

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

APRIL 11 1997

Mr. James E. Thomas Jr.
Jetco, Inc.
P.O. Box 11494
Memphis, TN 38111

Dear Mr. Thomas:

This is in response to your letters of October 14, 1996 and Dec 3, 1996 to Michael Shapiro. I apologize for the delay in our reply. Your questions concern the regulatory provisions under the federal hazardous waste regulations that apply to the remixing of paint and coatings that have separated in the container, and to the establishment of collection sites for empty paint cans.

First, I would like to commend you for your efforts to develop a technology that allows materials that might otherwise become wastes to be used as effective products as well as your efforts to minimize the failure of coatings which can result in unnecessary generation of waste and the need to use new replacement materials. The Environmental Protection Agency (EPA) encourages pollution prevention and the use of technologies that minimize waste generation.

Based on clarification provided to Kristina Meson and Ann Codrington of my staff and your letters, we understand that Jetco proposes to market a unit that remixes paint and coatings that have separated in the container due to age. The unit potentially may be purchased by hardware stores and other retailers who will encourage the public to bring in paint for remixing. You also propose to establish a system to collect paint cans that have been emptied according to the provisions at 40 Code of Federal Regulations 261.7 for future recycling as scrap metal. You ask that we clarify whether hazardous waste regulations apply to the owner or operator of a location that collects empty paint cans destined for recycling and whether regulations apply to the storage and transportation of the cans.

Hazardous Waste Determination

Paint that is to be remixed using the Jetco unit and is to be used for its intended purpose (e.g., as a paint or coating) regardless of its age or condition before re-mixing is not considered a solid waste and therefore cannot be a hazardous waste, and the hazardous waste regulations do not apply. However if the paint must be discarded, it would be considered a waste and the generator must make a hazardous waste determination and comply with any applicable requirements.

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In general hazardous waste regulations apply to materials which are first determined to be solid wastes. A solid waste is a hazardous waste if it is listed as a hazardous waste in Subpart D of 40 CFR Part 261, or if it exhibits a characteristic of hazardous waste as identified in Subpart C of 40 CFR, Part 261. A generator may test the waste or use knowledge of the process (or the material) to determine whether the waste generated is hazardous. It is the responsibility of the generator of the paint waste to determine whether the waste is hazardous.

Discarded paints generally are not found on EPA's "Lists of Hazardous Wastes" found at Subpart D of 40 CFR part 261. However, discarded paints are considered hazardous waste if they exhibit a characteristic described at 40 CFR 262 Subpart C. Paint wastes may exhibit characteristics such as Ignitability or Toxicity described at 40 CFR §§262.21 and 261.24. Paint that is considered hazardous waste and that is generated by a conditionally exempt small quantity generator (see definition below) is not subject to federal regulation under Parts 262 through 266, 268, 270 and other applicable provisions, if the waste is discarded in a facility which meets the criteria of 40 CFR §§261.5(f) and/or (g). States however, may impose more stringent requirements than the federal regulations and therefore must be contacted to determine what requirements might apply where paint remixing operations are to occur.

Generator Status of Household Waste

Generally, wastes from households are not subject to hazardous waste regulation. If the remixing process is not successful, homeowners may discard the paint themselves, or the paint may be discarded at the business since household wastes are excluded from the definition of solid waste at 40 CFR 261.4(b). Therefore, the hazardous waste regulations do not apply to household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse derived fuel) or reused. "Household waste" means any material including garbage, trash and sanitary residues in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). Therefore, if the waste comes from a household, it would not be subject to the hazardous waste regulations even if it were later discarded on the premises of a business.

Regulated Generators

If however, the paint is brought in by generators other than household generators (i.e., a conditionally exempt small quantity generator /1, a small quantity generator /2, or a large quantity generator /3), and the waste must be discarded (e.g., because the remixing process was not successful), paint that is hazardous waste would be subject to regulations and could not be

discarded at the premises of the business unless the business is a permitted treatment, storage, or disposal facility licensed to accept such wastes. Household waste which is mixed with hazardous waste from regulated generators would also be regulated.

