



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

FEB - 5 1997

Michael J. Walsh, P.E., CHMM
Senior Environment, Health and Safety Manager
Safety-Kleen Corp.
189A Willow Street, P.O. Box 5432
Salisbury, MA 01952

Re: Safety-Kleen Corp. Mass. Service Centers; Request for
Management of Spent Fluorescent Bulbs as Nonhazardous

Dear Mr. Walsh:

This is in response to your letter dated November 25, 1996, in which you asked whether intact spent fluorescent bulbs to be sent for recycling may be managed as a nonhazardous waste within Massachusetts. You enclosed an August 5, 1993, letter from the Massachusetts Department of Environmental Protection stating, as an interim state policy, pending the adoption of new federal requirements, that for lamps being sent for recycling, "the designation of a used fluorescent lamp as a 'waste' and subsequently a 'hazardous waste' need not occur until they are dismantled." You asked that the EPA "confirm" that it shares in this State interpretation so that your company may begin collecting fluorescent bulbs from customers within Massachusetts in a "cost-effective" manner (i.e., without paying the costs involved in complying with the full hazardous waste generator and transporter requirements).

The EPA recently has addressed this issue, although in a different manner than requested in your letter. On May 11, 1995, the EPA promulgated the Universal Waste Rule, which streamlines generator and transporter requirements for certain widely generated (or "universal") wastes. Authorized States such as Massachusetts may now adopt universal waste rules as part of their programs. While fluorescent lamps were not included nationally in the Universal Waste Rule, the Rule allows States to include additional wastes such as fluorescent lamps in their universal waste programs, subject to certain criteria and other requirements. In this Region, we are encouraging the States to promptly apply to administer the Universal Waste Rule and to include fluorescent lamps. Enclosed is a Guidance Document which has been provided to the States.



We anticipate that Massachusetts will apply to operate the Universal Waste Rule during the Spring of 1997 and we hope to be able to promptly approve its application. We also anticipate that Massachusetts will simultaneously apply and be approved to administer the Toxicity Characteristic ("TC") Rule, thus enabling the State to treat fluorescent bulbs as a universal waste, whether they are considered a base program waste or a TC rule waste.

It should be emphasized, however, that pursuant to the Universal Waste Rule, intact spent fluorescent bulbs to be sent for recycling will be considered to be a universal hazardous waste (assuming of course that they fail the TCLP test) - not a nonhazardous waste. They will be subject to only streamlined requirements, but these streamlined requirements will need to be met. You should carefully consult the Massachusetts requirements when they are adopted. Also, other states may choose not to adopt the Universal Waste Rule. Thus if your company ships these wastes out-of-state, it may continue to be subject to more stringent requirements.

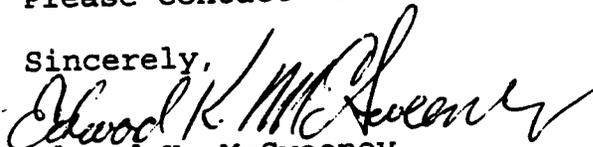
Finally, while understanding and sharing the State's objective, the EPA has not concurred with the State's interpretation set out in the August 5, 1993 letter. Rather, under the EPA's regulations, intact fluorescent bulbs being sent for recycling are considered to be spent materials being reclaimed, which when they flunk the TCLP test are considered to be hazardous wastes. See 40 C.F.R. § 261.2(c)(3); Compare Memorandum Re: Definition of Spent Material, from Michael Shapiro, Director of EPA Office of Solid Waste, dated March 24, 1994, RCRA Compendium # 9441.1994(07) (unbroken mercury-bearing thermostats become a waste as soon as they are "removed from service").

We recognize that differing federal and state interpretations create issues for industry, particularly in states such as Massachusetts where part of the RCRA program currently is directly administered by the EPA. We hope, however, that these problems will soon be resolved by the adoption of the Universal Waste Rule and the TC Rule by the State.

Please note that we are sending copies of your letter and our response to the six New England States as a part of our effort to coordinate with the States.

Please contact me if I can be of any further assistance.

