

Mr. Parker Brugge, President
American Wood Preservers Institute
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Fairfax, VA 22031-4312

Dear Mr. Brugge:

Over the past year, we have received correspondence from the American Wood Preservers Institute (AWPI) requesting clarification on the scope and applicability of the federal hazardous waste regulations at wood preserving facilities under the Resource Conservation and Recovery Act (RCRA). Some of this correspondence was directly related to specific enforcement proceedings to which we do not feel it is appropriate to respond in a general context. You did, however, request clarification on RCRA regulations that could apply more generally to the wood preserving industry. This letter responds to concerns raised in your letters of September 28, 2000 and June 25, 2001. Your September 28, 2000 letter raises three issues addressed in Part 1 of this letter. Your June 25, 2001 letter includes a "White Paper" discussion on additional issues addressed in Part 2 of this letter.

Part 1: Response to Issues Raised in Letter of September 28, 2000

Regulatory Status of Stormwater Generated in a Pentachlorophenol Treated Wood Storage Yard

You asked whether stormwater runoff containing pentachlorophenol or other constituents of concern from pentachlorophenol treated wood is covered under the scope of the F032 hazardous waste listing. This type of determination is generally based on site-specific factors. However, EPA can provide general guidance on how to interpret the Agency's regulations in this respect. In particular, preambles for several rules are relevant. The first is EPA's original listing of F032, F034, and F035 as hazardous wastes in the December 6, 1990 *Federal Register* (55 *FR* 50450-90). The proposed and final amendments to this rule were published in 56 *FR* 63848-63860 (December 5, 1991) and 57 *FR* 61492-61505 (December 24, 1992), respectively.

Where a wood preserving facility is in compliance with the applicable RCRA

requirements for its drip pads,¹ whether precipitation runoff from pentachlorophenol treated wood is regulated as a hazardous waste depends upon the particular facts, as described below. See 55 *FR* at 50458, footnote 4; 56 *FR* at 63850, and 57 *FR* at 61497-8.

If the stormwater in question is the result of rainwater that falls onto a wood preserving facility's drip pad and contacts preservative formulations or listed wastes, this stormwater would contain a listed hazardous waste. See 57 *FR* at 61497-8 (section titled "Mixture Rule and Contained-In Policy). The precipitation runoff exclusion in the "derived from" rule at 40 CFR §261.3(c)(2)(i) does not apply to this stormwater because "drip pads are hazardous waste management units designed and maintained to convey treated wood drippage, precipitation and surface water run-on to an associated collection system, . . ." 57 *FR* at 61498. If for some reason this stormwater is not contained within the drip pad and associated collection system (e.g., where runoff controls around the drip pad, such as berms, are non-existent or do not perform as appropriate), then the subsequent runoff also would be classified as hazardous waste because it "contains" hazardous waste. For this reason, we would urge wood preservers to pay attention to the proper collection and management of rainwater finding its way onto the drip pad.

Precipitation runoff in storage yards would not constitute an F032 hazardous waste, provided the facility is operating in compliance with Subpart W. This conclusion is reached by considering the longstanding interpretation of the wood preservative listings and the language of Subpart W. The December 6, 1990, Final Rule preamble states that, consistent with the general position not to apply the derived-from rule to precipitation runoff, the wood preserving listings do not apply to precipitation runoff from treated wood in storage yards where the owner or operator has complied with the no drippage requirement. See 55 *FR* at 50458, footnote 4. Also, if the wood preserving facility is in compliance with 40 CFR Parts 264 or 265, Subpart W, including adhering to the storage yard contingency plan required under 40 CFR §264.570(c) or §265.440(c),² then incidental and infrequent preservative

¹"Drip pad" is defined under RCRA at 40 CFR §260.10. Specific management standards for drip pads are in Subpart W of 40 CFR Parts 264 and 265.

²Generally, the facility owner or operator must: 1) immediately clean up this incidental and infrequent drippage, 2) document the cleanup of this drippage, 3) retain documents regarding the cleanup for three years, and 4) manage the contaminated media in a manner consistent with federal regulations. EPA considers "immediate" to be generally within 24 to 72 hours of the occurrence of drippage. See 57 *FR* at 61494 ("Drippage in Storage Yards

dripping in storage yards is not considered illegal disposal of hazardous waste. However, as EPA stated in a subsequent guidance document, in the case of a facility that is not in compliance with Subpart W, EPA can assert that the stormwater transported a listed hazardous waste and that the resulting sludge also carries the listings.³

Status of Steam or Vapor Emitted from Retort Doors or Treated Wood Following Pressure Treatment with Pentachlorophenol

and Contingency Plans”).

