Stephen Lee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

April 14, 1999

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Eileen M. Daily
Environment Committee
Legislative Office Building, Room 3200
Hartford, CT 06106-1591

Dear Senator Daily:

Thank you for your letter of March 5, 1999, regarding whether the Environmental Protection Agency (EPA) concurs with the interpretation by the Connecticut Superior Court decision in Oxford Tire Supply vs. Commissioner of Revenue Services and whether EPA classifies waste tires as a hazardous waste.

In general, the EPA considers waste tires to be a form of non-hazardous solid waste. As a solid waste, EPA has encouraged the recycling and reuse of the waste tires. Waste tires are not specifically listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Under RCRA, however, if a solid waste that is not listed nevertheless exhibits a characteristic of hazardous waste as defined 40 CFR Part 261, Subpart C (261.20 to 261.24), then the waste must be handled as a hazardous waste.

In your letter, you asked whether EPA concurs with the interpretation that was cited on Page 7B of the Connecticut Superior Court decision in Oxford Tire Supply vs. Commissioner of Revenue Services that the combustion risk of tires met the criteria of 40 CFR 261.21(a)(2) for an ignitable characteristic hazardous waste. The regulation (40 CFR 261.21(a)(2)) for an ignitable solid states, "It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and when ignited, burns so vigorously and persistently that it creates a hazard." The Agency believes that the cited regulation may not have been interpreted correctly. It appears that the determination of whether the tires met the characteristic of being a hazardous waste may have been confused with the risk associated with the combustion of tires. The regulation (40 CFR 261.20) calls for the testing of the material to determine whether any of the characteristic criteria are met to be considered a hazardous waste. EPA believes that the waste tires will not spontaneously catch fire or catch fire through friction or absorption of moisture under normal handling conditions in a manner that will create a hazard.

To further clarify the determination of whether a solid waste met the characteristic of ignitability, EPA on June 13, 1997, published a final rule (60 FR 32451) which amended its hazardous waste regulations for testing and monitoring activities. The amendment added a test method (Method 1030) for testing the ignitability of solids to the EPA- approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846.

However, we are not aware of any analytical results for waste tires from the use of this test method for waste tires. A copy of this test method is enclosed for your information.

In addition, we have contacted the CTDEP Bureau of Waste Management, Waste Engineering and Enforcement Division to get their assessment on this matter. The CTDEP has been authorized by EPA to implement the provisions of 40 CFR Part 261 - Identification and Listing of Hazardous Wastes and the state provisions are the regulations that are in effect. The CTDEP has provided EPA with a memorandum dated January 21, 1999 from David Nash to Jack Looney, concerning the Department's opinion relative to the court decision. EPA has reviewed the memorandum and supports the main points made in the memorandum relative to the court decision. A copy of this memorandum is also enclosed for your information.

If you have any questions relative to the CTDEP memorandum, you should contact Ms. Yvonne Bolton at (860) 424-3023. If you have any questions concerning the federal program, please do not hesitate to contact me or Stephen Yee of the Hazardous Waste Program Unit in the Office of Ecosystem Protection at (617) 918-1197.

Sincerely,

John P. DeVillars
Regional Administrator

Enclosures

cc: Jane Stahl, CTDEP
Richard Barlow, CTDEP
Kevin McSweeney, EPA-New England
John Hackler, EPA-New England
Representative Jessie Stratton

Let me know, Eileen, if there is more we can do on this. Hope you're well.
JPD