Sincerely,


Edward K. McSweeney
Associate Director for Waste Policy

Enclosure

cc: New England State Hazardous Waste Directors

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

MEMORANDUM

DATE: October 25, 1996

SUBJ: Coverage by States of Fluorescent Lamps Under Universal Waste Rule

FROM: Jeffrey Fowley, RCRA Lead Attorney, Office of Regional Counsel, Region I

TO: Gary Gosbee, Chief, Hazardous Waste Program Section, Region I

The purpose of this Memorandum is to record my thoughts regarding what the Region will be able to approve regarding coverage by states of fluorescent lamps under the Universal Waste Rule. The Universal Waste Rule was adopted at 60 Fed. Reg. 25492 et seq. (May 11, 1995) and is set out primarily in 40 C.F.R. part 273. It streamlines generator and transporter requirements for certain widely generated (or "universal") wastes, namely hazardous waste batteries (e.g., nickel cadmium), certain hazardous waste pesticides, and mercury containing thermostats. While the EPA is considering adding fluorescent lamps to the Universal Waste Rule, it has not yet done so.¹ The Universal Waste Rule provides, however, that additional hazardous wastes or categories of hazardous wastes may be added by EPA to the Universal Waste Rule using the criteria stated in the Rule, pursuant to a petition process. 40 C.F.R. §§ 273.80 -273.81, 260.20 and 260.23. Moreover as stated in the EPA's Notice of Final Rulemaking, "[s]tates ... may seek authorization for the portions of § 260.20 that address petitions to add new universal wastes, and for 40 CFR 260.23 and subpart G of part 273, which address the petition process and include the factors to be used to evaluate petitions.... States authorized for the petition process would use evaluation factors analogous to those in § 273.81 to review petitions and make decisions as to whether to add hazardous wastes to the State universal waste regulations. Management standards for these wastes would also be developed by the State using the criteria in subpart G of part 273." 60 Fed. Reg. at 25537.

After reviewing the regulations and the EPA's Notice of Final

¹ Because of their mercury content, fluorescent lamps typically are found to be a characteristic hazardous waste, except for wastes covered by household waste exclusions. Thus in the absence of coverage under a Universal Waste Rule, they are subject to hazardous waste generator and transporter requirements including manifesting, as well as TSD requirements when applicable.

Rulemaking and after consulting with the Office of General Counsel and your Office, I have reached the following conclusions:

1. When a State is authorized to administer the Universal Waste Rule as part of its RCRA program, it may be authorized to administer the petition process. To be authorized to administer a public notice and comment process, the State must (1) have and agree to follow Universal Waste Rule equivalent to the EPA petition process and (2) must adopt regulations that are equivalent to the EPA regulations regarding criteria for determining what wastes may be listed and for establishing management standards when wastes are listed.

The procedures EPA follows before granting a petition are publication of a proposed rule in the Federal Register, an opportunity for public comment, and publication of the final rule. A State will need to have equivalent procedures for notice, opportunity for public comment and publication of its final rule. Please note, however, that the State petition process will not be subject to the detailed public notice and comment requirements set forth in 40 C.F.R. part 124. Also, in my opinion, a State may list additional wastes on its own initiative after public notice and comment but without the need for a petition, without being considered less stringent.

The criteria the EPA follows in determining what wastes may be listed as additional Universal Wastes and in establishing management standards when wastes are listed are set out in 40 C.F.R. §§ 273.80 - 273.81 and 260.23(b). For example, only wastes may be listed which are generated by a "wide variety of types of establishments" and "a large number of generators." 40 C.F.R. § 273.81(b), (c). When wastes are listed, there must be management standards for ensuring "close stewardship of the waste" including "packaging, marking and labeling" requirements. 40 C.F.R. § 273.81(d). To be approved to add wastes to its Universal Waste Rule program, a State will need either to incorporate these EPA regulations by reference or to enact equivalent regulations.²

2. Once a State is authorized to administer the Universal Waste Rule including the petition process (or equivalent public notice and comment process), the State will be allowed to add

² While the EPA regulations are framed in terms of what a petitioner must show the EPA to get a waste listed, they in turn establish what the EPA must find in order to list a waste under the Universal Waste Rule, and thus set the minimum standards that States must follow in listing any additional wastes under the Universal Waste Rule.

fluorescent lamps to its Universal Waste Rule if it meets the following requirements. First, it must follow the agreed public notice and comment process. Second, it must document how fluorescent lamps meet the criteria for listing set out in its federally approved Universal Waste Rule.³ Finally, the State must adopt regulations which set forth appropriate management standards for the fluorescent lamps, which meet the criteria set out in its federally approved Universal Waste Rule. Examples of appropriate management requirements are found in Massachusetts' Interim Guidance for the Management of Spent Fluorescent Lamps Containing Mercury and New Hampshire's policy on Management of Fluorescent Lamps. Note that the particular management standards that the EPA has developed for the three wastes currently covered by the Universal Waste Rule are not sufficient for the different breakage and other issues raised by fluorescent lamps; additional regulations will need to be adopted to cover Fluorescent Lamps under any state Universal Waste Rule.

