

Ms. Regina J. Mahoney
Director of MGP and Special Projects
Vectren Corporation
1630 North Meridian St.
P.O. Box 44945
Indianapolis, IN 46244-0945

Dear Ms. Mahoney

Thank you for your August 10, 2000 letter regarding evaluation of manufactured gas plant (MGP) remediation waste and the recent court decision on application of the Toxicity Characteristic Leaching Procedure (TCLP) test to this waste. In Association of Battery Recyclers, Inc., et al. v. US Environmental Protection Agency (April 21, 2000), the court vacated the Environmental Protection Agency's (EPA) use of the TCLP test to evaluate the leaching potential of MGP remediation waste for the purpose of classifying the waste as hazardous. EPA acknowledged the Court's action in its recently proposed rules on Corrective Action Management Units (65 FR 51087, footnote 6, August 22, 2000). Your letter requested clarification of the practical impact of this court ruling, and asked how EPA would implement the ruling.

Under the Court's opinion, the TCLP leach test cannot be used under RCRA to determine whether MGP waste is hazardous. Since MGP remediation waste is not a listed hazardous waste, it would only be classified as RCRA hazardous if it exhibited any one of the ignitable, corrosive, or reactive hazardous characteristics (40 CFR 261.21, 22, or 23) or if it is mixed with a listed waste. MGP remediation wastes are unlikely to exhibit these hazardous characteristics. Therefore, absent the TCLP test, MGP remediation wastes are unlikely to be RCRA hazardous waste under the federal program, and would not be required to meet RCRA requirements, including Land Disposal Restriction requirements. Some states do have hazardous waste regulatory programs that are broader in scope than the federal program. It is therefore important to know how state waste management requirements apply to excavation of MGP remediation wastes.

If you determine that your MGP remediation wastes are non-hazardous under both federal and state regulations, disposal of excavated material would be governed by state non-hazardous waste regulations. Some states, Indiana among them, have particular management

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requirements for industrial waste. In any case, we recommend that you carefully consider potential environmental consequences as you manage MGP wastes.

Many states (including Indiana) also have programs to supervise remediation of contaminated industrial sites. I urge you to contact and work with responsible state environmental officials to address all aspects of MGP site remediation activity.

The Agency has also recently published a resource document for MGP sites, entitled A Resource for MGP Site Characterization and Remediation (EPA 542 R-00-005, July 2000). This document is available at EPA's web site (www.epa.gov/tio) or at the Clu-in website (clu-in.org; go to Clu-in Advanced Search and search on the document number). It is also available through EPA's National Service Center for Environmental Publications (800-490-9198).

I hope this addresses your questions about MGP site remediation in light of the Court's ruling in the Battery Recyclers' case. If you have further questions, please contact my office or you may call Greg Helms at 703-308-8845 for TCLP questions, or for remediation questions, Michael Fitzpatrick at 703-308-8411, both in the Office of Solid Waste.

Sincerely,

Michael Shapiro
Principal Deputy Assistant Administrator