

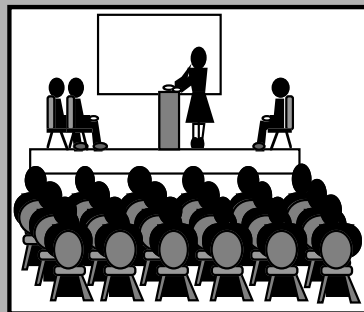


Inside the Hotline

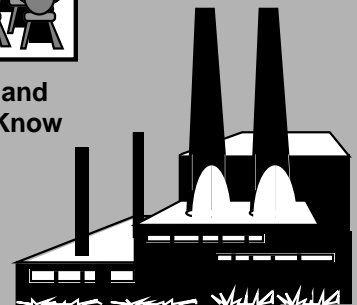
A Compilation of 1996 Monthly Hotline Reports



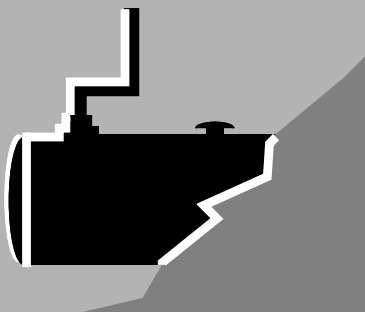
Clean Air Act §112(r)



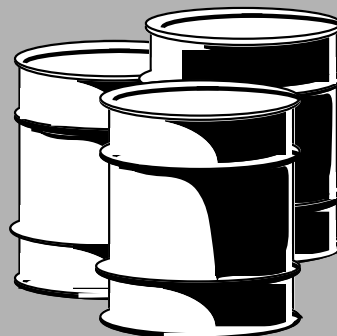
Emergency Planning and
Community Right-to-Know



Resource Conservation
and Recovery Act



Underground
Storage Tanks



Superfund

RCRA, Superfund & EPCRA Hotline Phone Numbers:

National toll-free (outside of DC area)	(800) 424-9346
Local number (within DC area)	(703) 412-9810
National toll-free for the hearing impaired (TDD)	(800) 553-7672
Local TDD number (within DC area)	(703) 412-3323

This document is prepared by Booz-Allen & Hamilton and submitted in support of Contract No. 68-W6-0016

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Washington, DC 20460

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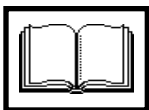
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INTRODUCTION

The Resource Conservation and Recovery Act (RCRA), Superfund, and Emergency Planning and Community Right-to-Know Act (EPCRA) Hotline was established to respond to inquiries from the regulated community and the public concerning waste management, disposal, and emergency planning and response regulations. In addition, the Hotline serves as point of contact for the risk management program under the Clean Air Act §112(r). The Hotline also functions as a referral point on the availability and distribution of program related documents and published materials.

This document is a compilation of Questions and Answers and Federal Register summaries from individual Monthly Hotline Reports for the period of January to December 1996. It is divided into three parts: Questions and Answers, Federal Register summaries, and Indices organized according to subject matter, regulatory citations, and statutory citations.

It is important that the reader understand the purpose and limitations of the information in this document. Neither the questions nor the Federal Register summaries are intended to fully represent or be used in place of the regulations. This document can be used to explore the application of the regulations in different scenarios or to shed light on complex issues. For an understanding of the actual regulatory requirements in any given situation, the reader must consult the appropriate sections of Title 40 of the Code of Federal Regulations (CFR), pertinent Federal Registers and EPA guidance documents, as well as relevant state regulations.

AVAILABILITY

This document, *Inside the Hotline: A Compilation of 1996 Monthly Hotline Reports*, is available for purchase from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, 1 (800) 553-6847 or (703) 487-4650. The NTIS Order No. is: PB97-137 632.

Other Hotline publications are also available from NTIS. Individual Monthly Hotline Reports from 1982 up through the current report and Monthly Hotline Report subscriptions are available, as well as the following:

<i>Inside the Hotline: A Compilation of 1995 Monthly Hotline Reports</i>	PB96-163 423
<i>Inside the Hotline: A Compilation of 1994 Monthly Hotline Reports</i>	PB95-179 388
<i>Inside the Hotline: A Compilation of 1993 Monthly Hotline Reports</i>	PB93-127 966
<i>Inside the Hotline: A Compilation of 1992 Monthly Hotline Reports</i>	PB93-159 572
<i>Inside the Hotline: A Compilation of 1991 Monthly Hotline Reports</i>	PB92-131 390
<i>Index to the Monthly Hotline Report Questions (June 1982 to December 1994)</i>	PB95-179 396

Electronic Availability

The Monthly Hotline Report Questions and Answers are also available for downloading at no charge from EPA's Cleanup Information BBS (CLU-IN). CLU-IN can be accessed via the following methods:

Access to CLU-IN:

- Via modem at **(301) 589-8366** (after registering at the main menu, choose "D" for download and use the filename **HOTLINE96.ZIP**)
- Via the Internet by Telnet at **clu-in.epa.gov** (after registering at the main menu, choose "D" for download and use the filename **HOTLINE96.ZIP**)
- Via the world wide web at <http://www.clu-in.com/clu-in.htm> (choose the file **HOTLINE96.ZIP** under directory 8)

Selected 1996 Monthly Hotline Reports are also available through EPA's Internet servers at the following route:

Access through the World Wide Web:

- Go to the Hotline's Home Page at <http://www.epa.gov/epaoswer/hotline>
- Choose "Monthly Hotline Reports"

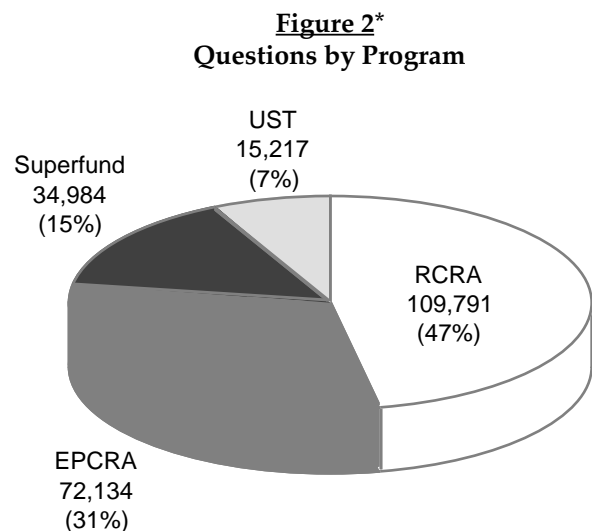
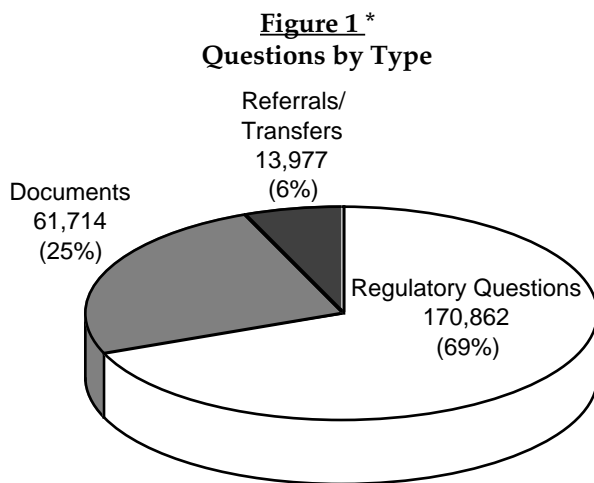


PART 1: QUESTIONS AND ANSWERS

This section contains a compilation of all the questions and answers from individual Monthly Hotline Reports for the period of January to December 1996. The questions in these reports arise from actual Hotline calls. While the number of questions represent only a small fraction of the total questions received, they do represent commonly asked or significant questions received by the Hotline. During 1996 the Hotline responded to over 246,000 questions regarding EPA regulations, programs, guidance documents, and other related matters. The number and type of questions in this report reflect the percentages cited in Figure 1. Figure 2 breaks down the questions by program area. The RCRA program received the highest number of questions, nearly 47 percent.

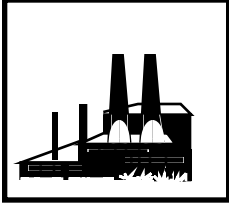
The questions and answers have undergone EPA technical and legal review and often reference other pertinent sources of information such as CFR citations, Federal Register notices, and Agency memoranda. These explanations and examples of regulatory application are for informational purposes only, and do not represent the issuance of formal policy or in any way affect the implementation of the regulations.

Keywords are provided in the left-hand margin at the beginning of each question. The month the question appeared in the Monthly Hotline Report is cited at the end of the entry. The questions in this section are grouped by EPA program area, then further grouped under broad, general regulatory areas and titles. To pinpoint a subject or topic more specific than the general regulatory area headings, please use the Indices in Part 3.



*Based on 246,553 questions received during 1996.

**Excludes 13,977 referrals and transfers made to other information sources.



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Air Emissions

Keywords:

Air emissions; containers; generator

"Frequently Asked Questions on the 40 CFR Parts 264/265, Subpart CC Air Emission Standards"

QUESTION: Are large quantity generators subject to the RCRA Subpart CC air emission standards for tanks, surface impoundments, and containers?

ANSWER: Yes, large quantity generators are subject to the Subpart CC air emission standards if managing hazardous waste in 90-day accumulation units (§262.34(a)).

QUESTION: Does Subpart CC affect containers used for satellite accumulation under §262.34(c)?

ANSWER: Subpart CC does not apply to containers used for satellite accumulation (59 FR 62896, 62910; December 6, 1994).

QUESTION: Are large quantity generators subject to the Subpart AA and BB air emission standards for process vents and equipment leaks?

ANSWER: Yes, in addition to establishing the Subpart CC air emission standards, the December 6, 1994, Federal Register also extended the applicability of Subparts AA and BB to large quantity generators accumulating hazardous waste in permit-exempt units (§262.34(a)).

QUESTION: Do the Subpart CC regulations specify the types of control equipment that must be installed to comply with the air emission standards?

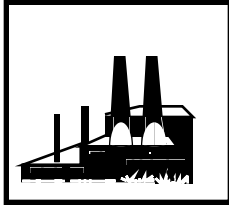
ANSWER: The Subpart CC standards do not require the use of any specific type of equipment or add-on control device. Instead, the standards allow owners/operators the flexibility of choosing a control device that is best suited for a particular wastestream (59 FR 62896, 62918; December 6, 1994). (February 1996 Monthly Hotline Report)

"Removal of Hazardous Waste Management Unit for Subpart CC Compliance"

Keywords:

Air emissions; containers; operating record; surface impoundment; tank; treatment, storage, and disposal facility

QUESTION: The effective date of the 40 CFR Parts 264/265, Subpart CC air emission standards is December 6, 1996. Owners and/or operators who are unable to install the appropriate air emission controls on affected tanks, surface impoundments, and containers by the effective date of the rule are given the opportunity to establish an implementation schedule for the installation of required equipment. In all cases, owners and/or operators must have all controls installed by December 8, 1997 (§265.1082). Is the removal of an affected unit from service an acceptable means of compliance



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

with the Subpart CC standards? If so, can the owner and/or operator continue to manage hazardous waste in the unit without the appropriate air emission controls if he or she is unable to remove the unit from service prior to the December 6, 1996, provided that documentation of the intentions to remove the unit from service by December 8, 1997, is placed in an implementation schedule?

ANSWER: Removal of a tank, surface impoundment, or container from service is an acceptable means of compliance with the Subpart CC standards. If, however, removal of the unit does not occur before the December 6, 1996, effective date, all required air emission controls must be installed on the unit if it continues to manage hazardous waste. When it is not possible to install the appropriate controls by the effective date of the rule, owners and/or operators must prepare an implementation schedule in accordance with the guidelines established in §265.1082.

Preparation of an implementation schedule is not an automatic extension to the effective date of the Subpart CC standards until December 8, 1997. In all cases, owners and/or operators must document in the schedule the reasons why required controls cannot be in place by the effective date and must make all efforts to install the equipment as soon as possible, but no later than December 8, 1997. Thus, in order to continue managing hazardous waste after the effective date of the air emission requirements in a unit scheduled for removal without the required controls, an owner and/or operator must be able to demonstrate why the unit cannot be removed before December 6, 1996, and why the necessary controls cannot be installed. An implementation schedule describing the removal of an affected unit must be prepared and placed in the facility's operating record. The owner and/or operator can continue to operate the unit without air emission controls while he or she is implementing the schedule. **(March 1996 Monthly Hotline Report)**

Financial Assurance

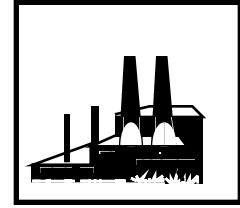
Keywords:

Closure; financial assurance; letter of credit

"Annual Payments Into A Standby Trust Fund When Using A Letter Of Credit"

QUESTION: Subpart H of 40 CFR Part 264 requires an owner or operator of a permitted treatment, storage, and disposal facility (TSDF) to establish financial assurance to satisfy closure and post-closure care of the facility. A letter of credit is one of the financial mechanisms that the owner or operator may choose to demonstrate financial assurance (§§264.143(d)/264.145(d)). A letter of credit allows a financial institution, that is authorized by a federal or state agency to issue letters of credit, to extend credit on behalf of a TSDF. The letter of credit must be irrevocable, issued for a period of at least one year, and in an amount at least equal to the current closure and post-closure cost estimates, unless used in combination with other financial assurance mechanisms (§§264.143(g)/

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)



264.145(g)). An owner or operator using a letter of credit for closure or post-closure financial assurance must also establish a standby trust fund to accompany the letter of credit (§§264.143(a)/264.145(a)). If an owner or operator is demonstrating financial assurance through the use of a letter of credit, must annual payments be made into the standby trust fund?

ANSWER: No. Under the federal regulations, the owner or operator is not required to make annual payments into the standby trust fund. The standby trust fund merely facilitates drawing on the letter of credit in the event that the owner or operator cannot pay for closure or post-closure care. A standby trust fund (as opposed to a trust fund established under §§264.143(a)/264.145(a)) cannot be used as a stand alone financial assurance mechanism under RCRA. The standby trust fund documentation must be worded exactly as the documentation for a trust fund, except for a few requirements: the annual payments into the fund are waived; schedule A of the trust agreement need not be updated; and annual valuations by the trustee or notices of nonpayment are not required. These provisions for establishment of a standby trust fund also apply to an interim status TSDf that is using a letter of credit to establish financial assurance for closure and post-closure care (§§265.143(c)/265.145(c)). **(December 1996 Monthly Hotline Report)**

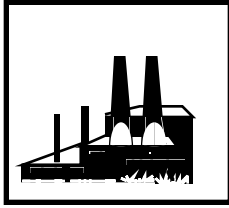
"Financial Statement Requirement for the RCRA Subtitle C Financial Test"

Keywords:

Financial assurance;
financial test; liability

QUESTION: For purposes of complying with the financial assurance requirements, treatment, storage, and disposal facilities (TSDFs) may demonstrate liability coverage by use of the financial test. As evidence that the TSDf satisfies the financial test requirements, the owner or operator is required to submit a certified public accountant's report on the latest completed fiscal year's financial statements (§264.147(f)(3)(ii)). If the owner or operator does not have financial statements from the latest completed fiscal year, may estimated financial statements be used as substitutes for this requirement?

ANSWER: No. If there are no financial statements for the latest completed fiscal year, the financial test mechanism cannot be used to demonstrate financial assurance. In addition, estimates of financial statements may not be used as substitutes for full statements. This is applicable not only to new companies, but also to companies that have recently separated from parent companies. Although such a recently separated company may have the ability to accurately estimate their financial statements using the parent company's statements, it must nevertheless rely on its own financial statements to qualify to use the financial test. This allows the certified public accountant to fairly predict the financial condition of the company in conformity with generally accepted accounting principals. **(November 1996 Monthly Hotline Report)**



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

"Tangible Net Worth Requirements for RCRA Subtitle C Financial Assurance"

Keywords:

Financial assurance;
financial test; liability

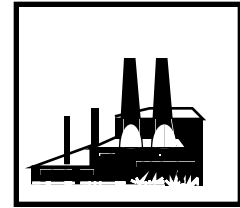
QUESTION: Owners and operators of treatment, storage, and disposal facilities subject to Subtitle C regulation are required to demonstrate liability coverage for bodily injury and/or property damage to third parties resulting from accidental occurrences arising from facility operations (53 FR 33938; September 1, 1988). This requirement can be demonstrated using one or a combination of financial mechanisms, including a financial test. The financial test for liability coverage requires the owner or operator to possess net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test, and a minimum tangible net worth of \$10 million (§264.147(f)(1)(i)(A) and (B)). How does an owner or operator calculate the required amount of tangible net worth when using the financial test?