3. As set out in the EPA's Notice of Final Rulemaking, the way for a State to include Fluorescent lamps under its Universal Waste Rule will be to first get its Universal Waste Rule approved by the EPA as part of the State's hazardous waste program and then add fluorescent lamps to the State's list of Universal Wastes.⁴ The listing and the regulations setting specific fluorescent lamp management standards will "not be subject to the authorization revision provisions in 40 CFR 271.21, since the State would already be authorized for the universal waste regulations" 60 Fed. Reg. 25537. However, as is the case for example when authorized states issue TSDF permits, the listing process will be subject to general EPA program oversight. Thus the States should provide the EPA with an opportunity to comment prior to listing any additional wastes.

A State may subject fluorescent lamps to the Universal Waste requirements rather than the full generator and transporter requirements under RCRA, without being considered to be less stringent than the EPA regulations. This is because the EPA regulations themselves allow for a petition process and for the states to administer this process (subject to the stated criteria).

³ While fluorescent lamps would seem to be the kind of waste suitable for inclusion in a State's Universal Waste Rule, this should not be pre-judged and a State should consider each criteria and document each finding prior to any listing.

⁴ The final listing could occur immediately upon the EPA approval of the overall program, provided the listing had been preceded by the required state public notice and opportunity for comment.

4. As stated in the EPA's Notice of Final Rulemaking on the Universal Waste Rule, a State "could not approve a petition for a waste it is not authorized to regulate as hazardous. For example, a State could not approve a petition for a waste that is hazardous due to the Toxicity Characteristic (TC) if the State is not authorized for the TC." 60 Fed. Reg. at 25537. This is because the EPA directly administers and enforces HSWA requirements like the TC rule until a State is authorized for such requirements; thus only the EPA may relax such HSWA requirements prior to a State's authorization for the requirements. However, as stated in the EPA's Notice of Final Rulemaking for the TC Rule, wastes that were hazardous even under the EP Toxicity test are considered to be subject to RCRA base program requirements; only wastes that first became hazardous (or exhibited different hazardous constituents) as a result of the TC Rule's TCLP test are considered to be HSWA wastes. 55 Fed. Reg. at 11847-11849 (March 29, 1990).

Fluorescent lamps may well have flunked the EP Toxicity test for mercury. However, they are commonly thought of as a HSWA (TCLP) waste and it might be difficult for a State to demonstrate that they were a base program waste. Thus to remove any doubt about a State's authority to cover fluorescent lamps under its Universal Waste Rule, the State should enact its Rule on fluorescent lamps only upon being approved to administer both the Universal Waste Rule and the TC rule. The State should apply to administer the Universal Waste Rule and the TC Rule together.

5. When fluorescent lamp management requirements are added by a State after program approval as outlined above, they will be part of the State's federally approved RCRA program. Thus in my opinion the fluorescent lamp management requirements will be federally enforceable. This is important because the management requirements will operate in lieu of the usual generator and transporter requirements which will no longer be enforceable.

6. In an effort to address the particular issues raised by fluorescent lamps and encourage recycling, some states have adopted policies defining unbroken lamps being sent for recycling as not being a solid waste (and thus not a hazardous waste). This, however, has run afoul of the EPA definition of solid waste as generally including any discarded materials that are recycled, and specifically including spent materials that are being reclaimed. 40 C.F.R. §§ 261.2(a), 261.2(c)(3). In the absence of the Universal Waste Rule, states not requiring fluorescent lamps to be manifested would appear to be less stringent than the federal requirements. This issue can be resolved by these States defining lamps heading for recycling as a waste - but as a Universal Waste. Companies discarding for recycling even unbroken lamps would be classified as either large or small quantity handlers of Universal Waste. Covering fluorescent lamps under the Universal Waste Rule would seem to meet the needs

sought to be addressed by these State's policies, without being less stringent in terms of what the states define as a waste.

