Mr. Stephen J. DeLussa
Environmental Affairs Manager
Envirosource Technologies
1155 Business Center Drive
Horsham, PA 19044-3454

Dear Mr. DeLussa:

Thank you for your letter dated March 1, 1999, regarding the applicability of the Universal Treatment Standards (UTS) to regulated underlying hazardous constituents inof a soil contaminated with F032, F034 and F035 wastes at a Superfund site in Oregon. The organic constituents at issue are also. underlying hazardous constituents (UHCs) listed in the UTS Table found at 40 CFR §268.48. These organic constituents qualify as UHCs because the F-code contaminated soil is also characteristically hazardous for arsenic and chromium. You have asked if hazardous soil containing these wastesthe waste and these organic UHCs must meet UTS prior to disposal , considering that the soil contaminated with these F-code wastes itself isis under a National Capacity Variance, and that the only UHCs found in the contaminated soil waste are also regulated constituents of the waste codes in question.

Typically, we refer site-specific implementation questions to the authorized state in which the facility is located because the authorized state is charged with the responsibility for administering the RCRA regulations on a site-specific basis. However, we have contacted personnel in both the State of Oregon and U.S. EPA Region 10, and they also request our input on this issue. Please remember that an authorized state is always free to be more stringent than the federal program and that our interpretation is of an advisory nature in this situation.

From your letter, we understand that you intend to treat the wastes for the two characteristic metals and decharacterize the contaminated soil, but that you are concerned about whether the organic UHCs must also be treated to their respective UTS

levels. In this case, as indicated in your letter, the only UHCs in the contaminated soilis waste, arsenic and chromium, are also regulated organic constituents of the waste codes F032, F034 and F035, for which a national capacity variance is in effect.

This issue was generally addressed in the Third Third final rule preamble in the broad context of wastes with multiple waste codes that are subject to more than one treatment standard. We stated that, during the period of a national capacity variance for one of the waste codes, the treatment standard for any other waste code needs to be met (55 FR at 22660, col. 1). However, our enunciation of this general principle did not address the situation in which one or more pivotal constituents not only cause the waste to be listed or identified but also trigger the need for a national capacity variance due to the lack of adequate treatment capacity.

It appears that treatment of the organic UHCs in soil contaminated with these F-codes falls into the situation that is not addressed by the general principle set out in the Third Third rule. Rather, for these Superfund soils, treatment of the organic UHCs would likely involve bethe same type of technology (combustion) that would beis required for the F032, F034 and F035 waste codes contained in the contaminated soilwaste. Considering that we specifically granted the national capacity variance because of insufficient combustion treatment capacity for F-code contaminated soil and debris, it would not be logicalmake sense to require treatment of organic UHCs in the contaminated soilthe waste. Therefore, in this particular case, the organic UHCs do not need to meet UTS prior to land disposal, at least from our federal perspective. However, if the contaminated soilwaste contains UHCs that are not regulated constituents of the waste codes that are under the variance, you would be required under the federal program to treat those UHCs down to UTS levels.

If you have any further questions, please contact Nick Vizzone of my staff at (703) 308-8460. Thank you.

Sincerely,

Elizabeth A. Cotsworth
Fredric D. Chanania,
Acting DirectorChief

cc: Al Goodman, EPA Region 10
Bill Dana, State of Oregon
Pam Smolzinski, State of IdahoWaste Treatment Branch