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RCRA/Superfund/OUST Hotline Monthly Report Question

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2. One-Time Notification Requirement Under §268.7(a)(6)

A manufacturer generates a listed, restricted waste which is piped direct to a wastewater treatment unit exempt from RCRA regulation under §§264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v). After treatment, the listed waste is discharged directly to a POTW pursuant to §261.4(a)(1)(ii). Because the waste is never managed in accumulation tank or containers regulated under §262.34, it is not subject to "substantive regulation" as defined in the March 24, 1986, Federal Register (51 FR 10152-3), and so is not counted in determining generator status (i.e., conditionally exempt, small quantity, or large quantity generator). Which Part 268 land disposal restrictions notification requirements, if any, apply to this waste?

The generator must comply with the one-time notification requirement under §268.7(a)(6). This section states, "[i]f a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2-261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of solid or hazardous waste or exemption from Subtitle C regulation, and the disposition of the waste, in the facility's file" (emphasis added). In the scenario presented above, the waste is generated during the manufacturing process and becomes excluded from the definition of solid waste at the point of discharge to the POTW (§261.4(a)(1)(ii)); in other words, subsequent to the point of generation (see 56 FR 3866; January 31, 1991). Therefore, the one-time notification requirement of §268.7(a)(6) would apply even if, prior to discharge, the generator does not manage the waste in a manner that subjects it to substantive regulation (i.e., the generator does not accumulate the waste in tanks or containers regulated under §262.34).