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HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAMS, CERCLA
AND RCRA LIABILITY OF MUNICIPAL SPONSORS OF

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CERCLA and RCRA Liability of Municipal Sponsors of Household
Hazardous Waste Collection Programs

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I am responding to your October 29, 1985, memorandum requesting an Agency policy statement concerning the liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of municipal sponsors of household hazardous waste collection programs. In addition, this memorandum clarifies the issue of potential liability under the Resource Conservation and Recovery Act (RCRA). The following interpretations are based on discussions of these issues with the Office of General Counsel (OGC) and the Office of Enforcement and Compliance Monitoring (OECM).

In a June 7, 1984, memorandum to the Deputy Administrator, Lee Thomas (then Assistant Administrator for the Office of Solid Waste and Emergency Response) clarified the issue of RCRA liability. This memorandum, which is attached, stated that household hazardous wastes are by definition exempt from regulation under Subtitle C for RCRA. Section 261.4(b)(1) unconditionally exempts household wastes from being designated as hazardous even when accumulated in quantities that would otherwise be regulated or when transported, stored, treated, disposed, recovered, or reused. However, when household wastes are mixed with hazardous wastes from small quantity generators, this resulting mixture is subject to the small quantity generator rules (Section 261.5(h)). In addition, when household waste is mixed with other regulated hazardous wastes, the entire mixture becomes subject to full hazardous waste regulation (Section 261.3(a)(2)). For this reason,

sponsors of household hazardous waste collection programs should be careful to limit the participation in their programs to households to avoid the possibility of receiving regulated hazardous wastes from commercial or industrial sources.

With regard to CERCLA, we cannot offer relief from long-term liability. CERCLA does not contain any type of exclusion for household waste or any type of exclusion based on the amount of waste generated. As a general matter, any waste that qualifies as a hazardous substance under CERCLA is subject to the liability provisions of Section 107. Hazardous substances are both defined under Section 101(14) and designated under Section 102(a). Therefore, if a household waste contains a substance that is covered under either section (whether or not it is a RCRA hazardous waste), potential CERCLA liability would apply regardless of whether the material was picked up as part of a community's routine trash collection service or was gathered as part of a special collection day program. With respect to household hazardous waste, such waste would clearly qualify as a "hazardous substance" if they contain any substance listed in Table 302.4 of 40 CFR Part 302. See 50 Federal Register 13474 (April 4, 1985).

With regard to enforcement under CERCLA, you noted that John Skinner, former Director of this office, recently cited a policy statement in a May 4, 1984, letter (attached) from Region I Administrator, Michael DeLand, to Dana Duxbury of the Massachusetts League of Women Voters. This policy statement relied on enforcement discretion in indicating that EPA had no intention of taking enforcement action against a Massachusetts town that sponsored a contracted collection day, if problems arose in the transportation or disposal of the household hazardous waste collected during the collection program. Further clarification was offered by Courtney Price (OECM) in a memorandum dated May 11, 1984 (attached), to Alvin Alm, former Deputy Administrator. For the specific case of that Massachusetts town, the company collecting and transporting the wastes and the disposal facility owner or operator would be considered the responsible parties.

While you are correct in stating that the Agency's general policy is to not give "no action" assurances in enforcement matters (see attached Courtney Price memorandum of November 16, 1984), Ms. Price addressed a specific household hazardous

waste collection program in the May 11, 1984, memorandum and explained their position in the Region I case in Massachusetts. The decision of "no action" in the Massachusetts case was based on the facts about that specific program. An important feature was limiting collections to household hazardous wastes. No wastes from small commercial businesses were accepted. Courtney Price indicated that OECM would have to look at the specific facts of any situation involving wastes from small businesses to determine whether an exercise of enforcement discretion would be appropriate.

In our recent discussions with OECM, we have considered the concept of "no action" as a possible general policy for sponsors of household hazardous waste collection programs. OECM has not yet completed their analysis of this issue. They expect to complete their analysis in the next several weeks and will supply their policy statement in a separate memorandum.

If you have any questions regarding the issues addressed in this memorandum, please contact Michael Flynn of my staff at 382-4489.