

JUN 3, 1986

MEMORANDUM

SUBJECT: Request for Comment on Memorandum Concerning the
Cleanup of Residues of Commercial Chemical Products
Within a Warehouse Storage Area

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

TO: David A. Wagoner, Director
Waste Management Division, Region VII

Attached is a draft response to your memorandum dated April 10, 1986, requesting a regulatory interpretation of the RCRA hazardous waste rules as they apply to residues of commercial chemical products that are cleaned up within a warehouse storage area. Due to the implications of this interpretation, I wanted you and the other Regional Division Directors to review and comment on our response. In particular, the draft memorandum specifies that any spills (including incidental spills) that occur at a warehouse of commercial chemical products that are listed in 40 CFR 261.33 or exhibit one or more of the hazardous waste characteristics are subject to regulation under RCRA, if they are not cleaned up immediately. The memo also indicates that enforcement action can be taken for treating, storing, or disposing of these hazardous waste without interim status or a permit. We have worked with the Office of General Counsel in preparing this response.

Please forward any comments you may have on our response to Matthew A. Straus as soon as possible, but no later than June 15, 1986.

Attachment

cc: Regional Division Directors (1-VI and VIII-X)
Lloyd Guerci (OWPE)
Mark Greenwood (OGC)

MEMORANDUM

SUBJECT: RCRA Regulatory Interpretation Assistance
Request - Cleanup of Residues of Commercial
Storage Area

FROM: Marcia E. Williams
Director
Office of Solid Waste (WH-562)

TO: David A. Wagoner
Director
Waste Management Division, Region VII

You have requested guidance on whether EPA can require cleanup of commercial chemical product residues on the floor and structural members of a warehouse that is part of an interim status hazardous waste storage facility now undergoing closure. According to your memorandum, the warehouse was used to store commercial pesticides. You state that samples collected from the warehouse floor and structural supports showed 2, 4-D (D016), Aldrin (P004), Chlordane (0036), and Dieldrin (P037). Some samples contained Heptachlor (P059), Five of eight floor samples also showed 2,4,5-T (F027).

Although your memorandum does not describe the nature of the residues, it appears from your discussion that the residues resulted from spills of materials stored in the warehouse. Therefore, our analysis presumes that the materials were spilled.

1. Can EPA require cleanup of the pesticide residues if the presence of 2,4,5-T cannot be confirmed?

ANSWER: If you cannot confirm the presence of 2,4,5-T, you can still require the facility to clean up the residues of any compounds listed in §261.33(e) or (f), if you can show that the materials stored in the warehouse meet the requirements of §261.33(a)-(d).

Based on the facts in your letter, the residues in the warehouse do appear to qualify as solid wastes. A solid waste is defined in §261.2(a)(2) as, among other things, any material which is discarded by being abandoned. Section 261.2(b)(3) defines discarded material as, among other things, a material that is accumulated, stored or treated (but not recycled) before or in lieu of being disposed of, burned, or incinerated. The term “abandoned” is used in the sense of “thrown away.” See 50 FR 627 (January 4, 1985).

Your description suggests that the spilled materials have, been abandoned by accumulating them in the warehouse, rather than disposing of them elsewhere. It may also be argued that the materials have been abandoned by being disposed of (§261.2 (b) (1)).

Whether these residues are also hazardous waste depends whether you have the facts to identify the materials that were originally stored in the warehouse. Section 261.33 provides that the materials listed in §261.33(a)-(d) are hazardous wastes when discarded or intended to be discarded. Materials listed in paragraphs (a) through (d) include commercial chemical products or manufacturing chemical intermediates (i.e., the pure grade of the chemical, any technical grade of the chemical, and formulations in which the chemical is the sole active ingredient), off specification products or intermediates; any container or inner liner used to hold such materials and any residue or other debris resulting from a spill of such materials on or into any land or water. You must show that the materials stored in the warehouse fit into one of these categories. If you cannot show that the products are listed under §261.33(e) or (f) (e.g., if the pesticides contained a combination of chemicals, rather than the pure chemicals), the residues would not be a hazardous waste under §261.33.

If the residues are a hazardous waste and were spilled after November 19, 1980, the requirements of Part 265 apply. See 40 CFR 265.1 (b). Under §265.1 (c) (11), treatment and containment of spills (except in immediate response to spills), must comply with applicable Part 265 requirements. Since it appears that this is not an immediate response situation, the facility would be subject to an enforcement action for treating, storing, or disposing of hazardous waste without interim status or a permit, and could be required to take appropriate action to clean up the residues^{*/}

2. If the residues are hazardous wastes, to what level can clean up be required?

ANSWER: Section 265.1 (c) (11) does not specify a level of cleanup for spills. You would, therefore, be free to require cleanup to a level which is appropriate. Options could include background or an end-point consistent with approved Agency numbers (e.g., MCLs).

