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MUNICIPAL WASTE COMBUSTION ASH

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 29 1990

Ms. Julie Sullivan
9 Bittersweet Court
Centerport, New York 11721

Dear Ms. Sullivan:

I am writing in response to your March 6 letter to Sylvia Lowrance regarding the Environmental Protection Agency's (EPA) interpretation of the regulatory status of municipal waste combustion ash.

As you noted, EPA articulated its interpretation of Section 3001(i) of the Hazardous and Solid Waste Amendments in the July 15, 1985 Federal Register (pages 28725-26). The Agency stated that there was no specific legislative language or history indicating that ash generated by energy recovery facilities accepting non-hazardous wastes from commercial or industrial sources would be exempt from regulation under Subtitle C if such ash exhibits a characteristic of a hazardous waste. Because the Section 3001(i) exemption did not extend to the ash from energy recovery facilities, ash generated by the combustion of non-household wastes is required to be handled like any other waste - if it exhibits a hazardous waste characteristic, it must be managed accordingly.

Recently, Sylvia Lowrance reiterated the Agency's position regarding the regulatory status of ash, in testimony before the House Subcommittee on Transportation and Hazardous Materials. Ms. Lowrance indicated that although the statute is ambiguous, EPA continues to believe that its interpretation of existing law is correct. The testimony also makes clear, however, that EPA believes that ash could be managed safely as a special waste under RCRA Subtitle D, with the use of management controls such as disposal in lined monofills, leachate collection systems, and groundwater monitoring. Accordingly, the Agency supports Congressional legislation that would

provide EPA with clear authority to regulate ash from municipal waste combustors under Subtitle D.

Two recent court decisions (enclosed) have rejected EPA's statutory interpretation and concluded that Section 3001(i) of RCRA does exempt ash from regulation under Subtitle C.

Environmental Defense Fund, Inc. v. Wheelabrator Technologies, Inc. No. 88 Civ. 0560 (S.D.N.Y. Nov. 21, 1989). Environmental Defense Fund, Inc. v. City of Chicago No. 88 C 769 (N.D.I.L. Nov. 29, 1989). The Agency is considering the appropriate response to these decisions.

I hope that this information sufficiently addresses your questions. Thank you for your interest.

Sincerely,

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Doreen Sterling
Chemist
Municipal Solid Waste Program