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

July 21, 1992

Mr. John D'Aloia Jr.
311 West Alma Street
St. Marys, Kansas 66536

Dear Mr. D'Aloia:

Thank you for your letter to Rajni D. Joglekar dated June 12, 1992. In your letter you ask whether our 1986 policy allowing generators to treat wastes in accumulation containers or tanks without interim status or a permits continues to be in effect.

In your letter you quote from the preambles of two Federal Register notices, the first from the May 20, 1992 notice regarding the listing determination of used oil and the second from the March 24, 1986 notice modifying standards for small quantity generators. Your first citation pertains to the definition of treatment:

It should be noted that mixing characteristic hazardous waste with another material to render the waste nonhazardous constitutes treatment of hazardous waste subject to applicable standards [emphasis added] under 40 CFR parts 264-265 and 270, and the notification requirements of section 3010 of RCRA . . . (Footnote 5, 57 Federal Register 28528-9 (May 20, 1992)).

Your second citation pertains to the Part 264 and 265 facility standard issues under the small quantity generators rule:

Therefore, generators of 100-1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 270 days)... (51 Federal Register 10168, (March 24, 1986)).

Our position on whether hazardous waste generators may treat hazardous wastes on-site in accumulation tanks or containers without having to have either a permit or interim status has not changed. These generators may conduct such treatment provided that accumulation tanks or containers conform to standards in Subparts I or J of Part 265.

The footnote to the used oil rule that you cited states that when a characteristic waste is mixed with another material to render it nonhazardous, that activity constitutes treatment of that waste. This footnote also states that such activity is subject to "applicable requirements" under 40 CFR Parts 264, 265 and 270 which may or may not require interim status or permitting. To reiterate, when a generator is treating hazardous waste on-site in accumulation tanks or containers conforming in Subparts I or J of Part 265, permitting and interim status are inapplicable.

However, please be aware that under Section 3006 of RCRA (42 U.S.C. Section 6926) that individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. When states are not authorized to administer their own program, the EPA Region that the state is located in administers the program and is the appropriate contact for any case-specific determinations. Please also note that under Section 3009 of RCRA (42 U.S.C. Section 6929) that states retain authority to promulgate regulatory requirements that are more stringent than federal regulatory requirements.

If you have any additional questions regarding this matter, please contact Paul Borst of my staff at (202) 260-8551.

Sincerely,
David Bussard, Director
Characterization and
Assessment Division

Enclosure