Collection Program

With respect to establishing a collection facility for empty paint cans, the Agency clarified its regulations pertaining to hazardous waste remaining in "empty" containers in a *Federal Register* notice published on November 25, 1980 (see 45 *FR* 78524). We have enclosed a copy of this *Federal Register* notice for your convenience. In this *Federal Register Notice*, EPA explained that "except where the hazardous waste is an acutely hazardous material listed in §261.33(e), the small amount of hazardous waste residue that remains in individual empty, [as described in 40 CFR 261.7] un-rinsed containers does not pose a substantial hazard to human health and the environment." The Agency also states in the November 25, 1980 *Federal Register* notice that "What should be clear from §261.7, however is that no "empty" containers are subject to regulatory control because no "empty" containers hold residues that are considered hazardous wastes for regulatory purposes." (45 *FR* 78525, November 25, 1980)

The definition of an "empty" container is found at 40 CFR 261.7(b)(1)(i), which describes a container as empty if:

- (i) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.*, pouring, pumping, and aspirating, *and*
- (ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*
- (iii) (A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or (B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

For the purpose of this interpretation, we will rely on the discussion found at 40 CFR 261.7(b) which focuses on containers that have held hazardous waste other than gases and acutely hazardous materials, because paint wastes most often fall into this category.

The Agency goes on to say in the November 25, 1980 *Federal Register* notice that "What should be clear from §261.7, however, is that no "empty" containers are subject to regulatory control because no "empty" containers hold residues that are considered hazardous wastes for regulatory purposes." (45 *FR* 78525, November 25, 1980)

Therefore, if the paint cans you propose to collect have been emptied in accordance with 40 CFR 261.7, the Agency would not consider them subject to regulatory control at the federal level. Please note that there are additional descriptions of "empty" that apply to containers

holding acute hazardous waste or compressed gas (see 40 CFR 261.7(b)(2) and (3)). Also note that there may be state or local regulations which govern the collection of containers that have held paints or other coatings. Please be sure to check with the appropriate state or local agency for regulations and guidelines applicable to paint cans.

However, if the cans are not emptied according to the provisions at 40 CFR 261.7, they may be subject to regulatory control if they were received from generators of hazardous waste other than household generators. Residues remaining in paint cans in quantities above the levels defined at 40 CFR 261.7, would be regulated as hazardous waste if they meet the defining criteria of hazardous wastes found at 40 CFR 261 Subparts C and D. In order for a business to collect such hazardous wastes, it must be a permitted treatment storage or disposal facility licensed to accept such waste.

I hope this information is useful. As you are aware, we have not included information about air or water regulations that may apply to the activities you propose, and we recommend that you contact the appropriate offices for that appropriate information. Please direct inquiries to the Director of the Office of Air Quality Planning and Standards, Mr. John S. Seitz, U.S. EPA-MD-10, Research Triangle Park, NC 27711, and to the Director of the Office of Water and Drinking Water, Ms. Cynthia C. Dougherty, U.S. EPA - E1209, 401 M Street S.W., Washington D.C. 20460.

Should you have questions or clarifications about this interpretation, please contact Ann Codrington of my staff at 703-308-8825.

Sincerely,

Elizabeth Cotsworth, Acting Director
Office of Solid Waste

Attachments

1 A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste and no more than 1 kilogram per month if the waste is an acute hazardous waste listed in 40 CFR parts 261.31, 261.31, or 261.33(e). A conditionally exempt small quantity generator may not accumulate more than 1000 kilograms at any one time (see 40 CFR 261.5).

2 A small quantity generator is a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and the quantity of waste accumulated on site never exceeds 6000 kilograms (see 40 CFR 262.34(d)).

3 A large quantity generator is a generator of quantities over 1000 kilograms of hazardous waste per calendar month.

