

RCRA, SUPERFUND & EPCRA CALL CENTER MONTHLY REPORT  
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**1. F003 Wastes Generated Prior to HWIR Waste Rule**

*A facility is located in a state authorized for the mixture and derived-from rules. A facility generated non-ignitable F003 waste prior to August 14, 2001, and stored it on site. After August 14, 2001, the facility generates additional non-ignitable F003 waste, which is subsequently mixed with the non-ignitable F003 generated prior to August 14, 2001. If the resultant mixture is non-ignitable, does the F003 listing apply?*

The answer depends on whether the state has adopted and received authorization for the May 16, 2001, HWIR-Waste Rule, which created the Section 261.3(g) exclusion for wastes listed solely for exhibiting the characteristic of ignitability, corrosivity, or reactivity (66 FR 27266). Because the new HWIR-Waste Rule is less stringent than the prior regulation, states are not required to amend their authorized programs.

If the authorized state has amended its program to include the new exclusion and received authorization, then the F003 listing would not apply if the entire mixture is non-characteristic. In the May 16, 2001, rule, EPA revised 40 CFR 261.3, which included a provision adding Section 261.3(g) for wastes listed solely for exhibiting the characteristic of ignitability, corrosivity, or reactivity (66 FR 27266). Effective August 14, 2001, such wastes are no longer hazardous when they do not exhibit a characteristic. Non-characteristic listed wastes, which are listed solely for ignitability, corrosivity, or reactivity, generated prior to the effective date of the rule do not carry the applicable waste code after the effective date of the rule. Therefore, this mixture of a non-characteristic F003 waste generated after the effective date of the rule, and a non-characteristic F003 waste generated before the effective date of the rule, will not carry the F003 waste code since the resultant mixture is non-characteristic (Section 261.3(g)(2)(i)). However, if the state has not adopted and received authorization for Section 261.3(g) in its authorized program, then the mixture would continue to carry the F003 code under the state's more stringent rules.