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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

DEC 20 1989

MEMORANDUM

SUBJECT: Applicability of the Land Disposal Restrictions to
Recycled Hazardous Wastes

FROM: Devereaux Barnes, Director
Characterization and Assessment Division

TO: Gerald M. Levy, Chief
MA Waste Management Branch
Region I

This memorandum responds to your November 9, 1989, request for clarification concerning the applicability of the Part 268 Land Disposal Restrictions (LDR) program to recycled wastes that are subject to the provisions of Part 266; in particular, recyclable materials from which precious metals are reclaimed (i.e., wastes subject to 40 CFR 261.6(a)(iv) and Subpart F of Part 266).

The requirements of Part 268 are applicable (as stated at 40 CFR 268.1(b)) unless specifically provided otherwise in Part 261 (or in Part 268). Section 261.6(a)(2) does not specifically provide otherwise and, therefore, the LDR requirements, including the applicable notification, certification and demonstrations required by the generator of a restricted hazardous waste, are applicable to those recyclable materials listed in section 261.6(a)(2). (For comparison, section 261.6(a)(3) does specifically provide otherwise and, therefore, the LDR requirements do not apply to those wastes listed in 261.6(a)(3)).

In future rulemakings, we will consider adding "Part 268" to the introductory paragraph of 40 CFR 261.6(a)(2), specifically stating that "the following recyclable materials" are subject to the LDR requirements to help clarify the applicability of Part 268. However, we have consistently maintained and believe it is

understood that such "recyclable materials" (and, in fact, all hazardous wastes, unless specifically provided otherwise) are (or will be) subject to the LDR requirements. For example, Subpart C of Part 266 was specifically modified (see 53 FR at 31197, August 17, 1988) due to the LDR statutory requirement that a hazardous waste must meet the treatment standards prior to placement on the land. Were those recyclable materials listed in 261.6(a)(2) not subject to Part 268, this modification would not have been necessary.

Should you have further questions, or need more information please contact Andrea McLaughlin, of my staff, at FTS 382-6946.

cc: RCRA Branch Chiefs, Regions II-X
Jim Thompson, OWPE