³Section 6-2, *Wood Preserving Resource Conservation and Recovery Act Compliance Guide, A Guide to Federal Environmental Regulation*, U.S. EPA, June 1996.

The issue was raised whether steam that is released from the wood preserving process equipment (such as from the retort doors when they are opened) and including condensate that might subsequently form as the steam contacts the ground away from the immediate retort area, is a hazardous waste. The listing descriptions for the F032, F034, and F035 wood preserving wastes at 40 CFR §261.31 include “Wastewaters, process residuals, preservative drippage, and spent formulations...” Wastewaters from wood preserving processes include water that is collected “in door and retort sumps” within the wood-treating equipment area (see 53 *FR* at 53288, December 30, 1988), which includes water that has condensed from steam onto the retort door, associated sumps and drip pad when the door is opened.⁴ EPA did not, however, include within the scope of the listing condensate resulting from steam that may have escaped and settled some distance from the process equipment. This interpretation is consistent with the Agency’s record, which does not support the conclusion that the scope of wastewaters includes such condensate. This interpretation is also generally consistent with the Agency’s overall approach to hazardous waste listings, which would not generally include fugitive air emissions from manufacturing processes, unless specifically identified. The Subpart W drip pad technical standards promulgated simultaneously with the wood preserving listings do not address, nor were they intended to address, releases to the air from process equipment.

However, where significant amounts of steam condensate from wood-treating process equipment are deposited in the immediate vicinity of the wood-treating process area, EPA might consider the resulting condensate to be covered by the listing description. In such cases, the condensate may be a wastewater or process residual that, in developing the listing, EPA expected to have been collected in the wood-treating process equipment or on the drip pad. I would add that if a particular facility is producing so much steam that significant amounts of preservative chemicals are being deposited on the ground, we would expect facilities to find ways to control the condensate, or reduce or minimize the amount of steam being emitted. Lastly, the point made in your letter that these vapors are not contained gases, and cannot be solid wastes, is irrelevant to whether or not the condensate is within the scope of the wood preserving waste listing.

Clarification of the Wastewater Treatment Unit Exemption Under RCRA For Wood Preserving Operations Subject to Zero Discharge Limitations under the Clean Water Act

Your letter also raised a question about the applicability of the wastewater treatment unit exemption (40 CFR §264.1(g)(6) and §265.1(c)(10)) to tanks located at wood preserving facilities. This exemption applies to units that meet the three-part definition of ‘wastewater treatment unit’ found at 40 CFR §260.10. According to the information you provided in your letter and at our meeting, your specific concern is over the interpretation of the requirement that an exempt wastewater treatment tank or tank system be part of a wastewater treatment

⁴See page III-3 of Background Document Supporting the Proposed Listing of Wastes from Wood Preservation and Surface Protection Processes, Volume I, December 1988.

facility “subject to regulation under either 402 or 307(b) of the Clean Water Act”, as defined in 40 CFR §260.10, where that facility is operating a zero discharge system.

Generally, a facility operating with a tank-based zero wastewater discharge system, where applicable effluent guidelines or pretreatment standards specify zero discharge,⁵ would be considered to be “subject to” the CWA for purposes of the wastewater treatment unit definition. Whether or not the criteria for the wastewater treatment unit exemption are met will depend, of course, on the particular facts. For example, if the facility is not subject to the CWA because the facility has no potential to discharge pollutants to waters of the United States, the exemption would not apply.

Part 2 : Response to Issues Raised In Letter of June 25, 2001

At a meeting on May 29, 2001, between EPA, AWPI, and other representatives of the wood treating industry, several issues were raised regarding the scope and applicability of RCRA requirements to wood preserving facilities. As a followup to that meeting, AWPI sent to EPA a letter dated June 25, 2001 which requested that EPA address not only the three issues raised in the original September 28, 2000 letter (which we do above in Part 1 of this letter), but also an additional issue concerning “..the applicability of the infrequent and incidental drippage regulation to areas other than the drip pad.” First, let me clarify the issue regarding the scope of the term “storage yards” in the context of the contingency plan requirements in 40 CFR §264.570(c) and §265.440(c). Simply put, the approach taken in the wood preserving regulations is that drip pads are *not* required in “storage yards” *provided* any incidental and infrequent drippage is immediately responded to in accordance with the storage yard contingency plan requirements. Thus, while the term “storage yards” is not defined in the regulations, the applicability section of the drip pad regulations states that “The requirements of [Subpart W] are not applicable to the management of infrequent and incidental drippage in storage yards, provided that the owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage.” 40 CFR §264.570(c) and §265.440(c).

