



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

May 31, 1996

Michael J. Mains, Environmental Compliance Manager
KTI Environmental Group, Inc.
110 Main Street, Suite 1308
Saco, ME 04072

Re: MWC Ash/Maine Energy Recovery Company

Dear Mr. Mains:

This is in response to your letter dated May 3, 1996, in which you request an "advisory opinion" as to the adequacy of the Maine Energy Recovery Company's facility ash sampling and analysis plan relevant to the proposed guidance from the EPA.

EPA is not in a position to evaluate the sampling and analysis plan you refer to since we currently have no jurisdiction over the ash as a RCRA Subtitle C waste. The history behind this issue may help to clarify our position.

The Supreme Court issued an opinion on May 2, 1994, which held that ash generated at resource recovery facilities (i.e. waste-to-energy facilities burning household hazardous waste and non-hazardous commercial wastes) that exhibits a hazardous waste characteristic is not exempt from the hazardous waste requirements of RCRA Subtitle C. In response to this decision EPA-New England notified the effected facilities in the region and requested that they test their ash to determine if it exhibited a hazardous waste characteristic. All of the effected facilities at that time responded to our request, including the Maine Energy Recovery facility, and it was determined that none of the ash from these facilities exhibited a hazardous waste characteristic.

It is the responsibility of the person who generates a solid waste to determine whether the waste is a hazardous waste following the procedures outlined in 40 CFR Part 261. So long as the ash continues to test non-hazardous RCRA Subtitle C does not apply. The State of Maine, however, does regulate the ash. We suggest that you consult with them regarding the specifics of their regulations.



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Should you have any questions regarding the above please contact me at (617)565-4879.

Sincerely,



Sharon M. Leitch, Environmental Engineer
Hazardous Waste Program Unit

cc: Gary Gosbee, Chief, Hazardous Waste Program Unit, EPA
Stacey Ladner, Remediation & Waste Management, MEDEP
Steve Silva, Chief, Maine State Program Unit, EPA