



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
JOHN F. KENNEDY FEDERAL BUILDING  
ONE CONGRESS STREET  
BOSTON, MASSACHUSETTS 02203-2211

January 31, 1994

Mr. Christopher S. Way  
Waste Management Specialist  
New Hampshire Department of Environmental Services  
Waste Management Division  
6 Hazen Drive  
Concord, NH 03301-6509

Dear Mr. Way:

This letter is in response to your May 28, 1993 inquiry. In your letter, you state that a New Hampshire facility proposes to recover terpene by recycling hazardous wastewater generated by its Massachusetts facility. Your main concern was whether the owner of the New Hampshire recycling facility would be subject to permit requirements under 40 CFR Parts 264 and 265 if it could be designed to operate without storing the waste.

Title 40 C.F.R. § 261.6(c)(2) states that owners or operators of facilities that recycle recyclable materials without first storing them are subject to notification requirements under Section 3010 of RCRA, 42 U.S.C. 6930 and the regulations requiring that hazardous wastes be properly manifested, set out at 40 C.F.R. §§ 265.71 and 265.72. Also, the air emissions standards of Part 264, Subparts AA and BB, apply to owners or operators of facilities subject to RCRA permitting requirements operating hazardous waste management units that recycle hazardous wastes.

In answer to your questions regarding transfer of waste from the vehicle to the process, and the use of feed hoppers/tanks, the Region has consulted with the Department of Transportation (DOT), and offers the following interpretation. The Transfer of Hazardous waste from a vehicle directly into a recycling process does not constitute storage, provided that the vehicle is unloaded in accordance with the DOT regulations found at 49 C.F.R. Part 177, Subpart B. Those regulations state that a vehicle is "unloading" when it is "attended," as defined at 49 C.F.R. § 177.834(h)(3). Further, the individual "attending" the unloading must be "qualified," as defined at 49 C.F.R. § 177.834(h)(4). Should the recycling unit malfunction, a storage



Recycled/Recyclable  
Printed with Soy/Cane ink on paper that  
contains at least 75% recycled fiber

determination may be made on a case by case basis (e.g. storage may result if the recycling unit was inoperative for several days). The waste is considered "stored" in the vehicle for regulatory purposes when: a) the motive power is removed from the vehicle, b) the vehicle is not attended; c) the delivery hose or mechanism is not directly piped into the recycling process, or; d) the flow of waste into the recycling unit is interrupted. The regulatory agency will determine if the flow has been interrupted on a case by case basis, and take into account the manner in which the particular unit operates.

EPA is enclosing a copy of the applicable DOT regulations for your reference.

EPA generally considers feed tanks/hoppers to be an essential component of a recycling unit. However, the feed tank/hopper must provide a steady flow of waste to the recycling process, and their capacity should be no greater than the hourly rated capacity of the recycling unit. Alternately the feed tank/hopper's capacity could equal the minimum volume necessary to provide a steady flow of waste to the recycling unit, whichever is less.

We are enclosing a copy of the April, 1987 RCRA Hotline Report. This document answers a question regarding storage prior to recycling and provides some additional guidance on this issue.

The proposed use of an evaporation unit to treat the remaining hazardous wastewater would require a permit. Such units are regulated under 40 C.F.R. Part 264, Subpart X, which sets out the permit requirements for miscellaneous units. However, EPA does allow the treatment of hazardous waste in tanks or containers without a permit, provided that: a) Subpart I (Use and Management of Containers) and Subpart J (Tank Systems) of Parts 264 or 265 are complied with; b) the waste is stored for less than 90 days, and; c) all applicable requirements of 40 CFR Part 268 (Land Disposal Restrictions) are met (p.g.10168/FR/Vol. 51, No./Monday, March 24, 1986).

Finally, your letter expresses concern that requirements in addition to the standard permit provisions might be advisable in order to obviate the danger that recycling facilities might

operate inadequately and yet not be accountable for clean up costs or public health liability. RCRA allows States to promulgate more stringent RCRA requirements than those set out in the federal regulations. Such State regulations might require additional permitting requirements to ensure added protection to human health and the environment.

