VI. CERCLA Impacts
VII. Executive Order 12291—Regulatory Impact
A. Estimates of Per Firm Costs
1. Part 262 Generator Standards
2. Transportation Costs
3. Treatment, Storage, and Disposal Costs
a. On-site Accumulation
b. Treatment and Disposal
B. Estimates of Nationwide Incremental Cost Burden on Generators of 100–1000 kg/mo
C. Estimates of the Economic Impacts of Today's Rule
VIII. Regulatory Flexibility Act
IX. Paperwork Reduction Act
X. List of Subjects

I. Authority

These regulations are being promulgated under authority of section 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, and 3019, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6939, 6991, and 6993.

anaged, the Agency has decided to mpose manifest requirements on these enerators, except in the case of certain lamation agreements. The existence a State-approved collection center loes not, on its own, provide assurance hat the waste would be transported or andled properly prior to or during ransportation to such a facility, or ndeed, that the shipment would ever each such a facility. Consequently, levelopment of some recordkeeping and ransportation requirements would be eeded which would offset any potential avings of such an exemption.

E. Part 264/265 Facility Standard Issues

The requirements for facilities that reat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. (See HSWA section 3005(e)). The Part 264 standards establish the minimum standards to be incorporated into a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Section 261.5(b) previously exempted generators of 100–1000 kg/mo of hazardous waste from the facility requirements of Parts 264 and 265 that cover the on-site treatment, storage, or disposal of hazardous waste, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste and no more than 1000 kg of hazardous waste were accumulated at any time. Under the rules promulgated today, this exemption will continue to apply only to generators of less than 100 kg/mo of hazardous waste. Generators of 100–1000 kg/mo of hazardous waste will be subject to full regulation under Parts 264 and 265 if they accumulate hazardous waste on-site for greater than 180 (or 270) days, exceed the 6000 kg accumulation limit, engage in waste treatment in other than tanks, or manage their waste in surface impoundments, waste piles, landfills, or land treatment facilities. In addition, those State-approved municipal or industrial waste facilities that manage wastes only from generators of 100–1000 kg/mo will also no longer be exempted from the Part 264 and 265 permit requirements. In the proposed rule, the Agency requested comments concerning the application of the uniform Part 264 and 265 requirements to generators of 100–1000 kg/mo and to the treatment, storage, and disposal facilities that accept waste from the generators.

1. Activities Requiring Permits.

Under today's final rules, 100–1000 kg/mo generators will be required to obtain a permit if they treat or dispose of hazardous waste on-site (except for treatment in tanks or containers during the 180/270 day accumulation period in conformance with Subparts J or I of Part 265, respectively) or accumulate hazardous waste on-site in tanks or containers for more than 180 (or 270) days.

A number of commenters agreed with the need to manage wastes from generators of 100–1000 kg/mo at fully permitted facilities. They argued that no special exemptions or requirements should be applied to the management of waste from these generators because the characteristics of the waste, not the source of the waste, poses the threat to human health and the environment.

Two commenters opposed the requirement for generators of 100–1000 kg/mo who accumulate waste on-site for longer than 180 (or 270) days to obtain RCRA permit, and argued that the accumulation time limit before permitting is required should be extended. One of the commenters also maintained that determining the maximum quantity of hazardous waste that may be accumulated at a non-permitted facility should be based on the degree of hazard posed by the waste and the generator's capacity to transport the waste off-site. The EPA disagrees with both of these positions. As noted in Unit III.C.4.a. of today's preamble, the HSWA of 1984 clearly limit Agency discretion in this matter. The Agency carries a heavy burden in extending the time limits established under section 3001(d)(6), and except for emergency circumstances, the Agency does not believe there to be sufficient justification for extending the limits Congress has established.

Another commenter opposed any permitting requirement due to the economic burden that would be placed on a small number of generators. While some generators of 100–1000 kg/mo may be burdened financially by the requirements promulgated today, Congress has already judged that outside of the accumulation limits allowed for in Section 3001(d)(6), disposal of wastes from these generators at permitted facilities is necessary to protect human health and the environment. In addition, since the rules allow generators to manage their hazardous wastes off-site, they are able to avoid the cost of acquiring a RCRA permit, if they so choose.

Several commenters suggested exemptions from the RCRA permitting requirements or reduced permit requirements for on-site waste treatment. Some commenters stated that there is a need to encourage on-site treatment to reduce the amount of wastes sent off-site and that the permitting requirements may hamper the ability of generators to treat wastes at their facilities.

The Agency disagrees that on-site treatment should be encouraged by exempting those generators of 100–1000 kg/mo from the RCRA permitting requirements. To the extent that these generators are conducting the same treatment/storage or treatment/disposal as other permitted facilities, their on-site treatment activities pose a potential risk to human health and the environment. Therefore, reduced or eliminated permitting requirements would be inappropriate.

Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or I of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus, the same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (90 days for over 1000 kg/mo generators and 180/270 days for 100–1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards. Therefore, generators of 100–1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 270 days).

Two commenters suggested that a mechanism should be created to tailor RCRA permits to the circumstances of individual facilities. For example, one commenter specifically asked for a simplified and streamlined permit for the incineration of spent paint spray

(EXCEDT)

- Recieved from Bob Haland -

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

JUL 17 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: On-site Treatment

FROM: Marcia Williams, Director
Office of Solid Waste

TO: Harry Seraydarian, Director
Toxics and Waste Management Division,
Region IX

The purpose of this memo is to respond to your April 9, 1986, request for clarification of a recent statement with respect to permitting of treatment activities occurring in a generator's accumulation tanks or containers.