ANSWER: The owner or operator using the financial test must possess a minimum tangible net worth of at least \$10 million. Even if six times the amount of liability coverage to be demonstrated by this test is less than \$10 million, the owner or operator must still have at least \$10 million in tangible net worth (see Example 1). If, on the other hand, six times the amount of liability coverage to be demonstrated by the financial test is more than \$10 million, then that six times multiple is the minimum tangible net worth necessary to qualify to use the financial test (see Example 2).

Example 1:	Amount demonstrated by the financial test:	\$500,000
	Six times the amount demonstrated:	\$3 million
	Minimum tangible net worth:	\$10 million

Example 2:	Amount demonstrated by the financial test:	\$2 million
	Six times the amount demonstrated:	\$12 million
	Minimum tangible net worth:	\$12 million

(December 1996 Monthly Hotline Report)



Generator and Transporter Requirements

Keywords:

Conditionally exempt small quantity generator; elementary neutralization unit; treatment

"Conditionally Exempt Small Quantity Generators Treating in Elementary Neutralization Units"

QUESTION: A conditionally exempt small quantity generator (CESQG) may treat or dispose of hazardous waste on site provided the generator meets certain requirements outlined in 40 CFR §§261.5(f)(3) and (g)(3). If a CESQG chooses to treat waste in an on-site elementary neutralization unit, must the generator meet the conditions of §§261.5(f)(3) and (g)(3)?

ANSWER: A CESQG may treat hazardous waste in an on-site elementary neutralization unit without meeting the requirements in §§261.5(f)(3) and (g)(3). Elementary neutralization units, as defined in §260.10, are exempt from RCRA treatment, storage and disposal standards and permitting requirements. The elementary neutralization unit exclusion does not preclude a CESQG from treating waste in the exempt unit as long as the generator meets the criteria outlined in §§264.1(g)(6), 265.1(c)(10), and §270.1(c)(2)(v). Specifically, the elementary neutralization unit must meet the definition of a container, tank, tank system, transport vehicle, or vessel; and be used for neutralizing wastes that are hazardous only because of the corrosivity characteristic. **(February 1996 Monthly Hotline Report)**

"Frequently Asked Questions on Hazardous Waste Generator Requirements"

Keywords:

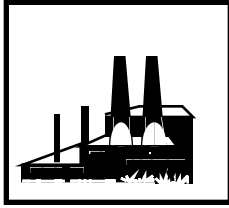
Conditionally exempt small quantity generator; generator; manifest; permit

QUESTION: May large quantity generators (LQGs) and small quantity generators (SQGs) treat hazardous waste on site without obtaining a permit or interim status?

ANSWER: EPA has consistently maintained that a permit or interim status is not required if a LQG or SQG treats hazardous waste in accumulation units such as tanks or containers that are in full compliance with the requirements of 40 CFR §262.34 and the special unit-specific requirements found in Part 265 (51 FR 10146, 10168; March 24, 1986). This treatment must be completed within the specified regulatory time limitations.

QUESTION: Must SQGs submit a Biennial Report for their hazardous waste management activities?

ANSWER: No, SQGs (generators of greater than 100 kg but less than 1,000 kg in a calendar month) are subject only to the reporting requirements listed in 40 CFR §262.44. The Biennial Report regulation at 40 CFR §262.41 is not specifically listed in that section.



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

QUESTION: The 40 CFR Part 262 regulations, Standards Applicable to Generators, do not mention conditionally exempt small quantity generators (CESQGs). Where are the CESQG regulations found?

ANSWER: Unlike the LQG and SQG regulations that are found throughout Part 262, the CESQG requirements are found in §261.5. CESQGs are those generators who produce less than or equal to 100 kg of hazardous waste, less than or equal to 1 kg of acute hazardous waste, or less than or equal to 100 kg of spill residue of acute hazardous waste per calendar month.

QUESTION: Must generators preparing an off-site shipment of hazardous waste list the EPA waste codes on the manifest?

ANSWER: EPA manifest regulations at 40 CFR §262.20 and Appendix to Part 262 do not require generators to list EPA waste codes on the manifest. The shaded space provided on the manifest for EPA waste codes is for the convenience of state agencies, as some states may require EPA waste codes to be listed on a manifest (40 CFR §271.10(h)). The Department of Transportation (DOT) regulations may, however, require listing EPA waste codes as part of the DOT description (49 CFR §172.203(k)(4)). **(April 1996 Monthly Hotline Report)**

"Generators and Designated Transporters"

Keywords:

Generator; transporter

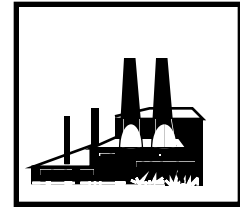
QUESTION: In the normal course of transportation, a designated transporter is unable to deliver a manifested shipment of hazardous waste to the designated facility. To complete delivery of the waste shipment, the transporter would like to hire a second carrier. Must the transporter seek the approval of the generator who initiated the shipment in order to make these changes to the chain of transportation?

ANSWER: Yes. Choosing the sequence of transporters that will deliver a waste to the designated facility is the sole responsibility of the hazardous waste generator, and changes to the chain of transportation require the approval of the generator.

A properly completed manifest identifies the full sequence of transporters that will conduct hazardous waste to a designated facility. The directions for the Uniform Hazardous Waste Manifest, found in the Appendix to 40 CFR Part 262, specifically instruct generators to provide the name and EPA identification number of the first transporter (Items 5 and 6), and if necessary, of the second transporter (Items 7 and 8). The instructions further direct generators to use a continuation sheet to identify additional transporters as necessary (Item 8, Note).

The regulations for hazardous waste transporters do not authorize haulers to make unapproved changes to the chain of transportation delineated on the manifest. In accordance with the manifest, transporters must deliver waste solely

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to the designated or alternate facility, the next designated transporter, or the designated export destination (§263.21(a)). Transporters who cannot deliver waste according to the generator's designation must contact the generator for instructions and must revise the manifest to reflect the approved changes to the prescribed chain of transport (§263.21(b)). Generators alone are responsible for identification of the complete chain of transportation and must, therefore, be apprised of and approve of all deviations from that plan. **(March 1996 Monthly Hotline Report)**

"Tank Storage at Transfer Facilities"

Keywords:

Permit; tank; transporter

QUESTION: A transfer facility is a place where transporters temporarily hold shipments of hazardous waste during the normal course of transportation (40 CFR §260.10). A transporter storing manifested shipments of hazardous waste in containers meeting DOT packaging requirements at a transfer facility for less than 10 days is not required to obtain a permit and is not subject to the requirements of Parts 264, 265, or 268 (§263.12). May a transporter store hazardous waste in stationary tanks at a transfer facility and still remain subject to the reduced transfer facility requirements of §263.12?

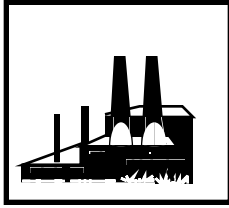
ANSWER: A transporter may not store hazardous waste in stationary tanks and still remain subject to the reduced transfer facility requirements because such tanks are not portable. To store hazardous waste at a transfer facility without a permit or interim status, the transporter must meet three criteria. First, the transporter may store only manifested shipments of hazardous waste. Second, waste must be held in containers (including tank cars and cargo tanks) which meet DOT packaging requirements. Container is defined to mean any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled (40 CFR §260.10). Finally, the waste may only be held for 10 days or less (§263.12). The transfer facility provisions, therefore, apply to storage in portable containers (to accommodate the normal and routine activities of the transportation industry). Storage of waste in stationary tanks at a transfer facility would not be a normal or routine activity of the transportation industry and thus is prohibited unless the facility has a permit or interim status (45 FR 86967; December 21, 1980). **(June 1996 Monthly Hotline Report)**

"Tolling Agreement and Exports"

Keywords:

Exports; generator; reclamation; small quantity generator

QUESTION: A small quantity generator (SQG) sends hazardous waste to a reclamation facility in Canada with whom they have a contractual agreement. Will this SQG need to comply with the export requirements in 40 CFR Part 262, Subpart E?



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

ANSWER: SQGs shipping hazardous waste under a reclamation agreement are not subject to the export requirements. Export requirements apply only to primary exporters of hazardous waste (§262.53). EPA defines primary exporter as “any person who is required to originate the manifest for a shipment of hazardous waste...” (§262.51). A SQG whose waste is reclaimed via contractual agreement is not subject to the manifest requirements provided the SQG follows the provisions of §262.20(e). As no manifest is required, the SQG does not meet the definition of primary exporter and, therefore, does not need to comply with the export requirements. (**September 1996 Monthly Hotline Report**)

Land-Based Units

"Delay of Closure for Non-retrofitted Hazardous Waste Surface Impoundments Continuing to Receive Non-hazardous Waste"

Keywords:

Closure; surface impoundment; toxicity characteristic

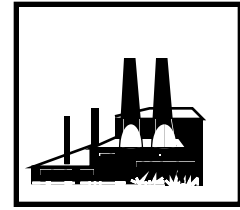
QUESTION: RCRA requires owners and/or operators of surface impoundments that become subject to regulation due to the promulgation of a new hazardous waste listing or characteristic to retrofit the impoundment to meet minimum technological requirements — a double liner, a leachate collection and removal system, and a leak detection system — or close within four years of the promulgation date of the listing or characteristic (§3005(j)(6)). If the owner and/or operator of a newly-subject surface impoundment ceases receipt of hazardous waste before the four years have elapsed and wants to receive only non-hazardous waste, must she first perform closure under 40 CFR Part 265, Subpart G?

ANSWER: No, the owner and/or operator may continue to receive non-hazardous waste indefinitely in the impoundment provided she complies with §265.113(d) and removes all hazardous waste from the unit (§265.113 (e)). She would not have to perform formal closure activities until 90 days after final receipt of non-hazardous waste (§265.113(a)).

However, if the owner and/or operator does not remove all hazardous waste from the impoundment, she must begin closure within 90 days of expiration of the four-year retrofitting period. The Regional Administrator may extend this deadline if removal of the hazardous waste will of necessity take longer than 90 days and such an extension will not pose a threat to human health and the environment (§265.113(e)).

For example, a surface impoundment stores a waste which becomes subject to regulation as a result of the promulgation of the toxicity characteristic waste codes on March 29, 1990 (55 FR 11798). The owner and/or operator must retrofit or close the unit by March 29, 1994. If in 1992, the owner and/or operator decides to cease receipt of the hazardous waste, but wants to continue receiving non-hazardous waste, she must remove all of the

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)



hazardous waste. Once she has removed all of the hazardous waste, she may receive non-hazardous waste indefinitely. When the owner and/or operator later ceases receipt of non-hazardous waste, for example on January 1, 1996, she must then begin closure operations within 90 days, or by March 31, 1996. If the owner and/or operator chooses not to remove the hazardous waste, and does not receive an extension from the Regional Administrator, she must then begin closure within 90 days of the expiration of the four-year retrofitting period, in this example 90 days from March 24, 1994, or June 24, 1994. **(June 1996 Monthly Hotline Report)**

"Hazardous Waste Liquid-containing Pumps and the Liquids in Landfills Prohibition"

Keywords:

Containers; hazardous waste landfill; liquids; pump; sorbents

QUESTION: RCRA prohibits the disposal of hazardous waste containing free liquids in hazardous waste landfills, where free liquids are defined as those that readily separate from the solid portion of a waste under ambient temperature and pressure (40 CFR §260.10). To meet this requirement, must owners and/or operators disposing of pumps containing free liquids dismantle the pump to remove the liquid?

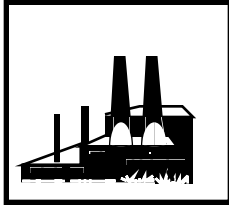
ANSWER: Owners and/or operators would not be required to dismantle the pump. When disposing of containerized liquids, owners and/or operators have three options: remove the liquid by a method such as decanting; add nonbiodegradable sorbent material or solidify the waste so that free liquids are no longer observable; or eliminate the free liquids by some other means (§§264.314(d)(1) and 265.314(c)(1)). The regulations provide exclusions from this requirement for small containers, such as ampules, and containers designed to hold free liquids for use other than storage, such as batteries or capacitors (§§264.314(d)(2)-(3) and 265.314(c)(2)-(3)). Since the pump holds liquid for use other than storage, the owner and/or operator of the pump will be exempt from the requirement to remove or sorb free liquids. **(June 1996 Monthly Hotline Report)**

"Regulation of Leachate Collection Sumps"

Keywords:

Hazardous waste landfill; sump; tank

QUESTION: Section 3004(o) of RCRA requires that owners/operators of new, replacement, and lateral expansions of hazardous waste landfills equip the units with two or more liners, a leak detection system, and a leachate collection and removal system (LCRS) above and between the liners. The LCRS between the liners must be equipped with a sump to collect the leachate that has percolated through the unit, and a liquid removal device, such as a pump, to move the leachate to a storage unit (40 CFR §264.301(c)(3)(v)). Is this leachate collection sump considered a tank subject to the hazardous waste tank regulations of Parts 264/265, Subpart J?



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ANSWER: No, a sump used to collect leachate in a landfill is not a hazardous waste tank subject to the tank standards in Parts 264/265, Subpart J. Although most sumps meet the definition of a tank, leachate collection sumps do not. EPA changed the definition of "sump" in the January 29, 1992, Federal Register to reflect this distinction. Leachate collection sumps are defined differently because, unlike other sumps, they are an integral part of the unit's liner system, surrounded by layers of liners; additional containment is often impracticable and unnecessary, and would yield little environmental benefit (57 FR 3471; January 29, 1992).

Only the actual collection sump is excluded from the federal definition of tank. Any unit subsequently used to manage the leachate may be regulated. For example, when a facility pumps the hazardous waste leachate from the collection sump into a storage tank, that tank is subject to full regulation under Parts 264/265, Subpart J. (**July 1996 Monthly Hotline Report**)

"Surface Impoundment Retrofitting Requirements"

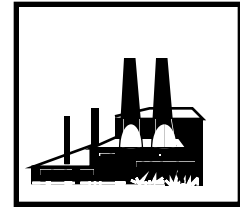
Keywords:

Groundwater monitoring; leachate collection and removal system; surface impoundment

QUESTION: The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA specify minimum technological requirements for the design and construction of new hazardous waste surface impoundments, including installation of a double liner and a leachate collection and removal system (LCRS) and groundwater monitoring (RCRA §3004(o)). Units for which EPA received permit applications after November 8, 1984, the enactment date of HSWA, must comply with these standards. HSWA also requires owners and operators of hazardous waste surface impoundments in existence on November 8, 1984, or which become subject to RCRA as the result of the promulgation of a new hazardous waste listing or characteristic, to retrofit their surface impoundments to meet the minimum technology requirements for new units (§3005(j)). Under what circumstances does HSWA require retrofitting of these existing or newly-subject surface impoundments, and by what date must retrofitting be completed?

ANSWER: HSWA required owners and operators of all hazardous waste surface impoundments operating under interim status on November 8, 1984, to retrofit to meet the double liner, LCRS, and groundwater monitoring requirements or close within four years, or November 8, 1988. Similarly, owners and operators of existing surface impoundments which become subject to RCRA as the result of a new hazardous waste listing or characteristic must retrofit or close within four years of the promulgation of the listing or characteristic. For example, owners and operators of surface impoundments which became subject to RCRA as the result of the promulgation of the toxicity characteristic waste codes on March 29, 1990, were required to retrofit those units to meet the minimum technology requirements or close by March 29, 1994 (55 FR 11798; March 29, 1990).

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HSWA also provided variances under which certain existing surface impoundments would not have to retrofit. These variances apply to surface impoundments: (1) with a single liner for which there is no evidence of leakage, located more than a quarter mile from an underground source of drinking water, and in compliance with groundwater monitoring requirements; (2) conducting aggressive biological treatment in compliance with the Clean Water Act and RCRA groundwater monitoring requirements; or (3) demonstrating no potential for migration of hazardous wastes or constituents into groundwater or surface water at any future time (§§3005(j)(2)-(4)). Additionally, HSWA granted the Administrator the authority to modify the retrofitting requirements for owners and operators of existing surface impoundments who had begun corrective action before October 1, 1984 (§3005(j)(13)).

Owners and operators of surface impoundments previously exempt from the retrofitting requirements under one of the variances, but which no longer meet the conditions of the variance (e.g., as a result of a torn liner), are required to retrofit their impoundments within two years of the discovery of the change. If the surface impoundment was exempt because it was conducting aggressive biological treatment, the owner or operator must retrofit the surface impoundment within three years. (May 1996 Monthly Hotline Report)

Land Disposal Restrictions

Keywords:

Land disposal restrictions; treatment; universal treatment standards

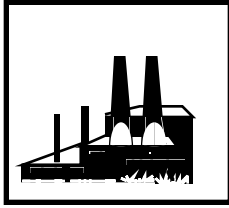
"Frequently Asked Questions on Compliance with Part 268 Land Disposal Restrictions Treatment Standards"

QUESTION: If a waste is subject to the land disposal restrictions, where can its treatment standard be found?

