

9453.1989(05)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 21 1989

Mr. Stephen J. Axtell
Smith & Schnacke
2000 Courthouse Plaza NE
Post Office Box 1817
Dayton, Ohio 45401-1817

Dear Mr. Axtell:

This letter is in response to your letter of February 23, 1989, requesting clarification of the generator accumulation time requirements of 40 CFR 262.34. You ask when the accumulation time begins for an unknown waste that, upon analysis, is found to meet the definition of hazardous waste. Initially, the container was improperly labelled or not labelled at all. A sample of the contents was sent off site for analysis, and was found to be hazardous.

In your letter you relate that Chris Bryant of the RCRA Hotline indicated that the accumulation time for an unknown waste begins when the analytical results indicating that the waste is hazardous are received. Unfortunately, this information was incorrect. The correct reading of Section 262.34 in this instance follows:

Section 262.34(a) provides a limited exemption from the requirement that those who store hazardous waste must obtain permits. To obtain the exemption, a generator must comply with all the requirements of Section 262.34. If the date on which the accumulation began was not marked on the drum (Section 262.34(a)(2)) or the drum was not marked "Hazardous Waste" (Section 262.34(a)(3)), then the generator has not met the pre-conditions for the exemption from permitting requirements and is an operator of a storage facility subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 270.

Where a generator does meet the conditions of Section 262.34, the accumulation time begins when a waste is generated or when it is first taken from a "satellite" accumulation area operated pursuant to 40 CFR 262.34(c). Waste is generated either when it is produced or when it is first caused to be subject to regulation (40 CFR 260.10), not when a generator first analyzes the waste. If the waste in the drum was a listed or characteristic hazardous waste when it was produced, then the one-time 90-day accumulation time could begin only at the time the waste was produced or removed from the satellite accumulation area.

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If the waste was not subject to regulation when it was first stored, e.g., the material had not yet been listed as a regulated hazardous waste, then the 90-day period would have begun when the waste became subject to regulation--upon the effective date of the new listing. A generator's failure to properly analyze, label, and accumulate waste does not exempt the waste from regulation.

If we can be of any further assistance, please contact Emily Roth at (202) 382-4777.

Sincerely,

Original Document signed

Sylvia K. Lowrance, Director
Office of Solid Waste

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