

9455.1985(01)

June 25, 1985

MEMORANDUM

TO: Harry Seraydarian
Director, Toxics and Waste Management Division
EPA Region IX

FROM: John H. Skinner
Director, Office of Solid Waste (WH-562)

SUBJECT: Determining Who Assumes Generator Responsibilities for
Importations of Hazardous Waste

With respect to the importation of hazardous waste, you have asked who should assume generator responsibilities: the transporter or the United States facility arranging for the importation of the hazardous waste.

Under current regulations "any person" who "imports" hazardous waste must comply with the generator requirements of 40 CFR Part 262. 40 CFR §§262.50(c), 262.50(d); see also §§262.10(c), 263.10(c). This broad language suggests that more than one party may be an "importer" in a given situation. In the situation you describe, both the transporter and the United States facility arranging for the importation would be persons who "import" hazardous waste. Where more than one person falls within the scope of this language, all of the parties, as contributors to the importation of hazardous waste, should be held jointly and severally liable for compliance with the generator requirements of Part 262.

Through mutual agreement, however, one of the parties may assume and perform the generator duties on behalf of all the parties. In fact, EPA encourages such agreements. Where such an agreement exists the Agency will look to the designated party to perform generator responsibilities. EPA, however, reserves the right to enforce against any of the parties if the requirements of Part 262 are not adequately met providing such enforcement is equitable and in the public interest.

In EPA's view, the party in the best position to assume the generator responsibilities should normally take on these responsibilities on behalf of the other parties. In fact, EPA will initially look to such a party where no party has been designated

or EPA is unaware of such designation. Under the specific factual situation you describe, it appears that the United States facility arranging for the importation of hazardous waste may be in the best position to assume the generator responsibilities. For a discussion of some relevant factors to consider in determining which party is in the best position to assume the generator responsibilities, see 45 FR 72024, 72025 (October 30, 1980) where an analogous situation is addressed.

You have also expressed some concern about the possibility of unmanifested or improperly manifested shipments occurring where the facility arranging for the importation is also the treatment, storage and disposal facility. Under such circumstances, the same facility must comply with both 40 CFR Parts 262 and 264 or 265 (for the receipt of waste from off-site sources). The fact that the facility receiving the waste must also assume generator responsibilities, thereby eliminating the presence of an independent treatment, storage and disposal facility to help assure compliance with the manifest requirements, should be of no greater concern than for shipments between sites owned by the same company.

cc: Hazardous Waste Division Directors, Regions I-VIII and X