

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

December 3, 1990

Vice Admiral P.M. Hekman, Jr.
Department of the Navy
Naval Sea Systems Command
Washington, D.C. 20362-5101

Dear Admiral Hekman:

Thank you for your letter of November 7, 1990, regarding the Fiscal Year 1990 Defense Authorization Act and its impact on the Navy's hazardous waste handling procedures. Last summer, my staff became aware of the issues mentioned in your letter, and they have been investigating how the new legislation affects the Solid Waste Disposal Act.

The legislation at 10 U.S.C. 7311 puts a certain burden on the Navy and its contractors to obtain separate "generator identification numbers" in order to document which party generated a hazardous waste during the repair of a ship. Section 7311(a)(4)(B) specifically states:

A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

Under the federal hazardous waste regulations, a "generator" is defined in 40 CFR 260.10 as "...any person, by site, whose act or process produces hazardous waste ... or whose act first causes a hazardous waste to become subject to regulation." EPA interprets the act of owning a vessel such as a Navy ship to cause the Navy to be a generator of hazardous wastes that are produced during the repair of the ship; in addition, a contractor actually conducting the repair is also a generator. In 1980, EPA addressed the issue of more than one party being responsible for a hazardous waste's generation by introducing the concept of "cogenerators." If more than one party plays a role in the generation of a hazardous waste at a site, the parties are "cogenerators" and must decide between themselves who is to assume the generator responsibilities. See the discussion in the enclosed Federal Register notice.

One of the generator's requirements is to obtain an EPA identification number (see the requirement in 40 CFR 262.12). Since a generator is defined as a "person, by site," the person generating hazardous wastes at a given site must obtain an EPA identification number for that site.

EPA's data management system for hazardous waste generators, transporters, and treatment, storage, and disposal facilities is set up to assign only one EPA identification number per unique site. To

assign more than one number to a unique site raises certain issues that EPA is still investigating. However, EPA's Office of Solid Waste will be rethinking the entire ID number assignment issue within the next eighteen months. Currently, the EPA regions and authorized states are responsible for assigning the numbers, and may make their own determinations of how to assign numbers at port facilities.

Assuming only one EPA identification number is issued to a port where a contractor is repairing a Navy ship, both the Navy and its contractor may use that EPA identification number in completing Box 1 of the Uniform Hazardous Waste Manifest. Note that nothing in the hazardous waste regulations prevents a generator, such as the U.S. Navy, from assigning its own tracking numbers on manifests in order to identify a particular contractor who was involved in generating the hazardous waste in that shipment (or, similarly, assigning tracking numbers that relate a particular hazardous waste shipment to a given ship or port of origin). Such "internal" tracking numbers could be placed in Box 15 of the Uniform Hazardous Waste Manifest.

Please be aware that this response reflects the federal hazardous waste regulations. States may impose their own requirements that are stricter or broader than the federal requirements. If you have further questions on this issue, please have your staff contact Becky Cuthbertson of my staff at (202) 475-8551.

Sincerely yours,

Don R. Clay
Assistant Administrator

DEPARTMENT OF THE NAVY

November 7, 1990

Mr. Don R. Clay
Assistant Administrator for Solid Waste and Emergency Response
Environmental Protection Agency
401 N Street, Southwest
Washington, DC 20460

Dear Mr. Clay:

The purpose of this correspondence is to enlist your assistance in resolving an issue regarding management and disposal of hazardous waste generated during Navy ship repairs performed by private shipyards.

The FY90 DOD Authorization Act amended 10 U.S.C. 7311 regarding hazardous waste management for contracts, other than new construction, for work on board naval vessels. The amendment, included at enclosure (1), requires the contractor to provide a hazardous waste generator identification number on manifests for contractor generated hazardous waste; the Navy to provide a hazardous waste generator identification number for Navy generated waste; and for the contractor and the Navy to provide a number for co-generated waste. The amendment further refined an existing requirement to identify the types and quantities of hazardous waste expected to be generated in the contractor's facility. Prior to the amendment, it was Navy policy that the owner of the facility where ship repair work was being performed would perform the hazardous waste generator duties including manifesting the waste using the shipyard owner's identification number. This policy was consistent with our understanding of applicable Federal and state laws.

The Naval Sea Systems Command (NAVSEA) and in particular, the Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPS) who are responsible for managing private sector repairs of Navy ships throughout the country, have implemented the new provisions of 10 U.S.C. 7311 in standard work specifications and contract clauses for ship repair work and have applied for hazardous waste identification numbers with state and/or regional EPA offices.

Responses received from state agencies and EPA regional offices thus far have been inconsistent. We have included a copy of a State of South Carolina letter to EPA Region IV, a State of Washington letter to the Navy, and two letters to Region IX from the Navy at enclosures (2) through (5) for your information. The unique provisions in 10 U.S.C. 7311 are requiring many states to review their own regulatory provisions. Further complicating the issue is the lack of definition of terms used only in 10 U.S.C. 7311. While several states have agreed to issue permanent generator numbers to SUPSHIPS, others interpret EPA regulations regarding "division of responsibility for generator duties"

very rigidly - limiting the issuance of generator numbers to owners of the facility. This interpretation has prevented small ship repair contractors who perform work on Navy ships docked at a Navy facility from complying with the requirements of 10 U.S.C. 7311 to provide generator numbers to manifest hazardous waste they generate. It has also hampered Navy efforts to comply with the requirements of 10 U.S.C. 7311.

We are advised that several states have requested direction from the regional offices who in turn have requested rulings from EPA headquarters. A NAVSEA representative met with EPA headquarters personnel on 30 May 1990 and discussed in general the difficulties that the SUPSHIPs were having in obtaining generator numbers and that the states were having in fitting 10 U.S.C. 7311 requirements into their RCRA manifesting systems. While the meeting was productive in identifying the issues, no concrete solutions were identified.

The SUPSHIPs have managed to make arrangements for disposal of hazardous waste generated during performance of ship repair contracts or have directed the ships to off-load any Navy waste at Navy owned facilities prior to ship arrival at the repair facility. The efforts do not present a permanent or satisfactory solution, however, and with the recent involvement of EPA regional offices, it is time to resolve the issue. We need guidance to be issued that addresses the unique problems raised by 10 U.S.C. 7311 and allows us to comply in a consistent manner with its requirements and Resource Conservation and Recovery Act requirements for the responsible management of hazardous waste including a system for tracking its generation, management and disposal.

Since neither 10 U.S.C. 7311 nor RCRA define the terms "Navy generated," "contractor generated," and "co-generated," the Navy has developed its own contractual definitions. We believe these definitions are consistent with RCRA and have included a copy of our contract clause for your assistance in reviewing this issue. We would ask that any guidance provided by your office to the regions and states would facilitate our use of the contract provisions to implement 10 U.S.C. 7311 and authorize the navy and the contractors, as appropriate, to obtain generator numbers for disposal of waste by a party other than the site owner. Senior members of my staff are available to meet with EPA personnel to examine the alternatives and assist in developing a solution. I have asked my Director of Environmental Protection, Dr. Kurt Riegel to take the lead on this very important issue. Dr. Riegel may be reached on (703) 602-3594.

P.M. Hekmen, Jr.
Vice Admiral, U.S. Navy

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