

LISA 1988



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

COPY

January 20, 1993

Thomas B. Powers, Deputy Commissioner
Massachusetts Department of
Environmental Protection
One Winter Street
Boston, MA 02108

Dear Mr. Powers:

This letter addresses the proposed protocol set forth in your October 8, 1992 correspondence regarding clean up and/or construction activities, and in particular the determination of the circumstances under which federal RCRA permitting and Land Disposal Restriction (LDR) requirements apply to the management of contaminated soil. The main issues raised in each of the situations are: 1) at what point soils should be sampled to determine whether they contain TC wastes; 2) if such soils are determined to contain TC wastes, whether a permit must be obtained for the management of those soils; and 3) what activities are considered "placement" of a hazardous waste, thus triggering the application of the LDR.

The five scenarios will be addressed in reference to the generation, determination and placement issues:

Situation 1

Permit and LDR Requirements

The "Interpretation" section of this Situation states that the soil involved is not a "discarded" material. In fact, the soil may be, or contain, a material or materials that were discarded at some point in time. However, if there is no reason whatsoever to believe that the soil is contaminated with hazardous waste, the assumption can also be made for purposes of this Situation that the material being excavated is not, and does not contain, a hazardous waste. Thus, no investigation or sampling of the soil is required, and neither the LDRs nor RCRA permit requirements apply.

Situation 2

Permit Requirements

This scenario presents a situation in which a 21E site has generalized urban contamination. In such a situation, it is likely that the toxicity characteristic is a problem because the soil may contain lead or other TC constituents. Therefore, sampling should occur to determine whether the soil is found to be a hazardous waste by virtue of the TCLP. If the soil is found



to be a hazardous waste, then a permit must be obtained if the soil is treated on-site (other than in tanks or containers for less than 90 days), stored for greater than 90 days or disposed of outside of the area of contamination. If the soil is found not to be hazardous, then no RCRA permitting requirements apply.

LDR Requirements

No facts are presented in the description of the Situation regarding the management of the excavated soil after it has been removed from, but before it is replaced in the hole. Unless the soil is managed in a way which does not constitute "placement," if the soil is determined to contain hazardous waste, it must be managed in accordance with the LDR.

Situation 3

Permit Requirements

This scenario states that, "none of the constituents are present at the levels which would cause the waste to be a TC-characteristic waste". Although not mentioned in the scenario, it must be clarified that the only way that such a determination can be made is by sampling the soil for such constituents. Assuming that such sampling occurred, and the results were negative for all TC constituents, the conclusion that the activity is not subject to a federal RCRA Permit is correct. However, the rationale for this decision is not because the soil "is not a discarded material." In light of the presence of hazardous constituents derived from the release of a listed hazardous waste in the soil, this material may be considered a discarded material under RCRA. Permit requirements are not applicable because the hazardous waste tested negative for TC constituents.

LDR Requirements

The consolidation of wastes within an area of contamination does not constitute "placement" of such wastes. Therefore, the interpretation is correct in concluding that compliance with the LDR is not required, provided that the MA DEP defines "Area of Contamination" as an equivalent to a land disposal unit.

Situation 4

Permit Requirements

This scenario opens with a comment that the contaminants on the site are of "sufficient concern" to merit TC testing. EPA would deem contaminants not to be of concern only after sampling for TC constituents had been performed.

LDR Requirements

Again in this scenario, the fact that the wastes are being consolidated within an Area of Contamination, provided that an AOC is equivalent to a land disposal unit, would cause this activity to be exempt from compliance with the LDR.

Situation 5

Permit Requirements

This scenario presents the issue of permitting versus treatment for less than 90 days in tanks or containers. Both are viable options in a situation in which soils are determined to be a hazardous waste. Until such time as the MA DEP is authorized for the TC rule and State permitting exemptions may be exercised, there will be a need for the issuance of a permit by EPA for on-site treatment of TC wastes for greater than ninety days.

LDR Requirements

The "Interpretation" of this Situation is correct in determining that the LDR applies to the management of these soils.

Finally, these hypothetical situations are appropriate only for determining considerations to be made at similar sites. No site is identical to another and EPA should continue to be consulted on Federal issues when there is any question. Also, the relevance of authorization for the TC rule to these situations should not be overlooked. EPA has reviewed the regulations that the MA DEP has adopted for the TC rule and they appear to be acceptable. If the MA DEP is interested in becoming authorized for this significant regulation, my staff is willing to make a priority of the review of a submittal. If you have any interest in initiating the authorization process for the TC rule, or have any questions, please, contact Betsy Davis of my staff at (617) 573-5722.

If you have any additional questions on other comments above, please contact Lisa Papetti at (617) 573-5745.

Sincerely,



Merrill S. Hohman, Director
Waste Management Division

cc: Steve Lipman, MA DEP
Lisa Papetti, EPA

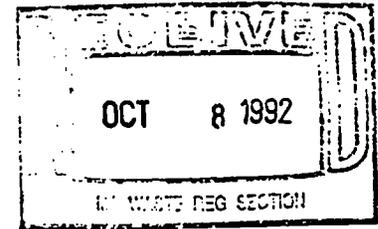


Commonwealth of Massachusetts
Executive Office of Environmental Affairs

Department of Environmental Protection

William F. Weld
Governor

Daniel S. Greenbaum
Commissioner



October 8, 1992

Mr. Merrill Hohman, Director
Waste Management Division
U. S. Environmental Protection Agency
Region I HRS CAN-2
JFK Federal Building
Boston, Mass. 02103

Dear Mr. Hohman, *Mel's*

This letter establishes the Massachusetts DEP's proposed protocols for clean up and/or construction activities at oil and hazardous material release sites, in order to address staff concerns at EPA and DEP regarding RCRA Toxicity Characteristics (TC) rules and Land Disposal Restrictions (LDR). The proposed protocols are being provided to EPA for your review and comment as you deem appropriate. These protocols are the result of several letters between our staff, numerous inter agency staff meetings, EPA concerns about 21E sites, research on the origin and intent of certain sections of RCRA, the application of the TC and LDR rules in other states and discussions with EPA Regional and Headquarters Staff.

As you know Massachusetts General Law Chapter 21E is a State statute which applies to the assessment and clean up of releases of oil and hazardous materials. Chapter 21E provides the authority to the DEP to promulgate and enforce regulations regarding assessment and clean up, entitled the Massachusetts Contingency Plan or MCP. Together, the statute and regulations require assessment and clean up of sites which results, among other things, in a total excess lifetime cancer risk of less than one in 100,000. Permanent and temporary solutions on 21E sites must be implemented under this program, and supervised by the DEP. The State's RCRA program is regulated under MGL chapter 21C and regulations 310 CMR 30.000. These regulations exempt 21E site clean up from the procedural requirements of obtaining a hazardous waste license, but all technical and management standards of 310 CMR 30.000 must be met if applicable to the clean up.

One category of technical requirements with implications at 21E site clean ups is the definition of a hazardous waste. There are a number of interpretative and judgmental issues relating to the regulatory classification of soils contaminated with

The DEP views resolution of the issues played out in the protocols critical to its ongoing 21E site remediation work, and welcomes EPA's timely input in their development.

Very truly yours,



Thomas B. Powers
Deputy Commissioner

cc: Paul Keough, Assistant Regional Administrator EPA Region I
Donald Clay, Assistant Administrator, OSWER, EPA, Washington
James Colman, Assistant Commissioner
Patricia Stanton, Assistant Commissioner
Steve Lipman, Boston Harbor Coordinator
Bill Sirull, DHW
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