

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF SOLID WASTE

OFFICE OF WATER
AND WASTE MANAGEMENT

MAY 20, 1981

Tim T. Ellis, PhD.
Director of Hazardous Materials Handling
CATALYST TECHNOLOGY INCORPORATED
4414 Old LaGrange Road
Post Office Box 115
Buckner, Kentucky 40010

Dear Dr. Ellis:

Gary Dietrich has asked me to respond to your letter of December 12, 1980. I apologize for the delay in this response; the Agency has been overwhelmed with requests for regulatory interpretations and other demands.

First, I wish to confirm as correct your understanding of the duties and responsibilities of an on-site contractor cleaning storage tanks, as stated in paragraph 2 of your letter. As a party which removes hazardous waste from a tank, vehicle, vessel or manufacturing process unit, thereby subjecting the waste to RCRA regulation, CAT-TECH falls within the definition of a "generator" 40 CFR §260.10 (a) (26), and may be held jointly and severally liable for compliance with the regulations. As you note, however, EPA will ordinarily look to the owner or operator of the facility to perform the generator's duties. See 45 Fed. Reg. 72026-7.

Secondly, thank you for your suggestion that tank cleaners be allowed to obtain a single identification number for each combination of a branch location and an EPA region in which work is performed. We have received this suggestion from a number of sources. We expect to change the requirements for identification numbers, either by a technical amendment to the regulations or by proposing a new regulation, during the summer of 1981.

In the interim, if I can be of further assistance, please let me know.

Sincerely yours,

Alfred W. Lindsey
Deputy Director
Hazardous and Industrial Waste Division (WH-565)

FaxBack# 11013

cc: Scott Biehl

December 12, 1980

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON
D.C. 20460

ATTENTION: Mr. Gary N. Dietrich
Associate Deputy Asst. Administrator
WS Rm. 2710

Dear Gary:

It has been a pleasure to talk with you on the phone (November 7 and 18, 1980) and in person (November 13, 1980) about the hazardous wastes handling services offered by CATALYST TECHNOLOGY, INC., and their relationship to the regulations promulgated by the Environmental Protection Agency under the Resource Recovery and Conservation Act of 1976. As a follow-up to our communication, this letter will 1) summarize CAT-TECH's overall philosophy in providing hazardous wastes handling services, 2) present for your comment CAT-TECH's understanding of the duties, responsibilities and liabilities of the on-site contractor cleaning storage tanks and/or of the generator of the hazardous wastes which may first be subject to regulation during these tank cleaning operations, and 3) offer comments and proposed changes in the Federal Hazardous Waste Management regulations promulgated under RCRA, which require site-specified EPA ?? for generators.

- 1) Since being formed in 1973, CATALYST TECHNOLOGY, INC., has striven continuously to provide the best available catalyst handling services to the refining and petrochemical industries. Extensive experience in confined space entry under inert atmospheres and in development of materials handling equipment and techniques, provides a strong foundation for CAT-TECH's participation in handling HW/HM. From the beginning, personal safety has been held in highest regard. Training includes in-depth classroom and field (on-the-job) sessions in first aid, CPR and CAT-TECH's life support system. Environmental suits, designed specifically for CAT-TECH, are currently being developed.

Recognizing that the subject of HW/HM management is very sensitive to the public as well as to the industries generating them, CAT-TECH operations are performed, without exception, in full compliance with all Federal, state, and local agencies which regulate these activities.

- 2) Your written comments are requested following interpretations based on Supplemental Information: Amendment to 40 CFR 261.4, Fed. Reg. 72024 - 82028 (Oct. 30, 1980) and on our conversation in your office the afternoon of November 13, 1980.

FaxBack# 11013

A company which “causes a hazardous waste to become subject to regulation” by performing the service of cleaning a tank containing that HW is “jointly and severally liable as (a) generator” of that HW. Dependent upon the specific conditions of HW generation, either the owner of the waste or the operator of the tank facility, not the service company which removes the HW is recommended by EPA to assume the full duties and responsibilities of being the generator of the waste. These responsibilities consist of two distinct types: 1) complying with the RCRA and with the regulations promulgated under it by the EPA and 2) meeting acceptable environmental standards, as based on Case Decisions - Common Law of Nuisance. All parties involved in HW management, generator (HW owner, storage facility operator, tank cleaner), laboratory analysis firm (which provided waste characterization), transporter, and TSD, may be subject to enforcement action based on failure to comply with either responsibility.

If the tank cleaning service company assumes the full responsibilities of generator, it will be required to perform all duties listed below:

1. Perform analysis to determine that the waste is hazardous or declare it so based on knowledge about its production (this may be done by using analysis either provided and certified by the HW owner or by having a certified analysis of a representative sample from a professional laboratory.)
2. Obtain an EPA ID#
3. Select appropriate containers and label them properly for shipment.
4. Prepare a hazardous waste manifest.
5. Assure, through the manifest system, that the waste arrives at the designated TSD facility.
6. Submit annual reports of HW activities.
7. Keep all records at least three years.

Provided that the tank cleaning service company completes the duties listed above, it would not assume any increased liabilities (beyond being “jointly and severally liable”). Transferal of the generator role to the tank cleaning service company in no way relieves the owner of the HW from the responsibilities mentioned above and the liabilities resulting from the their non-compliance.

It is suggested that evidence of practices and intents of compliance with all hazardous waste management regulations would be considered favorably, especially in the event of a “minor paperwork” violation. For example, the business practices of each transporter or TSD facility would be checked thoroughly including documented visits to their operations.

We have attempted to define in paragraph 2 our understanding of the responsibilities and liabilities we may incur in the handling of HW. If the above comments are not correct, please notify us; otherwise, we will continue our operations on this basis.

- 3) Comment on Supplemental Information: Amendment to 40 CFR 261.4, Fed. Reg. pg. 72027 (Oct. 30, 1980).

This amendment indicates that “if the person who removes hazardous wastes from tanks or units performs the generator duties, he must have a separate EPA Identification Number for each site at which he performs these duties.” It is suggested that this policy causes delays in the HW handling and requires additional paperwork and recordkeeping beyond that necessary to fulfill the intent of EPA’s role in efficient HW management.

The services performed by transporters and by emergency spill response teams (in most cases the latter are both generators and transporters) require notification and assignment of EPA ID#. However, notification is only required for the headquarters and/or branch facilities of these organizations, not “by-site”. A parallel appears to exist between these services and those provided by a company which removes HW from tanks and who performs the generator duties associated with these operations.

The following proposal is submitted for your consideration: Companies engaged in cleaning tanks containing HW should obtain a single EPA ID# for each combination of a branch location and an EPA region in which work is performed. For example, a sales office/branch location may be located in NJ and conduct operations in both PA and NJ. Therefore, two ID#s would be required, one for Region II and one for Region III, both located at the same installation address. In this way, time and paperwork spent in securing separate EPA ID#s “by-site” would be eliminated, yet all appropriate reporting and recordkeeping information would be forwarded to the appropriate EPA region, that in which the work was performed.

Thank you for receiving me on November 13 and in advance for considering the comments presented herein. We will look forward to your reply.

Sincerely yours,

CATALIST TECHNOLOGY, INCORPORATED

Tim T. Ellis, PhD.
Director of Hazardous Materials Handling

TTE:pak

cc: Charles W. Dobbins