



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

February 27, 1998

Mary Williams, Project Director
NH/VT Solid Waste Project
24 Tremont Square, Room 218
Claremont, NH 03734

Re: Regulatory Status of Newport, NH Ash Landfill Leachate

Dear Ms. Williams:

This letter is written to address the regulatory status of leachate collected from the Newport Ash Landfill operated by the NH/VT Solid Waste District and to provide fair notice of the applicable requirements. The major issue in this matter is whether the leachate collected from the operation of the ash landfill is regulated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) or whether the leachate is somehow excluded from RCRA by either (1) the domestic sewage exclusion, (2) as an industrial wastewater since it is ultimately discharged to a Publicly Owned Treatment Works (POTW) subject to a National Pollution Discharge Elimination System (NPDES) permit or (3) by the household hazardous waste exemption. For the reasons explained below, these exclusions do not apply to the leachate under the EPA regulations. The regulations promulgated under the New Hampshire state RCRA program must also be and are as stringent as these EPA regulations.

First, in order to be regulated under RCRA, the leachate generated by the operation of your ash landfill must meet the definition of a solid waste. A solid waste is any material that is discarded by being abandoned, recycled or inherently waste-like. A material is considered to be abandoned if it is disposed of, burned or incinerated, or accumulated, stored or treated before disposal. A solid waste may qualify for an exemption from this definition if it is found to be excluded under 40 C.F.R. § 261.4(a) or (b) of the RCRA regulations.

The leachate collected from your ash landfill is accumulated and stored prior to treatment and disposal into a waterway of the United States. Both the generation of the leachate and the manner in which this material is managed meets the definition of a solid waste. With respect to a possible exclusion as a "domestic sewage," the leachate collected is the result of an industrial process (e.g., the operation of the landfill) and is not a domestic sewage which is excluded under 40 C.F.R. § 261.4(a)(1)(i). Also, the leachate is not excluded under 40 C.F.R. § 261.4(a)(1)(ii) as it is not discharged to the sewer together with domestic sewage at the landfill but rather is accumulated on-site in a tank and is physically trucked off-site to a POTW.

Second, industrial wastewaters may be excluded from the definition of a solid waste. However, the exclusion language contained at 40 C.F.R. § 261.4(a)(2) only applies to the actual point source discharge which is located at the POTW, as explained in the “comment” under that regulation. This exclusion does not apply to the leachate or the leachate collection system located at your facility. EPA has applied the industrial wastewater treatment exemption in cases where landfill leachate from a leachate collection system was collected, treated and discharged directly into a nearby waterway under a clean water act permit. The industrial wastewater exemption under 40 C.F.R. § 261.4(a)(2) does not apply to the leachate (or sludges) generated at your facility since no clean water permit is applicable while the leachate is being collected, stored or treated prior to off-site transport and discharge to the POTW. The preamble language contained in the General Pretreatment and National Pollutant Discharge Elimination System Final Rule (FR, Vol. 55, No. 142) clarifies the regulatory status of both the domestic sewage and industrial wastewater exemptions as I have explained them to you. One of the intents of this rule was to regulate the discharge of liquid wastes that are trucked or hauled off-site to a POTW under RCRA which is the case with your ash landfill leachate

Last, under the EPA regulations, household hazardous waste need not be managed as a hazardous waste, including “household waste that has been collected, transported, stored, treated, disposed, recovered...or reused” pursuant to 40 C.F.R. § 261.4(b)(1). However, the Supreme Court determined in City of Chicago v. Environmental Defense Fund, 114 S. Ct. 1588 (1994) that this exemption does not extend to ash generated by a solid waste facility. Similarly, this exemption does not extend to leachate generated by such a facility, even if it is handling only household waste.

The leachate collected at your facility is, therefore, a solid waste under RCRA for which a hazardous waste determination is required to determine whether the leachate contains listed hazardous wastes or exhibits any of the hazardous characteristics. This determination must be conducted and known prior to any off-site shipments of this waste. Analytical results received after the leachate has been shipped off-site is an improper waste determination and defeats the purpose for sampling the leachate and conducting such a determination in the first place.

Therefore, pursuant to 40 C.F.R. § 262.11 and the corresponding New Hampshire regulations, the NH/VT Solid Waste Project is required to determine whether the leachate generated from the operation of the ash landfill is a hazardous waste. Such a determination must include the testing of sludges or sediments that may accumulate in the leachate collection tanks. Should the test results indicate that the leachate or sludges/sediments generated by the operation of the ash landfill are hazardous, the NH/VT Solid Waste Project would be required to submit a Notification of Hazardous Waste Activity, obtain a RCRA facility identification number and comply with all applicable RCRA requirements, including use of a hazardous waste manifest and the filing of a one-time notification for wastes shipped to a POTW.

This letter should hopefully clarify your obligations regarding this matter. Please contact me (617) 565-3349 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth B. Rota". The signature is fluid and cursive, with the first name being the most prominent.

Kenneth B. Rota, Environmental Protection Specialist
RCRA Technical Office

cc: William Varney, Commissioner, NH DES
Michael Sills, NH DES - Solid Waste Program
John Duclos, NH DES - Hazardous Waste Program