UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

FEB 11 2011

Mr. John P. Schantz
Environmental, Health, and Safety Manager
Veolia Environmental Services
125 Factory Lane
Middlesex, NJ 08846

Dear Mr. Schantz,

I am providing you with supplemental guidance regarding a question that Veolia asked the New Jersey Department of Environmental Protection (NJ DEP) on July 24, 2009. Veolia's question was whether Veolia is permitted to combine excluded hazardous secondary materials received under the 2008 Revisions to the Definition of Solid Waste (DSW) final rule with other similar hazardous wastes prior to reclaiming the materials. Matt Hale, former Director of the Office of Resource Conservation and Recovery, first responded to Veolia's question on March 30, 2010. The enclosed questions and answers are to provide you further guidance on this issue.

Please also note that EPA plans to publish a rule in June 2011 that may propose changes to the definition of solid waste.

If you have any further questions, please contact Amanda Geldard (703-347-8975, geldard.amanda@epa.gov) of my staff.

Sincerely,

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

Enclosure

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FEB 11 2011

Mr. Mike Fusco
North Division EHS Director
Safety-Kleen Systems, Inc.
P.O. Box 2313
Aston, PA 19014

Dear Mr. Fusco,

I am providing you with supplemental guidance regarding a question that Safety-Kleen asked in a letter dated November 4, 2008. One of Safety-Kleen's questions was whether Safety-Kleen is permitted to combine excluded hazardous secondary materials received under the 2008 Revisions to the Definition of Solid Waste (DSW) final rule with other similar hazardous wastes prior to reclaiming the materials. Matt Hale, former Director of the Office of Resource Conservation and Recovery, first responded to this question on January 20, 2010. The enclosed questions and answers are to provide you further guidance on this issue.

Please also note that EPA plans to publish a rule in June 2011 that may propose changes to the definition of solid waste.

If you have any further questions, please contact Amanda Geldard (703-347-8975, geldard.amanda@epa.gov) of my staff.

Sincerely,

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

Enclosure

Guidance for Mixing Hazardous Secondary Materials Received Under the 40 CFR 261.4(a)(24) Exclusion from the Definition of Solid Waste with Regulated Hazardous Wastes

The purpose of this guidance is to address the mixing of hazardous secondary materials excluded under 40 CFR 261.4(a)(24) with similar hazardous wastes regulated under RCRA Subtitle C. EPA understands that some reclaimers are receiving the same type of hazardous secondary materials for reclamation from multiple generators, with some amount excluded under § 261.4(a)(24) and some amount regulated as hazardous wastes. The regulatory status of the material depends on how the generator who sent the materials chose to manage and transfer the materials off-site. We also understand that reclaimers are interpreting § 261.4(a)(24) to mean that hazardous wastes and hazardous secondary materials must be stored in separate units and reclaimed independently of each other in order to preserve the regulatory status of the excluded materials and the exclusion for the generators that transferred the hazardous secondary materials to the reclaimer.

In order to improve efficiency of hazardous waste recycling operations, we offer the following questions and answers as guidance to reclaimers who may wish to take full advantage of their existing recycling infrastructure by storing and reclaiming hazardous secondary materials and hazardous wastes in the same units for the purpose of reclamation.

(1) To make its recycling operations more efficient, a reclaimer may wish to mix excluded hazardous secondary materials it receives from off-site under 40 CFR 261.4(a)(24) with other regulated hazardous wastes of the same type prior to recycling. If a reclaimer were to do this, what requirements would apply?

