UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 13, 2000

Mr. Richard Finnegan
AETS/Onyx Environmental
398 Cedar Hill Street
Marlboro, MA 01752

RE : Generator requirements: Management of unknown waste; Point of generation; and Logbooks.

Dear Mr Finnegan:

Thank you for your letter on August 6, 1999 to Mr. Ken Rota of EPA regarding RCRA requirements for hazardous waste generators. I apologize for the delay in the response. The following is a list of the issues that you raised for your clients and the information we provide for you. In order to try and provide an accurate response we have repeated your questions verbatim.

Question #1: We have a client who occasionally has unknown bottles of waste chemicals in gallon size or smaller containers (lab pack quantities). Obviously, a generator should not have any unknown wastes, but occasionally this does occur. AETS/Onyz can assist in identifying these wastes for the client. Our client's main concern is how they can manage these wastes in the interim period between the discovery of the unknown waste and the service to identify the waste material. They are concerned that if ever there was an inspection, that they would be out of compliance because of unknown materials being present. If they placed these unknown bottles of chemicals in their hazardous waste accumulation area with a sign indicating "Unknown Hazardous materials pending analyses:, treated and labeled the materials as a RCRA hazardous waste, identified each bottle as an unknown pending analyses, would this be acceptable for compliance with EPA requirements? I understand that there may be some technicalities with this, but it may show good faith on the part of the generator to attempt to comply with RCRA. If you have any suggestions on a better way to handle this type of situation, I am open to any ideas.

Response: First, You may want to check your client's generator status. Based on the quantities of the waste produced per month, EPA classifies generators into three categories - large quantity generators (LQGs), small quantity generators (SQGs), and conditionally exempted small quantity generators (CESQGs). If your client generates hazardous waste, he should manage the waste according to his specific generator type. In general, a LQG has to meet a number of RCRA regulations such as EPA identification number, requirements for accumulation area and storage

units, accumulation time and quantity, preparedness and prevention, contingency plan, personnel training, onsite management of waste, air emission requirements, land disposal plan, record keeping, and biennial reporting. A SQG is required to meet many of the preceding requirements and a CESQG usually is not subject to RCRA requirements provided that it meets the criteria of offsite management of the waste. Please note that some states may not recognize CESQG status, and may have more stringent requirements. You should consult with your state environmental agency to find out the differences.

The definitions and the appropriate federal RCRA regulations for the three hazardous waste generator types can be found in EPA's new series of publications i.e., "RCRA in Focus". The issues currently available are Printing (EPA530-K-97-007), Photo Processing (EPA530-K-99- 002), Vehicle Maintenance (EPA530-K-99-004), and Dry Cleaning (EPA530-K-99-005). The general and case specific information in these publications can serve as references and examples for your clients on how to manage their waste. There is a table in each issue which lists RCRA regulatory requirements and check lists for the three types of generators. You can contact the RCRA Hotline, toll-free at (800)424-9346 or TDD (hearing impaired) (800) 553-7672 for the series . It is also available on the Internet at <http://www.epa.gov/epaoswer/hazwaste/id/infocus/index.htm>.

As for the question about being out of compliance because of unknown materials being present during an inspection, EPA can not agree that it is ever legal to store waste marked "unknown." In order to minimize any potential violations, your client (LQG or SQG) should at least comply with the following RCRA regulations. Specifically, the regulation in 40 CFR 262.34 (a)(3) requires that the generator labels or marks the container clearly with the words "Hazardous Waste" while accumulating waste on site, and § 262.34 (c)(1)(ii) requires that the generator marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the container while accumulating waste in a satellite accumulation area . Since the generator status may also determine the length of time (e.g., 90 or 180 days) that the waste can be accumulated on site without a permit or without interim status, the regulation in § 262.34(a)(2) requires that the date accumulation begins is clearly marked for inspection on each container, except in satellite accumulation area where up to 55 gallons of hazardous waste or one quart of acute hazardous waste can be accumulated without time limitation (§ 262.34 (c) (1)). In addition, the generator should check to determine if he needs to comply with subpart I of 40 CFR part 265 on the use and management of containers (§262.34(a)(1)(i) & § 262.34 (d) (2)).

EPA encourages your client to minimize the use of hazardous materials wherever possible, and to implement a chemical hygiene plan. The chemical hygiene plan is designed to address the proper management of hazardous materials and help your client avoid situations where chemicals can not be identified.

Question #2: Another issue that is fairly common is related to the generation of hazardous waste from machinery and/or equipment(i.e.: HPLC machines). We have found this to be a gray area in the regulations. When these types of machines generate hazardous waste, the issue becomes the point of generation of the waste. Is the point of generation the container where the waste is accumulated out of the machine, or is it where that container is emptied into another container? AETS/Onyx usually leaves this decision up to the safety departments of our clients. If they persist in asking , we tell them to go worst case and treat the container connected to the machine as the satellite waste container. We recently received information from a contact at the Massachusetts Department of Environmental Protection (DEP) that the DEP would not consider the container connected to the machine as a satellite container. Reasoning for this is because the attached container is considered part of the machine. Is this the same approach that the EPA would take?