If you have any questions regarding these matters, please contact Mel Cheeks at 617-223-5590

Sincerely,



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

CC: Joshua Secunda, ORC  
Ken Rota, RCRA Support  
Joan Jouzaitis, RCRA Support

## Liaison Meeting Report - EPA's position

### II. SIGNIFICANT QUESTIONS AND RESOLVED ISSUES

#### A. RCRA

##### 1. Storage Prior to Recycling

According to the hazardous waste recycling regulations promulgated as part of the January 4, 1985 rule (50 FR 614), owners or operators of facilities that recycle materials without prior storage are subject only to Section 3010 notification requirements and §265.17 and §265.20 manifest regulations per §261.6(c)(1). Do the two following recycling operations involve storage prior to recycling?

- (a) Truck drivers with bulk shipments or drums of spent solvent pour the solvent into a receiving bin at a recycling facility. The receiving bin is directly hard-piped to the distillation unit, such that the receiving bin feeds the distillation unit. When the distiller is non-operational (at night), some waste solvents may remain in the feed tank.
- (b) As in the first situation, bulk shipments or drum of spent solvent are poured into a receiving device at a second recycling facility. The receiving device is essentially a tank with a pump in the bottom which is connected to a large tube that directly feeds into the distillation unit. The pump is in operation whenever there is waste in the tank. Therefore, the tank never contains solvent when the distillation unit is not in operation.
- (a) Although there is no time limit for storage, the two recycling facilities are fundamentally different. The first recycler uses the receiving bin to store waste when the distillation unit is not operating. Per §261.6(c)(1), he is subject to the storage standards.
- (b) In the case of the second recycler, he does not use the receiving bin for storage. His receiving bin is more clearly used only for conveyance, not storage. The bin is more directly tied to the operation of the recycling unit and indeed, could be viewed as part of the recycling unit. Hence, the second recycler would only be subject to §261.6(c)(1) (i.e., getting an EPA ID number and complying with the manifest standards.)

Source: Matt Straus (202) 475-8551

Research: Kim Gotwals

M. John Kidder  
Office of Pollution Prevention and Toxics  
-262- 9878

(c) A carrier (or agent) who operates a motor vehicle which contains a package of highway route controlled quantity radioactive materials, and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his immediate possession the route plan required by paragraph (c) of this section and operates the motor vehicle in accordance with the route plan.

(e) A person may transport irradiated material, fuel only in compliance with a plan if it is required under § 173.22(c) of this subchapter that will ensure the physical security of the material. Variation for security purposes from the requirements of this section is permitted so far as necessary to meet the requirements imposed under such a plan, or otherwise imposed by the U.S. Nuclear Regulatory Commission in 10 CFR Part 73.

(f) Except for packages shipped in conformance with the physical security requirements of the U.S. Nuclear Regulatory Commission in 10 CFR Part 73, each carrier who accepts for transportation a highway route controlled quantity of radioactive material (see § 173.40(d)), shall, within 90 days following the acceptance of the package, file the following information concerning the transportation of each such package with the Director, Office of Hazardous Materials Transportation, HS/PA:

(i) The route plan required under paragraph (c) of this section, including all required amendments, reflecting the routes actually used.

(ii) A statement identifying the names and addresses of the shipper, carrier and consignee, and

(iii) Procedures to be followed in case of an accident or other emergency.

(d) The driver has in his immediate possession a certificate of training as evidence of training required by this section, and a copy is placed to his certification file (see § 391.51 of this title), showing:

(i) The driver's name and operator's license number;

(ii) The dates training was provided;

(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of

highway route controlled quantity radioactive materials, and

(v) A statement by the person providing the training that information on the certificate is accurate.

(3) The driver has in his immediate possession the route plan required by paragraph (c) of this section and operates the motor vehicle in accordance with the route plan.

