



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

April 2, 2002

Ms. Kristina Richards
Senior Environmental Engineer
Environmental Science Services, Inc.
272 West Exchange Street, Suite 101
Providence, Rhode Island 02903

Re:

- # 1. Land Disposal Restriction Regulations; One-Time Notification for Exempted Wastes.
- # 2. Hazardous Waste Identification; F003 Listing Interpretation.

Dear Ms. Richards:

The purpose of this letter is to respond to your two regulatory interpretation requests dated June 18, 2001. Please accept my apology for not issuing this response sooner. The following are your questions as we understand them, and our responses.

Request # 1: Land Disposal Restriction (LDR) Regulations; One-Time Notification for Exempted Waste. In this request, you have two major questions.

1. Question:

A generator uses an F003-listed solvent, or a D001 characteristic solvent to spray onto a metal part for cleaning, then wipes the part with a cloth and collects the cloth in a container. The solvent (if considered a waste) is hazardous for a few seconds while it is on the part, before it is wiped with the cloth. However, the cloth/solvent mixture no longer exhibits the characteristic of ignitability and therefore, no longer meets the definition of a hazardous waste pursuant to the mixture rule in 40 CFR 261.3 as recently revised. 40 CFR 261.3(g)(3) (in effect as of August 14, 2001) states that wastes excluded under this section are subject to part 268 (as applicable) even if they no longer exhibit a characteristic at the point of land disposal. 40 CFR 268.7(a)(7) indicates that a one-time LDR notice to the generator's file is required if the waste is excluded "subsequent to the point of generation."

Would this solvent, as described above, be considered to be excluded "subsequent to the point of generation" because it was a hazardous waste (either F003 or D001) for a few seconds prior to wiping with the cloth, or would the point of generation be when the contaminated cloth is generated and placed in a collection container (thus it is never a hazardous waste to begin with)? If this waste is subject to the LDR requirements, which requirements apply? (i.e., the one-time notice to the generator's file per 268.7(a)(7), the one-time notice to US EPA pursuant to 268.9(d), the notice to the disposal facility when the waste is shipped offsite pursuant to 268.7(a)(3), and/or the requirement for a waste analysis plan pursuant to 268.7(a)(5)?) Does it make any difference whether the solvent used is an F003-listed solvent or a D001 only solvent?

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

Ms. Richard

Page 2

Does it make any difference if the solvent is first applied to the cloth rather than the part being cleaned?

Response:

In general, EPA would consider the point of generation to be when the material is discarded and thus becomes a solid waste. In the situation you describe, this would be when the contaminated cloth is generated and placed in a collection container. However, a generator must determine if the contaminated cloth generated is hazardous or not. He must determine if the waste exhibits any of the characteristics listed under 40 CFR subpart C and/or meets any of the criteria listed under 40 CFR subpart D to ensure that the waste does not pose threats to human health or the environment. A generator cannot simply assume that the cloth/solvent mixture is not hazardous, but rather must determine this for his particular case.

If the generator determines that the waste is hazardous at the point of generation, LDR regulations will apply. However, if the cloth/solvent mixture is not hazardous when discarded, then LDR regulations will not apply. As to which of the notifications apply for exempted waste that is hazardous at the point of generation and no longer hazardous at the point of disposal, this really depends on how the generator manages the waste. The following describes each of LDR regulations that you cited in your letter and what the generator is required to comply with based on his situation.

The regulations at 40 CFR 268.7(a)(7) apply to a generator managing a prohibited waste that is excluded from the definition of hazardous waste or solid waste or is exempted from Subtitle C regulation under 40 CFR 261.2 through 261.6, subsequent to the point of generation. This type of generator must place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site file.

The regulations at 40 CFR 268.7(a)(5) apply to a generator who treats a prohibited waste on-site in tanks and containers, or containment buildings regulated under 40 CFR 262.34 to meet applicable LDR treatment standards found at 40 CFR 268.40. The generator must develop and follow a written waste analysis plan which describes the procedures he will carry out to comply with the treatment standards. Such a plan must be kept on-site in the facility's file and made available to inspectors.

