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

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Arline M. Seeger
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Dear Ms. Seeger:

Thank you for your letter of April 23, 1992, inquiring about the applicability of RCRA hazardous waste export requirements, found in 40 CFR 262 Subpart E, to treatability study samples. Treatability study is defined in Section 260.10 as "a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volume of residuals from a particular treatment process. Also included in this definition for the purpose of the Section 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste."

Sections 261.4(e) and 261.4(f) allow exemptions from regulation under RCRA to persons who generate or collect samples for the purpose of conducting treatability studies, as defined above, and to the samples themselves. EPA promulgated these regulations on July 19, 1988. In the preamble to the rule, the Agency exempted "...samples sent for treatability studies from Subtitle C requirements. These include the requirement to notify EPA prior to export of hazardous waste..." 53 Fed. Reg. 27, 290, 27, 293 (July 19, 1988).

RO 11667

Persons who generate or collect samples for the purpose of conducting treatability studies must meet the requirements of Section 261.4(e) to be eligible for the exemption. As you stated in your letter, Section 261.4(e)(2)(iv) requires that "The sample is shipped to a laboratory or testing facility which is exempt under Section 261.4(S) or has an appropriate RCRA permit or interim status." In addition, Section 261.41(e)(2)(v)(C)(2) requires the generator or sample collector claiming the exemption to keep records of the EPA identification number of the laboratory or testing facility receiving the waste. Laboratories or testing facilities outside of the jurisdiction of the United States, however, are not subject to RCRA regulation and, therefore, cannot be permitted or be assigned an EPA identification number. As a result, it would appear to be impossible for a generator or sample collector seeking the exemption to satisfy either condition and thus qualify for the exemption for a treatability study sample bound for export. However, as the preamble language quoted above indicates, we do not believe that these conditions were intended to deny the exemption to samples destined for study in another country. Therefore, persons who generate or collect samples for the purpose of conducting treatability studies outside the U.S. and who meet all of the requirements set forth in Section 261.4(e), except for 261.4(e)(2)(iv) and 261.4(e)(2)(v)(C)(2), meet the terms of the exemption.

Your letter also alluded to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and its entry into force on May 5, 1992, for certain countries which have ratified it. France, the country to which you are proposing to send the treatability study sample, has ratified and is, therefore, a Party to the Convention, whereas the U.S. has not ratified. On May 5, 1992, the Convention requires that Parties prohibit transboundary movements of hazardous and other wastes with non-Parties, except when a separate international agreement exists for those movements. The agreement must be compatible with environmentally sound management, under the terms of Article 11 of the Convention.

Both the U.S. and France, as Members of the Organization for Economic Cooperation and Development (OECD), have adopted an OECD Council Decision, C(92)39/FINAL (March 30, 1992), so that certain transboundary movements of recyclables may continue after entry into force of the Basel Convention. However, this multilateral

arrangement pertains to movements of wastes destined for recovery operations; it does not include movements of hazardous waste samples destined for treatability studies. Because exports of hazardous waste treatability study samples are not covered by the OECD Council Decision, and because the U.S. is not a Party to the Basel Convention, a person seeking to export wastes from the U.S. to a Basel Party should determine if the government of the importing country (the Party) considers the movement subject to the terms of the Basel Convention. If the country, in this case France, interprets the Convention to cover treatability study samples, it will likely be a prohibited shipment as of May 5, 1992. Mr. Francis Combrouze of the French Environment Ministry may be contacted at 33.1.47.58.12.12 for assistance in determining if such a movement would be subject to the Basel Convention, in the judgment of the French government.

Please note that 40 CFR Section 262.53 requires that notifications of intent to export wastes subject to the RCRA regulations ... "should be submitted sixty (60) days before the initial shipment is intended to be shipped off site."

Thank you for your interest in the safe and effective management of hazardous waste. If you have any further questions, please contact Angela Cracchiolo of my staff at (202) 260-4779.

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