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DEPARTMENT OF ECOLOGY
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DEPARTMENT OF ECOLOGY
S.W. REGIONAL

February 19, 1993

TO: All Hazardous Waste Staff

FROM: Tom Eaton Tom Eaton

SUBJECT: Contained-in Policy

Many of you have recently heard about EPA's contained-in policy for contaminated environmental media. EPA's contained-in policy has been articulated over the years in a series of letters and memos from EPA Headquarters and regions. In a November 13, 1986 memo from Marcia Williams, EPA states, "...ground water contaminated with hazardous waste leachate is still subject to regulations since it contains a hazardous waste...the treatment, storage, or disposal of ground water contaminated with hazardous waste leachate must be handled as if the ground water itself were hazardous...however, if the ground water is treated such that it no longer contains a hazardous waste (it) would no longer be subject to regulation under Subtitle C of RCRA."

The contained-in policy is based on an EPA determination that although environmental media are usually not solid wastes, they frequently enter the RCRA system due to contamination by RCRA listed hazardous wastes. The contained-in policy states that environmental media, such as soils and groundwater, contaminated with a RCRA listed hazardous waste must be managed as if the media were hazardous waste until it no longer contains the hazardous waste or is delisted. Under EPA's current policy, contaminated environmental media may be determined to no longer contain hazardous waste when the hazardous constituents in the media fall below site-specific, risk-based levels <u>and</u> the media does not exhibit a characteristic. The contained-in policy is not a waiver from the requirement to designate material per WAC 173-303-070.

All contained-in determinations must be based on statistically adequate site-specific data and must, at a minimum, consider the concentration and risk of each constituent for which the hazardous waste was listed and any possible breakdown products. It is the responsibility of the facility to provide data of adequate quality and quantity. As interim policy, risk-based action levels should be established using residential standards calculated under the Model Toxics Control Act. Contingent management (i.e allowing application of the contained-in policy provided the media is managed in a specific manner which further reduces risk to human health or the environment) may be considered when appropriate. In some cases, Ecology may determine that contingent

management requirements allow the site-specific, risk-based action levels to be calculated according to the MTCA industrial standards.

Contained-in determinations should consider the overall risk posed by the contaminated environmental media, including relevant site-specific factors as well as hazardous constituents. The policy should be applied equitably and consistently with regard to the required scientific analysis and risk management procedures. All contained-in determinations should be well documented. Please keep in mind, the State cannot make contained-in determinations regarding RCRA hazardous waste listings for which we are not authorized (i.e F032). Contained-in determinations for non-authorized waste codes may be referred to EPA Region 10.

Contained-in determinations should be relayed to the facility by letter or order, signed by the Regional Solid and Hazardous Waste Program Section Supervisor, or the Section Supervisor in the Nuclear and Mixed Waste Program or the Industrial Section. Until additional guidance is available, please send all contained-in decisions through Elizabeth McManus for review prior to issuance.

I believe the contained-in policy is a strong tool which will be especially useful at closure and post-closure sites. Attached are three recent EPA letters which clarify their use of the policy. A subgroup of the Northwest Corrective Action Workgroup has assumed the task of preparing a document regarding the appropriate use of the contained-in policy in EPA Region 10. This memo will serve as the State interim guidance on implementation of the contained-in policy and will be reevaluated when EPA regional guidance becomes available. Our representative on the subgroup and contact for this policy is Elizabeth McManus. Please contact her at (206) 493-9506 if you have any questions. I would like you and your staff to become familiar with this policy and I encourage you to implement it whenever reasonable and appropriate.

TE:EM:vvn
Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

JAN 20 1993

RECEIVED
JAN 25 1993
EPA – WOO

Reply To
Attn Of: HW-104

Les Lonning
Vice President of Environmental Affairs
Cascade Pole Company
P.O. Box 1496
Tacoma, Washington 98401-1496

Dear Mr. Lonning:

The U.S. Environmental Protection Agency (EPA) has reviewed the analytical data which Cascade Pole obtained from samples of the approximately 1450 yd^3 soil pile at the Cascade Pole facility in Tacoma. You submitted the data after EPA approved a sampling plan with the objective of determining whether the soil, which is contaminated with federal-only listed waste F032, should be managed as a hazardous waste, in accordance with the principles of EPA's "contained-in" policy.

It is EPA Region 10's opinion that the constituents for which F032 was listed are present in the soil pile at concentrations which do not warrant management of the pile as hazardous waste in an industrial setting. EPA will not require you to dispose of the waste at a licensed hazardous waste land disposal or incineration facility provided Cascade Pole manage the soil within the following constraints:

- The soil must be maintained on the Cascade Pole facility premises in Tacoma or disposed as a special waste according to Washington Department of Ecology directives and approvals;

- If the soil is maintained on site, it must be managed in a fashion (such as paving) which minimizes both run-off to surface water and infiltration to ground water.

