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REGULATORY REQUIREMENTS PERTAINING TO THE MANAGEMENT OF
WASTE SOLVENTS AND USED OIL

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

October 28, 1992

Mr. Basil G. Constantelos, Director
Environmental Affairs
Safety-Kleen
777 Big Timber Road
Elgin, Illinois 60123

Dear Mr. Constantelos:

Thank you for your letter of May 22, 1992 requesting clarification on the regulatory requirements pertaining to the management of waste solvents and used oil. We understand you desire to provide your customers with a clear interpretation of the federal regulations governing the mixing of hazardous waste solvents into used oils. Of course, as you know, state regulations can be more stringent and broader in scope than the federal program. The enclosures to this letter individually address your series of questions regarding characterization requirements, waste minimization definitions, and the regulatory status of mixtures of waste solvents and used oil. Our responses reflect only EPA's federal regulations, and not individual state regulatory provisions.

Thank you for your interest in the safe and effective management of used oil. If you have any further questions, please contact Michael Petruska of my staff at (202) 260-9888.

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

Enclosures

RO 13570

I. Questions on Waste Characterization Requirements

Question #1: What degree of testing, or burden of proof with respect to knowledge of the waste is needed to ensure that waste mineral spirits is not a hazardous waste?

Persons who generate solid waste are not specifically required to test their wastes to determine whether it exhibits any of the hazardous waste characteristics. Instead solid waste generators are required to make a determination as to whether or not their wastes are hazardous (40 CFR 262.11). This determination may be made either by testing the waste or by applying knowledge of the characteristics of the waste, in light of the materials or the processes used in its generation. If a waste is determined to be hazardous, the generator must keep records establishing the basis for that determination (40 CFR 262.40(c)). These records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

Question #3: If the waste solvent exhibits the characteristic of ignitability, must a generator also test his waste for the TCLP characteristic in order to comply with the land ban restrictions?

If the waste solvent exhibits the characteristic of ignitability, the generator must determine whether the waste exhibits any of the other characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. This is the case because the generator must determine each EPA hazardous waste number (waste code) applicable to the waste in order to comply with the land disposal restrictions (40 CFR 268.9(a)). In addition, you may be aware of the recent D.C. Circuit opinion concerning the "Third Third" land disposal restrictions regulations. While there are no obvious implications of that decision for the scenario you have described here, we have not concluded our analysis of the case, so it is possible there could be some implications for your situation.

Question # 4: Can a generator rely on an analysis

of his unused mineral spirits (e.g., for ignitability and TC characteristics) plus knowledge of his operations to conclude that the resulting waste solvent will not exhibit any hazardous characteristic?

A generator can rely on analysis of unused mineral spirits plus knowledge of the operation to determine whether or not the resulting waste solvent exhibits any hazardous characteristic provided that he/she has sufficient information to make an accurate determination. Persons who generate solid waste are not specifically required to test their wastes to determine whether it exhibits any of the hazardous waste characteristics. Instead solid waste generators are required to make a determination as to whether or not their wastes are hazardous (40 CFR 262.11). This determination may be made either by testing the waste or by applying knowledge of the characteristics of the waste, in light of the materials or the processes used in its generation.

Question #5: If a generator can rely on an analysis of his unused mineral spirits, and knowledge of his operations to conclude that his waste solvent is not hazardous, can Safety-Kleen, as a transporter, storer, and recycler rely on the generator's certification?

Transporters, storers and recyclers who use knowledge or information supplied by others are still responsible for the accuracy of the determination. If transporters accept a waste, e.g., mineral spirits, that is sometimes hazardous, the transporters should discuss with either generator whether their particular wastestream is or isn't hazardous. In some cases, analysis may be appropriate to help make this determination.

Question #6: If the waste mineral spirits contains a listed hazardous waste (e.g., waste brake cleaner or some other chlorinated solvent), and the mineral spirits/listed waste mixture is blended into used oil, is the

entire mixture defined as a listed hazardous waste?

