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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOV 30 1987

Mr. Phillip C. McGuire
Associate Director, Law Enforcement
Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

Dear Mr. McGuire:

Thank you for your October 14, 1987, letter regarding the disposal of explosive materials under the Resource Conservation and Recovery Act (RCRA). We have reviewed the information you provided concerning the detonation of seized explosives that you believe would not fall under the RCRA Subtitle C program. We think, however, that the seized explosives may indeed be a solid waste from the moment a decision is made that the explosives must be destroyed and not returned to the original owners.

The basis for the Environmental Protection Agency's (EPA) opinion is that the explosives are not being used for their originally-intended purpose (e.g., demolition of a building, military use, etc.), but rather are being detonated to discard the materials. The explosives, therefore, would meet the definition of a solid waste as defined in 40 CFR Section 261.2(a) and (b). If these explosives exhibit the characteristic of reactivity as defined in 40 CFR 261.23, they would be subject to the RCRA hazardous waste regulations for storage, treatment and disposal. For example, detonation of reactive waste is considered a form of thermal treatment that is subject to Section 265.382, and shipments to the disposal site are subject to 40 CFR Parts 262 and 263.

We recognize the Bureau of Alcohol, Tobacco and Firearms (BATF) has considerable experience in handling explosives. Your internal procedures appear to be comparable to EPA's rules in many respects. There are, however, some differences that may need to be examined. For example, you state that the detonation areas must be at least 1,000 feet from buildings, woods, etc. EPA's regulations (Section 265.382) require farther distances for quantities in excess of 100 lbs.

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I would like to suggest that EPA staff meet with your staff to discuss how to reconcile the RCRA rules as they apply to BATF detonation activities. Rulemaking efforts may be required of both agencies to resolve any inconsistencies. In order to schedule a meeting that will be mutually convenient, please contact Mike Petruska, of my staff, on 475-8551. We believe that this meeting will provide the opportunity to discuss several points including what rulemakings may have to be undertaken by either agency, and what exemptions may be possible.

If I can be any further assistance, please let me know.

Sincerely,

Original Document signed

J. Winston Porter
Assistance Administrator