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RESPONSES TO ACCIDENTAL SPILLS OF LISTED OR
CHARACTERISTIC HAZARDOUS WASTES

SEP 29 1986

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Mr. Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue, Box 1760
Portland, Oregon 97207

Dear Mr. Hansen:

Thank you for your August 21, 1986, letter regarding accidental spills of listed or characteristic hazardous wastes. Enclosed is the Agency's response to the eight questions and issues that you raised. Please note that we have referred one of your questions to the Superfund Office and will forward a response to you. I hope this clarifies the Environmental Protection Agency's regulation of spills and spill cleanups.

If I can be of further assistance, please let me know.

Sincerely,

Original Document signed

J. Winston Porter
Assistant Administrator

Enclosure

1. Accidental spills of listed or characteristic hazardous wastes which are cleaned up within a reasonably short time.

The Resource Conservation and Recovery Act (RCRA) regulations in 40 CFR Parts 264 and 265 Subparts C and D require immediate actions to minimize hazards to human health and the environment from any unplanned, sudden or non-sudden releases of hazardous waste or hazardous constituents. Sections 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment and containment activities hazardous waste discharges and imminent and substantial threats of discharges (under §260.10 the term discharge includes both accidental and deliberate spills). The effect of this exemption is to promote hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threats of discharges from time consuming requirements.

Under the exemption, treatment, storage and disposal facilities regulated under RCRA must continue to meet the applicable requirements of Subparts C and D of Parts 264 and 265. Treatment and containment activities conducted after the initial response period are subject to interim status and permitting standards. A facility may qualify for an emergency permit under §270.61 for such treatment and containment activities occurring after the immediate response period.

Accidental spills should be addressed immediately and in accordance with the facility's contingency plan. Sections 264.51 and 265.51 require owner/operators of treatment, storage and disposal facilities to have a contingency plan describing actions facility personnel must take in response to any unplanned sudden or non-sudden releases. Under section 262.34(a)(4), generators are also required to have such contingency plans as a condition of obtaining a permit exemption for 90 day on-site accumulation. Generators are subject to interim status and permitting requirements for treatment and containment activities conducted after the accumulation period.

2. Accidental spills not cleaned up within reasonably short time.

As stated above, treatment and containment activities conducted after the initial response period are subject to permitting and interim status requirements. In addition, if cleanup activities do not begin promptly, the spill is considered a land disposal site subject to permitting requirements.

The Environmental Protection Agency (EPA) has not established a definition of what constitutes an immediate response to a spill situation. The time frames and extent of immediate response must be judged by persons responding to discharges on an individual basis. Extended responses which are not judged to be immediate in nature may result in: (1) a modification to the facility's contingency plan; (2) an enforcement action for an inadequate contingency

plan or permit violation; or (3) enforcement action for illegal disposal.

3. Spills where cleanup requires on-site treatment.

As explained in the response to question #1, §264.1(g)(8) and §265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment activities conducted in immediate response to discharges or threats of discharges.

4. Transportation spills cleaned up within a reasonably short time.

§263.30 requires the transporter to take appropriate, immediate action to protect human health and the environment. Under §263.30(b), an authorized official may authorize removal of the spill by transporters without an EPA ID number or manifest in an emergency. When an emergency no longer exists, all applicable requirements of the RCRA regulations once again apply to all of the transporter's activities. The Department of Transportation has also issued rules regarding spills occurring during transport.

5. Transportation spills not cleaned up within a reasonably short time.

As discussed above, EPA has not established a definition of what constitutes an immediate response to a spill situation. The timeframes and extent of immediate response must be judged by persons responding to discharges on an individual basis. Extended responses which are not judged to be immediate in nature may be subject to enforcement action for illegal disposal.

1. When does a spill become a Superfund candidate versus cleanup under RCRA?

Question has been referred to our Superfund Office for response.

2. When does a spill become a facility as defined in RCRA?

As discussed above, if cleanup activities do not begin promptly, the spill is considered a land disposal site subject to permitting requirements. In addition, spill areas where hazardous waste is treated, disposed or stored past the immediate response phase are subject to all applicable interim status and permitting standards for hazardous waste management facilities receiving waste under 11/19/80 as outlined in Parts 264, 265 and 122.

3. Are there any situations where the cleanup standards are different than background?

RCRA regulations do not specifically identify a level of clean-up required in spill situations. Under §263.31, a transporter must clean up any hazardous waste discharge so that the discharge no longer presents a hazard to human health and the environment. Under the emergency procedures provisions of §264.51 and §265.51, generators, treatment, storage and disposal facilities must take those actions, as outlined in the contingency plan, necessary to minimize hazards to human health and the environment.