

RCRA, SUPERFUND & EPCRA CALL CENTER MONTHLY REPORT
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2. Applicability of Farmer Exemption to Soils Contaminated with Waste Pesticides

A farmer uses several commercial pesticides to ensure that his annual crop yield is successful. Subsequently, he disposes of the pesticide residues in accordance with 40 CFR Section 262.70. Under Section 262.70, a farmer disposing of waste pesticides from his own use at his farm is not required to comply with the hazardous waste regulations provided he triple rinses each emptied pesticide container and disposes of the residues on his own farm in a manner consistent with the disposal instructions on the pesticide label. The soil where the pesticides were disposed is later excavated to be sent off-site for disposal. When the soil is excavated, it fails the Toxicity Characteristic Leaching Procedure (TCLP) for arsenic (D004) and contains various underlying hazardous constituents. Is the contaminated soil subject to the land disposal restrictions (LDR) requirements when disposed?

The LDR requirements would apply to the contaminated soil. Although farmers may dispose of their waste pesticides in accordance with the standards in Section 262.70, the exemption from RCRA management standards does not extend to contaminated soils that are later excavated and remediated. The disposal of contaminated soil excavated from farmland is not analogous to the disposal of waste pesticides and is not within the scope of the Section 262.70 exemption. Since the disposal of the excavated soil contaminated with arsenic is not covered by the farmer exemption, the hazardous soil would have to meet all applicable LDR requirements before it is land disposed (Section 268.49(a)).