

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUNE 22, 1987

Ms. Patricia M. Trainer
Environmental Staff Counsel
Aqua-Tech, Inc.
140 South Park Street
Port Washington, WI 53074

Dear Ms. Trainer:

This is in response to your inquiry of June 11, 1987, concerning 40 CFR §261.3(a)(2)(iii), often referred to as part of the hazardous waste "mixture rule." First if a waste mixture meets the requirements of §261.3(a)(2)(iii), no delisting is necessary. That is, a waste listed solely because it exhibits a characteristic, when mixed with another solid waste, is not hazardous if the resultant mixture no longer exhibits any of the hazardous waste characteristics (i.e., not only the characteristic for which it was listed, but all characteristics in Part 261, Subpart C).

Your questions concerning still bottoms from treating waste acetone (EPA listed waste F003) brings into play §261.3(c)(2)(i) the "derived from" rule, as well as the mixture rule. Because the still bottoms are a solid waste generated by the treatment of a hazardous waste (F003), §261.3(c)(2)(i) provides that the bottoms are themselves (absent a delisting) hazardous waste. Since the still bottoms were derived from a hazardous waste that was listed solely because it exhibited a hazardous waste characteristic (i.e., ignitability), then a mixture of the still bottoms and a solid waste would be designated as non-hazardous, if the resultant mixture exhibits none of the hazardous waste characteristics.

This mixing would be considered hazardous waste treatment.¹ Finally, §261.3(a)(2)(iii) does not specify any particular kind of solid waste that must be used to qualify for the exemption.

¹ You should note, however, that EPA interprets the regulations to allow generators who are otherwise exempt from permit and interim status requirements to treat their hazardous waste in their accumulation units without having to obtain a permit or interim status, provided they comply with the requirements in 40 CFR §262.34.

FaxBack# 11257

If you have further questions in this area, call Mike Petruska of my staff at (202) 475-6676.

Sincerely,

Matthew A. Straus, Chief
Waste Characterization Branch

AQUA-TECH, INCORPORATED

140 South Park Street, Port Washington, Wisconsin 53074
Phone (414) 284-5746 or (414) 375-0407 (Metro Milw.)

June 11, 1987

Mr. Matt Straus
U.S. Environmental
Protection Agency, Headquarters
Office of Solid Waste
401 M. Street S. W.
Washington, D.C. 20460

Dear Mr. Straus:

Aqua-Tech, Inc. would like to request a regulatory interpretation on an exemption provided in 40 CFR s 261.3. This provision deals with the definition of a hazardous waste, and the interpretation is vital in ensuring that our clients (generators) comply with the appropriate regulations.

Specifically, we are interested in s. 261.3(a)(2)(iii) which provides that a solid waste, as defined in s 261.2, is a hazardous waste if:

1. It is not excluded from regulation as a hazardous waste under s. 261.4(b); and
2. It meets any of the following criteria:
 - . . . iii. It is a mixture of a solid waste and a hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.

Aqua-Tech's question is: Is such a mixture automatically excluded from regulation as a hazardous waste or is the generator of that mixture required to comply with the delisting petition requirements of s. 260.22? It is our understanding that if any listed hazardous waste is mixed with a solid waste, the resultant mixture is a hazardous waste, and that mixture remains a hazardous waste until it is delisted. We would appreciate receiving an interpretation of whether the delisting is necessary if the mixture no longer meets the Subpart C characteristic for which it was listed.

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The question of interpretation first arose in defining still bottoms produced from the distillation of listed hazardous waste. For example, when waste acetone is distilled, the resultant still bottoms are a listed hazardous waste. It is our understanding that these still bottoms remain a listed hazardous waste until a site-specific delisting is granted under s. 260.22. Our question is: If these still bottoms are mixed with a solid waste and the resultant mixture no longer exhibits the characteristic of ignitability, are the still bottoms no longer hazardous? Another question raised is whether the mixing of a listed hazardous waste and a solid waste would be regulated as hazardous waste treatment? Further, are there any limitations on the type of solid waste used? A related question is: How would still bottoms produced from the distillation of acetone be defined, if the still bottoms do not meet the characteristic of ignitability?

We appreciate your help in explaining specifically how s. 261.3(a)(2)(iii) is to be applied. If you have any questions or need further information, please feel free to contact me.

Thank you for your time and consideration.

Sincerely,

AQUA-TECH, INC.

Patricia M. Trainer
Environmental Staff Counsel

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