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

FEB - 2 1998

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Dale L. Gable
State of West Virginia
Bureau of the Environment
Division of Environmental Protection
Office of Waste Management
2311 Ohio Avenue
Parkersburg, WV 26101-2537

Dear Mr. Gable:

Thank you for your letter of November 25, 1997 to Administrator Browner regarding the regulatory status of spills of nonlisted commercial chemical products that exhibit a characteristic of hazardous waste. Specifically, you inquired about the regulatory status of spills of gasoline on the ground surface at a gasoline storage facility. I apologize for the Agency's delay in responding to your original inquiry and hope that this reply satisfactorily addresses each of your questions.

If the gasoline is spilled and not promptly cleaned up, the Environmental Protection Agency (EPA) could consider the material to be a solid waste because it has been discarded by being abandoned (see 40 CFR §261.2(a)(2)). If the material that was spilled and abandoned exhibits a hazardous waste characteristic, disposal of a hazardous waste has occurred. The term "disposal" is defined in the Resource Conservation and Recovery Act (RCRA) statute in §1004(3). The spilled gasoline becomes a waste when it exits the unit, enters the environment, and is not promptly recovered or cleaned up. Under RCRA, the implementing agency could use enforcement authority to require the cleanup of the spill. The clean-up levels themselves would be established by the implementing agency on a site-specific basis. Note, if free product is recovered from a spill of gasoline, this material is potentially not a solid waste under RCRA if the material can be used as a commercial chemical product for its original intended purpose, or if the material is sent for reclamation.

For your information, I have also included a letter from J. Winston Porter to Fred Hansen, dated September 29, 1986 that addresses some of the same issues raised in your letter. This letter continues to reflect current Agency policy on spills of hazardous waste. Note, in the response to Question 2, we contemplated a situation where the Agency could determine that a spill not

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promptly cleaned up could be addressed as a land disposal unit. In practice, this approach is very rarely used and is solely at the discretion of the implementing agency. A determination that the spill area is a land disposal unit is not necessary to require cleanup of the spill.

In addition, as you are well aware, authorized states have their own regulations and policies that may be more stringent than federal regulations and policies. If you have any questions or require additional information, please call Michele Anders of my staff at (703) 308-8850.

Sincerely,

Timothy Fields, Jr.
Acting Assistant Administrator

Enclosures

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

SEP 29 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue, Box 1760
Portland, Oregon 97207

Dear Mr. Hansen:

Thank you for your August 21, 1986, letter regarding accidental spills of listed or characteristic hazardous wastes. Enclosed is the Agency's response to the eight questions and issues that you raised. Please note that we have referred one of your questions to the Superfund Office and will forward a response to you. I hope this clarifies the Environmental Protection Agency's regulation of spills and spill cleanups.

If I can be of further assistance, please let me know.

Sincerely,

J. Winston Porter
Assistant Administrator

Enclosure

1. Accidental spills of listed or characteristic hazardous wastes which are cleaned up within a reasonably short time.

The Resource Conservation and Recovery Act (RCRA) regulations in 40 CFR Parts 264 and 265 Subparts C and D require immediate actions to minimize hazards to human health and the environment from any unplanned, sudden or non-sudden releases of hazardous waste or hazardous constituents. Sections 264.1(g)(8) and 265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment and containment activities hazardous waste discharges and imminent and substantial threats of discharges (under §260.10 the term discharge includes both accidental and deliberate spills). The effect of this exemption is to promote hazardous waste discharge prevention and control by relieving persons engaged in immediate response to discharges and serious threats of discharges from time consuming requirements.

Under this exemption, treatment, storage and disposal facilities regulated under RCRA must continue to meet the applicable requirements of Subparts C and D of Parts 264 and 265. Treatment and containment activities conducted after the initial response period are subject to interim status and permitting standards. A facility may qualify for an emergency permit under §270.61 for such treatment and containment activities occuring after the immediate response period.

Accidental spills should be addressed immediately and in accordance with the facility's contingency plan. Sections 264.51 and 265.51 require owner/operators of treatment, storage and disposal facilities to have a contingency plan describing actions facility personnel must take in response to any unplanned sudden or non-sudden releases. Under section 262.34(a)(4), generators are also required to have such contingency plans as a condition of obtaining a permit exemption for 90 day on-site accumulation. Generators are subject to interim status and permitting requirements for treatment and containment activities conducted after the accumulation period.

2. Accidental spills not cleaned up within reasonably short time.

As stated above, treatment and containment activities conducted after the initial response period are subject to permitting and interim status requirements. In addition, if cleanup activities do not begin promptly, the spill is considered a land disposal site subject to permitting requirements.

