

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 16, 1991

N. G. Kaul, Director  
Division of Hazardous Substance Regulation  
NYSDEC  
50 Wolf Road  
Albany, NY 12233-7250

Dear Mr. Kaul:

I am writing to confirm several recent conversations with John Miccoli of your staff regarding the land disposal restrictions program. In particular, we have discussed which California list prohibitions remain applicable following promulgation of the Third Third.

The preamble to the Third Third final rule states that most California list prohibitions are superseded by more specific treatment standards; however, California list prohibitions remain in effect for:

- liquid hazardous wastes that contain over 50 ppm PCBs;
- wastes containing greater than 1000 ppm HOCs that are identified as hazardous by a characteristic property that does not involve HOCs; and
- liquid hazardous wastes that exhibit a characteristic and also contain over 134 mg/l of nickel and/or 130 mg/l of thallium.

55 Fed. Reg. 22520 at 22675. The issue raised is whether the California list prohibitions remaining in effect for HOCs, nickel, and thallium apply only to wastes that also exhibit a characteristic, as the preamble indicates; why wouldn't those prohibitions also apply to a listed waste containing one or more of those constituents where the treatment standard does not specifically address those constituents?

### HOCs

EPA specified in the preamble to the California List rule that California list HOC standards "are only applicable to those HOCs that are not covered by other Agency rulemakings . . ." 52 Fed. Reg. 25760 at 25773. Similarly, the regulations specify at 40 CFR 268.42(a)(2) that California list HOC standards "do not apply where the waste is subject to a part 268, subpart D treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is

established under [section] 268.41 (a)).” The California list HOC standards apply only to characteristic wastes because all listed wastes either have their own treatment standards or, because they are newly listed wastes, the California list prohibitions do not apply; more specific (i.e., waste code-specific) standards have now been promulgated for all wastes listed prior to November 1984, and the California list prohibitions do not apply to wastes listed after November 1984. 55 Fed. Reg. at 22674-22675.

#### Nickel and Thallium

While the reasoning presented above regarding HOCs is equally applicable for nickel and thallium (i.e., standards have been promulgated for all wastes listed prior to November 1984, and California list prohibitions do not apply to wastes listed after November 1984), there is a difference between HOCs and nickel and thallium from a treatability viewpoint. A treatment standard for a listed waste that includes organics will provide treatment for HOCs, but not necessarily for metals. Thus, although the likelihood appears remote, we do acknowledge the possibility that there could be a liquid listed waste containing nickel and thallium with a treatment standard that does not include nickel and thallium. In such a case, the California list prohibitions would apply to a listed waste.

I hope you find that this discussion clarifies the ????????. Please feel free to contact me at 703-308-8434 if you or your staff have any further questions.

Sincerely,

cc: John Miccoli