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

June 19, 2006

Evan J. Glass, President
ALTA Environmental Corp.
121 Broadway
Colchester, CT 06415

Re: Correspondence of March 30, 2006 – Methanol-preserved Soil Samples and Exclusion from Hazardous Waste

Dear Mr. Glass:

We are responding to your correspondence of March 30, 2006, in which you requested some clarification on whether the exclusion under 40 CFR 261.4(d) applies to methanol-preserved soil samples that are collected for possible testing but are ultimately not tested. You also asked:

1. Whether the word "testing" as it appears in 40 CFR 261.4(d)(i), may be read as "testing or possible testing," such that the exclusion applies to all samples that are collected for the sole purpose of testing or possible testing?

2. Will the methanol-preserved sample volumes be classified as a hazardous waste in connection with the methanol content, and if so, which classification would be most appropriate (e.g., D001 or F003)?

3. If the testing laboratory discards the remaining sample volume, is the testing laboratory considered to be the generator of this waste (presumed to be a hazardous waste)?

4. If the remaining sample volume is transported back to the sampler and the sampler discard the samples, is the sampler then the generator of this waste?

5. If the remaining sample volume is transported back to the facility from which it was collected, and the facility discard the samples, is the facility then the generator of this waste?

In response to the question concerning the "possible testing" of collected samples and the applicability of the exclusion, the preamble of the September 25, 1981, Federal Register (46 FR 47426 - 47429) indicates that samples may be held to confirm original analytical results, to test for additional constituents or properties, or for a specific purpose (40 CFR 261.4(d)(1)(vi)). The

preamble also notes that the exemption lasts only until the laboratory has completed its work and has no reason to continue to store the sample. Based on this review, the exclusion from the RCRA requirements to samples taken for testing or possible testing would be applicable provided that the chain of custody for the samples is maintained and any delay in testing or non-testing of the samples does not continue indefinitely and result in their abandonment. Upon the decision to dispose of the samples, they are subject to compliance with all applicable RCRA regulations (40 CFR 261.4(d)(3)).

In response to the question regarding the appropriate classification (D001 or F003) when discarding methanol-preserved samples, we believe that the F003 classification should be used because the methanol is being used for its solvent properties. Due to the addition of methanol, the samples will be an F003 waste when disposed regardless of whether it would have otherwise been a non-hazardous waste. Note that the samples are subject to the waste determination process and should also carry any other codes that are found to apply to the soil sample as a result of waste determination process.

With respect to the questions on who is responsible for the disposal of the remaining samples, 40 CFR 261.4(d), does not specify who is the generator of the waste samples for disposal purposes. However, Region 1 interprets the provision to mean that the person making the decision to dispose of the samples is the generator and is responsible for managing the samples in full compliance with all applicable regulations. The contractual arrangement between the facility, collector/sampler, and the laboratory may often indicate who has assumed this responsibility. From a regulatory perspective, the chain of custody must be maintained and the waste samples properly disposed of at the end of the process.

We also wish to note that the states may be more stringent than the federal government. In this case, you should contact the State of Connecticut to determine whether or not they may have more stringent requirements.

If you should have any questions, please contact Stephen Yee of my staff at (617) 918-1197 or yee.steve@epa.gov.

Sincerely,

Marv Rosenstein, Chief
Chemicals Management Branch
Office of Ecosystem Protection

cc: Diane Duva, CTDEP
William Sirull, MADEP
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30 March 2006

Mr. Ken Rota
Chief of RCRA Compliance Unit - USEPA
One Congress Street
Boston, MA 02114

Subject: Methanol-preserved Soil Samples, and Exclusion from Hazardous Waste

Dear Ken,

The purpose of this letter is to verify whether the exclusion under 40 CFR 261.4(d) applies to methanol-preserved soil samples that are collected though ultimately not tested. Briefly, by way of background, the Connecticut Department of Environmental Protection (DEP) with assistance from the Connecticut Department of Health (DPH) and the Environmental Professionals of Connecticut (EPOC), has recently issued final *"Guidance for Collecting and Preserving Soil and Sediment Samples for Laboratory Determination of Volatile Organic Compounds"* (effective March 1, 2006). For "high-concentration" soil samples, one sample collection option presented in the guidance involves collection of a 5 gram or 10 gram aliquot of soil to be preserved with 5 ml or 10 ml of methanol, respectively, in a 40 ml vial (an approximately 1:1 ratio of soil to methanol). "High-concentration" samples are samples that *may* contain high concentrations (generally over 200 ug/kg) of volatile organic compounds (VOCs), and that *may* be analyzed for VOCs depending on the data quality objectives of the investigative program and whether or not the laboratory determines that the "high-concentration" sample warrants testing (i.e., in lieu of, or in addition to, the "low-concentration" sample). The "low-concentration" samples are not preserved with methanol, and laboratories indicate that lower detection limits for VOCs can be achieved through testing of these samples.

Typically, within a given soil sampling interval, several sample aliquots are collected and stored/preserved in different fashions for different types of testing, with only one sample aliquot preserved in methanol in a 40 ml vial as a "high-concentration" VOC sample potentially for testing. In some cases, the methanol-preserved aliquot is tested. In other cases, the methanol-preserved aliquot is not tested, although other aliquots of the same sampled interval are tested. And finally, in some cases, the entire soil sample from a given sampled interval is not tested although samples were collected from that interval solely for possible testing purposes. We believe that any methanol-preserved sample volume remaining after testing (i.e., for both tested and untested methanol-preserved aliquots, as well as for sampled intervals not tested at all) would be classified minimally as either a characteristic hazardous waste due to ignitability (D001) or an F003 listed hazardous waste (with greater than 10% of methanol in the solvent placed in the sample vial, before use) due simply to the methanol preservative in the sample (i.e., not considering the nature of the actual soil sample collected).

Please verify whether the word *"testing"* as it appears in 40 CFR 261.4(d)(i), may be read as *"testing or possible testing"*, such that the exclusion applies to all samples that are collected for the sole purpose of testing or possible testing.

Additionally, to help clarify the point of hazardous waste generation associated with methanol-preserved samples, we would respectfully request that your response address the following:

1. Regardless of the nature of the soil samples, and whether or not the samples were analyzed for VOCs, when it is determined that the remaining sample volume is to be discarded, will the methanol-preserved sample volume be classified as a hazardous waste in connection with the methanol content, and if so, which classification would be most appropriate (e.g., D001 or F003)?

2. If the testing laboratory discards the remaining sample volume, is the testing laboratory considered to be the generator of this waste (presumed to be a hazardous waste by the author)?

3. If the remaining sample volume is transported back to the sampler and the sampler decides to discard the samples, is the sampler then the generator of this waste? and

4. If the remaining sample volume is transported back to the facility from which it was collected (i.e., the "investigated facility"), and the facility decides to discard the samples, is the investigated facility then the generator of this waste?

Thank you for your assistance in this matter. Please call me at (860) 537-2582 if you have any questions or need additional information prior to issuing a written response.

Sincerely,
ALTA Environmental Corporation

Evan J. Glass
President

EPA letter 30 March 2006.ejg