PPC 9451.1996(06)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 1, 1996

Peter J. Wojdyla
Pima County Risk Management
32 N Stone, 3rd floor
Tucson, AZ 85701

Dear Mr. Wojdyla:

Thank you for your letter of September 18, 1995 requesting an interpretation of several questions regarding generator requirements and how they may apply to various on-site and off-site scenarios. While we are responding to your questions based on EPA's implementation of federal regulations, please be aware that the State of Arizona is authorized to implement its RCRA program in lieu of the federal regulations and should be consulted regarding the circumstances of a specific location. The state may have regulations that are more stringent than federal regulations, and these state requirements govern operation at these sites.

Below is a summary of the questions you asked followed by our interpretation. For your convenience we have attached copies of documents which relate to the issues you raise.

Question one

Your first question requests clarification of the definition of on-site to determine whether two structures in one complex owned by a single owner are considered separate generators under RCRA. You state in your letter that an office building and a factory are located on a single property and that the office building generates one kilogram of hazardous waste while the factory generates one thousand kilograms of hazardous waste. You ask whether the complex can be considered one generator or two. You also ask for clarification of the terms "installation", "facility", and "individual generation site" as they pertain to the definition of "on-site".

For the purposes of generator notification and obtaining EPA identification numbers, and assuming that the two structures you describe are on-site as defined at 40 CFR 260.10, one identification number is sufficient for the two structures. Also, the wastes generated on the contiguous property would be subject to the requirements for large quantity generators of hazardous wastes (see footnote 1). A manifest however, would have to be completed if waste must be shipped on roads or other right-of-ways to which the public has access.

There is no regulatory definition for the term "by site". However, at 40 CFR 260.10, EPA defines "on-site" as:

...the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross roads intersection, and access is by crossing as opposed to going along, the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

EPA also defines the term "individual generation site" as "...the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous wastes but is considered a single or individual generation site if the site or property is contiguous." (40 CFR 260.10) The property you describe would meet the definition of individual generation site if it is contiguous and would be "on-site" for the purposes of manifesting if the two structures were either a) not divided by a public right-of-way, or b) the public right-of-way can be crossed directly without traveling along it.

If the two structures were owned by different people, then under federal regulations one identification number would be needed for each structure even if the regulated activity is taking place on a contiguous piece of property. However, please check with your state for specific guidance on the issuance of identification numbers for the scenarios you provide.

The definition of the terms "installation" and "facility" are not directly relevant to your specific question.

"Installation" is not defined in the RCRA regulations at 40 CFR 260.10. It is only defined within the instructions to the Notification of Regulated Waste Activity Form, (EPA form 8700-12). Since the form is used by all persons requiring an EPA identification number, the term installation is meant to refer in general terms to all users of identification numbers.

"Facility", as defined in 40 CFR 260.10, refers to treatment, storage, and disposal facilities. The term refers, for permitting purposes, to the area where hazardous waste treatment, storage, and disposal activities occur and/or the waste management area that may be made up of one or more waste management units and also defines the area subject to corrective action. Therefore the definition of facility is not of direct relevance in the context of the description you provide since your question does not concern waste management sites subject to permitting requirements, but rather generation sites.

Question two

You state in your letter that Pima County has several different individual generation sites that are divided by roads which are owned by the County. You ask whether consolidation of several locations currently having different identification numbers would be of any significance.

Consolidation of two or more locations having different EPA identification numbers may cause several changes in the notification and manifesting process. For example, a change in the County's regulatory classification as a small or large quantity generator could result from the consolidation of several locations having different identification numbers.

Should the County (the generator) decide to consolidate several locations into one site the following conditions must be met: 1. The County must control the roads and public access must be restricted. If the generator does not control the road, a manifest must be completed for shipments that must travel off-site, (e.g., along a road) to the other property belonging to the generator. 2. At a location where the generator controls the right-of-ways that divide the property and restricts access, a manifest is not required to ship wastes to the different individual generation sites. However, although there is no

specific prohibition in the regulations against a generator maintaining multiple I.D. numbers for an individual generation site, the Agency expects an individual generation site to have only one I.D. number. A state may approve of the use of more than one I.D. number in special cases. 3. The proper state or Regional office must be notified of the change.

Also, please be aware that the Agency has proposed to change the definition of"on-site" to include properties that, although contiguous, are divided by a public right-of way. (See 60 FR 56468, November 8, 1995)

Question three

You ask whether shipments of hazardous wastes between two properties under the same ownership located at opposite corners of an intersection would be considered "on-site".

The Agency has stated in a November 4, 1994, letter from Michael Shapiro to Congressman Tim Johnson, "If the entry and exit between two parts of a campus [at a university] are directly across from each other, or across the junction of two crossroads, they are considered geographically contiguous" and would meet the definition of"on-site". Two properties under the same ownership whose entrances are located cater-cornered to each other would meet the definition of"on-site".

