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SPENT SOLVENT RECOVERY, WASTE MANAGEMENT TAX

5/20/86

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Honorable Frederick Boucher
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Boucher:

Thank you for your letter of April 18, 1986 regarding your constituent's concern about fees assessed on the generation of hazardous waste. There is currently no such fee assessed under the Resource Conservation and Recovery Act (RCRA). My staff checked with officials in the State of Virginia, which is fully authorized to run its own RCRA program. The State indicated that it, too, does not impose a fee such as the one described by your constituent.

Your constituent may be referring to the waste management tax approved by the House as part of its CERCLA reauthorization bill. See the December 10, 1985 Congressional Record, p. H11666; see also H.Rep. No. 99-253, Part 2, pp. 9-16. The proposed waste management tax actually includes two different taxes: a tax on hazardous waste received at RCRA Subtitle C facilities, and a backup tax on RCRA generators if their waste is not received at a Subtitle C facility within 270 days. As explained below, it appears that your constituent would not be subject to the first tax, i.e., the tax on RCRA Subtitle C facilities. However, your constituent may be subject to the second tax, i.e., the backup tax. We agree that such a tax may serve as a disincentive for recycling. The Administration did not include a backup tax in its CERCLA reauthorization proposal.

Given your description of your constituent's waste it appears that these used solvents are a hazardous waste under RCRA; see 40 CFR §261.31. The solvents are then sent to a second company where they are stored prior to recovery. Presumably the storage unit would meet the House bill's definition of a "qualified hazardous waste management unit", which is provided in proposed

§4675(a)(2) of the Internal Revenue Code of 1954 (IRC). If so, the waste would be subject to the first tax at a rate of $4.15 per wet weight ton. However, the second company would receive a credit or refund for any tax paid for such waste. The credit for certain qualified solvents is outlined in proposed §4673(c) of the IRC. This credit was specifically designed to avoid creating a disincentive for solvent recycling.

Your letter states that after cleaning the used solvents, the second company returns the recovered solvents to your constituent for future use. Presumably this "cleaning" of the wastes is actually reclamation. If so, then these recovered solvents are not wastes. See 40 CFR §261.3(c)(2). This issue is specifically discussed in the preamble of our January 4, 1985 revised definition of solid waste (50 Fed. Reg. 614, 634). Since these solvents are not wastes under RCRA, they would not be subject to the first tax, which is imposed only on certain RCRA hazardous waste. See proposed IRC §§4671(a)(1) and 4675(a)(1).

The second company must properly manage the spent solvents that were not reclaimed. Such spent solvents are typically blended with oil and then sold as fuel. Such waste-derived fuel is still considered a hazardous waste under RCRA. See 40 CFR §261.2(c)(2). The fuel may be burned in an industrial boiler or furnace, or a RCRA Subtitle C incinerator. If so, then the second company may receive a credit or refund under the incineration provision. See proposed IRC §4673(b).

As noted above, your constituent may be subject to the proposed backup tax. That tax is imposed on hazardous waste which is not received at a qualified hazardous waste management unit within 270 days of its generation. See proposed IRC §4674(a). Thus, your constituent's potential liability under this tax would depend on whether one of the second company's RCRA units fits the House bill's definition of a "qualified hazardous waste management unit." If not, then your constituent would be liable for the backup tax. Until the Treasury Department promulgates regulations, the waste would be taxed at the disposal rate.

Let me reiterate that the Administration did not include a backup tax on generators in its proposal to reauthorize CERCLA. In designing a waste-end tax, we decided that the tax ought to be one the management of the waste, not the generation.

Finally, I agree with you that EPA should encourage recycling as a means of reducing the amount of hazardous waste requiring land disposal. The Hazardous and Solid Waste Amendments of 1984 established as national policy the reduction of hazardous waste. In particular, Section 224 of the 1984 RCRA amendments requires EPA to submit a report to Congress by October 1, 1986, on the desirability and feasibility of establishing waste minimization regulations to implement this national policy. As part of this effort, the Agency has identified incentives and disincentives currently affecting the utilization of waste minimization practices such as recycling. The report to Congress will discuss possible actions to alleviate some of the disincentives associated with recycling and to promote further use of recycling and other waste minimization practices.

Please let me know if I can be of any further assistance.

Sincerely,

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Assistant Administrator

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