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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

OCTOBER 1990

2. Regulatory Status of Petroleum Contaminated Media and Debris Under the Toxicity Characteristic UST Temporary Deferral

The owner/operator of a petroleum underground storage tank (UST) is conducting a corrective action pursuant to Subpart F of 40 CFR Part 180. During corrective action, sludges are removed from the inside of the tank. These sludges exhibit the toxicity characteristic (TC) for benzene. Pursuant to 40 CFR Section 261.4 (b) (10) "...petroleum-contaminated media and debris that fail the test for the toxicity characteristic of Section 261.24 and are subject to the corrective action regulations under Part 280 of this chapter..." are excluded from the definition of hazardous waste. The preamble to the March 29, 1990, Federal Register does not explicitly define petroleum contaminated "media" and "debris." (55 FR 11836). Would the deferral apply to those sludges that are removed from the tank, or is the deferral intended only for environmental media such as soil and groundwater?

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2. Regulatory Status of Petroleum Contaminated Media and Debris Under the Toxicity Characteristic UST Temporary Deferral (Cont'd)

In the March 29 preamble, the Agency stated that "further evaluation of the impacts of applying the TC to soils and ground water contaminated by petroleum from UST's and subject to the Subtitle I program is necessary in order to determine whether an exemption for such materials is warranted...." (55 FR 11836) The deferral only applies to contaminated ground water, soil and debris, but not to wastes such as sludges generated in a raw material storage tank. Section 261.4(a) states "(a) hazardous waste which is generated in a product or raw material storage tank,...is not subject to regulation under Parts 262 through 265, 268, 270, 271 and 124 of this chapter or to the notification requirements of Section 3010 of RCRA, until it exits the unit in which it was generated,...." Therefore, sludges removed from Underground Storage Tanks during corrective actions pursuant to Part 280 Subpart F do not meet the criteria of "media and debris" and, therefore, the deferral from TC regulation does not apply.

NOTE: The June 29, 1990, Federal Register contains a clarification of the deferral which states, "(t)his exclusion applies only to petroleum contaminated media and debris which exhibit the TC for any one or more of the newly identified organic constituents, and which are subject to corrective action under Part 280." (55 FR 26986) Therefore, those constituents previously regulated under the EP Toxicity rule (DO04-DO17) and now regulated under the TC are not eligible for the TC underground storage tank deferral even if they meet the criteria of media and debris. A generator must still determine if the media and debris is a characteristic hazardous waste for the TC constituents D004-DO17.

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