

January 23, 1985

Dear Mr. Tersegno:

Mr. Mitch Dubensky of the Office of Water Regulations and Standards forwarded your letter dated December 7, 1984, to the Office of Solid Waste since the exclusion you discussed in 40 CFR §261.4 (d) applies to hazardous waste regulated by the Resource Conservation and Recovery Act.

As you know, the laboratory waste exclusion insures that waste samples are not subject to all the hazardous waste regulations while the waste is being handled by the sample collector, transporter and laboratory for the purposes of waste characterization. The amendment specifically avoided using the word "generator" since the exclusion intended to designate any person collecting a potentially regulated sample.

The enclosed copy of the September 25, 1981, Federal Register notice provided further explanatory material in the preamble. On page 47426, the first full paragraph of the middle column explains that samples are sent for testing to determine whether or not the waste is hazardous. Furthermore, testing to identify the composition or characteristics of a sample is not treatment as defined in §260.10 (a) as stated in Section C on page 47428. The first sentence at the top of the right column on page 47428 says any laboratory that treats or stores hazardous wastes prior to disposal must comply with applicable RCRA regulations since these activities are not covered by the exclusion.

The waste is excluded from RCRA regulations as long as it meets the §261.4 (d) terms. At the site where a waste is produced, the storage and transportation prior to shipment to a testing laboratory is not regulated. The term "generator" is defined in §260.10 (a) as the person at a given site whose act or process produces RCRA hazardous waste or whose act first causes a hazardous waste to become subject to regulation. Therefore, in many cases, waste covered by the laboratory exclusion has had no generator as long as the waste is covered by the laboratory exclusion. If the waste is sent back to the site it came from, the waste would be subject to regulation then, and the generator would be at the original site. If the waste was kept by the laboratory for disposal, the laboratory is the generator. If the waste was sent back to a third party who collected the waste for analysis, that collector is generator. (Of course, some of these parties may be small quantity generators subject to §261.5.) The second sentence in the second paragraph of Section II on page 47426 of the preamble says the samples are shipped from the generator or sample collector, but the regulation only refers to sample collectors. The regulation is worded appropriately because the sample collector may not be the person who is ultimately considered to be the generator of the waste.

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the multiple definition idea means that the term sample collector could be the person who owns the waste or the person who actually removes the waste aliquot for analysis. No doubt your laboratory has made contractual agreements with your customers regarding the disposition of samples that specifies returning waste to the site from, in which case sample collector refers to the company that paid you to take aliquots of waste for them.

As you can see, the preambles and Agency explanations sometimes clarify the intent and coverage of the regulations. The Office of Solid Waste and Emergency Response sponsors the RCRA/Superfund Hotline which can answer many of these kinds of questions toll free on a routine basis at 800-424-9346. Of course, many States have authorized hazardous waste programs which have taken the place of the RCRA program. States may have more stringent requirements, so you should confer with them regarding specific State requirements. The Hotline can provide you with a list of the State Agency contacts.

If yo

Sincerely yours,

Irene S. Horner
Environmental Protection Specialist
Studies and Methods Branch (WH-562B)

2749 Delk Road, S.E.
Marietta, Georgia 30067
December 7, 1984

Mitch Dubensky
Environmental Protection Agency
Office of Water Regulations
and Standards (WH-586)
401 M Street S.W.
Washington, D.C. 20460

Dear Mr. Dubensky:

Regarding our conversation on December 6, 1984, I am enclosing a copy of the Environment Reporter (Section 261.4 (d) (1)-261.5 (h)). The section which requires interpretation is contained under the heading, "exclusions 261.4" in paragraph (d) (2) (ii). It states, "The sample is being transported back to the sample collector after collecting, or." Does the term "sample collector" refer to the person (s) doing the sampling or more specifically to the generator of the sample? Because our organization samples and tests waste from generators, transporters and disposers this section is of interest to us. We may find ourselves doing the actual sampling in addition to testing at a generator's request.

Your written response and interpretation to this will be much appreciated.

Sincerely,

Vincent J. Tersegno