7. Note that the Universal Waste Rule does not relax the requirements previously applicable to TSDFs or recyclers. But bona fide recycling facilities which do not treat, store or dispose of hazardous wastes are not subject to most TSDF requirements. Thus fluorescent lamps may be subject to only streamlined federal requirements if they are covered by a Universal Waste Rule at the generator and transporter stages and then recycled without being treated, stored or disposed.

8. The EPA may finalize its own rulemaking on fluorescent lamps as early as next summer. The States may wait for EPA's final rule before themselves addressing fluorescent lamps. However, the States also are free to proceed under the authority of the Universal Waste Rule as outlined above. If a State includes fluorescent lamps under its Universal Waste Rule and the EPA later adds fluorescent lamps to its Universal Waste Rule, no further state regulatory change is likely to be necessary. If the EPA instead decides to define fluorescent lamps as not being hazardous waste subject to certain conditions (the other option under consideration), no further state regulatory change is likely to be necessary, since State programs treating fluorescent lamps as a hazardous Universal Waste would then likely become more stringent than the federal program. But there is of course always a chance that the final EPA rulemaking will result in States, which have listed Fluorescent lamps as Universal Wastes, becoming less stringent than the federal program and thus needing to be again changed.

9. Finally, the States are of course free not to apply to administer the Universal Waste Rule, or not to include fluorescent lamps, in favor of subjecting discarded fluorescent lamps to full RCRA generator, transporter, recycling and TSDF requirements. The Universal Waste Rule and its petition process are regulatory reforms which make the RCRA program less stringent, and such less stringent requirements need not be adopted by the States.



Certified Mail
P 575 858 453

November 25, 1996

Edward K. McSweeney
Associate Director of Waste Policy
Mail Code: CAA
Office of Ecosystem Protection
U.S. Environmental Protection Agency - Region I
J.F. Kennedy Federal Building
Boston, Massachusetts 02203-2211

Re: Safety-Kleen Corp. Massachusetts Service Centers
Request for Management of Spent Fluorescent Bulbs as Nonhazardous

Dear Mr. McSweeney:

The purpose of this letter is to confirm that intact spent fluorescent bulbs are not required to be managed as a "hazardous waste." This position is based upon the Massachusetts Department of Environmental Protection's policy regarding management of spent fluorescent bulbs. Attached please find an August 5, 1993 Department letter of interpretation which states, "the designation of a used fluorescent lamp as a 'waste' and subsequently a 'hazardous waste' need not occur until they are dismantled, . . ."

The spent bulbs would be collected from Safety-Kleen customers in appropriate packaging and managed with a bill of lading. The spent bulbs would then be stored at Safety-Kleen Service Centers within warehouse storage areas and not within the permitted hazardous waste storage areas. No consolidation, repackaging, or processing of spent bulbs will occur at Safety-Kleen facilities in Massachusetts. Periodically, the accumulated boxes of bulbs would be shipped to a reclamation facility for recovery of mercury, glass, and metal. Currently, Safety-Kleen's outlet for the bulbs is MTI/AERC in Allentown, Pennsylvania. This facility requires that the bulbs be managed with an Official Pennsylvania Manifest Form as characteristically hazardous for mercury. Therefore, it is Safety-Kleen's intention to manage stored intact bulbs at its Massachusetts Service Centers as a nonhazardous waste until the time of shipment to the recycling outlet that requires a hazardous waste designation. In addition, this allows Safety-Kleen the flexibility to evaluate options to designate a recycling outlet that does not require transport of the bulbs as hazardous.

In the event that any spent bulbs are broken when handled, it will be determined whether the material is a hazardous waste (e.g. typically D009). If determined to be hazardous, the material will then be managed in accordance with Massachusetts Hazardous Waste Regulations 310 CMR 30.00.

The collection of spent fluorescent bulbs in the manner described above would allow Safety-Kleen to provide a safe and cost-effective program to collect this material from various sources. Safety-Kleen respectfully requests that the U.S. Environmental Protection Agency issue an interpretation on this matter so that we may proceed with a fluorescent bulb recycling program for our customers.

Sincerely,



Michael J. Walsh, P.E., CHMM
Senior Environment, Health and Safety Manager

cc: Al Nardone, MA DEP
William Sirull, MA DEP
Tom Heaton, Safety-Kleen
Tim Lorette, Safety-Kleen