PPC 9487.1986(04)

ABOVE-GROUND LAND EMPLACEMENT FACILITIES, N.J. LAW

MAR 26 1986

Honorable James J. Florio
Chairman
Subcommittee on Commerce, Transportation
and Tourism
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of February 26, 1986, regarding the regulatory status of "above-ground land emplacement facilities" under the federal hazardous waste regulatory program.

The phrase "above-ground land emplacement facilities" is not a term used in the federal regulations for treatment, storage, and disposal of hazardous waste. However, based on the information in your letter, it appears that the New Jersey Hazardous Waste Facilities Siting Commission defines that phrase as permanent placement of wastes on or in the land. under the Resource Conservation and Recovery Act (RCRA) and implementing regulations, permanent placement of hazardous waste, including perpetual "storage" falls into the regulatory category of land disposal.

Over the past several years, we have reviewed a number of proposals for "above-ground" long-term storage or disposal. Without exception, we have viewed each of these proposals as land disposal, and, more specifically, as landfills. */

*/ EPA permitting regulations for hazardous waste facilities recognize five kinds of land-based treatment, storage, or disposal units: surface impoundments, waste piles, land treatment units, underground injection wells, and landfills. The permanent placement of hazardous waste is permitted only at land treatment units, disposal surface impoundments, underground injection wells, and landfills. Under EPA regulations (40 CFR §260.10), a landfill is defined as a "catchall" category, encompassing land disposal of hazardous waste that does not constitute disposal in any of the other three categories.

I would like to also clarify certain points in your letter. You state on page 2, that "Therefore, the ban applies when the addition of absorbents fails to convert the liquids into a non-liquid form or fails in eliminating free liquids in the waste." As stated above, the bulk hazardous liquid ban applies even if (or when) an absorbent has been added to the waste and changed its physical character (i.e., changed the waste from a liquid to a solid).

Another point that you raised on page 2 is that the bulk hazardous liquid ban does not apply to non-liquid (i.e., solid) hazardous waste or wastes containing no free liquids, whether or not absorbents have been added. This statement is true only if a bulk waste is initially determined to be a solid by the Paint Filter Liquids Test (Method 9095). This amendment does not prohibit a landfill owner or operator from adding an absorbent to a solid hazardous waste if he/she so chooses. If, however, the bulk waste is initially determined to be a liquid by the above test, the addition of an absorbent to treat the waste (i.e., make it a solid) converts the waste into a material that cannot be placed in a landfill.

I wish to caution you on your reading of §3004(c)(1) and (c)(2). You appear to be combining these two paragraphs into one. The Agency interprets §3004(c)(1) to regulate bulk liquid hazardous wastes while 3004(c)(2) regulates containerized liquid hazardous wastes. The bulk hazardous liquid amendment prohibits the use of absorbents while the containerized hazardous liquid amendment allows absorbents that are non-biodegradable and structurally stable (i.e., do not release liquids when compressed). These two paragraphs ((c)(1) and (c)(2)) are exclusive with different legislative histories (one originated in the House, the other in the Senate), and thus should not be read to address the same universe of waste.

In regard to the example that you provided on page 4, I wish to point out that the Hotline's interpretation does not prohibit "these types of liquid elimination processes." Your example refers to free liquid molecules that are bonded within the structure of the solidified product (similar to the hardening of concrete that binds water molecules. I understand this process (i.e., bonding) to be a chemical reaction and is often referred to as chemical stabilization or encapsulation. These bonding processes are what Congress envisioned to be acceptable treatment methods for bulk liquid hazardous waste. Again, what the Hotline's interpretation would prohibit is the bulk (or non-containerized) disposal in a hazardous waste landfill of a liquid hazardous waste that has been treated only by absorption regardless of where the absorption (or where the addition of an absorbent) took place. We interpret the Congressional meaning of absorption to be the addition of an absorbent, where a physical,

and not a chemical, reaction with the liquid fraction takes place. This distinction between physical and chemical processes is discussed further in the enclosed guidance.

I hope that this discussion responds satisfactorily to your concerns, If you should have any additional comments or questions, please contact Paul Cassidy, of my staff, at (202) 382-4682.

Sincerely

J. Winston Porter
Assistant Administrator

Enclosure