As noted in your memo, the preamble to the final small quantity generator regulations promulgated on March 24, 1986, states that "... no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of Section 262.34 and J or I of Part 265." This interpretation is applicable to all generators subject to Section 262.34.

This statement is based upon a legal interpretation of what the existing rules allow at this point in time rather than a deliberate and significant shift in Agency policy with respect to accumulation or treatment. The preamble discussion continues, "Nothing in Section 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision (emphasis added)." The interpretation is predicated on the fact that the Agency has allowed certain types of storage to occur at generation sites (i.e., accumulation for periods of 90, 180, or 270 days, depending on generator type) without the requirement for permitting or interim status. Since the Agency has never developed standards specific to treatment in tanks and containers, the same technical standards applicable to such storage (i.e., Subpart I or J of Part 265) would also be applicable to treatment.

In choosing to communicate this legal interpretation in the small quantity generator final rule, OSW sought to avoid forcing small firms to stop conducting beneficial treatment of small quantities of hazardous waste in their accumulation tanks and containers by requiring them to either cease treatment or expend significant resources to obtain a RCRA permit. We do not believe that allowing some treatment to occur while wastes are being accumulated prior to subsequent management, in full compliance with applicable tank or container standards, is currently prohibited under the existing regulatory scheme.

With respect to the limits of treatment which may occur without a permit on-site, this legal interpretation only applies to treatment occurring in a generator's own accumulation tanks or containers subject to, and in compliance with, Section 262.34. This means that the tank or container in which treatment occurs must be appropriately marked with the date the accumulation period began, the tank or container must be completely emptied every 90 days (or 180/270 days for generators of 100-1000 kg/mo), and must be operated in strict compliance with Subparts I or J of Part 265. Any amendments to these Subparts which may be promulgated in the future would also apply. Treatment in other than tanks or containers (e.g., incineration, land treatment or treatment in surface impoundments) would continue to require a permit.

We would expect that generators that treat hazardous waste on-site in tanks or containers and who have obtained interim status, a full permit, or have a Part B application pending might wish to exit the permit process on the basis of this interpretation. Since such on-site treatment without a permit has never been legally precluded under RCRA, those who now wish to avail themselves of this interpretation may do so, provided they comply with all applicable rules respecting withdrawal of permit applications. If however, a unit that now qualifies for Section 262.34 has, in the past, been subject to regulation because it did not qualify for the Section 262.34 exemption, the Region should determine whether the unit has residual obligations under Part 264 or 265 (e.g., closure requirements). In addition, the fact that such a unit was once under interim status provides a basis for action under Section 3008(h), where appropriate.

However, we would caution these generators, as well as those who may wish to alter their accumulation practices in order to conduct treatment without a permit, not to rely upon the continued existence of this legal interpretation in making process changes requiring substantial capital outlays. Specifically, OSW is now considering publication

DEC 15 1987

MEMORANDUM

SUBJECT: Requested Re-interpretation of On-site Treatment Exemption

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562B)

TO: Robert F. Greaves, Acting Chief
Waste Management Branch (3HW30)

This is in response to your request for a re-interpretation of the on-site treatment exemption. We have reviewed your concerns regarding our interpretation. While in general we continue to believe that treatment in tanks or containers is allowed under Section 262.34, the questions you posed indicate that the rule as currently written is unclear and should be clarified.

1. General policy. Although 40 CFR 270.1(c) does state that a permit is required for treatment, storage, and disposal of hazardous waste, please note that Section 270.1(c)(2)(i) exempts generators who accumulate hazardous waste on-site in compliance with Section 262.34 from the requirement to obtain a RCRA permit. The exemption does not depend on whether or not treatment is conducted. The reason for this general policy is as follows. First, as you have stated, Section 262.34 does not preclude treatment in accumulation units. Also, the performance standards under Part 265, Subparts I and J, apply to the generator's containers and tanks regardless of whether storage, treatment, or both processes occur in them. In addition, both Subparts I and J contain special handling requirements for ignitable, reactive, and incompatible wastes, and these requirements should adequately control treatment typically conducted in tanks or containers. Finally, treatment often renders waste less hazardous, or at least easier to transport or more amenable for recovery. For all of these reasons, OSW believes that treatment is not only allowable under Section 262.34, but also is consistent with sound waste management.

2. Thermal treatment. You raised the concern that generators could conduct thermal treatment such as detonation or open burning under Section 262.34 and thereby avoid permitting for obviously dangerous activities. Certainly, detonation and open burning were never intended to be allowed under Section 262.34. As explained above, a large part of the Agency's rationale in allowing treatment under Section 262.34 was that the same standards would apply for both treatment and storage. All thermal treatment is subject to Part 265, Subpart P; if this was not the case, the standards would not be the same, and the premise of the Section 262.34 exemption would be violated. The regulatory language of Section 262.34 is not clear on this point, and OSW is considering promulgating amendments to clarify applicability of the section.

If you have further questions in this area, please contact Michael Petruska at FTS 475-8551.

cc: Waste Management Branch Chiefs,
Regions I, II, and IV-X

of an advanced notice of proposed rulemaking that would seek comment on a number of issues related to the 90/180/270 day accumulation provisions. Should the Agency decide at some time in the future to either modify the 90 day accumulation rule in some manner or to write specific standards for treatment, the obligations of generators with respect to treatment in accumulation tanks could change.

cc: Regional Division Directors
Eileen Claussen
Bruce Weddle
Jack Lehman