You have indicated that the potential exists at many wood preserving facilities to store treated wood in most any location outside of the drip pad. Therefore, your question is whether the “storage yard contingency plan” (which allows for incidental and infrequent drippage to occur without constituting hazardous waste disposal as long as such drippage is responded to immediately in accordance with the contingency plan) can apply everywhere at a wood treating facility *outside* of the drip pad. Generally speaking, the answer is yes. The contingency plan can cover all areas of the wood preserving facility outside the boundaries of

⁵For example, wood preserving operations such as the “Boulton” process have specific effluent guidelines and pretreatment standards under the CWA that specify zero discharge. 40 CFR Part 429, Subpart H.

the drip pad.

However, regarding the Agency's goal of preventing or minimizing releases of preservative outside the drip pad, I would like to highlight a couple of provisions in the Subpart W requirements of Part 265, with which owners or operators of wood treating facilities must comply (along with the rest of Subpart W, of course) if they are a generator of hazardous waste, in order to comply with 40 CFR §262.34(a)(1)(iii). Section 265.443(j) requires that the tracking of hazardous waste or constituents off the drip pad from personnel or equipment *be minimized*, and §265.443(k) requires that treated wood be held on the drip pad until drippage *has ceased*. While the Agency has clearly acknowledged that incidental and infrequent drippage may occur from the treated wood after its removal from the drip pad (56 *FR* at 63850), I would emphasize that facilities that do not comply with provisions such as the ones we have cited, or those that do not comply with the facility's contingency plan, would be subject to enforcement. There may also be situations where simply cleaning up and documenting releases is not adequate, because the drippage is more than infrequent and incidental, and therefore the basic standards of subpart W are not met.

You also presented arguments as to why the presence of hazardous constituents in soil at a wood treating plant is not by itself evidence of illegal disposal of hazardous waste under RCRA. You stated that the Agency has previously acknowledged that contamination at wood preserving plants existed before the Subpart W rules were promulgated, and that existing RCRA requirements allow for de minimis releases of preservative to soil to be addressed under the storage yard contingency plan, so that hazardous constituents in soil are not indicia of illegal disposal. In response to your question, the mere presence of contamination does not necessarily mean that hazardous waste has been illegally disposed; however, whether or not contamination is the result of hazardous waste disposal must be determined on a case-by-case basis. The fact that EPA has acknowledged that contamination may have been present prior to promulgating the Subpart W standards, or that de minimis releases to the ground can still occur under a facility's contingency plan, does not mean that there cannot be a finding, at a particular facility, that illegal disposal of hazardous waste has occurred.

Finally, in your letter, you pointed out that splits or cracks ("checks") in the wood were recognized by EPA as a function of the "type of wood" and, therefore, are a legitimate source of "incidental and infrequent" drippage. To clarify, we agree that EPA did acknowledge "imperfections in the wood" such as "splits and knotholes" when discussing factors affecting drippage in treated wood.⁶ This should clarify for you that preservative drippage from these imperfections in the wood can be addressed under a wood treating facility's storage yard contingency plan, provided this drippage is "incidental and infrequent," which would be a case-by-case determination.

We should note that states may have requirements governing the management of

⁶See pages III-32, Background Document Supporting the Proposed Listing of Wastes from Wood Preservation and Surface Protection Processes, Volume I, December 1988.

hazardous waste that are more stringent than federal regulations. Where these state hazardous waste management requirements are part of the state-authorized RCRA program, they become requirements of RCRA Subtitle C, and can be enforced by EPA even if they are more stringent than the requirements in the federally-issued regulations. States also have independent authority to enforce state hazardous waste management requirements in the state system. In addition, some states (e.g., state of Washington) have taken a more stringent approach to ensuring that drippage from wood ceases and have included standards in water permits which specify that facilities must ensure that treated lumber is “shaken or manipulated well” so that all drippage ceases prior to it being removed from the drip pad.

Should you have any questions regarding this letter, please contact Ross Elliott of my staff at (703) 308-8748.

Sincerely,

Elizabeth Cotsworth, Director
Office of Solid Waste