The regulations at 40 CFR 268.7 (a) (3) apply to a generator who ships waste off-site and has determined that the waste when generated meets LDR treatment standards. With the initial shipment of waste to each treatment, storage or disposal facility, the generator must send a one-time written notice to each treatment, storage or disposal facility, and place a copy in the file. If the waste changes, the generator must send a new notice to the receiving facility, and place a copy in his file.

Ms. Richards

Page 3

The regulations at 40 CFR 268.9(d) apply to a generator who manages a waste that displays any of the hazardous characteristics of ignitability, corrosivity, reactivity, or toxicity, but is no longer hazardous when sent to a Subtitle D facility for disposal. 40 CFR 268.9(d) states that wastes that exhibit a characteristic are also subject to §268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's files and sent to the EPA region or authorized state. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the Subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur.

Regarding your question about the difference in using an F003 listed solvent or a D001 only solvent, the regulations at 40 CFR 261.31 provide the criteria for spent solvents that are listed as F003 waste. The F003 listing covers both F003 solvents and mixtures that contain one or more F003 solvents plus 10% or more of other F-listed solvents (F001, F002, F004, and F005). The difference in using an F003 listed solvent or a D001 only solvent would be for the F003 waste that contains 10% or more of the other F-listed solvents (F001, F002, F004, and F005); this waste would also bear those waste codes, and as such would not be eligible for the exclusion under 40 CFR 261.3(g) of the revised mixture and derived-from rule. The exclusion applies only to F003 wastes that do not contain 10% or more of these other solvents (66 FR 27284).

You also asked if it makes any difference if the solvent is first applied to the cloth rather than the part being cleaned. It does not seem to make any difference whether the solvent is first applied to the cloth or the part being cleaned. The generator has the same responsibility to determine whether the contaminated cloth is hazardous when discarded, in either case.

You should be aware that the "Hazardous Waste Identification Rule (HWIR); Revisions to the Mixture and Derived-From Rules" that were published on May 16, 2001, (66 FR 27266) and became Federally effective on August 14, 2001, will not go into effect in authorized States until they adopt the revisions and become authorized by EPA for them. New England States are authorized to carry out state requirements in lieu of 40 CFR Part 261. Since none of the May 16, 2001, revisions are more stringent than the existing Federal requirements, the authorized States are not required to adopt the revisions (66 FR 27293). As such, waste can not be excluded under 40 CFR 261.3(g) until the States adopt and become authorized for these revisions.

In summary, the May 16, 2001, final rule does not change the applicability of the LDR program, all the LDR rules continue to apply. However, if the waste is not hazardous at the point of generation, it is not subject to LDR. The May 16, 2001 final rule will take effect in a State when the State obtains authorization for it.

2. Question:

Ms. Richards

Page 4

Which of the LDR requirements apply to a generator treating a corrosive hazardous waste in an exempt elementary neutralization system, or other hazardous wastes in exempt units such as wastewater treatments units or totally enclosed treatment facilities? (i.e., the one-time notice to the generator's file per 268.7(a)(7), the one-time notice to US EPA pursuant to 268.9(d), the notice to the disposal facility when the waste is shipped off site pursuant to 268.7(a)(3), and/or the requirement for a waste analysis plan pursuant to 268.7(a)(5)?)

Response:

If the waste being managed is a prohibited waste, the generator is required to comply with 40 CFR 268.7 (a)(7) which states that if a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous waste or solid waste or is exempted from Subtitle C regulation under 40 CFR 261.2 through 261.6 subsequent to the point of generation, including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified at 40 CFR 261.4(a)(2) or that are CWA-equivalent, or are managed in an underground injection well regulated by the Safe Drinking Water Act (SDWA), he must place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous waste or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste, in the facility's on-site file.

Based on the above information, it seems that 40 CFR 268.7(a)(7) (the one-time notice to generator's file) will apply to a generator treating a corrosive hazardous waste in an exempt elementary neutralization system, or other hazardous wastes in exempt units such as wastewater treatments units or totally enclosed treatment facilities.

Sludges generated from the above mentioned units are newly generated wastes that should be evaluated at the point of generation. If hazardous, the appropriate LDR requirements must be applied.

