April 1, 1985

Brenner Munger
Manager
Environmental Department
Hawaiian Electric Co., Inc.
P.O. Box 2750
Honolulu, Hawaii 96840

Dear Mr. Munger:

In your letter of January 21, 1985, you inquired whether Hawaiian Electric's facilities might be exempted from the Resource Conservation and Recovery Act's (RCRA's) permitting requirements as wastewater treatment units. Hawaiian Electric is considering the construction of wastewater management systems at three facilities on Oahu so that they will be exempt from RCRA permitting requirements. You inquire whether it is possible to construct a wastewater treatment system at one of the three facilities, transport to that facility the hazardous wastewaters generated at the other two facilities, and retain the exemption from RCRA permitting for the wastewater treatment system under 40 C.F.R. §270.1(c) (2) (v) and also for the two facilities from which the hazardous waste waters are shipped.

Under 40 C.F.R. §264.1 (g) (6) and §270.1 (c) (2) (v), the substantive standards of Part 264 and the RCRA permit application requirements of Part 270 do not apply to owners and operators of wastewater treatment units. The interim status requirements of Part 265 also do not apply to such units (40 C.F.R. §265.1 (c) (10)). "Wastewater Treatment Unit" is defined in 40 C.F.R.§260.10 as a device which:

(1) is part of a wastewater treatment facility which is subject to regulation under §402 or §307 (b) of the Clean Water Act; and

(2) receives and treats or stores an influent wastewater which is hazardous waste or generates and accumulates or treats or stores a wastewater treatment sludge which is a hazardous waste; and

(3) is a tank (as defined in §260.10).

This exemption from the RCRA requirements only covers a tank which treats or stores hazardous wastewater or hazardous wastewater treatment sludge. In addition, the tank must be part of a wastewater treatment facility subject to regulation under §402 or §307 (b) of the Clean Water Act. Only the wastewater treatment unit (i.e., the tank) is exempt; the exemption does not "follow" or attach to the waste. For example, if such a waste is eventually destined for a wastewater treatment unit but is stored in a surface impoundment, the surface impoundment storage would not be exempt from RCRA requirements.

You hypothesize a situation where two facilities generate hazardous wastewaters and ship them to a third facility which would operate a wastewater treatment system. You state in your letter that the facility to which the wastewater will be transported would meet the definition of a wastewater treatment unit. Because you did not describe the facility in any detail, I am assuming that it would, in fact, meet the §260.10 wastewater treatment unit definition. The questions your letter raises are (1) whether the facilities generating, accumulating, and shipping wastewaters would be exempt from RCRA permit requirements under the wastewater treatment unit exemption and (2) whether a wastewater treatment facility can receive hazardous wastewaters from off-site.

The facilities generating, accumulating, and shipping the hazardous wastewaters would not be wastewater treatment sites. They do not treat before shipment and therefore are not part of a wastewater treatment system. They also are not subject to regulation under §307 (b) or §402 of the Clean Water Act. Therefore, they could not be exempt under the wastewater treatment unit exemption. Moreover, the facilities shipping the waste off-site are subject to the requirements of 40 C.F.R. Parts 262 and 263 relating to generators who offer waste for off-site transport, which include the RCRA manifest requirements. You should also note that the facilities generating and storing hazardous wastewaters may be exempt from permitting under §262.34 if they store hazardous wastes for less than 90 days and can comply with the other requirements of that section.

It appears that a wastewater treatment facility cannot receive hazardous waste from off-site. Hazardous waste (including hazardous wastewaters may only be transported off-site to a "designated facility." 40 C.F.R. §§262.20 & 263.21. Under 40 C.F.R. § 260.10, designated facilities only include hazardous waste treatment, storage or disposal facilities which have an EPA - issued RCRA permit, interim status, or a RCRA permit from a state authorized under Part 271. As noted above, wastewater treatment facilities are excused from EPA's RCRA permitting and interim status requirements. Therefore, a wastewater treatment facility cannot be a "designated facility" and cannot receive hazardous wastes from off-site.

You stated in your letter that two of the three facilities now have interim status under RCRA, As such, they could receive hazardous waste from other sites if their Part A applications are amended. See 40 C.F.R. §§ 270.71 & 72. These facilities will eventually need a RCRA permit to continue to receive hazardous wastes from off-site.

I have apprised John Lehman, Director of the Waste Management and Economics Division and Bill Wilson of EPA's Region IX of this interpretation and they concur on its application to your facilities. If you have further questions, please call me at (202) 382-7709.

Sincerely,

Kenneth F. Gray
Attorney
Office of General Counsel (LE-132S)

cc: Alan Waltner Region IX
Don White
Bill Wilson - Region IX
RCRA Hotline