

RCRA Guidance: U.S. Environmental Protection Agency Addresses Terms Owner or Operator



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The United States Environmental Protection Agency ("EPA") added a December 17, 2018, letter to its Resource Conservation and Recovery Act ("RCRA") Compendium ("Compendium") addressing the terms "owner" or "operator."

The Compendium is a catalog of EPA opinions or guidance on RCRA interpretations.

EPA's December 17th letter is a response to a letter dated October 4, 2018, from Mr. Rodney Huerter of Veolia ("Veolia") North America.

Barnes Johnson, Director of EPA's Office of Resource Conservation and Recovery is the author of the December 17th letter.

Veolia's letter describes a hypothetical set of facts about a "Company." Such facts were then incorporated into a question which asked whether EPA:

... would generally consider the Company to be an operator under 40 CFR 260.10, or an owner or operator under § 270.2.

The hypothetical facts were listed as follows:

- never owned a particular property in a state (the "Site"), or any facility located on the Site;
- never conducted any treatment, storage, or disposal of hazardous waste at the Site (and never used any contractor to treat, store, or dispose of any hazardous waste at the Site on behalf of the Company);
- is not seeking (and has no intention to ever seek) a permit to treat, store, or dispose of hazardous waste at the Site;
- never exercised "active and pervasive control over the overall operation of the facility"; and was never "in charge of [overall] plant operations on a day-to-day basis" at the Site;
- never caused or contributed to any contamination at the Site;
- never engaged in any of the activities that require "Special Forms of [RCRA] Permits" under subpart F of part 270, either with respect to the Site, or any other area in the United States that is subject to the RCRA jurisdiction of the Agency; and
- is not identified in the most current RCRA Subtitle C Site Identification Forms related to the Site, and is not identified as the current owner or operator of record of the Site in the Agency's RCRAInfo system or in any of the Agency's public web-based resources (e.g., Envirofacts).

The questions posed by Veolia included:

- Question 1: Based on the above-noted hypothetical facts, would the Agency generally consider the Company to be an "operator" of the Site under § 260.1 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)
- Based on the above-noted hypothetical facts, would the Agency generally consider the Company to be an "owner or operator" under § 270.2 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)

EPA qualifies its answer by noting it is based on a hypothetical situation and that Veolia's letter does not present hypothetical, or actual, facts about activities that would call into question the status of the Company as an owner or operator. Regardless, EPA responds in part by stating:

. . .the agency would generally not consider the Company to be an operator under § 260.10 or an owner or operator under § 270.2 .

Additional qualifications posited by EPA included an assumption that the Company conducts no other activities that would otherwise trigger RCRA applicability criteria and that RCRA delegated states may have more stringent requirements.

A copy of the letter can be found [here](#).