

9451.1989(01)

RECYCLING ACTIVITIES

MAY 3 1989

Alan H. McLean
Hughes Hubbard and Reed
Madison Avenue
New York, New York 10017

Dear Mr. McLean:

This letter is in response to your letter dated March 2, 1989, requesting a written interpretation of aspects of the Resource Conservation and Recovery Act (RCRA) implementing regulations applicable to recycling activities (40 CFR Parts 124, 264, 265, 266, 268 and 270). It is my understanding that Environmental Technology Group's (ETG's) operation involves a mobile recycling unit that visits hazardous waste generator sites. Used solvents are pumped into the mobile unit through hoses connected to the generators' storage tanks or containers and a horizontal thin film evaporator is applied to reclaim reusable solvents. The reusable solvents are then pumped back into the generator's product tanks or containers. All rinsings and non-recoverable residues exiting from the mobile unit are placed in waste containers and remain on-site as the property of the generator.

In your letter, you reached several tentative conclusions regarding the applicability of certain RCRA regulations to your process. I have discussed those Federal regulations below to clarify how they would apply to your activities. However, it should be noted that in states that are authorized to implement the RCRA program, the state regulations, rather than Federal regulations, are applicable. The state program can be broader-in-scope or more stringent than the Federal counterpart, so ETG should check all applicable state standards before deploying its mobile recycling units.

The first question raised is, who is considered the generator of the residue or still bottom resulting from the recycling of the spent solvent by ETG's units. EPA considers the original generator of the spent solvents and ETG to be

co-generators of these still bottoms, and the RCRA regulations regarding generators, found at 40 CFR Part 262, are applicable to both. However, this does not mean that both generators must satisfy each regulatory requirement individually. When two or more parties contribute to the generation of a hazardous waste, as is the case in the generation of the still bottoms, these requirements are satisfied if one of the parties assumes and performs the duties of the generator on behalf of both the parties (45 FR 72026, October 30, 1980). Therefore, by mutual agreement either party could perform the generator responsibilities of recordkeeping, reporting, and manifesting for the still bottom waste. Typically, these duties are assumed by the original generator who owns the site. Nevertheless, EPA reserves the right to enforce against any and all persons who fit the definition of "generator" in a particular case if the requirements of Part 262 are not adequately met. For more discussion on generator responsibilities, see the October 30, 1980 Federal Register notice referenced above.

Regarding the notification process, generator notifications under section 3010 of RCRA are generally required only once, at the time that RCRA regulations initially become applicable to the generator. It is through the notification process that a generator obtains an EPA identification number. If the original generator has already submitted a notification and received an EPA identification number, and if this generator consents to performing the generator duties for the still bottoms as described above, then, additional notification is not required for the mobile unit to perform the recycling operation. This arrangement appears to fit the circumstances described in your letter. However, should the agreement between ETG and a particular client prescribe that ETG be generator of record for the still bottoms, including manifesting the residue, ETG would need to obtain an EPA identification number for that particular site by submitting a notification form (40 CFR 262.12(a)).

You also inquire about the applicability of the permitting requirements to the generator or the mobile unit operator. Your letter correctly states that a hazardous waste recycling process is exempt from the RCRA permitting requirements (40 CFR 261.6(c)). Therefore, neither ETG nor the generator would be obligated to obtain a permit for the recycling

operation. Further, generators are allowed to accumulate hazardous waste on-site in tanks or containers for up to 90 days without being required to obtain interim status or a permit (40 CFR 262.34). It should be noted, however, that 90-day generators must comply with the technical standards of Part 265, Subpart J (for tanks), and Subpart I (for containers), as well as certain emergency response and personnel training provisions. If the accumulation period before the waste is introduced into the recycling unit exceeds 90 days, the generator will need to obtain interim status or a permit for such storage.

Wastes or residues from recycling activities are considered to be newly generated wastes and therefore are also allowed a 90 day accumulation period without a permit. Note that these wastes are also "derived from" wastes and are assigned the same EPA waste codes as the spent solvent from which they are derived (40 CFR 261.3 (c)(2)(i)).

You also indicate in your letter that ETG will not be subject to the Part 268 land disposal restriction requirements since a permit is not required. However, you should note that the Part 268 standards apply independent of the permit program, and any such requirements that are applicable to a particular waste (e.g., the solvent still bottoms) must be compiled with regardless of the §262.34 accumulation provision.

I hope this information will be helpful to you. If you have further questions please feel free to call Frank McAlister at (202) 382-4740.

Sincerely yours,

Original Document signed

Joseph S. Carra
Director
Permits and State Programs Division