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DUST SUPPRESSION AS ROAD TREATMENT

SUBJECT: Prohibition on Use of Hazardous Waste for Dust
Suppression or Road Treatment (Your memo dated 6-25-85)

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562)

TO: Charles E. Findley, Director
Hazardous Waste Division (M/S 529)
Region X

Based on the legislative history to Section 3004(1), and on the structure of the statute and EPA's current regulatory policy, we believe that the ban in Section 3004(1) applies only to materials that are themselves hazardous wastes. The provision will be codified in Part 266, a subpart reserved for hazardous waste uses constituting disposal.

The language of Section 3004(1) does not specify whether the mixture of used oil and hazardous waste must, itself, be a hazardous waste in order for the ban to apply. However, the conference report to the Hazardous and Solid Waste Amendments of 1984 explains that Congress intended for the ban to apply to the use of "dioxin contaminated wastes or any other hazardous waste as a dust suppressant" (H.R. Rep No. 1133, 98th Cong., 2d Sess. SS (1984)). [Emphasis added.]

In addition, Congress placed the prohibition on dust suppression in Section 3004 of RCRA, where regulatory jurisdiction is generally limited to hazardous wastes identified or listed under Section 3001. Congress, if so inclined, could have extremely extended the prohibition to used oils or other materials that are not hazardous wastes. For example, the prohibition could have been placed in Section 3014(a) of RCRA, which applies to all used oils that are recycled, whether or not the used oils are hazardous waste.

In Section 3001 of RCRA, Congress gave EPA the authority to define in regulations the hazardous wastes subject to regulation under Subtitle C. Section 261.3(a)(2)(iii) provides that if a mixture of a solid waste and a characteristic waste no longer exhibits any of the characteristics, it is not a hazardous waste and is no longer subject to Section 3004. This is not an exemption but rather is part of EPA's definition of hazardous waste. Absent a clear indication in the statutory language or legislative history that Congress intended to override EPA's current regulatory policy relating to the definition of hazardous wastes, we believe that the policy should apply in this case.

Based on the above rationale, our position remains as stated in the June 6 memorandum.

cc: Waste Management Division Directors, Region I - IX
Mark Greenwood, OGC