If the entire mineral spirits/listed waste mixture is blended into used oil, the entire mixture is subject to regulation as a hazardous waste under 40 CFR Parts 260 through 266, 268, 270, and 124 rather than as a used oil (see 40 CFR 261.3(a)(2)(iv), and the new 40 CFR 279.10(b)(1)(i)).

II. Questions on Waste Minimization

Question #7: Is the practice of diluting a characteristically hazardous waste into used oil to render the mixture nonhazardous considered waste minimization on a hazardous waste manifest, may generators use this practice as waste minimization in their annual reports, and is it considered waste minimization with respect to the SARA Title III and Pollution Prevention Control Act requirements?

Waste minimization, as defined by HSWA, means (1) reduction of the total volume or quantity of hazardous waste; (2) reduction in the toxicity of hazardous waste; or (3) both, as long as the reduction is consistent with the goal of minimizing present and future threats to human health and the environment. Source reduction is the reduction or elimination of hazardous waste at the source, usually within a process. Recycling is the use or reuse of waste as an effective substitute for a commercial product, or as an ingredient or feedstock in an industrial process (1991 National Biennial RCRA Hazardous Waste Report). This type of dilution does not reduce volume and does not appear to reduce the amount of toxic constituents in the mixture.

III. Questions on the Regulatory Status of Mixtures of Waste Solvents and Used Oil

Question #8: If a generator mixes its characteristic hazardous waste into its used oil, and the resulting mixture continues to exhibit a

hazardous waste characteristic, is the resulting mixture regulated as a hazardous waste or as a used oil? [Note: does the answer to this question depend on the characteristic exhibited by the solvent and the oil. For example, if the solvent is hazardous due to ignitability, and the mixture is hazardous only for lead.]

If a generator mixes characteristic hazardous waste into used oil and the resultant mixture exhibits a hazardous waste characteristic, the resultant mixture is subject to regulation as hazardous waste under 40 CFR Parts 260 through 266, 268, 270 and 124 rather than as a used oil (40 CFR 261.3(a)(2)(iii)). When the new Part 279 used oil management standards become effective mixtures of used oil and waste which is hazardous solely because it exhibits the characteristic of ignitability will be subject to regulation as used oil provided that the resultant mixture does not exhibit the characteristic of ignitability (40 CFR 279.10(b)(2)(iii)).

Question #9: If the mixture is regulated as a hazardous waste, and is destined to be burned for energy recovery, is it regulated in accordance with 40 CFR Part 266 Subpart H?

If the used oil/solvent mixture is regulated as a hazardous waste, and is destined to be burned for energy recovery, it must be managed in accordance with the requirements in 40 CFR Part 266 Subpart H.

Question #10: If the mixture is regulated as a used oil, is it subject to the used oil exclusion in 40 CFR 261.6(a)(2)(iii)? That is, if the mixture is destined to be burned for energy recovery it is excluded from most of the RCRA regulations and managed in accordance with 40 CFR Part 266 Subpart E?

If the used oil/solvent mixture is subject to regulation as used oil, and is destined to be burned for energy recovery, it must be managed in accordance with 40 CFR Part 266 Subpart E. When the new Part 279 standards become effective, 40 CFR Part 261.6(a)(4) will indicate that mixtures which are regulated as used oil and recycled (destined for energy recovery as well as recycled in some other manner) are subject to Part 279 rather than Parts 260 through 268. The new Part 279 standards will replace 40 CFR Part 266 Subpart E.

Question #11: If the mixture is regulated as a used oil, is it also subject to the used oil exclusion in 261.6(a)(3)(iii)? That is, if the mixture is destined to be recycled in some manner other than burning for energy recovery is it essentially excluded from regulation under RCRA?

If the used oil/solvent mixture is subject to regulation as used oil, and is destined to be recycled in some manner other than burning for energy recovery, it is not subject to regulation under Parts 262 through Parts 266 or Parts 268, 270, or 124 and is not subject to the notification requirements of Section 3010 of RCRA. When the new Part 279 standards become effective, 40 CFR Part 261.6(a)(4) will exclude mixtures which are regulated as used oil and recycled (destined for energy recovery as well as recycled in some manner other than burning for energy recovery) from the requirements of Parts 260 through 268. Rather, such recycled used oil mixtures will be subject to the requirements of Part 279.

Question #12: Is the resulting mixture regulated as a hazardous waste or as a used oil?

If the resultant used oil/solvent mixture no longer exhibits a hazardous characteristic, it is subject to regulation as a used oil (40 CFR Part 261.3(a)(2)(iii)).

Question #13: If the resulting mixture is regulated as a used oil, is it subject to the used oil exclusions included in 40 CFR 261.6(a)(2)(iii) and 261.6(a)(3)(iii)?

If the resultant mixture is subject to regulation as used oil and the used oil is destined for energy recovery or recycled in some manner other than burning for energy recovery, the used oil mixture is eligible for the exclusions in 40 CFR 261.6(a)(2)(iii) and 261.6(a)(3)(iii). When the new Part 279 standards become effective, 40 CFR Part 261.6(a)(4) will exclude used oil that is recycled (destined for energy recovery as well as recycled in some manner other than burning for energy recovery) and is also a hazardous waste solely because it exhibits a hazardous characteristic from the requirements of Parts 260 through 268 and such used oil will instead be subject to the requirements of Part 279.

Question #14: If a generator mixes her characteristic hazardous waste with used oil to generate a nonhazardous mixture destined for recycling, does this constitute treatment? (It may be assumed that this activity is taking place in a 90-day accumulation tank.)

The mixing of characteristic hazardous waste with used oil in an accumulation tank does constitute treatment if the purpose of the mixing is to make the waste more amenable for recovery (e.g., energy recovery), and/or to make the waste less hazardous (i.e., to remove the solvent's ignitable characteristic) (40 CFR 260.10)

Question #15: If the practice of mixing hazardous waste mineral spirits with used oil is considered treatment, is this type of treatment regulated under RCRA? That is, are generators allowed to treat their hazardous wastes on-site without a permit?

If the hazardous waste mineral spirits are mixed in the same accumulation tank (or container), the tank is regulated both as a hazardous waste tank under 40 CFR Section 262.34 and as a used oil tank when the new Part 279 standards become effective. Regardless of whether the resultant mixture is used oil or hazardous waste, both sets of standards apply. EPA does not require a permit to treat hazardous waste in an accumulation tank, provided the generator meets the requirements of Sections 262.34 and

268.7(a)(4), as well as Part 279, Subpart C, when it becomes effective.

Question #16: If generators are allowed to treat their hazardous wastes on-site without a permit, what burden of proof must the generator have to ensure that the resulting mixture is no longer a hazardous waste? Is analysis required to ensure that the characteristically hazardous waste has been treated such that it no longer exhibits the characteristic?

Regardless of whether or not hazardous waste is being treated on-site without a permit, generators are required to make a determination as to whether or not their wastes are hazardous (40 CFR 262.11). This determination may be made either by testing the waste or by applying knowledge of the characteristics of the waste, in light of the materials or the processes used in its generation.

Question #17: Does the treatment of mineral spirits exhibiting a hazardous waste characteristic in used oil to render the mineral spirits nonhazardous constitute dilution? If so, is this practice prohibited under 40 CFR 268.3?

The treatment standard for nonwastewater ignitable wastes containing greater than or equal to 10 percent total organic carbon is fuel substitution, recovery of organics, or incineration (40 CFR 268.42 Table 2). Mixing mineral spirits exhibiting a hazardous waste characteristic with used oil that will ultimately be treated by the specified treatment technology is aggregation of like wastestreams and therefore not impermissible dilution (55 FR 22532). As mentioned in our answer to Question 3, there was a new D.C. Circuit opinion on the Third Third regulations, and while we saw no obvious connection to your question here, we have not fully concluded our analysis of that case, so we cannot be completely definitive at this time.