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

January 28, 1988

Mr. James D. Roberts
Environmental Engineer
Department of Natural Resources
State of Michigan
Stevens T. Mason Building
Box 30028
Lansing, Michigan 48909

Dear Mr. Roberts:

This is in response to your request for a clarification from this office on whether the remote secondary containment area for the direct offloading of hazardous waste-derived fuel into a cement kiln is subject to permitting requirements under the Resource Conservation and Recovery Act (RCRA). As discussed below, based on the information provided, such tanks are exempt from RCRA permitting requirements. In arriving at this conclusion, I have consulted with relevant personnel in the Office of Solid Waste and Region V.

The facility specifically at issue in your letter, St. Marys Peerless Cement Company, plans to unload hazardous waste-derived fuel directly from tank trucks into the cement kiln for burning. While unloading, those trucks will be located in a secondary containment area. The trenches surrounding the truck bay containment area drain into a remote secondary containment structure which is a concrete tank, or sump. In your letter, you inquire whether this sump is subject to RCRA permitting requirements as a hazardous waste storage tank.

As you are aware, sumps which meet the definition of "tank" and which collect hazardous waste are generally subject to the regulations under RCRA concerning hazardous waste tank systems. However, as discussed in EPA's July 14, 1986 final rule revising the regulations for hazardous waste tank systems, not all tanks are subject to full permitting or regulatory requirements.

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Specifically, depending on its use, a sump may fall within any one of three types of tanks which are subject to different regulatory requirements under these rules: primary containment tanks, secondary containment sumps, and "temporary tanks."

Sumps that store hazardous waste as primary containment vessels are subject to all tank system requirements, including permitting requirements. Primary containment sumps are sumps designed to collect and transport routine and systematic discharges of hazardous waste. 51 Fed. Reg. 25441 (July 14, 1986). Sumps designed to serve as the storage for hazardous waste from periodic cleaning of process equipment, for example, are primary containment vessels.

In contrast, sumps that serve as part of a secondary containment system, i.e., to collect spills from a primary containment vessel storing hazardous waste, are subject to all applicable requirements for tank systems except for the requirement to obtain secondary containment. 51 Fed. Reg. 25441 (July 14, 1986).

Finally, "temporary tanks" are tanks used for the storage of hazardous waste in response to a leak or spill, and other temporary, unplanned occurrences. Such tanks are exempted from regulatory and permitting requirements under 40 C.F.R. Sections 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3), except for requirements concerning preparedness and emergency procedures. 51 Fed. Reg. 25445 (July 14, 1986). Under these provisions, a sump that may be used to collect hazardous waste in the event of a spill, whether accidental or intentional, and which is not designed to serve as a secondary containment structure for a tank storing hazardous waste, is generally exempt from regulatory and permitting requirements so long as it is used to contain hazardous waste only as an immediate response to such a spill.

As you have described the remote secondary containment device at St. Marys, the sump will contain hazardous waste only in the unusual event of a spill during the offloading of hazardous waste-derived fuel into the cement kiln. It will not collect routine or systematic discharges of hazardous waste, and thus is not a primary containment tank. In addition, it is not serving as a secondary containment structure for spills from a primary containment vessel storing hazardous waste because the trucks containing the hazardous waste-derived fuel are not storage vessels when located on-site for

short periods during the transfer of hazardous waste into the kiln. See 40 C.F.R. 263.12 and letter of clarification to Mr. Richard Stoll (attached). Accordingly, the remote secondary containment sump is not subject to RCRA permitting requirements to the extent that it is only used to contain hazardous waste as an immediate response to a spill.

If you have further questions concerning this issue, please feel free to call me at (202) 382-7706.

Sincerely,
Caroline H. Wehling
Attorney
Solid Waste and Emergency
Response Division (LE-132S)

Attachment

cc: Robert Dellinger; Matthew Hale; Karl Bremer