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

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 list of hazardous waste, and given the relative difference, would the thermometers be subject to hazardous waste regulation if reclaimed or discarded?

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(40 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 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.