

July 9, 1997

Ms. Cynthia Hilton  
Executive Director  
Association of Waste Hazardous Materials Transporters  
2200 Mill Road  
Alexandria, Virginia 22314

Dear Ms. Hilton:

This is in response to your May 29, 1997 letter to Administrator Carol M. Browner of the U.S. Environmental Protection Agency (EPA) regarding your concerns with the Subpart CC rule. I regret that it has taken this long for you to receive clarification for the two issues raised in your letter.

We have reviewed the first issue raised in your January 19, 1997 letter to Bruce Jordan, regarding the Department of Transportation (DOT) compliance demonstration option in the Subpart CC container standards, as amended November 25, 1996. Those container standards allow three options for compliance demonstration, one of which is through compliance with certain applicable DOT regulations for packaging of hazardous materials for transportation. This option, described at 40 CFR 265.1087 (f) and 264.1086 (f), includes four requirements which must all be met to comply with that Subpart CC compliance demonstration. If compliance with the Subpart CC rule can not be demonstrated using this option (i.e. if all four of the requirements of 40 CFR 265.1087 (f) and 264.1086 (f) are not met), compliance with Subpart CC must be demonstrated using one of the other two options, which are listed in 40 CFR 265.1087 (c)(1) and (d)(1). Since your letter does not specify whether the container in question meets each of the four requirements of 40 CFR 265.1087 (f), we do not consider it appropriate to speculate as to the Subpart CC compliance status of the unit. However, you are in a better position to determine the DOT classification of your container, and whether this DOT container, and the hazardous waste which is managed in this container, meet all of the requirements of the Subpart CC rule, paragraph 265.1087 (f). In reading your letter, it seems you may have misunderstood the requirements of this compliance demonstration option. Compliance with all of the four subparagraphs within 265.1087 (f) is necessary for compliance with paragraph 265.1087 (f); a close reading of that regulatory language should clearly indicate that it is the EPA's intent to require compliance with all four of the subparagraphs 265.1087 (f)(1) through (f)(4). For your better understanding, the following paragraphs provide a detailed description of each of the four requirements found at 265.1087(f).

The first requirement, found at 40 CFR 265.1087 (f)(1), specifies that the container must meet the applicable requirements specified in 49 CFR part 178 or part 179. It is EPA's intent to require that in order to comply with 40 CFR part 265.1087(f), a container must be subject to 49 CFR part 178 or 179; it is also our intent to require that such a container be in compliance with all the requirements of 49 CFR parts 178 and 179 that are applicable to that container. In developing the final rule, we determined that containers subject to and in

compliance with these requirements would achieve the appropriate level of air emission control. We could not make that finding for containers not subject to these provisions. Your January 17, 1997 letter indicates that the roll-off container you describe is not subject to 49 CFR part 178 or 179. A container not subject to 49 CFR part 178 or 179 is not eligible to comply with the Subpart CC rule through the requirements of 40 CFR 265.1087 (c)(1)(i) or (d)(1)(I), nor the corresponding paragraphs in 40 CFR part 264; it would have to comply with the Subpart CC rule through the requirements of 40 CFR 265 (c) (1)(ii), (c)(1)(iii), (d)(1)(ii) or d (1)(iii), or the corresponding paragraphs in 40 CFR part 264, as appropriate.

The second requirement within 40 CFR 265.1087 (f) for DOT-compliant containers stipulates that the hazardous waste must be managed in the DOT container in accordance with all the requirements contained in the 49 CFR part 107 subpart B, part 172, part 173, and part 180 that are applicable to that container and the waste managed in that container. We listed these regulatory parts because they were characterized by yourself and by DOT representatives as the parts which describe the requirements for management of hazardous waste, for the types of containers that are specified in 49 CFR parts 178 and 179. In answer to the specific question in footnote 5 of your January 17, 1997 letter, the reference to 49 CFR part 107 subpart B is included to recognize the exemptions for containers that have been determined by DOT to be equivalent or superior to those required within 49 CFR part 178 and 179 standards. As you may recall, this inclusion was specifically requested by representatives from the Association of Waste Hazardous Materials Transporters at our March 3, 1995 meeting.

The third and fourth requirement, listed in the 40 CFR 265.1087 (f)(3) and (f)(4) and their corresponding paragraphs in 40 CFR part 264, are intended to stipulate that the DOT-authorized container must be in compliance with all applicable requirements in 49 CFR parts 178 and 179. Paragraph 265.1087 (f)(3) of the Subpart CC rule specifically means that for the purposes of this Subpart CC rule provision, compliance with 49 CFR parts 178 and 179 is required, and no exceptions to those provisions are allowed (unless the container were a lab pack, as described in 265.1087 (f)(4)). There are many exceptions, both explicit and implicit, to the 49 CFR part 178 and 179 standards which are contained in other sections of the DOT standards. The EPA's intent in 40 CFR 265.1087(f)(3) is to disallow any regulatory provision which removes or alters a requirement contained in 49 CFR parts 178 or 179, regardless of where that disallowing regulatory provision is codified, or whether that provision is specifically described as an "exception." For instance 49 CFR 173.28 (e) states that a non-reusable container may be reused for certain circumstances; however, the allowance of that paragraph would not be recognized for compliance with the Subpart CC container standards at 40 CFR 265.1087 (f) or 264.1086 (f). As another example, 49 CFR 173.204 contains an implicit exception for certain hazardous materials that states, "packagings need not conform to the requirements of part 178"; however, if that packaging were used to manage a hazardous waste subject to the container regulations of the Subpart CC rule, the effect of 40 CFR 265.1087 (f)(3) would be to require that, for compliance with the Subpart CC rule, such packaging must comply with the requirements of 49 CFR part 178. In this example, 40 CFR 265.1087(f) and 264.1086(f) would disallow the exception to 49 part 178 provided by 49 CFR 173.204. In general, 40 CFR 265.1087(f) and 264.1086(f) have the intended effect of requiring strict

compliance with all applicable requirements of 49 CFR parts 178 and 179 (other than the exception for lab packs at 49 CFR 173.12(b)), for the purpose of the DOT compliance option within the Subpart CC container standards. This strict compliance with these provisions is necessary to ensure that the emission reduction intended by the rule is achieved.

The second issue raised in your letter to Bruce Jordan concerns the Subpart CC rule requirement for a visual inspection of each regulated container which is transported to a regulated facility and contains hazardous waste at the time it arrives at the facility. This inspection requirement is found at 40 CFR 265.1087 (c)(4) and (d)(4), and at the corresponding paragraphs in 40 CFR part 264. The purpose of the visual container inspection is for the facility operator to ensure that the container has no visible openings or gaps through which organics could be emitted. The amended container regulations published November 25, 1996 did not specify the time frame in which the initial inspection must be conducted; however, it is the intent of the EPA that the initial inspection be subject to the same time requirements as were contained in the December 6, 1994 final regulation (see 40 CFR 265.1089(f)(1) of the December 6, 1994 published regulation). Specifically, the container inspection must be conducted on or before the date that the container is initially subject to the Subpart CC container standards. For a container with hazardous waste that is transported to a regulated facility, the inspection of the container is required on or before the date that the container is accepted at the facility. If, as your letter states, it would be infeasible to inspect a container on the date it is accepted at the facility, for the purpose of compliance with the Subpart CC container standards, it would be acceptable for the container to be inspected prior to that date.

I appreciate this opportunity to be of service and trust this information is helpful to you.

Sincerely,

John S. Seitz  
Office of Air Quality Planning and Standards