

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

AUGUST 11, 1988

Mr. Greg Steele
Safety Officer
National Institute for Petroleum
and Energy Research
Post Office Box 2128
Bartlesville, OK 74005

Dear Mr. Steele:

This is in response to your letter of July 12, 1988, requesting an interpretation of 40 CFR Section 261.4(d) regarding the conditional exemption for samples collected for testing. After consultation with EPA Region VI, we agreed that a general explanation of the scope of Section 261.4(d) would help clarify the issue. You should continue to deal with the State of Oklahoma regarding an interpretation of the rules as they apply to your facility. Also, please note that a State may impose requirements more stringent than, or in addition to, EPA's.

The scope of Section 261.4(d) is defined by the introductory paragraph (d)(1), which provides that the sole purpose of testing must be to determine the sample's characteristics or composition; in other words, to characterize the sample. (See 46 FR 47426; September 25, 1981.)

Paragraph (d)(1)(iv) provides that samples stored in a laboratory before testing are excluded, and paragraph (d)(1)(v) and (vi) provide for storage of the sample at a laboratory for specific purposes. The rule does not specifically say that all sample preparation/testing occur at a single laboratory; rather, preparation and splitting of samples is generally viewed as part of the analytical procedures required for waste characterization and this, in many cases, is not done at the same laboratory that does the waste testing. Thus, as long as all the other Section 261.4(d) conditions are met, this two-stage analytical process is allowable under the exclusion.

Finally, we note that in your letter you refer to NIPER as being "sample collector." This would only be true, however, if NIPER personnel actually collect the sample. Being under the same contract as the company taking the sample does not make NIPER the sample collector. If NIPER is a laboratory, however, the exclusion could apply as described above.

If you have further questions in this area, please contact Mike Petruska of my staff at (202) 475-9888.

Sincerely,

Devereaux Barnes, Director
Characterization and Assessment Division

FaxBack # 11362