



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

5/21/91

Daniel Gillingham
RCRA Compliance Officer
Franklin Environmental Services, Inc.
185 Industrial Road
P.O. Box 617
Wrentham, MA 02093

Dear Mr. Gillingham:

This letter is written in response to your April 3, 1991 request for clarification concerning the "empty container" regulations as they relate to the residues and "heels" of hazardous waste that typically remain in a bulk liquid tanker after off-loading.

Question:

"If a truck is off-loaded and, after completion of off-loading, the tank now meets the definition of an "empty container" of 40 CFR 261 (i.e.; Assuming a 5,000 gallon tanker, there is approximately ten gallons of residual waste remaining in the truck that cannot be further removed by common procedures usually associated with off-loading trucks (267.7(b)(1)). This ten gallons is less than the "0.3%" criteria of the empty container definition.) Would this truck then be allowed under current regulations to go to a commercial truck wash facility whose discharge is regulated by the Clean Water Act to completely wash out its remaining residuals so that the next load the truck carried did not become cross contaminated with any of the residuals, or would this residue still be considered a hazardous waste and this washing-out at a commercial truck wash facility not be allowed under RCRA regulations as the truck wash facility is not a permitted RCRA treatment or disposal facility."

Response:

Region I believes there are additional issues raised by this question which must be addressed to completely answer your hypothetical question. The proper regulatory citation for empty containers is 40 C.F.R. § 261.7(b)(1)(i). To answer the first part of your question, the "empty" tanker truck is not prohibited under RCRA to go to a commercial truck wash facility. Although the tanker may be considered legally "empty" under RCRA, this does not pre-empt or replace the definition of "empty" as defined by the Department of Transportation regulations under 49 C.F.R. which generally recommends a steam cleaning procedure as the minimal requirement to qualify as an "empty" tank.



The actual rinsing/cleaning procedure, however, raises a number of regulatory issues. For example, if the rinseate exhibits the characteristic of a hazardous waste, the entire volume is subject to the applicable provisions of RCRA. Upon meeting the definition of a hazardous waste, the generator must be determined. If your employee conducts the cleaning, you become the generator of a hazardous waste. Likewise, if the commercial truck wash facility personnel conducts the cleaning/rinsing, the facility becomes the generator of a hazardous waste (if it exhibits the characteristic) unless the facility acts as your agent, in which case, you would remain the generator.

With respect to the portion of your question that states the truck washing facility has a regulated discharge under the Clean Water Act, if the allowable concentration limits for hazardous waste/constituents found in the "regulated" discharge can be achieved in a manner not constituting improper dilution, the discharge would not be regulated under RCRA.

Since the cleaning/rinsing procedure is a waste generation process, if the waste generated is hazardous, the waste will become subject to the land disposal restrictions requirements (unless the waste is regulated as a TCLP hazardous waste which is not currently subject to land disposal restrictions requirements). Tank cleaning/rinsing procedures which are not beneficial and do not contribute to the cleaning process are considered to be an improper dilution of land disposal restricted wastes.

best is answered by the RCRA and CERCLA provisions...

Question:

"In a second scenario, if the ten gallons or less of residue in the 5,000 gallon tanker would classify the tank car as "empty" under 40 CFR 261.7, then if the tank car was brought to another site to be completely purged so as to prevent future cross contamination, would any of the waste generated from this cleaning be considered a hazardous waste due to the "mixture" and/or "derived from rules if the residue was from a "listed" waste that the tank car originally transported? Or, since the residue being washed out is from an "empty" tank, the "mixture" and "derived from" rule have no application and the only criteria that needs to be considered is if the resultant mixture exhibits any characteristics of a hazardous waste from 40 CFR 261.21, .22, .23 and .24"

Response:

Region I believes that any tank car waste generated in the manner as described above from a tanker which is legally "empty" under RCRA can only be classified as hazardous waste based on the characteristic of the resultant mixture. A hazardous waste cannot be "derived from" or qualify as a "mixture" from a tanker which is legally "empty".

Question:

"The third question revolves around the manifesting requirements if a tank car does not meet the definition of "empty" when off-loaded at the TSDF. Does this situation require the TSDF to become the generator for a shipment back to the original generator where it can be cleaned and purged, or can it travel back on the original manifest with a notation in the Discrepancy Section of how many gallons not able to be off-loaded."

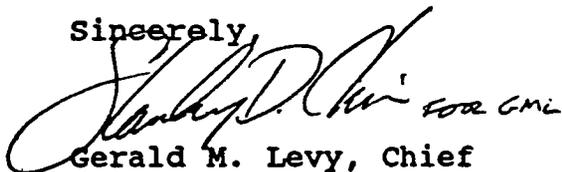
Response:

Region I believes that 40 C.F.R. § 263.21(a) clearly states that the transporter must deliver the entire quantity of hazardous waste accepted for shipment to the designated TSD or alternate designated TSD or revise the manifest in accordance to the generator's instructions for the entire volume of waste received.

For those situations in which the off-loaded volume at the TSD is less than the initial volume received from the generator, if the tanker qualifies as legally "empty", Region I would consider the entire volume to be delivered for purposes of 40 C.F.R. § 263.21(a). A manifest discrepancy would be required in the appropriate section of the hazardous waste manifest.

If you have any questions concerning these responses, please contact Kenneth Rota of my staff at (617) 573-5759.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald M. Levy".

Gerald M. Levy, Chief
MA Waste Management Branch