RCRA Guidance Letter/Military Munitions Rule: U.S. Environmental Protection Agency Addresses Manifest Exemption for Geographically Contiguous Properties Under Control of the Same Person



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The United States Environmental Protection Agency ("EPA") Office of Resource Conservation Recovery addressed in a March 6th Resource Conservation and Recovery Act ("RCRA") guidance letter a request from the University of Virginia's Office of Environmental Health and Safety ("UVA") requestion and/or asking:

1. An interpretation of the manifest exemption for geographically contiguous properties under the control of the same person (finalized as part of EPA's 1997 Military Munitions Rule ("MMR")).
2. Whether EPA agrees that the two hypothetical geographically contiguous properties depicted in the graphic in the attachment of your letter are "on-site."

UVA is stated to have raised a concern with EPA that its decision to establish the manifest exemption for transport of hazardous waste instead of finalizing the on-site redefinition as proposed in the MMR created potential confusion in the regulations. Also cited by UVA:

…preamble discussion from the MMR final rule on pages 6645-6646 and 6651, and an EPA interpretative letter from Elizabeth Cotsworth, Acting Director of the Office of Solid Waste.

UVA suggested that EPA finalized 40 CFR 262.20(f) to convey that contiguous properties under the control of the same person are equivalent to on-site. As a result, it argued that two geographically contiguous properties controlled by the same person, as illustrated in UVA's attachment, are on-site with one another.

EPA discusses the MMR as proposed in 1995 and the decision to not change the definition of on-site. Background is provided regarding comments on the proposed change and EPA's response to those comments. Also referenced is a manifest exemption that EPA finalized in 40 CFR 262.20(f).

The RCRA guidance letter provides that UVA's understanding about the intent of the manifest exemption requirement at 40 CFR 262.20(f) as finalized was not intended to convey that contiguous properties under control of the same person are equivalent to on-site. It further notes that the definition of:

…“on-site” at 40 CFR 260.10 considers contiguous properties divided by a right-of-way as "on-site" if the entrance and exit between the properties are "at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way.

A copy of the guidance letter can be downloaded here.