If the above conditions are not met at any time after you receive this letter, EPA may reverse its decision and require that the soil be managed as hazardous waste.

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Please note that this application of the contained-in policy, like any such application, is particular only to the site-, waste-, and media-specific conditions for which the decision is rendered. No inference of the explicit or implicit inclusion in this decision of other contaminated media at this facility or any other facility would be legitimate.

If you have any questions regarding this matter, please contact Marcia Bailey of my staff at (206) 553-0684.

Sincerely,

Michael F. Gearheard, Chief
Waste Management Branch

cc: Kay Seiler, Washington Department of Ecology, SWRO
David Polivka, Washington Department of Ecology, SWRO
Dru Butler, Washington Department of Ecology

Contaminated

9/1/92
KAB.

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August 26, 1992

DIRECT DIAL:

REPLY TO:

Ms. Sylvia Lowrance
Office of Solid Waste
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

Dear Ms.Lowrance:

This is a follow up to my letters of January 20 and July 16, 1992. As stated in that letter, I am attempting to determine whether contaminated soils under certain very specific circumstances are considered to be a RCRA hazardous waste. The specific circumstances for which I require guidance are as follows:

1. A tank containing virgin carbon tetrachloride leaks. As a waste, carbon tetrachloride is listed by the Agency as U-211.

2. The soil around the tank is sampled and found to be contaminated with carbon tetrachloride. However, the contamination is below state remedial requirements. State policy and/or regulations does not require any remedial activity with respect to the contaminated soils.

Under these circumstances, I would like to know whether the undisturbed contaminated soil is deemed by the EPA to be a RCRA hazardous waste or is required to be managed as a RCRA hazardous waste. If it is deemed to be a RCRA hazardous waste or required to be managed as such, could you please explain the basis for this determination. If it is not deemed to be a RCRA hazardous waste or required to be managed as such, I would like to now whether any of this contaminated soil which is excavated incident to the removal of the tank (as opposed to four purposes of addressing the spill; something which state law does not require because of the low level of contamination found in the soil) is deemed to be a RCRA hazardous waste required to be managed as such, or whether, because it was not excavated to address the spill and therefore is not waste or for any other reason, it is not deemed to be a RCRA hazardous waste and may therefore be returned to the excavation.

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I look forward to hearing from you in the near future and appreciate your kind assistance in this matter.

Yours very truly,

William L. Warren

WLW:np

Attachment 1 reference #1 ~~SUSAN~~ - dist. CARDIE Betty

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

OCT 15 1992

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

RECEIVED
NOV 12 1992
WASTE MANAGEMENT BRANCH

Mr. William L. Warren
Cohen, Shapiro, Polisher, Sheikman and Cohen
1009 Lenox Drive, Building Four
Lawrenceville, NJ 08648

Dear Mr. Warren:

I am pleased to respond to your letter of August 26, 1992, in which you requested clarification of several issues relating to the regulatory status of soils contaminated from releases of commercial chemical products.

The example outlined in your letter dealt specifically with leakage of carbon tetrachloride from a tank. Since the carbon tetrachloride has been "discarded" in this case, it would be identified as U-211 listed hazardous waste. The key question posed in your letter is whether the resulting contaminated soil is hazardous waste, and under what circumstances it would be subject to hazardous waste management requirements.

Under EPA's regulatory definition of hazardous waste in §261.3(c)(1), soils that contain hazardous wastes must be managed as if they were hazardous wastes until or unless they no longer contain the listed waste, exhibit a characteristic, or are delisted (see 57 Fed. Reg. 37225, Aug. 18, 1992). Under the "contained-in policy" the authorized State or EPA has the discretion to determine contaminant-specific health-based levels, such that if the concentrations of the hazardous waste constituents were below those levels the media would no longer be considered to contain the waste. This applies to "U" listed wastes, and other listed wastes. The health-based levels used in making contained-in determinations are established on a site-specific basis, in accordance with general State or Federal guidelines, or by means of a site specific risk assessment. This discretion is available to the State Administrator in an authorized State, or otherwise is vested in the EPA Regional Administrator.

In the example outlined in your letter, you state that the contaminant levels are below the State's remedial requirements. As such, it may be that the State would determine that the soils do not contain hazardous wastes. If such is the case, and

assuming the State is authorized for the RCRA program, there would be no RCRA hazardous waste management requirements applicable to the soils before or during excavations incident to removal of the tank.

I hope this has helped to clarify the issues you raised. If you have any further questions, please contact Dave Fagan at 202 260-4497.