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(iii) The name and address of the person providing the training;

(iv) That the driver has been trained in the hazards and characteristics of

## Watch and Special Programs Administration, Inc.

Subpart A  
General Requirements

§ 177.826 Carrier's registration statement.

(a) Packages secured in a vehicle, Any tank, barrel, drum, cylinder or other packaging, not permanent, at least attached to a motor vehicle, which contains any flammable liquid, compressed gas, corrosive material, poison or material, or radioactive material, must be secured against movement within the vehicle on which it is being transported under a condition, normal by accident or transportation.

(b) No person may transport a flammable explosive liquid in a portable tank or a cargo tank unless he has filed a registration statement with certified mail, return receipt requested, with the Director, Office I, Watch and Special Programs, Inc., and (d) of this section.

(c) To the registration statement must contain the following information in accordance with paragraphs (a), (c) and (d) of this section:

(1) The carrier's name and principal place of business.

(2) Location, where cargo tanks used to transport flammable explosive liquid are located.

(3) The serial number of vehicle identification number of each cargo tank used by the carrier to transport flammable explosive liquids, and the name of each flammable explosive liquid transported in each cargo tank.

(4) The registration statement must be filed:

(i) Initially between January 1 and February 26, 1985; this initial statement is only required to contain information regarding operations that took place during the 30 days prior to the date of the statement, and

(ii) Subsequently, between January 1 and February 26 of each odd numbered year after 1985.

(d) For equipment obtained or operated between the two years following intervals specified in paragraph (c) of this section, the information must be provided on the registration statement filed during the next 60 day filing period.

(e) The route of loads loading and unloading the loads, which are likely to damage the effectiveness of the container or any package or other container or likely adversely to affect such package or container, shall be used for the loading or unloading of any explosive or other dangerous article.

(f) Prevent relative motion between containers containing, or otherwise, flammable liquids, flammable solids, explosive materials, corrosives, compressed gases, and poisons, bounds or gases, must be so braced as to prevent motion thereof relative to

the vehicle, or cargo tanks.

(g) Use of tools loading and unloading the tools, which are likely to damage the effectiveness of the container or any package or other container or likely adversely to affect such package or container, shall be used for the loading or unloading of any explosive or other dangerous article.

(h) Tools of Management and Budget under control number 2417 0540.

(i) O.S.C. 1004, Item 19 CTR 134 App A to Part 10

(Amend 177.60, 49 CFR 27700, 27714, June 16, 1981, 49 CFR 5041, Item 1, 1981)

## Subpart B Loading and Unloading

**Subpart B Loading and Unloading**

**Note:** For prohibited loading and storage of hazardous materials, see § 177.610.

ne vehicle while  
is having valves  
and containers  
other fittings  
not be so loaded that there will be  
no additional likelihood of damage  
to the vehicle.

(ii) **Prohibited loading combinations.**  
In any single driven motor vehicle or  
motor vehicles, hazardous materials  
shall not be loaded together if produced  
by loading and storage chart  
§ 179.8(b). This section shall not be so  
constructed as to forbid the carrying of  
materials essential to safe operation of  
motor vehicles. See Motor Carrier  
Safety Responsibilities Part 393 of this  
title.)

(iii) **Reservoirs.**  
(A) **Use of cargo heaters when trans-**  
**porting certain hazardous material.**  
Transportation includes loading, car-  
rying, and unloading.

(B) **When transporting explosives.** A  
motor vehicle equipped with a cargo  
heater of any type may transport ex-  
plosives only if the cargo heater is ren-  
dered inoperable by (i) disconnecting or re-  
moving the cargo heater fuel tank;  
and (ii) disconnecting the heater's  
power source.

(C) **When transporting certain dam-  
ageable material to use of combus-**  
**tion heaters.** A motor vehicle  
equipped with a combustion cargo  
heater may be used to transport flamm-  
able liquid or flammable gas only if  
each of the following requirements are  
met:

(i) It is a catalytic heater.  
(ii) The heater's surface temperature  
cannot exceed 130° F. (60° C.)  
either on a thermostatically controlled  
heater or on a heater without ther-  
mostatic control when the outside or  
ambient temperature is 60° F. (16° C.)  
or less.

