

9442.1993(05)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

December 23, 1993

Mr. Peter L. Joseph
United States Department of Agriculture
Animal and Plant Health Inspection Service
6505 Belcrest Road
Federal Building, Room 533
Hyattsville, Maryland 20782

Dear Mr. Joseph:

Thank you for your letter of August 4, 1993, concerning the requirements for disposal of discharged M-44 Cyanide Capsules that originally contained a sodium cyanide pesticide. Your letter identifies two exemptions from the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that you believe may apply to discharged M-44 capsules. It appears that either or both of these exemptions may apply to your activities. Each exemption is discussed in detail below. Please note that because these exemptions are conditional and self-implementing, it is your responsibility to determine whether or not the conditions of the exemptions are met. Because generation of this waste is not likely to fit the typical hazardous waste generation pattern, it may also be necessary to contact the agency implementing the hazardous waste program in the areas where the pesticide is used to determine the applicability of these exemptions.

First, you identify the empty container provision of 40 CFR 261.7 as a possible exemption. Since the capsules contained a sole active ingredient formulation of sodium cyanide (acute hazardous waste P106, see 40 CFR 261.33(c) and (e)), 40 CFR 261.7(b)(3) would be the appropriate standard. Specifically, 40 CFR 261.7(b)(3) indicates that a container that has held an acute hazardous waste listed in 40 CFR 261.33(e) is considered empty if: 1) the container has been triple rinsed, or 2) the container has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal.

In your letter you indicated that the fired capsules are cleaner than triple-rinsed pesticide containers. If the capsules have been cleaned (i.e., the pesticide removed) by a method that has been shown to achieve removal equivalent to triple rinsing, they would be considered empty containers. This exclusion is self-implementing; there is no formal EPA approval process for using an alternative cleaning method under 40 CFR 261.7(b)(3). We would suggest that persons using an alternative cleaning method document the equivalency of the method and its use. Note that under 40 CFR 262.40(c), generators of hazardous wastes (see footnote 1) are required to maintain records of waste identification determinations. It might also be useful to discuss the use of an equivalent removal method with the agency implementing the hazardous waste regulations in the area of use; the state hazardous waste agency if authorized, or the appropriate EPA regional office if the state is not authorized.

Second, you identify the Conditionally Exempt Small Quantity Generator (CESQG) provision of 40 CFR 261.5 as a possible exemption. Specifically, 40 CFR 261.5(e) and (f) indicate that a generator who generates less than one kilogram of acute hazardous waste in a calendar month is a CESQG and is not required to manage that acute hazardous waste in compliance with the full hazardous waste regulations providing that the generator complies with certain requirements set forth in paragraph (f). In addition to waste identification and accumulation requirements, the generator is limited to managing the acute hazardous waste in an on-site or off-site facility that meets one of five criteria listed in 40 CFR 261.5(f)(3)(i)-(v). It should be noted that this requirement would apply to burial of hazardous wastes as well as to burning.

The one kilogram quantity limit applies to each generator, which is defined in 40 CFR 260.10 to mean "any person, by site, whose act or process produces hazardous waste ..." Depending on where and how the M-44 Cyanide Capsules are used, it is possible that each person or organization using the capsules in an area (and/or the owner of the land on which they are used) may be considered a separate generator. As long as any such generator generates less than one kilogram of acute hazardous waste in a month, that waste may be managed under the reduced provisions of 40 CFR 261.5(e) and (f) (see footnote 2). Users of M-44 Cyanide Capsules should contact the appropriate state or EPA regional office for assistance in defining individual generators based on

the facts of the pesticide use. Alternatively, if the Animal and Plant Health Inspection Service is the only user of these capsules, it may be possible to identify the total quantity generated annually, and from that determine that all generators generate less than one kilogram per month. Please note that any undischarged capsules that are disposed of would also be included in this calculation.

Under 40 CFR 261.5(f), a CESQG of less than one kilogram per month of an acute hazardous waste may dispose of that waste at one of several types of facilities. For M-44 Cyanide Capsules, the most useful type of facility is likely to be one that is "permitted, licensed, or registered by a state to manage municipal or industrial solid waste" (40 CFR 261.5(f)(3)(iv)). Please find enclosed a letter that further explains this requirement. It may be possible to obtain permitting, licensing, or registration from the appropriate state agency to dispose of M-44 Cyanide Capsules at the site of use or elsewhere in the field (burning or burial). Alternatively, the capsules would have to be disposed of at an off-site facility meeting one of the listed criteria.

This letter addresses only the federal hazardous waste regulations. Authorized state agencies (or in some cases the appropriate EPA Regional Offices) generally implement the RCRA program within each state, and state regulations may be different (although no less stringent) than the federal regulations. Most relevant for you may be that some states do not recognize the CESQG exemption, or may have different quantity limits than the federal regulations. Thus, persons using M-44 Cyanide Capsules should contact the state environmental agency (or EPA regional office) for the area in which the capsules will be used to determine how the regulations of that particular state will apply to disposal of the capsules.

Thank you for your interest in the safe and environmentally sound management of these wastes. If you have any further questions please contact Charlotte Mooney, of my staff, at (202) 260-6926.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

Enclosure

cc: Bill Jacobs, OPP (7505C)

- 1 Except Conditionally Exempt Small Quantity Generators, discussed below.
- 2 If the actual weight of residue remaining in the container can be identified, it is not necessary to include the weight of the container in this quantity.