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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN 7 1990

MEMORANDUM

SUBJECT: Transportation Regulations

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Robert L. Duprey, Director
Hazardous Waste Management Division
Region VIII

Thank you for your memorandum of February 26, 1990, in which you describe a situation of concern related to hazardous waste transportation. In the situation you describe (and described in the accompanying letter from the State of Utah) a hazardous waste transporter appears to be transporting hazardous waste unnecessarily through numerous transporters to "buy" time in which to accumulate a quantity of hazardous waste sufficient to fill a tank truck. The events as described raise the possibility that this chain of shipments is not consistent with a "normal course of transportation" as described in the Federal Register notice of December 31, 1980 (45FR86966). Our response is based upon, and limited to, the facts as you have described them.

In developing the hazardous waste transportation regulations, EPA differentiated between the storage of hazardous waste (requiring the obtaining of a RCRA permit) and the holding of waste for short periods of time during the course of transportation. EPA specifically stated that transporters who hold hazardous wastes for a short period of time in the course of transportation should not be considered to be storing hazardous wastes, and should not be required to obtain a RCRA permit or interim status and comply with the standards of Parts 264 or 265. EPA allows transporters to hold wastes at a transfer facility in the course of transportation for up to 10 days. This regulatory relief measure applies to the holding of wastes which is incidental to normal transportation practices. If the waste is

held for more than ten days at a particular location, a RCRA permit is required, and the transporter must comply with the applicable storage standards and permit requirements.

Violations of the transportation regulations may be occurring in situations where State or EPA Regional enforcement authorities determine that a transporter has held waste at one location for longer than 10 days, or has held waste in a manner which is not consistent with the normal course of transportation. Two examples of activities which ordinarily would be inconsistent with the normal course of transportation are: (1) waste not being transported from a site at all, but rather, possession of the waste is changing from one transporter to another while the waste remains at one site, or, (2) waste is routed to the same geographic location more than once during the course of transportation.

Furthermore, the act of simply routing hazardous wastes to numerous transporters for extended periods of time may, at some point, no longer be consistent with the normal course of transportation. EPA noted at the time of promulgation of the transfer facility requirements that the transportation industry had indicated that shipments of hazardous waste normally take no longer than 15 days, including both on the road time and incidental temporary holding. While circumstances may occasionally justify periods significantly longer than 15 days, the 49-day chain identified in the documents from Utah strongly suggest that the intermediate purported transfer facilities were not holding the waste incident to the normal course of transportation.

Of course, our interpretation of the situation you describe is based upon, and limited to, what you have documented in your letter, and does not mean that there cannot exist additional circumstances not described in your correspondence that would be material to any determination of a violation. We cannot discount the possibility that, sometimes, under particular circumstances, activities such as those described above may be consistent with the normal course of transportation. The enforcement authority, either the State or EPA Region, must determine, based on the factual situation, whether the circumstances involved are in keeping with a normal course of transportation.

We are planning to consider the other question you raised

(regarding re-manifesting of wastes received from multiple sources by transporters) as we discuss outstanding manifest issues as part of a project recently begun by a working group of states under an agreement between EPA and the National Governors' Association. This project will evaluate the current manifest system and provide input on potential improvements. EPA staff met in March of this year with the state manifest coordinators group to kick off the project. For information on this project, please contact Russ Brodie of the National Governor's Association at (202) 624-5305.

Thank you for bringing this transportation situation to my attention. If you have any questions regarding this memorandum, please have your staff contact Emily Roth, at FTS 382-4777.