

PPC 9441.1992(34)

REGULATORY STATUS OF SOILS CONTAMINATED FROM RELEASES OF
COMMERCIAL CHEMICAL PRODUCTS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

October 15, 1992

Mr. William L. Warren
Cohen, Shapiro, Polisher, Sheikman and Cohen
1009 Lenox Drive, Building Four
Lawrenceville, New Jersey 08648

Dear Mr. Warren:

I am pleased to respond to your letter of August 26, 1992, in which you requested clarification of several issues relating to the regulatory status of soils contaminated from releases of commercial chemical products.

The example outlined in your letter dealt specifically with leakage of carbon tetrachloride from a tank. Since the carbon tetrachloride has been "discarded" in this case, it would be identified as U-211 listed hazardous waste. The key question posed in your letter is whether the resulting contaminated soil is hazardous waste, and under what circumstances it would be subject to hazardous waste management requirements.

Under EPA's regulatory definition of hazardous waste in §261.3(c)(1), soils that contain hazardous wastes must be managed as if they were hazardous wastes until or unless they no longer contain the listed waste, exhibit a characteristic, or are delisted (see 57 Fed. Reg. 37225, Aug. 18, 1992). Under the "contained-in policy" the authorized State or EPA has the discretion to determine contaminant-specific health-based levels, such that if the concentrations of the hazardous waste constituents were below those levels the media would no longer be considered to contain the waste. This applies to "U" listed wastes, and other listed wastes. The health-based levels used in making contained-in determinations are established on a site-specific basis, in accordance with general State or Federal guidelines, or by means of a site specific risk assessment. This discretion is available to the State Administrator in an authorized State, or otherwise is vested in the EPA Regional Administrator.

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In the example outlined in your letter, you state that the contaminant levels are below the State's remedial requirements. As such, it may be that the State would determine that the soils do not contain hazardous wastes. If such is the case, and assuming the State is authorized for the RCRA program, there would be no RCRA hazardous waste management requirements applicable to the soils before or during excavations incident to removal of the tank.

I hope this has helped to clarify the issues you raised. If you have any further questions, please contact Dave Fagan at 202 260-4497.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

Attachment

Cohen, Shapiro, Polisher, Sheikman and Cohen
1009 Lenox Drive, Building Four
Lawrenceville, New Jersey 08648
(609) 895-1329

October 19, 1992

Ms. Sylvia Lowrance
Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Ms. Lowrance:

This is a follow up to my letters of January 20, July 16 and August 26, 1992. As stated in that letter, I am attempting to determine whether contaminated soils under certain very specific circumstances are considered to be a RCRA hazardous waste. The specific circumstances for which I require guidance are as follows:

1. A tank containing virgin carbon tetrachloride leaks. As a waste, carbon tetrachloride is listed by the Agency as U-211.
2. The soil around the tank is sampled and found to be contaminated with carbon tetrachloride. However, the contamination is below state remedial requirements. State policy and/or regulations does not require any remedial activity with respect to the contaminated soils.

Under these circumstances, I would like to know whether the undisturbed contaminated soil is deemed by the EPA to be a RCRA hazardous waste or is required to be managed as a RCRA hazardous waste. If it is deemed to be a RCRA hazardous waste or required to be managed as such, could you please explain the basis for this determination. If it is not deemed to be a RCRA hazardous waste or required to be managed as such, I would like to know whether any of this contaminated soil which is excavated incident to the removal of the tank (as opposed to four purposes of addressing the spill; something which state law does not require because of the low level of contamination found in the soil) is deemed to be a RCRA hazardous waste required to be managed as such, or whether, because it was not excavated to address the spill and therefore is not waste or for any other reason, it is not deemed to be a RCRA

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hazardous waste and may therefore be returned to the excavation.

I look forward to hearing from you in the near future and appreciate your kind assistance in this matter.

Yours very truly,
William L. Warren

Attachment

Cohen, Shapiro, Polisher, Sheikman and Cohen
1009 Lenox Drive, Building Four
Lawrenceville, New Jersey 08648

August 26, 1992

Ms. Sylvia Lowrance
Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Ms. Lowrance:

This is a follow up to my letters of January 20 and July 16, 1992. As stated in that letter, I am attempting to determine whether contaminated soils under certain very specific circumstances are considered to be a RCRA hazardous waste. The specific circumstances for which I require guidance are as follows:

1. A tank containing virgin carbon tetrachloride leaks. As a waste, carbon tetrachloride is listed by the Agency as U-211.
2. The soil around the tank is sampled and found to be contaminated with carbon tetrachloride. However, the contamination is below state remedial requirements. State policy and/or regulations does not require any remedial activity with respect to the contaminated soils.

Under these circumstances, I would like to know whether the undisturbed contaminated soil is deemed by the EPA to be a RCRA hazardous waste or is required to be managed as a RCRA hazardous waste. If it is deemed to be a RCRA hazardous waste or required to be managed as such, could you please explain the basis for this determination. If it is not deemed to be a RCRA hazardous waste or required to be managed as such, I would like to know whether any of this contaminated soil which is excavated incident to the removal of the tank (as opposed to four purposes of addressing the spill; something which state law does not require because of the low level of contamination found in the soil) is deemed to be a RCRA hazardous waste required to be managed as such, or whether, because it was not excavated to address the spill and therefore is not waste or for any other reason, it is not deemed to be a RCRA hazardous waste and may therefore be returned to the excavation.

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I look forward to hearing from you in the near future and appreciate your kind assistance in this matter.

Yours very truly,
William L. Warren