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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

OCT 27 1988

MEMORANDUM

SUBJECT: RCRA Regulation of Pesticide Rinsate
Treatment/Recycling System

FROM: Sylvia K. Lowrance, Director
Office of Solid Waste (OS-300)

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

This memorandum is in response to your September 15, 1988 memorandum requesting clarification of the RCRA regulation of certain tanks in a pesticide container washing operation.

As I understand the process, the rinsewater from the container washing is collected in a sump, is then pumped to a settling tank, and subsequently treated with activated carbon. The treated rinsewater is reused for container rinsing, but the pesticide residues are discharged.

Your interpretation that the used rinsewater is a "spent material" is correct; as a spent material going for treatment (or reclamation), it is a solid waste. If the used rinsewater contains a pesticide listed in 40 CFR 261.33 that was not derived from an "empty" container as defined in Section 261.7, the used rinsewater is a hazardous waste. If the pesticides do not meet a listing, the used rinsewater is a hazardous waste if it exhibits a characteristic (Section 261.20-261.24).

Although the system does have certain characteristics of a reclamation operation, it is more clearly defined as a wastewater treatment unit. As stated in your memo, this unit would be subject to RCRA permit requirements unless exempted under the wastewater treatment unit exemption at 40 CFR 264.1(g)(6) or 265.1(c)(10). In a September 2, 1988 Federal

Register notice, the Agency clarified that this wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and, therefore, is subject to the NPDES or pretreatment requirements of the Clean Water Act, or (2) produces no treated wastewater effluent as a direct result of such requirements. This exemption is not intended to apply to wastewater treatment units that are not required to obtain an NPDES permit because they do not discharge treated effluent (see 53 FR 34080-81). As your memo explains, the treated rinsewater is completely recycled back into the operation and no discharge occurs. I cannot conclusively determine whether the unit would be eligible for an exemption as a wastewater treatment unit; that determination must be made by the authorized State or Regional office. In making this determination, the authorized State or Regional office must determine whether the facility is subject to regulation under Sections 307(b) or 402 of the Clean Water Act.

Regarding the regulatory status of the "reclaimed" rinsate, you cited the January 4, 1985 Federal Register preamble (50 FR 634) discussion of products from recycling operations losing their status as a waste. While the regulatory language allows for flexibility in determining whether a reclaimed waste may be considered a product (thus losing its status as a waste), the preamble discussion indicates that reclaimed wastewaters are not to be considered products. The reasons for this approach (i.e., that wastewaters are not ordinarily considered to be commercial products and are often discharged, and that the Agency did not intend to allow facilities to exempt their wastewater treatment surface impoundments from regulation by being classified as "recycling" facilities) are not necessarily applicable in this case. When reused, the reclaimed rinsate would lose its status as a solid waste as provided in 40 CFR 261.2(e)(1)(ii), provided it is truly reclaimed as an effective substitute for what is typically used to rinse the containers. Until it is reclaimed and fit for reuse, the rinsate would remain a solid waste, and, if applicable, a hazardous waste.

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If you have any further questions or need any additional clarification, you should contact Mitch Kidwell at FTS 475-8551.

cc: Michael Feeley
Chief, Waste Programs Branch
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Karen Schwinn
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Waste Management Division Directors
Regions I-X