

OSWER POLICY DIRECTIVE NO. 9574.00-1

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

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MEMORANDUM

SUBJECT; Clarification of Issue Pertaining to Household
Hazardous Waste Collection Programs

FROM: J. Winston Porter
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and Emergency Response

TO: Waste Management Division Directors,
Regions I-X

As you know, the Agency enthusiastically supports household hazardous waste (HHW) collection and management programs. As part of this support, EPA has sponsored annual HHW conferences since 1986. The first collection programs began in 1981. As of October 1988, over 1300 collection programs have been set up in 44 States and more programs are being planned all the time. EPA believes these programs are important because they: (1) promote citizen awareness regarding proper handling of HHW; (2) reduce the amount of HHW in the municipal solid waste stream which ultimately is taken to municipal solid waste combustors or landfills; (3) limit the amount of HHW which is dumped down a drain and ultimately discharged to a publicly-owned treatment works (POTW), or is dumped indiscriminately; (4) remove a greater amount of HHW from the home, thereby reducing potential safety hazards; and (5) help to reduce the risk of injuries to sanitation workers.

Several issues have been raised pertaining to HHW collection programs. These issues include the liability of collection program sponsors under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); EPA's recommendations regarding the management of HHW; and the regulatory status of HHW that contains dioxin.

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This memorandum clarifies our position on these issues. You should note, however, that State positions may vary; the State agency should be contacted for details on the State's policies or regulations regarding HHW.

1. What does EPA recommend regarding management of HHW collected in HHW collection programs?

As you know, all household wastes are exempt by definition from the Federal hazardous waste regulations promulgated under Subtitle C of RCRA. Section 261.4(b)(1) unconditionally exempts household wastes, including HHW, from the Subtitle C regulations even when accumulated in large quantities. This exemption also applies to HHW collected during a HHW collection program. However, when household wastes are mixed with hazardous wastes from small quantity generators, this resulting mixture is subject to the small quantity generator rules in Section 261.5. For this reason, sponsors of HHW collection programs should be careful to limit the participation in their programs to households to avoid the possibility of receiving regulated hazardous wastes from commercial or industrial sources and triggering all or some of the Subtitle C controls on this waste.

Household waste, including HHW, is subject to the regulations under Subtitle D of RCRA. The current Subtitle D regulations governing the disposal of any solid waste are the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). These regulations are general environmental performance standards that are implemented by the States. On August 30, 1988 (see 53 FR 33314) EPA proposed new rules for municipal solid waste landfills at 40 CFR Part 258. HHW can legally be disposed in any solid waste disposal facility, including a municipal solid waste landfill, that is in compliance with the existing "Criteria" and State and local requirements.

Although HHW is exempt from Federal RCRA Subtitle C hazardous waste regulations, EPA recommends that sponsors of HHW collection programs manage the collected HHW as a hazardous waste. When a community has already gone to the effort of expense of collecting these materials, Subtitle C controls provide a greater level of environmental protection. In selecting a management option, the Agency recommends that program sponsors follow the waste management hierarchy of:

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- (1) Reusing and recycling as much waste as possible;
- (2) Treating waste in a hazardous waste treatment facility; and, finally,
- (3) Disposing of remaining waste in a hazardous waste landfill.¹

The Agency also recommends the use of licensed hazardous waste transporters who will properly identify, label, manifest, and transport the collected wastes for recycling, treatment, or disposal. Although sponsors are not required to manage HHW as a hazardous waste, it is clear from seeing the programs in action, that, in fact, sponsors usually contract with hazardous waste management professionals to run the programs. These contractors generally manage the HHW as a hazardous waste and usually make efforts to reuse and recycle the waste.

2. What is the regulatory status of HHW that contains dioxin?

As stated above, HHW is unconditionally exempt from Federal RCRA Subtitle C regulation. This exemption includes HHW that contains dioxin, such as pesticides. Like any household waste, HHW that contains dioxin must be disposed of in accordance with EPA's rules under Subtitle D of RCRA.

The RCRA land disposal restrictions rule issued November 8, 1986, applies only to those dioxin-bearing wastes that are specifically listed as hazardous wastes under Subtitle C of RCRA. Therefore, this rule does not apply to any HHW and does not prohibit hazardous waste land disposal facilities from receiving any HHW, even those potentially containing dioxin.² Although dioxin-containing HHW are exempt from EPA's land disposal restrictions rule, we understand that, due to public perception concerns, some Subtitle C hazardous waste management facilities currently do not accept dioxin-bearing HHW. EPA will explore options with State and local governments so that a solution for this problem can be found. For example, we are looking at ways to encourage the waste management industry to reconsider their position and accept these wastes. Some communities have chosen to temporarily store this dioxin-bearing HHW until a more permanent management option can be found. -

¹To the extent that non-hazardous liquids are not containerized in accordance with Sections 40 CFR 264.314(d), 265.314(c), 2674.316, and 265.316, such liquids are subject to the non-hazardous liquids restrictions set forth at Sections 264.314(e) and 265.314(f). Likewise, the land disposal restrictions do not apply to any other HHW.

3. What liability do HHW collection programs sponsors have under Subtitle C of RCRA?

As stated above, Section 261.4(b)(10), exempts household wastes, including, HHW, from the Federal Subtitle C regulations. As a result, handlers of HHW are not potentially liable under Subtitle C of RCRA for failure to follow the regulations and are not required to manage collected HHW in Subtitle C hazardous waste management facilities. As previously mentioned, however, EPA recommends that this waste be handled as a Subtitle C hazardous waste.

4. What liability do sponsors of HHW collection programs have under CERCLA?

CERCLA does not contain an exclusion from liability for household waste or an exclusion based on the amount of waste generated. Any waste that qualifies as a hazardous substance under CERCLA is subject to the liability provisions of Section 107. Hazardous substances are defined under Section 101(14) and designated under Section 102(a) of CERCLA. HHW may qualify as a "hazardous substance" if it contains any substance listed in Table 302.4 of 40 CFR Part 302. If a household waste contains a substance that is covered under these CERCLA sections (whether or not it is a RCRA hazardous waste), potential CERCLA liability exists.

Communities should recognize that potential liability under CERCLA applies regardless of whether the HHW has picked up as part of a community's routine waste collection service and disposed of in a municipal waste landfill (RCRA Subtitle D) or if the HHW was gathered as part of special collection program and taken to a hazardous waste landfill (RCRA Subtitle C). The additional safeguards provided by HHW collection and Subtitle C management may reduce the likelihood of environmental and human health impacts and, therefore, may also reduce potential CERCLA liability.

I hope this information will assist you in addressing questions regarding HHW collection and management programs. We are providing copies of this memorandum to States and the major waste management trade associations. I request that you make this information available to any other interested parties in your Region. If you require additional information or clarification on these issues, please contact Allen Maples of the Municipal Solid Waste Program at (202) 382-4683.

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