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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

November 1, 1993

Ethan R. Ware
Ogletree, Deakins, Nash, Smoak & Stewart
Palmetto Center
1426 Main Street
P.O. Box 11206
Columbia, South Carolina 29211

Dear Mr. Ware:

Thank you for your letter dated January 4, 1993, concerning the management of hazardous waste by generators under the Resource Conservation and Recovery Act (RCRA). In your letter you asked whether 40 CFR §262.34, which allows generators to store and/or treat wastes in accumulation containers or tanks without interim status or a RCRA permit, applies to the situation of your clients. I regret the delay in responding to your letter.

You specifically asked whether the transfer of hazardous waste from one container to another for treatment affects the applicability of the generator 90-day treatment exemption. This type of waste transfer may occur during the accumulation period for two reasons. First, 40 CFR §262.34 does not preclude generators from transferring waste between tanks or containers to facilitate storage or treatment. Second, the requirements of Subparts I and J of 40 CFR Part 265, compliance with which is a condition of the exemption, address the addition and removal of wastes in tanks and containers and provide procedures to prevent releases to the environment from such activities. Of course, the requirements of §262.34 would apply to each tank or container holding hazardous waste (see, e.g., 40 CFR §265.173 and 40 CFR §265.193).

However, please be aware that under §3006 of RCRA (42 U.S.C. §6926), individual States may be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. When States are not authorized to administer the program,

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the EPA Region in which the State is located administers the program and is the appropriate contact for any case-specific determinations. Also note that under §3009 of RCRA (42 U.S.C. §6929), States retain the authority to promulgate regulatory requirements that are more stringent than federal regulatory requirements. Some States may not allow generators to treat hazardous waste under §262.34, while other States may not allow this type of transfer of hazardous waste for either storage or treatment.

You indicated in your letter that the characteristic hazardous waste treated under §262.34 by generators would no longer be defined as hazardous waste after treatment. For the waste to become non-hazardous, a generator must remove the characteristic and comply with the applicable RCRA Land Disposal Restrictions (LDRs) requirements, including 40 CFR §268.7(a)(4), for restricted wastes prior to land disposal. Therefore, if the generator's waste is restricted from land disposal, he must either meet applicable treatment standards during the on-site treatment period, or notify the treatment or storage facility in accordance with 40 CFR §268.7.

Thank you for your interest in the safe management of hazardous wastes. If you have any additional questions regarding this matter, please contact Rick Picardi of my staff at (202) 260-5756.

Sincerely,
Bruce R. Weddle
Acting Director
Office of Solid Waste

bcc: EPA Regional RCRA Branch Chiefs, Susan Bromm (OWPE), Dawn Messier (OGC), Catherine Smith (OE), RCRA Hotline