ANSWER: The table of "Treatment Standards for Hazardous Wastes" (40 CFR §268.40) lists by waste code each waste that is subject to the land disposal restrictions (LDR); each waste code entry identifies either the hazardous constituents subject to treatment and their applicable treatment levels, or the specific treatment technology that must be applied to the waste.

QUESTION: If the §268.40 "Treatment Standards for Hazardous Wastes" identifies the treatment standard applicable to each particular waste, what are the "Universal Treatment Standards" in §268.48?

ANSWER: The "Universal Treatment Standards" (UTS) table is an alphabetical list of all the hazardous constituents referenced in the "Treatment Standards for Hazardous Wastes." While the UTS lists the numeric treatment level for every hazardous constituent, only the §268.40 table of "Treatment Standards for Hazardous Wastes" identifies the standard to which a waste must be treated prior to land disposal.



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QUESTION: Why would a handler of a restricted or prohibited waste consult the §268.48 UTS?

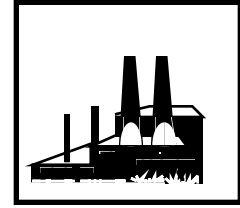
ANSWER: The table “Treatment Standards for Hazardous Wastes” notes that certain characteristic wastes, in addition to complying with the treatment standard for the specific constituent or characteristic, must also “meet §268.48 standards.” Characteristic wastes subject to this additional treatment requirement must meet both the concentration limit (or technology) for that particular waste code and the UTS levels for each underlying hazardous constituent (defined in §268.2) likely to be present at the point of generation.

QUESTION: Under what circumstances are listed wastes subject to the §268.48 UTS?

ANSWER: While characteristic wastes often vary significantly in composition, each listed waste is, by definition, fairly uniform in the hazardous constituents it contains. As a result, the treatment standard listed in the §268.40 “Treatment Standards for Hazardous Wastes” is able to address all of the hazardous constituents that are commonly of concern for each particular listed waste. Therefore, listed wastes treated to their waste code-specific treatment standards identified in §268.40 will not require additional treatment for underlying hazardous constituents. Only listed wastes that also exhibit a characteristic not addressed in the treatment standard for the listed waste (§268.9(b)) could be required to meet UTS for underlying hazardous constituents.

QUESTION: Until Phase IV of LDR is finalized, characteristic metal wastes are subject to less stringent treatment standards for metal constituents than are wastes whose treatment standards require compliance with the UTS of §268.48. Where a characteristic metal waste also exhibits another characteristic that renders it subject to compliance with UTS levels, would the waste need to meet the more stringent standard for the metal constituent?

ANSWER: Section 268.9(b) requires wastes to “meet the treatment standards for all applicable listed and characteristic waste codes.” In the rare case where a waste is subject to multiple treatment standards for a particular constituent, the more stringent treatment standard will continue to apply. **(March 1996 Monthly Hotline Report)**



Solid Waste Management

"Contractors as Procuring Agencies"

Keywords:

Contractor; procurement; recycling

QUESTION: RCRA §6002 applies to procuring agencies that purchase \$10,000 or more of a designated item during the current fiscal year, or who purchased \$10,000 or more of a designated item or functionally equivalent items during the preceding fiscal year. A procuring agency is defined as "...any federal agency, or any state agency, or agency of a political subdivision of a state which is using appropriated federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract (§1004(17))." If a federal agency is subject to §6002, will contractors with that federal agency automatically be subject to §6002?

ANSWER: No. Federal contractors with procuring agencies subject to §6002 are not automatically subject to the requirements of §6002. These contractors must buy an EPA-designated item with recycled content subject to certain conditions (e.g., availability, conformance with applicable performance standards) if they purchase \$10,000 or more of the item during the current year or purchased \$10,000 worth of the item in the preceding fiscal year, for use under the agency contract. For example, a federal contractor that purchases \$10,000 of office paper products during the current fiscal year for use on the federal contract would need to purchase recycled content paper. Thus, the contractor would need to ensure the paper purchased for the federal contract contained the highest amount of postconsumer recovered material practicable. **(January 1996 Monthly Hotline Report)**

"Frequently Asked Questions on Composting"

Keywords:

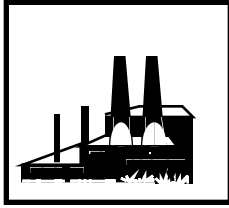
Composting; recycling; source reduction

QUESTION: Does composting constitute source reduction or recycling in EPA's hierarchy of solid waste management?

ANSWER: Composting organic wastes after they are transported to a centralized municipal composting facility is a waste management activity characteristic of recycling. Composting organic waste at the point of generation such as in the yard of a home is a form of source reduction, since no formal waste management activity occurs (Characterization of Municipal Solid Waste in the United States, 1994 Update, November, 1994).

QUESTION: Must a centralized municipal solid waste composting facility obtain a permit before the facility may begin composting operations?

ANSWER: Although the federal regulations do not specifically address composting facilities, many individual state or county agencies have established permitting procedures to operate centralized solid waste



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composting facilities. States may require facilities to submit the following information: details of facility design, operating plans, description of incoming materials, monitoring plans, potential environmental releases, and potential markets for final compost product (Decision-Makers' Guide to Solid Waste Management, Volume II, August 1995).

QUESTION: What markets are available for compost product material?

ANSWER: Many markets are available for composted material including the agricultural industry, the landscape industry, the nursery industry, public agencies, and residential property owners. New research and field work has also begun to open markets for tailored compost material in the commercial bioremediation industry to clean up contaminants in soil, water, and air. The quality of compost products and the demand for compost products will vary according to regional land and climate characteristics. As such, a centralized municipal compost facility should identify potential markets early and cater to those markets needs. For more information about compost markets refer to Markets for Compost (November 1993).

QUESTION: What percentage of yard trimmings are recycled in centralized municipal compost piles?

ANSWER: EPA has estimated that 32.8 million tons of yard trimmings were generated in 1993. Approximately 19.8 percent (or 6.5 million tons) of the 1993 quantity of yard trimmings were managed in centralized municipal compost facilities (Characterization of Municipal Solid Waste in the United States, 1994 Update, November, 1994). Many yard trimmings are also managed in backyard compost heaps. Since 1988, private and public compost facilities have increased from about 700 to 3,100 in 1994. (**January 1996 Monthly Hotline Report**)

TSDFs

Keywords:

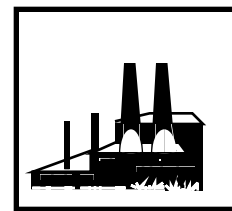
Generator; permit; treatment, storage, and disposal facility

"Conversion of Permitted or Interim Status Units to Generator Accumulation Units"

QUESTION: A treatment, storage, or disposal facility (TSDF) stores hazardous waste in permitted storage units. The owner or operator wishes to convert some of the permitted storage units into generator 90-day accumulation units used to manage wastes that are generated on site. What requirements must the owner or operator comply with before a permitted unit may operate as a generator 90-day accumulation unit?

ANSWER: Generally, an owner or operator removing a unit from the jurisdiction of a RCRA permit must first close the unit in accordance with all of the applicable closure provisions for permitted units. In this case, since the converted units will continue to store hazardous waste, conversion will not

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trigger closure requirements because the unit will not have received its final volume of hazardous waste (40 CFR §264.113(a)). Once the unit receives waste for the last time, the owner or operator must comply with the more stringent permitted closure provisions in 40 CFR Part 264 (Subpart G and the unit specific closure provisions), rather than the closure provisions for generator accumulation units referenced in §262.34(a). In addition, the owner or operator must maintain financial assurance pursuant to Part 264, Subpart H, until closure of the unit is complete (57 FR 37254; August 18, 1992). To indicate that hazardous waste management activities in the converted unit are no longer covered by the facility's permit, the facility must submit the appropriate permit modification.

Owners or operators converting interim status units to 90-day accumulation units also need not begin final closure until after the final receipt of hazardous waste (40 CFR §265.113(a)). Upon final closure, the owner or operator must comply with the interim status closure provisions in Part 265 (Subpart G and the unit specific closure provisions). As with permitted TSDFs, the owner or operator of interim status facilities must maintain financial assurance pursuant to Part 264, Subpart H, until final closure is completed. **(January 1996 Monthly Hotline Report)**

"Corrective Action Beyond Interim Status Facility Boundary"

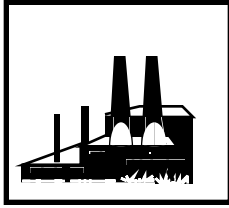
Keywords:

Corrective action; interim status; treatment, storage, and disposal facility

QUESTION: RCRA §3004(v) requires owners/operators of permitted hazardous waste treatment, storage, and disposal facilities (TSDFs) to perform corrective action for any contamination that has migrated beyond the facility boundary. What authorities can EPA use to order corrective action for releases which have migrated beyond the boundary of an interim status facility?

ANSWER: EPA can invoke §3008(h) or §7003 authority to address releases that have migrated beyond an interim status facility boundary. Pursuant to §3008(h), EPA can order corrective action or bring suit for the "release of hazardous waste into the environment" from a facility that is interim status, should have had interim status, or formerly had interim status. This includes authority for releases which have migrated beyond the facility boundary. Although §3008(h) does not explicitly state that EPA can order corrective action beyond an interim status facility boundary, EPA interprets the §3008(h) statutory authority to be at least as broad as the permitted facility corrective action authorities in §§3004(u) and (v) (50 FR 28716; July 15, 1985). Thus, because §3004(v) explicitly provides authority for corrective action beyond a permitted facility boundary, §3008(h) provides parallel authority for releases beyond an interim status boundary.

Section 7003 gives EPA the power to order corrective action or bring suit to abate imminent and substantial endangerment caused by the past or present handling, storage, treatment, transport, or disposal of any solid or hazardous waste. This broad and powerful authority is not limited to any particular kind of RCRA site. Section 7003 is, therefore, also potentially applicable to contamination which has



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migrated beyond the boundary of an interim status facility. (January 1996 Monthly Hotline Report)

"Resampling and Groundwater Monitoring Notification Requirements"

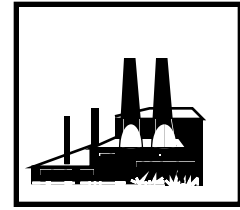
Keywords:

Groundwater monitoring; sampling; statistical analysis

QUESTION: As part of the groundwater monitoring requirements of 40 CFR Part 264, Subpart F, owners/operators of permitted hazardous waste landfills, surface impoundments, waste piles, or land treatment units must implement a detection monitoring program. Under this program, an owner/operator samples the groundwater at least semi-annually for permit-specific indicator parameters and waste constituents, monitoring for statistically significant evidence of a release from the unit (§§264.98(a) and (b)). If the owner/operator determines that such evidence exists, she is required to notify the Regional Administrator in writing within seven days and immediately sample the groundwater for hazardous constituents listed in Part 264, Appendix IX, noting the concentration of any listed constituents detected (§§264.98(g)(1) and (2)). The owner/operator has the option to resample the groundwater within one month and repeat the analysis for the hazardous constituents (§264.98(g)(3)). The owner/operator is required to submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program within 90 days (§264.98(g)(4)). If the owner/operator chooses to resample, must she submit her permit modification within 90 days of the initial notification, or the resampling?

ANSWER: Because the determination of the existence of statistically significant evidence of a release may be affected by the resampling, the owner/operator must submit any required permit modification within 90 days of the resampling. However, if the resampling shows that no statistically significant evidence of a release exists, the owner/operator would not submit a permit modification and would continue detection monitoring. If the resampling confirms the presence of statistically significant evidence of a release, the owner/operator must then submit an application for permit modification within 90 days of the resampling.

Many statistical procedures written into permits to comply with the Part 264, Subpart F, groundwater monitoring requirements involve verification resampling and retesting procedures as a means to simultaneously control Type I, or "false negative," error rates and improve statistical power. With such procedures, statistically significant evidence of a release from a unit is not necessarily indicated by a single "statistically significant" exceedance. Instead, the results of the statistical test are not interpreted until all resampling and retesting activities have been completed. Thus, an initial exceedance of a prediction limit, for example, could be followed by a single or double independent resampling and retesting procedure. Should either the first or second independent retests lie below the prediction limit, then no statistically significant increase should be inferred, and the owner/operator may resume detection monitoring without performing the complete Part 264, Appendix IX, analysis or conducting a permit



modification. Details of these and other statistical procedures can be found in Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities — Addendum to Interim Final Guidance (EPA530-R-93-003). (**October 1996 Monthly Hotline Report**)

Universal Waste

Keywords:

Pesticides; thermostats;
universal waste

"Frequently Asked Questions on the Universal Waste Regulations"

QUESTION: Which hazardous wastes are covered under the universal waste regulations in 40 CFR Part 273?

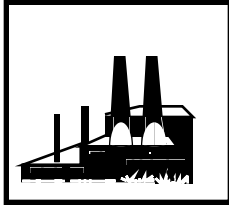
ANSWER: Currently, the three specific wastes covered under Part 273 are hazardous waste batteries (e.g., nickel-cadmium and lead-acid batteries), hazardous waste pesticides, and hazardous waste mercury-containing thermostats (§273.1). Part 273, Subpart G, contains provisions to allow for other wastes to be added to the universal waste regulations through a petitioning process. As such, new wastes, such as mercury lamps, may be added in the future.

QUESTION: Are universal waste handlers required to manage spent lead-acid batteries under 40 CFR Part 266, Subpart G, or under Part 273?

ANSWER: Handlers may actually choose the management standards with which they will comply. That is, they may either manage their batteries under the standards provided in Subpart G of Part 266 for spent lead-acid batteries that are being reclaimed, or they may comply with the universal waste regulations in Part 273 (60 FR 25505; May 11, 1995).

QUESTION: What are the notification requirements for Large Quantity Handlers of Universal Waste (LQHUU) and Small Quantity Handlers of Universal Waste (SQHUW)?

ANSWER: The universal waste regulations specify two distinct forms of notification for handlers of universal waste: a one-time written notification of universal waste management activity, and the acquisition of an EPA identification number. SQHUWs are not required to notify EPA of their universal waste activity, nor are they required to obtain an EPA identification number (§273.12). LQHUUWs, however, must submit the one-time written notification and must also obtain an EPA identification number (§273.32). Renotification is not required for a LQHUU who has previously notified EPA of universal waste management activities and who has already received an EPA identification number (60 FR 25521; May 11, 1995).



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QUESTION: Do the universal waste regulations contain a provision similar to the generator satellite accumulation provisions in §262.34(c)?

ANSWER: There is no specific provision under Part 273 for satellite accumulation. However, the universal waste regulations do not limit the location, or number of locations, at which a handler may accumulate universal wastes. Thus, a handler may accumulate universal wastes at or near the point of generation and may do so, in general, for up to one year (60 FR 25527; May 11, 1995). (**May 1996 Monthly Hotline Report**)

Used Oil

"Coolant Recycling and Used Oil Processing"

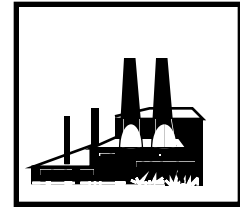
Keywords:

Processing; recycling;
used oil

QUESTION: A used oil generator uses an on-site filtration system to filter contaminants from metal working oils, commonly known as coolants, in order to extend the life of these oils. Is such on-site coolant recycling by the used oil generator considered used oil processing under 40 CFR Part 279?

ANSWER: On-site coolant recycling by a generator is not considered used oil processing if done in accordance with §279.20(b)(2)(ii). Processing is defined in §279.1 as, "chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived product." Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining. Whether used oil is being processed depends on the purpose for which the used oil is being filtered, separated, or otherwise reconditioned. These activities constitute processing if they are intended to produce used oil derived products or facilitate the burning of used oil for energy recovery.

