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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 3 1990

Paul G. Burkholder
President, Bowyer Properties
400 South Washington Street
Winchester, Virginia 22601

Dear Mr. Burkholder:

This is in response to your letter (undated) that I received June 16, 1990, regarding the regulatory status of creosote treated cross ties going for disposal and the applicable requirements and standards for facilities disposing these materials.

First, I must clarify that the information provided in this letter pertains to the regulatory status of creosote treated cross ties under Subtitle C of the Resource Conservation and Recovery Act (RCRA). In your letter, however, you use the term "hazardous materials." This is a specific term utilized by the United States Department of Transportation (DOT), whereas, the Environmental Protection Agency (EPA) utilizes the term "hazardous waste" when defining a material's regulatory status under the Subtitle C program.

Under Subtitle C of RCRA, material that is disposed or intended for disposal is defined as solid waste pursuant to 40 CFR 261.2. Once a material is identified as a solid waste, this waste can be a hazardous waste if it meets a listing of hazardous waste in Subpart D of 40 CFR Part 261, or if it exhibits a characteristic of hazardous waste identified in Subpart C of 40 CFR Part 261. The EPA has issued final regulations listing unused commercial chemical product creosote, when discarded or intended to be discarded, and two manufacturing process wastes (bottom sediment sludge from the treatment of wastewaters from the wood preserving processes that use creosote and/or pentachlorophenol (K001), and wastewater treatment sludges generated in the production of creosote (K035)) as hazardous waste in Subpart D of 40 CRF Part 261. Additionally, in the December 30, 1988 Federal Register (53 FR 53282), the EPA proposed to amend its regulations by listing as hazardous, several

additional wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives.

Finally, please note that State and local regulatory agencies may have regulations that are more stringent than those at the Federal level. Should you have further questions regarding the regulatory status of creosote treated cross ties at a specific site, I encourage you to contact the appropriate Regional office or State regulatory agency to determine what, if any, additional regulations apply.

Sincerely,

Original Document signed

David Bussard, Director
Characterization and
Assessment Division