



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

APR 28 1997

Paul A. Ahearn, Director
Regulatory Compliance
Clean Harbors Environmental Services, Inc.
325 Wood Road
P.O. Box 327
Braintree, MA 02184

Re: Corporate Restructuring

Dear Mr. Ahearn:

This is in response to your letter of January 20, 1997, regarding your request for a regulatory interpretation from EPA-New England regarding the Clean Harbors, Inc. (CHI) restructuring program to consolidate several of its wholly-owned subsidiary companies into a single operating entity and its effect on the state of the Federal hazardous waste permit. According to your letter, CHI will be consolidated into a single operating unit known as Clean Harbors Environmental Services, Inc. (CHESI). CHESI currently operates the Clean Harbors fleet of licensed hazardous waste transporters, several waste oil companies, and other related activities. The restructuring program will include one Massachusetts-based facility, Clean Harbors of Natick, Inc. (the facility), which currently holds an EPA-issued HSWA permit.

The regulations which pertain to changes or transfers of the owner or operator of a facility are found at 40 CFR §§ 270.40 and 270.42. The regulations, in essence require that when there is a change in the facility owner or operator the permit must be modified or revoked and reissued to identify the new owner prior to the transfer of ownership. The regulations allow the change to occur by way of a Class 1 modification with prior written approval of the Director (see 40 CFR§ 270.42, Appendix I, A.7.). It is our understanding that Clean Harbors believes that this corporate restructuring does not constitute a "change of ownership" and views this change as a modification which does not require prior written approval.

Based on the information submitted in the January letter and in a subsequent phone conversation you had on March 5, 1997, with Sharon Leitch, of my staff, EPA believes that a Class 1 modification with prior Agency approval would be necessary. In that conversation you indicated that under the current structure, there are separate operators (i.e. CHNI) operating under one company (CHI). Clean Harbors intends to consolidate all operations into one company (CHESI). EPA feels that the restructuring does affect the status of the ownership of the facility and therefore has concluded that



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the change would require a Class 1 modification with prior Agency approval.

In accordance with the regulations at 40 CFR § 270.40(b) the facility must submit to the Director a revised permit application which indicates the new owner or operator no later than 90 days prior to the scheduled change, include documentation indicating the date when the change will take place, indicate that the 40 CFR part 264, subpart H requirements (Financial Requirements) are complied with under the old structure and submit documentation to demonstrate that the requirements will be met under the new structure (CHESI). This demonstration of compliance with the subpart H requirements must be made within 6 months of the date of the change of ownership of the facility.

Clean Harbors should submit a request for a Class 1 permit modification which includes the information responsive to the above requirements (see 40 CFR 270.40(b)) as soon as possible. Upon receipt of the request and following internal review of the information to be submitted the Region will issue a prompt response.

This interpretation only applies to the HSWA portion of the facility permit issued by EPA. You must contact each New England state in which CHESI/CHI has operations to determine if there are provisions which differ from EPA's and may affect the state-issued portion of the permit.

If you have any questions, please do not hesitate to contact me at (617) 565-3725. You may also contact Sharon Leitch, of my staff, at (617)565-4879.

Sincerely,



Gary B. Gosbee, P.E., Chief
Hazardous Waste Program Unit

cc: K. McSweeney, Associate Director of Waste Policy, EPA
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