Coolant recycling, which includes the on-site maintenance, filtering, separation, reconditioning, or draining of coolants used in machining operations, is intended to extend the life of the oil and is incidental to the production process. This type of recycling is incidental or ancillary to a primary processing activity and is not intended to produce used oil derived products or facilitate burning for energy recovery. Therefore, EPA did not intend to regulate these practices as used oil processing (59 FR 10555-6; March 4, 1994). Such coolant recycling is not considered processing as long as the coolant is generated on site and is not being sent directly off site to a burner of used oil. The generator (or collection center or aggregation point) must comply with the requirements set forth in §279.20(b)(2)(ii). (**November 1996 Monthly Hotline Report**)



"Rebuttable Presumption for CFC Contaminated Used Oil"

Keywords:

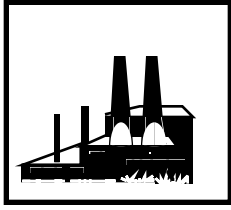
Chlorofluorocarbon (CFC); reclamation; used oil

QUESTION: EPA presumes used oil containing more than 1,000 ppm total halogens is a hazardous waste because it has been mixed with a listed halogenated hazardous waste. Used oil generators may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (§279.10(b)(1)(ii)). The rebuttable presumption, however, does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units when the CFCs in the used oil are “destined for reclamation” (§279.10(b)(1)(ii)(B)). At what point does this exemption from the rebuttable presumption apply—at the point of draining from the unit or only once the CFCs in the used oil have actually been reclaimed? Additionally, would a generator or handler reclaiming the CFCs from the used oil be considered a processor, subject to the standards for used oil processors and re-refiners in Part 279, Subpart F?

ANSWER: A generator handling CFC contaminated used oil is exempt from the rebuttable presumption at the point of draining, as long as the CFCs are eventually reclaimed from the used oil to the fullest extent possible, and the used oil has not been mixed with other wastes or with used oil from other sources (57 FR 41580; September 10, 1992). Although the rebuttable presumption does not apply, these used oils remain subject to appropriate Part 279 standards.

In the event the CFCs are not reclaimed, the rebuttable presumption would have applied at the point of draining from the unit. If the presence of CFCs in compressor oils removed from refrigeration units causes the used oils to exceed the 1,000 ppm halogen limit, the oil must be managed as a hazardous waste unless the presumption of hazardous waste mixing is successfully rebutted.

On-site CFC reclamation by a used oil generator does not necessarily subject the generator to the standards for used oil processors. Used oil processing, as defined in §279.1, involves producing (or making used oil more amenable for the production of) fuel oils, lubricants or other used oil-derived products. However, §279.20(b)(2)(ii)(A) provides that generators who filter, clean, or otherwise recondition used oil before returning it for reuse by the generator are not processors if the used oil is generated on-site and is not being sent off-site to a burner of used oil. Furthermore, the used oil/CFC separation process is generally not designed to make the used oil more amenable for the production of used oil derived product. Likewise, off-site used oil/CFC separation by a used oil handler does not necessarily subject the handler to the standards for used oil processors. Rather, a handler storing used oil on site for greater than 24 hours but less than 35 days is regulated as a transfer facility. Only a handler storing the used oil on site for greater than 35 days would become subject to the processor requirements (§279.45(a)). This is true



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for any transfer facility storing used oil for more than 35 days, regardless of whether the facility is engaged in CFC reclamation. **(December 1996 Monthly Hotline Report)**

"Recycling Presumption Under Part 279"

Keywords:

Generator; recycling;
used oil

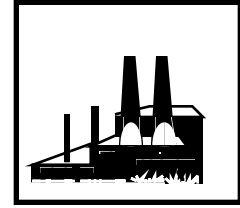
QUESTION: According to 40 CFR §279.10(a), used oil handlers are subject to the Part 279 used oil management standards until the used oil is disposed of or sent for disposal. How is a used oil generator regulated if he/she sends used oil to a processor to be recycled, but the processor disposes of it instead? In this situation, is the generator required to determine if the used oil is hazardous, since it was not recycled?

ANSWER: No, the generator is not required to conduct a hazardous waste determination for the used oil originally sent to the processor to be recycled. The Part 279 used oil management standards are based on a presumption that all used oil is recyclable and should be managed under one set of standards. Even if the used oil exhibits a hazardous waste characteristic or will ultimately be disposed of by a different used oil handler, it is still subject to Part 279 (57 FR 41578; September 10, 1992). The recycling presumption allows a used oil handler or any other person who handles the oil prior to the person who decides to dispose of the oil, to presume that his/her used oil will be recycled regardless of its final disposition.

Once a used oil handler determines the used oil will be sent for disposal, he/she must conduct a hazardous waste determination pursuant to §262.11. Since used oil is not a listed hazardous waste under RCRA, it would be subject to all applicable Subtitle C regulations if it exhibits a hazardous waste characteristic. Additionally, the recycling presumption and the Part 279 standards do not apply if the used oil is mixed with a listed hazardous waste (except for a conditionally exempt small quantity generator (40 CFR §279.10(b)(3)), or mixed with a characteristic hazardous waste which does not meet the provisions of §279.10(b)(2). In either of these situations, the used oil/hazardous waste mixture would be subject to Subtitle C regulation.

Finally, not all of the federal Part 279 standards are effective in every state. Used oil handlers should contact their state agencies for specific regulatory requirements which could, potentially, be more stringent than the federal standards. **(November 1996 Monthly Hotline Report)**

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Keywords:

Burning; state programs;
used oil

"State Authorization and Used Oil Recycled Through Some Other Means Than Burning For Energy Recovery"

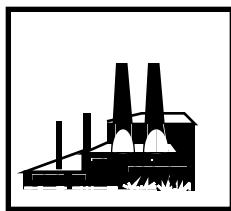
QUESTION: In a state where the 40 CFR Part 279 used oil management standards are not in effect, how does Federal EPA regulate generators who recycle their used oil by sending it to be re-refined?

ANSWER: In states where Part 279 is not in effect, EPA does not regulate used oil that is recycled in some manner other than by being burned for energy recovery, including re-refining. On November 29, 1985 (50 FR 49164), EPA established regulations for recycled used oil that is burned for energy recovery (Part 266, Subpart E). At the same time, the Agency exempted characteristic used oil from regulation if it was recycled through some other means than burning for energy recovery (§261.6(a)(3)(iii)).

On September 10, 1992 (57 FR 41566), the Agency established a new program in Part 279 expanding the regulation of used oil recycling activities to include other methods than burning for energy recovery. The Agency also repealed §261.6(a)(3)(iii), and replaced it with a new provision that exempts recycled used oil from the requirements of Parts 260 through 268 and subjects it to Part 279 (§261.6(a)(4)). Since Part 279 has been treated similarly to regulations promulgated under the authority of a non-HSWA statutory requirement, the Part 279 regulations are only in effect in unauthorized states and states with EPA-approved programs.

Unlike the newer Part 279 regulations, the Part 266, Subpart E and §261.6(a)(3)(iii) regulatory program was effective in all states, regardless of the state's authorization status. Although the Agency repealed Part 266, Subpart E, when it promulgated Part 279, in states that have not modified their state program to adopt Part 279, the pre-1992 exemption for used oil recycled through some other means than burning for energy recovery may still apply. In these states, generators who recycle used oil through methods that do not involve burning for energy recovery, including re-refining, are not regulated.

Finally, states may have additional used oil regulations. Regardless of the effective status of the federal regulations in Part 279 and Part 266, Subpart E, used oil handlers should refer to their appropriate state agency for any further used oil regulatory requirements. **(November 1996 Monthly Hotline Report)**



RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Waste Identification

Keywords:

Commercial chemical product; hazardous waste identification; solid waste definition

"Definition of Commercial Chemical Product for Solid Waste Determination vs. Hazardous Waste Identification"

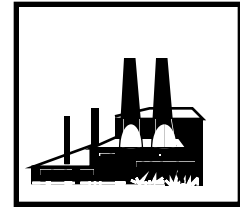
QUESTION: An instrument manufacturer has off-specification mercury thermometers which it wishes to either discard or reclaim. Under 40 CFR §261.2, the definition of solid waste, "commercial chemical products" such as thermometers being reclaimed are not solid waste and therefore cannot be hazardous waste (§261.2(c)(3) and §261.3). Under §261.33, the P and U lists of hazardous wastes, "commercial chemical products" containing mercury as a sole active ingredient are characterized as U151, a listed waste (§§261.33(d), 261.33(f)). What is the difference between the definition of commercial chemical product for the purposes of the definition of solid waste and the P and U lists of hazardous waste, and given the relative difference, would the thermometers be subject to hazardous waste regulation if reclaimed or discarded?

ANSWER: The phrase "commercial chemical product" has different meanings in the definition of solid waste and the definition of hazardous waste. As applied to §261.2, the definition of solid waste, EPA interprets the category of commercial chemical products to include all types of unused commercial products, whether or not they would commonly be considered chemicals (e.g., circuit boards, batteries, and other types of equipment). Although §261.2(c)(3), Table 1, applies this provision to "commercial chemical products listed in 40 CFR 261.33," EPA interprets the definition to also include commercial chemical products that are not listed in §261.33, but exhibit one or more characteristic of hazardous waste (50 FR 14219; April 11, 1985).

For the purposes of the P and U lists of hazardous wastes, however, EPA intended to include in the P and U lists only those commercial chemical products and manufacturing chemical intermediates known by the generic chemical name listed in §261.33. EPA considers the P and U list definition of commercial chemical product to exclude manufactured articles such as thermometers or fluorescent lamps (45 FR 78541; November 25, 1980). Therefore, manufactured articles that contain a P or U listed chemical would not be considered a listed waste when discarded in an unused form.

If the thermometers in question are to be reclaimed, they would be considered commercial chemical products being reclaimed for the purposes of the definition of solid waste, and, thus, would not be a solid waste. Since a material must be a solid waste in order to be considered a hazardous waste, the thermometers destined for reclamation could not be regulated as a hazardous waste (§261.3). If the thermometers are to be discarded, then they would be a solid waste and the manufacturer must then consider whether the off-specification thermometers are listed or characteristic hazardous waste (§262.11). Mercury thermometers are not among the process- and industry-specific wastes found in the F and K lists in

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§§261.31 and 261.32. The thermometers would not meet the P or U listing criteria because they are considered manufactured articles, not commercial chemical products for the purposes of hazardous waste, as explained above. As a result, the thermometers would not be regulated as U151, and would only be subject to regulation as a hazardous waste if they exhibited a characteristic of a hazardous waste found in Part 261, Subpart C. **(August 1996 Monthly Hotline Report)**

"Exclusion of Laboratory Wastes from the Mixture Rule"

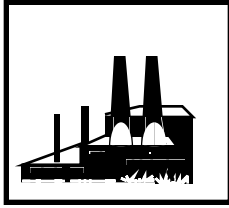
Keywords:

Exclusion; hazardous waste identification; mixture rule

QUESTION: A facility has a laboratory that generates a variety of listed wastes. The laboratory generates wastes listed because they are toxic wastes (with a Hazard Code of (T)), as well as acutely hazardous wastes (with a Hazard Code of (H)). In addition, the laboratory generates wastes which are listed because they are both toxic wastes and commonly exhibit the hazardous waste characteristics of ignitability, corrosivity, or reactivity (e.g., with a Hazard Code of (I,T), (C,T), or (R,T)). The laboratory discharges all of these listed wastes into the facility's wastewater treatment system. The mixture rule exempts from Subtitle C certain wastes from laboratory operations that are discharged to wastewater treatment systems (40 CFR §261.3(a)(2)(iv)(E)). Specifically, this section notes that mixtures of laboratory wastes listed for being toxic (T) and large volumes of other wastewaters cease to carry the listing after they pass the headworks of the wastewater treatment system. Are the laboratory's wastes that are listed because they are acutely hazardous (H) or toxic and characteristic ((I,T), (C,T), or (R,T)) also exempt from the mixture rule?

ANSWER: Wastes listed for being acutely hazardous (H) or both toxic and characteristic ((I,T), (C,T) or (R,T)) are also eligible for the wastewater treatment exemption from the mixture rule provided that the wastewater flow meets all the other conditions of §261.3(a)(2)(iv)(E) (i.e., the concentration of laboratory wastes is less than 1 ppm of the total wastewater flow into the headworks of the wastewater treatment facility or the laboratory contributes less than 1 percent of the flow into the headworks). This exemption does not apply, however, to wastewaters which were listed solely because they exhibit a characteristic (e.g., a Hazard Code of (I) only). If wastes which were listed solely for exhibiting a characteristic were mixed with other solid wastes, such as a wastewater, and ceased to exhibit any characteristic they would, however, no longer be considered hazardous wastes (§261.3(a)(2)(iii)).

Pursuant to the derived-from rule, sludges generated from the treatment of listed wastes normally carry the same listings as the original wastes (§§261.3(c) and (d)). Since laboratory wastewaters with Hazard Codes of (T), (H), (I,T), (C,T), or (R,T) cease to carry any listing under §261.3(a)(2)(iv)(E), sludges generated from the treatment of these wastewaters would not carry



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the listings of the laboratory wastes. If the sludges exhibited any characteristics of a hazardous waste (including the characteristics for which the waste may have been listed), or if the sludges were derived from any non-laboratory listed wastes not otherwise excluded, they would have to be handled as hazardous. **(May 1996 Monthly Hotline Report)**

"PCB Wastes as Hazardous Wastes"

Keywords:

Hazardous waste identification; PCBs; toxicity characteristic; TSCA interface

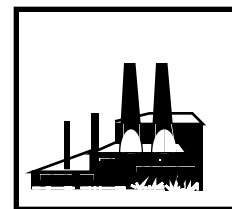
QUESTION: Polychlorinated biphenyls (PCBs) are organic chemicals often used as coolants and lubricants in transformers, capacitors, and other electrical equipment. Generally, the management of these substances is regulated under the Toxic Substances Control Act (TSCA), according to regulations found at 40 CFR Parts 700-799. Are PCB wastes subject to RCRA Subtitle C regulation as well?

ANSWER: Subtitle C regulations apply to PCB wastes only if they are RCRA hazardous wastes. Wastes are hazardous under RCRA if they are listed on one of four hazardous waste lists or if they exhibit a characteristic of hazardous waste. Discarded, unused PCBs are not listed as commercial chemical product hazardous wastes on the P or U lists found in 40 CFR §261.33. PCB wastestreams are likewise not specifically among the process- and industry-specific hazardous wastes found in the F and K lists in §§261.31 and 261.32. It is possible that PCBs will be present as incidental contaminants in wastes that are themselves listed as hazardous. For example, solvents are often used to remove PCBs from transformers. These solvents, when spent, could be F001 through F005 listed solvents. In this case, the entire wastestream, including the PCBs, would be regulated as listed hazardous wastes.

Wastes are also regulated under RCRA when they exhibit one or more of four characteristics of hazardous wastes: ignitability, corrosivity, reactivity, or toxicity (§§261.21-261.24). Typically, fluids and materials regulated as PCBs under TSCA would not exhibit these characteristics. However, in a rare case, a PCB waste could exhibit ignitability, corrosivity, or reactivity, and thus be subject to Subtitle C regulation.

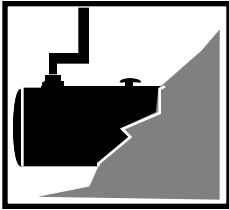
PCBs are not among the 39 different elements and compounds which can cause a waste to exhibit the toxicity characteristic (TC) under §261.24, but any waste containing PCBs could potentially exhibit the TC for another contaminant, e.g., chlorinated benzenes. To deal with this possibility and avoid dual TSCA/RCRA regulation, certain PCB-containing wastes that exhibit the toxicity characteristic are explicitly exempted from RCRA requirements. Section 261.8 exempts from RCRA Subtitle C regulation PCB-containing dielectric fluid and the electric equipment which holds such fluid if they satisfy two criteria. First, these PCB wastes must be regulated under

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the TSCA standards of Part 761. Second, only the PCB wastes which exhibit the TC for an organic constituent (waste codes D018-43) may qualify for the exemption.

If a PCB-containing waste exhibits a RCRA characteristic or matches a listing description, and does not qualify for the §261.8 exemption, that waste is subject to all applicable Subtitle C regulations. These include manifesting, treatment, storage, disposal, and recordkeeping requirements. Some PCB-containing hazardous wastes may also be subject to the RCRA land disposal restrictions. For example, PCB wastes that may be subject to LDR include liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm (RCRA §3004(d)(2)(D)), or hazardous wastes containing halogenated organic compounds in total concentrations greater than or equal to 1,000 mg/kg (RCRA §3004(d)(2)(E)). **(September 1996 Monthly Hotline Report)**



UNDERGROUND STORAGE TANKS (UST)

Applicability

Keywords:

Pump; underground storage tank (UST)

"Frequently Asked Questions on the Applicability of the 40 CFR Part 280 Underground Storage Tank Regulations"

QUESTION: The Part 280 regulations apply to owners and/or operators of UST systems. How are UST systems defined?

ANSWER: An UST system, or tank system, means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any (§280.12).

QUESTION: Would the pump attached to an UST be considered part of that tank system, and therefore subject to Part 280?

ANSWER: If underground, the pump meets the definition of ancillary equipment, which includes, but is not limited to, piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST and is subject to the regulations (§280.12).

QUESTION: Is there an exclusion from the Part 280 regulations for an UST of a certain size?

ANSWER: Yes, any UST system with capacity of 110 gallons or less is excluded from the requirements of Part 280 (§280.10).