(iii) The heater is not located in a  
loaded vehicle.  
(iv) There is no flame, either on the  
catalyst or anywhere in the heater.

(v) The manufacturer has certified  
that the heater meets the require-  
ments under paragraph (i)(iv) of this  
section by permanently marking the  
heater "HEATERS NOT REQUIRIED  
FOR CATALYTIC HEATERS  
USED WITH FLAMMABLE LIQUIDS  
AND GASES."

(vi) The heater is also marked "DO  
NOT LOAD INTO OR USE IN CARGO  
COMPARTMENTS CONTAINING  
flammable liquids or gases." (See  
also § 177.161(a)(1))

(D) **The carrier's obligation for trans-**  
**porting the materials is fulfilled.**

(i) The cargo tank has been placed  
on the consignee's premises; and  
(ii) The motive power has been re-  
moved from the cargo tank and re-  
moved from the premises.

(E) **A person "attends" the loading  
and unloading of a cargo tank if,**  
roughly the places, he is awake  
on an unobstructed view of the cargo  
tank, and is within 7.62 meters (25  
ft) of the cargo tank.

(F) **A person is "qualified" if he has  
been made aware of the nature of the  
hazardous material which is to be  
loaded or unloaded, he has been in-  
structed on the procedures to be fol-  
lowed in emergencies, he is authorized  
to move the cargo tank, and he has  
means to do so.**

### *NAME IS VISIBLE ON CARS OR IN THE TITLE*

(i) Each cargo heater fuel tank other than LPG must be coupled or removed.

(ii) Each LPG fuel tank, for automated temperature control equipment must have its diaphragm valve closed and its fuel feed line disconnected. Two tanks constructed and maintained in compliance with Spec. 106-A or 110-A (93) 179.400 179.401 or 179.402 that are authorized for the disposal of hazardous materials by highway in Part 173 of this subchapter must be carried in accordance with the following requirements:

(A) Use of a heater manufactured after November 15, 1976, is governed only by the requirements under 49 CFR 170.4(A), (C), (D), (E), and (G) of this section until October 1, 1976, and by every requirement under 49 CFR 170.4 of this section.

(B) Use of any heater after September 30, 1976, is governed by every requirement under paragraph (G)(2) of this section.

(C) **Restraints on automatic cargo space heating temperature control devices.** Restraints on these devices have two dimensions. Restraints upon use and restrictions which apply when the device must not be used.

(D) **Use restrictions.** An automatic cargo space heating temperature control device may be used when tanks containing flammable liquid or flammable gas only if each of the following requirements is met:

(i) Electrical apparatus, in the cargo compartment is nonsparkling or explosion proof.

(ii) There is no conduction apparatus in the cargo compartment.

(iii) There is no connection for return of air from the cargo compartment to the conduction apparatus.

(iv) The heating system will not heat any part of the cargo to more than 130° F. (60° C.).

(E) **Heater requirements under § 179.77 of this title are coupled with other protection against fire.** Flammable liquid or flammable gas may be transported by a vehicle which is equipped with an automatic cargo space heating temperature control device that does not meet each requirement of paragraph (d)(2) of this section, only if the device is first rendered inoperable as follows:

(i) To the cargo heater fuel tank other than LPG must be coupled or removed.

(ii) The cargo heater fuel tank must be disconnected from the cargo heater.

managed, the Agency has decided to impose manifest requirements on these generators, except in the case of certain reclamation agreements. The existence of a State-approved collection center does not, on its own, provide assurance that the waste would be transported or handled properly prior to or during transportation to such a facility, or indeed, that the shipment would ever reach such a facility. Consequently, development of some recordkeeping and transportation requirements would be needed which would offset any potential savings of such an exemption.

