



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

June 13, 2013

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 5301P
Washington, DC 20460

RE: Request for regulatory interpretation relative to the management of spent baghouse filters from waste-to-energy (WTE) facilities

Dear Ms. Rudzinski:

I am writing on behalf of the New Hampshire Department of Environmental Services (NHDES) to request a formal regulatory interpretation relative to the management of spent baghouse filters from WTE facilities and the applicability of Federal Register/Vol. 60, No. 23/Friday, February 3, 1995/6666-6670, "Determination of Point at Which RCRA Subtitle C Jurisdiction Begins for Municipal Waste Combustion Ash at Waste-to-Energy Facilities" (hereinafter "60 FR 6666 2/3/1995"); and the US Environmental Protection Agency's March 22, 1995, "Revised Implementation Strategy for City of Chicago v. EDF Municipal Waste Combustion Ash Supreme Court Decision" (hereinafter "EPA Revised Ash Implementation Strategy 3/22/1995"). NHDES is requesting EPA Headquarters' interpretation as a result of hazardous waste compliance evaluation inspections conducted on May 3, 2012 at Wheelabrator Concord Co., L.P., in Concord, New Hampshire ("Wheelabrator - Concord") and May 17, 2012 at Wheelabrator Claremont Co., L.P., in Claremont, New Hampshire ("Wheelabrator - Claremont"). Both Wheelabrator facilities are WTE facilities permitted to burn municipal solid waste and non-hazardous industrial waste to produce energy.

During the facility inspections, NHDES inspectors learned that, prior to 2010, Wheelabrator had routinely removed the spent baghouse filters from the two New Hampshire facilities' air pollution control equipment and burned them with incoming municipal solid waste. Specifically, the spent baghouse filters were removed from service, double-bagged in contractor-style plastic bags within the baghouse, removed from the baghouse, hand-carried back into the combustion building, and then placed into the feed hopper to be burned in the boilers. In September, 2010 Wheelabrator confirmed that the spent baghouse filters leached 26 mg/L of cadmium and 16 mg/L of lead for Wheelabrator - Concord and 12 mg/L of cadmium for Wheelabrator - Claremont during Toxicity Characteristic Leaching Procedure analysis. Sometime thereafter, Wheelabrator began disposing of the spent baghouse filters off-site as a D006 and D008 hazardous waste.

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Based upon NHDES's understanding of the aforementioned guidance documents, EPA imposes hazardous waste regulation at the point ash leaves the "resource recovery facility;" defined as the "combustion building (including connected air pollution equipment)." The NHDES interpretation is that any ash exhibiting a hazardous waste characteristic must be managed in compliance with all applicable hazardous waste regulations upon exiting the combustion building (including connected air pollution control equipment). NHDES reviewed the EPA guidance and found that it does not specifically address spent baghouse filters. Accordingly, NHDES is requesting EPA's response to the following questions as they relate to the specific facilities and practices described above:

1. Does EPA consider Wheelabrator's spent baghouse filters to be fly ash subject to 60 FR 6666 2/3/1995 and the EPA Revised Ash Implementation Strategy 3/22/1995?
2. Where is the point-of-generation (*i.e.*, at what point would RCRA hazardous waste jurisdiction begin) for the double-bagged spent baghouse filters?
3. Would a RCRA hazardous waste permit be needed for the double-bagged spent baghouse filters to be burned in the facility's boiler?

Thank you in advance for your anticipated timely review of this request. Should you or your staff have any questions, please feel free to contact Michael J. Wimsatt, Director, Waste Management Division at (603) 271-1997 or John J. Duclos, Administrator, Hazardous Waste Management Bureau at (603) 271-1998.

Sincerely,



Thomas S. Burack
Commissioner

ec: Elizabeth Deabay, EPA Reg. I
Betsy Devlin, EPA-HQ, ORCR
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Pamela Hoyt-Denison, Administrator, WMP
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