Sincerely,

Sylvia K. Lowrance
Director, Office of Solid Waste

reference # 2

Attachment 2

Betty

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

RECEIVED
NOV 20 1992
WASTE MANAGEMENT BRANCH

NOV 4 1992

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Mr. James V. Noles
General Manager, Remedial/ Removal Operations Group
Four Seasons Industrial Services, Inc.
3107 South Elm-Eugene Street
P.O. Box 16590
Greensboro, North Carolina 27416-0590

Dear Mr. Noles:

This is in response to your letter of August 1, 1992, in which you asked several questions related to the classification of F003 wastes (ignitable non-toxic spent solvents). Specifically, you presented us with two scenarios: 1) the spilling of containerized spent solvent onto soil, and 2) the proper classification and applicable treatment standards for paint cleaning wastes in which xylene and acetone were used as solvents.

In the first situation described in your letter, xylene and acetone (F003) spent solvent wastes were containerized in drums for storage and ultimate incineration at a permitted treatment, storage, and disposal (TSD) facility. During loading of the drums for shipment, some of the spent solvent waste was spilled onto soil. The affected soils were excavated, containerized, sampled, and analyzed. You presented us with two questions concerning this incident:

1) Would this spent solvent contaminated soil be regulated as a hazardous waste?

ANSWER: Under Federal regulation, contaminated soils and other environmental media, when they contain a listed hazardous waste, must be handled as a hazardous waste until the medium no longer contains the listed waste. The determination as to whether or not the medium "contains" the listed waste or what treatment would be sufficient to remove the waste is decided by the EPA Region or authorized State agency. Please be aware that a state's laws and regulations may differ from the Federal program. In this case you should contact the State of North Carolina.

2) If yes, please explain why the waste mixture rule as defined in 40 CFR 261.3(a)(2)(iii) would not apply. The rule basically states that a solid waste *(in this case, the soil)*, mixed with a hazardous waste *(in this case, the ignitable spent solvent)* listed in Subpart D solely because

it exhibits a characteristic of a hazardous waste as identified in Subpart C, would no longer be a hazardous waste should the mixture *(the contaminated soil)* not exhibit a hazardous characteristic.

ANSWER: Environmental media (such as soil or ground water) are not considered wastes, and, therefore, the "mixture rule" (40 CFR 261.3(a)(2)(iii)) does not apply. However, under the Agency's "contained-in" policy, such media contaminated with listed hazardous waste must itself be treated as listed hazardous wastes until the listed waste has been removed. Please note that with regard to your reference to §261.3(a)(2)(iii), the procedures in that section have been updated in accordance with Land Disposal Restrictions rules (see answer to #4 below).

In the second situation, according to your letter, xylene and acetone are used as solvents to clean excess paint and paint sludges from tools and equipment. The wastes generated, as described in your letter (classified as F003) are subsequently placed in a drum for disposal. An analysis of the waste reveals that the waste contents from these drums do not exhibit any characteristic of hazardous waste; however, the waste has constituent levels above those specified in the Land Disposal Restrictions treatment standards for xylene and acetone (0.15 ppm and 0.59 ppm, respectively). You presented us with two questions concerning this scenario:

3) Would this spent solvent paint waste be regulated as a hazardous waste?

ANSWER: Yes. Given that this waste is a spent solvent waste that meets the listing description, it is classified under current regulations as a listed F003 waste. The listing description applies to the containerized waste, which includes both the spent solvents and the paint residual removed by the solvents in the containers.

4) If this spent solvent paint waste sludge is a hazardous waste, how would you apply the fact that this type of spent solvent (F003) is listed in 40 CFR 261, Subpart D, due to its ignitability, and this waste no longer exhibits the ignitability characteristic?

ANSWER: From your letter and discussions our staff has had with you, we understand your question to concern the applicability of the Land Disposal Restrictions (LDR) treatment standards to this waste and mixtures involving this waste. Thus, our response is based on this understanding of your question. The LDR treatment standards are applicable to wastes as generated. As described above, the waste as generated in the situation you present, since it has not been mixed with another solid waste, is a listed hazardous waste because of the use of solvents identified in

F003, and their disposal subsequent to their being spent. The fact that the waste does not exhibit the characteristic of ignitability after storage does not alter its status as a listed waste when generated. As the Agency recently reiterated (57 FR 37210, August 18, 1992), "... such wastes cannot be land disposed until treated to meet the applicable treatment standards, and cannot be diluted to meet those treatment standards (56 FR 3871). This would also be true of mixtures involving such listed wastes, since otherwise the prohibitions would have no real meaning." Thus, the waste you have described above must be treated to meet the Land Disposal Restrictions treatment standards for constituents such as xylene and acetone if they contain levels of these constituents higher than those prescribed in the regulations and are destined for land disposal.

Thank you for your inquiry. If you have any questions concerning the solvent listings, please contact Mr. Ron Josephson of my staff at (202)260-6715. For answers to policy questions concerning the Land Disposal Restrictions, please contact Ms. Rhonda Craig at (703)308-8434.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

cc: Ken Gigliello, OWPE
Rhonda Craig, WMD
Waste Management Division Directors, EPA Regions I - X

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NOV 6 1992
HAZARDOUS WASTE DIV...