Question four

You ask whether waste from a conditionally exempt small quantity generator could be shipped for centralized handling to a site generating large quantities of wastes without obtaining a permit for storage or treatment of hazardous waste.

The Agency is in the process of reviewing whether waste from a conditionally exempt small quantity generator loses its exemption if taken to an intermediate location not identified at 40 CFR 261.5(g)(3) for purposes such as consolidation and storage prior to delivery to its final destination. We therefore cannot provide an interpretation on this question until a determination has been made.

Question five

You ask to whom must a large quantity generator send waste?

Large quantity generators and small quantity generators shipping waste off-site must prepare a manifest and transport the waste to a facility designated on the manifest in accordance with 40 CFR 262.20(b). EPA defines the term "designated facility" to mean

...a hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a State authorized in accordance with Part 271 of this chapter, or (3) is regulated under section 261.6(c)(2) or Subpart F of part 266 of this chapter, and (4) that has been designated on the manifest by the generator pursuant to section 260.20[sic (262.20)]. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

This definition includes only limited exceptions for facilities other than permitted or interim status TSDFs. Therefore, a large quantity generator or small quantity generator could manifest and transport hazardous waste to facilities other than permitted TSDFs provided that the facility is appropriately designated on the manifest and meets the definition of a "designated facility". (Small quantity generators possessing a reclamation-agreement pursuant to 40 CFR 262.20(e) are exempted from certain manifesting requirements as you mentioned in your letter.)

Question six

You ask whether a permit must be obtained if the owner of several small generation sites would like to utilize a centralized handling operation for packaging, transport, etc., and whether all requirements at Part 263 apply.

If a generator generates waste in quantities over 100 kilograms and ships the waste to a location other than one that is on-site as defined at 40 CFR 260.10, a manifest is required for these shipments, and the regulations at Part 263 apply.

However, waste in transportation (e.g., manifested off-site) may be consolidated at transfer facilities defined at 40 CFR 260.10 as "...any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous wastes are held during the normal course of transportation".

Under certain specified conditions, the regulations allow transporters to store shipments of hazardous waste at transfer facilities without obtaining a permit or interim status. The regulations state that:

> A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of section 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 264, 265, 268 and 270 of this chapter with respect to the storage of those wastes (40 CFR 262.12).

If the county designated an area as a transfer facility and met the conditions identified, consolidation would be allowable at that location. In order for the transfer facility to be excluded from permitting requirements, the waste must be stored during the normal course of transportation (e.g., treatment, storage, and disposal facilities designated on the manifest cannot qualify as transfer facilities.) Waste at such transfer facilities may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or rerouting. (See December 31, 1980 45 FR 86966)

Question seven

The following clarifies how a facility may respond to a location where hazardous wastes have been dumped illegally.

Persons who generate hazardous waste as a result of a discharge may temporarily store those wastes without a permit if they comply with the requirements for 90 day accumulation described on 40 CFR 262.34.

The Agency defines the term "discharge" or hazardous waste discharge" to mean "the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of

hazardous waste into or on any land or water (40 CFR 260.10).

The regulations at 40 CFR 270.1(c)(3) exempt only those management activities performed to provide an immediate response for discharges of hazardous waste from the permitting requirements.

> (I) A person is not required to obtain a RCRA permit for treatment or containment activities taken during immediate response to any of the following situations:
> (A) discharge of a hazardous waste;
> (B) An imminent and substantial threat of a discharge of hazardous waste; A discharge of a material which, when discharged, becomes a hazardous waste.
> (ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

Additional provisions exempting immediate response activities are found at 40 CFR 264.1(g)(8) and 265.1(c)(ll). To qualify for the exemption the treatment or containment activity must be for the initial, immediate response to the discharge. Once the immediate threat passes, all applicable RCRA standards apply including the accumulation provisions described at 40 CFR 262.34. EPA explains:

> The exemption concerns only treatment and storage activities; it does not relieve anyone of complying with any requirements for the disposal of hazardous waste. In addition, the exemption applies only during immediate response; all hazardous waste management activities thereafter are fully subject to RCRA regulations (January 19, 1983; 48 FR 2508, 2509).

Additionally, after the initial response has ended, an emergency permit may be available for other emergency activities.

We hope we have clarified the issues you raised. Again, we strongly encourage you to check with the state of Arizona because as an authorized state, Arizona may have regulations or interpretations that differ from, or are more stringent than the federal requirements.

Please direct any questions about the interpretations in this letter to Ann Codrington, of the Generation and Recycling Branch at 202-260-8551.

