

9462.1993(01)

EXPORT OF PETROLEUM-CONTAMINATED SOIL

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

February 18, 1993

Honorable Patsy T. Mink
U.S. House of Representatives
Washington, D.C. 20515-1102

Dear Ms. Mink:

Thank you for your letter of November 21, 1992, to Administrator Reilly regarding the Environmental Protection Agency's (EPA's) evaluation as to whether the recent shipment of petroleum-contaminated soil from Unocal Hawaii to the Republic of the Marshall Islands satisfied all of the Agency's requirements for such shipments. We have since learned that the government of the Marshall Islands has refused to allow the petroleum contaminated soil to be used for its original purpose (i.e., landfill in a causeway between two islands). As a result, the contaminated soils will return to the United States.

Regarding the regulations covering the movement of these contaminated soils from the U.S. to the Marshall Islands, current regulations under the Resource Conservation and Recovery Act (RCRA) (40 CFR 252.50-60) require any U.S. exporter of RCRA regulated hazardous wastes to notify and obtain consent from any receiving country prior to shipping hazardous wastes to that country. However, wastes not regulated by RCRA are exempt from the notice and consent procedures prior to export.

The burden of determining whether or not a waste shipment is subject to RCRA export regulations rests with the generator of the waste. In the case of the shipment of petroleum-contaminated soil from Hawaii to the Marshall Islands, the notification of intent to export sent to EPA by South Pacific Environmental (SPE) claimed that the shipment was exempt from RCRA regulation and therefore from export controls under RCRA. Should SPE's determination be found to be incorrect, EPA could take appropriate enforcement

action, including the assessment of penalties. To date, no such finding has been made by EPA or the State of Hawaii.

Petroleum-contaminated soils from the cleanup of underground storage tanks (USTs), such as those to which you refer in your letter, are currently exempted from regulation as hazardous waste under RCRA and are therefore not subject to RCRA export regulations. The only exception to this exemption is in cases where petroleum-contaminated soils excavated during the cleanup of USTs fail EPA's toxicity characteristic test for one or more of 13 contaminants (see 40 CFR 261.4(b)(10)). In such cases, the contaminated soil is considered hazardous under RCRA and subject to the RCRA export requirements.

Please let me know if I may be of any further assistance to you regarding this matter.

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