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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 26 1999

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Stephen Hammond, Director
Division of Solid & Hazardous Materials
New York State Department of Environmental
Conservation
50 Wolf Road, Room 488
Albany, New York 12233-7250

Dear Mr. Hammond:

Thank you for your letter of November 19, 1998 concerning whether several processes used to decharacterize D018 coal tar wastes at manufactured gas plant (MGP) sites in New York State are permissible under the current Land Disposal Restrictions (LDR) program. You present two basic scenarios that involve various mixing processes, each of which raise a number of considerations under current federal regulations and policies. We are pleased to provide you with an explanation of how our federal LDR regulations and policies might pertain. However, as you are aware, authorized states are granted the authority and responsibility to make these types of regulatory interpretations and policies themselves so long as the outcome is no less stringent than the federal program would otherwise be. Thus, New York State is ultimately the appropriate regulatory authority for making any final determination on a site-specific basis.

Your first question is whether it is acceptable to mix D018 MGP waste, or soil containing the same, with carbon and/coal fines provided that the material is subsequently permanently treated in a thermal destruction device. Under federal law, we would view this practice as permissible assuming that this form of pre-treatment enhances the treatment of the material in a combustion unit (e.g., utility boiler). Mixing with carbon and/or coal fines effects a physical change to the waste stream that makes the waste more amenable to combustion, a form of treatment that removes and destroys the hazardous organic constituents. See the enclosed memorandum from Sylvia Lowrance, OSW Director, to EPA Regional Waste Management Division Directors on the Remediation of Historic Manufactured Gas Plant Sites, dated April 26, 1993.

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Your second question is whether it is acceptable to add soil, either in the area of contamination or in tanks/containers, to D018 MGP waste or soil containing the same. The soil would decharacterize the material and allow the mixed material to be transported to an off-site, non-RCRA C facility for subsequent thermal destruction complying with LDR treatment standards. In addressing this question, the specifics of each situation are key to making any final determination on the acceptability and appropriateness of these practices. Again, the authorized state is in the best position to make these judgments, particularly in a remedial context.

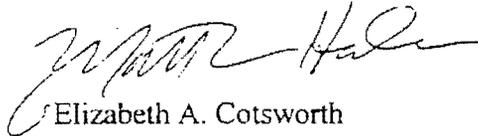
From the federal perspective, once a hazardous, contaminated soil has been "generated" and becomes subject to LDR treatment standards, dilution of that soil solely as a substitute for adequate treatment to achieve compliance with LDR treatment standards is considered impermissible dilution, and is prohibited under 40 CFR §268.3. In addition, under federal regulations, D018 MGP waste may not be deliberately mixed with soil solely to change its treatment classification, that is from a waste to a contaminated soil. If this were done, the resulting material would continue to be subject to the LDR standards for the original hazardous waste classification of D018.

However, various aspects of soil mixing at remediation sites have been recognized by the Agency as allowable under our federal program. For example, if the mixing occurs through the normal consolidation of contaminated soil from various portions of a site that typically occurs during the course of remedial activities or in the course of normal earthmoving and grading activities, the Agency does not consider this to be intentional mixing of soil with non-hazardous soil for the purposes of evading LDR treatment standards. Therefore, this is not viewed by us as a form of impermissible dilution. See 63 FR 28605 and 28621 (May 26, 1998). Indeed, if a contaminated soil is consolidated within an area of contamination before it is removed from the land (i.e., generated), the determination as to whether the soil exhibits a characteristic of hazardous waste may be made after such consolidation. If the soil is determined not to be hazardous when removed, neither Subtitle C nor the land disposal restriction requirements would apply. This point is made in my August 21, 1998 letter to William Weissman, which you referenced in your letter.

The Agency also recognizes that some situations may require soil mixing, as part of a pre-treatment process, to facilitate and ensure proper operation of the final treatment technology to meet the LDR treatment standards. For example, addition of less contaminated soil may be needed to adjust the contaminated soil BTU value, water content, or other properties to facilitate treatment. These adjustments would be for meeting the energy or other technical requirements of the treatment unit to ensure its proper operation. The Agency views this type of pre-treatment step as allowable provided the added reagents or other materials produce chemical or physical changes and do not (1) merely dilute the hazardous constituents into a larger volume of waste so as to lower the constituent concentration or (2) release excessive amounts of hazardous constituents to the air. If the mixing or other pre-treatment is necessary to facilitate proper treatment in meeting the LDR standards, then dilution is permissible. See 51 FR 40592 (November 7, 1986) and 53 FR 30911 (August 16, 1988).

