



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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAR 01 2013

Mr. T.L. Nebrich Jr., President
TLN Environmental Consulting
170 Londonderry Lane
Getzville, NY 14068

Dear Mr. Nebrich:

I am writing in response to your letter of January 28, 2013, addressed to Barry N. Breen, Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response. In the letter you request a clarification regarding the dilution of listed F003/D001 hazardous wastes.

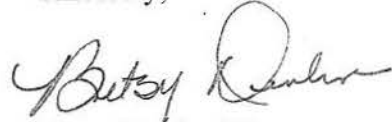
You first ask EPA to verify that if an F003 waste (which was listed solely for the characteristic of ignitability) is mixed with a solid waste such that it no longer exhibits any hazardous waste characteristic, it is not regulated as F003. In response to your request, 40 CFR Section 261.3(g)(1) states that a waste that has been listed solely for the characteristic of ignitability (D001), corrosivity (D002) or reactivity (D003) "is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste."

You further ask whether or not water can be used to dilute the F003 waste to render it nonhazardous and, if not, what can be used as a diluent for such a waste treatment. You pointed out that this is a treatment option that is not performed to skirt the LDR requirements in 40 CFR Part 268 because "a LDR Notification attaches at the point of generation." In this respect, F003 wastes that express a characteristic *at the point of generation* but are subsequently de-characterized are excluded under 40 CFR Section 261.3(g)(1), but are still subject to the Part 268 Land Disposal Restrictions (LDR) requirements per 40 CFR Section 261.3(g)(3). However, water or any other nonhazardous diluent that removes the characteristic of ignitability from F003 wastes allowing the generator to claim the 40 CFR Section 261.3(g)(3) exclusion cannot be used in a manner that constitutes impermissible dilution under CFR Section 268.3. That is, F003 wastes may not be simply diluted as a substitute for adequate treatment.

Furthermore, you should be aware that most States are authorized to implement the RCRA hazardous waste program, and that States may have hazardous waste regulations more stringent than those of the Federal government. In addition, States were not required to adopt the May 16, 2001 revisions to the Mixture and Derived-From Rules (66 FR 27266) that promulgated the 40 CFR Section 261.3(g) exclusion since such revisions are less stringent than the existing regulations. In a State which has not adopted 40 CFR Section 261.3(g), the F003 waste continues to be regulated as F003 regardless of whether it does not exhibit any characteristic of hazardous waste at the point of generation or disposal.

Thank you for your interest in the hazardous waste regulations. If you have further questions concerning this matter, please contact Chichang Chen of my staff at (703) 308-0441 or chen.chichang@epa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betsy Devlin".

Betsy Devlin, Director
Materials Recovery and
Waste Management Division