



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OCT 10 2014

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Mr. Thomas S. Burack, Commissioner
State of New Hampshire
Department of Environmental Services
P.O. Box 95
29 Hazen Drive
Concord, New Hampshire 03302-0095

Dear Commissioner Burack:

I am responding to your June 13, 2013 letter seeking an interpretation from the Environmental Protection Agency (EPA) relative to the management of spent baghouse filters from waste-to-energy (WTE) facilities and the applicability of the EPA's statutory interpretation published in the Federal Register (FR) on February 3, 1995 (See 60 FR 6666), "Determination of Point at Which RCRA Subtitle C Jurisdiction Begins for Municipal Waste Combustion Ash at Waste-to-Energy Facilities."

Specifically, your request results from inspections at two New Hampshire municipal waste combustion WTE facilities (Wheelabrator - Concord and Wheelabrator - Claremont) during 2010. During the facility inspections, New Hampshire staff observed that spent air pollution control baghouse filters were removed from service, double-bagged in plastic bags, removed from the baghouse facility, hand-carried back into the combustion building, and then placed into the feed hopper to be burned in the boilers. According to your letter, these spent baghouse filters could contain concentrations of lead and cadmium, such that they could exhibit the toxicity characteristic for lead and cadmium.

Disposing of these spent baghouse filters generally occurs once every 3-5 years when the facility replaces all of their baghouse filters in a baghouse compartment or when they replace the baghouse filters for all compartments in the facility at once. In addition, the EPA notes that the municipal waste combustor will continue to be subject to Clean Air Act emissions standards, and the burning of the baghouse filters is not expected to significantly impact emissions from the combustor.

At issue is whether EPA's 1995 interpretation applies to spent baghouse filters, in addition to ash. EPA's interpretation states that the point at which ash generated at a WTE facility becomes subject to jurisdiction under the Resource Conservation and Recovery Act (RCRA) is the point at which the ash leaves the facility's combustion building (including connected air pollution equipment). Of particular concern is whether or not that interpretation specifically addresses spent baghouse filters. Accordingly, you pose three questions described in pertinent part below:

Question 1: Does the EPA consider Wheelabrator's spent baghouse filters to be fly ash subject to the interpretation at 60 FR 6666?

Question 2: At what point does the facility need to determine whether the spent baghouse filters are hazardous wastes (i.e., at what point would RCRA hazardous waste jurisdiction begin)?

Question 3: Would a hazardous waste permit be needed for the double-bagged spent baghouse filters to be burned in the facility's boiler?

In assessing the specific situation you pose, the EPA has determined that the answer most consistent with the statutory interpretation is that spent baghouse filters which are removed from the air pollution control equipment, double bagged to ensure containment, then removed from the baghouse building and directly transferred to the waste feed area and inserted into the combustor are still "constructively" within the resource recovery facility and thus, would remain excluded from Subtitle C control. Thus, materials transferred to the waste combustion unit as soon as possible have not left the resource recovery facility and therefore the operator does not have to determine whether the filters become subject to hazardous waste regulations.

While the focus of EPA's 1995 interpretation was on the handling of ash, the Agency also stated that, "EPA believes that it is reasonable to conclude that Congress intended to exempt all handling of any hazardous waste within the building, including the handling of hazardous ash." See 60 FR 6668. Thus, the question for the Agency is whether the spent baghouse filters have left the "resource recovery facility," which is defined in EPA's interpretation as the combustion building, including connected air pollution control equipment.

Supporting EPA's determination are several statements from the FR notice you cite. First, the resource recovery facility includes "pollution control devices that are integral components of the combustion process." 60 FR 6668. Further, ash from the control devices reconveyed back to the combustion building has not left the resource recovery facility and by virtue of the containment and direct movement of the spent baghouse filters to the combustion tipping area "does not come into contact with the environment." *Id.* In addition, there are certain situations in which the ash could be "constructively" considered to be within a combustion building. As stated at 60 FR 6668/9:

A few WTE facilities may exist where the combustion device is not housed within a building. In these instances, the combustion device (including air pollution control equipment and proximate areas for handling ash) may constructively constitute a combustion building, within the meaning discussed above. Thus, if fly ash and bottom ash were handled in enclosed systems that operate in the same manner as they would if a building existed and the fly ash and bottom ash were mixed in an enclosed unit proximate to the combustion device, that management activity would be considered to take place within a combustion building as described above.

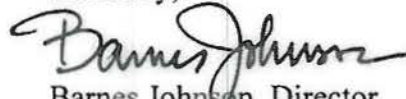
The EPA considers spent baghouse filters that are managed as discussed above, similarly, remain constructively within the combustion building. Thus, a determination as to whether RCRA Subtitle C applies is not required for those materials and a hazardous waste permit would not be needed. The EPA emphasizes that this interpretation is limited to the immediate burning of the

baghouse filters, and is not related to any other materials generated by a WTE facility that may not necessarily be managed within the resource recovery facility. Similarly, if the spent baghouse filters are managed in any location that is not in or "constructively" considered to be within a combustion building, then the operator would need to make a hazardous waste determination at that point.

Finally, state RCRA programs may always be more stringent than their federal counterpart. Therefore, New Hampshire's program may choose a different determination if it so desires.

Should you have any questions to my letter, please contact Betsy Devlin of my staff at (703) 308-7906 or devlin.betsy@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Barnes Johnson". The signature is written in a cursive style with a large, prominent initial "B".

Barnes Johnson, Director

Office of Resource Conservation and Recovery

cc: Susan Shinkman
Mary-Kay Lynch
James Owens