



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 17 1999

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Stephen Hammond, Director
Division of Solid and Hazardous Materials
New York State Department of Environmental
Conservation
50 Wolf Road, Room 488
Albany, New York 12233-7250

Dear Mr. Hammond:

Thank you for your letter of December 23, 1998, concerning the clean up of manufactured gas plant (MGP) sites. Specifically, you raise concerns about the regulatory policies and impacts of co-processing decharacterized wastes through a "Bevill" unit, such as a utility boiler. As explained below, although we can appreciate your concerns, we believe that the underlying policy and regulatory issues have been aired, particularly in the context of our recent Land Disposal Restrictions (LDR) Phase IV final rule (63 FR 28556, May 26, 1998). Of course, as emphasized in our recent response to you on other MGP questions, dated January 20, 1999, we ultimately regard New York State as the appropriate regulatory authority for making final determinations on site-specific issues.

The observations in your letter primarily address the absence of regulatory oversight and LDR requirements for decharacterized wastes sent to a Bevill unit for co-processing. As we read your letter, you appear to be raising issues that were particularly germane during the development of our MGP remediation policies eventually embodied in the April 26, 1993 memorandum from Sylvia Lowrance, Director of the Office of Solid Waste to Regional Waste Management Directors (copy enclosed). To encourage effective and timely remediation of historic MGP sites, our 1993 memorandum created a very limited regulatory policy solely for MGP wastes. Under that policy, which is still extant today, decharacterized MGP wastes can be sent to utility boilers without triggering substantial regulatory oversight or permitting obligations.

Nonetheless, as your letter attests, the issue of LDR obligations has been brought into sharper focus by the Phase IV final rule, particularly with respect to decharacterized wastes. The 1993 memorandum predates the Phase IV final rule, and does not purport to fully resolve the LDR requirements for decharacterized MGP wastes that are burned in a electric utility fossil fuel

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boiler. Recently, in separate correspondence to representatives of the electric utility industry, dated August 21, 1998 (copy enclosed), we explained that decharacterized MGP wastes remain subject to LDR requirements if they are actively managed in a way that constitutes land disposal. These requirements mandate that actively managed MGP wastes must be treated to eliminate any characteristics and to achieve the Universal Treatment Standards (UTS) for any underlying hazardous constituents. In the case of soils contaminated with MGP wastes, the generator can elect to comply with the Phase IV soil standards in lieu of the otherwise applicable UTS.

However, you are quite correct in pointing out that the LDR requirement to treat underlying hazardous constituents does not apply to these decharacterized MGP wastes because of the lack of land placement prior to combustion and the Bevill status of the combustion wastes. As we indicated in the Phase IV preamble, however, residues from the co-processing of MGP wastes in a utility boiler are not subject to the LDR requirements because these residues are Bevill wastes excluded from hazardous waste requirements.

We appreciate your concerns that EPA's approach in its MGP policies might lead to abuses (for example, as you describe it, the "laundering" of non-MGP wastes in utility boilers). In general, however, we do not share your concerns. EPA's MGP policies were developed specifically for remediation of historic MGP sites – indeed they were based on the Agency's experience at MGP sites under the Federal Superfund program – and they reflect the particular characteristics of MGP wastes (e.g., that these wastes are themselves coal-derived) and of MGP remediation. Generators of other wastes would be misinterpreting the scope of the 1993 memorandum and the Phase IV discussions of MGP wastes if they assume these policies apply broadly.

I hope this provides you with sufficient information to proceed with your state policies and site-specific decisions regarding remediation of MGP waste sites in New York State. As you know, we are encouraging these cleanups to be done as quickly as possible, and we appreciate your efforts, and those of the New York Superfund program, in supporting this important environmental protection effort. If you have any further questions, please feel free to contact me directly at (703) 308-8895, or your staff may contact Rita Chow of our Waste Treatment Branch at (703) 308-6158.

