

9444.1987(40)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SEP 9 1987

Mr. Alfred A. Levin
Manager
Toxics Substances Control
Velsicol Chemical Corporation
5600 River Road
Rosemont, IL 60018-5119

Dear Mr. Levin,

This is in response to your letter of July 16, 1987, regarding whether certain materials contaminated with the registered pesticides, chlordane and heptachlor would be considered hazardous wastes. As stated in your letter, professional pesticide applicators dilute the concentrated pesticides and apply them for use to control structural termites.

You describe three scenarios that result in the contamination of materials due to the accidental spilling or over-application of these pesticides. In the first scenario, the pesticide solution is applied around a home with a swimming pool. Water from the swimming pool moves through cracks in the pool's wall and enters the soil. Soil contaminants then move out of the soil into the pool. The pesticide was then discovered to have migrated into the pool. You want to know whether the water in the pool (when discarded) is a hazardous waste. As stated in 40 CFR 261(d)(1)(B), listed commercial chemical products are not wastes when applied to land if that is their normal manner of use. Since the contamination of the pool water resulted from the normal use of the pesticide as a product, rather than from its disposal, the pool water is not hazardous waste via the mixture rule.

In the second scenario, a professional applicator spills some of the pesticide outside on the grass (soil) away from the intended site of application, creating a very low-level contamination of the sod. He collects the contaminated soil and you wish to know whether it is a hazardous waste. The contaminated soil that is collected is a hazardous waste; disposal is defined at 40 CFR 260.10 to include spilling any solid or hazardous waste into or on any land. Under 40 CFR 261.33(d), hazardous

wastes are defined to include contaminated soil or debris resulting from the cleanup of a spill on any land of listed commercial chemical products, which includes chlordane and heptachlor. Thus, the contaminated soil is subject to regulation provided you exceed the small quantity generator limit (i.e., clean up more than 100 kg in a calendar month). If you clean up less than 100 kg per month, you are subject to the requirements in 40 CFR 261.5(f) (for heptachlor) or (g) for chlordane.

In the third scenario, a professional applicator either over-applies or spills the pesticide, resulting in a residue on the carpet or wallboard of a house. You want to know whether the contaminated carpet and wallboard, after they are removed, are hazardous wastes. Regardless whether it is spilled or overapplied, contaminated carpet or wallboard should be safely managed. Depending on the individual circumstances, sound management is required under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) or RCRA. First, if the contaminated carpet or wallboard results from overapplication of the pesticide, the carpet or wallboard would not be a hazardous waste, since the contamination resulted from the use of the pesticide. This would be a violation of FIFRA, however, and the Agency could take proper action under FIFRA to ensure safe disposal. On the other hand, if the carpet or wallboard became contaminated as a result of spilling the pesticide, the carpet or wallboard (after they are removed) would be a hazardous waste, since this would be considered disposal of the pesticides. The cleanup of this debris would be covered by 40 CFR 261.33(d), as discussed above for the second scenario.

In response to your inquiry into the possibility of a delisting of the dilute wastes generated by professional applicators, we believe it is most appropriate to evaluate these materials on a spill-specific basis. These materials can vary in hazardous constituent concentrations, waste volumes, and exposure scenarios. Consequently, we believe it is inappropriate to promulgate a generic exclusion for spill residues and related materials.

You also requested the Agency's advice as to what information, in addition to the requirements discussed in the Delisting Guidance Document, would be useful for the evaluation of petitions to delist dilute solutions or minimum concentrations of chlordane and heptachlor. One requirement which is not listed in the current

guidance document is that four quarters of ground water monitoring data from a compliant system under Subpart F must be submitted by the petitioner for any on-site land-based management unit. Other available data which you submit will be considered, but be aware that the current Agency policy is that delisting is waste-specific, and site-specific factors (i.e., intended management, local hydrogeologic attenuation properties) are generally not considered.

If you have additional questions, please feel free to call Ms. Wanda LeBleu-Biswas, of my staff at (202) 382-7392.

Sincerely yours,

Original Document signed

Marcia E. Williams
Director
Office of Solid Waste