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DEC 13 1985

MEMORANDUM

SUBJECT: Regulatory Interpretation for Pesticide Applicator
Washing Rinse Water

FROM: Marcia E. Williams, Director
Office of Solid Waste

TO: Harry Seraydarian, Director
Toxics and Waste Management Division
EPA Region IX

This is in response to your memorandum dated September 16, 1985, regarding the regulatory status of washwaters that are generated by washing the exterior of a pesticide serial applicator's airplane. You expressed concern that the interpretation set forth in our July 22 memorandum does not consider the ultimate disposal and the hazard presented by these washwaters and the enforcement problems that such an interpretation would cause. In particular, in the study that was submitted with your memo, that data appear to suggest that there is a potential for migration of pesticide residues resulting in contamination of ground water. Therefore, you request that we re-visit this issue. In addition, you also request that we expedite the regulations designed to close the current loop-hole concerning mixtures of spent solvents and other commercial products.

Although I understand your concerns and generally agree with you that these rinse waters may present a hazard if they are not properly managed, I must agree with Dr. Skinner in this interpretation of the rules; any other reading of the rules would argue that any chemical that is released into the environment as a result of use would be disposed and regulated under RCRA. In particular, the mixture rule states that if a solid waste and a hazardous waste are mixed, the entire mixture is defined as hazardous. At issue here is whether the pesticide that adheres to the exterior of the airplane is defined as a "RCRA hazardous waste." To be defined as a RCRA hazardous

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waste, the pesticide would have to be an unused discarded commercial chemical product. See 40 CFR §261.33. Since the pesticide has been sprayed from the airplane, it technically has been used and, therefore, is not defined as a §261.33 commercial chemical product. (On the other hand, the pesticide residue that remains in the spray tanks after the spraying operation has not technically been used and, thus, would be defined as a §261.33 commercial chemical product.) Any other interpretation would go beyond the intent of RCRA and the implementing regulations. These pesticide washwaters, therefore, are not defined as hazardous because of the mixture rule.

Nevertheless, it should be noted that the interpretation should not be taken to mean that we have evaluated these wastes and have determined that they are non-hazardous. As I already indicated, these washwaters may be hazardous (as evidenced by the study you attached with your memo) and may present as much of a hazard as the rinsate from spray tanks (which are currently subject to regulation). In fact, we have begun a study to try to define the levels at which these washwaters may present a hazard if these washwaters are mismanaged (i.e., placed in unlined surface impoundments). The study is expected to be completed (at least as a draft) by the end of this year and we will keep you apprised of the results. Based on the data, as well as any other information that is collected, we may take further action to control these washwaters.

With respect to your other request to close the current loop-hole concerning solvent mixtures and other commercial products, the solvent mixture rule is expected to be promulgated in December, while the commercial chemical product mixture rule is expected to be proposed very shortly.

Please feel free to call Matt Straus if you have any questions or comments; his telephone number is (8) 475-8551.

cc: A&WM Division Directors (Regions I-VIII and X)
S. Shatzow