

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON D.C. 20460

NOV 28, 1986

Mr. William H. Crabtree  
Vice President and General Counsel  
Motor Vehicle Manufacturers Association  
300 New Center Building  
Detroit, Michigan 48202

Dear Mr. Crabtree:

I am responding to your letter of November 4, 1986, in which you ask EPA to modify the generator certifications on the Uniform Hazardous Waste Manifest form, the Biennial Hazardous Waste Report form, and the Notification for Underground Storage Tanks form. Specifically, you ask us to include in those certifications the phrase “. . . to the best of my knowledge and belief.” You note that this phrase was included in the certification requirement for permit applications (40 CFR 270.11(d)) and state that EPA failed to include this phrase in the generator’s waste minimization certification statement which was amended on October 1, 1986.

We have consulted with the Office of General Counsel and have been informed that this issue was never a part of the litigation of the Codification Rule. It is neither a logical outgrowth of the 1984 Hazardous and Solid Waste Amendments, nor is it related to the 1985 regulations. Therefore, we are considering your request independent of the litigation.

As you know, EPA recently finalized various changes to the manifest certification (51 FR 35109 October 1, 1986) two of which grew out of settlement discussion with MVMA. While your suggested change to the certification would more appropriately have been submitted in response to the March 24, 1986 proposal (which was finalized on October 1, 1986), it raises a policy issue that would have to be dealt with quite apart from the more technical changes made in the October 1 rule.

Specifically, your suggested change to the manifest and other generator certifications raises the question of who is responsible within the corporate or other organizational structure for submitting the required information and certifying to its accuracy. When EPA adopted regulations for facility owners or operators on May 19, 1980, it required that

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the person signing the certification for a permit application or annual report be at a fairly high level in the corporate (or other) structure. See 40 CFR §270.11; 40 CFR §260.10 (definition of “authorized representative”). However, the officer or other authorized representative was not required to sign an unqualified certification since he may not have firsthand knowledge of the truth, accuracy, or completeness of the information submitted. Thus, the Agency allowed the signatory to respond on the basis of his inquiry of individuals immediately responsible for obtaining the information.

In addition, both the certification for underground storage tanks (UST) and the generator biennial report certification (Biennial Hazardous Waste Report form 8700-13A) allow the generator or his authorized representative to certify to the truth, accuracy, or completeness of the report based on the signer's personal familiarity with the information and upon his personal inquiry of those responsible for obtaining the information. See 40 CFR §262.41. Therefore, the Agency has already addressed your concern in these three areas.

However, this approach is not applicable to the generator's manifest certification, where there is no requirement that an "authorized representative" sign the certification. In fact, the person signing the manifest certification should have firsthand knowledge of the information listed on the manifest.

Thus, the Agency has already considered this issue in the context of the generator regulations, and we see no reason to revisit it at this time.

Should you have any questions about our response, please contact Bob Axelrad, of my staff, on (202) 382-4769.

Sincerely,

Marcia E. Williams  
Director  
Office of Solid Waste

November 4, 1986

Ms. Marcia Williams  
Office of Solid Waste (WH-562B)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Ms. Williams:

In the October 1, 1986 Federal Register (51 Fed. Reg. 35190 et seq.), the U.S. Environmental Protection Agency (EPA) finalized various changes to the Uniform Hazardous Waste Manifest. Two of the three changes were the subject of settlement discussions between EPA and industry litigants challenging EPA's July 15, 1985 rule implementing the 1984 Hazardous and Solid Waste Amendments. The Motor Vehicle Manufacturers Association (MTMA)\* participated in these discussions.

One change addresses the problem of unnecessary personal liability by providing the option for employees to sign manifests Non behalf of their respective legal entities. This approach, however, fails to include an important qualification embedded in EPA's certification regulation, i.e., "... to the best of my knowledge and belief" (40 CFR 270.11(d)). This qualification is particularly important for employees of multi-plant

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\* MVMA represents U.S. automobile, truck and bus manufacturers producing more than 98 percent of all domestic motor vehicles. MVMA members are: American Motors Corporation; Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of American Mfg., Inc.; LTV Aerospace & Defense Company, AM General Division; M.A.N. Truck & Bus Corporation; Navistar International Corporation; PACCAR Inc; Volkswagen of America, Inc.; and Volvo North America Corporation.

Corporations with hazardous waste minimization programs developed at some other location such as corporate division headquarters

To implement this suggestion, EPA should modify the certification statement for the waste manifest by inserting "to the best of my knowledge and belief..." Certification statements for the Biennial Hazardous Waste Report and the Notification for Underground Storage Tanks should likewise be modified.

We appreciate your consideration of this request. Should you have any questions, please contact me or Thomas R. Merlino of my staff.

Sincerely,

William H. Crabtree  
Vice President and General Counsel

WHC/srd

cc: C. Kaneen, Esq.