



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

DEC 17 2018

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

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EMERGENCY MANAGEMENT

Mr. Rodney Huerter
Veolia North America
4760 World Houston Parkway, Suite 100
Houston, Texas 77032

Dear Mr. Huerter:

Thank you for your letter of October 4, 2018, requesting clarifications of our March 5, 2018, letter to Veolia North America regarding the definition of "owner or operator." Your letter describes a hypothetical set of facts about a "Company" and then, based on assuming those facts to be undisputed, asks whether the U.S. EPA (the Agency) would generally consider the Company to be an *operator* under 40 CFR 260.10, or an *owner or operator* under § 270.2.

The hypothetical set of facts about the Company are 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 from your letter are included here, followed by our response.

Question 1: Based on the above-noted hypothetical facts, would the Agency generally consider the Company to be an "operator" of the Site under § 260.10 that is required to conduct RCRA corrective action or obligated to obtain a RCRA permit? (Yes or No)

Question 2: 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)

Questions such as these are difficult to answer with certainty, as they are based on a hypothetical situation. Additionally, the 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. However, assuming the set of hypothetical facts presented is undisputed and the Company conducts no other activities that would otherwise trigger RCRA applicability criteria, the Agency would *generally* not consider the Company to be an operator under § 260.10 or an owner or operator under § 270.2. Please note that states authorized to implement the RCRA program may have more stringent requirements that may impact the Company's status under RCRA.

Thank you for your inquiry. If you have any questions, please contact Jeff Gaines of my staff at (703) 308-8655, or gaines.jeff@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Barnes Johnson". The signature is written in black ink and is positioned above the printed name and title.

Barnes Johnson, Director
Office of Resource Conservation and Recovery