Request # 2: Hazardous waste identification; F003 listing interpretation.

In this request, you ask for the assistance with an interpretation of the F003 hazardous waste listing in 40 CFR 261.31.

Question:

If an F003-listed solvent, in this case, acetone, is to be used at a generator's facility for cleaning purposes; however, prior to use, the acetone is blended with 0.7% to 0.9% isopropyl alcohol, does the spent solvent meet the F003 listing? Because the solvent being used is not pure acetone, it seems (to the questioner) that this waste would not meet the F003 definition. What if the acetone were mixed with 10% to 15 % water prior to use rather than isopropyl alcohol? Again, it seems (to the questioner) that the spent solvent would not meet the F003 listing in this scenario. I understand that in both cases, the characteristics of the waste need to be determined and that, at

Ms. Richards

Page 5

a minimum, the D001 waste number is likely to apply.

Response:

The Solvent Mixture Rule promulgated at 50 FR 53315, 12/31/85, provides that a mixture containing F003 solvents would retain the listing under the following two conditions: the mixture contains: (1) only F003 constituents, or (2) one or more F003 constituents and 10% or more by volume of one or more of F001, F002, F004 and F005 listed solvents, prior to use.

The F003 listing also covers mixtures of F003 solvents and other substances such as isopropyl alcohol and water if the mixtures are technical grade solvent formulations, which are used for their solvent properties. The term technical grade refers to all grades of a chemical which are marketed or recognized for general usage by the chemical industry. Solvent formulations containing de minimis percentages of manufacturing contaminants or impurities are considered technical grade products, provided that they are available for purchase and use in this form. In other words a technical grade solvent could contain small concentrations of contaminants or manufacturing impurities and still meet the F003 listing after being used for its solvent properties. The purity of a technical grade formulation will vary from compound to compound and may range from highly purified to very impure. EPA has not established specific percentages or other criteria for use in determining when contamination is considered de minimis, such a decision must be made on a case by case basis. (RCRA Online, 6/1/94, Faxback 13675)

In the first scenario, acetone (an F003 solvent) is blended with a constituent (isopropyl alcohol) other than F003 constituents; in the second scenario, acetone is diluted with water. In both cases, the determination as to whether the mixture will retain the F003 listing is dependent upon whether or not the mixture is considered a technical or commercial grade solvent.

EPA New England does not have adequate information at this time to assess what percentage of isopropyl alcohol or water in acetone will qualify acetone mixture as technical or commercial grade. It is recommended that the generator check with manufacturers to determine if acetone which contains 0.7% to 0.9% isopropyl alcohol or 10% to 15% water is considered commercial or technical grade. If it qualifies as commercial or technical grade, once spent, it would still meet the F003 listing. If it is not commercial or technical grade, this reason why the acetone mixture does not meet the F003 listing criteria should be documented, and the mixture should be tested for the characteristic of ignitability.

Please note that the New England States in accordance with Section 3006 of the Resource Conservation and Recovery Act (RCRA), are authorized to administer and enforce the base RCRA program in lieu of federal program and, in particular, have regulatory authority regarding hazardous waste determinations for 40 CFR 261 - Identification and Listing of Hazardous Waste. Therefore, you should also consult with the appropriate state personnel regarding all of your

Ms. Richards

Page 6

requests.

I hope the above responses address your concerns. It should be noted that EPA has since published two corrections to the revised mixture and derived-from rule (66 FR 50332 and 66 FR 60153). However, these corrections and extension of the effective date on this rule should not affect today's responses. If you have any further questions, please contact Ms. Jui-Yu Hsieh in my Hazardous Waste Unit at 617-918-1646.

Sincerely,



Marv Rosenstein, Chief
Chemical Management Branch
Office of Ecosystem Protection

cc: Gary Gosbee , EPA, OEP
Jeffry Fowley, EPA, ORC
Ken Rota, EPA, OES
Matt Hoagland, EPA, OSRR
Laurie Grandchamp, RI DEM
Jim Miller, MA DEP
Dave Sattler, CT DEP
Stacy Ladner, ME DEP
Peter Marshall, VT DEC
John Duclos, NH DES