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

MAY 9, 1989

Mr. John D'Aloia, Jr.
Vice President, Regulatory Affairs
Deuel & Associates, Inc.
311 West Alma Street
St. Marys, Kansas 66536

Dear Mr. D'Aloia:

Thank you for your March 20, 1989, letter regarding personnel training and emergency procedures under the regulations of the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). You questioned whether OSHA's exemption of large- and small-quantity generators who "do not have emergency response teams that respond to releases of ... hazardous substances" has any applicability, given EPA's requirements for training and response in 40 CFR 262.34(a) and (d).

EPA requires generators of more than 1,000 kilograms per month (kg./mo.) of hazardous waste (or more than 1 kg./mo. of acutely hazardous waste) who accumulate waste on site, to comply with certain requirements in 40 CFR Part 265 pertaining to contingency plans, emergency procedures, and personnel training (40 CFR 262.34(a)(4)). In your letter you asked specifically whether a generator could comply with these requirements by instituting a training program and emergency procedures whose only requirement is for employees to withdraw to a safe distance and call for outside assistance. Such a program would not satisfy the requirements in Subparts C and D in 40 CFR Part 265 and §265.16. The generator's training program must be:

> designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:
> (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment....(40 CFR 265.16(a)(2))

Besides not meeting these requirements, the training program you hypothesize would not meet many other requirements relating to preparedness. For example, generators are required to have an employee designated as the emergency coordinator (§265.55). The emergency coordinator's responsibilities include taking "all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable ... collecting and containing released waste ..." (§265.56). These

requirements contemplate employees' active involvement in controlling emergencies, unlike the essentially passive program you describe.

Generators of more than 100 kg./mo. but less than 1,000 kg./mo. of hazardous waste ("small-quantity generators") are required to comply with Subpart C of Part 265 as well as the special emergency preparedness provisions of §262.34(d). Like other generators, small-quantity generators must maintain appropriate fire and spill control equipment on site (§265.32). The special provisions in §262.34(d) require that an employee be designated as the emergency coordinator (§262.34(d)(5)(i)) and that the emergency coordinator respond to emergencies that arise (§262.34(d)(5)(iv)). Appropriate responses include calling the fire department or attempting to extinguish a fire, and containing and cleaning up spills of hazardous wastes. To comply with these requirements, virtually all small-quantity generators will need to plan for more than evacuation and calling the fire department.

EPA does not require generators of less than 100 kg./mo. of non-acutely hazardous waste ("conditionally exempt" small-quantity generators) to comply with emergency preparedness or training requirements. (See 40 CFR 261.5.)

On March 6, 1989, OSHA promulgated regulations for large-and small-quantity generators of hazardous waste:

> who have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances, for their RCRA workplaces only paragraph (p) (8) of this section is applicable. Such generators of hazardous wastes who do not have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances are exempt from the requirements of this section. (54 Federal Register 9294)

In your letter you question whether this exemption has any effect, given EPA's requirements for training and emergency response.

The final rule promulgated by OSHA does not distinguish between small-quantity generators and conditionally exempt small-quantity generators. Rather, it defines "small-quantity generators" in such a way as to include both (29 CFR §1910.120(a)(3)). Therefore, the terms "large-quantity generators" and "small-quantity generators" together refer to all three EPA categories of generators. You will need to contact OSHA as to whether the emergency coordinator and the trained employees at sites generating over 1,000 kg./mo. and l00-1,000 kg./mo. are "emergency response teams" under OSHA's regulations. Conditionally exempt small-quantity generators, however, are not required to have any trained personnel on site. Therefore, they probably are exempt from compliance with 29 CFR 1910.120(p)(8), thus giving effect to OSHA's exemptions.

I hope this response answers your questions regarding the intersection between EPA's and OSHA's regulations. Please bear in mind that OSHA is the appropriate agency to give you a final interpretation of OSHA standards. You should also note that some states have different definitions of large- and small-quantity generators, and in some cases there is no category of conditionally exempt

small-quantity generators. Therefore, to obtain the exact requirements for a particular facility, you should consult with the appropriate EPA regional office or with the authorized state agency. If you need additional information, please contact Emily Roth at (202) 382-4777.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste