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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN 26 1989

Peter R. Simon, M.D., M.P.H.
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Dear Dr. Simon:

Thank you for your letter of April 20, 1989, regarding the potential effect of the leach testing procedure on programs designed to remove lead-contaminated soils from residential areas.

Under existing solid waste regulations, if a contaminated soil is removed from a site, the generator must determine whether the soil is contaminated by a hazardous waste and thus must be managed as a hazardous waste. (Contaminated soil that is left in place is not subject to any hazardous waste management requirements, including any testing.) This determination can be made either by testing the waste containing soil or through knowledge of the composition of the waste, it must be managed under the Subtitle C regulations of the Resource Conservation and Recovery Act (RCRA).

RCRA requires that regulatory decisions regarding a hazardous waste take into account the potential risk to human health and the environment posed by mismanagement of the waste. The Environmental Protection Agency (EPA) has determined that a municipal landfill, which does not have design and operating standards as stringent as those under Subtitle C of RCRA, is not an appropriate site for disposal of hazardous waste. Under the existing statutory and regulatory framework, hazardous waste generated as a result of cleanups at industrial and residential sites are subject to the same management standards.

As you know, EPA also has authority to clean up releases of hazardous materials under the Comprehensive Environmental Response, Compensation and Liability Act, More popularly known as "Superfund." Superfund, like RCRA, requires cleanups to protect human health and the environment. Furthermore, unless certain exceptions apply, Superfund cleanups must comply with requirements from other environmental statutes, such as RCRA, when those requirements are "applicable" to the Superfund activities. The Superfund statute also encourages compliance with these other laws where they do not apply, but are "relevant" or "appropriate" to the clean-up action. Currently, EPA follows the rules outlined above to determine whether the hazardous material at a Superfund site is a RCRA hazardous waste -- in other words, we test the material or determine whether it is hazardous based on knowledge of its composition. If the material were a RCRA waste, RCRA standards would probably be "applicable," and disposal in a municipal landfill would not be acceptable.

You have expressed concern that EPA has proposed to change its regulatory test for determining whether a waste is toxic hazardous waste. Section 3001 (g) of the 1984 amendments to RCRA specifically directed EPA to examine the extraction procedure (EP) toxicity test as a predictor of the leaching potential of waste and to make necessary changes to improve its accuracy. In June 1986 (see 51 FR 21648), the Agency proposed to require a new, more precise, leaching procedure, using a buffered solution instead of an acid titration, to determine whether a waste is characteristically hazardous based upon its toxicity. This test, the toxicity characteristic leaching procedure (TCLP), is more precise than the original EP toxicity test. A second Federal Register notice (53 FR 18792, May 24, 1988) provided additional information and opportunity for comment on the TCLP. When the toxicity characteristic proposal is promulgated as a final rule, the TCLP will supersede the EP test.

We are aware that under certain conditions the TCLP may be somewhat more aggressive than the EP toxicity test. For this reason, we are gathering information on the relationship between the two test procedures. We would like to ensure that the test procedures we use to determine whether a waste is hazardous appropriately model our reasonable worst-case mismanagement scenario -- in the case of the toxicity characteristic, management of a hazardous waste in a municipal landfill.

At this time, we are working closely with EPA Region I officials to assess the possible implications of applying the TCLP to lead-contaminated soils. I encourage you to provide us with any information you may have that compares the results of the two procedures on identical lead-contaminated soil samples. We will be using these data in our continuing efforts to improve the accuracy and reproducibility of our test procedures.

Thank you for sharing your concerns with us. To keep up to date on our progress regarding this matter, we suggest that you contact Gerry Levy, Branch Chief of Massachusetts Waste Management, in our Region I office. Mr. Levy can be reached at (617) 573-5720.

Sincerely yours,

Original Document signed

Jonathan Z. Cannon
Acting Assistant Administrator