

March 12, 1998

Mr. T. L. Nebrich, Jr., CHMM, QEP
Technical Director
Waste Technology Services, Inc.
640 Park Place
Niagra Falls, NY 14301

Dear Mr. Nebrich:

This is in response to your letter of August 21, 1997 asking for clarification regarding 40 Code of Federal Regulations (CFR) 264.12, the *Required notices* section of Subpart B, *General Facility Standards*, and specifically the language used in section 264.12(b).

The regulations at '264.12(b) state that an Aowner or operator of a facility that receives hazardous waste from an off-site source . . . must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. . . @ You ask if the language, Ainform the generator in writing,@ requires the owner/operator to inform the generator in writing directly, or whether the owner/operator could send the written notice to an agent/broker of the generator who would then forward the notice to the generator.

In a phone conversation with one of my staff on March 4, 1998, you explained the reason for your question. In that conversation, you noted that the written notice was not being consistently delivered to the appropriate person at the generator facility, and that sometimes the notice was either mis-directed or lost. You also mentioned that you had proposed a solution to the generator in which the owner/operator of the facility receiving the waste would send the notice to you and then you would subsequently ensure its delivery to the appropriate person at the generator facility. However, the

RO 14464

generator expressed concern that your proposal was in conflict with '264.12(b), inferring that the notice must be sent directly to the generator.

Section 264.12(b) only states that the owner/operator must inform the generator in writing. The regulations do not specify how the written notice is to be delivered to the generator. We believe that your proposed solution, in which an agent/broker of the generator receives the notice and then delivers it to the generator, meets the intent of '264.12(b), because the end result is that the generator is informed... in writing.@ Please note that states authorized for the Resource Conservation and Recovery Act may have more stringent requirements than the federal program. We, therefore, suggest that you contact your state agency to see whether any additional requirements apply.

Thank you for the opportunity to respond to your request. If you have any further questions, please do not hesitate to contact Jeff Gaines of my staff at (703) 308-8655.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

