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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MARCH 1991

1. Amendments to Part 262 Hazardous Waste Determination and Recordkeeping Requirements of Part 262 and 268 The Land Disposal Restrictions (LDR) Third Third final rule (June 1, 1990, 55 FR 22520 revised the waste identification requirements of 40 CFR 262.11. Prior to the revision, section 262.11 set out an either/or scheme where, if the generator determined that a waste was listed in Part 261, Subpart D, he or she need not determine whether the waste exhibited a characteristic under art 261, Subpart C. With the promulgation of the Third Third rule, the Agency amended section 262.11 to indicate that generators must determine whether listed wastes also exhibit any hazardous waste characteristics for purposes of compliance with LDR.

A generator is required to develop and maintain records for hazardous waste under two regulatory programs, LDR (Part 268) and generator standards (Part 262). How does the amended language of 40 CFR 262.11(c) affect the paperwork associated with these two regulatory programs?

The amended language of section 262.11(c) does not affect the generator paperwork required in Part 262. When a generator determines that a solid waste meets a Part 261, Subpart D hazardous waste listing, he/she is not required to determine whether the listed waste exhibits any characteristics for purposes of filling out Part 262 paperwork such as generator notification forms (8700-12) and biennial reports. (However, the generator may elect to determine whether the waste exhibits a characteristic for his/her own information or for other reasons.) On the other hand, the paperwork of Part 268 must reflect the amended language of Section 262.11(c) which states that for the purposes of compliance with Part 268 a generator must determine if a listed waste is also characteristically hazardous. (Emphasis added.)

The general principal of the section 262.11 waste identification modification is that if both the treatment standard for a listed waste and the treatment standard for a characteristic waste are in effect for a common constituent, then the treatment standard for the listed waste applies because it is more specific. If, however, the treatment standard for the listed waste does not specifically address the characteristic(s), the waste codes for both the listed waste and the characteristic waste(s) should be included on the notification paperwork of section 268.7. (see 35 FR 22659) In the Third Third technical amendment rule (January 31, 1991,

36 FR 3864), the Agency provided an example of this second scenario. K062 is listed for toxicity as well as for the characteristic of corrosivity. Because the K062 treatment standard does not specifically address the characteristic of corrosivity, both K062 and D002 must be included in the section 268.7 paperwork. (56 FR 3872)

There is also a variation of the principle illustrated above. If the most specific treatment standard is subject to a national capacity variance or a case-by-case extension and thus is not yet in effect, then the treatment standard for the most specific waste code that is in effect must be met. The January 31, 1991, Federal Register also provides an example of this situation. During the K048 variance period from August 8, 1990, until November 8, 1990, K048 was subject to the treatment standards for EP toxic chromium and lead (D007 and D008) since the treatment standards for these two characteristics were in effect. After the variance expired for K048, section 268.7 notification for the K048 treatment standard would only apply because the listing treatment standard is more waste specific than the two characteristic waste treatment standards. (56 FR 3873)

In conclusion, the amended language at 40 CFR 262.11(c) was intended for compliance with LDR treatment standards. The generator recordkeeping and reporting requirements of Part 262 remain unaffected.

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