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TITLE: Effect on Authorized State of Recent Addition of a Waste Stream
to 40 CFR 261.31

APPROVAL DATE: 4-16-84

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Regulations: 40 CFR 261.31, 271.21

Subject: Effect on Authorized State of Recent Addition of a Waste Stream
 to 40 CFR 261.31

Addressee: Thomas P. Eichler, Regional Administrator, Region III

Originator: Lee M. Thomas, Assistant Administrator

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Summary:

The promulgation of Federal regulations adding wastes to the list contained in 40 CFR 261.31 broadens the universe of wastes subject to regulations under RCRA and affects regulation development in the States (§271.21). Within a year of the date EPA promulgates new regulations (or two years, if the State must amend or enact a statute in order to make the required revision), the State is required to: (1) establish equivalent control over these wastes, and (2) notify the Regional Administrator in writing that the controls are in effect.

The State is required to submit documentation (§271.21) which EPA deems necessary to assess and approve the State program revision. Neither the State nor EPA is required to provide for public comment or hearing on the impact of this revision on the State's authorization.

APR 16 1984

MEMORANDUM

SUBJECT: Recent Addition of a Waste Stream to 40 CFR 261.31
/s/ Jack W. McGrath
FROM: Lee M. Thomas
Assistant Administrator
TO: Thomas P. Eichler
Regional Administrator, Region III (3RA00)

At 49 FR 5308 (February 10, 1984), the Agency published a regulation which lists a generic group of wastes generated during the manufacture of chlorinated aliphatic hydrocarbons. This waste listing is additive to those wastes listed in 40 CFR 261.31 (i.e., waste from non-specific sources) and, therefore, broadens the universe of waste subject to regulation under the Federal hazardous waste management program.

As provided in 40 CFR 271.21, this promulgation affects regulation development in the States. This is of special concern in your Region because Delaware has final authorization. By February 10, 1985, (or by February 10, 1986, if the State must amend or enact a statute in order to make the required revision) Delaware is required to: (1) establish equivalent control over these wastes, and (2) notify the Regional Administrator in writing that the controls are in effect.

Especially since such of the chlorinated aliphatic hydrocarbon waste is already listed in 40 CFR 261.32, the Agency does not consider State program modifications in response to this generic listing to be "substantial" revisions under 40 CFR 271.21(b). For comparison, 40 CFR 261.32 regulates approximately 1,509,000 metric tons nationally of chlorinated aliphatic hydrocarbons, while the new generic listing will add only approximately 75,000 metric tons nationally.

Under section 271.21, the State is required to submit documentation which EPA deems necessary to assess and approve the State program revision. In this case I suggest that the State Director need only submit a copy of the State legal authority (e.g., amended statute and/or regulations) which establishes control over these wastes and specify the effective date. You

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may approve Delaware's program revision by return letter to the State Director without Headquarters' concurrence. Under the provisions of §271.21, neither the State nor EPA is required to provide for public comment or hearing on the impact of this revision on the State's authorization. We would appreciate receiving a copy of the approval letter and revision documents. The letter and documents should also be filed in the Region's "Authorization File" (see page 1.4-14 of the Final Authorization Guidance Manual).

Should your staff have further questions on the applicability of 40 CFR 271.21 and the aliphatic hydrocarbons rule, they should feel free to call Truett DeGera of the Office of Solid Waste at 8-382-2210. (Copies of the approval letter and revision documents discussed above should be forwarded to him.)

cc: Hazardous Waste Division Directors, Regions I-X
John Skinner
Bruce Weddle
State Programs Branch

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