UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEBRUARY 3, 1989

MEMORANDUM

SUBJECT: Tracking of Medical Waste Shipments Originating Outside Covered States

FROM: Devereaux Barnes, Director
Characterization and Assessment Division

TO: Conrad Simon, Director
Waste Management Division
EPA Region II

In response to your staff's request, this is an explanation of how the interim final rule will deal with shipments of medical waste originating outside, but then brought into, one of the Covered States. OSW originally planned to require the transporter to initiate the tracking form at the State border in this situation. OGC advised us, however, that due to the language of Section 11003(a) of the Act, which directs EPA to regulate medical waste "generated in a state subject to the demonstration program" (emphasis added), EPA cannot regulate waste unless it is actually generated in a Covered State.

We recognize that this situation is potentially an implementation and enforcement problem. We discussed the matter further with OGC and settled on a provision in the rule (Section 259.1(d)) which establishes a rebuttable presumption. If regulated medical waste is being transported or otherwise managed in a Covered State, enforcement officials will presume that the waste was generated in the Covered State unless the transporter has documentation (i.e., shipping papers, bill of lading) showing the waste originated in a non-Covered State. If documentation is produced, the shipment would be subject only to the state requirements, not EPA's.

Each State then will have to develop regulations to control what comes in from other States. While this is not the optimal solution, States would be able to regulate incoming and outgoing shipments in the same manner by adopting rules similar to EPA's under State authority.