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JAN 27 1987

Paul P. Didier, Director  
Bureau of Solid Waste Management  
Wisconsin Department of Natural  
Resources  
Box 7921  
Madison, Wisconsin 53707

Dear Paul:

Thank you for your letter of December 9, 1986, requesting an interpretation of 40 CFR §261.3(a)(2)(iii), regarding the regulatory status of listed wastes which were listed solely because they exhibit a characteristic and whether they must go through the delisting procedures of §260.22 in order to become non-hazardous.

Your interpretation of the provision is largely correct. The existing regulations do allow wastes which are listed in Subpart D solely because they exhibit a characteristic of hazardous waste identified in Subpart C to be mixed with solid waste and become unregulated, provided that the resultant mixture no longer exhibits any characteristic of hazardous waste. The provisions of §260.22 notwithstanding, §261.3(a)(2)(iii) is, in essence, a form of self-implementing delisting.

In the case of still bottoms produced from the distillation of waste acetone (F003), those still bottoms would remain hazardous waste unless mixed with another solid waste such that the resultant mixture no longer exhibited a characteristic. Such a mixture would not currently be required to go through the delisting procedures. Despite the apparent contradiction, however, this provision only applies to mixtures of solid wastes and hazardous wastes. Thus, these still bottoms would technically remain hazardous until formally delisted unless they were mixed with a solid waste, even if the still bottoms did not exhibit a characteristic of their own.

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While the mixing of a solid waste and a hazardous waste would technically meet the definition of treatment, you should be aware that generators may perform treatment in their accumulation tanks or containers without a permit provided that it is performed strictly in accordance with §262.34. The enclosed memorandum provides additional detail on this policy interpretation.

It is also worth noting that we perceive a number of problems with the mixture rule provision and are considering proposing a change to the regulations. However, no such proposal is likely in the near future due to other priorities.

I hope that this has been responsive to your request. If we can be of any additional help on this issue, please do not hesitate to contact Matt Straus, of my staff, on (202) 475-8851.

Sincerely,

Marcia Williams, Director  
Office of Solid Waste

Enclosure

cc: Dave Stringham, Region V

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