9551.1994(01)

CLARIFICATION OF CERTAIN ASPECTS OF 40 CFR 268 DEBRIS REGULATIONS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

October 6, 1994

Mr. Kenneth L. Humphrey
Environmental Affairs Director
Envirosafe Services of Ohio, Inc.
4350 Navarre Avenue
P.O. Box 167571
Oregon, Ohio 43616-7571

Dear Mr. Humphrey:

This letter is in response to your request of August 11, 1994, requesting clarification of certain aspects of the 40 CFR 268 debris regulations, specifically that portion of the 40 CFR 268.2(g) definition of debris which states: "A mixture of debris that has not been treated to the standards provided by section 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris by volume, based on visual inspection."

In your letter you ask for clarification as to: 1) whether waste shipments containing mixtures of debris and non-debris materials are to be regulated as debris if the debris portion is present at 50 percent or greater, by volume based on visual inspection; and 2)-whether EPA has defined the term "primarily" as included in the definition of mixtures of debris and non debris materials other than the percentage given at the 57 FR 37235, footnote 42.

The EPA has not defined the term "primarily" as it is used in the definition of debris, nor has it been specifically defined elsewhere in the final rule, preamble or EPA background document. You are correct in noting that the only reference to a specific percentage, with respect to the term "primarily" is found on 57 FR 37235, footnote 42. As discussed on 57 FR 37224, the Agency has classified debris as any mixture of materials (debris, soil and/or

sludge), where the debris portion comprises the largest amount of material present by volume, based on visual inspection. As such, if a mixture is comprised of three components (debris, soil, and sludge); the mixture would be classified as debris if the volume of debris is greater than soil and greater than the volume of sludge. If however, the mixture is comprised of two components, debris and soil or debris and sludge as described in your question, the debris component would have to comprise at least 50 percent, by volume, based on visual inspection to be subject to the debris rule.

EPA would like to stress, however, that the determination of a mixture as primarily debris can not be achieved by deliberately mixing the debris with other wastes in order to change the treatment classification. Such mixing is impermissible dilution under section 268.3. In addition, in such situations where debris is used merely to dilute another prohibited waste, the mixture would remain subject to the most stringent treatment standard of any waste that is part of the mixture as is specified in section 268.41(b).

Finally, in response to your third question, a State's authorized program generally operates in lieu of the Federal RCRA requirements. However, for requirements based on HSWA authority (which includes the various Land Disposal Requirements), EPA is required to implement these authorities until the State has adopted them and received authorization from EPA.

When a State is not yet authorized for a HSWA-based authority, facilities are required to comply with the Federal HSWA requirement, as well as any applicable provisions of State law that address the same matter. States may adopt and implement authorities that are equivalent to or more stringent than the corresponding Federal laws. However, if State law is less stringent than Federal laws, the State authority would not apply.

If you should have any further questions regarding this matter, please contact Richard Kinch of my staff at 703-308-8434.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

cc: Richard Kinch