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CLARIFICATION OF RCRA REGULATORY APPLICATION TO SOILS
CONTAMINATED BY CEMENT KILN DUST

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

September 15, 1993

MEMORANDUM

SUBJECT: Clarification of RCRA Regulatory Application
to Soils Contaminated by Cement Kiln Dust

FROM: Jeffery D. Denit, Acting Director
Office of Solid Waste

TO: Terry L. Anderson, Chief
Hazardous Waste Branch
EPA Region VIII

This memorandum responds to your memorandum of July 27, 1993, in which you request additional clarification of the regulatory status of soil contaminated by cement kiln dust (CKD). You asked if soil contaminated with CKD is removed during a corrective action, would a hazardous waste determination for the soil be made using all current applicable regulations? More specifically, you asked whether the two-part test provision of 40 CFR 266.112 applies retroactively to wastes disposed in units that ceased operations prior to the effective date of the BIF rule in a manner similar to the way hazardous waste listings apply to wastes disposed in units that ceased operations prior to the effective date of the listings?

It is not necessary to make a hazardous waste determination for CKD-contaminated soil using the two-part test provision of §266.112. The situation you describe where CKD-contaminated soil is remediated during a corrective action is not analogous to that of applying hazardous waste listings retroactively to wastes disposed in units that ceased operations prior to the effective date of the listings. In the latter situation, we are simply determining whether the waste that was previously disposed meets the listing description. In the former situation, we are interpreting the scope

of the Bevill amendment to wastes produced from an industrial process that co-processes RCRA hazardous wastes. Moreover, the new regulatory provisions of §266.112 replace the Agency's position that was described in the Federal Register notice of November 29, 1985 in footnotes 87 - 89 (which said that wastes from co-processing remain covered by the Bevill amendment), and as new regulatory provisions, they do not apply retroactively.

If you have any comments or further questions, please have your staff contact either Steve Silverman of the Office of General Council on 202-260-7716 or Richard Kinch of the Waste Management Division on 703-308-8434.