

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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March 17, 1999

Ms. Jennifer Drury Buzecky
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111 E. Wisconsin Ave., Suite 2100
Milwaukee, WI 53202-4894

Subject: Waste Determination
Praefke Brake & Supply Company, Inc.
FID #:267004430, HW/NOTIF

Dear Ms. Drury Buzecky:

Thank you for the additional information in your March 11, 1999 letter about pentachlorophenol ("PCP") contamination at the Former EIS Brake Parks Property located at 133 Oak Street, West Bend, Wisconsin. I reviewed it and your February 5, 1999 letter to Sandy Miller.

In general, the regulatory status of contaminated remediation wastes is a site-specific determination, based on the waste determination that is to be made by the generator of the remediation wastes. Of course, it may be possible to remediate many contaminated sites without generating significant amounts of contaminated soils or groundwater, but where excavation or extraction are used to clean up the site, the generator must apply knowledge to determine whether these solid wastes are hazardous wastes.

As you know, this requires a thorough, good faith inquiry into the nature and origin of the contamination. For example, in the case of a dry cleaning site which has tetrachloroethylene ("perc") contamination, if the generator of remediation wastes cannot reasonably conclude that the source of perc-contamination was a release of unused perc or a release of F002, then it would be reasonable to manage the remediation wastes as hazardous wastes only to the extent that they met one or more of the characteristics of hazardous waste (e.g., TCLP).

With respect to PCP wastes, however, the process is more clear. By way of background, when we adopted our F027 definition (effective April 1, 1988), the Natural Resources Board was concerned about dioxins in PCP; the widespread use of PCP in Wisconsin; and a loophole in the Federal definition of F027 that omits discarded used formulations. For these reasons, we broadened the federal language to add discarded used PCP formulations to our definition. (Prior to this rule change, all PCP wastes were regulated by the Department as U242 listed hazardous wastes.)

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With respect to the issue of actively managing PCP-contaminated soils as a solid waste or as a special waste, it is clear that Wisconsin's hazardous waste regulations require that the soil be handled as an F027 listed hazardous waste in Wisconsin. Section NR 605.09(2)(a), Table II, Wis. Adm. Code, defines an F027 hazardous waste number as a discarded, used or unused formulation containing pentachlorophenol. The pentachlorophenol contaminated soil, under the mixture rule found in s. NR 605.04(2)(b), Wis. Adm. Code, remains a hazardous waste. It makes no difference how PCP was discarded, used or unused at a facility because PCP is not naturally occurring in the environment and because our State's definition encompasses *all* formulations of PCP.

I appreciate the importance of this issue to you and your client and please be assured that it is our intent to accommodate the concerns of our customers in a manner that is consistent with applicable law. While I do not advocate mis-management of hazardous wastes, I believe it is important to explain that the Wisconsin definition of an F027 hazardous waste is more stringent than the federal definition in 40 CFR 261.31. The USEPA definition of F027 only includes unused formulations of pentachlorophenol. What this all boils down to is that PCP-contaminated soils from the Former EIS Brake Parts Property are considered a hazardous waste in Wisconsin. Therefore, the PCP-contaminated soils which are excavated from the site would have to be shipped as a hazardous waste with a Wisconsin licensed hazardous waste transporter by means of a Wisconsin hazardous waste manifest. If the receiving State's definition of an F027 hazardous waste is equivalent to the federal definition (such as Minnesota), then the soils would not be a hazardous waste (assuming they are not an D037 characteristic hazardous waste also) in the receiving State and the soils could be disposed of as a solid waste, without the signing of the hazardous waste manifest. If you choose to follow this course of action, the final step would be submission of an exception report following the requirements found in s. NR 615.11(2)(b), Wis. Adm. Code.

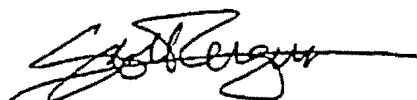
Recent guidance was placed into effect for handling hazardous waste remediation issues (May 20, 1997 which was signed by Paul Didier and Mark Giesfeldt). In discussing general hazardous waste requirements applicable to all cleanups, the guidance reaffirms the Department's current policy that if the contaminant is a listed hazardous waste that was either accidentally or intentionally discharged, then any excavated soil or extracted groundwater that is contaminated must be managed as a hazardous waste due to the "contained in" provisions of s. NR 605.04(1)(b)4., Wis. Adm. Code. Under current rules and guidance, this principle continues to apply as long as the hazardous waste constituents are present above soil standards established under ch. NR 720, Wis. Adm. Code, or groundwater standards contained in ch. NR 140, Wis. Adm. Code.

In summary, Wisconsin's definition of F027 hazardous wastes is more stringent than the federal definition. Our definition also includes both unused and used formulations of pentachlorophenol and therefore, under the mixture rule, PCP-contaminated soil from your site is considered a listed hazardous waste. Nonetheless, assuming that the PCP-contaminated soils are solely F027 and not also a characteristic hazardous waste, the soils would no longer be considered as hazardous waste if a receiving State's definition mirrored the federal definition, provided certain provisions of our rules are followed.

I believe that our position in this case is consistent with the Department's guidance and rules and "consistency" is a critical issue for the Department under its new reorganization. Finally, because the Praefke Brake remediation is being performed under the NR 700 series of remediation rules and pentachlorophenol has been released to the environment, it is reasonable to also consider potential contamination and remediation of dioxins in this situation. Based on the material which was used in this review, it is not clear to me if the potential of dioxins being released to the environment had been investigated. Therefore, I encourage your client to work with the Department's Mike Zillmer in determining if an analysis for dioxin contamination is necessary for the site.

I hope that this letter clarifies the regulatory status of PCP-contaminated remediation wastes which are actively managed. Please call me at (414)229-0849 if you have any questions.

Sincerely,



Scott J. Ferguson, Hydrogeologist
Waste Management Program

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