

PPC 9554.1995(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

June 14, 1995

Roy F. Weston, Inc.  
Ms. Janell B. Bergman, P.G., CPG  
Senior Project Manager  
215 Union Boulevard, Suite 550  
Lakewood, CO 80228-1842

Dear Ms. Bergman:

It is a pleasure to respond to your letter dated April 27 1995, regarding the Land Disposal Restrictions Phase II final rule (59 FR 47982). Specifically, you requested an interpretation of the phrase "which can reasonably be expected to be present" as it applies to underlying hazardous constituents in soil that exhibits the toxicity characteristic.

The preamble to the final phase II rule states: "regulated entities do not have to ascertain the presence of all hazardous constituents for which EPA is promulgating a universal treatment standard. Generators may base this determination on their knowledge of the raw materials they use, the process they operate, and the potential reaction products of the process, or upon the results of a one-time analysis of the entire list of constituents at 268.48." (See 59 FR 48015.)

In the case of contaminated soil, however, the "generator" may not be the party that caused the contamination, but rather may be the one performing the cleanup. As you point out, it may be difficult to determine exactly what constituents are reasonably expected to be present in the soil because of the lack of records about the site and the absence of anyone who has institutional memory about the cause of the contamination. It is appropriate, therefore, to use the constituents that are at levels above the Universal Treatment Standards, based on monitoring at the site, provided analysis has been conducted for the entire list of constituents at 268.48. These would be the constituents reasonably expected to be present at the point of generation (in a remediation, the point of generation is the point the contaminated

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soil is picked up).

I hope you find this information helpful. If you have further questions, please call Rhonda Craig of my staff on (703) 308-8771.

Sincerely,

Michael Shapiro  
Director  
Office of Solid Waste

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Attachment  
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Weston  
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27 April 1995

Mr. Michael Shapiro  
Director, Office of Solid Waste  
United States Environmental Protection Agency  
401 M Street, SW  
Washington, D.C. 20460

SUBJECT: Land Disposal Restrictions - Phase II

Dear Mr. Shapiro:

Roy F. Weston, Inc. requests an interpretation of a phrase pertaining to the recently published Land Disposal Restrictions - Phase II (59 FR 47982). Specifically, we request an interpretation of the phrase "which can reasonably be expected to be present" as it applies to underlying hazardous constituents that may be found in soil that exhibits the toxicity characteristic (TCLP). (Sections 268.2(i) and 268.40(e))

Application of this concept is straightforward as it applies to industrial waste streams; however, it becomes difficult when referring to contaminated soil where unknown wastes were deposited

years ago. Weston requests EPA's interpretation of this concept as it applies to contaminated soils. Is it sufficient to use the list of constituents that have been detected at the site as the list of constituents reasonably expected to be present?

Thank you for your attention to this matter. We look forward to your response to this question.

Sincerely,

ROY F. WESTON, INC.

Janell B. Bergman, P.G., CPG  
Senior Project Manager

cc: Mr. Jim Thompson  
Office of Regulatory Enforcement  
RCRA Enforcement Division