

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

June 3, 1994

Mr. Kenneth M. Kastner
Bryan Cave
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

Dear Mr. Kastner:

Thank you for your letter of February 24, 1994, on behalf of Rohm and Haas Company, requesting clarification of the Resource Conservation and Recovery Act (RCRA) regulations applicable to hazardous debris. Specifically, you asked EPA to clarify how the "contaminated debris" rule applies to the removal of contaminants from an intact manufacturing building prior to its demolition.

You state that removing contaminants from a standing, intact building before demolishing the structure often provides the most environmentally sound and technically practical approach to decontaminating the building. Your question is whether removal of contaminants from a building prior to demolition constitutes RCRA treatment for which a permit is required. You also ask if incidental holding of removed contaminants within the building could be considered to be "storage." The answer depends primarily on whether the contaminants are considered a newly generated waste upon removal or are hazardous wastes prior to their removal from the building. RCRA defines "generation" as any activity that first causes a material to become "subject to RCRA regulation." In the situation you describe, involving physical removal of contaminants from a standing building, EPA considers the actual removal of the contaminants to be the point of waste generation and consequently, the point at which the RCRA regulations become applicable.

We take this position because we believe that an intact, standing building continues to perform the essential functions of a building and so need not, and should not be considered to be "discarded" under §261.2(a)(2)(i) until it is actually destroyed. We also note that the situation is analogous to that of wastes removed from product storage units in which wastes do not become subject to regulation until they are removed from those units. §261.4(c).

In this case, after the contaminating materials have been removed from a building and are destined for disposal, RCRA requirements apply if the contaminating chemicals are RCRA hazardous wastes. The Part 262 Generator standards would apply, which do allow accumulation of waste for up to 90 days without a permit, if the conditions of §262.34 are met. Further, if the materials meet the definition of debris, such "hazardous" debris may be treated to meet the applicable treatment standard for the contaminating hazardous wastes found at 40 CFR 268.41, 268.42, and 268.43, or it may be

treated to comply with the alternative hazardous debris treatment standards of 268.45. If the materials do not meet the definition of debris, they would be subject to the treatment standards for the contaminating hazardous wastes §§ 268.41, 268.42, and 268.43. The facility performing treatment to meet these treatment standards would be subject to applicable RCRA permit requirements.

Having explained how the RCRA regulations apply in the situation you describe, I should note that I realize that the preamble to the hazardous debris rule may be somewhat misleading regarding how the removal of contaminants from a building prior to demolition is regulated. The preamble language you cite, which states that physical extraction of contaminants from a contaminated building prior to demolition is subject to permit requirements, presumes that the building itself is determined to be a hazardous waste prior to demolition. As stated earlier in this letter, an intact building would not yet be a solid waste, and therefore, extraction of contaminants would not involve hazardous waste treatment.

Finally, you should note that EPA Regions and States authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some States have programs more stringent than the Federal hazardous waste program. I hope this addresses your concerns. If you have any further questions, please contact Richard Kinch of the Waste Treatment Branch at (703) 308-8434.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste