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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

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Dear Ms. Richards:

This is in response to your letter of March 22, 1990, in which you asked several questions concerning the management of used oil and the identification of listed hazardous wastes.

1) Question on 40 CFR 266 Subpart E: Does this subpart apply to all used oils, or does it apply only to used oils which exhibit characteristics of a hazardous waste? The definition in 40 CFR 266.40(b) implies that the regulation applies to all used oils. However, one arrives at 40 CFR 266.40 because it is referenced by 40 CFR 261.6(a)(2)(iii). 40 CFR 261.6 covers the requirements for "recyclable materials," which are defined by EPA as hazardous wastes that are recycled. Therefore, 40 CFR 261.6 would not apply to nonhazardous used oils. This implies that 40 CFR 266 Subpart E does not apply to nonhazardous used oils.

ANSWER: 40 CFR 266 Subpart E applies to all used oil, both hazardous and non-hazardous. However, the level of regulation imposed under Subpart E can differ substantially. The used oil regulations may be clarified in the following way:

Used oil that meets the definition of 40 CFR 266.40(b) and is burned for energy recovery is regulated under 40 CFR 266, Subpart E.

Used oil that exhibits a characteristic of hazardous waste and is burned for energy recovery is regulated under 40 CFR 266, Subpart E (40 CFR 261.6(a)(2)(iii)), rather than Subpart D, provided it is not mixed with a listed hazardous waste. Subpart E specifies two classes of used oil:

- "On-specification" used oil is subject to minimal requirements.
- "Off-specification" used oil is fully regulated under Subpart E.

Used oil that exhibits a characteristic of hazardous waste but is recycled in a manner other than being burned for energy recovery is not regulated under any provisions of 40 CFR Parts 262-266, 270, or 124 (40 CFR 261.6(a)(3)(iii)).

Please note that the definition of used oil in §266.40(b) is a statutory definition--Section 1004(36) of the Resource Conservation and Recovery Act (RCRA). Under the authority of that section and Section 3014 of RCRA, Congress gave EPA special authority to regulate used oil that is destined for recycling. The requirement that EPA develop management standards for recycled used oil is independent of a determination concerning the identification or listing of used oil as a hazardous waste. The used oil fuel standards under Subpart E were developed under this authority. Thus, any used oil that meets the definition of §266.40(b) and is burned for energy recovery is regulated under Subpart E.

2) Question on 40 CFR 261.31: With regard to the 10% rule for F-listed solvents, what does "before use" mean? Does "before use" mean as purchased from a manufacturer, or as used by a generator? For example, if a generator purchased a product that contained 15% toluene and 85% water, then the generator blended the material with more water to prepare the material for use at the generator's facility, so that the resulting material contained 8% toluene and 92% water, how would the waste generated from using this material (as a cleaning solvent) be identified?

ANSWER: With regard to listed F wastes, "before use" means before use at the facility, not when purchased. Thus, in your example, the waste solvent generated would not meet the listing description.

3) Question on 40 CFR 261.31: As I understand the F003 listing, the product, before use, must contain 100% (or technical grade) F003-listed solvent(s) in order for the waste generated from using the solvent to be identified as F003.

In addition, mixtures containing F003-listed solvents and 10% or more of the solvents listed in F001, F002, F004, and F005 are identified with the waste number F003 and the waste number(s) representing the other solvent(s) present. In this case, however, how much of the F003-listed solvent(s) must be present in the mixture for F003 to apply?

ANSWER: You are correct in your first point that, in order to meet the F003 listing description, the product (before use) must contain only (i.e., 100%) the solvents listed under F003 (according to the regulation). With regard to your second question, the regulation states that the listing applies to "all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005." Should the solvent meet the ten percent criteria of F001, F002, F004, and/or F005 solvent and contain F003, the regulation (or the preamble language of December 31, 1985) contains no guidelines for the minimum amount of F003 solvents needed to meet the listing description; therefore, any amount will do so.

4) Question on 40 CFR 261.33: There are references in the comment at the end of 40 CFR 261.33(d) to "commercially pure grade and "technical grade." How does EPA define these terms?

ANSWER: The Office of Solid Waste does not have a regulatory definition for the two terms in your question. However, please refer to the Federal Register preamble concerning the comment to 261.33(d) (45 FR 78529, November 25, 1980) for more details. Potentially, "technical grade" or "commercially pure grade" can refer to any and all grades of purity of a chemical that are marketed, or that are recognized in general usage by the chemical industry.

5) Question on 40 CFR 261.32: Do K-listed waste numbers apply only to waste generated from facilities whose primary industries are the industrial categories listed, or do they apply to wastes generated from the manufacturing operations listed, regardless of what the primary industrial category of the generator is? I understand that K062 only applies to industries within specified SIC codes, but does this concept apply to all the other K-listed wastes as well?

ANSWER: The EPA Hazardous Waste Numbers listed under 40 CFR 261.32 are wastes from "specific sources," and the sources are specified in the listing description. These may be the "manufacturing operations listed" to which your letter refers. The primary SIC code for the facility does not limit the applicability of the hazardous waste listing description(s) to that (or any other) facility. For example, production of various organic chemicals with different SIC codes may occur at large, complex facilities.

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Thank you for your inquiry. If you need further assistance, please contact Ed Abrams, Chief, Listing Section at (202) 382-4770.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

cc: Waste Management Division Directors, Regions I-X
Susan Bromm, OWPE (OS-520)