QUESTION: To be subject to Part 280, USTs must contain "regulated substances." What is a regulated substance under the UST regulations?

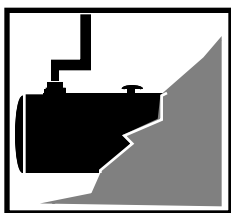
ANSWER: A regulated substance is any substance defined in §101(14) of CERCLA (but does not include any substance regulated as a hazardous waste under Subtitle C), and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (§280.12).

QUESTION: How is an UST storing fuel for use in emergency power generators regulated?

ANSWER: An UST storing fuel solely for use by emergency power generators is deferred from the release detection requirements in Subpart D of Part 280 (§280.10). Owners and operators of these systems, however, must comply with the requirements in all other subparts of Part 280 (September 23, 1986; 53 FR 37113).

QUESTION: Would an UST at a residence be subject to Part 280 regulations?

ANSWER: A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes is not included in the



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definition of an UST, and would therefore not be subject to the Part 280 regulations (§280.12).

QUESTION: If an UST is storing heating oil, is it subject to the Part 280 regulations?

ANSWER: The UST is not subject to the Part 280 regulations if the heating oil is stored for consumptive use on the premises where stored (§280.12). Consumptive use includes heating as a typical use of the fuels, but does not limit the exclusion to fuels so used. Tanks holding heating oil for any on-site use, such as heating or to power a generator, are exempted from federal regulation (September 23, 1986; 53 FR 37117). State and local regulations may be more stringent. **(June 1996 Monthly Hotline Report)**

Financial Responsibility

Keywords:

Financial responsibility;
underground storage
tank (UST)

"Frequently Asked Questions on Underground Storage Tank (UST) Financial Responsibility"

QUESTION: When a new UST is installed, does the owner/operator have any financial responsibility notification requirements?

ANSWER: Within 30 days of bringing a new UST into use, UST owners/operators must submit a new tank notification form to their state or local implementing agency. As a part of this notification, they must demonstrate financial responsibility for the newly installed UST (40 CFR §280.110(b)).

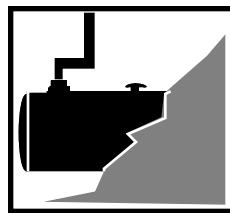
QUESTION: For which financial responsibility mechanisms must an UST owner/operator also establish a standby trust fund?

ANSWER: According to 40 CFR §280.103, UST owners/operators must establish a standby trust fund when using a guarantee (§280.96), a surety bond (§280.98), or a letter of credit (§280.99). Standby trust funds are deposit mechanisms into which funds are placed in the event that the owner/operator is unable or unwilling to pay for corrective action or liability claims.

QUESTION: What constitutes "bodily injury" and "property damage" for purposes of UST financial liability coverage?

ANSWER: As described in 40 CFR §280.92, "bodily injury" and "property damage" for purposes of UST financial liability coverage have the meaning given to them by applicable state law. These terms do not include liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury and/or property damage.

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QUESTION: The UST liability coverage per occurrence and annual aggregate amounts are set at levels between \$500,000 and \$2 million depending on the type of UST facility and the number of tanks owned and/or operated. Do these amounts limit an owner/operator's overall liability?

ANSWER: The required per occurrence and annual aggregate amounts do not in any way limit the liability of an UST owner/operator (40 CFR §280.93(h)).

QUESTION: When is an UST owner/operator no longer required to comply with the financial responsibility provisions of 40 CFR Part 280?

ANSWER: After proper UST closure has been completed, or after any necessary UST corrective action and subsequent closure have been completed (§280.113), UST owners/operators are not required to maintain UST financial responsibility. (September 1996 Monthly Hotline Report)

"Use of Insurance and State Funds to Fulfill UST Financial Responsibility"

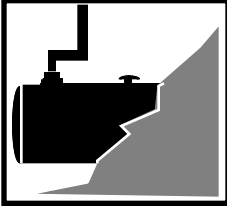
Keywords:

Financial responsibility;
insurance; underground
storage tank (UST)

QUESTION: Owners and/or operators of petroleum underground storage tank (UST) systems are required to demonstrate financial responsibility for corrective action by using the mechanisms outlined in 40 CFR Subpart H. Insurance policies (§280.97) and state funds (§280.101) are two of the methods that may be used to fulfill this requirement. However, these mechanisms often include deductible amounts that must be paid by the tank owner. Could a one million dollar insurance plan or state fund that includes a deductible serve as the sole means of demonstrating UST financial responsibility, or does an owner or operator need to obtain additional coverage for the deductible amount?

ANSWER: A single insurance policy that covers the entire \$1 million or \$2 million sum may be used to demonstrate financial responsibility. EPA alleviated the problem of an uncovered deductible by requiring that insurance for underground storage tanks provide "first dollar" coverage (§280.97(b)(2)). In other words, insurers are liable for the entire sum of the policy including the amount of the deductible. This does not preclude them from allotting such a charge, it simply makes it the insurer's responsibility to recover the deductible amount from the policy holder. This type of coverage ensures that corrective actions will not be stalled or halted because an owner or operator cannot meet the deductible (53 FR 43349; October 26, 1988).

State funds may also be used as the sole method of demonstrating financial responsibility if they provide for the full sum required, though this is often not the case. For example, many state funds apply deductibles without providing first dollar coverage. In these cases, the state funds can be approved as partial financial responsibility mechanisms, but owners and/or operators must use an additional device (like a surety bond) to cover the difference (53 FR 43354; October 26, 1988). (June 1996 Monthly Hotline Report)



UNDERGROUND STORAGE TANKS (UST)

Keywords:

Financial responsibility;
trust fund; underground
storage tank (UST)

"UST Financial Responsibility and Insolvent State Trust Funds"

QUESTION: Owners and operators of underground storage tanks (USTs) regulated under 40 CFR Part 280 must maintain financial responsibility for releases from their tanks (§280.93). UST owners and operators may demonstrate financial responsibility by obtaining coverage from a state fund that has been EPA-approved or submitted for EPA approval under §280.101. EPA Regional Offices have the authority to revoke the approval of a state's fund if the Region determines that the fund is no longer solvent. In such a circumstance, the state must then send a notice to those UST owners and operators, informing them that the state fund is no longer an acceptable mechanism for complying with the financial responsibility requirements. If, after receiving such notice, owners and operators commence UST temporary or final closure activities, will they still be subject to the federal UST financial responsibility requirements?

ANSWER: All owners and operators of regulated USTs, including those in states with insolvent funds, are subject to the Part 280 financial responsibility requirements, regardless of whether or not they commence UST temporary or final closure activities. UST owners and operators must maintain financial responsibility for all regulated tanks until the tanks have been properly closed or, if corrective action is required, until after corrective action has been completed and the tank has been closed in accordance with the requirements of Part 280, Subpart G. The act of commencing temporary or final closure procedures does not release UST owners or operators from their responsibility to maintain financial assurance through an approved mechanism.

Owners and operators of regulated USTs must obtain alternate financial assurance within 30 days from the date that they received notification from the state that their coverage under the state fund will no longer be acceptable as a financial responsibility mechanism (§280.110). Affected UST owners and operators may obtain alternate financial responsibility by using any one of the mechanisms listed in §§280.95 through 280.107. **(March 1996 Monthly Hotline Report)**

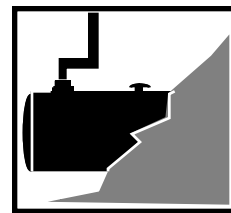
"UST Financial Responsibility and the Definition of Petroleum Marketer"

Keywords:

Financial responsibility;
petroleum; underground
storage tank (UST)

QUESTION: Owners and/or operators of petroleum underground storage tanks (USTs) are required to demonstrate financial responsibility in both per occurrence and annual aggregate amounts. Owners and/or operators of petroleum USTs located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, must demonstrate \$1 million in per

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occurrence coverage (§280.93(a)(1)). On the other hand, owners and/or operators of petroleum USTs located at non-marketing facilities that handle an average of less than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, are only required to demonstrate \$500,000 in per occurrence coverage. Petroleum marketing facilities include all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public (§280.92). Based on this definition, if a private boating club sells petroleum to its members only, is it considered a marketer or non-marketer for purposes of determining UST financial responsibility per occurrence coverage?

ANSWER: The private boating club is considered a non-marketer. Because the boating club's members are part of a restricted group (and hence not the general public), the sale of petroleum to "members only" does not constitute the sale of petroleum to the public at large. This situation is analogous to the interpretation that rental car facilities that sell gasoline only to renters (also members of a restricted group), are not considered marketers selling petroleum to the public at large (53 FR 43330; October 26, 1988).

The private boating club, therefore, would be considered a non-marketer, and assuming the club handled an average of less than 10,000 gallons of petroleum per month based on annual throughput for the previous year, the owner and/or operator would have to demonstrate only \$500,000 in per occurrence financial responsibility coverage. If, on the other hand, the boating club handled an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous year, the owner and/or operator would have to demonstrate \$1 million in per occurrence financial responsibility coverage. **(February 1996 Monthly Hotline Report)**

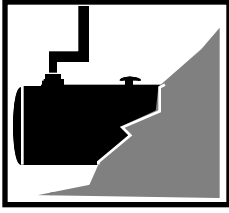
"UST Financial Responsibility: Use of the Guarantee When the Guarantor is Not U.S.-based"

Keywords:

Corporate guarantee;
financial responsibility;
underground storage tank
(UST)

QUESTION: Owners and operators of petroleum underground storage tanks (USTs) are required to demonstrate financial responsibility using one of the mechanisms in 40 CFR Part 280, Subpart H. The use of a corporate guarantee, which allows an owner or operator to secure a guarantee from another firm, is an allowable mechanism (§280.96). To act as a guarantor, the firm must either possess a controlling interest in the owner or operator, be controlled through stock ownership by a common parent firm possessing a controlling interest in the owner or operator, or have a substantial business relationship with the owner or operator (§280.96(a)). If a foreign company meets one of these criteria, can the company qualify as a guarantor for a company based in the U.S.?

ANSWER: Any company can qualify as a guarantor if the company passes either of the two options for the financial test requirements of the guarantee. The guarantor may fulfill either the UST financial test of self-insurance requirements



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(§280.95(b)), or a modified version of the requirements of the treatment, storage, and disposal facility (TSDF) financial test for liability coverage as described in §280.95(c).

The first option for passing the financial test, under §280.95(b), requires the guarantor to demonstrate a tangible net worth of at least \$10 million and have a tangible net worth of at least 10 times the amount of aggregate and liability coverage required. The guarantor must also file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or report annually the firm's tangible net worth to Dun and Bradstreet and have been assigned a financial strength rating of 4A or 5A. If the company's year-end financial statements are independently audited, they cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification. The company's chief financial officer must also provide a signed letter verifying the information required above (§280.95(d)).

Companies have a second option of passing the financial test under §280.95(c). This financial test criteria requires the guarantor to have a tangible net worth of at least \$10 million, tangible net worth of at least six times the amount of liability coverage required, and assets in the U.S. amounting to at least 90 percent of their total assets or at least six times the required liability amount. The guarantor must also have either a net working capital of at least six times the amount of liability coverage required or have a bond rating AAA, AA, A, or BBB from Standard and Poor's, or a bond rating of Aaa, Aa, A, or Baa as issued by Moody's. The company's year-end financial statements must be examined by an independent certified public accountant. The company's chief financial officer must also provide a signed letter verifying the information required above and the company must meet a few other requirements of §280.95 to ensure the information is accurate and complete.

As long as the foreign company passes one of the financial tests described above, the company may qualify as a guarantor. **(April 1996 Monthly Hotline Report)**

Leak Detection

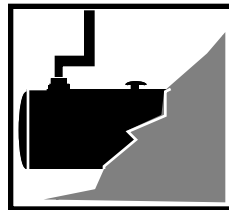
Keywords:

Leak detection;
underground storage
tank (UST)

"Automatic Tank Gauging Requirements"

QUESTION: Owners and/or operators of underground storage tanks (USTs) must comply with release detection requirements in 40 CFR Part 280, Subpart D. Effective leak detection for USTs allows owners and/or operators to respond quickly to signs of leaks. Owners and/or operators of petroleum USTs may use an automatic tank gauging system (ATGS) as an acceptable method for compliance with monthly leak detection requirements (§280.41(a)). An ATGS can test for leaks and can also be used to measure

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product inventory. If an owner and/or operator conducts monthly leak detection using an ATGS, will a daily product inventory measurement need to be taken as well?

ANSWER: All ATGS permanently installed on or after December 22, 1990, must be capable of detecting a 0.2 gallon per hour leak rate within a month with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05 (§280.40(a)(3)). An ATGS, or any other alternative leak detection method (§280.43(h)(1)), capable of meeting these performance standards would obviate the regulatory requirements for inventory control under §280.43(d), including the need for the owner and/or operator to conduct a daily product inventory measurement.

However, an owner and/or operator using an ATGS not meeting the Pd/Pfa requirements will need to conduct and record a product inventory measurement or use another test of equivalent performance every day that fuel is added or removed from the UST. This daily measurement is required in addition to testing for the loss of product each month (§280.43(d)(2)). Records documenting monitoring activities, whether recorded automatically by the ATGS or manually by the owner and/or operator, must be maintained for at least one year (§280.45). Owners and/or operators of USTs should contact their state or implementing agency to determine if more stringent regulations apply. **(June 1996 Monthly Hotline Report)**

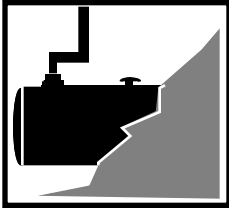
"Differences in Underground Storage Tank Leak Detection Requirements"

Keywords:

Leak detection;
secondary containment;
underground storage
tank (UST)

QUESTION: Although petroleum underground storage tanks (USTs) and hazardous substance USTs are subject to many similar technical standards under 40 CFR Part 280, the requirements differ significantly with regard to leak detection. What are these distinctions?

ANSWER: The leak detection requirements for hazardous substance tanks are more stringent than those for petroleum tanks. Owners and operators of petroleum tanks can choose from the variety of leak detection systems found in §280.43. New hazardous substance tanks (those installed after December 22, 1988), on the other hand, must be equipped with secondary containment systems and interstitial monitoring devices (§280.42(b)). Existing hazardous substance tanks (those installed before December 22, 1988) may meet the requirements for petroleum tanks. However, by December 22, 1998, these existing tanks must be upgraded to meet the same leak detection standards as new hazardous substance tanks (§280.42(a)). This stricter regulation of hazardous substance tanks is based on the premise that hazardous substances that have leaked into the soil are more difficult to detect and to clean up than petroleum leaks (September 23, 1988; 53 FR 37082, 37155).



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In order to meet the stricter requirements, owners and operators of hazardous substance tanks must install secondary containment systems for their tanks. This system may consist of double walled tanks, external liners, or vaults, and must be equipped with interstitial monitoring to detect leaks (§280.42(b)). All underground piping for hazardous substance tanks also must be equipped with secondary containment devices (§280.42(b)(4)). A facility may use alternate release detection methods if it receives a site-specific variance from the implementing agency (§280.42(b)(5)).

On the other hand, owners and operators of petroleum tanks can choose a leak detection system from those found in §280.43. These options include inventory control and tank tightness testing, manual tank gauging and tank tightness testing, automatic tank gauging, vapor monitoring, groundwater monitoring, and statistical inventory reconciliation (§§280.43(d)-(h)). Suctioned or pressurized piping in these systems must meet leak detection requirements similar to those for the tank (§280.41(b)). In addition, states may have more stringent UST leak detection standards than the federal requirements. **(March 1996 Monthly Hotline Report)**

Tank Requirements

Keywords:

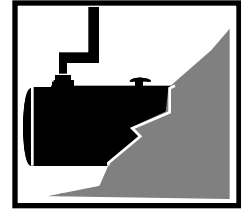
Petroleum; release reporting; underground storage tank (UST)

"Release Reporting Requirements for Underground Storage Tanks"

QUESTION: An operator of an underground storage tank (UST) accidentally overfills his tank, resulting in a 5-gallon spill of petroleum. According to the federal UST regulations of 40 CFR Part 280, owners and operators of UST systems who contain and immediately clean up petroleum spills or overfills of less than 25 gallons do not have to report the spills to their implementing agency (§280.53(b)). However, §280.61(a) states that all releases from UST systems must be reported to the implementing agency. What is the difference between these two provisions, and which provisions would apply to the operator in this case?

