

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460**

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Mr. Michael W. Steinberg  
Morgan, Lewis, and Bockius, LLP  
1800 M Street, N.W.  
Washington, D.C. 20036-7000

Dear Mr. Steinberg:

Thank you for your letter of December 23, 1997 regarding the interaction of two Resource Conservation and Recovery Act (RCRA) regulatory provisions: the speculative accumulation provisions in the definition of solid waste in 40 CFR 261 and the generator accumulation provisions in 40 CFR 262.34.

As you are aware, certain recyclable materials are not considered solid wastes if they are recycled in a timely manner. However, if these materials are accumulated on-site for too long, they become a solid waste pursuant to the speculative accumulation provisions of 40 CFR 261.1(c)(8) and 261.2(c)(4). Specifically, the regulations state that a material is not accumulated speculatively if: 1) the material is potentially recyclable, 2) there is a feasible means of recycling the material, and 3) 75% by weight or volume of the amount of the material accumulated at the beginning of the calendar year (January 1) is either recycled or transferred to a different site for recycling during the calendar year. If 75% of the material is not recycled in the specified time frame, the material becomes a solid waste on January 1 of the following year.

We have reviewed the rules and preamble statements cited in your analysis. We agree with you that the definition of "generator" in §260.10, the definition of "speculative accumulation" in §261.1, and the generator accumulation requirements in §262.34 together allow a person accumulating potentially recyclable materials to become a generator when the materials become solid and hazardous wastes at the end of the accumulation period, and then to hold the wastes for 90/180/270 additional days in compliance with §262.34 without a permit. The Office of Solid Waste (OSW) believes that this is the most practical outcome and that it also is a reasonable interpretation of the somewhat confusing preambles on the issue.

Although the April 4, 1983 preamble to the proposed "definition of solid waste" rule appears to state that persons who speculatively accumulate immediately become storage facilities subject to permit requirements (48 FR 14499), the January 4, 1985 preamble to the final rule suggests the opposite. It states that speculative accumulators

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are subject to "immediate regulation" as generators and eventual regulation as storage facilities if they hold waste for more than 90 days<sup>1</sup> or if they fail to comply with the substantive requirements of 262.34 during the 90 days (50 FR 650, note 42). OSW believes that this discussion shows that the Agency changed its view and decided that §262.34 was available to generators. The additional discussion in the January 4, 1985 preamble of time needed to come into compliance with storage permit requirements does not conflict with this result -- OSW reads it as applying to former speculative accumulators who decide to become hazardous waste storage facilities holding wastes for more than 90 days.

In addition, as you are aware, authorized states have their own regulations and policies that may be more stringent or broader in scope than federal regulations and policies. If you have any questions or require additional information, please call Mary Beth Clary, of my staff, at (703) 308-4941.

Sincerely yours,

Elizabeth A. Cotsworth, Acting  
Director  
Office of Solid Waste

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<sup>1</sup> Note that in 1985 all generators were subject to a 90-day accumulation time limit. The 180 and 270-day options were added for small quantity generators in 1986 (51 FR 10175).