40 CFR 261.4(a)(24) states that the exclusion applies if the hazardous secondary materials are generated and transferred "for the purpose of reclamation." Thus, a reclaimer mixing excluded hazardous secondary materials with regulated hazardous wastes of the same type may only mix the materials for the purpose of reclamation (and not for the purpose of, for example, burning for energy recovery or disposal). The following requirements would apply to the reclaimer:

a) Prior to mixing, the reclaimer must manage the excluded hazardous secondary materials under § 261.4(a)(24) up to the point that they mix the excluded materials with similar materials that are regulated hazardous wastes. The reclaimer must meet the applicable conditions of the § 261.4(a)(24) exclusion, including legitimate reclamation, recordkeeping, financial assurance, containment of hazardous secondary materials, notification, and the prohibition on speculative accumulation.

b) After mixing the excluded hazardous secondary materials with regulated hazardous wastes, the reclaimer must manage the entire mixture as hazardous waste for the purpose of reclamation. Therefore, the reclaimer must comply with the standard

hazardous waste regulations applicable to hazardous waste managed by an off-site reclaimer (i.e., 40 CFR 261.6(c) and (d) or 40 CFR Parts 264 or 265).

(2) What does it mean for a reclaimer to mix "for the purpose of reclamation"?

Mixing "for the purpose of reclamation" can be satisfied by mixing in units that are dedicated for reclamation, such as storage units that are connected to reclamation units by hard pipes or other conveyances; storage units that are solely used to store materials prior to the reclamation process; and recycling units.

A reclaimer is not mixing for the purpose of reclamation if the reclaimer first mixes materials and then makes a determination whether the mixture should be reclaimed or sent for burning or disposal. This determination must be made prior to mixing the excluded hazardous secondary materials with regulated hazardous wastes.

(3) Why does a reclaimer have to comply with the conditions of 40 CFR 261.4(a)(24) prior to mixing?

The reclaimer must comply with all applicable conditions of 40 CFR 261.4(a)(24) because it is receiving hazardous secondary materials transferred for the purpose of reclamation and excluded from the definition of solid waste. The reclaimer therefore must comply with the requirements of the exclusion: legitimate reclamation, recordkeeping, financial assurance, containment of hazardous secondary materials, notification, and the prohibition on speculative accumulation.

(4) Why does a reclaimer have to comply with applicable hazardous waste regulations after mixing?

Excluded hazardous secondary materials cannot be mixed with regulated hazardous wastes and still maintain the exclusion from the definition of solid waste. If excluded hazardous secondary materials are mixed with hazardous wastes, the resulting mixture is a hazardous waste. This follows the general principle that RCRA applicability cannot be avoided by mixing a hazardous waste with another material.[1]

This means that the mixture must be stored and managed in compliance with hazardous waste regulations applicable to hazardous waste managed by an off-site reclaimer (i.e., 40 CFR 261.6(c) and (d) or 40 CFR Parts 264 or 265). If a reclaimer mixes hazardous secondary materials and other similar hazardous wastes in a recycling unit, the mixture would be considered hazardous waste, but the unit would generally be exempt from regulation under § 261.6(c)(2).

[1] *Horsehead Resource Development Co., Inc. v. EPA, 16 F3d 1246 (February 1994)*.

(5) How does mixing of excluded hazardous secondary materials with regulated hazardous wastes by the reclaimer affect the requirements applicable to generators that shipped the hazardous secondary materials for the purpose of reclamation under the 40 CFR 261.4(a)(24) exclusion?

Mixing by the reclaimer of excluded hazardous secondary materials received under 40 CFR 261.4(a)(24) with regulated hazardous wastes does not affect the requirements applicable to generators who shipped the hazardous secondary materials, provided that the hazardous secondary materials are transferred for the purpose of reclamation and the reclaimer complies with all applicable conditions of § 261.4(a)(24) prior to mixing.

Excluded hazardous secondary materials mixed with regulated hazardous wastes of the same type become hazardous waste at the point of mixing and must be managed as such after that point. Therefore, generators transferring hazardous secondary materials under 40 CFR 261.4(a)(24) to a reclaimer who mixes may manage the hazardous secondary materials under the § 261.4(a)(24) exclusion (e.g., longer storage times, shipping without a manifest) because the hazardous secondary materials have not yet been mixed with regulated hazardous wastes. (Of course, the generator and the reclaimer must meet all applicable conditions of § 261.4(a)(24) prior to mixing.)