

The Honorable Norm Coleman
United States Senate
Washington, DC 20510-2307

Dear Senator Coleman:

Thank you for your letter of May 23, 2003, to Administrator Whitman regarding the Environmental Protection Agency's (EPA) standards under the Resource Conservation and Recovery Act (RCRA) governing the treatment of mercury-bearing hazardous waste. We share your desire that mercury-containing wastes be treated appropriately, and, as explained below, are taking steps to address the particular issue you identify in RCRA treatment requirements.

Mercury-containing wastes can originate from several sources, including households, industry, and cleanup sites. Different federal and state regulations can govern these sources, including regulations for household hazardous waste, hazardous industrial waste, hazardous debris and soil, and hazardous waste produced by small quantity generators. Only certain of these mercury-containing wastes are regulated under the RCRA debris provision (§ 268.45) that you raised as a concern. We are currently working with the Northeast Waste Management Officials' Association (NEWMOA) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to review the management and final disposition of all these mercury-bearing wastes. The Office of Solid Waste also is consulting with experts in the EPA regional offices and Canadian provinces to better understand the disposition of mercury-contaminated cleanup wastes. This work should help inform a more complete approach to issues raised by mercury disposal.

In 1992, EPA finalized land disposal restriction treatment standards for debris-like hazardous wastes. These standards, under §268.45, are tailored specifically to accommodate the challenges of treating debris-like objects and wastes from remediation sites. For metal-bearing wastes, including mercury, the debris standards provide several alternatives: 1) source separation (removal of the mercury components of the debris for management separate from the remaining debris); 2) microencapsulation (mixing wastes with reagents and stabilization materials); and 3) macroencapsulation (application of surface coatings or use of jackets and containers). If none of the debris standard technologies can be achieved, the treatment standards for non-debris wastes are applicable (for mercury wastes with concentrations of greater than 260 ppm mercury, the treatment standard is retorting). It is important to point out that EPA defined "debris" to exclude

certain types and sizes of waste. Because the definition excludes intact containers, containers such as dental amalgam collection devices and batteries cannot be disposed of under the hazardous debris standards.

You requested that we provide you with information on administrative actions we are taking to address this issue. EPA is currently working closely with the states through ASTSWMO and NEWMOA to issue a memorandum to federal and state waste managers that will aid in ensuring that mercury contaminated debris subject to the RCRA debris standard is properly treated and managed. This memorandum is being drafted and will be sent to the states for review later this summer. We also have been working with state and local managers of household collection waste programs to determine how mercury wastes from households, which are exempted from RCRA hazardous waste regulations by statute, are managed. The intent of these collection programs is to keep such waste out of municipal landfills. All of our most recent information indicates that these wastes are sent to retorters for mercury recovery, even though there is no federal requirement for mercury recovery. We will continue our discussions with state and local managers of household waste collection programs and consider whether any administrative actions (e.g., guidance, technical assistance) are warranted to ensure that these wastes are sent for mercury recovery.

You also asked us to provide you with information on our plans to modify the debris regulations. We believe that, based on the results of our investigation to date, our administrative actions appear to most quickly and effectively address any environmental problems associated with these wastes. However, as we continue to evaluate current management practices in our joint efforts with the states, we will consider the appropriateness of undertaking rulemaking to address any deficiencies in the debris standard.

Again, thank you for your letter. If you have further questions or concerns, please contact Veronica Davis-Shivers in the Office of Congressional and Intergovernmental Relations at (202) 564-3105.

Sincerely yours,

Marianne Lamont Horinko
Assistant Administrator

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