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

August 25, 1992

SUBJECT: Clarification of the Conditionally Exempt  
Small Quantity Generator

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

TO: William Muno, Director  
Waste Management Division, Region V

This is in response to David Ullrich's December 24, 1991, memorandum in which the Waste Management Division (WMD) requested guidance on a number of questions pertaining to 40 CFR 261.5(g)(3). In response to WMD's general question, the term "either of which" in the introductory paragraph of §261.5(g)(3) refers to both on-site and off-site treatment or disposal facilities, whichever option the generator chooses for management of any particular waste. Thus, if a conditionally exempt generator chooses to treat or dispose of his or her hazardous waste on-site at the generator's own facility, the facility must meet one of the five conditions listed in § 261.5(g)(3)(i) through (v). Similarly, if the conditionally exempt generator chooses to send his or her hazardous waste to an off-site facility for treatment or disposal, the off site facility must meet one of the same five conditions.

Based on the answer to this question, your questions 2a and 2b are addressed below. Question 2b has been amended after discussion with Mirtha Capiro of your staff.

Question: Would a conditionally exempt small quantity generator be required to file a notification for hazardous waste activity and to have a permit under Part 270 and 265 if her on-site facility does not satisfy the conditions stated under § 261.5(g)(3)(iii), (v), and (v)?

Answer: If a conditionally exempt generator disposes of

or treats his or her hazardous waste on-site, the generator's facility must meet one of the five conditions listed in § 261.5(g)(3). Therefore, if, as in your question, the generator's on-site facility does not meet the conditions of § 261.5(g)(3)(iii), (iv), or (v) (see footnote 1), the facility must meet the conditions of either § 261.5(g)(3)(i) or (ii). Therefore, such a facility must be permitted under 40 CFR Part 270, or in interim status under 40 CFR Parts 270 and 265. In either case the facility would be required to file a notification of hazardous waste activity and obtain an EPA Identification Number (see §§ 264.11 and 265.11).

Question: If a conditionally exempt small quantity generator exceeds the generation quantity limits of § 261.5, does management of his or her hazardous waste remain subject to § 261.5(g)(3)?

Answer: No. If a generator generates greater quantities of hazardous waste in a calendar month than the quantity limits set forth in § 261.5, he or she is not a conditionally exempt small quantity generator during that month. Thus, management of any hazardous wastes he or she generates during that month is not subject to §261.5, but is instead subject to the applicable small quantity or large quantity generator provisions of 40 CFR Part 262.

Thank you for your interest in the conditionally exempt small quantity generator regulations. I hope this information is useful to you and your staff. If you have any further questions please contact Charlotte Mooney, of my staff, at (202) 260-6926.

1 Thus is not:

- (1) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;
- (2) Permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or
- (3) A facility which (a) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or (b) treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.