Sincerely yours,

Michael Shapiro, Director
Office Solid Waste

Enclosures

cc: Bill Hamele
Ethel DeMarr, Arizona DEQ

1 However, if acute hazardous waste is generated in quantities less than one kilogram, then this waste may be counted and managed separately from non-acute hazardous waste. (See 40 CFR 261.3(e) and (f)). For example, a generator of one kilogram or less of acute hazardous waste and l000 kilograms of non-acute hazardous waste may manage the acute hazardous waste according to the provisions for conditionally exempt generators while the non-acute hazardous waste would be subject to requirements found at 40 CFR 262.34(d) for small quantity generators.

Attachment

PIMA COUNTY
RISK MANAGEMENT
32 N STONE, 3RD FLOOR
TUCSON, AZ 85701
(602) 740-5295

September 18, 1995

Michael Shapiro
Director, Office of Solid Waste
United States Environmental Protection Agency
401 M Street Southwest
Washington, District of Columbia 20460

Re: Request for Written Interpretations

Dear Mr. Shapiro:

I am the Environmental Loss Control Officer for Pima County Risk Management in Tucson, Arizona. Some of my duties include providing assistance for our various departments in understanding federal regulations. I am in the process of performing a form of "desk audit" in order to assist our operating units to comply with "RCRA" requirements in a consistent manner. I find that some of the definitions and guidance given are subject to interpretation; I need to clarify some of these issues before I attempt to provide direction to some of our operations which get involved with hazardous waste and therefore RCRA compliance. In the past, I have approached the Region for such interpretations, and when I asked for a written response, my questions were forwarded to the "central office". In two cases, the Region and the "central office" provided contradictory responses; for this reason, I am setting forth my questions in writing and asking for a written answer, clarification, interpretation, and/or response to each.

I shall set forth each question or situation for which I am seeking guidance:

1. In 40 CFR 260.10, "Generator means any person, by site,

whose act or process produces hazardous waste ....". What does "by site" mean? EPA Form 8700-12 utilizes the term "Installation" for notification purposes. It has also been suggested that "Facility", as defined in 40 CFR 260.10, can be used to define "Installation" for generator notification purposes in as much as a generator can be expected to store hazardous waste for a time, no matter how short. Reflecting on these various generator location descriptors, I am unsure as to the extent of a generator for regulatory purposes. For example, if a complex, single ownership, has two separate structures, one of which is an office building and the other a factory, and the factory generates one thousand kilograms (1,000 kg) of hazardous waste per calendar month and the office wastes one kilogram (1 kg) of spent flammable toner per month, are there two (2) generators, one of which is conditionally exempt, or just one (1) (with the office waste subject to full large quantity generator regulation)? The term "by site" would seem to suggest there are 2 generators, whereas if the "facility" definition is used, 1 generator. The term "Installation" would appear to be able to cover either interpretation. What if they shared the same structure? Also do the definitions of "On-site" or "Individual generation site" have any application in answering/interpreting the proffered situation?

2. As a political subdivision, Pima County owns many road "rights-of-way" and could, theoretically, conjoin its various locations. Is this of any significance under "RCRA" regulations?

3. If two properties with the same ownership are located "kitty-corner" across an intersection and access can be had at the opposing corners, would they be covered by the term "On-site"?

4. If there are two (2) "generators", one of which is a large quantity generator (LQG) and the other is a "conditionally exempt small quantity generator" (CESQG), which are owned and operated by the same entity but separated geographically, it would appear that the CESQG waste cannot be transported to the other generation site for handling by the LQG (without it being a permitted TSDF) for the purpose of combining it with its own wastes in order to see that it

is appropriately disposed. Is this correct? (As a public entity, the county attempts to keep its hazardous wastes out of local landfills and see that it is appropriately disposed or destroyed.)

5. It appears that an LQG must manifest and transport his hazardous waste(s) to nothing other than a permitted TSDF, unless it is being handled "On-site". Is this correct? And, except for contractual reclamation of hazardous waste, it appears that the same is also true of small quantity generators (SQG). Is this also correct?

6. Pima County is a large county and has many operations/facilities located throughout it. In order to transport hazardous wastes to a centralized handling operation for packaging, transport, etc., must that operation acquire a TSDF permit before being utilized? Also, do all the manifesting and transportation requirements apply to moving the wastes to such a location?

7. At present, when there is a "wildcat dump" of what appears to be a hazardous material within our "right-of-way" or on County property, we try to appropriately mitigate the situation; this usually entails the containerization of the contaminant and affected material(s) and transport to one of our maintenance yards for holding until an appropriate disposition can be made. If the material is a hazardous waste, and we are knowledgeable of this fact, can this be done in other than an emergency situation?

Please provlde me with written responses to the above. If guideline or program memoranda exist which can assist in addressing the above, I would be grateful if they could also be provided.

Thank you for your attention and consideration. If you have any questions concerning this letter, please call me at (520) 740-4001.

Very truly yours,

Peter J. Wojdyla, P.E.
Environmental Loss Control Officer

xc: Bob Healey, Director
Chris Straub, Deputy County Attorney
Becky Pearson, Public Works