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

August 11, 1994

Ms. Susan L. Prior  
Regional Environmental Manager  
Laidlaw Environmental Services (North East), Inc.  
221 Sutton Street  
North Andover, Massachusetts 01845

Dear Ms. Prior:

Thank you for your letter of July 5, 1994, in which you requested clarification regarding the hazardous waste sample exclusion found in 40 CFR 261.4(d).

Your letter describes a situation in which a waste management company receives a shipment of hazardous waste, samples the shipment, analyzes the sample, and retains the sample for thirty to sixty days as specified in the company's RCRA permit. The samples, your letter states, are retained in the event that there is a problem with the material at the off-site facility, or analysis has to be re-run for any reason. At the end of the designated time period, the samples are segregated and lab-packed for ultimate disposal. You ask if storage of the samples for thirty to sixty days after analysis has been completed qualifies for the exemption under § 261.4(d)(1)(vi).

40 CFR 261.4(d) (1) (vi) states that:

Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part of parts 262 through 268 or part 270 or part 124 of this chapter or to the notification requirements of section 3010 of RCRA, when ... the sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement

action where further testing of the sample may be necessary).

EPA promulgated the conditional exclusion for such samples because the Agency believed that the risk posed to human health and the environment from the management of these samples is not substantial, that sufficient incentives exist to manage the samples properly, and that the full set of hazardous waste regulations is inappropriate for these samples. The Agency also envisioned samples being stored at the laboratory for significant periods of time. As stated in the September 25, 1981, preamble: "...samples are sometimes saved for several years for additional and future analyses. Such analyses may be necessary to confirm original analytical results or to test for additional constituents or properties. Samples may also be stored by the laboratory for a specific purpose, such as when waiting until conclusion of a court case or enforcement action (46 FR 47427)."

We believe that retaining the samples at the laboratory for thirty to sixty days as specified in the company's permit could fit the description presented in § 261.4(d)(1)(vi) (i.e., the sample is being stored temporarily in the laboratory after testing for a specific purpose). However, since your letter states that retention of the samples is a requirement of the company's RCRA permit, we suggest that you contact the State agency which granted your company's permit for applicable laws, regulations, and procedures that may exist. As you are probably aware, under section 3006 of RCRA, individual States can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. In addition, section 3009 of RCRA allows States to promulgate regulatory requirements that are more stringent than the federal program.

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

Sincerely,

David Bussard, Director  
Characterization and Assessment Division  
Office of Solid Waste

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Attachment  
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LAILAW Environmental Services (North East), Inx.  
221 Sutton Sreet  
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Phone 508.683.1002, FAX 508.794.9665

July 5, 1994

U.S. EPA  
Office of Solid Waste  
401 M St. SW  
Washington, DC 20460

Attn: Michael Shapiro, Director

Dear Mr. Shapiro,

Laidlaw Environmental Services (North East), Inc., requests clarification on the hazardous waste issue discussed below:

#### Sample Exclusion

A waste management company takes samples of all incoming waste containers, analyzes the samples, and retains the analyzed samples for a period of time (30 - 60 days) as specified in the company's RCRA Part B Permit. The original containers are sent for off-site disposal based on the generators profile and analysis of the material. At the end of the designated time period, the samples are segregated and labpacked for ultimate disposal.

The samples are retained in the event that there is a problem with the material at the off-site facility, or analysis has to be re-run for any reason. In several previous civil and criminal cases, the use of retains has either protected the generator or established cradle-to-grave liability if the waste causes a problem either before or during disposal.

Would the samples qualify for the after analysis exemption listed in 40 CFR §261.4(d)(1)(vi)? Although the samples are not being held for a court case as listed in the example, the samples are being held for a specific purpose and a specific time period as required in the facilities Part B permit.

Thank you for your consideration and I look forward to your reply.

Very Truly yours,

Susan L. Prior  
Regional Environmental Manager