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

July 22, 1992

MEMORANDUM

SUBJECT: RCRA Subtitle C Requirements Applicable to Household Hazardous Waste Collection Programs Collecting Conditionally Exempt Small Quantity Generator Waste

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste

TO: Waste Management Division Directors
Regions I - X

The purpose of this memorandum is to clarify that state-approved Household Hazardous Waste (HHW) Collection Programs (HHWCPs) that manage both Conditionally Exempt Small Quantity Generator (CESQG) waste and HHW are not subject to the full RCRA Subtitle C requirements merely because they mix these two types of wastes together. Based on the numerous questions we are receiving, it is apparent that there is a great deal of uncertainty among members of the regulated community and implementing agencies about this issue.

Background

This clarification is necessary for several reasons. First, many communities are addressing the issue of CESQG waste management because they want to assure that these hazardous wastes are appropriately managed. As with HHW, some communities are interested in separating and collecting CESQG waste from the municipal solid waste stream to minimize the input of hazardous constituents to their landfills and combustors. In addition, many CESQ generators (the majority of which are small businesses) are addressing the issue of how to best manage their waste to reduce potential future liability for cleanup of facilities where wastes have been

mismanaged. CESQ generators are interested in participating in HHWCPs even though they, unlike HHW generators, typically must pay a fee. Often CESQ generators do not have alternative options other than disposal in the solid waste stream for their wastes. Their quantities are too small to economically manage using hazardous waste disposal firms and these generators usually lack the expertise and resources to manage their wastes under Subtitle C.

The regulations governing the management of CESQG waste are found at §261.5 of Title 40 of the Code of Federal Regulations (CFR). This provision describes a conditional exemption from the full hazardous waste regulations for CESQG waste as long as certain requirements are met (see footnote 1). The issue raised to the Agency concerns state-approved programs that collect both HHW and CESQG waste. Household waste, including HHW, is excluded from regulation as a hazardous waste under 40 CFR 261.4(b)(1).

Problem

Uncertainty about RCRA regulatory requirements prevents communities and businesses from making cost-effective decisions about management of HHW and CESQG waste. The question raised to the Agency by communities and companies considering developing or participating in collection programs that collect both HHW and CESQG waste is:

> If a collection program accepts and manages both HHW 2nd CESQG waste and mixes these two types of wastes together (e.g., pours spent solvents from households and small businesses into the same drum), how is the resultant mixture regulated?

This question is prompted specifically by 40 CFR §261.5(h), which states that CESQG waste may be mixed with non-hazardous waste (e.g., HHW) and remain subject to the reduced requirements for CESQ generators, even though the mixture exceeds CESQG quantity limitations, only so long as the mixture does not meet any of the characteristics of hazardous waste in 40 CFR Part 261.

If §261.5(h) were to apply to collection programs where CESQG waste and HHW are mixed, these programs would be faced with the substantial burdens and costs associated with full Subtitle C requirements. The only way to reduce these burdens would be to

manage CESQG waste and HHW separately (i.e., not mix them in the same container). Even this approach would have significant downsides. For example, managing the wastes separately greatly increases paperwork requirements, increases the space required to store the wastes, increases packaging costs, and increases both shipping and disposal costs. This increased burden comes with no increase in environmental protection. To avoid either of the above scenarios -- full Subtitle C regulation or increased costs associated with separate management of CESQG waste and HHW -- many collection programs are refusing to accept CESQG waste. This represents an unnecessary barrier to communities and companies who are seeking environmentally sound methods of managing CESQG waste.

Clarification

The CESQ generator regulations were not intended to impose barriers to collection of CESQG waste and, thus, to the removal of these wastes from the municipal solid waste stream. In fact, the discussion in the preamble when §261.5(h) was promulgated (45 FR 33102 - 33104) indicates that collection of CESQG waste was not envisioned at that time and, thus, was not addressed by the regulations. The Agency's intent behind the Subtitle C regulations concerning HHW and CESQG waste was, as with municipal solid waste, to allow States to determine what controls are necessary for management of CESQG waste and HHW within the state. See 45 FR 33104. Therefore, to apply §261.5(h) to collection programs that mix CESQG waste and HHW would create an unintended barrier to programs whose intent is to dispose of these wastes economically and in an environmentally sound manner.

Based on the above discussion, and the fact that §261.5 generally provides direction to the CESQ generator rather than to others managing CESQG waste, it is our interpretation that §261.5(h) applies to the CESQ generator and not to the subsequent managers of the CESQG waste described in §261.5(f)(3) and (g)(3). Programs and facilities receiving and mixing CESQG waste and HHW are subject to requirements imposed by States through the States' municipal or industrial waste permit, license, or registration programs, but are not subject to the full hazardous waste Subtitle C regulations, even if the mixed CESQG and household hazardous wastes were to exhibit a characteristic of a hazardous waste. The collection facility does not become the generator of the mixture merely by mixing CESQG waste with nonhazardous waste, and

regardless of the quantity of the mixture of wastes, is not subject to the 40 CFR Part 262 generator regulations. By contrast, CESQ generators that mix hazardous and nonhazardous waste and whose resultant mixtures exceed the §261.5 quantity limitations and exhibit a characteristic, are no longer conditionally exempt and are subject to the applicable Part 262 hazardous waste generator regulations.

cc: Bruce Weddle, David Bussard, Regional Implementation Team

1 Under 40 CFR 261.5(f)(3) and (g)(3), CESQGs must send their wastes to either a federally permitted or interim status hazardous waste management facility, a state authorized hazardous waste management facility, a recycling facility, or a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste. (For further detail concerning state approval, see attached letter dated October 9, 1986 from Mark A. Greenwood, Assistant General Counsel, U.S. EPA, to Joan H. Peck, Chief, Waste Evaluation Unit, State of Michigan Department of Natural Resources.)

Attachment

PD#:9574.00-0

United States Environmental Protection Agency
Washington, D.C. 20460
Office of General Counsel

Ms. Joan H. Peck, Chief
Waste Evaluation Unit
Hazardous Waste Division
State of Michigan Department of Natural Resources
Stevens T. Mason Building, Box 30028
Lansing, Michigan 48909

Dear Ms. Peck:

I am responding to your September 15, 1986 request for clarification on how 40 CFR 261.5(g)(3)(iv) applies to facilities that temporarily store hazardous wastes produced by generators of less than 100 kg/mo.

The condition under which the hazardous waste produced by these generators would be exempt from full regulation under §261.5(g)(3)(iv) is that the generator must either treat or dispose of his hazardous waste in an onsite facility or ensure delivery to an offsite storage, treatment or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. The purpose behind imposing this condition was to ensure that the facilities managing the waste are approved by the State to handle the particular waste. This would allow the States more flexibility in dealing with small quantity generators, since the State could deal directly with situations such as where it determines that certain types of waste should not be managed in a particular non-hazardous facility. See 45 Fed. Reg. 33104 (May 19, 1980).

The requirement that the facility be permitted, licensed or registered by a State was not intended to impose upon the States any particular procedure for approval of the facility. All that is required is that the State have some mechanism for approving facilities that propose to manage the exempt waste. Since the

underlying intent of the requirement is that the State assess the risks associated with particular facilities handling the exempt waste, any mechanisms that the State chooses to accomplish this is, in our view, acceptable under the regulations. Thus, we would not judge an exchange of letters to be an inappropriate way to achieve "registration" of a facility (see note below).

If you have any further questions, feel free to contact me or Maureen Smith of my staff at (202) 382-7703.

Sincerely,
Mark A. Greenwood
Assistant General Counsel
Solid Waste & Emergency Response Division

Note: The regulations do not define the term "registration."