



EX. HAZARDOUS MATERIALS DISPOSAL
PROCEDURES
ENTRUSTED

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



AUG 11 1988

Mr. Phillip C. McGuire
Associate Director, Law Enforcement
Department of the Treasury
Bureau of Alcohol, Tobacco, and Firearms
Washington, DC 20226

Dear Mr. McGuire:

This letter is in response to the issues raised recently by the Bureau of Alcohol, Tobacco, and Firearms (BATF) with respect to compliance with the Resource Conservation and Recovery Act (RCRA). Specifically, your staff has requested EPA guidance for two situations: (1) when a BATF agent is called to a location where there is an immediate safety threat, and (2) when explosives or explosive related materials that do not present an immediate safety threat are stored in BATF secured lockers for analysis and possible use in law enforcement proceedings.

The guidance given below for these two situations is based on the federal RCRA program as administered by EPA pursuant to 40 CFR Parts 260-271. In authorized States (which are 43 in number), EPA has delegated the hazardous waste program to the States pursuant to statutory provisions in RCRA. Although each authorized State program must be consistent with and at least as stringent as the Federal program, a State is free to be more stringent. Hence, any guidance given below must be followed up by a BATF analysis of any different provisions that an authorized State may have chosen to enact.

1. Explosives That Present an Immediate Safety Threat

According to our discussions, this scenario involves identification by a trained BATF agent of explosives that create an immediate safety threat, removal of those explosives from the original location to a safe area (often a local law enforcement agency's bomb disposal site or a nearby military installation), and immediate destruction, normally by detonation or open burning.

Under current RCRA regulations (40 CFR Sections 264.1(g)(8), 265.1(e)(1)(i), and 270.1(c)(3)), all activities taken in

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Under 40 CFR Section 262.11, generators of solid waste must determine if their wastes are hazardous. "Generator" is defined by person and by site. Thus, for example, each of your storage locker areas would be a generator site. Except for generators who meet the conditional exemption in Section 261.5, generators of hazardous waste are subject to all applicable Sections of Part 262. [In the case where a BATF field office generates less than 100 kilograms (kg) per month, Section 261.5 allows the disposal of the explosive waste at a permitted or interim status hazardous waste facility, or at a facility permitted, licensed or registered by a State to manage municipal or industrial solid waste.] Among other requirements, generators of hazardous waste must have EPA ID numbers (40 CFR Section 262.12). Each BATF field office must apply for an EPA ID number for each site at which hazardous waste is generated in excess of 100 kilograms per calendar month. This is a simple process involving the submittal of one short form for each generator site. These forms can be obtained from EPA Regional Offices or we at Headquarters will be glad to supply them to you.

We note that, under 40 CFR Section 262.34, hazardous waste may be stored in tanks or containers without a permit for up to 90 days. So, even after a material becomes a waste (i.e., an intent to discard is present), the generator has 90 days to make necessary arrangements for transportation, treatment, or disposal, according to applicable regulations in 40 CFR Section 262.34, and Parts 264, 265, 266, 268, and 270. As a general matter, we believe the Bureau should consider a policy that would require removal of explosive material stored in BATF lockers within 90 days from the time the material becomes a waste. Otherwise, RCRA storage permits may be required.

BATF may transport hazardous waste explosives themselves, or may hire a transporter. In either case, the transportation is subject to the requirements in 40 CFR Parts 262 and 263. Transportation of hazardous waste off the site of generation is subject to manifest requirements (40 CFR Section 262.20). The generator must designate on the manifest a facility that has the proper RCRA permit or interim status to receive the waste.

In general, destruction of explosive waste by open detonation/open burning is thermal treatment that must be conducted at a RCRA interim status or permitted facility in compliance with Parts 264, 265, and 270. In the event that the destruction is being done under court order or under directions from the U.S. Attorney's office, RCRA is not automatically waived. The Bureau should therefore locate facilities nearest to its field offices that have the appropriate RCRA permits or