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

May 4, 1993

Doug MacMillan
Institute of Chemical Waste Management
1730 Rhode Island, N.W. Suite 1000
Washington, D.C. 20036

Dear Mr. MacMillan:

I am writing in response to your letter of January 28, 1993, in which you expressed several concerns regarding the potential effect that the newly promulgated regulations for corrective action management units (CAMUs) may have on the management of "as-generated" hazardous wastes.

As I understand from your letter, and from subsequent discussions with my staff, your primary concern is that as-generated containerized hazardous wastes being stored at a facility could be considered remediation wastes, and therefore could be managed at an area or a facility that has been designated as a CAMU, with the effect that those wastes would no longer be subject to the RCRA land disposal requirements, or to minimum technology requirements.

Let me assure you unequivocally that it was not the Agency's intent in promulgating this regulation to allow or to encourage such waste management practices; furthermore, the regulations as finalized prohibit such practices. As stated in the regulations, and as explained in the preamble, CAMUs may only be used for the management of remediation wastes (40 CFR §260.10; 58 FR 8663-4), and only for the purpose of implementing remedial actions (e.g., corrective actions under RCRA 3004(u) or 3008(h) authorities). The concept of remediation wastes is somewhat new to RCRA, and I agree that it is important to have a clear understanding of what these wastes are, and the limitations on the use of the CAMU concept in regard to management of "as-generated" hazardous wastes.

As-generated hazardous wastes, whether containerized or non-containerized, are subject to the full set of Subtitle C requirements applicable to treatment, storage and disposal of hazardous wastes. These regulations are designed with the primary goal of preventing such wastes from creating environmental contamination problems that require remediation. Thus, so long as as-generated hazardous wastes are managed in accordance with applicable RCRA standards and regulations, there should be no need to "remediate" those wastes.

In contrast, remediation wastes as defined in the CAMU rule include only wastes that are generated and managed for the purpose of implementing corrective actions at facilities. It is this purpose--cleanup of environmental problems resulting from historic waste mismanagement practices--that is fundamental to the concept of remediation waste. In the preamble to the CAMU rule we articulated the inherent differences between cleanup (i.e., corrective action) and management of as-generated, or "new" wastes. The Agency's rationale for promulgating the CAMU rule is tied directly to our conclusion that cleanup is fundamentally different activity than management of as-generated wastes, and that RCRA requirements for management of cleanup wastes can and should differ from those for as-generated wastes.

As stated in the preamble of the final CAMU rule (58 FR 8664), "Today's definition of remediation waste excludes 'new' or as-generated wastes (either hazardous or non-hazardous) that are generated from ongoing industrial operations at a facility." Further, the regulatory definition of remediation waste in the final rule is limited to wastes "... that are managed for the purpose of implementing corrective action requirements under 264.101 and RCRA section 3008(h)." (40 CFR §260.10) In crafting the definition of remediation waste in this way (particularly when the definition is read together with the preamble discussion), we believe that it is clear that CAMUs are not to be used for management of as-generated waste. However, we understand your concern that if read alone, the definition might mislead some readers or allow some room for abuse. We are currently developing guidance for EPA and State decision makers on implementation of the CAMU rule. Among other things, the guidance will emphasize that containerized as-generated wastes that are stored at RCRA facilities cannot be managed in CAMUs. In addition, we are willing to consider adding a clarification to the regulation that would

specifically exclude management of as-generated wastes in CAMUs, as well as in temporary units. I would welcome further discussions with you and your organization on this matter.

In your letter you suggested that owner/operators might have incentives to stockpile containerized as-generated wastes, for subsequent treatment and disposal in CAMUs. As explained above, such wastes would be as-generated wastes, not eligible for placement in a CAMU (unless all applicable Subtitle C requirements, including the land disposal restrictions, were satisfied). Furthermore, in storage the wastes would be subject to the applicable "prevention" requirements of Subtitle C, which should serve to ensure that they are not mismanaged such that "cleanup" or the wastes would be required. If an owner/operator were to mismanage such wastes, for example, by dumping the wastes with the intent that the wastes would then become remediation wastes, such activities would clearly be illegal, and subject to the substantial civil and/or criminal penalties under RCRA, as well as possible liabilities under CERCLA. In addition, such purposeful dumping of wastes would likely result in contamination of large volumes of soils or other media, and the costs of the required cleanup could be many times the costs of complying with the Subtitle C prevention standards. Thus, we do not believe that the CAMU concept realistically creates an incentive for mismanagement of as-generated wastes.

As an additional safeguard, it should be emphasized that CAMUs may only be designated by EPA or an authorized State; an owner/operator could not himself simply designate an area of a facility as a CAMU, as a means of changing the requirements that would apply to those wastes.

In your letter you suggested amending the CAMU regulation to restrict the definition of remediation waste to contaminated media resulting from corrective action at a facility. I would like to clarify that in the CAMU rule the Agency did not intend to distinguish between contaminated media and other cleanup wastes. By restricting the definition to contaminated media, certain other cleanup wastes could not be managed in CAMUs, such as sludges disposed of before 1980. As explained in the preamble to the rule, the CAMU concept is a response to the inherent differences in the objectives and incentives of remediation of "old" wastes, as distinguished from management of "new" wastes. Since remediation of

facilities will often involve management of sludges and other pre-RCRA wastes that would not be considered contaminated media, we do not believe that it would be appropriate to amend the CAMU regulations to apply only to contaminated media.

As you know, many of the issues addressed in the CAMU rule are now being discussed in the context of the HWIR Forum, in which you have been actively involved. As we have discussed in the Forum, a major component of the HWIR discussions focuses on contaminated media; this important dialogue is thus an opportunity to reevaluate many of the issues associated with remediation, as well as requirements for as-generated hazardous wastes. It is possible that the HWIR dialogue will result in substantial revisions to the existing RCRA regulations that address management of remediation wastes, including the CAMU regulations. If so, the Agency is committed to reviewing the need for changes to those regulations. I look forward to the continued participation of ICWMA in these discussions.

I hope this has been responsive to the concerns raised in your letter. If you have any further questions, please do not hesitate to contact me or Dave Fagan ((703) 308-8620).

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste