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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 1991

3. Removal of Toxicity Characteristic Waste from a Surface Impoundment

A generator produced a solid waste and disposed of his waste in an on-site surface impoundment. After the September 25, 1990, effective date of the toxicity characteristic (TC) rule, the waste would meet the definition of a newly-identified TC waste (40 CFR §261.24). If he chooses to remove the waste from his surface impoundment and dispose of it off-site, would his surface impoundment be a regulated unit under Subtitle C of RCRA?

No, not under the following circumstances. The generator may remove the waste from the surface impoundment prior to the effective date of the TC rule and the unit will not be regulated as a subtitle C unit. EPA has also clarified that the Agency would not normally consider the one-time removal of waste from a unit on or after the TC effective date to bring the unit into the hazardous waste management system (e.g., as a storage unit). Federal Register clarification notice, "EPA does not consider one-time removal of waste from a unit on or after the TC effective date, in and of itself, to Subtitle C. The Agency does not view one-time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment." The preamble language goes on to state that this removal is beneficial to human health and the environment since it would eliminate potential sources of groundwater contamination. (55 FR 39410)

Should the generator choose to remove the hazardous waste from the unit on a one-time basis, he may use the impoundment as a non-Subtitle C unit (provided no other hazardous wastes are generated, managed, or disposed of in the unit). On the other hand, if the generator chooses to leave the waste in place and does not use the unit for hazardous waste management after the effective date of the TC rule (for example, if he intends for the surface impoundment to be the final disposal site for the waste), the unit would not be a regulated Subtitle C surface impoundment.