

9461.1988(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 31 1988

Richard A. Svanda, P.E.
Director, Hazardous Waste Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Mr. Svanda:

This is in response to your July 20 , 1988, letter to Jeffery Denit, concerning regulation of hazardous waste recyclers.

The responses to your questions are attached. Please note that the responses address the Federal regulations for generators of over 100 kilograms of hazardous waste, or 1 kilogram of acute hazardous waste. Most of the generators that responded to the July 1987 survey conducted by the EPA Small Business Ombudsman, referenced in your letter, were actually conditionally exempt generators under 40 CFR Section 261.5. As you know, regulation of this conditionally exempt waste, including regulation of recyclers who accept such waste, is a State matter.

Please contact Michael Petruska at (202) 475-9888 if you have any questions on this response.

Sincerely,

Original Document signed

Sylvia K. Lowrance
Director
Office of Solid Waste

Attachment

ATTACHMENT

1.

Q: Can incoming listed hazardous wastes be stored at [a recycling] site for up to ten days and then be moved [on the same site] to the recycling process, where recycling begins immediately? What distinction is drawn between a transfer facility located on contiguous versus con-contiguous property in relation to the recycling operation?

A: The transfer facility provisions of 40 CFR Section 263.12 apply to holding of waste in the normal course of transportation. Arrival of the waste at the designated facility constitutes completion of the transportation phase, so the 10 day limit is not applicable at the recycling facility. If waste is off-loaded from vehicles directly in recycling equipment at the facility, however, this off-loading area is not a storage facility. Each recycling facility has to be evaluated on a case-by-case basis to determine whether storage is in fact occurring.

The distinction which is drawn between a contiguous transfer facility and a non-contiguous one is best described by stating that the Section 263.12 regulation was promulgated to account for normal transportation practices. A transporter who ships to a piece of property contiguous to a recycling facility has technically completed the transportation phase if no further "transportation" (as defined in Section 260.10--movement by air, rail, highway, or water) is to be conducted. Thus, a piece of property contiguous to a recycling facility must meet the definition of a designated facility. A piece of property that is not contiguous to the recycling facility technically could be a transfer facility provided further movement by air, highway, rail, or water will occur. There is potential for a transporter to deliver hazardous waste to a site close to the recycling facility, and still qualify for the transfer facility exemption; however, in an enforcement situation, this activity may not qualify for the exemption, which was intended to cover situations of limited in-transit storage.

2.

Q: Is this (Question #1) a transfer facility as defined in Section 260.10?

A: As explained above, designated facilities cannot have transfer facilities on their property. The recycling facility may or may not need a RCRA storage permit, depending on the factual situation at the facility.

3.

Q: How should the definition of "storage" be interpreted? Is there a specific time limit on storage for this situation?

A: The Agency has interpreted conveyance into a recycling unit as not regulated, while holding of hazardous waste for a matter of a few hours is a site-specific determination, and may or may not constitute storage. Each recycling facility that attempts to claim an exemption for their storage activities will have to be evaluated individually, and the owner or operator must maintain all supporting documentation under Section 261.2(f).

4.

Q: What has been the EPA's and other State's practice for addressing this issue for containerized hazardous wastes?

A: Based on discussions with four authorized States, three of four stated that any storage prior to recycling is regulated. One stated that a recent policy was developed in which hazardous waste received from off-site and placed into the recycling unit by nightfall of the calendar day it was received at the facility would not be considered stored.

5.

Q: Would such facility be exempt from the hazardous waste permitting requirements (i.e., can the facility operate

under transporter, transfer facility and generator requirements)?

A: Such a facility could not operate under transporter and transfer facility requirements, although they may qualify as a designated facility under Section 260.10 if they recycle without prior storage. As explained above, however, holding of drums for a few hours may not be storage. Further, the facility could be constructed so that the conveyance to the recycling unit is the only holding which occurs prior to recycling, so that there would be no RCRA storage area.

6.

Q: If a hazardous storage permit is required, this type of operation will most likely not continue, and new prospective recycling operations will be discouraged from starting. What other methods of encouraging recycling of hazardous waste could you suggest?

A: EPA is currently evaluating how its regulatory structure affects recycling. You should note that a number of exclusions (i.e., Sections 261.2(e), 261.4(a)(6), (a)(7), (a)(8)), exemptions (i.e., Section 261.6 (a)(3)), and variances (i.e., Section 260.30) are available for recyclable materials. We are considering whether additional such mechanisms should be established, and whether some broader mechanism, such as a special recycler permit (perhaps similar to the one created by Congress for used oil under RCRA Section 3014(d)) might be appropriate.

You should be aware that a number of recycling facilities that provide storage of hazardous waste on site prior to recycling the waste have complained that their competitors are circumventing the spirit of our regulations by recycling directly from the transportation vehicle and not obtaining a RCRA storage permit. They have encouraged EPA to modify the regulations to state that such practices constitute storage and should be fully regulated under RCRA.