

9551.1988(03)

LAND DISPOSAL RESTRICTIONS TESTING AND RECORD KEEPING
REQUIREMENTS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAY 13 1988

Dr Paul Palmer, Ph.D.
Onscreen Directories Inc.
7345 Healdsburg Avenue
Suite 524
Sebastopol, California 95472

Dear Dr. Palmer:

This letter is in response to your March 1, 1988 and April 19, 1988, letters requesting an interpretation of 40 CFR 268.7 requirements. Your letter of April 19, 1988 expresses a general frustration with EPA's seemingly meaningless recordkeeping and certification requirements. EPA believes that these requirements are necessary, and I will try to explain the rationale behind the rules.

EPA is responsible for enforcing the prohibitions on land disposal of untreated hazardous wastes imposed by Congress. A determination that a waste is a listed hazardous waste (40 CFR 261.31, and 261.32) is, in general, based on how the material is used or the process by which it was generated, not on the constituents in the wastes. Thus, only the original generator can determine what the applicable waste codes are. This information is frequently, but not always, on the manifest. Waste codes have also been subdivided for the purpose of setting treatment standards. The treatment, storage, or disposal facility must be informed of the applicable standard. In cases where no land disposal is anticipated, the notice is still required to insure that the waste is not disposed of by a facility not realizing that such disposal for that particular waste is prohibited.

All restricted wastes, whether treated and disposed on site, or sent off-site to a RCRA treatment or disposal facility or to a non-RCRA recycling facility, are subject to testing and

recordkeeping requirements. Please note that although recycling facilities may be exempt from RCRA regulation, the wastes they receive and the resulting residues are regulated by RCRA and are subject to the land disposal restrictions. We believe that the notifications are necessary to assure that the information for insuring compliance with the statute is available to both the handlers of the hazardous waste and to EPA.

Certification is a necessary tool for tracking restricted wastes from generation to final disposal. This law clearly puts the burden on the generator to see that the waste is properly managed and disposed of. Thus, the certification operates to protect the generator in addition to providing EPA information needed to efficiently enforce these regulations.

In response to the specific questions in your March 1 letter, I hope the following discussion will be helpful. After a generator makes a determination that he is managing a restricted waste which does not meet the appropriate treatment standards, or where the waste does not comply with the applicable prohibitions in section 268.32 or RCRA Section 3004(d), the generator must notify the treatment or storage facility in writing of the appropriate treatment standards and applicable prohibitions in section 268.32 or RCRA section 3004(d). This notification must accompany each shipment of the waste.

As a treatment and storage facility that ships restricted wastes off-site for further management, you must comply with the notice requirements applicable to generators in section 268.7(a)(1). You must also comply with the manifest requirements of section 264.71(c) or section 265.71(c).

In the case of the operator of a cement kiln receiving restricted wastes for further management (for use as a fuel supplement), the treatment residues from these restricted wastes are subject to all requirements under section 268.7(b)(2), (i) and (ii) prior to land disposal.

Your interpretation of 40 CFR 268.7 certification requirement is correct. A certification is required that the waste meets the applicable treatment standards before the restricted waste may be land disposed. When the restricted waste is not destined for land disposal a certification is not

required. However, a written notification must accompany each shipment of restricted waste where further management is appropriate before land disposal.

I hope this information adequately addresses your concerns. If you have further questions, please feel free to contact Jim Thompson, at (202) 382-7438.

Sincerely,

Original Document signed

Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Region IX