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SEP 25 1986

MEMORANDUM

SUBJECT: Truck or Rail Shipment of Hazardous Wastes to A POTW

FROM: Marcia Williams, Director
Office of Solid Waste

TO: David A. Stringham, Chief
Solid Waste branch, Region V

This memo is in response to your September 8, 1986 request for clarification of the POTW exemption in 40 CFR 261.4(a)(1)(ii).

As you correctly note in your memo, materials which are directly mixed with domestic sewage that passes through a sewer system to a publicly owned treatment system for treatment is neither a solid waste nor a hazardous waste. Whether or not the material would otherwise be a "listed" or "characteristic" hazardous waste under other circumstances, however, makes no practical difference. In addition, the POTW exemption has no bearing on whether or not the POTW treatment residues are considered hazardous waste by virtue of exhibiting a characteristic.

The POTW exemption is, in fact, limited to the specific conditions of 261.4(a)(1)(ii). Therefore, the exemption only applies to the actual mixture of domestic sewage and other materials while they are in the sewer system. Consequently, any activities occurring prior to the actual introduction of the material to the sewer system is not covered by the exemption. In particular, any material that is either listed in Part 261, Subpart D or which exhibits a characteristic of hazardous waste and which is accumulated, transported, or managed via any other regulated activity prior to introduction into the sewer system, would still be subject to regulation as a solid and hazardous waste.

As you know, the accumulation of hazardous waste on-site in tanks or containers is regulated under 262.34. Accumulation in other types of units is considered storage subject to

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permitting. To the extent that any hazardous waste is accumulated or otherwise stored prior to transportation to a POTW, it would be regulated exactly as if it was eventually to be, for example, landfilled or incinerated. Similarly, the transportation of any hazardous waste is regulated under Part 263, regardless of the destination. Therefore, a facility

-2-

which generates a hazardous waste and which subsequently ships the waste to a POTW for treatment must comply with all appropriate accumulation and transportation requirements, including appropriate use of the manifest system. Since under 270.60(c), a POTW is deemed to have a RCRA permit provided they comply with a limited set of requirements, including notification and compliance with the manifest system, we see no regulatory obstacle to a facility shipping its waste to a POTW for subsequent management.

I hope this interpretation is responsive to your concerns. If you have any further questions on the issue, please feel free to contact Bob Axelrad, of my staff, on FTS 382-4769.

cc: Regional Branch Chiefs
Regions I-IV and VI-X