

Syn...



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

January 9, 1998

Mr. James P. Fox
East Coast Environmental Corp.
209R Broadway
Methuen, MA 01844

re: South Bay Incinerator - ash removal

Dear Mr. Fox:

The Hazardous Waste Program Unit of EPA-New England is in receipt, by fax, of your letter dated November 14, 1997, and revisions dated November 21, 1997, in which you propose a process to remove and stabilize (treat) lead-contaminated ash from the South Bay Incinerator site. It is my understanding that you also had a phone conversation with Sharon Leitch of the EPA-New England Hazardous Waste Program Unit on January 5, 1998, in which you indicated that you no longer intend to treat the lead contaminated ash at the South Bay Incinerator site but will be shipping it off-site as a hazardous waste. Although treatment will not be occurring at the site EPA would like to clarify its position regarding the above proposed process.

In the above referenced letter you stated that you intend to treat any ash containing leachable lead in excess of the regulatory limit of 5.0 ppm by mixing it with a Portland Cement slurry as necessary to reduce the TCLP to less than 5.0. You also indicated that you feel free to conduct the proposed process as outlined based upon a February 3, 1995, federal determination in which you believe that fly ash from municipal incinerators is exempt from regulations for hazardous waste treatment until the ash exits the building.

EPA does not believe that the ash is exempt from hazardous waste treatment regulations until it exits the building. Rather, the federal determination of February 3, 1995, you refer to as allowing this exemption is based upon a May 2, 1994, Supreme Court ruling on the regulatory status of Municipal Waste Combustion Ash from resource recovery facilities. In that ruling the Supreme Court issued an opinion that ash generated at resource recovery facilities was not exempt from RCRA Subtitle C



Recycled/Recyclable
Printed with Soy/Canola Ink on paper that
contains at least 75% recycled fiber

Mr. James Fox
Page 2
January 9, 1998

regulations if the ash was tested and determined to be a hazardous waste. EPA-HQ clarified the point of determination of RCRA Subtitle C jurisdiction for municipal waste combustion ash in a statutory interpretation published in the February 3, 1995 Federal Register (60 FR 6666). In that determination EPA believed that the application of RCRA to the ash after it leaves the resource recovery facility would remove "potentially significant impediments" (see 60 FR 6666) to a facility whose purpose meets the intent of the RCRA statute (i.e. recovering resources). The Agency also defined what is meant by "resource recovery facility" in a March 22, 1995, memo which indicated that the definition did not include ash handling operations allowing exposure to the environment. Therefore, as soon as any ash from these facilities was exposed to the environment RCRA Subtitle C requirements would apply. While your proposal indicates that the treatment of the ash will be occurring inside the existing building EPA does not feel that the application of the February 3, 1995, determination is appropriate in this case since the South Bay Incinerator is no longer an operating facility.

As indicated above, the ash contains lead which may be found at levels that would define it as a hazardous Toxicity Characteristic (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 Commonwealth of Massachusetts will be seeking authorization for the TC rule during 1998. The implications of this on your 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).

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. In addition, the waste must be treated within tanks or containers as defined in 40 C.F.R. § 260.10. Please

Mr. James Fox
Page 3
January 9, 1998

note that the South Bay Incinerator building does not meet the definition of a tank or container. Thus far, it has not been demonstrated that the building meets the definition of a containment building in accordance with 40 CFR Part 264, Subpart DD. Also, we understand that the use of the "Vactor" is intended for the transfer of material not as a container for storage. Additionally, the accumulation and storage of waste in piles on the tipping room floor prior to treatment would not meet the permitting exemption requirements unless the building meets the definition of a containment building. 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 ash 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 ash 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 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 the state for a determination regarding its views on the regulatory status of the stabilization process and on the disposal of the treated ash. Since Massachusetts is authorized for the base RCRA program, which includes sections 261, 262, and 264 of 40 CFR, it maintains 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 proposed activity if you meet the requirements discussed above. However, East Coast Environmental Corp. will be subject to federal generator requirements, including LDR requirements, and also should contact the MADEP to determine if there are provisions that are more stringent or broader in scope than EPA's.

Mr. James Fox
Page 4
January 9, 1998

As initially stated, it is our understanding that the lead-contaminated ash will no longer be treated on-site but will be shipped off-site as a hazardous waste. Therefore, a determination regarding the status of the proposed process with respect to an exemption from the hazardous waste permitting regulations is not necessary. You are, however, responsible for meeting all applicable generator requirements pursuant to 40 CFR Part 262 and any other applicable state or federal hazardous waste regulations.

If you have any questions regarding this or any other issue, please do not hesitate to contact Gary Gosbee, Chief, Hazardous Waste Program Unit at (617) 565-3725. You may also contact Sharon Leitch, of his staff, at (617) 565-4879.

Sincerely,



Edward K. McSweeney, Associate Director
Waste Policy

cc: G. Gosbee, Chief, Hazardous Waste Program Unit, EPA
K. Rota, Acting Chief RCRA Enforcement Unit, EPA
J. Fowley, Atty., ORC-EPA
J. Miller, Chief, Waste Branch, MADEP
A. Nardone, Licensing & Permitting, MADEP
E. Pawlowski, North East Regional Office, MADEP
J. Carrigan, Compliance Assessment Branch, MADEP
B. Sirull, Waste Branch, MADEP
J. Duclos, Supervisor, Hazardous Waste Compliance Section, NHDES
D. Sattler, Supervisor, WEED, CTDEP
L. Hellested, Supervising Engineer, RIDEM
S. Ladner, Supervisor, Bureau of Remediation & Waste Management, MEDEP
P. Marshall, Chief, Hazardous Materials Management Division, VTDEC