



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

NOV 3 1980

OFFICE OF WATER
RECEP. WASTE MANAGEMENT

NOV 6 1980

LAW DEPARTMENT

Lawrence W. Bierlein, Esq.
Compressed Gas Association
Suite 701
910 Seventeenth St., N.W.
Washington, D.C. 20006

Dear Mr. Bierlein:

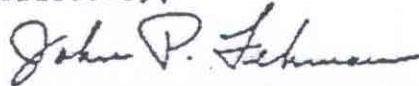
This is in response to your inquiry regarding applicability of the Resource Conservation and Recovery Act, and hazardous waste management regulations issued thereunder, to the practice in the compressed gas industry of repetitive transportation of cylinders by gas manufacturers and their customers.

As described to us during your meeting here on October 15, all cylinders are owned by or are under the equivalent control of the gas supplier. When the customer has completed his use of the gas, the cylinder is returned to the supplier. As a matter of safety, there is residual pressure in the cylinder when it is returned. (The return transportation is extensively regulated by the Department of Transportation under the federal Hazardous Materials Regulations, 49 CFR 170-189.) The customer's purpose in making the shipment is to return the supplier's property, not to discard the remaining contents. The customer does not make the decision on the final disposition of the residue in the cylinder; this is the exclusive prerogative of the gas supplier. Further, the decision whether or not to discard the contents of the container is not made until the container is returned to the supplier.

Under these circumstances, the customer is not generating a waste by merely returning the cylinder and, neither the returned container nor the contained residue is a "solid waste" as that term is defined in the Resource Conservation and Recovery Act and Part 261 of the EPA regulations of May 19, 1980. Under §261.3(b)(1), a material must be "discarded" before it can be a solid waste. The description you have provided indicates that residual gases are not discarded until the cylinders are returned to the supplier, that no decision is made to discard

the residual gases until the cylinders are returned, and that the customer plays no part in this decision. Therefore, the material is not discarded until the cylinder reaches the supplier and a decision is made whether to discard the residual gas. Consequently, the customer's return of the supplier's cylinders that may hold some residue is not the shipment of a solid (or hazardous) waste. Simply returning such cylinders does not make the customer a generator, and the shipment need not be manifested to an EPA-permitted facility or be carried by a hazardous waste transporter.

Sincerely,



John P. Lehman, Director
Hazardous and Industrial Waste Division
Office of Solid Waste (WH-565)