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

September 28, 1994

Ms. Susan L. Prior
Regional Environmental Manager
Laidlaw Environmental Services (North East), Inc.
221 Sutton Street
North Andover, Massachusetts 01845

Dear Ms. Prior:

Thank you for your letter of May 31, 1994, in which you requested clarification on four hazardous waste issues. Your questions and our responses follow.

Manifest Document Number

Your first question pertained to use of the manifest document number in situations in which the hazardous waste manifest consists of several pages. The manifest document number is the unique five digit number assigned to the manifest by the generator. Under the Federal program, if continuation sheets are necessary, the number entered in the manifest document number block of the continuation sheets should be the same as the number entered in the manifest document number block on the first page of the manifest. However, in states such as Louisiana which have discontinued use of continuation sheets, you should contact the state environmental agency to determine the appropriate procedures.

F003, F005, D001

In the second scenario, a solvent mixture consisting of F003 and F005 exhibits the characteristic of ignitability. You asked if, for purposes of Land Disposal Restriction compliance, the treatment standard for D001 (ignitability) should be included. Your letter states that although the characteristic constituents or properties are not specifically addressed in the treatment standard for the listed wastes, the characteristic of ignitability is effectively removed during treatment for F003 and F005.

Yes, F003 and F005 wastes that are also ignitable should also be identified as D001. This will assure that the applicable treatment standards for the spent solvent wastes will be met, as well as the treatment standards for D001 that were established in the Third rule in 1990 (for high TOC D001 wastes) and in the Interim Final Rule promulgated on May 24, 1993 (D001 wastes managed in non-Clean Water Act (CWA) wastewater treatment systems, non-CWA-equivalent wastewater treatment systems, and non-Class I nonhazardous underground injection wells).

Waste Destined for Recycling

In your third question, you describe a situation in which a manufacturer generates a characteristic by-product that is excluded from the definition of solid waste if reclaimed [40 CFR §261.2(c)(3)]. The generator wants to recycle the material but cannot afford the transportation costs to send the material to the reclaimer. Instead, he sends the material to a TSDF storage facility who in turn ships it to the reclaimer. You asked if the material was subject to RCRA while in storage at the TSDF, or if the solid waste exemption extended to this situation if the TSDF ships the waste to be reclaimed. You also asked if scrap metal that exhibited a characteristic but was destined for recycling would need to be managed as a hazardous waste if stored at a TSDF prior to being recycled. In addition, you asked if the TSDF could receive material, meeting the definition of recyclable material under §261.6(a)(3), on a hazardous waste manifest and send it out on a bill of lading.

I will answer the three sections to this question separately, beginning with the reclaimed characteristic by-product. Under the existing RCRA recycling regulations, the status of secondary materials is based upon 1) the type of materials and 2) the recycling activity involved (January 4, 1985 Federal Register; 50 FR 619). The recycling activity is viewed prospectively; that is, the status of certain secondary materials is determined by knowing how the material is going to be recycled. The term "when" as it is used in 40 CFR §261.2(c) for recycling activities (e.g., when reclaimed) is not meant to refer only to the moment in time when that activity occurs, in order to determine the regulatory status of a materials (with the exception of speculative accumulation, explained below). In your illustration, if the generator intends to have his/her characteristic by-product reclaimed at some point in

the future, he/she would not be deemed to be managing a solid or hazardous waste, according to Table 1 in §261.2. Of course, when secondary materials are excluded or exempt based on a claim of recycling, the material will no longer be excluded or exempt if it is accumulated speculatively prior to recycling. Also, respondents in enforcement actions who make such a claim (e.g., generator, recycler, owner/operator of the TSDF conducting storage) must be able to document a claim of legitimate recycling (see §261.2(f)). If the Agency believes that particular management practices involving excluded materials are contributing to the waste disposal problem, to the extent that the materials are clearly discarded (in other words, if the material is managed in such a way that it is essentially being disposed of), these materials would be considered to be solid waste.

Regarding speculative accumulation, in the January 4, 1985, final rule, EPA acknowledged the risks associated with accumulating hazardous secondary materials prior to reclamation and chose a more stringent approach as a result (50 FR 617). The purpose of promulgating the speculative accumulation provisions was to allow EPA to regulate certain materials, intended for recycling, as solid waste if the person claiming that his/her waste was excluded did not recycle sufficient quantities of these materials within the calendar year.

> The [speculative accumulation] provision thus applies to secondary materials not otherwise considered to be wastes when recycled -- namely, to materials that are to be used as ingredients or as commercial product substitutes, to materials that are recycled in a closed-loop production process, to unlisted sludges and by-products that are to be reclaimed, and to black liquor and spent sulfuric acid being reclaimed. Thus, if one of these materials are overaccumulated, they would be considered to be hazardous wastes and would become subject to regulation... (50 FR 635, emphasis added).

