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MEMORANDUM

SUBJECT: Regulation Interpretation for Pesticide
Applicator Washing Rinse Water

FROM: John H. Skinner, Director
Office of Solid Waste (WH-562A)

TO: William Hathaway, Acting Director
Air and Waste Management Division (6AW)
Region VI

This is in response to the memorandum from Allyn Davis dated April 22, 1985, regarding the regulatory status of washwaters that are generated by washing the exterior of a pesticide aerial applicator's airplane. As we stated in a previous memorandum to Region VII (dated June 16, 1982), the airplane washing rinsewater is a hazardous waste via the mixture rule (§261.3(c)) if the pesticide residue on the aircraft is listed in 40 CFR §261.33(e) or (f) (see attachment). This regulatory interpretation has created some concern, especially regarding the excessive impacts the hazardous waste rules will have on pesticide applicators and regulatory agencies. Consequently, we have been asked to reconsider our position on this issue.

Upon reconsideration, we now believe that we have misinterpreted the rule and what the airplane washing rinsewater is not hazardous via the mixture rule. In particular, the mixture rule states that when a hazardous waste is mixed with a non-hazardous waste, the entire mixture is hazardous, unless the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or, in the case of a listed waste, the mixed waste is delisted pursuant to 40 CFR §§260.20 and 260.22. In the case of the airplane washing rinsewater, the mixture would have to be one of water and commercial chemical product--namely, the pesticide. The Agency does not believe that the pesticide residue left on the aircraft is a discarded commercial chemical product. The residue does not qualify as material discarded or intended to be discarded. See generally 45 FR 33115; May 19, 1980. In

listing commercial chemical products, EPA intended to cover these products which, for various reasons, are thrown away. *Id.* The Agency did not intend to cover these cases, as here, when the chemical is released into the environment as a result of use. Unless we take such a position, one could argue that the pesticide that is sprayed that does not fall directly on the crop (but falls on the ground next to the crop) would be disposal of an unused commercial chemical product; such an interpretation is a distortion of the commercial chemical product rule.

Consequently, we are withdrawing our previous interpretation that airplane washing rinsewater is a hazardous waste via the mixture rule.^{1/} Rather, this rinsewater would be defined as hazardous only if it exhibits one or more of the characteristics identified in Subpart C of Part 261.

Should you have any further questions concerning this matter, please contact Matthew A. Straus of my staff on (202) 475-8551.

cc: Air & Water Management Division Directors (I to V and VII to X)
Air & Waste Management Branch Chief (I-X)
S. Schatzow
P. Gray
R. Ehardt
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1/ It should be noted that the remainder of the regulatory interpretations discussed in the June 16, 1982 memorandum are still appropriated and should be considered valid.

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