

9443.1989(04)

CONTAMINATED ENVIRONMENTAL MEDIA - SOIL AND GROUND
WATER

MAY 23 1989

Honorable Lloyd M. Bentsen
United States Senator
961 Federal Building
Austin, Texas 78701

Dear Senator Bentsen:

Thank you for you April 24, 1989, letter regarding
Hollis E. Ervin's concerns about the March 14, 1989, court
opinion supporting the Environmental Protection Agency's (EPA)
interpretation of the regulatory status of contaminated
environmental media (such as soil and ground water).

EPA believes that a hazardous waste does not necessarily
lose its hazardous characteristic when it is combined with an
environmental medium, and that, unless demonstrated otherwise,
the contaminated medium should be managed as a hazardous waste
because it contains a hazardous waste. (The environmental
medium itself is not a hazardous waste.) To consider
contaminated media as newly generated wastes for purposes of
determining whether they are hazardous could be an incentive
for the purposeful contamination of environmental media with
hazardous waste in an effort to avoid regulations otherwise
applicable.

EPA has established a process under which persons
may petition the Agency to have their waste removed from
regulatory control on a case-by-case basis (sometimes called
"delisting"). Under this process, EPA evaluates the waste in
question and determines whether it needs to be regulated as a
hazardous waste. In addition, EPA is currently examining ways
to streamline this process - e.g., setting de minimis levels of
contaminants which, when met, would allow for the management of
wastes outside the structure of the hazardous waste
regulations.

As found by the D.C. Court of Appeals, the "contained in"

rule has been a consistent and reasonable interpretation since the promulgation of the applicable regulations in 1980. To change an established regulatory interpretation, the Agency is required to provide notice and an opportunity for public comment (i.e., regulatory interpretations cannot be changed at the "whim" of EPA).

Thank you for your interest in the hazardous waste program. If I can be of further assistance to you, please feel free to call me, or have your staff contact Bob Dellinger at (202) 475-8551.

Sincerely yours,

Sylvia K. Lowrance, Director
Office of Solid Waste

OS305/DELLINGER/T. MCMANUS - 382-4646/CSH/5-16-89/
CONTROL #AL892146/DUE DATE:5-19-89/DISK #23/NAME:BENTSEN