

PPC 9441.1980(04)

RAILROAD TIES AS HAZARDOUS WASTES UNDER THE MIXTURE RULE,  
SMALL QUANTITY GENERATOR

UNITED STATE ENVIRONMENTAL PROTECTION AGENCY

NOV 17 1980

Mr. William S. Stowe  
Boston Edison Company  
800 Boylston Street  
Boston, Massachusetts 02199

Dear Mr. Stowe:

This is in response to your letter of September 5, 1980, requesting this issuance of regulation interpretation memoranda (RIMs) on three questions you have about our RCRA hazardous waste management regulations. Although we may consider issuing RIMs or amendments to our regulations of these issued at some point in the future, I do not wish to further delay our response to you. Therefore, I am providing answers to your questions in this response.

First you raise the question about whether the mixture rule of §261.3(a)(2)(ii) causes railroad ties to be hazardous wastes because they contain creosote which is listed in §261.33(f) or causes insulating materials to be hazardous wastes when and because they contain asbestos which also is listed in §261.33(f). The answer is no. The intent and purpose of §261.33 is to list commercial chemical products and manufacturing chemical intermediates as hazardous wastes when and only when they are discarded or intended to be discarded. Thus, we are interested in creosote and asbestos in their common commercial form as hazardous wastes if discarded. If we should ever be interested in listing railroad ties or insulation materials as hazardous wastes, when discarded, because of their content of creosote, asbestos or other chemicals, we will specifically list them in §261.33 or in a similar section. Similarly, if we should ever be interested in listing used railroad ties or used insulation materials (insulation material removed from buildings) as hazardous wastes because of their content of chemicals, we will list them in §261.31.

The mixture rule of §261.3(a)(2)(ii) does apply in a limited way to §261.33 chemicals. If these listed chemicals are discarded by being

mixed into a solid waste, then the resulting solid waste mixture becomes a hazardous waste. Examples are dumping excess acetone into a wastewater sewer or dumping excess inventory or expired-date inventory of pesticide into a refuse bin. In these cases, the commercial chemical becomes a hazardous waste instantly when the act of discarding takes place. As a hazardous waste at that point, the mixture rule operates to cause the mixture to become a hazardous waste. Incorporating creosote into railroad ties or asbestos into insulation materials is not an act of discarding these chemicals/ thus, these chemicals do not, at that point, become hazardous wastes, nor does the resulting product.

Your second question is whether the small quantity generator special requirements of §261.5 apply to each facility; a facility being manufacturing plant or, possibly, several manufacturing or other operations on the same or geographically contiguous site (see definition of "on-site" in §260.10(a)). The term "person" was erroneously used in §261.5. The Agency meant to use the term "generator" which by its definition in §260.10(a) means "any person, by site, . . . ." We will be correcting this error in a forthcoming amendment of §261.5. The terms "person" as defined in §260.10(a) includes whole companies and this causes §261.5 to be applicable only on a company-wide basis. Thus, for example, a company that operates several plants, each of which could qualify for the small quantity generator special requirements because each generates slightly less than 1000 kilograms of hazardous waste each month, could not qualify, under a literal reading of the provision as now written, because the company's aggregate generated quantity of hazardous waste exceeds 1000 kilograms each month.

Finally, you ask whether the full regulations apply to intermittent or very small quantities of hazardous waste generated by a facility that cannot qualify for the small generator special requirements because it also generates one or more large quantities of hazardous waste. The full regulations apply to these intermittent and very small quantities of hazardous waste as they do to all other quantities of hazardous waste generated by a "large quantity generator."

I hope I have clearly answered your questions and apologize for the tardiness of this response--we have simply been overburdened with questions, requests for RIMs and other demands.

Sincerely yours,

Gary N. Dietrich

Associate Deputy Assistant Administrator  
for Solid Waste

bcc: Filomena w/incoming

Regional A&HM Division Directors w/incoming

Jack Lehman w/incoming

WH:GDietrich:bm:11/13/80:401 M