Response : EPA's approach is to treat the container connected to the HPLC machine as a satellite accumulation container, because this container is at or near the point of generation where the waste initially accumulated out of the machine, and is therefore subject to RCRA requirements on marking and labeling (40 CFR 262.34 (c) (1) and § 262.34 (c)(1)(ii)). Nonetheless, if the waste in this container is emptied into another larger container in the same laboratory with compatible waste for consolidation purposes, the "larger" container can also be considered as a satellite container, as long as the larger container is at or near the point of generation, under the control of one of the operators in the laboratory who is generating such waste, and the total amount of the waste in the container does not exceed 55 gallons (or one quart of acutely hazardous waste). If the large container is not at or near the point of generation, it must be marked with the date that the container first received waste and leave the site within 90 or 180 days of receipt depending on the generator status (40 CFR 262.34(a) & §262.34(d)).

Question # 3: The last issue we have is the use of logbooks to document weekly hazardous waste accumulation areas and satellite hazardous waste areas. AETS/Onyx prefers that our client maintain a logbook of these weekly inspections to document that weekly inspections have been done. Again, there is no

regulatory requirement that written documentation of these inspections is necessary. During an inspection, would EPA want to see documentation that these weekly inspections have been performed? If so, what would EPA's reaction be if these logbooks were not available?

Response : Pursuant to 40 CFR 262.34, a LQG or SQG who accumulates hazardous waste in a container must meet the standards in subparts I of 40 CFR part 265 which include weekly inspections for leaks and deterioration (§265.174) in the waste accumulation area . It is helpful to use the logbook or other written document as the proof that the generator has done the weekly inspections, and it is the generator's responsibility to demonstrate that weekly inspections are conducted. As for satellite accumulation areas, because the generator only needs to comply with § 265.171, §265.172, and §265.173 (a), the documentation for weekly inspections is not required.

Since your company serves clients in both Massachusetts and Rhode Island, you should also confer with these states on the above issues. States with authorized RCRA programs may have more stringent requirements.

I hope this letter has addressed your concerns. If you have any further questions, please call Ken Rota at (617) 918-1751 or Jui-Yu Hsieh at (617) 918-1646.

Sincerely,

Edward K. McSweeney

Edward K McSweeney
Associate Director for Waste Policy
Office of Ecosystem Protection

cc: Ken Rota, EPA, OES
Gary Gosbee, EPA, OEP
Matt Hoagland, EPA, OSRR
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12/99 Reg 1 to EPA

Richard Finnegan
AETS/Onyx Environmental
398 Cedar Hill Street
Marlboro, MA 01752
August 6, 1999

Ken Rota
EPA-New England Region 1
1 Congress Street Suite 1100
Boston, MA 02114

Ken,

Hi Ken. You introduced yourself at the EPA Conference in Kittery, Maine a couple of weeks ago. I would like to introduce myself. I am a project manager for AETS/Onyx Environmental Services for Boston, Cape Cod, and State of Rhode Island areas. Thank you for your perspective and assistance at the conference. It was very informative.

As you know, there was a limited time period for questions, specifically relating to RCRA requirements for Hazardous Waste. I was approached by a few customers to try and contact your agency regarding some issues that they have. They have some difficulties and would like to have an EPA interpretation of requirements. The following summaries outline some issues they would like some clarification on:

1. We have a client who occasionally has unknown bottles of waste chemicals in gallon size or smaller containers (lab pack quantities). Obviously, a generator should not have any unknown wastes, but occasionally this does occur. AETS/Onyx can assist in identifying these wastes for the client. Our client's main concern is how they can manage these wastes in the interim period between the discovery of the unknown waste and the service to identify the waste material. They are concerned that if ever there was an inspection, that they would be out of compliance because of unknown materials being present. If they placed these unknown bottles of chemicals in their hazardous waste accumulation area with a sign indicating "Unknown Hazardous materials pending analyses", treated and labeled the materials as a RCRA hazardous waste, identified each bottle as an unknown pending analyses, would this be acceptable for compliance with EPA requirements? I understand that there may be some technicalities with this, but it may show good faith on the part of the generator to attempt to comply with RCRA. If you have any suggestions on a better way to handle this type of situation, I am open to any ideas.

2. Another issue that is fairly common is related to the generation of hazardous waste from machinery and/or equipment (i.e.: HPLC machines). We have found this to be a gray area in the regulations. When these types of machines

generate hazardous waste, the issue becomes the point of generation of the waste. Is the point of generation the container where the waste is accumulated out of the machine, or is it where that container is emptied into another container? AETS/Onyx usually leaves this decision up to the safety departments of our clients. If they persist in asking, we tell them to go worst case and treat the container connected to the machine as the satellite waste container. We recently received information from a contact at the Massachusetts Department of Environmental Protection (DEP) that the DEP would not consider the container connected to the machine a satellite container. Reasoning for this is because the attached container is considered part of the machine. Is this the same approach that the EPA would take?

3. The last issue we have is the use of logbooks to document weekly hazardous waste accumulation areas and satellite hazardous waste areas. AETS/Onyx prefers that our clients maintain a logbook of these weekly inspections to document that weekly inspections have been done. Again, there is no regulatory requirement that written documentation of these inspections is necessary. During an inspection, would EPA want to see documentation that these weekly inspections have been performed? If so, what would EPA reaction be if these logbooks were not available?

I apologize for this being a little lengthy, but I wanted to make sure you understand the concerns involved. Thanks in advance for your help and ideas.

Sincerely,

Richard G. Finnegan

Richard Finnegan
Project Manager