



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

January 28, 1997

Christopher T. Lloyd, Director
NYNEX
Environmental Operations
125 High Street, Room 1040
Boston, MA 02110

Re: Manhole Sediment Stabilization Process

Dear Mr. Lloyd:

This is in response to your letter of September 13, 1996, regarding your request for a regulatory interpretation from EPA New England and for New England wide "approval" for the NYNEX in-line stabilization process for removing and treating sediment from NYNEX manholes. We apologize for the delay in responding to your request, the nuances surrounding the issue and our desire to maintain coordination with the six New England states have added to the delay. While EPA is not in a position to "approve" the treatment process we do offer the following regarding the regulatory implications.

We are aware of the complexity of the situation in which NYNEX finds itself, particularly the need to deal with this issue throughout the New England states and are willing to work with NYNEX in order to facilitate a productive outcome. While the Region supports any process which enhances protection of human health and the environment we are limited in our authority to make a definitive decision regarding this issue. Since each of the New England states are authorized for the RCRA base program, which includes determinations regarding identification and generation of hazardous waste, they maintain the authority to make more stringent regulatory interpretations relating to your situation.

As we understand the situation, NYNEX conducts emergency service operations for its underground cable network. Manholes are typically used to provide access to the underground equipment serviced by NYNEX. According to NYNEX, sediments may accumulate in this underground system over time and, in the course of its emergency operations, require immediate removal. Analytical testing of these sediments conducted by NYNEX has shown that these sediments may, on occasion, exhibit the toxicity characteristic for lead. NYNEX cannot attribute the lead to any single identifiable source. EPA suspects that the potential



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sources of this lead may be due to historical use of leaded gasoline, lead stabilizers contained in telephone cable plastics, etc.

In your letter to EPA, NYNEX identified a process developed for the treatment of the potentially lead-contaminated sediment that may be removed during an emergency service operation. The treatment process described in your letter involved the use of a vacuum truck as the primary method for removing the sediments from the manhole. In NYNEX's process description, two 55-gallon drums are connected "in-line" between the vacuum truck and a section of hose containing the vacuum nozzle. The 55-gallon container closest to the nozzle is used to accumulate the sediments removed during emergency clean out. The purpose of the second 55-gallon container is to provide an emergency backup for the first container in case sediments, accumulated in first container, exceed the capacity of the drum. A schematic of the process shows the hose, used to transfer the potentially lead-contaminated sediments from the manhole into that 55-gallon container, is also used to concurrently transfer the lead treatment chemical into the same accumulation container via a "T" connection in the line. NYNEX provided waste analyses of the sediment that is accumulated in the 55-gallon "in-line" accumulation container after treatment was conducted. The analytical results for this treated waste found that the toxic characteristic for lead was no longer exhibited and the sediment was rendered non-hazardous (less than 5 ppm of leachable lead).

We are aware of NYNEX's need for expedience in dealing with the sediment in emergency service situations. We realize that the sediment in each manhole, of which there are approximately 70,000 throughout the New England states, does not necessarily need to be removed nor does it always exhibit the toxicity characteristic (TC) for lead but that certain service needs do not allow for the turn-around time necessary for testing at each manhole. Therefore, NYNEX currently handles all sediment as a hazardous waste when it is removed from the manholes on an emergency basis and intends to treat this sediment by the above referenced process. Non-emergency service needs do allow for the time necessary to make hazardous waste determinations and therefore, in these situations, only hazardous sediment removed from the manholes would be treated.

Generally, the regulatory implications for a process where a facility treats hazardous waste are that the facility must obtain a RCRA Part B permit unless the treatment process is excluded from permitting requirements or the waste is entirely excluded from regulation under Subtitle C. The applicable federal RCRA regulations include the identification and listing of hazardous wastes, generator and treatment regulations, and land disposal restrictions (LDR), 40 CFR Parts 261, 262, 264 and 268,

respectively.

As indicated above, the sediment contains lead which may be found at levels that would constitute it as a hazardous TC waste. The TC rule was promulgated by EPA under the authority of the Hazardous and Solid Waste Amendments (HSWA) and therefore is implemented by EPA in all states until such time that the states become authorized for the rule. The state of Vermont is currently the only New England state authorized for the TC rule. However, the Commonwealth of Massachusetts will be seeking authorization during 1997. The implications of this on the NYNEX situation would be that if the process is deemed to need a RCRA Part B permit because of the TCLP test, EPA would be the permit issuing authority in states that do not have TC authorization.

The possible exclusion from permitting which may apply to your process is found in 40 CFR § 264.1, which states that the requirements of Part 264 - Standards for owners and operators of hazardous waste TSDFs, do not apply to:

A generator accumulating waste on-site in compliance with 40 CFR § 262.34. In connection with such accumulation, the EPA also has determined that permits are not required for generators treating their hazardous wastes in the generators' tanks or containers in conformance with the requirements of § 262.34 and Subparts I or J of Part 265. See 51 Fed. Reg. at 10168 (March 24, 1986), and 40 C.F.R. § 268.7(a)(4).

EPA believes that your process may qualify for the federal RCRA exclusion for generators accumulating and treating waste on-site. In order to qualify for this exemption from the permitting requirement, the waste must be treated by the generator and stored for no more than 90 days. This appears to be your plan. In addition, the waste must be treated within tanks or containers as defined in 40 C.F.R. § 260.10. Your system as described in your correspondence appears to fall within these definitions. Finally, all parts of your system involved in storing and treating the waste must meet the requirements of 40 C.F.R. § 262.34 and 40 C.F.R. Part 265, Subparts I or J, and Subparts AA, BB, and CC. In order to be excluded from the permitting requirement, you need to ensure that all of these requirements are met.

Assuming that you do qualify for the exemption from permitting, you must still meet all applicable generator requirements. In removing any soil which is a hazardous waste, you are considered to be generating a hazardous waste, even if it is then rendered non-hazardous by your treatment. The applicable requirements include obtaining an EPA ID number as the generator of a hazardous waste. 40 C.F.R. § 262.12.

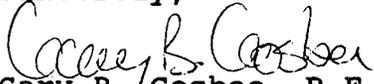
In addition, while the stabilized sediment will be non-hazardous if it does not fail the Toxicity Characteristic, it still must meet all applicable land disposal restrictions (LDR). The current LDR treatment standard for lead for this type of waste is 5.0 mg/l TCLP. As a generator treating wastes subject to LDR, you also will be required to develop and follow a written waste analysis plan pursuant to 40 C.F.R. § 268.7(a)(4).

Although an EPA permit will not be required for the in-line stabilization process if you meet the requirements stated above, you are reminded that individual state regulations may be both more stringent and broader in scope than the EPA regulations. Therefore, you will need to contact each state for a determination regarding its views on the regulatory status of the in-line stabilization process. Since all of the New England states are authorized for the base RCRA program, which includes sections 261, 262, and 264 of 40 CFR, they maintain the authority to make more stringent determinations regarding exclusions.

In summary we believe for reasons previously discussed that an EPA hazardous waste permit will not be required for the above activity if you meet the requirements discussed above. However, NYNEX will be subject to federal generator requirements, including LDR requirements, and also should contact each New England state to determine if there are provisions that are more stringent or broader in scope than EPA's.

If you have any questions regarding this or any other issue, 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

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