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

June 25, 1997

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. James P. Snyder, Director
Pennsylvania Department of Environmental Protection
Rachael Carson State Office Building
Post Office Box 8471
Harrisburg, PA 17105-8471

Dear Mr. Snyder:

We have received your letter of June 4, 1997 in which you express concern that the Environmental Protection Agency (EPA) has construed Pennsylvania's comments on the proposed Hazardous Waste Identification Rule (HWIR-Media proposal) as, "unqualified support of the bright line option of the proposed rule." You also expressed concern that EPA "is using these comments out of context to leverage other stakeholders." We understand from Mr. Rick Shipman, of your staff, that you are referring to EPA's recommendation of Pennsylvania as a participant in the June 5, 1997 meeting on RCRA remediation waste reform sponsored by the White House Council on Environmental Quality (CEQ).

First, I must clarify that EPA has not "construed" Pennsylvania comments on the HWIR-Media proposal, or any other comments, in an effort to "leverage" other stakeholders. EPA does not use comments on proposed rules in this way. Since neither EPA or CEQ made any effort to characterize Pennsylvania's comments to other stakeholders at the meeting, we cannot understand this reference.

The content of Pennsylvania's comments on the HWIR-Media proposal was examined and discussed as EPA developed a list of recommended state participants for the CEQ meeting. In our efforts to recommend a balanced list of state participants, we made a point of recommending both states that had submitted HWIR-Media comments in favor of the so called "unitary" approach and states that submitted comments supporting non-unitary approaches. We believed, and continue to believe, that this type of balance is important given the diversity of views on RCRA remediation waste reform. We discussed this need for balance and the content of state comments on the HWIR-Media proposal with staff from the Association of State and Territorial Solid Waste Management Officials, since they assisted us in developing the participant recommendations.

Pennsylvania was recommended as a state on record as supporting non-unitary approaches because, as you know, Pennsylvania's official comments on the HWIR-Media proposal indicate that "...the 'Unitary' approach allows too

much flexibility without any standards by allowing any remediation waste or media, regardless of toxicity, to be excluded from Subtitle C regulation as part of a case-by-case state administered site plan." I note that no one at EPA in any way expressed an expectation that the representative from Pennsylvania, Mr. Shipman, should continue to articulate this position if the state's thinking on remediation waste had, in fact, changed.

We regret that our effort to include you in a broad-based dialogue on RCRA remediation waste reform has caused you distress and appreciate you taking the time to revise Pennsylvania's comments on the HWIR-Media proposal. We take state comments on proposed regulations very seriously and rely on them to accurately represent any given state's position. In fact, we will add your letter to the HWIR-Media docket, so that it will become part of the official rulemaking record. In the future, however, we ask that your characterizations of EPA's actions with respect to state (or any other) comments on proposed regulations be based on facts or direct involvement. In that way, the important partnership EPA and the states have worked so diligently to develop will not be eroded.

If you wish to discuss this matter further, you may contact me personally, on (703) 308-8895.

Sincerely,

Elizabeth Cotsworth

Elizabeth Cotsworth, Acting Director
Office of Solid Waste