

PPC 9551.1991(13)

THIRD THIRD LAND DISPOSAL RESTRICTIONS FINAL RULE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

DEC 20 1991

Mr. Douglas MacMillan, Director
Hazardous Waste Policy
National Solid Wastes Management Association
Suite 1000
1730 Rhode Island Ave., N.W.
Washington, DC 20036

Dear Mr. MacMillan:

This letter responds to your inquiry dated October 11, 1990 about several aspects of the Third Third land disposal restrictions final rule. Your letter includes questions about the following topics: lab packs, inorganic solid debris, certification/notification requirements, and the disposal of D001 ignitable wastes. Responses to the specific questions about each of these topics are presented below.

1. Lab Packs

Your question concerns the language in 40 CFR 264.316(f) and 40 CFR 265.316(f). You refer specifically to perceived contradictions between the first and second sentences of these paragraphs; however, it is assumed that you are actually concerned with the language of the second and third sentences which specifies that "[p]ersons who incinerate lab packs according to the requirements in 40 CFR 268.42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums must meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in paragraph (b) of this section." In particular, you request clarification of whether this language requires fiber drums to be overpacked in metal drums. It is assumed that your confusion stems either from the DOT specifications in 49 CFR 173.12, or the overpacking requirements in 40 CFR 264.316(b) and 40 CFR 265.316(b). The language of the DOT specifications and the §§ 264.316(b) and 265.316(b) overpacking requirements will be examined below.

The language specifying that fiber drums must meet the DOT specifications in 49 CFR 173.12 does not require fiber drums to be overpacked in metal drums. In fact, paragraph (b) of 49 CFR 173.12 states: "The outside packaging must

be a DOT specification metal or fiber drum" (emphasis added).

Moreover, the language specifying that fiber drums must be overpacked according to the requirements in §§ 264.316(b) and 265.316(b) does not require overpacking of fiber drums in metal drums. The first sentence of §§ 264.316(b) and 265.316(b) ("[t]he inside containers must be overpacked in an open head DOT specification metal shipping container") does not apply because §§ 264.316(f) and 265.316(f) clearly state that "[p]ersons who incinerate lab packs according to the requirements in 40 CFR 268.42(c)(1) may use fiber drums in place of metal outer containers." The §§ 264.316(b) and 265.316(b) language that does apply, however, is the requirement to pack a sufficient quantity of absorbent material around the inner containers to completely absorb all of the liquid contents of the inside containers, making the outer container full after packing.

As you mention in your letter, the preamble language on page 22631 of the Third Third final rule explains the Agency's decision to allow fiber drums to be used as outer containers for lab packs being incinerated according to the requirements in 40 CFR 268.42(c)(1). The language of §§ 264.316(f) and 265.316(f) does not eliminate this decision by otherwise requiring the fiber drums to be overpacked in metal drums.

2. Containers

You request clarification of why containers are included in the "inorganic solid debris" definition. You also ask when an empty container would be judged to carry a characteristic of hazardous waste.

By way of background, inorganic solid debris is defined in 40 CFR 268.2(9) as nonfriable inorganic solids contaminated with D004 - D011 hazardous wastes that are incapable of passing through a 9.5 mm standard sieve; and that require cutting, or crushing and grinding in mechanical sizing equipment prior to stabilization; and, are limited to certain types of debris specified in subsequent paragraphs. Paragraph (g)(6) of § 268.2 includes metal cans, containers, drums, or tanks in the definition of inorganic solid debris.

As a further point of background, the answers to your questions are impacted by whether the container being discussed is empty as defined at 40 CFR § 261.7(b). Under the § 261.7(b) provisions, a container that has held hazardous waste (other than a compressed gas or an acute hazardous waste) is "empty" if it meets certain criteria. All wastes must have been removed that can be removed using the practices commonly employed to remove materials from that type of container. To assure that all waste has been removed, there

may be no more than 2.5 centimeters (one inch) of residue remaining on the bottom of the container or inner liner; or no more than 3 percent by weight of the total capacity of the container remaining in the container or inner liner if the container is less than or equal to 110 gallons in size, or no more than 0.3 percent by weight of the total capacity of the container remaining in the container or inner liner if the container is greater than 110 gallons in size.

In response to your first question, containers are included in the definition of inorganic solid debris to cover the possible scenario of a container that has been discarded by means of land disposal (as defined in § 268.2), that does not meet the § 261.7(b) definition of empty, and that is contaminated with a characteristic metal waste. This scenario could occur, for instance, during an excavation at a corrective action site. A container might be uncovered that is damaged (e.g., crushed) so that the hazardous waste within it cannot be removed sufficiently to meet the § 261.7(b) definition of empty. Such a container (i.e., including its contents) is a hazardous waste subject to the land disposal restrictions if it is subsequently land disposed. Furthermore, it is likely that the disposed container would be considered contaminated debris (such a determination may depend upon site-specific conditions best made by an authorized state or EPA Regional representative). If the waste contaminating this disposed container is a characteristic metal waste (DO04 - D011), the container would likely meet the § 268.2(g)(6) criteria of inorganic solid debris, and would thus be subject to a national capacity variance until May 8, 1992 (see § 268.35(b)).

In response to your second question, a container meeting the § 261.7(b) definition of empty may be judged to be a characteristic metal waste under two scenarios. In the first scenario, a container that has never held any hazardous waste may be a characteristic waste if: (1) it is being discarded; and, (2) if the container is in itself a characteristic waste.

In the second scenario, an empty container (as defined in § 261.7(b)) may be a characteristic waste if: (1) it is being discarded; and, (2) if the container is in itself a characteristic waste. It should be noted, however, that any residue remaining in the container is exempt from regulation under the provisions of § 261.7(a) that states that "[a]ny hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under Parts 261 through 265, and Parts 268..."

3. Certifications

You request clarification of the record keeping requirements for a particular scenario: A waste that the generator determines (based on process knowledge)

does not meet the treatment standard is sent to a treatment facility. The treatment facility determines the waste does meet the treatment standard. You did not suggest how such a determination was made. Your question is, how would the record keeping requirements be affected?

In this particular scenario, the treatment facility should analyze the waste in order to determine that the waste meets the treatment standard according to the provisions of their waste analysis plan. It should be noted, however, that there is no requirement that treatment facilities analyze each shipment of waste received, except as specified in their waste analysis plan (see § 268.7(b)). In this particular scenario, however, the generator has made the determination that the waste must be treated based on his knowledge of the waste. The treatment facility is countering the generator's determination with a determination that the waste meets the treatment standard as generated; therefore, the Agency believes that it is appropriate to ask the treatment facility to support their determination with analytical data. The treatment facility also must complete a certification that the waste met applicable treatment standards as generated (see § 268.7(a)(2)(ii), supported by the general principle expressed in § 268.7(b)(6) requiring treatment facilities to comply with notice and certification requirements applicable to generators).

The treatment facility must send the waste analysis data (see § 268.7(b)(4)(iv)), the certification, and a notification (either the generator's notification may be sent, or the facility may create a new notification) to the disposal facility. Copies of the waste analysis data, the generator's notification (as well as the treatment facility's notification if a new notification was created), and the certification must be kept as records in the treatment facility's files.

4. Notification/Certification

A scenario was presented of a TSD company that has a sister company on adjacent property that recycles "side-stream" and "off-spec" chemicals and other wastes containing recoverable amounts of organics by means of a custom distillation process. This process generates still bottoms and wash waters that are subject to the land disposal restrictions. These restricted wastes are piped directly back to tanks at the TSD facility, sometimes on an intermittent basis, sometimes continuously. The question is asked: How must these piped transfers of hazardous wastes from the recycler to the TSD be handled from the perspective of notification/certification compliance?

Even though the recycling facility and the TSD facility are sister companies on adjacent property, they would have been assigned different EPA

identification numbers and are thus considered separate facilities. Therefore, the waste that is piped to the TSD facility (regardless of whether it is on a continuous or an intermittent basis) is subject to the record keeping requirements of § 268.7.

The recycling facility would be subject to the generator requirements of § 268.7(a), which specify that a notification must be sent with each shipment of waste (in this case, from the recycling facility to the TSD facility). The TSD facility must comply with the requirements of § 268.7(b). Questions on how frequently the required paperwork should be sent from the recycling facility to the TSD (i.e., what constitutes a "shipment") should be directed to the EPA Regional land disposal restrictions contact.

5. D001

The question is whether 40 CFR 264.312 allows for the land disposal of a D001 waste. Until promulgation of the Third Third final rule on May 8, 1990, 40 CFR 264.312 (and § 265.312) set out special management requirements for ignitable or reactive wastes that were disposed in a surface impoundment, waste pile, land treatment unit, or landfill. On page 22553 of the final rule, however, the Agency explained that these management requirements are superseded by the treatment standards promulgated in the Third Third final rule. This means that "[f]acilities handling ignitable and reactive wastes will have to comply with the promulgated treatment standards for these wastes in order to land dispose them." The Agency made changes to the regulatory language of §§ 264.312 and 265.312 in the Third Third final rule, to incorporate the requirement that the treatment standards for ignitable and reactive wastes must be met prior to land disposal. Furthermore, the Agency's intent is clearly expressed in the preamble (55 FR 22553).

Therefore, land disposal is allowed only for those D001 wastes that meet the treatment standard. (The treatment standard for D001 wastes containing less than 10% total organic carbon (TOC): deactivation; for D001 containing greater than 10% TOC: incineration or fuel substitution; see 40 CFR 268.42, Table 2.)

I hope you find these answers to be helpful. If you have any further questions, please feel free to contact Matthew A. Straus at (703) 308-8414.

Sincerely,

Original Document signed

Sylvia K. Lowrance

Director
Office of Solid Waste