

OCTOBER 11, 1988

Mr. William N. Guerry  
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Dear Mr. Guerry:

You have requested an opinion regarding whether the Navy may require contractors to assume the responsibilities of a hazardous waste generator. In summary, if the contractor is a generator or co-generator of the waste, the contractor may assume all the generator responsibilities. If, on the other hand, the contractor is not a generator of the waste, the Navy's EPA generator identification number must be used (in manifesting and recordkeeping requirements, for example) but the contractor may assume the recordkeeping, manifesting, and pre-transport requirements.

#### What Generator Responsibilities May be Assumed

##### Generator Identification Numbers

Under 40 CFR § 262.12 a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number. The purpose of this requirement is to provide EPA with notification of who is generating hazardous waste. If a contractor were to be allowed to have a generator number instead of the generator itself, the manifests and reports would not identify the generator of the waste. Consequently, the Navy must have received a generator identification number when it is the sole generator of the waste. If there is more than one generator of waste it is EPA's long-standing policy that either generator may obtain the generator identification number. 45 Fed. Reg. 72024, 72026 (October 30, 1980).

##### Manifesting Requirements

You have argued that a contractor cannot assume certain generator manifesting responsibilities required by § 262.20. Specifically, you point to Item 16 on the manifest form. Item 16 requires a generator to certify, by his signature, (1) that the manifest accurately describes the waste and (2) that the generator has in place a waste minimization program. The Appendix to Part 262 sets out the instructions for completing the manifest form. The instructions for the certification, Item 16, specifically allow for a signature to be "on behalf of" a generator. 40 CFR Part 262, Appendix, and see 51 Fed. Reg. 35192, October 1, 1986. This language allows the generator to authorize someone, including a contractor, to sign the certification. The contractor and the generator should establish the means to ensure that the contractor is properly authorized to sign on behalf of the generator.

## Pre-Transport, Recordkeeping, and Reporting Requirements

Subparts C and D of Part 262 delineate the generator's pre-transport, recordkeeping and reporting requirements. The purpose of the regulations is to ensure that wastes are properly packaged and reported. EPA believes that delegation of these responsibilities will not affect the proper packaging or reporting of the waste because the generator must be identified on the manifest, and the generator will remain responsible for proper fulfillment of these requirements, no matter who performs them. Because the regulations do not explicitly address the issue, and the purpose of the requirements can be equally well fulfilled by contractors, the requirements of Subparts C and D may be delegated.

### Who is the Generator?

In some cases, a contractor will in fact be the generator of a particular hazardous waste. EPA's regulations define a generator as "any person, by site, whose act or process produces hazardous waste . . . or whose act first causes a hazardous waste to become subject to regulation." 40 CFR 260.10. I cannot give you one simple answer regarding whether your clients are generators of waste, because such determinations are too fact-specific. I can give some general rules that may assist you.

### When the waste is produced at sea

When the Navy produces hazardous waste at sea that waste is subject to regulation as soon as it is produced unless it is in an exempt unit such as a product or raw material storage tank, product or raw material vehicle or vessel, or a manufacturing process unit or an associated non-waste-treatment manufacturing unit. 40 CFR 261.4. If the waste is not exempt from regulation when produced at sea by the Navy, then the Navy is the sole generator of the waste.

If the material is not regulated until it is removed from a vessel, then the contractor is a co-generator of waste if the contractor removes the waste. In such a case the contractor's act first subjects the waste to regulation, and he therefore is a generator. If the contractor simply carries material that is already subject to regulation off the ship, the contractor cannot be the generator of the hazardous waste, because he neither produces it nor makes it subject to regulation--it is already subject to regulation. Instead, the contractor is a transporter of the waste, or is preparing the waste for transport on behalf of the generator.

### When the Waste is Produced in the Dockyard of the Contractor

The analysis does not change if the waste is produced at the dockyard. The question is still whether any act or process of the contractor makes it a generator. "Acts" may include such things as the ownership of the materials from which the waste is generated, operation of the units in which the waste is generated or removal of waste from the process in which it is generated. See 45 Fed. Reg. 72024 at 72026. If the contractor's actions do not help produce the waste and do not cause it to be first subject to regulation, then the contractor is not a generator, may not take advantage of the

accumulator provisions (40 CFR 262.34), and may not use its generator identification number to track the waste.

Finally, I would advise you that the Agency is currently considering changing the regulations governing the generation of waste on board vessels. If we should do so there will be an opportunity for your clients to comment on the proposed rule(s). I hope this answer has been of help to you, please call me if you have any further questions.

Sincerely,

Diane Regas  
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