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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

OCT 30 1990

MEMORANDUM

SUBJECT: Transfer Facility Regulation Interpretation

FROM: Sylvia Lowrance, Director
Office of Solid Waste

TO: David Ullrich, Acting Director
Waste Management Division (5H-12)

Thank you for your memorandum of July 19, 1990, requesting an interpretation of the regulations pertaining to "transfer facilities" in relation to designated facilities and permitted and interim status facilities.

The first issue you raise concerns whether a permitted or interim status treatment and storage facility can function as a transfer facility and temporarily store hazardous waste destined for another facility (the designated facility) for processing. The answer to this question depends on whether the transfer facility is also the "designated facility" indicated on the manifest. A permitted or interim status facility that has not been designated on the manifest as the "designated facility" may serve as a transfer facility for shipments of waste awaiting further transportation to the designated facility. The limiting conditions are the definition of "transfer facility" itself (Section 260.10) and the provisions of Section 263.12, i.e., storage not to exceed 10 days, and containers must meet DOT requirements. A permitted or interim status treatment and storage facility that is the "designated facility" for a particular shipment of waste cannot function as a transfer facility with respect to that waste. "Designated facility" is defined in 260.10 as a hazardous waste treatment, storage, or disposal facility that is permitted or has interim status, that is regulated under 40 CFR 261.6(c)(2) or Subpart F of 40 CFR Part 266, or another facility allowed by the receiving State to accept such waste and that has been designated on the manifest by the generator pursuant to 40 CFR 262.20. [See 55 FR 2353, January 23, 1990 for recent EPA statement on the designated facility issue.]

The term "transfer facility" is defined in 40 CFR 260.10 as "any

transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation." The key part of this definition is the phrase "during the normal course of transportation." Arrival of a manifested shipment of waste at the "designated facility" constitutes completion of the transportation phase, such that the transfer facility provisions will no longer apply. That is, the manifested shipment cannot be stored for 10 days or less under 40 CFR 263.12 once it arrives at the designated facility. This issue is discussed in the attached letter dated August 31, 1988 from Sylvia Lowrance, Director of the Office of Solid Waste, to Richard Svanda, of the Minnesota Pollution Control Agency.

The second issue you address is the consolidation of wastes by a transporter at a transfer facility. Wastes are routinely combined at transfer facilities; often containerized waste is transferred to a tanker truck. However, you are correct that the December 31, 1980 Federal Register as well as subsequent notices on the topic of transportation do not place any additional requirements on transporters that consolidate wastes at transfer facilities.

There are no EPA Federal standards or requirements that apply specifically to transfer facilities other than the storage time limitation of 10 days and other provisions of 263.12. There have not been any new policy or guidance documents on the topic of transfer facilities since the regulations were promulgated. However, you should note that transporters who store hazardous waste at transfer facilities must comply with all applicable requirements of the transporter regulations of Part 263 (e.g., Subpart C, Hazardous Waste discharges).

Under certain circumstances, transporters are required to comply with the requirements that apply to generators of hazardous waste. A transporter who mixes hazardous wastes of different Department of Transportation (DOT) shipping descriptions by consolidating them into a single container must comply with 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste (40 CFR 263.10(c)(2)). The Agency does not intend to encourage transporters to combine wastes of different DOT descriptions. On the contrary, the imposition of the generator requirements should provide sufficient cause for the transporter to avoid such waste combinations whenever possible. The transporter who mixes hazardous wastes of different DOT descriptions is obligated to remanifest the waste. For example, a change in the DOT "proper shipping name" or hazard class would require the completion of a new manifest.

The act of combining wastes may also result in changes in containers. Therefore, the container designations on the manifest would need to be changed as well. In a situation involving only one or two minor changes, such as container changes, the original manifest could be marked to reflect the changes. In other cases such as the situation mentioned above involving a change in shipping description, a new manifest would have to be initiated. In any case, whether a new manifest is initiated or not, the waste may only be delivered to the designated receiving facility as indicated on the original manifest by the original generator of the waste. In other words, transporters would not be able to combine waste (resulting in a DOT description change), and remanifest the waste to a designated facility that was not indicated on the original manifest by the original generator as the designated facility.

In regard to the compatibility of wastes being mixed, I refer you to the document entitled "A Method for Determining the Compatibility of Hazardous Wastes," order number 600/2-80/076, available from EPA's Office of Research and Development ((513) 569-7562). An individual consolidating wastes in containers should also refer to Appendix V of 40 CFR Part 264. This appendix groups materials according to their potential incompatibility.

With respect to your questions regarding notification, several issues require clarification. Under Subpart D of 40 CFR 266, facilities which qualify as marketers or burners are required to notify the Agency of their hazardous waste fuel activities, even if they had previously obtained an EPA identification number. See 40 CFR 266.34(b) and 266.35(b), respectively. Marketers are defined as generators who market hazardous waste fuel directly to a burner, persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel and persons who distribute but do not process or blend hazardous waste fuel. If the service centers fall into any of these categories, they are considered marketers of hazardous waste fuel and are required to renotify to identify their hazardous waste fuel activities.

You are correct that the EPA identification number is location-specific. Under 40 CFR 263.11, a transporter is prohibited from transporting hazardous wastes without having received an EPA identification number. Currently, this number is assigned to the transportation company as a whole; all of the individual transporters (trucks) in a given shipping company have the same EPA ID number, the number that the transportation company was issued and which is issued to the company's headquarters location.

Your final question concerns the identification number that should appear on

the manifest accompanying the waste at the transfer facility. Regardless of whether the transfer facility is acting as a transfer facility or a regulated storage facility, the identification numbers appearing on the manifest would be the EPA identification numbers associated with the generator of the waste, all the transporters who transport the waste, and the designated facility.

In the situation you describe, in which one company transports waste to and from a transfer facility it operates, and the waste remains under the control of the transporter, no separate EPA ID number need be entered on the manifest specific to the transfer facility. However, you should note that waste must remain under the control of a transporter as designated on the manifest while at a transfer facility. As described in detail in the regulations, a transporter may only deliver wastes to: (1) the designated facility listed on the manifest, (2) an alternate designated facility, (3) the next designated transporter or, (4) a place outside the United States designated by the generator (40 CFR 263.21). Until the signature of the designated facility or subsequent transporter is obtained, the waste is considered to be in the custody of the transporter who last signed the manifest (45 FR 12739; February 26, 1980).

As mentioned briefly above, transporters must comply with the generator standards of 40 CFR Part 262 when they mix wastes of different DOT descriptions (40 CFR 263.10(c)(2)). They must remanifest the waste to accurately reflect the composition of the waste. Although they may indicate on the manifest in box 15 the name of the original generator(s) of the combined waste, they must represent themselves as the generator of the new waste. Although by creating or generating a new waste they have taken on some of the generator requirements, the transporter should continue to manifest the waste to the designated facility as indicated on the original manifest by the original generator.

I realize that this letter contains an abundance of information. If you would like to discuss any of the topics further, please have your staff contact Emily Roth of my staff at FTS 382-3098.

Attachment