To respond to the second part of this question, scrap metal is both a solid waste and a hazardous waste but is exempt from the hazardous waste regulations found in 40 CFR 262 through 266 and parts 268, 270, and 124, if it is recycled (§261.6(a)(3)(iii)). Again, the recycling activity is viewed prospectively; provided that the generator intends to recycle his/her scrap metal at some point in the future, the scrap metal is exempt from the hazardous

waste regulations. As in the illustration above, respondents in enforcement actions who make such a claim (e.g., generator, recycler, owner/operator of the TSDF conducting storage) must be able to document a claim of legitimate recycling (see §261.2(f)).

Regarding the third part of this question, recyclable materials that are listed in §261.6(a)(3) are exempt from the hazardous waste regulations found in parts 262 through 266 and parts 268, 270, and 124, including the hazardous waste manifest, if they are recycled. There would be no reason, under the Federal program, for these recyclable materials to be accompanied by a hazardous waste manifest during transportation.

Treatment Standards for Chlorinated Fluorocarbons

Finally, your letter states that the waste code F001 contains a constituent listed as "chlorinated fluorocarbons" in 40 CFR Part 261 Subpart D, and that the treatment standards for the F waste found in 268.43 contains only two chlorinated fluorocarbon constituents. Your letter asks which treatment standard should be used for spent chlorinated fluorocarbons which are different from the two constituents listed under F001 - F005 in §268.43.

Only the treatment standards for the spent chlorinated fluorocarbons identified as constituents of concern in F001 - F005 wastes must be met for purposes of satisfying the treatment standards for F001 - F005 wastes. You should be aware, however, that there is one fluorocarbon waste included in Appendix III to 268, in the list of halogenated organic compounds regulated under §268.32: dichlorodifluoromethane. If this constituent is present in total concentration greater than or equal to 1,000 mg/kg, it would be subject to the LDR treatment standard found at §268.42(a)(2).

Please note that under section 3006 of RCRA, individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. In addition, section 3009 of RCRA allows states to promulgate regulatory requirements that are more stringent than the federal program. Therefore, you should contact the appropriate state environmental agency for applicable laws and regulations that may exist.

For questions pertaining to use of the manifest, please call Angela Cracchiolo at (202)260-4779. For questions pertaining to

the Land Disposal Restrictions program, please call Rhonda Craig at (703)308-8771. Thank you for your interest in the safe and effective management of hazardous waste.

Sincerely,

Michael L. Shapiro, Director
Office of Solid Waste

Attachment

Laidlaw Environmental Services (North East), Inc.
221 Sutton Street
North Andover, Massachusetts 01845

May 31,1994

U.S. EPA
Office of Solid Waste
401 M St. SW
Washington, D.C. 20460

Attn: Michael Shapiro, Director

Dear Mr. Shapiro,

Laidlaw Environmental Services (North East), Inc., requests clarification on the four hazardous waste issues discussed below:

1. Manifest Document Number

   According to the manifest requirements found in the Appendix to 40 CFR Part 262, the manifest document number required in item #1 must be a unique five digit number assigned to the manifest by the generator. Since many of the state agencies no longer allow the use of continuation pages, several manifests may be required for one shipment of hazardous waste. The state of Louisiana says that additional first page manifests may be used "as continuation pages". Should the manifest document number be different for each page of the manifest even though they represent one shipment, or can one document number be used on all manifest for the same shipment?

2. F003, F005, D001

   An F003 and F005 solvent mixture carries a D001 because it exhibits the characteristic of ignitability. For purposes of Land Disposal Restriction compliance, do treatment standards for D001 have to be included? Although the characteristic constituents or properties are not specifically addressed in the treatment standard for the listed wastes, meeting the

listed treatment standards for the F003/F005 solvents would effectively remove the characteristic.

3. Waste Destined for Recycling

   A manufacturer generates a by-product waste which exhibits the RCRA lead characteristic, but is exempt as a solid waste if it is reclaimed [40 CFR § 261.2(c)(3)]. The generator wants the material to be recycled but cannot afford the transportation costs to send the material to the reclaimer, so the generator sends the waste to a TSDF storage facility who in turn ships to the reclaimer. Does the waste have to be managed as a hazardous waste while in storage at the TSDF, or does the solid waste exemption still hold if the TSDF ships the waste to be reclaimed? If the TSDF were storing scrap metal destined for recycling [40 CFR § 261.6(a)(3)(iii)], would it have to be managed as a hazardous waste during storage if it exhibited a characteristic? Could the TSDF receive material on a hazardous waste manifest and send it out on a bill of lading if it met the definition of a recyclable material under 261.6(a)(3)?

4. Treatment Standards for Chlorinated Fluorocarbons

   The waste code F001 contains a constituent listed as "chlorinated fluorocarbons" in 40 CFR Part 261 Subpart D. The treatment standards for the F waste found in 268.43 contains only two chlorinated fluorocarbon constituents. What treatment standard should be used for spent chlorinated fluorocarbons which are different from the two constituents listed under F001 - F005 in 268.43?

Thank you for your consideration and I look forward to hearing from you at your convenience.

Very truly yours,

Susan L. Prior
Regional Environmental Manager