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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 22 1991

Mr. Kevin S. Dunn
Project Manager
Environmental Policy Center
Law Companies Environmental Group
1828 L Street, N.W.
Suite 711
Washington, D.C. 20036

Dear Mr. Dunn:

Thank you for your letter of May 28, 1991 regarding the regulatory-status of industrial equipment which formerly contained a hazardous waste. I apologize for the delay in responding to your inquiry.

In your letter, you described a situation in which pumps containing elemental mercury were taken out of service and used as containers for temporary storage, transportation and handling of the mercury before its treatment and disposal. You asked whether the pumps could be regulated as non-hazardous wastes if the mercury were removed from the pumps in a manner consistent with the requirements of 40 CFR 261.7 for empty containers.

It is our view that if the pumps meet the definition of "container" in 40 CFR 260.10, they are exempt from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) after they are emptied in accordance with 40 CFR 261.7. Section 260.10 defines "container" as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled". If the pumps you describe are portable, they may be managed as a non-hazardous waste under federal law.

This interpretation reflects the federal regulations governing hazardous waste. States with authorized RCRA programs may impose more stringent requirements. Such States also have the authority to make regulatory determinations about the materials which constitute hazardous wastes under their systems.

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I hope this letter has addressed your concerns. If you have any further questions, please contact Mitch Kidwell of my staff at (202) 260-8551.

Sincerely,

David Bussard, Director
Characterization and
Assessment Division