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DEC 13 1985

Mr. Eliot Cooper  
Manager  
Environmental Affairs  
Waste-Tech Services, Inc.  
445 Union, Suite 223  
Lakewood, Colorado 80228

Dear Mr. Cooper:

This letter confirms the information that was provided to you in our December 3, 1985, meeting regarding the RCRA permitting issues which were raised in your letter of October 21, 1985.

In that correspondence you presented three RCRA permit issues regarding on-site treatment by fluidized bed incineration and your interpretations of those issues. Our response to those issues are as follows:

Issue 1: "Waste-Tech Services will own and operate the incinerator on the leased property of the generator. Waste-Tech Services will be applying for all environmental permits to be issued to Waste-Tech Services."

Answer: Under 40 CFR §270.10, both the owner and the operator of the facility must sign the RCRA permit and are subject to the conditions of the regulation. Although Waste-Tech Services will be the owner and operator of the hazardous waste incinerator, it is not the sole owner or operator of the facility under RCRA. A "facility" is defined under §260.10 as "...all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste." Therefore, the generator's property (including property leased to Waste-Tech Services for the unit) will be considered the "facility" under Subtitle C of RCRA (§260.10) and the generator, as owner of the land, and Waste-Tech Services, as the operator of the incineration unit, must sign the permit for the incinerator. As a matter of general policy, the owner or operator of the facility will include: the owner of the land, the owner of the structures (e.g., the incinerator unit) and the operator of the facility or unit (45 FR 33169, May 19, 1980). The ownership status of the property for purposes of RCRA permit signatory requirements will be determined based on State and Federal laws and the terms of agreement between the parties. Clarification

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of the issue of who is the "owner" of the facility is provided in the Regulation Interpretation Memorandum which was published in 45 FR 74489, November 10, 1980. A copy of that memorandum is enclosed.

Issue 2: "Waste-Tech Service's incineration facility will be located on the generator's property leased to Waste-Tech Services. Waste will never cross any public highway or leave the generator's property. Therefore, manifesting of the waste transferred from the generator to Waste-Tech Services will not be required."

Answer: This issue, as stated, is correct. On-site treatment of hazardous waste is excluded from the manifest requirements in §260.10.

Issue 3: "Waste-Tech Services will be incinerating waste materials on-site at a generator's facility. Waste-Tech Services contractual relationship with the generator requires that the generator assume all responsibility for the proper treatment and disposal of incinerator residuals, including bed materials, ash, and scrubber waste water sludge."

"Since the generator already has in place a closure plan that accounts for all the wastes that are generated on site, and assumes responsibility for all residuals resulting from incineration of their waste, Waste-Tech Services closure plan will only address the costs necessary to decontaminate our equipment and ensure that our leased site has not been contaminated."

Answer: Issue 3 is directly related to the issue of permit signatories which is discussed under Issue 1. Since both Waste-Tech Services and the owner of the property must sign the permit, they will be jointly and severally responsible for all RCRA requirements which include, but are not limited to, the treatment, storage, and disposal of residue resulting from incineration, since the residue is a hazardous waste (§261.3), and the removal of incinerator residue from the incinerator site for closure of the unit (§264.351).

The generator and Waste-Tech Services may use a contractual agreement to determine who prepares the permit application and who carries out the conditions of the permit (e.g., performance of closure plan). This agreement, however, does not eliminate liability incurred by either the owner or the operator of the facility. Although the contract may provide for a division of responsibility and liability, EPA may, if necessary, bring enforcement actions against all responsible parties involved. (45 FR 33169, May 19, 1980).

In conversations that you have had with members of my staff you have indicated that you are considering using fluidized bed incinerators for mobile treatment of hazardous waste. I would like to point out that my Division is presently conducting a study to develop procedures for facilitating the permitting of mobile treatment units and invite you to discuss any additional issues on this subject with nancy Pomerleau at 202/382-4500. Technical questions about the RCRA incinerator requirements should be addressed to Robin Anderson at 202/382-4498.

Sincerely,

Bruce R. Weddle  
Director  
Permits and State Programs Division

Enclosures:  
FR Notice, November 10, 1980, 40 CFR Part 122  
Summary of meeting with Waste-Tech Services on December 3, 1985

cc: Peter Guerrero  
Art Glazer  
Robin Anderson  
Nancy Pomerleau  
Carrie Wehling (LE-132S)  
Hazardous Waste Branch Chiefs, Regions I-X