



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

May 26, 1993

John G. Ferland, General Manager
Clean Casco Bay, Inc.
48 Union Wharf
P.O. Box 387
Portland, Maine 04112

Re: Applicability of the Resource Conservation and Recovery Act (RCRA) to the activities of Clean Casco Bay, Inc. (CCB)

Dear Mr. Ferland:

This is in response to your letter dated July 14, 1992, requesting EPA's position on the applicability of certain portions of regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq. to activities undertaken by your corporation. Your letter stated that Clean Casco Bay, Inc. (CCB) plans to contain and recover materials spilled into the waters of Casco Bay or into the open ocean, and that some of these materials might be hazardous waste as defined by RCRA. Therefore, you requested the Region's interpretation of the applicability of portions of RCRA to these activities.

Under the scenario set out in your letter, CCB would not be a "generator" as defined by RCRA. In the ordinary course of business, CCB's oil collection activities and towing of oil recovery containers would qualify CCB as a RCRA "transporter," pursuant to 40 C.F.R. Part 263. However, your letter states that CCB will contain and recover materials spilled at sea solely during emergency or "immediate response" situations. Title 40 C.F.R. § 270.1(c)(3) provides a temporary exclusion from RCRA for treatment or containment activities taken during an immediate response to a discharge of hazardous waste; an imminent and substantial threat of a discharge of hazardous waste; and, a discharge of a material which, when discharged, becomes a hazardous waste. Title 40 C.F.R. Part 263 provides that any local, state or federal authority with responsibility for protecting human health and the environment has the authority to waive EPA identification number and manifesting requirements. Thus, in immediate response situations as described above, CCB would not be subject to the RCRA transporter requirements.

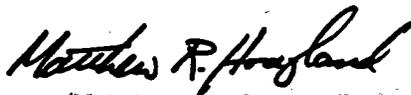
1 However, please note that 40 C.F.R. § 270.1(c)(3)(ii) states that "any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities."

2 See 40 C.F.R. §§ 263.30 and 263.31.

Finally, based on the description of your activities set out in your letter, it is Region I's conclusion that you are not a RCRA "facility."³ However, should CCB store hazardous waste or hazardous constituents on its vessel or in tanks for longer than ten days, the vessel and/or tanks might become a hazardous waste storage facility and subject to all applicable RCRA regulations.⁴

If you have any further questions regarding this matter, please contact Kenneth Rota of the RCRA Enforcement Unit at (617) 573-5759 or Joshua Secunda of the Office of Regional Counsel at (617) 565-3433.

Sincerely,



Matthew R. Hoagland, Chief
ME, NH & VT Section

cc: Scott Whittier, Maine DEP

³ Title 40 CFR § 260.10 defines a "facility" as:

all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

⁴ See 40 C.F.R. Part 265. Further, in such a case, CCB would be required to obtain a RCRA permit for storage pursuant to 40 CFR § 270.1(c).