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TEST SAMPLES, EXCLUSION FROM HAZARDOUS WASTE

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MEMORANDUM

SUBJECT: Management of Test Samples as Hazardous Waste

FROM: Howard Wilson, Manager  
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TO: Environmental Compliance Managers

This memo is intended to clarify a letter from the EPA's Office of Solid Waste on the management of laboratory samples under the Resource Conservation Recovery Act (40 CFR Part 261).

According to 40 CFR Part 261.4 (d) (1), samples collected solely for the purposes of testing are exempted from the regulations for hazardous waste management. I would like to emphasize that this is a qualified exemption. The samples are exempt from regulation as long as they meet any of the following conditions contained in 261.4 (d) (1) (i..vi):

- (i) Being transported from the collector to the laboratory
- (ii) Being transported from the laboratory back to the collector for following testing
- (iii) Being stored at the collector waiting to go to the laboratory
- (iv) Being stored at the laboratory before being tested
- (v) Being stored at the laboratory after being tested but before being returned to the collector
- (vi) Being stored at the laboratory for a specific purpose after being tested (i.e. for a court case in which the sample is evidence, etc.)

Regulation 261.4 (d) (3) states that the exemption does not apply if the laboratory determines the waste is hazardous and the conditions listed above are no longer being met.

According to 40 CFR Part 261.5 (a), facilities that generate less than 100 kg/mo of hazardous waste or 1 kg/mo of acute hazardous waste are exempt from hazardous waste regulations. This exemption is also conditional, based on a generator's compliance with the following:

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- o Determining if their waste is hazardous; this is required by 261.5 (b), which references 261.5 (g), which cites 262.11.
- o Disposing of their waste at a facility authorized to accept it; this is required by 261.5 (f) (3) and 261.5 (g) (3).

Generators of less than 100 kg/mo of hazardous waste would also be subject to RCRA requirements under regulation 262.34 if they accumulate, for the purpose of disposal, greater than 1000 kg of hazardous waste.

In summary, samples held for testing need not be managed as hazardous waste while they are being tested. Once they are determined to be waste, a determination of whether the waste is hazardous must be made if it hasn't been already. If the waste is determined to be a hazardous waste, it must be managed in full compliance with all applicable regulations, including 40 CFR Parts 261.5 and 262.11.