ANSWER: The operator of the UST would not have to report the 5-gallon aboveground spill of petroleum to his implementing agency provided he contains and immediately cleans up the spill. The provisions of §280.53 pertain specifically to aboveground spills and overfills from an UST, whereas the release reporting requirements of §280.61(a) pertain specifically to underground releases from USTs (53 FR 37172, 37176; September 23, 1988). According to §280.53(a), all spills and overfills of petroleum from an UST which result in a release to the environment that exceeds 25 gallons, and all spills and overfills of a hazardous substance which result in a release to the environment that equals or exceeds its reportable quantity under CERCLA, must be reported to the implementing agency. Any spill or overfill of petroleum from an UST that is less than 25 gallons, or any spill or overfill of a

UNDERGROUND STORAGE TANKS (UST)



hazardous substance that is less than its reportable quantity, need not be reported to the implementing agency provided that the owner or operator of the UST contains and immediately cleans up the spill or overfill (§280.53(b)). Any underground release of petroleum or a hazardous substance, however, must be reported to the implementing agency regardless of the volume of the release (§280.61(a)). In addition, states may have more stringent UST reporting requirements than the federal requirements. **(October 1996 Monthly Hotline Report)**

"Replacement Equipment for Existing Underground Storage Tanks"

Keywords:

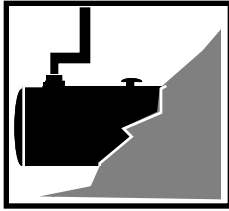
Corrosion protection;
spills/spill prevention,
underground storage
tank (UST)

QUESTION: The RCRA underground storage tank (UST) regulations in 40 CFR Part 280 provide tank design and operating standards to prevent leaks of petroleum into the environment. To that end, the regulations provide corrosion, spill, and overfill protection standards with which USTs must comply. New tanks, those installed after December 22, 1988 (as defined in §280.12), must meet these standards at installation. Existing tanks, or those installed prior to December 22, 1988, either must upgrade their tanks to meet these requirements or close by December 22, 1998 (§§280.20 and .21). If a pipe on an existing UST is being replaced, will such replacement subject the existing tank system to the corrosion protection and spill and overfill protection requirements at that time because the new components were installed after December 22, 1988, and are therefore viewed as a new tank system?

ANSWER: The replacement of a part does not require the entire existing tank system to meet the upgrade requirements (i.e., corrosion protection and spill and overfill protection). Existing UST systems do not have to meet these requirements until December 22, 1998 (§280.21). New components of existing tank systems, however, are required to meet the standards for new UST systems, because the new components were installed after December 22, 1988, and are therefore viewed as a new tank system. The replacement pipe, therefore, would need to be protected from corrosion if it routinely contained product and was in contact with the soil.

In order to meet the corrosion protection requirements, the replacement pipe must be constructed of either fiberglass-reinforced plastic, cathodically-protected steel with corrosion-resistant coating, metal without corrosion protection if a corrosion expert has determined that the site will not cause the pipe to leak due to corrosion during the active life of the unit, or an alternative design approved by the implementing agency (§280.20(b)). In addition, the owner and/or operator of the UST must maintain records demonstrating such compliance (§280.34(b)).

For more information on corrosion protection, owners and operators may contact the National Association of Corrosion Engineers (NACE), the American Petroleum Institute (API), or similar trade associations. Further, UST owners and operators



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should consult their implementing agencies, as some states may have more stringent requirements. (**March 1996 Monthly Hotline Report**)

"Underground Storage Tank Spill Catchment Basin Size Requirement"

Keywords:

Spills/spill prevention;
underground storage
tank (UST)

QUESTION: Owners/operators of underground storage tank (UST) systems must comply with the spill and overfill requirements in 40 CFR Part 280, Subpart B. New and existing UST systems must prevent spilling and overfilling associated with product transfer by complying with equipment standards under §280.20. An owner/operator of an UST is using a spill catchment basin to comply with the spill prevention requirements (§280.20(c)(1)(i)). Do the UST regulations specify a size for this spill catchment basin?

ANSWER: The UST regulations do not specify a size for spill catchment basins, but rather, establish a performance-based standard. The design and size of the spill catchment basin should be of sufficient size to contain spills and prevent releases to the environment (§280.20(c)(1)(i) and 53 *FR* 37134; September 23, 1988). EPA originally proposed that catchment basins should be large enough to contain the volume of the transfer hose (52 *FR* 12779; April 17, 1987). This language was modified in the September 23, 1988, final rule to allow the appropriate volume of the catchment basin to be determined case by case. EPA also allows the use of alternative devices to prevent spills if they are approved by the implementing agency (§280.20(c)(2)(i)). In addition, EPA does not require spill or overfill prevention equipment when the UST system is filled by transfers of no more than 25 gallons of regulated substances at one time (§280.20(c)(2)(ii)). The state or implementing agency should be contacted to determine if more stringent regulations are in place in a particular jurisdiction. (**October 1996 Monthly Hotline Report**)

Upgrading

"Closure Requirements for Tanks Not Upgraded by 1998"

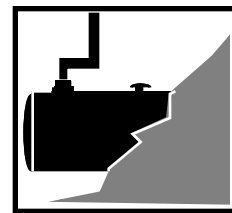
Keywords:

Closure; underground
storage tank (UST);
upgrading

QUESTION: Existing underground storage tanks (USTs) (i.e., tanks installed before December 22, 1988) must meet certain spill, overfill, and corrosion protection requirements by December 22, 1998. An owner/operator who does not upgrade or replace an UST by this date must close the existing UST according to 40 CFR, Part 280, Subpart G (§280.21(a)). If an owner/operator chooses to permanently close the UST, when must the closure be completed?

ANSWER: Permanent closure of the UST must be completed by December 22, 1998 (§280.21(a)(3)). To perform permanent closure under Subpart G, the owner/operator must notify the regulatory authority at least 30 days before the UST is taken out of service for closure or replacement. The

UNDERGROUND STORAGE TANKS (UST)



tanks must be emptied and cleaned of liquids, dangerous vapor levels, and accumulated sludge, and can either be removed from the ground or filled with a harmless and chemically inactive solid. The owner/operator must perform a site assessment to determine if releases from the UST have contaminated the surrounding environment; however, vapor or groundwater monitoring records may be used in lieu of the site assessment to determine if a release has occurred (§280.71). If contamination is found during the site assessment the owner/operator must begin corrective action in accordance with 40 CFR, Part 280, Subpart F (§280.72(b)); but corrective action itself would not need to be completed prior to December 22, 1998. If the existing UST has not been upgraded or has not been properly closed by the 1998 deadline, the facility may be cited for violations and fined. States may have UST closure requirements more stringent than the federal requirements. **(July 1996 Monthly Hotline Report)**

"Frequently Asked Questions on Upgrading of Existing Underground Storage Tanks (USTs)"

Keywords:

Corrosion protection;
spills/spill prevention;
underground storage
tank (UST); upgrading

QUESTION: The federal underground storage tank (UST) regulations under 40 CFR Part 280 require owners and operators to upgrade, replace, or close existing USTs, those installed prior to December 22, 1988, by December 22, 1998. What are the elements of the federal upgrading requirement?

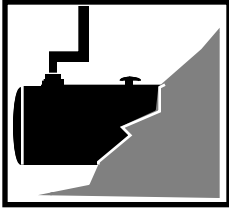
ANSWER: The upgrading regulations require owners and operators of existing USTs to retrofit all existing tanks with spill and overfill equipment to protect against releases during transfers of regulated substances (§280.21(d)). Owners and operators of existing steel tanks and metal piping must also install corrosion protection equipment to prevent releases into the environment (§§280.21(b) and (c)). All existing tank systems must now be provided with release detection (§280.40).

QUESTION: What are the upgrading requirements for existing USTs constructed of fiberglass?

ANSWER: Existing fiberglass USTs must meet the upgrading requirements only for spill and overfill equipment. Existing tanks and piping made out of fiberglass already meet the corrosion protection upgrading requirements (§§280.21(b) and (c)).

QUESTION: Do tanks that hold only small amounts of a regulated substance have to be retrofitted with spill and overfill equipment?

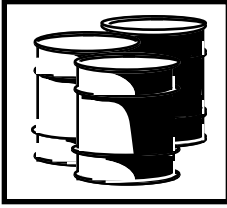
ANSWER: USTs that never receive greater than 25 gallons of a regulated substance at any one time are exempt from the requirement to be fitted with spill and overfill equipment (§280.20(c)(2)(ii)).



UNDERGROUND STORAGE TANKS (UST)

QUESTION: What records must an owner or operator keep when an existing UST is upgraded?

ANSWER: An owner or operator of an existing tank upgraded to meet the corrosion protection requirements must keep documentation of operation and maintenance of the corrosion protection equipment (§280.34(b)). If an owner or operator chooses to close an existing UST instead of upgrading, he or she must notify the implementing agency 30 days prior to permanent closure and keep documentation of the results of the site investigation conducted at permanent closure (§§280.34(a) and (b)). **(July 1996 Monthly Hotline Report)**



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ARARs

Keywords:

CERCLA waste; off-site rule; remedial action

"Determination of Acceptable Facilities to Receive CERCLA Wastes"

QUESTION: According to the off-site rule promulgated on September 22, 1993 (59 FR 49200), all CERCLA wastes transferred off site must be sent to a facility deemed acceptable to receive CERCLA wastes. These facilities must meet the acceptability criteria outlined in 40 CFR §300.440(b). CERCLA §120 requires that all federal agencies comply with the provisions of CERCLA. Can any federal agency performing remedial actions under CERCLA §120 designate treatment, storage, and disposal facilities as acceptable to receive CERCLA waste?

ANSWER: The off-site rule implementing §121(d)(3) of CERCLA applies to CERCLA actions conducted by federal agencies, including those pursuant to §120 of CERCLA. EPA is the only federal agency with the authority to designate facilities as acceptable to receive CERCLA wastes. Other federal agencies may suggest appropriate facilities to the EPA Regional Office, but EPA must make the final determination. **(August 1996 Monthly Hotline Report)**

Liability/ Settlements

Keywords:

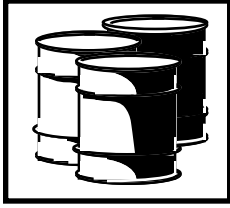
Enforcement; settlements

"Alternative Dispute Resolution"

QUESTION: In 1987, EPA issued the "Final Guidance on Use of Alternative Dispute Resolution Techniques in Enforcement Actions" endorsing the use of Alternative Dispute Resolution (ADR) as a settlement tool during Superfund enforcement cases (OWPE Directive 9834.12, PB91-139 303). As part of the Superfund Administrative Reforms, EPA is emphasizing the use of ADR as a tool for potentially responsible parties (PRPs) to negotiate settlements for cleanup at Superfund sites. What is ADR and for what types of cases is ADR used?

ANSWER: ADR encompasses a series of processes that assist parties in resolving disputes. Central to each method is the use of a mediator or other objective third-party. ADR is a standard component of EPA's enforcement program, for it has the potential of lowering the transaction costs for the parties as well as expediting the enforcement process. Where the parties will have long-term working relationships, the use of ADR has been found to improve those relationships. ADR may be particularly suitable for multi-party cases. The use of ADR may avoid years of litigation between the parties and may save EPA time and resources needed to take enforcement actions against a large number of parties.

Cases are nominated for ADR by EPA Regional personnel. Before a case is chosen for ADR, EPA must analyze the case to determine whether ADR may be appropriate. There must be sufficient case information developed to substantiate the violations. EPA will also consider whether the case is negotiable, i.e., no precedent-setting issues are involved. Also, EPA will consider court or statutory



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deadlines in determining whether sufficient time exists to conduct ADR negotiations.

ADR techniques used by the Agency include several methods such as mediation, convening, allocation, fact-finding, and arbitration, as described below.

- Mediation, the primary ADR technique used by EPA, relies on a mediator to facilitate negotiations among the parties. The mediator has no power to decide the issues, but assists the parties in reaching a voluntary negotiated settlement.
- Convening is often used as a prelude to mediation to assist parties in determining whether to use ADR and in selecting an appropriate ADR process.
- Allocation is the use of a third party who assists negotiating parties to determine their relative cost responsibilities for a Superfund site. The allocator may consider factors such as volume or toxicity of the waste contributed, ability to pay, the degree of care exercised in handling waste, and permit violations of the responsible parties, to develop a fair allocation of the site costs.
- Fact-finding, often used in technical disputes, involves the use of a neutral third party with subject matter expertise to investigate and decipher complex data. The decision may or may not be binding depending on the agreement between the parties. If the parties agree, these findings are admissible as established facts in subsequent judicial or administrative hearings.
- Arbitration involves the use of a third party who hears the issues, and renders a decision. As with fact-finding, the findings may be binding or non-binding depending upon the parties' agreement. EPA has authority to enter into arbitration for small cost recovery claims, if the claims do not exceed \$500,000 (CERCLA §122(h)(2)).

EPA seeks parties with certain qualifications including demonstrated experience, independence, neutrality, and technical expertise. The type of ADR to be used at a particular site must be decided before negotiations begin in order to determine the exact role the mediator or other third-party will play throughout the ADR process. Discussions with a mediator are protected by federal and state confidentiality provisions.

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To date, ADR has been used in more than 100 Superfund enforcement cases as well as numerous cases arising under other statutes. By establishing ADR leaders in the Regional offices, providing ADR training, and sponsoring several ADR pilots, EPA is committed to increasing the use of ADR. For further information on ADR please see the fact sheet entitled Use of Alternative Dispute Resolution in Enforcement Actions, May 1995, and the Guidance on Use of ADR for Litigation in Federal Courts, DOJ 1992, OSWER Directive 9208.0-09, PB94-963 668. (May 1996 Monthly Hotline Report)

"CERCLA Liability in Relation to Subsurface Migration of Hazardous Substances"

Keywords:

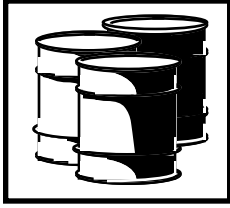
Aquifer; hazardous substance; liability

QUESTION: According to CERCLA §§107(a)(1) and 101(9), the current owner of any property containing a hazardous substance can be held liable for response costs incurred at that site. The possibility that hazardous substances may come to be located in or on a property via subsurface migration in an aquifer creates concern among property owners, prospective purchasers of property, and lenders about potential CERCLA liability. What is EPA's policy toward owners of property at which contamination has come to be located as the result of subsurface migration?

ANSWER: EPA's "Policy Toward Owners of Property Containing Contaminated Aquifers" (60 FR 34790; July 3, 1995) is an attempt to lower the barriers to transfer of such property by reducing uncertainty regarding the possibility that EPA or third parties may take action against these landowners. This policy clarifies the Agency's position that it will not take any enforcement actions (to require the performance of response actions or the payment of response costs) against the owner of a property at which hazardous substances have come to be located solely as the result of subsurface migration in an aquifer from a source or sources outside the property.

Applicability of this policy is, however, subject to certain conditions. First, the landowner must not have caused, contributed to, or exacerbated the release or threat of release of any hazardous substances at the site. This policy may not apply, for example, if the property contains a well that may affect the migration of contamination in the aquifer. In this case, EPA's policy requires a fact-specific analysis of the circumstances, including, but not limited to, the impact of the well and/or the owner's use of it on the spread or containment of the contamination in the aquifer.

Second, the person who caused the release must not be an agent or employee of the landowner, and must not have been in a direct or indirect contractual relationship (defined at CERCLA §101(35)) with the landowner. In cases where the landowner acquired the property, directly or indirectly, from a person that caused the original release, applicability of this policy will depend upon whether,



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at the time the property was acquired, the landowner knew or had reason to know of the disposal of hazardous substances that gave rise to the contamination in the aquifer.

The third condition for applicability of this policy is that there exists no alternative basis for the landowner's liability for the contaminated aquifer. Thus, the policy will not apply if there exists contamination on the landowner's property other than that which migrated in the aquifer from an outside source.

Additionally, in appropriate circumstances, EPA will consider de minimis settlements (under CERCLA §122(g)(1)(B)) with landowners who satisfy the requirements of the policy and who are threatened by third party lawsuits. In such settlements, EPA would provide the landowner with a covenant not to sue, as well as protection from third party contribution suits (under CERCLA §§113(f)(2) and 122(g)(5)). **(November 1996 Monthly Hotline Report)**

"CERCLA Liability Protection for Prospective Purchasers of Sites for Redevelopment"

Keywords:

Liability; prospective purchaser; settlements

QUESTION: In a 1989 guidance (OSWER Directive 9835.9), EPA addressed concerns that potential property owners and/or operators may have about liability under CERCLA. CERCLA embodies a strict liability provision, which means that a person is liable for contamination involving hazardous substances, without regard to fault, diligence, negligence, or motive. Owners of a vessel or a facility can be held liable for releases involving hazardous substances, even if the release occurred prior to their ownership. The 1989 guidance allowed the use of a legal tool, the covenant not to sue, in specific circumstances. The purpose of the covenant not to sue is to minimize the threat of CERCLA liability for prospective purchasers of contaminated property, in exchange for compensation to the Agency. In May 1995, EPA reissued the original prospective purchaser guidance by changing the scope of circumstances under which EPA will grant a covenant not to sue. The new guidance changes the type of compensation EPA is willing to consider in return for the agreement. How have these changes improved the effectiveness of prospective purchaser agreements?