#### ***E. Part 264/265 Facility Standard Issues***

The requirements for facilities that treat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. See HSWA section 3005(e)(1). The Part 264 standards establish the minimum standards to be incorporated into a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Section 261.5(b) previously exempted generators of 100-1000 kg/mo of hazardous waste from the facility requirements of Parts 264 and 265 that cover the on-site treatment, storage, or disposal of hazardous waste, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste and no more than 1000 kg of hazardous waste were accumulated at any time. Under the rules promulgated today, this exemption will continue to apply only to generators of less than 100 kg/mo of hazardous waste. Generators of 100-1000 kg/mo of hazardous waste will be subject to full regulation under Parts 264 and 265 if they accumulate hazardous waste on-site for greater than 180 (or 370) days, exceed the 6000 kg accumulation limit, engage in waste treatment in other than tanks, or manage their waste in surface impoundments, waste piles, landfills, or land treatment facilities. In addition, those State-approved municipal or industrial waste facilities that manage wastes only from generators of 100-1000 kg/mo will also no longer be exempted from the Part 264 and 265 permit requirements. In the proposed rule, the Agency requested comments concerning the application of the uniform Part 264 and 265 requirements to generators of 100-1000 kg/mo and to the treatment, storage, and disposal facilities that accept waste from the generators.

#### ***1. Activities Requiring Permits***

Under today's final rules, 100-1000 kg/mo generators will be required to obtain a permit if they treat or dispose of hazardous waste on-site, except for treatment in tanks or containers during the 180/370 day accumulation period in conformance with Subparts J or L of Part 265, respectively, or accumulate hazardous waste on-site in tanks or containers for more than 180 (or 370) days.

A number of commenters agreed with the need to manage wastes from generators of 100-1000 kg/mo at fully permitted facilities. They argued that no special exemptions or requirements should be applied to the management of waste from these generators because the characteristics of the waste, not the source of the waste, poses the threat to human health and the environment.

Two commenters opposed the requirement for generators of 100-1000 kg/mo who accumulate waste on-site for longer than 180 (or 370) days to obtain RCRA permit, and argued that the accumulation time limit before permitting is required should be extended. One of the commenters also maintained that determining the maximum quantity of hazardous waste that may be accumulated at a non-permitted facility should be based on the degree of hazard posed by the waste and the generator's capacity to transport the waste off-site. The EPA disagrees with both of these positions. As noted in Unit III.C.4.a. of today's preamble, the HSWA of 1984 clearly limits Agency discretion in this matter. The Agency carries a heavy burden in extending the time limits established under section 3001(d)(6), and except for emergency circumstances, the Agency does not believe there to be sufficient justification for extending the limits Congress has established.

Another commenter opposed any permitting requirement due to the economic burden that would be placed on a small number of generators. While some generators of 100-1000 kg/mo may be burdened financially by the requirements promulgated today, Congress has already judged that outside of the accumulation limits allowed for in Section 3001(d)(6), disposal of wastes from these generators at permitted facilities is necessary to protect human health and the environment. In addition, since the rules allow generators to manage their hazardous wastes off-site, they are able to avoid the cost of acquiring a RCRA permit if they so choose.

Several commenters suggested exemptions from the RCRA permitting requirements or reduced permit

requirements for on-site waste treatment. Some commenters stated that there is a need to encourage on-site treatment to reduce the amount of wastes sent off-site and that the permitting requirements may hamper the ability of generators to treat wastes at their facilities.

The Agency disagrees that on-site treatment should be encouraged by exempting those generators of 100-1000 kg/mo from the RCRA permitting requirements. To the extent that these generators are conducting the same treatment, storage or treatment/disposal as other permitted facilities, their on-site treatment activities pose a potential risk to human health and the environment. Therefore, reduced or eliminated permitting requirements would be inappropriate.

Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or L of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus, the same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (30 days for over 1000 kg/mo generators and 180/370 days for 100-1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards. Therefore, generators of 100-1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 370 days).

Two commenters suggested that a mechanism should be created to tailor RCRA permits to the circumstances of individual facilities. For example, one commenter specifically asked for a simplified and streamlined permit for the incineration of spent paint spray