^{*/}. If the residues are solid wastes that contain hazardous constituents, it might be possible to require cleanup under Section 3008 of RCRA, which authorizes EPA to order corrective action for releases of hazardous waste at interim status facilities. EPA has taken the position that this authority extends to releases of solid waste containing hazardous constituents.

3. How does the scope of regulatory authority change if the residues contain 2,4,5-T?

ANSWER: Unlike the materials listed in §261.33 (e) and (f), 2,4,5-T need not be a sole active ingredient formulation in order to be considered a hazardous waste. If the presence of 2,4,5-T is confirmed, residues would be acute hazardous wastes unless delisted, regardless of their source. If the 2,4,5-T is mixed with other solid wastes in the warehouse, the mixture would be an acute hazardous waste under §261.3 (a) (iii). In addition, these residues would be subject to the special management standards promulgated for dioxin-containing wastes. Furthermore, to the extent that the concentration of 2,4-D in the residues exceeds the maximum concentrations set out in Table 1 of §261.24 (EP toxicity), those residues would be hazardous wastes. Thus, even if you cannot meet the burden imposed by §261.33, some or all of the residues could still be considered hazardous wastes which would be subject to Part 265.

4. Would residues which are not subject to RCRA prior to cleanup become subject to RCRA after cleanup?

ANSWER: As noted above, the residues would be hazardous wastes if they met the requirements of §261.33 or were mixed with a listed hazardous waste. If the residues are hazardous wastes, residues from spills occurring after November 19, 1980 would be subject to Part 265 requirements both before and after cleanup. Spills that occurred prior to November 19, 1980 and have not been subject to further management activities since then could be considered disposed of, and would not be regulated by RCRA. However, if the owner or operator chose to clean such materials up, the spill cleanup materials would be subject to Part 265, which applies to treatment, storage, or disposal activities taken after November 8, 1980. See 40 CFR 265.1 (b).

If the residues do not meet the requirements of §261.33 or the mixture rule, they are not hazardous wastes either before or after cleanup.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

MEMORANDUM

SUBJECT: RCRA Regulatory Interpretation Assistance Request - Cleanup of Residues of Commercial Chemical Products Within a Warehouse Storage Area

FROM: David A Wagoner
Director, Waste Management Division

TO: Marcia Williams, (WH-562)
Office of Program Management and Support

Issue

Please provide guidance as to whether EPA has regulatory authority to require cleanup of RCRA regulated commercial chemical product (pesticide) residues on the floor and structural members of a warehouse storage area of a building that is part of a hazardous waste storage facility.

Background

The facility, which is leased by Thompson-Hayward Chemical Company (THCC), had interim status. It is currently undergoing final closure for the storage of hazardous waste, i.e., spent solvents.

- On the facility property is a building that was used for the storage of numerous commercial pesticides.
- THCC which presently retains the environmental liabilities with respect to this leased property in Pleasant Hill, Iowa, has decided to terminate its lease.
- Analytical sampling, which consisted of using a 100 sq. centimeter hexane and filter paper wipe test, was done on the warehouse floor, and I-beam structural members. All the samples collected in the warehouse showed 2,4-D (D016), Aldrin (P004), Chlordane (U036), and Dieldrin (P037). Heptachlor (P059) was also common. Also, 2,4,5-T (F027) was found in five of eight samples taken on the floor. Typical floor contamination ranges were : 1) 1.5 mg to 18 mg/100 cm² for 2,4-D; 2) 0.13 mg to 15 mg/100 cm² for Aldrin; 3) 0.15 mg to 6.4 mg/100 cm² for Chlordane and 4) 3.6 mg to 22 mg/100 cm² for Dieldrin; 5) 0.26 mg to 3.6 mg/100cm² for Heptachlor and 6) 0.03 mg to 3.2 mg/100 cm² for 2,4,5-T.

It appears from a review of 261.33(a) that we do not have the authority to address or require residue cleanup on the floor and structural members in a warehouse building that stored commercial chemical products (pesticides) where that building was not a regulated storage area at a RCRA facility.

However, if we are incorrect in our interpretation, your assistance is also requested on answering the following questions:

1. If the residue cleanup is regulated, to what level can we require cleanup?
2. If the presence of 2,4,5-I residues are confirmed by reanalysis, how does that change the scope of our regulatory authority?
3. If we do not have regulatory authority over the residues prior to cleanup, do we have regulatory authority over the residues once they are generated by the cleanup activity?

Time of Response

We would appreciate a prompt reply. If written response is not received May 16, 1986, we will assume you concur with our interpretation.

If there are any questions, please contact Luetta Flournoy, Chief, Iowa Section at FTS 757-2888.

Decisionmaking

Concurrence _____

Non-concurrence _____