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

SEPTEMBER 17, 1981

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Thomas L. Moran
Corporate Manager
Client Relations and Regulatory Affairs
520 Speedwell Avenue
Morris Plains, New Jersey 07950

Dear Mr. Moran:

Fred Lindsey, Deputy Director of the hazardous and Industrial Waste Division of the Office of Solid Waste, asked me to respond to your July 29, 1981 inquiry regarding the Agency's policy on a generator's liability for the improper handling of his hazardous waste by a permitted off-site facility. In that letter you asked us to confirm your interpretation of our policy based on your telephone conversation with Tony Baney of the "RCRA Hotline." First, let me say that we assisted the "RCRA Hotline" to develop the answer to this question, as we do with all questions related to enforcement issues. Mr. Baney assures us that he gave the Agency approved response to you, but your interpretation of that conversation does not reflect the Agency's position.

The Agency policy is that if the generator, in good faith, follows all the generator requirements in the regulations implementing the Resource Conservation and Recovery Act of 1976 ("RCRA") at 40 C.F.R. 262, through and including the receipt of a signed copy of his manifest from the designated facility or the filing of an exception report, and complies with the other recordkeeping requirements in Subpart D, the Agency would not take action under 40 C.F.R. 262 against the generator for mishandling of hazardous waste by the designated permitted facility. Part of the generator's responsibility, of course, is to ascertain that the designated facility is permitted to handle his particular waste (see, Preamble to 40 C.F.R. 262 at FR 12728, February 26, 1980).

However, notwithstanding the fact that the generator has complied with the requirements in 40 C.F.R. 262, the Agency may still take legal action, in appropriate cases, pursuant to the emergency provisions in any appropriate environmental statutes including Section 7003 of RCRA, 42 U.S.C. 6973; Sections 504(a), 33 U.S.C. 1346, and 311(e), 33 U.S.C. 1321, of the Clean Water Act; Section 1431 of the Safe Drinking Water Act, 42 U.S.C. 300i; Section 7 of the Toxic Substances Control Act, 15 U.S.C. 2606; Section 303 of the Clean Air Act, 42 U.S.C. 7403, and Section 106 of the Comprehensive Emergency Response, Compensation and Liability Act, 42 U.S.C. 9606. We may also use relevant common law authority when appropriate.

These authorities empower the Agency to issue Administrative Orders or to initiate judicial actions designed to respond to "imminent hazards". To date, actions of this type have primarily involved injunctive actions to force responsible parties (potential1y including generators) to clean-up hazardous waste problems at their own expense -- and/or to reimburse the government for Federal emergency clean-up expenditures.

Clearly, the basic policy question is who will bear the cost of clean-up if hazardous waste handling and disposal generates an imminent and substantial endangerment. Rather than placing that burden on totally uninvolved third parties or on the government – these provisions authorize actions against those whose involvement has contributed to the prob1em.

I hope that I have clarified the Agency policy on generator liability for you. Please let me know if we can be of further assistance.

Sincerely yours,

Douglas MacMillan
Acting Director
Office of Waste Programs Enforcement