

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

June 5, 1989

Cynthia V. Bailey
Executive Director
Department of Waste Management
James Monroe Building, Eleventh Floor
101 North Fourteenth Street
Richmond, Virginia 23219

Dear Ms. Bailey:

This letter responds to your March 13, 1989, correspondence regarding the current regulatory status of hazardous waste residues removed from "empty containers." In your letter, you cited the August 18, 1982 Federal Register notice that discussed this issue but indicated EPA's need to study the matter further.

The Agency has not yet amended 40 CFR 261.7 to include regulatory language addressing residues removed from empty containers. The Agency does not plan to promulgate such amendments at this time, pending the acquisition of additional data. Unfortunately, our further study of the issue has been deferred because of other priorities.

Section 261.7 provides that residues remaining in an "empty" container are exempt from regulation under Subtitle C as a hazardous waste. As you are aware, the Agency has interpreted 40 CFR 261.7 to also exempt residues removed from "empty" containers from hazardous waste regulations (see 45 FR 78524, November 25, 1980 and 47 FR 36092, August 18, 1982). Residues removed from "empty" containers are subject to full regulation under Subtitle C, however, if the removal or subsequent management of the residues generates a new hazardous waste that exhibits any of the characteristics identified in Part 261, Subpart C (for example, by incineration of both a container and its contents).

As an authorized State, the implementation of certain RCRA hazardous waste regulations has been delegated to the Commonwealth of Virginia. Pursuant to 40 CFR 271.1(i), Virginia may enforce requirements that are more stringent, more extensive, or greater in scope than those required under Subtitle C of RCRA. You are certainly within your authority to interpret the authorized State equivalent to section 261.7 more stringently.

EPA appreciates your concern regarding this issue. Although there are no definite plans to address this issue in the near future, the Agency continually reviews its regulations to identify changes

necessary to ensure protection of human health and the environment. I would encourage you to submit any data or information on this issue to Bob Dellinger, of the Waste Characterization Branch, Office of Solid Waste. Also, if you should have any additional questions or comments on this issue, please contact me or have your staff contact Mitch Kidwell, of my staff, at (202) 382-4805.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste