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RCRA/Superfund/OUST Hotline Monthly Report Question

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2. Reclaimed Commercial Products: Regulatory Status

The owner of a facility collects used railroad ties that were treated with a wood preservative containing creosote. When the owner has accumulated a sufficient amount of railroad ties he bakes them to draw out the creosote. Once this process is complete, the reclaimed creosote can be used as a wood preservative without further processing. A drum of the creosote leaked into the soil. How is the resulting contaminated soil regulated upon disposal?

The creosote-contaminated soil must be managed as U051. The recovered creosote formulation is classified as a product because the creosote has been reclaimed from the railroad ties and requires no additional processing before it can be beneficially used (40 CFR 261.3(c)(2)). Upon leaking into the soil, the creosote is classified as a solid waste pursuant to §261.2(b). The generator must then determine whether this solid waste is a hazardous waste. Sections 261.33(c) and (f) designate certain commercial chemical products as hazardous wastes when discarded. Specifically, §261.33(d) defines commercial chemical product in part as any commercial or technical grade of a product, or any formulation in which the listed chemical is the sole active ingredient. Assuming the reclaimed creosote is the only chemically active component for the function of the wood preservative (i.e., the sole active ingredient), and the discarded material meets the definition of a solid waste per §261.2(b), the discarded creosote is classified as U051. Since the soil is contaminated with U051, it is subject to regulation as a hazardous waste in accordance with EPA's "contained-in" policy, which requires all media (i.e., debris, soil, groundwater, sediment) that contain listed hazardous wastes to be managed as listed hazardous wastes. The soil therefore, would have to be handled as a hazardous waste (U051) until it is decontaminated or until the hazardous waste is delisted (see, for example, 56 FR 24444, 24456; May 30, 1991).