Sincerely yours,



Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

Enclosures (2)

New York State Department of Environmental Conservation

Division of Solid and Hazardous Materials, Room 488

50 Wolf Road, Albany, New York 12233-7250

Phone: (518) 457-6934 FAX: (518) 457-0629

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where is response to
11/19 letter?
Elij.*



John P. Cahill
Commissioner

DEC 23 1998

Ms. Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste (5301-W)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

Dear Ms. Cotsworth:

Re: Bevill Exclusion

The August 21, 1998 letter from your office to Piper & Marbury L.L.P., addressed the effects the Phase IV LDR Supplemental Rule might have on the cleanup of manufactured gas plant (MGP) sites.

In addition to the issue of decharacterization of MGP wastes discussed in my letter of November 19, 1998, the August 21, 1998 letter raises questions with respect to EPA's application of the "Bevill" exclusion. These questions involve more than remediation wastes.

Of concern is how EPA will view the regulatory impact of co-processing decharacterized wastes through a "Bevill" unit, such as a utility boiler.

There is no dispute that the residues are excluded from being hazardous wastes and are not subject to LDR requirements. However, the residues are a newly generated waste. Is it appropriate that the wastes entering the "Bevill" unit are also not subject to any numerical LDR standards, given that residues derived from such wastes will be land disposed? By this "reach back" policy, certain exclusions which clearly apply to the "Bevill" residues are also made to apply to the waste from which the residue is derived.

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This "reach back" interpretation, even if permissible under HSWA, has implications which affect issues beyond the cleanup of MGP sites and remediation wastes in general.

There appears to be significant potential for "Bevill" units to be used as "laundering" devices, relieving hazardous and decharacterized wastes of having to comply with numerical and many other LDR requirements when such materials are co-processed. For this current discussion, we would like to highlight our concerns for the

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co-processing of formerly characteristic wastes that have been decharacterized, which can include soils, debris, or even newly-generated wastes. This area is of concern because decharacterized wastes are no longer hazardous and "Bevill" units that co-process them are subject to essentially no substantive regulation under Subtitle C.

These are the issues of concern as we view them:

a. When a characteristic waste is decharacterized by the generator and sent to a "Bevill" unit for co-processing, the system is essentially self-implementing between the generator and the owner/operator of the "Bevill" unit. There may be no regulatory agency oversight involved, particularly to determine if the removal of the characteristic might have been achieved by dilution. Oversight is rendered even more difficult if the two entities are located in different states.

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b. The decharacterized waste can be processed at a facility that is not subject to any Subtitle C controls, and, other than LDR generator one-time notification/record keeping requirements, exits Subtitle C regulation completely. The facility does not need to notify the appropriate regulatory agency as a hazardous waste handler and would not be inspected from a RCRA-C perspective.

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c. If a waste is decharacterized and not subject to numerical LDR standards, it will not be subject to any RCRA waste analysis plan at the "Bevill" facility.

*Agency letter
clarifier*

d. The owner/operator of the "Bevill" unit will be under no obligation to document the effectiveness of the treatment with respect to the decharacterized waste. Other units which process wastes subject to numerical LDR standards, regardless of whether they are Subtitle C or Subtitle D units, must document the effectiveness of treatment.

*Covered in
8/21/99 Letter*

e. The safeguards of 40 CFR 266.112 would not apply. The "Bevill demonstration" requirement is designed to ensure that residues from "Bevill" devices are not adversely affected by the co-processing of hazardous wastes. Co-processing residues must pass this test in order for the residues to retain the "Bevill" exclusion.

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However, the plain language of 266.112 states that the demonstration is only required for residues derived from the co-processing of hazardous waste. If the material being co-processed is not a hazardous waste, 266.112 does not apply and RCRA imposes no limit on the impact that the waste material may have on the residue generated.

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In summary, we believe the "reach back" policy may create a significant potential for characteristic wastes to evade numerical LDR standards and regulatory oversight by "laundering" through a "Bevill" unit. At a minimum, the effectiveness of the treatment would be undocumented. We would appreciate EPA's comments on these concerns and thank you in advance.

If there are questions, please do not hesitate to contact this office at (518) 457-6934 or have your staff call Lawrence Nadler, of my staff, at (518) 485-8988.

Thank you.

Sincerely,



Stephen Hammond, P.E.
Director
Division of Solid & Hazardous Materials

cc: K. Callahan-EPA Region II