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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SEP 13 1990

Charles Winwood
Assistant Commissioner
Office of Inspection and Control
U.S. Customs Service
1301 Constitution Avenue, NW
Washington, D.C. 20229

Dear Mr Winwood:

Thank you for your letter of July 12, 1990 concerning the current and future regulatory status of "empty" containers under 40 CFR 261.7.

Your statement is correct that this section allows, in some cases, up to one inch of residue to remain in a container that held certain hazardous wastes and be considered empty for purposes of the Resource Conservation and Recovery Act (RCRA) regulations. However, the "one-inch" rule is only part of the definition of an "empty container" in 261.7(b). This definition has three parts and is dependent on the type of waste the container held. In other words, how one determines whether a container is empty depends on the material previously contained. Enclosed with this letter for your review, and for the use of your staff, is a discussion of the Agency's interpretation and rationale for this important provision. The current rule was our way of defining when a container no longer poses a serious hazard, but we did not have definitive data to support the conclusion.

I have asked Mike Petruska, Chief of the Waste Characterization Branch, to contact your staff. His Branch is responsible for generator and transporter issues, and I think it appropriate for them to meet as this would allow us to understand more fully your concerns and to discuss alternative regulatory definitions to rectify this situation.

My understanding of your concern is that border inspections

of containers may unknowingly expose your agents to hazardous waste through this regulatory definition. This is a legitimate concern, and you should note that this situation may be rectified through our work on the administration's Export Bill pursuant to the Basel Agreement. When it is finalized, it is anticipated that it will subject hazardous waste that is currently exempt from Subtitle C requirements e.g., "empty" containers) to the provisions governing the import and export of hazardous waste. My staff will continue working with your staff to ensure that situations such as this are covered in the final bill.

In the interim, EPA will continue working with Customs on training efforts such as the recently completed U.S. Customs/NEIC training of 500 customs inspectors on the Mexican border. Currently, we are discussing the feasibility of expanding this effort to include joint training of U.S. and Canadian customs officials with Environment Canada. Adequate training for inspection procedures for hazardous waste shipments is probably the best method of ensuring the continued safety of Customs employees.

Thank you for your interest in this issue, I look forward to continuing to work with the Customs Service on hazardous waste issues. If I or my staff can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Original Document signed

Sylvia K. Lowrance
Director
Office of Solid Waste

Enclosure

ENCLOSURE

The definition of "empty" containers in 40 CFR 261.7 has three parts and is dependent on the type of waste the container held. In other words, how one determines whether a container is empty depends on the material previously contained.

The first part of the definition applies to containers which held hazardous wastes other than compressed gases or acute hazardous wastes. For such containers, the regulations provide that an empty container is one from which all wastes have been removed that can be removed using practices commonly employed to remove materials from that type of container, (e.g., pouring, pumping, aspirating), and that no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner (40 CFR 261.7 (b)(1)(l)(i) and (ii)). Additionally, in the August 18, 1982 Federal Register, the Environmental Protection Agency (EPA) provides a weight alternative to this "one-inch" rule. Specifically, the Agency allows 3 percent by weight of the total capacity of the container to remain in containers that are less than or equal to 110 gallons in size. For containers greater than 110 gallons, an empty container is one from which all residues have been removed by normal means, and no more than 0.3 percent by weight of the total capacity of the container remains in the container (40 CFR 261.7 (b)(1)(iii)).

In the preamble to the August 18, 1982 Federal Register, EPA discusses the incorrect substitution, by members of the regulated community, of the word "or" for the word "and" at the end of paragraph 261.7 (b)(l)(i). This substitution would lead an individual to believe that the practice of leaving one inch of residue in a container qualifies the container as being "empty", whether or not all of the waste has been removed to the extent possible using methods commonly employed. The Agency emphatically states that this is not the case. When the two paragraphs are correctly read together, it is clear that one inch of residue is an overriding constraint, to be utilized only if all wastes cannot be removed by normal practices.

The second part of the definition covers containers which have held hazardous wastes which are compressed gases. For these containers to be considered empty under RCRA, the pressure inside the container must approach atmospheric pressure.

The third part of the definition covers containers that have held acute hazardous listed in 261.31, 261.32 or 261.33(e). For such a container to meet the definition of "empty" under 261.7(b), the container must be triple rinsed with an appropriate solvent, or in the case of a container with an inner liner, the inner liner must be removed.

The EPA discusses the rational for the definition of "empty container" in the preamble of the November 25, 1980 Federal Register (45 FR 78525). "EPA believes that, except where the hazardous waste is an acutely hazardous material listed in 261.33(e), the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment." However, EPA was still (and remains) somewhat concerned with unregulated container residues.

This concern was illustrated later in the November preamble, when the Agency set forth three options for regulation of the residues in "empty" containers and solicited comments on these options, as well as any data indicating that unregulated residues may pose a substantial hazard to human health and the environment. The three options were 1) to require triple rinsing for all containers; 2) to regulate the residue when it is removed from a container; and 3) to impose a limit on the amount of unregulated residue. Of the three options presented, EPA considered triple rinsing for all containers to offer the greatest protection to human health and the environment. This approach would ensure that the only container residues left unregulated would be trace amounts remaining after triple rinsing or an equivalent cleaning operation. Thus, if all containers were required to be triple rinsed before they were considered "empty" under RCRA, the potential for environmental and health problems associated with these containers could be substantially reduced.

The Agency addressed the comments received in response to the November 25, 1980 solicitation in the August 18, 1982 Federal Register. Most commenters found the triple rinsing option undesirable and the Agency had no data to support the proposal of the triple rinse option based on the comments received. Accordingly, the Agency has continued to implement the "one-inch"

rule (or the 3 percent/0.3 percent alternative) under Federal regulations.

It is also important to note that the shipment of empty containers which have held hazardous wastes may be registered under more stringent or additional State, local, or Federal regulations. For example, under the Department of Transportation (DOT) regulations, a container which has held a hazardous material must be cleaned and purged of its contents before the hazardous material label can be removed (49 CFR 173.29).