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## RCRA/SUPERFUND HOTLINE SUMMARY

NOVEMBER 1989

### 1. SIGNIFICANT QUESTIONS AND RESOLVED ISSUES-NOVEMBER 1989

#### A. RCRA

##### 1. Treatability Studies Sample Exemption

The treatability studies sample exclusion in 40 CFR 261.4(e) and (f) conditionally exempts generators of waste samples and owners or operators of laboratories or testing facilities conducting certain defined treatability studies from Subtitle C hazardous waste requirements. Is it within the scope of 40 CFR 261.4(e) and (f) for the testing facility to return the samples to the generators of the samples after the treatability study is completed?

Yes; 40 CFR 261.4 (f)(10) states, as one of the conditions of the test facility exemption, as follows: "The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section 261.3 and, if so, are subject to Parts 261 through 268, and Part 270 of this Chapter, unless the residues and unused samples are returned to the sample originator under the Section 261.4(e) exemption." 40 CFR 261.4(e) is analogous to all sample exclusion in 261.4(d) in that its intent is to exclude samples from all regulations under Subtitle C as long as all provisions in the exclusion are complied with. This is restated in the preamble to Sections 261.4(e) and (f), July 19, 1988 Federal Register (53 FR 27292,27295),

which states that, upon completion of the treatability study, the owner or operator of the laboratory can return the unused samples and residue to the generator or sample collector which remaining excluded from Subtitle C hazardous waste regulations.

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