ANSWER: Changes to the original prospective purchaser guidance were designed to make better use of the covenant not to sue in achieving the Agency's fundamental goal of protecting human health and the environment, while providing an economic stimulus for abandoned industrial areas. For instance, the current guidance is applicable at sites where federal involvement has occurred or is expected to occur, while the old guidance was limited to sites where enforcement action was anticipated. EPA recognized potential

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gains in terms of cleanup and public benefit may be realized with broader application of prospective purchaser agreements. In addition, the original guidance stipulated that the Agency would only consider direct benefit (i.e., monetary compensation for cleanup) in exchange for the covenant not to sue. The 1995 guidance modifies this provision by stating that the Agency may consider accepting an indirect public benefit in combination with a reduced direct benefit from a prospective purchaser. Indirect benefits to the community include measures that serve to substantially reduce the risks posed by the site, create jobs, develop abandoned or blighted property, create conservation or recreation areas, or provide community services. EPA recognized that indirect benefit to a community is an important consideration and may justify the commitment of the Agency's resources to negotiate such an agreement.

EPA may enter into a covenant not to sue at its own discretion and the Agency reserves the right to void the covenant at any time if it determines the prospective purchaser provided inaccurate or incomplete information. Further, a covenant not to sue has no bearing on any future liability a prospective purchaser may incur as a result of his or her own activities under CERCLA or other laws. These aspects of prospective purchaser agreements have not changed from the original 1989 guidance. **(December 1996 Monthly Hotline Report)**

National Priorities List (NPL)

Keywords:

Deletion; liability; National
Priorities List (NPL)

"Partial Deletion of National Priorities List Sites"

QUESTION: The National Priorities List (NPL) is EPA's list of uncontrolled hazardous substance releases that are priorities for long-term remedial evaluation and response. EPA may delete releases from the NPL with state concurrence when it determines that no further response is appropriate under CERCLA (40 CFR §300.425(e)). Most NPL sites are the result of multiple releases. Is the cleanup of each release at an NPL site required for a site to be deleted from the NPL?

ANSWER: EPA's policy is that portions of NPL sites may be deleted if those releases qualify for deletion (60 FR 55466; November 1, 1995). Prior to November 1, 1995, EPA policy had been to delete releases only after evaluation of the entire site, once the entire site met the NPL deletion requirements specified in §300.425(e).

Total site cleanup can take many years, while individual releases can often be cleaned up and made available for productive use in considerably less time. Waiting to delete sites from the NPL until after evaluation of the entire site



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Release Reporting

Keywords:

Hazardous substance;
release reporting;
reportable quantity

does not communicate the successful cleanup of portions of sites. Furthermore, potential investors or developers may be reluctant to undertake economic activity at a cleaned-up portion of property that is part of a site that remains listed on the NPL. For this reason, EPA will now delete portions of sites where no further response is appropriate for that portion of the site. A portion of a site can be a geographic unit, including a residential unit or a specific environmental medium (e.g., groundwater). These partial deletions will take place according to the National Contingency Plan requirements in 40 CFR §300.425(e). Thus, state concurrence will continue to be a requirement for any partial deletion. **(July 1996 Monthly Hotline Report)**

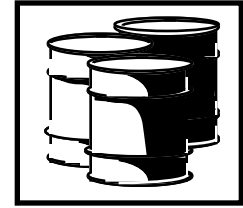
"CERCLA §103(a) Notification for Contamination Discovered During a Site Inspection"

QUESTION: CERCLA §103(a) requires immediate notification to the National Response Center (NRC) for releases of hazardous substances in quantities equal to or greater than the reportable quantity (RQ). If hazardous substances are discovered during site assessment or audit activities, does the CERCLA §103(a) notification provision apply? If so, who is required to notify?

ANSWER: CERCLA §103(a) notification requirements apply as soon as a "person in charge" has knowledge of a release of a hazardous substance equal to or greater than the RQ. As part of normal real estate transactions, site assessments (e.g., Phase I environmental assessments) are often performed as a requirement for obtaining a loan from a lending institution. For instance, lending institutions must ensure that all appropriate inquiry into a site is performed prior to purchase as a defense against potential liability (CERCLA §§107(b)(3), 101(35)(B)). In the course of conducting all appropriate inquiry, information regarding a release of a hazardous substance may become available. If the amount is greater than or equal to the RQ for any hazardous substance, the person in charge of the facility is required to comply with the notification provisions under CERCLA §103(a) (54 FR 34238; August 18, 1989).

The person in charge of a particular facility may vary according to the nature of the incident. EPA has not defined the term person in charge and believes that proper assignment of reporting responsibilities depends on the site-specific operation involved, management structure, and other case-specific considerations (50 FR 13460; April 4, 1985). If the person in charge is unsure whether a RQ of a hazardous substance has been released due to the lack of information about contamination found at a site, EPA encourages the person in charge to notify the NRC immediately (55 FR 8676; March 8, 1990). **(July 1996 Monthly Hotline Report)**

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"CERCLA §103(a) Release Notification Requirements for Friable and Non-friable Forms of Asbestos"

Keywords:

Hazardous substance;
release reporting;
reportable quantity

QUESTION: CERCLA §103(a) requires the person in charge of a facility or vessel to report a release of a hazardous substance, that equals or exceeds a reportable quantity (RQ), to the National Response Center. The hazardous substances and their reportable quantities are listed in 40 CFR §302.4. Asbestos is listed as a hazardous substance. The asbestos listing includes a footnote indicating that the RQ is limited to friable forms only. Is non-friable asbestos a CERCLA hazardous substance? Does CERCLA liability attach to releases of non-friable forms of asbestos?

ANSWER: Both friable and non-friable forms of asbestos are CERCLA hazardous substances. The carcinogenic potential of asbestos is related, however, to specific airborne fiber shapes, sizes, and concentrations ([Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, July 1989](#)). EPA does not require reporting of non-friable forms of asbestos. Although releases of non-friable asbestos are exempt from release notification requirements, such releases are still subject to CERCLA response and liability provisions. (**July 1996 Monthly Hotline Report**)

Response Process

Keywords:

Brownfields; cooperative
agreements; uses of the
fund

"Brownfields Pilots: Funding Goals and Limitations"

QUESTION: As part of the Brownfields Economic Redevelopment Initiative, EPA is awarding 50 grants of up to \$200,000 each to selected states, towns, counties, U.S. Territories, and Indian Tribes for the two-year funding of brownfields demonstration pilots. EPA is funding the brownfields pilots with money from the Hazardous Substances Superfund under the authority of CERCLA §104(d)(1). Under this section, EPA may enter into cooperative agreements with eligible states, political subdivisions, territories, or Indian Tribes. Through these agreements, EPA may authorize these political entities to undertake response and investigation activities at Superfund sites. Once the cooperative agreements have been established, what types of activities will the brownfields grants support? Has the Agency placed any limits on the potential uses of the grant moneys?

ANSWER: Brownfields funding is limited to pre-cleanup environmental activities at sites where there is an actual or threatened release of a hazardous substance, pollutant, or contaminant. Allowable pre-cleanup activities include site assessments, site identifications, site characterizations, site remediation planning and design, and outreach efforts directed toward generating more effective stakeholder involvement in these activities.



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The CERCLA §104 restrictions on EPA's use of funding apply to brownfields pilot grant recipients as well. Consequently, brownfields pilot funds may not be used for, for example, the assessment, identification, characterization, or remediation of petroleum contamination. CERCLA funds may only be used to address hazardous substances, pollutants, and contaminants, which are defined to exclude petroleum. CERCLA regulations also prohibit the use of EPA funds to match any other federal funds. Brownfields pilot funds may be used to develop creative financing solutions (e.g., tax schemes, revolving loan funds) for the environmental activities described above; however, federal grant funds may not be used for capitalizing or fund-raising purposes. Finally, included in the restrictions traditionally placed on CERCLA §104 funding, EPA has specified that brownfields grant recipients may not use pilot funds for job training or to support their own lobbying efforts.

In addition to initiating the partial deletion of releases at NPL sites, the Agency will also consider petitions to delist portions of sites. Any person may submit such a petition, including individuals, business entities, states, local governments, and other federal agencies. Individuals need not follow any specific format in submitting petitions. EPA will consider any petition that is submitted in writing. Petitioners should note that the primary purpose of the NPL is to serve as an informational and management tool. Whether property is part of an NPL site is unrelated to CERCLA liability because neither NPL listing nor deletion assigns liability to any party or to the owner of any specific property. CERCLA §107 sets forth broad liability provisions associated with releases of hazardous substances without reference to NPL listing or deletion. As with entire sites, deleted portions of sites remain eligible for further Fund-financed remedial actions should future conditions warrant such action. **(April 1996 Monthly Hotline Report)**

"Discount Rates for Comparison of Remedial Alternatives"

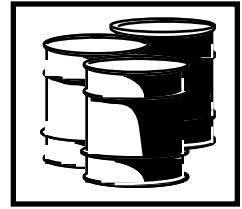
Keywords:

Discount rates; remedial alternatives; remedial investigation/feasibility study (RI/FS)

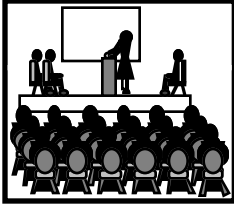
QUESTION: During the feasibility study phase of the Superfund response process, the project manager carefully estimates the costs of various remedial action alternatives. Present worth analysis is used to evaluate expenditures that occur over different time periods by discounting all future costs to a common base year, usually the current year (OSWER Directive 9355.2-01). By performing a present worth analysis, the cost of remedial action alternatives can be evaluated and compared with regard to the total cost of an action, even though the remedial action may take several years to complete. The figure derived from the present worth analysis represents the amount of money that, if invested in the base year and then disbursed over time, would reflect all remedial action costs. Has EPA recommended a certain discount rate to use in present worth calculations?

ANSWER: Yes. EPA recommends that project managers use a seven percent rate to conduct present worth calculations (OSWER Directive 9355.3-20). The preamble to the National Oil and Hazardous Substances Contingency Plan states,

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"EPA recognizes the importance of using an appropriate discount rate when deriving estimates of project costs. EPA will follow OMB circular A-94 . . ." (55 FR 8722-8723; March 8, 1990). The OMB Circular was revised on October 29, 1992, changing the discount rate to seven percent. In June 1993, EPA directed project managers to use the seven percent discount rate instead of the five percent discount rate published in Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA: Interim Final (October 1988, OSWER Directive 9355.3-01). The seven percent rate should be applied to all sites which have a Record of Decision (ROD) planned for FY94 and thereafter (OSWER Directive 9355.3-20). **(January 1996 Monthly Hotline Report)**



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW (EPCRA)

Emergency Planning and Release Notification

Keywords:

Release reporting;
reportable quantity

"Notification Requirements for Transportation-related Releases Under EPCRA §304"

QUESTION: In the event of a release of an extremely hazardous substance (EHS) or a CERCLA hazardous substance above its reportable quantity (RQ), a facility owner/operator must immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) of the incident (EPCRA §304(b); 40 CFR §355.40(b)) and for CERCLA hazardous substances, the National Response Center (NRC). As soon as practicable after the release occurs, the facility owner/operator must submit a written follow-up emergency notice to the SERC and LEPC (EPCRA §304(c); 40 CFR §355.40(b)(3)). In the case of a transportation-related release, EPCRA §304(b) states that the emergency release notification requirements may be satisfied by providing notice to the 911 operator instead of the SERC and LEPC (40 CFR §355.40(b)(4)(ii)). Must the notifier submit a follow-up emergency notice after the initial 911 report?

ANSWER: Notification of a transportation-related release, including the requirement to submit a written follow-up notice, is satisfied by dialing 911 and providing the release information as described in 40 CFR §355.40(b)(2) to the operator (40 CFR §355.40(b)(4)(ii)). In the absence of a 911 number, the notifier may call the local operator to satisfy the emergency release notification requirements (EPCRA §304(b)(1)). **(May 1996 Monthly Hotline Report)**

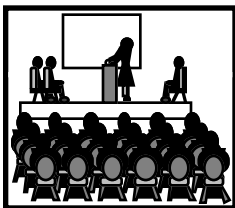
Hazardous Chemical Inventory Reporting

Keywords:

Hazardous chemical
inventory report; Tier I/
Tier II

"The Development and Use of Electronic Versions of EPCRA §312 Hazardous Chemical Inventory Reporting Forms"

QUESTION: An owner or operator of a facility that meets the applicability requirements of 40 CFR §370.20 must submit a hazardous chemical inventory form containing Tier I information to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the fire department with jurisdiction over the facility (EPCRA §312 (a)(1)). Reports are due by March 1 of each year and contain information from the preceding calendar year. An owner or operator of a facility must provide Tier II information upon the request of the SERC, LEPC, or the fire department



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(EPCRA §312(e); 40 CFR §370.25(c)). Do electronic versions of the Tier I or Tier II forms exist? May states or private companies develop electronic versions of the forms?

ANSWER: The Iowa SERC, in cooperation with EPA, has developed an electronic equivalent of the Federal Tier II form for both DOS and Windows operating systems. Both are available from the EPCRA Hotline on 3.5" diskette. States may adopt Iowa's electronic version of the Tier II form, or develop their own. Interested parties should check with individual SERCs to determine state policy on the use and submission of electronic inventory forms.

Other states may develop and implement Tier I and Tier II electronic copies of inventory forms without formal approval by EPA, so long as the electronic version collects, at a minimum, the identical information required by 40 CFR §§370.40 and 370.41. In states which accept submission of inventory forms on magnetic media, the owner or operator or the officially designated representative of the owner or operator must certify a magnetic media submission by including a signed certification cover letter with the submission (40 CFR §§370.40 and 370.41). Private companies can also create electronic versions of inventory forms, subject to state approval. States may establish procedures for submission and receipt of electronic forms. The Agency encourages the use of electronic forms because it conserves resources, and may facilitate data management and exchange for SERCs, LEPCs, and covered facilities. **(August 1996 Monthly Hotline Report)**

Toxics Release Inventory

Keywords:

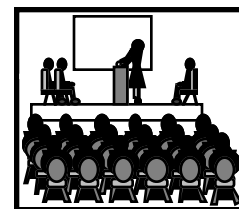
Form R; toxic chemicals; toxics release inventory reporting

"Deletion of EPCRA §313 Toxic Chemicals from the TRI Database"

QUESTION: EPCRA §313(d) provides for the addition and deletion of chemicals from the list of toxic chemicals found at 40 CFR §372.65. When a toxic chemical is deleted, the final action is effective upon publication in the Federal Register, thereby relieving covered facilities of EPCRA §313 reporting requirements for the newly deleted chemical from the date of publication forward. If a facility submits a Form R for a newly deleted chemical, must the facility submit a formal written withdrawal request to the Agency?

ANSWER: Facilities need not submit a formal written withdrawal because the Agency does not enter a Form R received for a newly delisted toxic chemical into the TRI database. Facilities that submit Form Rs for that chemical will receive a Notice of Data Change informing the facility that the data on the Form R was not entered into the database due to the chemical's deletion from the toxic chemical list. The Agency does not, however, remove from the database information from Form Rs submitted for years during which the toxic chemical was listed as an EPCRA §313 toxic chemical.

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In the case where only certain forms of a toxic chemical are delisted, the Agency will not automatically exclude the Form Rs because the Agency cannot determine for which form of the chemical the threshold determinations and reported data were based. For example, non-aerosol forms of sulfuric acid were delisted on June 30, 1995 (60 FR 34182), making aerosol forms the only EPCRA §313 reportable forms of sulfuric acid. In this case, without written clarification from the facility and review of the data submitted, the Agency cannot assume Form Rs submitted for sulfuric acid for reporting year 1994 represent reporting for only non-aerosol forms of sulfuric acid. Therefore, the Agency will enter the data as received, unless the facility submits a written revision or withdrawal request, as appropriate. **(March 1996 Monthly Hotline Report)**

"EPCRA §313 and Certification Signatures"

Keywords:

Certification statement;
Form R; toxics release
inventory reporting

QUESTION: Both the Toxic Chemical Release Inventory Reporting Form R and the Toxic Chemical Release Inventory Certification Statement require a certification signature in Part I, Section 3 of the respective form. May a representative from a consulting firm that prepares a Form R or Certification Statement for a covered facility sign the certification in lieu of the covered facility's owner or operator?

