

9441.1988(44)

October 27, 1988

Mr. Jon Greenberg, Manager
Environmental Policy
Browning-Ferris Industries
1150 Connecticut Avenue, NW
Suite 500
Washington, DC 20036

Dear Mr. Greenberg:

This is in response to your August 11, 1988, inquiry about the status of hazardous wastes that are generated at one site and treated at another. Specifically, we are responding to the questions of whether treatment residuals of a characteristic hazardous waste under 40 CFR 261.20-261.24 can be a listed hazardous waste under 40 CFR 261.30-261.33.

Determination of the proper EPA Waste Code may be made by a careful examination of the generator's production processes. It is the generator's responsibility to determine if his waste meets the listing descriptions for hazardous wastes listed at 40 CFR 261.30-261.33 or if they exhibit a hazardous characteristic. (See 40 CFR 261.20-261.24.) If the owner/operator of a transportation firm or waste treatment facility determine that a listed waste had been improperly labeled as a characteristic waste by a generator, then the generator should be advised to correct the error (a) on the manifest or receipt of wastes from the generator should be refused. Giving the requirements of the Land Disposal Restrictions regulations (40 CFR 268) both the generator and the treatment facility could face penalties for improperly analyzing and managing a listed hazardous waste. (See 51 FR 40572).

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According to the requirements in the derived-from rule (40 CFR 261.3(c)(2)(i)), a residual generated from the treatment, storage or disposal of a listed hazardous waste is itself a listed hazardous waste. A residual generated from the treatment, storage, or disposal of a characteristic hazardous waste (or a waste that has been listed only because it exhibits a characteristic, such as F003) is a hazardous waste only if it exhibits a characteristic. However, if a listed spent solvent, such as F005, is mixed with the characteristic spent solvent before or during treatment (e.g., solvent recovery), the mixture "becomes" a listed waste when the listed waste is first added to the characteristic waste. (See 40 CFR 261.2(a)(2)(iv) and 40 CFR 261.3(b)(2).) Any residual generated from the treatment of this mixture would be the listed hazardous waste F005.

In some cases, characteristic or nonhazardous wastes, when treated, will have treatment residues that are listed hazardous wastes. This will depend in each case on the scope of the listing. An example is rinsewater from electroplating operations. These rinsewaters are not listed and may or may not exhibit the hazardous characteristic of extraction procedure (EP) toxicity. However, once the wastewater treatment sludge precipitates, it meets the listing description for F006 (with the exception of precipitates from rinsewaters from certain excluded electroplating processes). The listing applies whether the sludge is generated at the electroplating facility or a commercial waste treatment facility. Thus, a commercial waste treatment facility must know the electroplating processes to identify the wastewater treatment sludge correctly as F006. This may require the treatment facility to obtain information from the waste generator regarding processes that produced the waste to be treated.

As pointed out in your letter, there is no specific requirement for a generator to identify the processes that lead to the generation of their waste. However, there is nothing to prevent the treatment, storage, or disposal facility from requiring such information before accepting the waste. Once a treatment, storage, or disposal facility accepts the waste, it is their responsibility to accurately characterize any residual resulting from treatment. The Agency has no plans at this time to change the regulations as they relate to this requirement.

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If you have any further questions, please contact David Topping at (202) 382-7737, or the RCRA/Superfund Hotline at (202) 382-3000.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste