

9554.1989(04)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV 28 1989

Mr. Jon Greenberg
Manager of Environmental Policy
Browning-Ferris Industries
Suite 500
1150 Connecticut Avenue, Northwest
Washington, DC 20036

Dear Mr. Greenberg:

This letter is in response to your two letters dated October 10, 1989, requesting clarification of the California list HOC land ban regulations, and applicability of Federal land disposal restrictions, (LDR) regulations regarding household hazardous waste (HHW) and hazardous waste from generators of less than 100 kg/month, what you are calling "very small quantity generator waste" (VSQG). We are providing answers or clarifications in response to all of your inquiries except for two, which we would like additional time to consider. We do not wish to delay providing answers to the other questions raised in your letters, so we are responding to those at this time.

Your first question concerned California list HOCs, specifically a non-liquid waste containing only one HOC (at levels greater than or equal to 1000 mg/kg) listed in Appendix III of Part 268. As stated in 40 CFR 268.42(a)(2), a waste is prohibited from land disposal unless it has been incinerated in accordance with Subpart O of either Part 264 or 265. (The treatment standard of incineration does not apply when there is an established treatment standard specified for the HOC in Subpart D of Part 268). You stated, however, that 40 CFR 268.42(a)(2) is less clear when there is a mixture of more than one listed HOC in a non-liquid waste. You gave us your understanding that in this case, if there is an established treatment standard in Part 268 for at least one of the listed HOCs, then that treatment standard, and not the incineration standard of 40 CFR 268.42(a)(2), applies. This is a correct interpretation; as stated in previous rulemakings, California list prohibitions are superseded by more specific prohibitions and treatment standards (see 52 FR 29993, August 12, 1987; and 52 FR 25773, July 8, 1987).

You also requested confirmation of your understanding of the effects of the Court-ordered stay on multi-source leachate, when it is derived from a waste as described above. You stated that the effect of the stay is to remove the treatment requirements

established under Part 268 as they apply to multi-source leachate and, therefore, the incineration treatment standard applies. The Agency would like additional time to further consider your interpretation before providing a response.

Your final question in the first letter dealt with a non-liquid waste containing less than 1000 mg/kg HOCs when initially generated. This waste is de-watered for further treatment, which results in the concentration of the HOCs being increased to above 1000 mg/kg. With further treatment, the concentration of the HOCs in the waste again drops to below 1000 mg/kg. You stated that your understanding is that, because the waste did not meet the California list criteria when it was initially generated nor when it eventually was disposed, it does not have to meet the requirements off 40 CFR 268.42. The Agency would also like additional time to consider the issues involved in this questions, and so is deferring a response at this time.

Your second letter is concerned with the applicability of the Federal land disposal restrictions to wastes that are not hazardous by Federal hazardous waste definitions, i.e., household hazardous waste and hazardous waste from generators of less than 100 kg/month, but are hazardous by a State's definition. You wished to know if the Federal land disposal restrictions apply in these cases.

States with approved hazardous waste programs that regulate generators and handlers of less than 100 kg of hazardous waste in a calendar month have a larger regulated universe than is required by Federal law. The program components that include these classes of hazardous waste handlers are "broader in scope" than the Federal requirements. "Broader in scope" provisions are not considered part of the State authorized program and are not subject to EPA oversight and enforcement (40 CFR 271.1 (i)(2)). Therefore, State regulated household hazardous waste and "very small quantity generator" waste handlers are not subject to the Federal land disposal restrictions unless the Federal regulations are adopted and enforceable under State law.

If you have any further questions, please call Robert Scarberry, Chief, Land Disposal Restrictions Branch, at 382.4770.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste