



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

JUL 18 2007

Carolyn M. Brown, Esquire
Greenebaum Doll & McDonald PLLC
300 West Vine Street
Suite 1100
Lexington, KY 40507-1665

Dear Ms. Brown:

Thank you for your May 18, 2006 letter, on behalf of Ashland, Inc. (Ashland), in which you request clarification regarding the applicability of the Resource Conservation and Recovery Act (RCRA) regulatory program to a proposed spray irrigation system at Ashland's hazardous waste landfill located in Boyd County, Kentucky. Specifically, you ask that we clarify that the treated effluent permitted under Ashland's state National Pollutant Discharge Elimination System (NPDES) permit would be excluded from being a solid waste under 40 CFR 261.4(a)(2), even if a portion of the treated effluent is managed by spray irrigation to the cap of the hazardous waste landfill. (The regulation at 40 CFR 261.4(a)(2) excludes from the definition of solid waste wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act (CWA).)

According to your letter, Ashland proposes to use the treated wastewater from the leachate collection system of the landfill for spray irrigation and maintenance of the landfill cap. The landfill leachate is classified as a listed hazardous waste with the hazardous waste code F039.

After reviewing the matter, we have determined that wastewater sprayed onto a landfill cap does not qualify for the Industrial Wastewater Discharge Exclusion under 40 CFR 261.4(a)(2). Although a portion of the effluent will continue to be discharged from Ashland's NPDES-permitted outfall to Chadwick Creek (and thus permitted under Section 402), wastewater that is diverted to land application and is not discharged to waters of the United States is not a point source discharge subject to regulation under the CWA and, therefore, does not qualify for the RCRA exclusion (even if it is part of the NPDES permit). Therefore, the wastewater remains a solid and hazardous waste. Unless it is delisted, the land application of this wastewater will constitute illegal disposal of hazardous waste. We believe a site-specific

delisting, if granted, is the most appropriate action for removing the F039 hazardous waste code and allowing the proposed spray irrigation practice to occur.

Thank you for your inquiry regarding RCRA applicability to Ashland's proposed system. All inquiries regarding applicable permit requirements should be directed to Kentucky's Hazardous Waste Program. For other questions on this letter, please contact Jeff Gaines, at (703) 308-8655, or Ross Elliott, at (703) 308-8748.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Hale". The signature is written in a cursive style with a large initial "M".

Matt Hale, Director
Office of Solid Waste

cc: April Webb, KDEP
John Jump, KDEP
Bruce Scott, KDEP
Jon Johnston, EPA, Region 4
Kathy Nam, EPA, OGC
Robert Dellinger, EPA, OSW
Robert Hall, EPA, OSW

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May 18, 2006

Matt Hale

Director, Office of Solid Waste (5301W)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Applicability of Industrial Wastewater
Discharge Exclusion

Dear Mr. Hale:

Our firm represents Ashland Inc. (Ashland) which is the owner/operator and permittee for the Route 3 Landfill in Boyd County, Kentucky. Ashland operated the Route 3 Landfill for disposal of hazardous and nonhazardous wastes from Ashland's Catlettsburg Refinery complex. Closure of the landfill was completed in October 2000. Postclosure monitoring was instituted after completion of closure, and the Kentucky Division of Waste Management issued RCRA Postclosure Permit No. KYD-000-615-898 for the landfill in May 2005. The purpose of this letter is to obtain clarification from your office as to the applicability of the RCRA regulatory program to a proposed spray irrigation system for maintenance of the landfill cap. The spray irrigation system will be covered by the Kentucky Pollutant Discharge Elimination System (KPDES) permit for the landfill as explained in more detail below.

A. Background

The Route 3 Landfill has an extensive leachate collection system including sumps. The collection lines combine and discharge to a concrete wastewater treatment tank (WWTU). The influent from the leachate collection system is classified as F039 multi-source leachate. While in

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the tank, this wastewater is treated by sedimentation and aeration. In addition, a granulated activated carbon treatment system is brought on-site to polish the accumulated wastewater prior to periodic discharge to the KPDES-permitted outfall. There is also a separate treatment system for water (precipitation) collected by an underdrainage system. Both wastewater streams are treated and discharged to Chadwick Creek, pursuant to KPDES Permit No. KY0063096.

When the KPDES permit was renewed in 2005, different limitations were imposed. Ashland has discussed with the Divisions of Water and Waste Management possible amendment of the KPDES permit to allow use of the treated wastewater in a spray irrigation system for landfill cap maintenance during appropriate weather conditions while also continuing to allow discharge of the wastewater to Chadwick Creek. Ashland has undertaken extensive analysis of the wastewater as part of its evaluation of spray irrigation as an option. Testing has shown that the treated effluent is typically non-detect for F039 constituents that would be associated with the facility. In fact, ammonia appears to be the constituent that presents the greatest challenge for continued compliance with the KPDES permit -- of course, the ammonia in the effluent also makes it a good choice for cap maintenance. Although this approach would have environmental benefits in terms of reducing discharges to the creek and promoting healthy vegetation on the cap in lieu of fertilizer applications, a question has arisen as to whether the treated wastewater that is pumped from the WWTU and applied to the cap by the spray irrigation equipment may permissibly be considered excluded from the definition of solid (and thus, hazardous) waste pursuant to 40 CFR 261.4(a)(2). At a meeting in April with representatives of the Divisions and Ashland, it was decided that Ashland would submit this request in order to obtain clarification from EPA on the applicability of the exclusion for industrial wastewater discharges in this situation.

B. Regulatory Provisions

The wastewater collected in the WWTU has been classified as multi-source leachate, which is a listed hazardous waste with waste code F039.¹ However, 40 CFR 261.4(a) identifies certain materials which are not classified as a solid wastes and thus would not be hazardous wastes. Pursuant to 40 CFR 261.4(a)(2), the following are not classified as solid waste:

Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended.

[*Comment:* This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or

¹ Ashland has considered seeking to delist the wastewater based on analyses obtained to date which typically are non-detect for the constituents of concern.

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treated before discharge, nor does it excluded sludges that are generated by industrial wastewater treatment.]

The Environmental & Public Protection Cabinet, Division of Water has been delegated authority to implement the National Pollutant Discharge Elimination System (NPDES) permitting program under Section 402 of the Clean Water Act (known as the KPDES permit program in Kentucky). As stated above, Ashland presently holds KPDES Permit No. KY0063096 for discharges of treated wastewater to Chadwick Creek. Ashland intends to seek modification of the KPDES permit to add spray irrigation as a means of managing a portion of the wastewater from the landfill as an alternative to discharge to the creek. The spray irrigation would be strictly controlled to assure that appropriate amounts were applied. The wastewater will not be able to percolate into the closed landfill due to the liner that was part of the final cap design. Ashland requests confirmation from EPA that the wastewater at the point of application from the spray irrigation system would no longer be classified as hazardous waste provided that the spray irrigation is included in the KPDES permit. Having completed closure of the landfill, Ashland obviously wants to avoid inadvertently triggering any additional hazardous waste management requirements as a result of implementation of this proposed wastewater management option.

If you have any questions regarding this letter, please do not hesitate to call. We appreciate your attention to this inquiry.

Sincerely yours,



Carolyn M. Brown

CMB/cab

cc: John G. Horne, Esq., KDEP General Counsel
April Webb, Kentucky Division of Waste Management
Dale Burton, Kentucky Division of Waste Management
Jory Becker, Kentucky Division of Water
Nigel Goulding
Joseph A. French, Esq.