

9433.1985(04)

OCT 23 1985

Mr. Ronald Panicucci
LAN Associate
662 Goffle Road
Hawthorne, New Jersey 07506

Dear Mr. Panicucci:

This is in response to your letter, dated September 25, 1985, concerning the liability of an industry once a waste is delisted. In particular, your request clarification of the generator's liability if a waste that is delisted and disposed of in a non-hazardous waste landfill is, at some point in the future, considered hazardous again.

In general, after a waste has been delisted, it is no longer subject to the RCRA hazardous waste regulation. However, the generator is still liable for any damage the waste may cause and can be held responsible under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or can be sued by any citizen for damage incurred. In response to your concern over revoking a previous delisting decision, if a delisting were revoked it would not effect any waste that has already been disposed as non-hazardous, since the waste was considered non-hazardous at the time of disposal (i.e., you would not be required, under RCRA, to dig up the waste). However, as indicated earlier, you still may be held responsible under CERCLA if it is shown at your waste contaminated the environment.

Should you have any further questions regarding this matter, please contact Mr. James Poppiti at (202) 382-4788.

Sincerely yours,

Original Document signed

J. Winston Porter
Assistant Administrator