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DEC 22 1986

Mr. J. Alex Barber
Director
Division of Waste Management
Commonwealth of Kentucky
Department for Environmental Protection
Fort Boone Plaza
18 Reilly Road
Frankfort, Kentucky 40601

Dear Mr. Barber:

My apologies for the delay in getting back to you on your letter of August 27, 1986, concerning the treatment of hazardous waste in a generator's accumulation tanks and containers.

As you know, the Agency state in the preamble to the final small quantity generator regulations in the March 24, 1986, Federal Register that treatment could occur in a generator's accumulation tanks and containers without a permit, provided the treatment was performed strictly in accordance with 40 CFR 262.34. While I can appreciate the points you raise in your letter with respect to consistency of interpretation, I believe that this policy discussion was, and remains, appropriate for several reasons.

First, while it appears on the surface to be a major shift in policy, it represents a long-standing opinion of our office of General Counsel that consistency dictates that treatment and storage which is regulated identically at permitted facilities also be regulated identically at generation sites. At this time, we do not have special treatment standards in the regulations for any treatment activities except for incinerators. Thus, when we permit treatment facilities, or permit storage facilities, the identical standards apply. If the storage or treatment occurs in a tank, the tank standards must be met. If the activity occurs in a container, the container standards apply. It is true that additional permit requirements, including financial responsibility and corrective action, are imposed at both treatment and storage facilities where permitting is required and I fully agree that this appropriate.

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While we have differentiated in the regulations between long term storage and accumulation at generation sites, they are nevertheless at their core identical activities. We have chosen to exempt from permitting requirements (as well as associated financial responsibility and corrective action provisions) storage (i.e., accumulation) which occurs at generation sites for less than 90 days (or 180 or 270 days in the case of small quantity generators). Since the regulations do not impose additional standards for treatment when it occurs in a storage facility, there is no basis for regulating treatment at an exempt storage facility.

Whether or not the §262.34 exemption from permitting for storage, as well as treatment, is appropriate is an issue which we are now beginning to re-examine. As you know, we published an advance notice of proposed rulemaking on July 1, 14, 1986, which sought comment on various aspects of the exemption. Should we change the §262.34 regulations for on-site accumulation, it would of course affect the status of treatment as well. Similarly, if we develop treatment standards for additional activities which we believe warrant special standards, these activities would also lose their exemption from permitting.

We ultimately chose to communicate this legal interpretation in the small quantity generator regulations because we believe that it is essential that treatment not be unduly discouraged under our regulations, particularly at a time when disposal options are being severely limited under a variety of statutory and regulatory provisions. In particular, we were concerned that a substantial amount of treatment was occurring at generator sites which were unregulated prior to the September 22, 1986 effective date for small quantity generator regulations. It was important to clearly state the Agency's position on this matter.

As a practical matter, although this policy will allow some treatment which has been carried out without a permit up to this point to continue, we believe it will have little or no impact at permitted or interim status treatment facilities. While permitted or interim status treatment units at generator sites may now become strictly accumulation units and thus exit the permit process, we would assume that these tanks or containers have not been operated strictly in accordance with the accumulation provisions in the past (e.g., emptied every 90 days) and thus have been legitimately and appropriately brought into the permit system. Furthermore, exiting the permit process must be accomplished strictly in accordance with the procedures already established (e.g., in compliance with the closure rules.)

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Again, let me assure you that I understand your misgivings with respect to this discussion. However, I must also point out that it is our position that this is and has been the legal situation with respect to treatment in accumulation tanks and containers since the §262.34 provisions were promulgated.

I hope that this has helped to clarify our position on this issue. If you wish to discuss the issue in more detail, please feel free to contact Maureen Smith in the Office of General Counsel at (202) 382-7703 or Bob Axelrad, of my staff, at (202) 382-4769.

Sincerely,

Original Document signed

Marcia Williams
Director
Office of Solid Waste

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