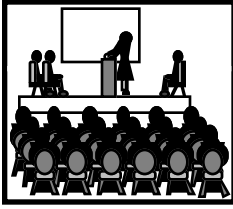
ANSWER: No. A representative from a consulting firm preparing a Form R or a Certification Statement for a covered facility cannot sign the certification in Part I, Section 3 of either the Form R or the Certification Statement. The certification must be signed by the owner or operator, or a senior management official employed by the facility subject to EPCRA §313 toxic chemical release inventory reporting. Senior management official means an official with management responsibility for the person or persons completing the report, or the manager of environmental programs for the facility or establishments, or for the corporation owning or operating the facility or establishments responsible for certifying similar reports under the other environmental regulatory requirements (40 CFR §372.3). **(July 1996 Monthly Hotline Report)**

"EPCRA §313 Article Exemption: Materials Recognizable as Articles"

Keywords:

Exemptions; Form R;
threshold; toxics release
inventory reporting

QUESTION: A manufacturing facility produces neon signs by bending leaded glass tubing. The facility uses enough tubing annually to process in excess of 25,000 pounds of lead, an EPCRA §313 toxic chemical. EPCRA §313 provides an exemption for chemicals present in the form of an article (40 CFR §372.38(b)) To qualify as an article, a material must be formed to a specific shape, have its end use dependent in whole or in part upon that shape, and not release a toxic chemical under normal conditions of use (§372.3). When signs are formed from glass tubing, the diameter of the tubes remains unchanged and lead is not released during the heating or bending process, qualifying the tubes for the article



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exemption. If a discrete number of glass tubes are broken and discarded during the year, under what circumstances would disposal of the broken tubes constitute a release that negates the article exemption, and how would the facility calculate the amount of lead used in their operation?

ANSWER: Disposal of the glass does not necessarily constitute a release which automatically negates the article exemption. Materials that remain "recognizable" as articles upon disposal are still exempt if they continue to meet the definition of an article in §372.3. For the tubing to meet the definition of an article when discarded, the diameter of the tubing must remain intact and unchanged. As a result, shards of glass no longer qualify as articles, while cracked sections of tubing continue to be exempt as articles.

Only the shattered glass that is not recognizable as the original tubing loses the article exemption. When calculating the quantity of lead used in its process, the facility only must count the lead present in shattered tubing toward the EPCRA §313 processing threshold and in subsequent release determinations. (**April 1996 Monthly Hotline Report**)

"EPCRA §313 Clarification of Processing Threshold for Items that are Processed More Than Once"

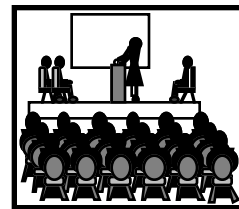
Keywords:

Processing threshold;
threshold

QUESTION: Manufacturing facilities (Standard Industrial Classification codes 20-39) and federal facilities with ten or more full-time employees, who manufacture, process, or otherwise use a toxic chemical in excess of the applicable activity threshold must comply with the EPCRA §313 reporting requirements found at 40 CFR Part 372. Processing is defined as the preparation of a toxic chemical, after its manufacture, for distribution in commerce (40 CFR §372.3). A metal fabrication facility extrudes ingots containing 20,000 pounds of copper into rods, which is considered to be a type of processing under EPCRA §313. The facility then transfers the rods containing 20,000 pounds of copper to another portion of the facility, which is completely separate from the extruding operation, for further processing, such as grinding. Has the facility processed 40,000 pounds of copper, and thus exceeded the processing threshold of 25,000 pounds per calendar year?

ANSWER: No. In this scenario, the facility has only processed 20,000 pounds of copper and would not be subject to reporting pursuant to 40 CFR Part 372 for this toxic chemical. For threshold purposes, facilities must count the amount of a toxic chemical that is processed during the calendar year. Facilities should not, however, double count toxic chemicals that are subject to multiple on-site processing steps before being distributed in commerce. Conversely, facilities that transfer toxic chemicals off site for processing and receive the same toxic chemical back for further processing must count the toxic chemical twice when calculating thresholds because the toxic chemical is considered to be newly obtained. (**February 1996 Monthly Hotline Report**)

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"EPCRA §313: Distribution in Commerce and the Definition of Process"

Keywords:

Form R; manufacturing threshold; processing threshold; threshold; toxics release inventory reporting

QUESTION: A facility covered under EPCRA §313 uses formaldehyde as an ingredient in feedstock. The feedstock is sent for use to another facility under common ownership. The preparing facility does not receive direct compensation for the product, nor is the product distributed to the general public. Does such a transfer of a toxic chemical, after its preparation, to another facility under common ownership constitute distribution in commerce and thus need to be considered in threshold determination for reporting under EPCRA §313?

ANSWER: Yes. Under EPCRA, process means the preparation of a toxic chemical, after its manufacture, for distribution in commerce (40 CFR §372.3). Distribution in commerce includes any distributive activity in which benefit is gained by the transfer, even if there is not direct monetary gain. Toxic chemicals that are shipped from one facility to another facility under common ownership are considered to be distributed in commerce. Although the chemical in the product is not distributed to the general public, the preparing facility does derive economic benefit by transferring the toxic chemical, as both facilities are under common ownership. The amount of toxic chemical prepared at the facility must be counted towards the 25,000 pounds per year processing threshold. (**August 1996 Monthly Hotline Report**)

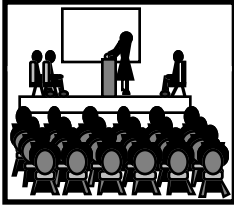
"EPCRA §313 Listing of Hydrochloric Acid"

Keywords:

Hydrochloric acid; toxic chemicals; toxics release inventory reporting

QUESTION: Hydrochloric acid, also known as hydrogen chloride (CAS number 7647-01-0) is a listed toxic chemical under EPCRA §313. Hydrochloric acid can exist in both aqueous solution and in a gaseous, anhydrous form. On July 25, 1996, EPA modified the listing of hydrochloric acid to include acid aerosols including mists, vapors, gas, fog and other airborne forms of any particle size (61 [FR](#) 38600). Does the modified listing of hydrochloric acid refer to both the aqueous and the anhydrous forms of this chemical?

ANSWER: Yes. The CAS number 7647-01-0 identifies both aqueous and anhydrous forms of hydrochloric acid. The listing modification also applies to both aqueous and anhydrous forms of hydrochloric acid. Beginning with the 1995 reporting year, an EPCRA §313-covered facility that manufactures, processes, or otherwise uses more than a threshold quantity of hydrochloric acid aerosols, either in aqueous or anhydrous forms, must submit a Form R or a Certification Statement for hydrochloric acid aerosols. (**August 1996 Monthly Hotline Report**)



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW (EPCRA)

Keywords:

Form R; toxic chemicals; toxics release inventory reporting

"EPCRA and RCRA-Empty"

QUESTION: An EPCRA §313 covered facility sends a 55-gallon drum containing less than one inch of a toxic chemical off site for disposal. For purposes of the RCRA hazardous waste regulations, the container is considered an empty container as defined in 40 CFR §261.7 (i.e., "RCRA-empty"). Must the facility report the toxic chemical contained in the RCRA-empty container as an off-site transfer for purposes of disposal on the Form R, even though it is not considered to contain hazardous waste under RCRA?

ANSWER: Yes. The definition of an empty container pursuant to 40 CFR §261.7 does not apply to EPCRA §313. Even though the residue remaining in a container rendered "RCRA-empty" is no longer considered a hazardous waste under the federal RCRA regulations, it is still considered a toxic chemical under EPCRA. The status of a toxic chemical as a nonhazardous waste under RCRA has no impact on the applicability of EPCRA regulations on that chemical.

Under EPCRA §313, the term "release" is defined as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any toxic chemical." In Section 8.1 of the Form R, EPA requires facilities to report all releases of toxic chemicals, except those quantities released to the environment as a result of remedial actions, catastrophic events, or one-time events not associated with production processes. Disposal of a "RCRA-empty" container which contains any amount of a toxic chemical is generally reportable in Section 8.1 when transferred from or disposed of at an EPCRA §313 covered facility. If, however, the facility has total reportable amounts of the chemical not exceeding 500 pounds, it may be eligible for the higher alternate reporting threshold in 40 CFR §327.27. **(February 1996 Monthly Hotline Report)**

"Facility Maintenance Exemption Under EPCRA §313"

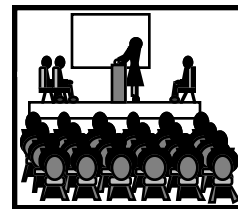
Keywords:

Exemptions; toxic chemicals; toxics release inventory reporting

QUESTION: An EPCRA §313 covered facility uses 55-gallon drums of paint containing a toxic chemical to paint lines on the roads and air strips on the facility's grounds. Paint is also used to maintain road signs and facility building signs. Would the toxic chemicals in the paint be exempt from EPCRA §313 reporting requirements under the facility grounds maintenance exemption found at 40 CFR §372.38(c)(2)?

ANSWER: The facility grounds maintenance exemption in 40 CFR §372.28(c)(2) applies to the use of products that are similar in type or concentration to consumer products used for routine janitorial or facility

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grounds maintenance. This exemption includes both individually packaged products (e.g., cans of paint) and substances in bulk containers (e.g., 55-gallon drums of paint). Therefore, if the paint in the drums used to maintain the roads and the signs is similar in type or concentration to consumer products, the toxic chemicals in the paint would be exempt from EPCRA §313 reporting requirements. **(February 1996 Monthly Hotline Report)**

"Reporting Evaporative Losses of Ammonia Under EPCRA §313"

Keywords:

Ammonia; Form R; threshold; toxic chemicals; toxics release inventory reporting

QUESTION: EPCRA §313 requires certain manufacturing and federal facilities to report annually on releases and transfers of toxic chemicals, and source reduction and recycling activities associated with those chemicals. A manufacturing facility subject to EPCRA §313 processes an aqueous ammonia solution from water-dissociable ammonium salts in tanks and open vats. Evaporative losses occur at several points during processing. Are these evaporative losses considered releases of aqueous ammonia or anhydrous ammonia for purposes of EPCRA §313 reporting?

ANSWER: Evaporation and drying losses from aqueous ammonia solutions result in the release of anhydrous ammonia, which is 100 percent reportable under the EPCRA §313 ammonia listing. Although EPA modified the ammonia listing on June 30, 1995 (60 FR 34172), the modification only limits the quantity of aqueous ammonia that is reportable. The modification does not apply to anhydrous ammonia, which remains 100 percent reportable. Facility owners or operators must still include all anhydrous ammonia manufactured, processed, or otherwise used at a covered facility in threshold determinations and release reporting. Anhydrous ammonia generated through the evaporation or drying of aqueous ammonia solutions derived from water-dissociable ammonium salts or other sources must be counted toward the applicable activity threshold. For example, if a facility processes aqueous ammonia, it has processed 100 percent of the aqueous ammonia in that solution. If the ammonia stays in solution, then 10 percent of the total aqueous ammonia is counted toward thresholds. If there are any evaporative losses of anhydrous ammonia, then 100 percent of those losses must be counted toward the processing threshold. If the manufacturing, processing, or otherwise use thresholds for the ammonia listing are exceeded, the facility must report 100 percent of these evaporative losses in Sections 5 and 8 of the Form R. **(April 1996 Monthly Hotline Report)**



CLEAN AIR ACT SECTION 112(r) (CAA)

Risk Management

Keywords:

Accidental release prevention; Clean Air Act; emergency planning; Risk Management Program

"Frequently Asked Questions on the CAA of §112(r) Requirements"

QUESTION: Who is subject to the accidental release prevention regulations under CAA §112(r)?

ANSWER: An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process is required to comply with the CAA §112(r) requirements (40 CFR §68.10). The applicable threshold quantities are listed in 40 CFR §68.115.

QUESTION: When must risk management plans (RMPs) be submitted?

ANSWER: For chemicals currently found on the list of regulated substances (40 CFR §68.130), compliance with 40 CFR Part 68 requirements, including submission of RMPs, is required by June 21, 1999, or the date on which a regulated substance is first present above a threshold quantity in a process (whichever is later). For substances subsequently added to the list, the due date for RMP submission will be three years after the date on which a regulated substance is added to the list (40 CFR §68.10).

QUESTION: Are there any industry-wide exemptions from the accidental release prevention provisions and risk management program regulations?

ANSWER: The only industry-wide exemption is for ammonia held by farmers for use as an agricultural nutrient (40 CFR §68.125). This exemption only applies to farmers as farmers and does not apply to other participants in the fertilizer industry. Otherwise, owners or operators of stationary sources are subject to the accidental release prevention requirements if any process at the stationary source contains a regulated substance in excess of the applicable threshold quantity (40 CFR §68.10).

QUESTION: A stationary source is subject to the Occupational Safety and Health Act (OSHA) process safety management (PSM) standard for chlorine. The stationary source does not, however, exceed the threshold for chlorine (or any other regulated substance) in a process under the risk management program regulations (40 CFR §68.130). Is the stationary source subject to the risk management requirements?

ANSWER: No. An owner or operator of a stationary source that is subject to the OSHA PSM standard is subject to the risk management program requirements only if he or she has more than a threshold quantity of a regulated substance in a process (40 CFR §68.10(a)). **(July 1996 Monthly Hotline Report)**



CLEAN AIR ACT SECTION 112(r) (CAA)

Keywords:

Clean Air Act; emergency planning; integrated contingency plan; National Response Team

"National Response Team's Integrated Contingency Plan Guidance"

QUESTION: A number of federal statutes and regulations require emergency response planning (e.g., risk management planning under the Clean Air Act §112(r), contingency planning under RCRA, and facility reponse planning under the Oil Pollution Act). On June 5, 1996, the National Response Team (NRT), published the Integrated Contingency Plan ("One Plan") Guidance (61 FR 28642), providing a mechanism by which a facility may consolidate multiple emergency response plans into one functional plan. Is a facility required to integrate its emergency response plans? Must a facility use the Integrated Contingency Plan (ICP) format specified in the guidance?

ANSWER: Adherence to the ICP guidance is not required, but the NRT believes that a single functional plan is preferable to multiple plans. The ICP is intended to streamline the emergency planning process of those facilities that may be subject to one or more federal emergency planning regulations (the ICP does not address state emergency planning requirements). While not affecting the substantive requirements of these federal regulations, the NRT developed a mechanism by which the components of the emergency plans may be incorporated into a single document.

The guidance provides a sample format for an ICP. The plan is divided into three parts: an introductory section, a core plan, and a series of supporting annexes. The steps necessary to initiate, conduct, and terminate an emergency response action are found in the core plan. The annexes provide detailed support information based on the procedures detailed in the core plan. Because the core plan is designed to provide only the most essential response steps, the core plan should frequently reference the annexes. The annexes may further reference other plans (e.g., area contingency plans under OPA, local emergency planning committee plans under EPCRA) to facilitate their integration with the facility's ICP. If a facility submits an ICP for review and approval by a federal agency, the plan should cross-reference existing emergency response regulatory requirements and their location in the plan.

Though the NRT's ICP guidance represents the federally preferred method of response planning, a facility is not required to implement the format outlined in the guidance. The NRT is aware that alternate formats exist and others will likely be developed; however, the NRT anticipates that future federal emergency response planning regulations will incorporate use of the ICP guidance. Additionally, developers of state and local requirements will be encouraged to be consistent with the ICP guidance. **(September 1996 Monthly Hotline Report)**

**CLEAN AIR ACT SECTION 112(r)
(CAA)**



"Relationship Between the Risk Management Program Rule and the Process Safety Management Standard"

Keywords:

Clean Air Act; emergency planning; OSHA; Risk Management Program

QUESTION: The Clean Air Act Amendments of 1990 (CAAA) mandated the Occupational Safety and Health Administration (OSHA) to develop a regulatory program to protect workers from the risk of accidents that involve hazardous chemicals. OSHA promulgated its Process Safety Management Standard (PSM) on February 24, 1992 (57 FR 6356), codified at 40 CFR §1910.119. The CAAA also mandated EPA to develop a regulatory program to reduce the risk of serious chemical accidents that could affect public health and the environment. In response, EPA promulgated its List Rule on January 31, 1994 (59 FR 4478), and its Risk Management Program Rule on June 20, 1996 (61 FR 31668), codified at 40 CFR Part 68. Would a stationary source that is in compliance with OSHA's PSM already be in compliance with EPA's Risk Management Program Rule?

ANSWER: A process that is subject to OSHA's PSM, unless it meets the criteria for Program 1 eligibility, will be subject to Program 3 requirements under EPA's Risk Management Program Rule. The prevention program requirements for Program 3 processes under 40 CFR §§68.65 through 68.87 are almost identical to the requirements of OSHA's PSM. Thus, a source owner or operator responsible for a process that is in compliance with OSHA's PSM should already be in compliance with the Program 3 prevention program requirements (61 FR 31687; June 20, 1996). The owner or operator of the stationary source would still need to develop a management system, conduct a hazard assessment, develop and implement an emergency response program, and submit a risk management plan. (October 1996 Monthly Hotline Report)