

9477.1983(01)

SUBPART H FINANCIAL RESPONSIBILITY REQUIREMENTS

January 5, 1983

Mr. Bradley E. Dillon  
Associate General Counsel  
US Ecology, Inc.  
3200 Melbville Road, Suite 526  
P.O. Box 7216  
Louisville, Kentucky 40207

Dear Mr. Dillon:

Your letter of November 5, 1982, raises a question about the applicability of the Subpart H, Financial Responsibility requirements to a US Ecology facility. Your specific concern is the extent of your responsibility for compliance in view of the §265.140(c) exemption for States and Federal government and the fact that your facility operates on land leased from the State of Nevada.

Section 265.140(c) states "States and the Federal government are exempt from the requirements of this subpart." The Subpart H regulations apply to owners and operators; while either party may fulfill the requirements, the Agency may take action against either or both of the parties in the event of noncompliance. The Agency interprets this exemption to mean that where one party (the owner or the operator) is an exempted party because it is a State or Federal governmental unit, the other, private sector party need not comply with the Subpart H requirements. However, a State or Federal agency owner may, of course, require the private sector operator by contractual agreement to demonstrate financial responsibility.

I suggest that you confer with staff at EPA Region IX and the state of Nevada to determine the extent and applicability of responsibility for the concerned parties under the Resource Conservation and Recovery Act regulations. You should be aware that RCRA Subpart G regulations, which stipulate the requirements for performance of closure and post-closure care, do not contain any such exemption. The exemption applies only to the Subpart H regulations, which contain the requirements for

proving financial responsibility for closure and post-closure care and for liability coverage.

Sincerely,

John H. Skinner  
Acting Director  
Office of Solid Waste

cc: Dick Procunier, Region IX

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11 MAY 1983

MEMORANDUM

SUBJECT: April 20, 1983, Memorandum on Financial Requirements

FROM: John H. Skinner, Director  
Office of Solid Waste (WH-562)

TO: Harry Seraydarian, Director  
Toxics and Waste Management Division, Region IX (T-1)

Your memorandum of April 20, 1983, suggested that a regulatory interpretation memorandum be written to clarify the exemption of States and the Federal government from the RCRA Subpart H, Financial Requirements (§§264.140(c) and 265.140(c)). However, the interpretation you suggest does not appear to be consistent with the regulations. Our interpretation of the regulations, confirmed by Office of General Counsel staff, is that set forth in my January 5, 1983, letter sent to Mr. Bradley E. Dillon at US Ecology, a copy of which is attached. A copy of that letter was also sent to Richard Procunier, the Region IX financial contact.

Your suggestion that EPA modify the various State and Federal agencies which may be affected by this exemption may be pursued at a later date. However, since the owners and operators of hazardous waste facilities are jointly and severally liable for the other requirements of the Resource Conservation and Recovery Act (RCRA) regulations, I am not sure that such a narrowly focused letter would be appropriate. Rather, a letter broadly addressing the potential obligations of the States and Federal government under the RCRA regulations would be sent.

You can be sure that as we make decisions on regulatory reporting to EPA Headquarters, this particular section will be kept in mind. I am certain that should we find environmental problems caused or exacerbated by this exemption, we will make every effort to revise the regulations in a responsive manner.

Attachment