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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

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February 2, 1994

Ms. Kris Backes
Association of Washington Business
Post Office Box 658
Olympia, WA 98507-0658



Dear Ms. Backes:

Re: Corrective Action Information Requirements in Permits

Thank you for your and Nancy Darling's inquiry regarding hazardous waste permit information submittal requirements for corrective action. As I understand, your specific concerns fall into two areas: 1) Non-Solid Waste Management Units (SWMU) related information requirements in permit applications; and (2) Non-SWMU related information requirements during the permitted life of a facility. Each concern is addressed below; however, I want to emphasize that these new regulations do not expand the types of releases already required to be reported under federal and state law. The Department of Ecology's (Ecology) release reporting requirements are broader than federal requirements under RCRA because MTCA, which is being used as our basis for corrective action, does not include a SWMU concept and requires reporting of significant releases regardless of source.

Before getting into specifics, your concerns raise a more general question, that is, how does a regulatory agency balance between flexibility and predictability? In some circumstances, it is impossible for the Ecology to promulgate regulations which will adequately address the details of every site-specific situation. In such circumstances, broad regulatory language is meant to address a range of circumstances. This kind of flexible regulatory language allows Ecology and the regulated community to make site-specific determinations that accomplish the goals of legislation but fit the individual circumstances of each site. More prescriptive regulations, while being clear (i.e., any solid waste mixed with a dangerous waste, regardless of relative quantities, is automatically considered a dangerous waste) inevitably are applied to situations that don't make sense. Since we are in the midst of major efforts to reform regulations, I would like to discuss the flexibility/predictability balance

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with you (and others) sometime to get a better idea of the business community's perspective.

Permit Application Information Requirements

Federal regulations at 40 CFR § 270.14(d) and State regulations at WAC 173-303-806(4)(a)(xxiii) require that permit applicants submit information on all SWMU at their facility. State regulations at WAC 173-303-806(4)(a)(xxiv) also require permit applicants to submit information on any and all known releases of dangerous waste and dangerous constituents not associated with SWMU at their facility. Information requirements for non-SWMU related releases stem from Ecology's decision to conduct corrective action in a manner consistent with the Model Toxics Control Act.

Regarding the specific concerns expressed in the memo from Nancy Darling dated January 12, 1994, WAC 173-303-646(2) specifies that corrective action is required only to the extent necessary to protect human health and the environment; therefore, it is necessary for facility owner/operators to submit information only on releases which might adversely impact human health and the environment. For example, if a facility had suffered a spill and the spill had been adequately remediated, reporting under -806(4)(a)(xxiv) would not be necessary; if a facility has on-going unpermitted releases, (i.e., an on-going release from piping associated with a processing or storage unit), reporting under -806(4)(a)(xxiv) would be expected. If sampling of a release were conducted and levels of dangerous constituents in all affected environmental media were below the calculated cleanup levels from the MTCA database, reporting under -806(4)(a)(xxiii) would not be necessary. Again, the purpose of -806(4)(a)(xxiv) is to ensure that corrective actions are consistent with the scope of existing MTCA cleanup requirements. Please refer to the Toxics Cleanup Program's policy on release reporting (Policy 101, copy enclosed) for additional guidance.

On-going Information Requirements

Reporting of newly discovered releases should follow the same logic as inclusion of releases information in permit applications. If a release will not adversely affect human health or the environment, reporting for corrective action purposes is not necessary.

Timing of release reporting, like timing for reporting of newly discovered SWMU, will be specified in permits. The EPA proposed information submittal requirements for SWMU in draft subpart S including proposed time frames of 30 days to report a newly

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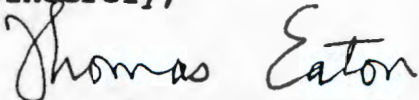
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discovered or created SWMU and 20 days to report a new release from an existing SWMU (see 55 FR 30849). Ecology did not incorporate those standards because: (1) Much of the language is duplicative of the existing MTCA regulatory structure, and (2) The final subpart S regulations may differ from the existing draft. For consistency, Ecology will use the release reporting time frames in the Toxic Cleanup Program's policy on release reporting (Policy 101) as guidance when writing corrective action permit conditions.

Facility owner/operators are responsible for determining which releases could adversely affect public health or the environment. Ecology is responsible for ensuring that facility owner/operators accurately assess the potential health and environmental risks from releases; (i.e., if an operator concludes a 5000 gallon spill of methylene chloride is insignificant, we would take issue with it). Facility owner/operators who are in doubt about the significance of a release are encouraged to contact Ecology for assistance. In any case, Ecology is not interested in reports on open cans of paint, drops of antifreeze, or other such in significant releases.

I hope this satisfies your concerns regarding permit information requirements for corrective action. Ecology is looking forward to working with the regulated community to implement our innovative state corrective action program in a manner that is environmentally protective, cost effective, and efficient. If you have any questions regarding these or other corrective action issues, please contact me at (206) 407-6702 or Elizabeth McManus, of my staff, at (206) 753-8071.

Sincerely,



Thomas Eaton, Manager
Hazardous Waste and Toxics Reduction Program

TC:EM:cc
Enclosure

cc: Richard Bremer, Tosco Northwest Refinery
Nancy Darling, Hazardous Substances Committee

CORRESPONDENCE DISTRIBUTION COVERSHEET

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Subject: CORRECTIVE ACTION INFORMATION REQUIREMENTS IN PERMITS

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