CLAIRE STANLEY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

July 15, 1993

Nick Skoularkis, Ph.D,
Project Manager
Loureiro Engineering Associates, P.C.
100 Northwest Drive
Plainville, CT 06062

Dear Dr. Skoularkis:

I am writing to you in response to your correspondence dated November 16, 1992 requesting EPA's interpretation on whether an interim status facility, under the current regulations, would be allowed to excavate contaminated soils, place them in a containment building constructed for that purpose and within 90 days, treat the soils adequately so that they no longer contain hazardous waste and/or hazardous constituents.

It is possible to conduct storage and treatment in a containment building providing the requirements of 40 CFR Part 265, Subpart DD are complied with. These requirements became effective on February 18, 1993. An owner or operator that began operating a containment building under these provisions prior to the effective date was required to notify the Regional Administrator of his/her intent to comply with the requirements of Subpart DD prior to the beginning of operation. Subsequent to the effective date, a PE certification is required prior to operation of the unit.

Generators who accumulate or treat hazardous waste in containment buildings must comply with 40 CFR § 262.34(a)(1)(iv) as well as meet the same substantive standards as permitted and interim status units under 40 CFR Part 264 Subpart DD and Part 265 Subpart DD, respectively, without obtaining a permit or interim status as long as thermal treatment is not involved. This includes the requirement of obtaining certification by a professional engineer that the unit is designed and constructed to meet the requirements for containment buildings, maintain such certification at the facility, and for the 90-day accumulation exclusion, maintain documentation showing no hazardous waste remains in the unit for greater than 90 days as required by 40 CFR § 262.34(a)(1)(iv). These requirements may be found at 57 FR 37264 of the August 18, 1992 Federal Register.

If a generator choose to treat a prohibited hazardous waste in containment buildings in order to meet applicable 40 CFR Part 268, Subpart D treatment standards, he or she must comply with the waste analysis plan requirements of 40 CFR § 268.7(a)(4).

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At closure, owners or operators of permitted, interim status and less-than-90-day containment buildings will be required to clean close the units by removing all hazardous waste from the containment building and by removing or decontaminating all hazardous waste residues, contaminated containment systems components, contaminated subsoils, and structures and equipment contaminated with waste, and managing them in accordance with 40 CFR § 264.1102 or 265.1102 and 40 CFR Parts 264 or 265 Subparts G and H. If clean closure cannot be achieved, then the unit must satisfy the requirements for closure in accordance with 40 CFR § 264.310 or 265.310.

Please be advised that the proposed treatment process may require that the facility to obtain an air permit from the State of Connecticut for any air emissions generated by the process. It is the facility's obligation to obtain the necessary permits for the proposed operation. In addition, you should be aware that EPA strongly believes that such treatment processes should not merely result in the transfer of hazardous constituents from the contaminated environmental medium to another medium (i.e., from soil to the atmosphere) without any significant effort to treat, capture, or minimize the release of hazardous constituents. Appropriate treatment technology should be incorporated into any remediation plan that will result in the treatment, capture, or the minimization of the release of hazardous constituents to the environment.

Based on the limited information provided in your letter, the chlorinated solvents appear to be listed wastes. The Agency's position is that mixtures of environmental media and listed hazardous waste (i.e., contaminated ground water, contaminated soils, and contaminated sediments) must be managed as if they were hazardous waste. This position is also known as the "contained-in" policy.

Consistent with this approach, the Agency further interprets the regulations to mean that environmental media contaminated with listed hazardous waste must be managed as if they were hazardous waste until the media no longer contains the listed hazardous waste (i.e., decontaminated), or is delisted. To date, the Agency has not issued any definitive guidance as to when or what levels environmental media contaminated with listed waste no longer contains that listed waste. The Region or the State of Connecticut may determine these levels on a specific case-by-case basis. The state is bound by the Agency's interpretations of Federal regulations but may interpret their own regulation more strictly than EPA interprets Federal regulations.

Please be advised that on August 18, 1992, EPA published the final rule on "Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris" (57 FR 37194) which, in part, became effective on February 18, 1993. Among other things, the rule

codifies the "contained-in" policy with respect to contaminated debris. The rule also published revised treatment standards for debris as defined in the rule which are contaminated with listed prohibited wastes. The rule specifies acceptable treatment technologies for the hazardous debris and as an alternative, hazardous debris may continue to be handled in accordance with the "contained-in" policy, and so may be land disposed if it no longer "contains" a hazardous waste. The treated debris which has met the performance standards and not exhibit any characteristic of hazardous waste would not be prohibited from land disposal or reuse. However, residuals generated from the treatment of debris contaminated with listed waste would still be hazardous wastes by virtue of the derived-from rule and would be subject to the numerical treatment standards for the wastes contaminating the debris. Please note that the case-by-case capacity variance for certain hazardous debris was granted a one year extension from the effective date of May 8, 1993. A generator wishing to take advantage of this variance must submit to EPA in Washington, D.C., proof that they have made a good faith to find capacity (58 FR 28506, May 14, 1993).

In addition, your letter indicated that the contaminated soils were located at a RCRA interim status facility, as such, the facility is subject to corrective action. Any remediation effort shall include, at a minimum, an assessment of the nature and extent of contamination, impacts upon any ground water sources, a sampling and analysis plan, treatment standards to be achieved during the treatment of the soils, etc.

If you have any questions, please do not hesitate to contact me at (617) 573-5644 or Elaine Stanley at (617) 223-5515.

Sincerely,

Stephen Yee

Stephen Yee,
Environmental Engineer
CT Waste Regulation Section

cc: David Nash, CTDEP
George Dews, CTDEP
Elaine Stanley, EPA
Matt Hoagland, EPA
John Podgurski, EPA