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LAW OFFICES

COHEN, SHAPIRO, POLISHER, SHIEKMAN AND COHEN

PRINCETON PIKE CORPORATE CENTER

997 LENOX DRIVE - BUILDING THREE

LAWRENCEVILLE, NEW JERSEY 08648

(609) 895-1600

SPECIAL LITIGATION COUNSEL
MORRIS M. SHUSTERCOUNSEL
REUBEN E. COHEN
GEORGE WARRENALBERT M. COHEN
1928-1956
ABRAHAM L. SHAPIRO
1957-1987

TELECOPIER: (609) 895-1329

PENNSYLVANIA OFFICE

PSFS BUILDING

12 SOUTH 12TH STREET

PHILADELPHIA, PENNSYLVANIA 19107

(215) 922-1300

CABLE: COSAC

TELECOPIER (215) 592-4329

DIRECT DIAL:

EDWARD N. POLISHER
PHILIP M. SHIEKMAN
BENNETT L. ARONSON
E. BURTON KERR
JUDAH I. LABOVITZ
STEPHEN C. SUSSMAN
ALAN M. LERNER
HERSHEL J. RICHMAN
ROBERT E. GOLDSMITH
ROSLYN G. POLLACK
ROBERT I. TUTEUR
BARRY R. ELSON
WILLIAM L. WARREN*
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C. SCOTT MEYER
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FRANCES M. VISCO
BRYNA L. SINGER
DEBRA B. WEIDMAN
ERIC A. HEINZ
VERNON R. BYRD, JR.
JOEL P. PERILSTEIN
ROBERT L. GRUNDLOCK, JR.*
KENNETH SPIEGEL
CAROLYN M. FRANK
STEVEN M. PLOIN
HOWARD SPIERER
JOHN M. BARTH
DENISE HOLLINGSWORTH-DAWSON
MARK A. DROGALIS
THERESA M. KIRKPATRICK

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ROBERT FREEDMAN
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RICHARD B. PEARL
RICHARD M. SOUIRE
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MARCIA J. WEXBERG
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ELLEN RADOW
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DAVID J. BROOKMAN
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LORETTA GRENNON
RUTH E. GRANFORS
PAUL L. FELDMAN
PAUL J. RUSSONIELLO
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KENNETH D. RUBIN*
MICHAEL H. GLUCK
MARSHA S. WOLF
MURIEL L. GOODE
ROBERT ROSS
MICHELLE D. BANKS
RITA M. BOSELLI
DIANE M. DOBBS
SHERRY A. KAJDAN
MARK A. STEVENS

* ADMITTED IN NEW JERSEY
Δ ADMITTED IN NEW YORK
* NOT ADMITTED IN PENNSYLVANIA
UNLESS NOTED ADMITTED IN PENNSYLVANIA

December 23, 1988

James Rooney, Esq.
Assistant Regional Counsel
U.S. EPA - Region II
26 Federal Plaza
New York, New York 10278

Mr. Kevin Schick
Bureau of Environmental Evaluation &
Risk Assessment
New Jersey Department of Environmental
Protection
401 East State Street
6th Floor
Trenton, New Jersey 08625

RE: SCP/Carlstadt Treatability Studies - -
Offsite Transport of Samples

Dear Messrs. Rooney and Schick:

As you know from our meeting on December 21, 1988, our consultant ERM, Inc. is planning to begin collecting soil samples from the above site during the week of December 26th. These samples will be sent to several laboratories or consultants who will conduct treatability tests. Most of these laboratories and consultants are in states other than New Jersey.

We are concerned that administrative requirements not interfere with our ability to collect and ship the samples promptly to the labs; yet we must also address the requirements of both the originating and receiving states. I noted in the

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course of our December 21st meeting that EPA revised section 261.4 of the RCRA regulations in July, 1988 to create an express conditional exemption from the RCRA Subtitle C requirements to facilitate the shipment of waste materials for treatability testing. [See 40 CFR §261.4, 53 Fed. Reg. 27290 (7/19/88)]. This rule revision relieves the shipper and the laboratory from many of the more burdensome requirements such as permitting and manifesting, yet assures adequate protection and safety by limiting the amount of materials that may be transported, stored and tested under this exemption. Furthermore, compliance with requisite transportation and storage safeguards would assure protection of health and the environment. The PRP Group and its consultant are fully prepared to comply with the conditions outlined in 40 CFR §261.4.

The difficulty we foresee, however, is that this exemption may not be applicable in several of the states in which the samples will be shipped and treated. The preamble to the rule notes specifically in Part IV that, because this exemption is viewed as a reduction in federal requirements, it does not automatically apply in states which have RCRA programs authorized and approved by EPA under 40 CFR Part 271. Rather, EPA stated that "the regulations will not be applicable until the State revises its program to adopt equivalent regulations under state law." 53 Fed. Reg. 27290. Moreover, should a state adopt equivalent regulations, it is still "not authorized to implement these regulations in lieu of EPA until the State program modification is submitted to EPA and approved." [Id.]

New Jersey has a fully authorized RCRA program which does not presently include the new §261.4 revisions; hence, this exemption is not applicable in New Jersey. We believe that most, if not all of the states to which samples are to be shipped also have EPA-approved RCRA programs: none of these states, to our knowledge, expressly adopted the federal exemption*. Therefore, we may be required to comply with several RCRA rules such as manifesting, permitting and obtaining EPA ID numbers. Of particular concern to us is the permit status of the target laboratories. We doubt whether many of these labs have RCRA TSD permits or the state equivalent. Without the §261.4 exemption, we could not ship waste samples to unpermitted laboratories for treatability testing. A side issue is whether the requirements apply only as to the originating state, the receiving state, or both.

*I am presently researching the status of this exemption for each of the states to which we anticipate sending samples for treatability analyses.

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I am writing to remind you of this dilemma we face and to solicit your help in resolving this issue promptly. To prevent delay in shipping and treating the samples, we request your assistance to facilitate sample shipments. To the extent that express variance or waivers can be acquired, the work can proceed on schedule. To the extent that this regulatory issue may interfere with timely sample shipment, of course, the Operable Unit FS may not adhere to the suggested schedule. Neither we nor you wants to see the project delayed any further. Therefore, your cooperation and assistance are crucial.

Please feel free to call me or Bill Warren should you have any questions.

Sincerely,

Susan E. Hoffman

Susan E. Hoffman

SEH/jb
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cc: Janet Feldstein
Raymond Basso
James Schmidtberger
Gil Weil
Ron Fender - ERM
William L. Warren, Esq.

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