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December 12, 1985

EMPTY TANK CARS THAT CONTAINED COMMERCIAL CHEMICAL PRODUCT

Daniel R. Cookey  
Mobile Tank Care Services  
8007 Asabottom Road  
Louisville, Kentucky 40213

Dear Mr. Cookey:

This letter responds to your inquiry of November 15, 1985, regarding the applicability of 40 CFR 261.7 -- the exemption of residues of hazardous waste in empty containers -- to "empty" tank cars that contained commercial chemical products.

As stated in your letter, the definition of "container" applies to tank cars in which hazardous wastes were stored, transported, treated, disposed, or otherwise handled. You are correct in stating that the residue in the tank cars you clean and the rinse waters are exempt from Federal regulations. The exemption applies in your case because the amount left in the tanks cars is less than 0.3 percent of the tank volume. Since the residue is exempt, the rinse waters are like-wise exempt if they do not exhibit one or more of the characteristics of hazardous waste (i.e., ignitability, EP Toxicity, reactivity or corrosivity).

You may, however, still be regulated under state hazardous waste regulations. Since state regulations must be at least as protective of human health and the environment as the Federal regulations, in many cases these rules are more stringent. As stated in your letter, Ohio maintains a stricter interpretation of the rule. In such cases, the State rules pre-empt the Federal rules.

I trust that this letter adequately responds to your inquiry.

Sincerely,

Marcia Williams, Director  
Office of Solid Waste

RO 125122