

The Honorable Gil Gutknecht
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Gutknecht:

Thank you for your letter of March 18, 2004, regarding the Environmental Protection Agency (EPA) standards under the Resource Conservation and Recovery Act (RCRA) governing the treatment of mercury-bearing hazardous waste. We share your desire that mercury-containing wastes be managed appropriately. On March 23, 2004, my staff met with staff from your office and Congressman Greenwood's office. We appreciate the opportunity to provide technical comments on the Greenwood mercury thermometer bill. We are also pleased to report that, since your last letter to the EPA on management of mercury wastes (dated May 23, 2003), we have issued a memorandum titled, "Treatment Standards for Mercury-Containing Debris." This memorandum, issued on October 23, 2003, is enclosed with this letter.

We believe that the debris memorandum effectively addresses the issues that have been raised regarding mercury-containing debris. It describes the types of hazardous mercury-containing wastes that are eligible for management under the debris treatment standards, and clarifies that mercury-containing devices, such as thermostats and mercury pumps, are not subject to the debris standards, and must undergo mercury recovery ("retorting"). It also explains that free liquids (including mercury) are prohibited under RCRA from land disposal in "microencapsulated" debris. Finally, the memorandum provides up-to-date information on the types of debris-like wastes that mercury retorters are capable of safely processing, and includes detailed information on how to meet the treatment requirements that apply to mercury-containing debris.

Your letter raises specific concerns about the effectiveness of microencapsulation as a treatment technology for mercury-containing wastes. Based on recent treatment research, we provided additional guidance in the debris memorandum on how to meet the microencapsulation standard and other treatment standards for mercury-containing debris. We described site-specific factors that industry and regulators should evaluate to ensure that the performance standard is met for microencapsulation and disposal of

mercury-containing debris. If the microencapsulation standard cannot be met, then other technologies, including retorting, must be used to treat the waste.

EPA has assessed the need to modify the debris standard for mercury-containing wastes. In 1999, we issued a *Federal Register* notice seeking comment on a number of mercury issues, including whether EPA should modify the debris standard to require retorting for all mercury-contaminated debris (64 FR 28949). All of the comments we received on this issue, except one, expressed the view that EPA should not modify this standard. The commenters provided examples of debris-like waste that are not always amenable to retorting, or discussed factors relating to retorter design and operating conditions that can prevent retorters from accepting certain wastes. The one commenter with a contrary view encouraged EPA to consider revising the debris standards to provide an incentive for the optimization and development of retorting technologies. However, this commenter expressed concern that if all wastes were required to undergo retorting, incomplete combustion of organic compounds could take place in retorting units, with the potential to form hazardous products of incomplete combustion (PICs). Finally, it should be noted that the landfills that can accept these mercury-bearing hazardous wastes are permitted under Subtitle C of RCRA and require stringent operating and design standards and thus, are unlikely to present any risk to human health and the environment.

In addition, we have worked with the States over the last year to investigate potential mismanagement of mercury-containing debris. We have not found any evidence that there is a significant environmental problem associated with the management of mercury-containing debris under our current rules. Thus, at this time, we do not plan to revise our hazardous waste debris regulations. If we become aware of a significant problem, we will reconsider our position.

Again, thank you for your letter. If you have further questions or concerns, please contact me, or your staff may contact Holly Smithson in the Office of Congressional and Intergovernmental Relations at 202-564-1609.

Sincerely,

Michael O. Leavitt

Enclosure

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