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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

March 26, 1991

John E. Ely
Enforcement Director
Virginia Department of Waste Management
101 North 14th Street
Richmond, Virginia 23219

Dear Mr. Ely:

At the request of Carlyle C. Ring, Vice President and General Counsel of Atlantic Research Corporation, I am sending this letter to summarize the Agency's current position on the "contained-in" interpretative policy. It is my understanding, based upon Mr. Ring's letter, that there was some question as to whether the "contained-in" interpretative policy applies to all environmental media or only to ground water. Mr. Ring's letter also suggested that a letter from my Office would help resolve this matter. I hope this letter will answer this question and further clarify the policy. I have also enclosed, for your information, a memorandum from Jonathan Cannon to Thomas Jorling dated June 19, 1989. I hope that you will find these helpful.

The "contained-in" interpretation addresses environmental media (i.e., ground water, soil, and sediment) contaminated with RCRA listed hazardous waste. Our federal regulations at 40 CFR Part 261.3 identify hazardous wastes. Among other things, these regulations state that a solid waste mixed with a hazardous waste is a hazardous waste. However, these regulations generally do not specifically address environmental media, which are not solid wastes, mixed with listed hazardous waste. The Agency's position continues to be that mixtures of environmental media and listed hazardous waste (i.e., contaminated ground water, contaminated soil, and contaminated sediments) must be managed as if they were hazardous waste. This position is known as the "contained-in" policy. EPA's application of the "contained-in" policy to contaminated media was upheld by the D.C. Circuit Court of Appeals in *Chemical Waste Management Inc. v. U.S.EPA*, 869 F.2d 1526 (D.C. Cir. 1989).

Consistent with this approach, the Agency further interprets the regulations to mean that environmental media contaminated with

listed hazardous waste must be managed as if they were hazardous waste until the media no longer contain the listed hazardous waste (i.e., until decontaminated), or are delisted. To date, the Agency has not issued any definitive guidance as to when, or at what levels, environmental media contaminated with listed hazardous waste no longer contain that hazardous waste. Until such guidance is issued, the Regions or authorized States may determine these levels on a case-specific basis. However, as you know, States that are authorized to implement the RCRA hazardous waste program, as Virginia is, are not bound by EPA's interpretation of the Federal regulations. Although they usually follow Federal interpretations, authorized States may interpret their own regulations more strictly than EPA interprets the Federal regulations.

Related to making a determination as to when contaminated media no longer contains listed hazardous waste, we suggest that a risk assessment approach be used that addresses the public health and environmental impacts of hazardous constituents remaining in the treated soils. And as stated above, the authorized State could apply more stringent standards or criteria for contaminated environmental media than those recommended by the Federal EPA if the authorized state determined it to be appropriate. [Note: However, this approach does not apply to residuals from the treatment of listed hazardous waste or mixtures of solid waste with listed hazardous waste under our current regulations, which must be delisted.]

I hope that this letter will be helpful to you in establishing and implementing Virginia's hazardous waste policies on related issues. Should you have any questions concerning EPA's "contained-in" interpretative policy, please contact Steve Cochran, Acting Chief of the Waste Identification Branch, at (202) 382-4770.

Sincerely yours,
Sylvia K. Lowrance
Director
Office of Solid Waste

cc: C. Ring; D. Freedman