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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

AUG 31 1987

Mr. Neil Gingold
General Counsel
Envirosure
333 Ganson Street
Buffalo, NY 14203

Dear Mr. Gingold:

This is in response to your letter of June 12, 1987, in which you requested clarification regarding waste tracking and classification. First, I would like to apologize for taking so long in responding to your letter; I hope my delay hasn't caused you any problems. The answers to your questions are as follows:

1. EPA's current policy on mixing low and high Btu wastes is summarized in an enforcement guidance memo published in the Federal Register of March 16, 1983. (Enclosure 1.) As the guidance memo explains, a determination of what constitutes "sham burning" depends on a number of factors presented by the circumstances of a particular case; the energy value of the wastes being blended or burned is likely to be of primary significance in most cases. Blending a low Btu waste (i.e., less than 5000 Btu/lb.) with a higher Btu waste would not normally change the "sham" character of the subsequent burning.

You should note that, as the guidance memo points out, other factors are considered in distinguishing sham from legitimate burning, and that EPA will set a priority on sham burning in non-industrial settings. Also, as you correctly point out, EPA has proposed a new fuels policy in the form of revisions to the hazardous waste burning regulations. On May 6, 1987, EPA proposed standards for boilers and furnaces burning hazardous waste. (See Enclosure 2.) The proposed standards would apply to boilers and furnaces burning hazardous waste regardless of whether the purpose was energy recovery or destruction, so the "sham recycling" distinction would no longer be relevant. (Id. at 16989.) EPA has accepted public comments on the May 6 proposal and we will be making decisions regarding the final rule within the next year. Until this regulation is made final, the enforcement policy will remain in effect.

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As a final point on burning of wastes, you should note that the U.S. court of Appeals for the District of Columbia reached a decision on July 31, 1987, that calls into question EPA's authority to regulate certain waste recycling activities. EPA is studying the opinion to determine its scope. Because the Court has not yet issued its mandate, the regulations currently in the Code of Federal Regulations defining what is "solid waste," and establishing regulations for recycled hazardous waste, remain in effect.

2. Listed wastes never "lose their identify." Wastes are tracked on the manifest by waste code under U.S. Department of Transportation (DOT) regulations at 49 CFR Parts 171 and 172.1/ For mixtures, you must enter each waste code in the mixture on the manifest. Further, you should note that facilities in interim status must specify on their "Part A" permit application the hazardous waste they will be receiving (see 40 CFR §270.13(j)) and must amend the Part A to receive new wastes (§270.72(A)). Also, a RCRA permit granted to a treatment, storage, or disposal facility may specify the specific hazardous wastes the facility is authorized to accept. Finally, a treatment, storage, or disposal facility must keep an operating record with very specific information on each hazardous waste at the facility. (See §§264.73 and 265.73.)
 3. All of the requirements referenced in answer number 2, above, require tacking of individual wastes by shipment (and if necessary, by container).
 4. The proper classification of waste treatment residuals (the filter cake in your case) depends on the wastes entering your treatment system. Under 40 CFR §261.3(c)(2)(i), any waste derived-from treating a hazardous waste is itself a hazardous waste. Such "derived-from" wastes
- 1/ Please note a couple of points regarding waste shipment tracking. First, the DOT rules referred to above do not require the EPA waste code for "U" and "P" listed wastes. This is because U and P chemicals must already be described by their specific chemical names under 49 CFR Part 171. You should also note that although EPA does not require the EPA waste codes to be placed on the hazardous waste manifest, some States do require EPA's (or their own) codes to be entered on the manifest in addition to the DOT requirements.

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are assigned the waste code(s) of the incoming (i.e., treated) wastes. Thus, if more than one listed waste was treated, the treated residue would be identified by all the listed wastes treated.

If you have further questions in this area, please contact Mike Petruska of my staff at (202) 475-6676.

Sincerely,

Sylvia K. Lowrance, Acting Director
Characterization and Assessment
Division