



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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MAR 30 2010

Mr. John P. Schantz  
Environmental, Health, and Safety Manager  
Veolia Environmental Services  
125 Factory Lane  
Middlesex, NJ 08846

Dear Mr. Schantz,

At the request of the New Jersey Department of Environmental Protection (NJ DEP), I am responding to Veolia's two questions regarding the October 2008 Revisions to the Definition of Solid Waste final rule. Included below is a response to the question you raised in your July 24, 2009, letter to the NJ DEP, as well as a response to a question from Mike Pikulin to Susan Cosgrove during an August 13, 2009, NJ DEP inspection.

1. **Question from July 24, 2009, letter to NJ DEP: Is Veolia permitted to combine wastes received under this exclusion with other similar hazardous waste prior to reclaiming the materials?**

**Response:** No. Excluded hazardous secondary materials cannot be commingled with regulated hazardous waste and still maintain the exclusion from the definition of solid waste. If excluded hazardous secondary materials are mixed with hazardous waste, the resulting mixture is a hazardous waste. This follows the general principle that RCRA applicability cannot be avoided by mixing a hazardous waste with another material.<sup>1</sup>

2. **Question from Mike Pikulin to Susan Cosgrove during August 13, 2009, NJ DEP inspection: If hazardous (non-excluded) waste is run in a still and then that same still is to be used for excluded waste, must the still be cleaned first?**

**Response:** Excluded hazardous secondary materials cannot be commingled with regulated hazardous waste and still maintain the exclusion from the definition of solid waste. However, it is possible to use the same distillation column to run separate batches of hazardous waste and excluded hazardous secondary materials provided that the hazardous waste and associated residues

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<sup>1</sup> *Horsehead Resource Development Co., Inc. v. EPA*, 16 F3d 1246 (February 1994).

are removed from the distillation unit before processing the hazardous secondary materials. Each facility needs to ensure that the hazardous waste (and associated residues) and hazardous secondary materials are not commingled. (Any hazardous waste and associated residues will need to be managed according to the Subtitle C regulations.) You should discuss with your state or regional implementing agency the procedures you will need to implement to clean the distillation unit in order to ensure that hazardous secondary materials are not commingled with hazardous wastes and obtain their concurrence that commingling is not occurring under these procedures.

As I am sure you are aware, this rule is currently in effect as part of the federal regulations in states and territories that are not authorized to implement the Resource Conservation and Recovery Act (RCRA) hazardous waste regulatory program, as well as in authorized states that have adopted the rule. (See <http://www.epa.gov/epawaste/hazard/dsw/statespf.htm> for a list of states where the rule is currently in effect.) However, because states may choose to be more stringent than the federal RCRA hazardous waste program, you should also consult with the appropriate state agency for any particular facility wishing to use the rule in an authorized state.

Thank you for your interest in hazardous secondary materials recycling. If you have any further questions, please contact Tracy Atagi (703-308-8672, [atagi.tracy@epa.gov](mailto:atagi.tracy@epa.gov)) or Amanda Geldard (703-347-8975, [geldard.amanda@epa.gov](mailto:geldard.amanda@epa.gov)) of my staff.

Sincerely,

A handwritten signature in blue ink that reads "Maria P. Vickers for". The signature is written in a cursive style.

Matt Hale, Director  
Office of Resource Conservation and Recovery