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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

November 13, 1996

MEMORANDUM

SUBJECT: Definition of Solid Waste Issues Related to Cleanup of
Culpeper Wood Preserving Facility

FROM: Michele Anders, Chief
Generator and Recycling Branch

TO: Wayne Naylor, Chief
Technical and Program Support Branch (Region III)

This memo is in response to a July 16, 1996 memo from David Friedman of your staff to Stephen Bergman of my staff concerning RCRA jurisdiction over contamination at the Culpeper Wood Preservers (Culpeper) facility in Culpeper, Virginia from wastewater that was at one time managed in a surface impoundment and reused there in the wood preserving process.

It is our understanding that you are in the process of determining whether contamination at the site that is currently being addressed under the Superfund program is actually more appropriately managed under the RCRA Corrective Action program. As you know, it is OSW policy to defer to authorized states and EPA regional offices regarding site specific issues. However, if it would be helpful for me to address in a general sense the questions you raised in your letter, I am happy to do so. As you know, these answers will be based on the federal program, which may or may not mirror the environmental laws of the state of Virginia.

In the memo, you asked that we answer several jurisdictional questions related to the regulatory status of the wastewater and

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of the surface impoundment in which it was managed at the time the contamination was caused. Those questions are as follows:

- þ Is the water that is collected, managed in the surface impoundment, and recycled back to the process a solid waste under the current RCRA regulations?
- þ Can the use/reuse exemptions apply in a situation where the material is being managed on the ground?
- þ If the water is a solid waste then does it follow that the surface impoundment is a regulated unit?

The answer to your first question is yes. Assuming that, like other wood preserving operations we know of, the Culpeper process involves some reclamation (such as filtration), it is not eligible for a use/reuse exclusion under 40 CFR 261.2(e)(1). However, you should know that the Office of Solid Waste is currently looking at the possibility of excluding in-process wastewaters recycled at wood preserving facilities, under certain conditions.

As a theoretical matter, the answer to your second question is also yes. The use/reuse exemptions can apply in a situation where a material is being managed on the ground, provided that it is not being reclaimed, used in a manner constituting disposal or used to make products that are placed on the land. Practically speaking however, given that treated wood is often placed on the land and that the recycled material is reclaimed, this would be a difficult exemption for a wood treater to claim.

Finally in answer to your third question, if the water is a solid waste and a hazardous waste (either by being listed or exhibiting a hazardous waste characteristic), the surface impoundment is a regulated unit.

I hope that this has been of some assistance to you. I understand that Stephen has had several conversations with Elizabeth McManus of our Corrective Actions Programs Branch concerning this facility and that he suggested to David Friedman that he give her a call. I also urge you to do this. Whereas we are comfortable addressing questions related to RCRA jurisdiction

and the definition of solid waste, we are not qualified to judge whether the Culpeper site is best managed under Superfund or Corrective Action. In her conversations with Stephen, Elizabeth outlined a number of options that Region III could pursue. You can reach her at (703) 308-8657.

If you have any questions concerning our answers to your definition of solid waste questions, please call Stephen at (703)308-7262.