9441.1990(21)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 19 1990

Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

Dear Senator Lugar:

Thank you for your letter of March 15, 1990 in which you request information concerning Resource Conservation and Recovery Act (RCRA) regulations that may be applicable to electric utility poles. As I understand your constituent's concerns, the local utility is no longer providing these used poles to area residents and you are inquiring as to why this may be.

Subtitle C of RCRA requires that generators of solid waste must determine if the waste generated is hazardous. Once electric utility poles have served their original purpose and are removed, they would meet the RCRA definition of a solid waste. A solid waste can be defined as a hazardous waste if it is listed as a hazardous waste in Subpart D of 40 CFR, Part 261, or if it exhibits a characteristic of hazardous waste identified in Subpart C of 40 CFR, Part 261.

These used utility poles would not currently be classified as a hazardous waste via a listing. Of the four characteristics of hazardous waste--ignitability, corrosivity, reactivity and toxicity--the toxicity characteristic is the only characteristic that may be directly relevant to these poles. This characteristic identifies a number of toxic constituents that may cause a waste to be identified a hazardous.

The Environmental Protection Agency (EPA) recently published the Toxicity Characteristic (TC) Rule which adds 25 organic constituents to the list of constituents which generators of solid waste must consider when making hazardous waste determinations. The TC is designed to address the potential for certain hazardous constituents to leach from waste into ground water. Of concern here might be pentachlorophenol, which is used in the treatment of some wood and wood products. If these poles were treated with this chemical, they may fail the Toxicity Characteristic Leaching Procedure (TCLP) levels for this constituent. Whether they fail the characteristic is determined by how much of the chemical may leach from the poles. The TC regulatory levels are set at 100 times the health-based level, a concentration which is clearly hazardous. It is possible that

these poles may fail the Toxicity Characteristic for this constituent, in which case they would have to be managed as hazardous waste once removed from the ground. You should note, however, that the TC rule does not take effect until September 25, 1990.

Another reason why these poles may no longer be available to local residents may relate to changes in the State regulations relative to the disposition of the poles once removed from the ground. Your constituent would have to check with the appropriate local officials about State regulations addressing disposition of these poles. Even if used poles are not hazardous wastes, State regulations under Subtitle D of RCRA may preclude the utility from giving these poles to local residents.

A final reason why the utility may have decided not to provide the used poles might be potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Although used poles may not be hazardous wastes, a court could still hold the utility responsible for their cleanup at some future date should health or environmental problems ensue.

In summary, RCRA regulations and the CERCLA statute may apply to used utility poles once they are removed from the ground. The specific reason(s) why the utility is no longer providing these poles can not be determined without more information.

I hope this information is helpful. If I can be of further assistance, please feel free to contact me.

Sincerely yours,

Original Document signed

Sylvia K. Lowrance, Director
Office of Solid Waste