9441.1994(04)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

March 22, 1994

Mr. T. L. Nebrich, Jr.
Technical Director
Waste Technology Services, Inc.
640 Park Place
Niagara Falls, New York 14301

Dear Mr. Nebrich:

I am pleased to respond to your letter of January 10, 1994, in which you requested clarification of the Agency's "contained in" policy. The specific question that you raise regards soil contaminated with a listed waste that is listed only because of its ignitability. You question whether the contaminated soil is still a hazardous waste when it is not ignitable. The example that you cite involves soil contaminated with U239. You also raise the same question for soils contaminated with other listed wastes (such as F003) that are listed solely for ignitability.

As you correctly state in your letter, under the "contained-in policy", the authorized state or EPA has the discretion to determine contaminant-specific health-based levels, such that if the concentrations of the hazardous waste constituents were below those levels, the media would no longer be considered to contain the waste. The health-based levels used in making contained-in determinations are made on a site-specific basis. EPA has codified the contained-in policy for contaminated debris (see 57 FR 37225, August 18, 1992).

In cases where the waste is listed only for ignitability, and the contaminated soil is not ignitable and does not exhibit any other characteristics, the contaminated soil may contain hazardous constituents and thereby contain the listed waste. The authorized state or EPA may establish health-based levels for any hazardous constituents present in the contaminated soil below which the contaminated soil would no longer contain the listed waste. For

example, for a soil contaminated with F003 listed waste, the authorized state or EPA might establish contained-in determination levels for individual solvents as well as for any metals that might be present. This interpretation is consistent with the delisting process for wastes that are listed solely because they exhibit a characteristic. To make a delisting determination, the Administrator may examine additional hazardous constituents other than those for which the waste was listed (260.22(c)(2)).

I hope that this has helped to clarify the issues that you have raised. If you have any further questions, please contact Hugh Davis at (703) 308-8633.

Sincerely,
Michael Shapiro
Director, Office of Solid Waste