I hope that this provides you with sufficient information to proceed with your site-specific decision making regarding remediation of MGP waste sites in New York State. As you know, we are encouraging these clean-ups to be done as quickly and effectively as possible, and we appreciate your efforts in this important environmental protection effort. If you have any further questions, please feel free to contact me directly at (703) 308-8895, or your staff may contact Rita Chow of our Waste Treatment Branch at (703) 308-6158.

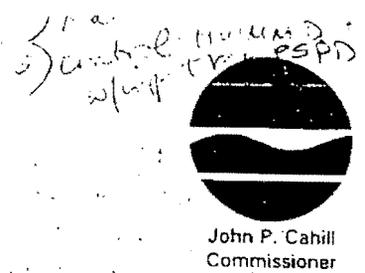
Sincerely,



Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste

Enclosure (1)

New York State Department of Environmental Conservation
Division of Solid and Hazardous Materials, Room 488
50 Wolf Road, Albany, New York 12233-7250
Phone: (518) 457-6934 FAX: (518) 457-0629



NOV 19 1998

Ms. Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste (5301-W)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

Dear Ms. Cotsworth:

Re: LDRs and Decharacterizing MGP Coal Tar Wastes

Recently, this Department received copies of the August 21, 1998 letter from your office to Piper & Marbury, L.L.P., concerning the effects the Phase IV LDR Supplemental Rule might have on the cleanup of manufactured gas plant sites. Your letter was in response to a May 11, 1998 letter requesting guidance on this subject and submitted on behalf of the Utility Solid Waste Activities Group.

Regarding processes for decharacterizing coal tar wastes, further EPA guidance is needed. In New York State, for example, the elimination of the toxicity characteristic (D018) has been accomplished by the addition of coal fines and activated carbon to reduce the leachability of the contaminated media. Sufficient carbon and coal fines are added such that the media no longer exhibits a characteristic. This admixture binds but does not reduce or destroy the principal or underlying hazardous constituents, virtually all of which are organics. This treatment has occurred both within the excavation and in a container adjacent to the excavation. In New York State, the decharacterized material is then transported to an approved combustion unit (i.e., utility boiler) where the organics are destroyed thermally after the material is combined with coal.

1. Is it acceptable under the LDRs to decharacterize D018 MGP waste, or soil containing same, by treatment with carbon and/or coal fines, provided the organic component of the decharacterized material is subsequently permanently treated in a thermal destruction device?

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DUE- 12/7/98

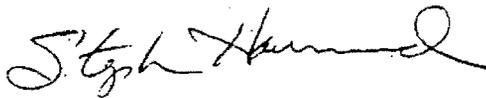
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2. Is it acceptable to add soil, either in the area of contamination or in tanks/containers, to D018 MGP waste or soil containing same, in order (a) to decharacterize the waste and (b) to allow the mixed material to be transported to an off-site, non-RCRA "C" facility for thermal destruction? Is such soil mixing impermissible dilution?

Given that we are presently faced with several important permitting and remediation decisions concerning MGP wastes, we urgently need EPA's opinion relative to whether these methods are acceptable under the LDR's.

If you have any questions, you may contact this office at (518) 457-6934 or have your staff call Lawrence Nadler, of my staff, at (518) 485-8988.

Sincerely,



Stephen Hammond, P.E.

Director

Division of Solid & Hazardous Materials

cc: K. Callahan, EPA Region II



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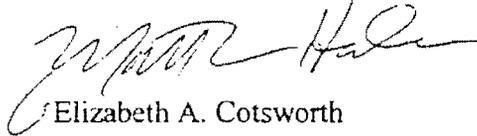
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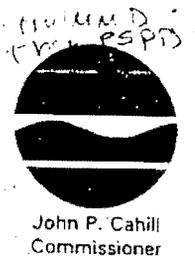
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