



DIRECTIVE NUMBER: 9560.12-85

TITLE: Clarification of Points Raised at an EPA Symposium
on RCRA and HSWA

APPROVAL DATE: 07/10/85

EFFECTIVE DATE: 07/10/85

ORIGINATING OFFICE: OSW

☒ **FINAL**

☐ **DRAFT**

STATUS

A- Pending OMB approval
B- Pending AA-OSWER approval
C- For review &/or comment
D- In development or circulating

REFERENCE (other documents): headquarters

OSWER OSWER OSWER
/E DIRECTIVE DIRECTIVE D

Key Words: HSWA, Incineration,

Regulations:

Subject: Clarification of Points Raised at an EPA Symposium on RCRA and HSWA

Addressee: Larry Penberthy, Penberthy Electromelt International, Inc.,
631 South 96th Street, Seattle, Washington 98101

Originator: John H. Skinner, Director, Office of solid Waste

Source Doc: #9560.12(85)

Date: 7-10-85

Summary:

The letter clarifies the following question raised at a recent EPA Symposium on RCRA and HSWA:

- RCRA does not regulate production process changes. It regulates treatment of waste streams. therefore, the use of an electric glass furnace to detoxify hazardous waste on a manufacturer's site is subject to RCRA and will require an incinerator permit.



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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Larry Penberthy
Penberthy Electromelt International, Inc.
631 South 96th Street
Seattle, Washington 98101

Dear Mr. Penberthy:

Thank you for your letter of May 6, 1985, which requests clarification on several points I made at the recent EPA Symposium regarding the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA).

First, the Environmental Protection Agency (EPA) will not exercise jurisdiction over in-plant production process modifications that result in less waste or less toxic waste. Modifications to the product manufacturing process are not within the purview of RCRA. A device that treats a waste stream in order to detoxify it or reduce its volume, however, is clearly within the authority of RCRA. In other words, production process changes are not regulated under RCRA; treatment of a waste stream is regulated under RCRA.

Secondly, let me address your device specifically. I understand that you have had numerous discussions with David Sussman of my staff and individuals in our Office of Research and Development. It is also my understanding that they have explained to you that we consider your device to be an incinerator. If it burns hazardous waste, it is subject to the RCRA incinerator standards. The use of your electric glass furnace to detoxify hazardous waste on a manufacturer's site is subject to RCRA and will require a permit as an incinerator. The permitting process is rigorous but protection of the public's health from improper hazardous waste management warrants this care.

Let me also address the other points in your letter. The Hazardous and Solid Waste Amendments establish as national policy the minimization of hazardous waste. The legislation requires waste minimization considerations to be addressed in RCRA transport manifests, generator reports, and permits. In addition, the Amendments require that a "Report to Congress" be submitted by EPA by October 1, 1986, assessing the feasibility and desirability of establishing waste minimization regulations.

Senate Report No. 284, 98th Congress, 1st Session 66 (1983), articulates Congress' intent with regard to the waste minimization requirements in the HSWA. As this legislative history states, both minimization requirements for the manifest and biennial report refer to a certification by the generator that a program is in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined by the generator to be economically practicable. While the requirement to make this certification is mandatory, the determination of what waste minimization practices are economically practicable are to be made by the generator. The legislative history makes clear that Congress' objective in enacting the requirement of waste minimization certification is to encourage generators of hazardous waste to voluntarily reduce the quantity and toxicity of waste generated. Thus, from an enforcement perspective, the Agency will focus efforts on ensuring that generators have implemented waste minimization programs and are complying with the certification requirements.

With the passage of the HSWA, EPA will shortly be implementing a program to prohibit certain hazardous wastes from being land disposed. These restrictions from land disposal are designed to protect human health and the environment and should provide incentives for the development of alternative waste treatment technologies, both on-site and off-site. In addition, EPA is currently conducting a series of technical studies that will evaluate the availability of alternative treatment capacity and what additional incentives or disincentives could be implemented to insure that adequate treatment capacity will be available for generated wastes. I encourage you to suggest approaches that might be beneficial to insure that treatment capacity will continue to be available to industry. Please contact Penelope Hansen, Chief of the Waste Treatment Branch at (202) 382-7917, with any ideas you might have.

As you mentioned, the HSWA also requires that all interim status landfills and surface impoundments submit a Part B permit application to the EPA and certify compliance with the groundwater monitoring and financial responsibility provisions (subsections of Part 265) by November 8, 1985. Unfortunately, the Agency cannot totally predict the effect these provisions will have on the regulated community. Although these measures may result in the closure of a significant number of landfills and surface impoundments, the Agency and the regulatory community will continue to work within the statutory constraints in order to protect human health and the environment. In the case of extensive landfill and surface impoundment closures, there will be a substantial decrease in capacity which will be considered in the effective dates imposed by hazardous waste land disposal restrictions.

Thank you for your interest in the RCRA hazardous waste program. If you should have any further questions, please feel free to contact the appropriate members of my staff.

Sincerely,

JS) M. Cook for

John H. Skinner
Director
Office of Solid Waste (WH-562)