

9453.1987(03)

July 1, 1987

Bernard E. Cox, Jr., Chief
Hazardous Waste Branch
Land Division
Alabama D.E.M.
1751 Federal Drive
Montgomery, AL 36130

Dear Mr. Cox:

This is in response to your letter of June 11, 1987, requesting clarification of EPA's policies concerning the regulatory status of on-site treatment by generators under 40 CFR §262.34. The following addresses, first, EPA's general policy in this area, and then the specific container-related examples you provided.

1. General policy. Although you appear to believe that EPA has amended its interpretation of the hazardous waste rules in March 1986, EPA actually discussed the relationships between storage treatment, and disposal in the preamble of the January 12, 1981 Federal Register. (See 46 Federal Register 2806-2808). In particular, EPA noted that treatment can occur either at a disposal or a storage facility and that the conduct of treatment does not affect a facility's regulatory status. (Id. at 2808.)^{1/} Nothing in §262.34, or in preambles specifically related to the section (often called the "90 day generator" rule) preclude treatment. EPA believes that treatment activities should similarly not affect the regulatory status of 90-day generators.

Of course, EPA's most important consideration is protection of human health and the environment. In discussing treatment at storage facilities, EPA noted that the general requirement of §264.17, which applies to all storage facilities, addresses hazards posed by ignitable, incompatible, or reactive wastes. (See 46 Federal Register 2806; January 12, 1981.) EPA concluded, therefore, that the most serious hazards likely to be posed during treatment would be addressed under these provisions. (Id) Ninety-day generators similarly must comply with special

1/ We view this preamble discussion as more definitive than the statements and guidance you quote from 1980.

requirements for ignitable, reactive, or incompatible waste under Subparts I and J of Part 265 (referenced by §262.34).

Finally, EPA notes that treatment often renders waste less or nonhazardous, or more amenable for further treatment, recycling, etc. The hazard posed by waste shipped off-site can thereby be reduced, and recycling can be promoted. A requirement to obtain a permit for any on-site treatment would very likely discourage such practices.

2. Treatment in containers. Although nothing in §262.34 specifically precludes treatment in containers, 90-day generators are subject to the container management standards of Part 265, Subpart I. One provision of Subpart I (§265.173(a)) requires that containers be kept closed during storage, except when adding or removing waste. Other sections of Subpart I provide that containers must be handles to prevent leaks or ruptures (§265.173(b)), and address hazards pose by incompatible, reactive, or ignitable waste (§§265.172, 265.176, and 265.177). These requirements limit the extent that treatment could occur in containers. The examples you provided (burning in open drums or tanks) would be considered open burning under §260.10, and as such, would generally be recognized as a method of disposal. Disposal does change a facility's regulatory status, and is not allowed under §262.34. Further, open burning (except for certain explosive wastes) is prohibited under §265.382. Finally, if there are cases of treatment that do not appear to be adequately regulated under §262.34, EPA can take action to mitigate an imminent hazard under RCRA Section 7003.

Please feel free to contact Michael Petruska at 475-6676 if you have any further questions.

Sincerely,

Marcia Williams, Director
Office of Solid Waste

bcc: James Scarbrough, Chief
Region IV Residuals Management Branch
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