

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Final OSWER Response to Audit Report E1DSF4-11-0036
Manifesting Requirements on Hazardous Waste Generators

FROM: Elliot P. Laws
Assistant Administrator

TO: Michael Simmons
Associate Assistant Inspector General
for Internal and Performance Audits

I am pleased to transmit to you the Office of Solid Waste and Emergency Response's (OSWER's) final response to the above-referenced final Audit Report. The final Audit Report addressed the effectiveness of the Hazardous Waste Manifest System and other areas of concern to hazardous waste generators under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The Report made recommendations to both OSWER and the Office of Enforcement and Compliance Assurance (OECA).

As you know, this Office has provided you previously with responses to the draft and final Audit Reports, and our staffs have met in order to discuss the Reports' conclusions and recommendations. I understand that a consensus was achieved during a July 30, 1996, division level meeting between our staffs, and that the actions, alternatives, and milestones set forth below represent a mutually agreeable resolution to the portions of the Audit Report that affect OSWER. This response addresses only the recommendations directed to OSWER; OECA will provide a separate response to the recommendations in the Audit Report touching upon enforcement interests.

For each of the recommendations addressed to OSWER in the final Audit Report, I have restated your Office's recommendations as they were presented in the Report. Following each recommendation or group of related recommendations, I have identified the corrective actions, alternative solutions, and milestones which we are willing to commit to in order to resolve this Audit.

RECOMMENDATION 1: Consider the development of measures to determine manifesting effectiveness including mechanisms to ensure that hazardous wastes are managed property.

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RESPONSE: Within the context of EPA's efforts to implement the Government Performance and Results Act (GPRA), OSWR will consider whether a workable performance measure can be developed that will gauge the level of understanding and compliance by generators with the "front end" areas of RCRA implementation, such as determining when a material is subject to hazardous waste regulations, notification of hazardous waste generator status, and initiation of manifests for off-site shipments. A workable measure must not be unduly resource-intensive for the Agency to implement, and will need to be examined in light of competing demands on OSWER, OECA, Regional and State resources.

RECOMMENDATION 2: Require that original generators and manifest numbers be referenced on any new manifests created by transporters or TSDFs for re-shipments of hazardous waste.

RECOMMENDATION 3: Ensure that generators maintain control of the disposition of their hazardous wastes by requiring that transporters obtain generator consent before hazardous waste commingling occurs.

RECOMMENDATION 4: Ensure that generators are informed and consulted when partial or full loads of hazardous waste are rejected by TSDFs, or when hazardous waste remains as a residue in a "non-empty" container.

RESPONSE: OSWER maintains that the additional tracking features included in these 3 recommendations are not necessarily required to meet the explicit statutory mandate respecting transportation of hazardous waste to facilities holding a permit under RCRA Subtitle C or title I of the Marine Protection, Research, and Sanctuaries Act. However, OSWER notes the discussion of these issues by the Negotiated Rulemaking Committee during 1992-93, and the consensus reached by the stakeholders to cross-reference original generators and manifest numbers whenever a new manifest is initiated to track a re-shipment of a rejected load or a non-empty container residue. OSWER generally agrees with the Negotiated Rulemaking Committee's recommendations for cross-referencing generator and manifest information for these re-shipments, and will evaluate and consider requiring this information to be recorded on new manifests, or will otherwise provide for the linkage of the information. These issues will be addressed in the manifest regulatory revisions now under development. OSWER is providing the OIG with an interim milestone of December 15, 1996, at which time we will provide the OIG with our rulemaking schedule for this project.

Based on the July 30, 1996, discussions between OSWER and OIG staff, both offices now understand that a cross-referencing requirement may not be practical for all types of hazardous waste re-shipments (e.g., shipments of treatment residuals resulting from treatment many generators' wastes). Similarly, the parties understand that it may not be

practical to require generator consent to all commingling of hazardous waste shipments at transporters' transfer facilities, as suggested in the OIG's Recommendation 3. Further, even the cross-referencing referred to in the previous paragraph might be unduly burdensome for container residues that result from multiple shipments involving a container or tank vehicle. Therefore, OSWER will evaluate whether tracking procedures for "container residues" can be developed that will not be unduly cumbersome or unworkable, or result in disproportionate burdens for waste handlers. If a decision is made not to include manifest cross-referencing in the proposed or final revisions to the manifest requirements, OSWER will provide the OIG with an explanation that describes the points of evaluation and the rationale for the decision.

RECOMMENDATION 5: Change the Notification of Hazardous Waste Activity" form and instructions to clearly state that a new EPA hazardous waste identification number must be applied for when a facility changes location and that generators should notify EPA when they go out of business or otherwise cease being generators.

RECOMMENDATION 6: Change the "Notification of Hazardous Waste Activity" form to allow "protective filing" for potential generators, and identify generator protective filers in the RCRA data base.

RESPONSE: OSWER agreed with the data quality goals underlying both of these recommendations. With respect to recommendation 5 and facilities which change location, OSWER has implemented the requested clarification of re-notification responsibilities in the instructions which accompany the notification form. This revision was undertaken in the course of renewing the Information Collection Request for the notification requirements. The renewal is now with OMB, and is scheduled to become effective by October 1, 1996.

With respect to the other data quality problems associated with facilities that cease hazardous waste operations and with facilities that are "protective filers," OSWER believes that the Waste Information Needs (WIN) initiative provides a more systematic approach for resolving these and other data quality problems in the RCRA program. The States have flagged the notification/renotification process and related "Universe Identification" issues as a high priority area for WIN analysis. We will provide the OIG with information on the scope of this analysis after the States and EPA have agreed upon a workplan. At this time, it appears that the analysis will probably be implemented by a joint State/EPA workgroup over a 6-month period beginning in early 1997.

RECOMMENDATION 7: Develop a standard requiring generators to document a description of their facility processes when using process knowledge for waste determinations.

RESPONSE: OSWER is sympathetic with the underlying intent of this recommendation, which is aimed at standardizing better the type of information which facilities may use to substantiate that they do or do not generate a hazardous waste when the determination is based on "knowledge" of the process rather than testing. However, documentation issues can be complex. If every facility had to support its "no hazardous waste" determination with some threshold level of documentation, virtually every type of business could find itself touched by this recordkeeping requirement. A documentation requirement for each process and waste could result in a significant paperwork burden with little resulting benefit. In those cases where a waste generator declares their waste to be hazardous waste, the documentation is not needed, since the generator is subjecting its waste to hazardous waste management standards.

OSWER is willing to consider developing a more narrowly circumscribed approach to documenting process knowledge determinations in the ongoing Hazardous Waste Identification Rulemaking (HWIR), which involves a more narrow universe of facilities and constituents. The HWIR rulemaking schedule currently calls for a final rule to be issued by February, 1997, but EPA expects this schedule to change. OSWER expects that the revised schedule would also take into account the addition of this issue to the scope of the rule. If a decision is made not to include this type of documentation requirement in the final HWIR Rule, OSWER will provide the OIG with an explanation that describes the points of evaluation and rationale for the decision.

I trust that this response, combined with the anticipated response from OECA, will enable you to close out this Audit. I appreciate all the work that you and your staff put into this Audit Report, and I particularly wish to commend your staff for the efforts demonstrated in recent weeks to work with us to resolve the issues identified in the Report in a constructive manner.

cc: Tim Fields
Johnsie Webster
Becky Brooks
Richard LaShier
Carol Jacobson
Ann Stephanos, OECA