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APPLICABILITY OF RCRA REGULATIONS REGARDING LARGE QUANTITY  
GENERATORS, TO THE VETERANS AFFAIRS MEDICAL CENTER

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

November 23, 1994

Mr. John G. Staudt, Jr., P.E.  
Chief, Environmental Engineering Division (138C4)  
Department of Veterans Affairs  
1810 Vermont Avenue, N.W.  
Washington, D.C. 20420

Dear Mr. Staudt,

This letter is in response to your letter dated October 26, 1994 regarding the Veterans Affairs Medical Center (VAMC) located in White River Junction, Vermont.

The State of Vermont has received authorization for the Base RCRA program as well as numerous other, more recent regulations as published in the Federal Register dated June 6, 1993 50 FR 31911. This means that the State of Vermont is authorized to administer and enforce the hazardous waste provisions approved under the Federal RCRA program.

EPA's definition of "hazardous waste" at 40 CFR 261.3 does not include medical wastes. Accordingly, EPA would not consider VAMC subject to the regulatory requirements for a large quantity generator under the Federal RCRA program. However, Vermont since 1988 has included "known" infectious waste as well as other State regulated wastes in its definition of hazardous waste. Vermont's inclusion of known infectious waste is considered a "broader in scope provision" of the State hazardous waste regulations. Vermont may administer and enforce as a matter of State law hazardous waste requirements using a broader in scope definition of hazardous waste. EPA's regulations at 40 CFR 271.1(i)(1) allow States to adopt and enforce requirements which are more stringent or broader in scope than those required by the Federal program. Provisions which are broader in scope are not part of the Federally approved

or authorized program (see 271.1(i)(2)) and are, therefore, unenforceable by EPA. However, broader in scope provisions are permissible as part of the State's program, and facilities are required to comply with applicable State law requirements.

You specifically ask how Vermont's definition would affect VAMC's status as a conditionally exempt small quantity generator, if the hazardous medical waste it produces increases the combined total hazardous chemical waste and hazardous medical waste to more than 1000 kilograms per month. As stated above, there is nothing in Federal law that would compel treatment of VAMC as a large-quantity generator. Instead, the issue is one of State law. Therefore, I recommend that you contact Peter Marshall or Steven Simoes of the Hazardous Materials Division of the Vermont Department of Environmental Conservation at (802) 241-3868 with questions regarding VAMC and compliance with Vermont's hazardous waste generator requirements.

I hope you have found this information useful. Please do not hesitate to contact me or Angelia Blackwell, Acting Chief of the State and Regional Programs Branch at (703) 308-8760 if you have further questions.

Sincerely,

Michael Shapiro, Director  
Office of Solid Waste

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Attachment  
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Department of Veterans Affairs  
1810 Vermont Avenue, N.W.  
Washington, D.C. 20420

October 26, 1994

Mr. Michael Shapiro  
Director, Office of Solid Waste  
U.S. Environmental Protection Agency  
401 M Street S.W.  
Washington, D.C. 20460

Dear Mr. Shapiro:

Our medical center in White River Junction, Vermont is currently a conditionally exempt small-quantity generator of hazardous waste. As a result of the state's recent inclusion of medical waste in their definition of hazardous waste, the VA Medical Center (VAMC) is faced with a problem for which we need regulatory clarification. The question that we need answered is whether, all things being equal, the VAMC would be required to adhere to EPA regulatory requirements for a large-quantity generator if the hazardous medical waste they produce increases the combined total hazardous chemical waste and hazardous medical waste to more than 1000 kilograms per month. A related question is whether state can administer or enforce EPA's hazardous waste requirements using a definition of hazardous waste that includes medical waste.

We contacted EPA Region I in Boston and the state and were unable to get an answer to the foregoing. The RCRA Hotline, however, on two separate occasions confirmed my understanding that for the purpose of determining RCRA compliance medical waste should not be included with waste defined as hazardous by 40 CFR Part 261.

If Vermont administers EPA's solid waste program using definition of hazardous waste that includes medical, the implications for VAMC White River Junction will be severe:

- To meet the RCRA permitting and other regulatory requirements of a large quantity versus a small-quantity

exempt generator, the VAMC would have to meet burdensome regulatory requirements that they currently are not required to meet and otherwise would not have to meet if located in other states.

The public might perceive the VAMC to have a greater potential to pollute the environment than it actually has. Without a distinction between hazardous medical waste and hazardous chemical waste it is conceivable that a medical center producing primarily medical waste would be viewed as having the same capability to pollute as the industrial operation producing only chemical hazardous waste.

- It will be difficult, if not impossible, for the VAMC to reduce the amount of hazardous medical waste it produces to meet the pollution prevention/waste minimization goal of reducing hazardous waste.

A document provided by the state indicates that the state is using the same generator class terminology as contained in federal regulations (i.e., conditionally exempt small-quantity generator, etc.). It is unclear from this document both whether generators will be required to report hazardous chemical waste and hazardous medical waste separately and whether the state will similarly separately report these wastes to EPA.

Thank you for your cooperation. If you or your staff have any questions, please contact me at (202) 233-7197.

Sincerely,

John G. Staudt, Jr., P.E.  
Chief, Environmental Engineering Division (138C4)

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Attachment  
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VERMONT AGENCY OF NATURAL RESOURCES  
FACTSHEET--INFECTIOUS WASTE

WHAT IS INFECTIOUS WASTE AND HOW IS IT REGULATED? Infectious waste

is defined in the Vermont Hazardous Waste Management Regulations (VHWMR) Section 7-103 as "a waste capable of producing an infectious disease. For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. The following types of waste shall be managed as infectious wastes when the presence of an infectious disease is known or when exposure to or contamination by pathogens is known to have occurred: isolation wastes, cultures and stocks of etiologic agents, blood and blood products, pathological wastes, contaminated laboratory wastes, sharps, dialysis unit wastes, experimental animal carcasses and body parts, experimental animal bedding and other animal room wastes, contaminated food and other products, and contaminated equipment."

Infectious waste is regulated as a hazardous waste in Vermont. It is listed in Section 7-210 of the VHWMR and is identified by the code VT07. This hazardous waste listing includes "infectious waste from hospitals, clinics, mortuaries, laboratories, patient care facilities and the offices of medical, dental or veterinary practices...." This means that in Vermont, any generator of infectious waste is subject to the applicable provisions of the Hazardous Waste Management Regulations.

Please note that although most infectious waste is also regulated by the Department of Health as "medical waste," not all medical waste meets the VHWMR definition of infectious (and therefore hazardous) waste.

WHEN IS INFECTIOUS WASTE NOT A HAZARDOUS WASTE? VHWMR Section

7-203(13) provides an exemption for infectious waste if "the waste is disinfected, sterilized or incinerated at the site of its generation" and the waste does not exhibit a hazardous waste "characteristic." Waste that meets the conditions of this exemption would no longer be regulated as a hazardous waste (although it

still may be regulated as a medical waste). [NOTE: There are four hazardous waste characteristics: ignitability, corrosivity, reactivity, and toxicity. These are fully described in VHMWR Sections 7-204 through 7-207.]

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For more information regarding Vermont's Hazardous Waste Management Program, please contact the Management & Prevention Section of the Hazardous Materials Management Division (HMMD) at (802) 241-3888. The HMMD can also provide a list of companies who are certified to transport infectious hazardous waste.

For information regarding the regulation of "medical waste," please contact the Vermont Department of Health at (802) 863-7231.

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