The Environmental Protection Agency (EPA) has not established a definition of what constitutes an immediate response to a spill situation. The timeframes and extent of immediate response must be judged by persons responding to discharges on an individual basis. Extended responses which are not judged to be immediate in nature may result in: (1) a modification to the facility's contingency plan; (2) an enforcement action for an inadequate contingency plan or permit violation; or (3) enforcement action for illegal disposal.

3. Spills where cleanup requires on-site treatment.

As explained in the response to question #1, §264.1(g)(8) and §265.1(c)(11) provide a regulatory exemption from interim status and permitting standards for treatment activities conducted in immediate response to discharges or threats of discharges.

4. Transportation spills cleaned up within a reasonably short time.

§263.30 requires the transporter to take appropriate, immediate action to protect human health and the environment. Under §263.30(b), an authorized official may authorize removal of the spill by transporters without an EPA ID number or manifest in an emergency. When an emergency no longer exists, all applicable requirements of the RCRA regulations once again apply to all of the transporter's activities. The Department of Transportation has also issued rules regarding spills occurring during transport.

5. Transportation spills not cleaned up within a reasonably short tim

As discussed above, EPA has not established a definition of what constitutes an immediate response to a spill situation. The timeframes and extent of immediate response must be judged by persons responding to discharges on an individual basis. Extended responses which are not judged to be immediate in nature may be subject to enforcement action for illegal disposal.

1. When does a spill become a Superfund candidate versus cleanup under RCRA?

Question has been referred to our Superfund Office for response.

2. When does a spill become a facility as defined in RCRA?

As discussed above, if cleanup activities do not begin promptly, the spill is considered a land disposal site subject to permitting requirements. In addition, spill areas where hazardous waste is treated, disposed or stored past the immediate response phase are subject to all applicable interim status and permitting standards for hazardous waste management facilities receiving waste after 11/19/80 as outlined in Parts 264, 265 and 122.

3. Are there any situations where the cleanup standards are different than background?

RCRA regulations do not specifically identify a level of clean-up required in spill situations. Under §263.31, a transporter must clean up any hazardous waste discharge so that the discharge no longer presents a hazard to human health and the environment. Under the emergency procedures provisions of §264.51 and §265.51, generators, treatment, storage and disposal facilities must take those actions, as outlined in the contingency plan, necessary to minimize hazards to human health and the environment.

BUREAU OF THE ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
Office of Waste Management
2311 Ohio Avenue
Parkersburg, WV 26101-2537

Gaston Caperton
GOVERNOR

Laidley Eli McCoy
DIRECTOR

July 3, 1996

Stephen Bergman, Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Dear Mr. Bergman:

This letter is to request a written clarification of the regulatory status of spills of Non-Listed Commercial Chemical Products that exhibit a characteristic of hazardous waste. In the April 11, 1985 Federal Register (Vol. 50, No. 70, p. 14219), under "Regulatory Status of Non-Listed Commercial Chemical Products", the section states that "Although we do not directly address non-listed commercial chemical products in the rules, their status would be the same as those that are listed in § 261.33 -- That is, they are not considered solid wastes when recycled in ways except when they are recycled in ways that differ from their normal manner of use. This is the same relationship that exists between discarded commercial chemical products that are listed in § 261.33, and those that exhibit a characteristic of hazardous waste. We believe this point is implicit in the rules, as it is implicit in existing §§ 261.3 and 261.33".

For an example, a gasoline storage facility has had repeated spills of gasoline onto the ground surface. The facility made no attempts to either contain the spills or to remediate the spill areas. Gasoline has a flash point of as low as -50 degrees Fahrenheit and commonly exhibits a level of TCLP benzene far in excess of 0.5 mg\L. 40 CFR § 260.10 defines disposal as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters". Does a spill of gasoline (or other non-listed commercial chemical products that exhibit a characteristic of hazardous waste) onto the ground, constitute disposal of hazardous waste?

Under the definition of solid waste in 40 CFR § 261.2(a)(1), a solid waste is defined as any discarded material that is not excluded by § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31. A discarded material, defined under § 261.2(a)(2), is any material which is either abandoned; recycled; or inherently waste-like, as explained in paragraphs b, c and d of § 261.2. Materials are solid waste if they are abandoned by being disposed of. In addition, commercial chemical products listed in § 261.33 are solid wastes if they are applied to or placed on the land in a manner that constitutes disposal. Does the same status apply to non-listed commercial chemical products?

Under § 261.33 (Discarded commercial chemical products, off-specification species, container residues,

and spill residues thereof), all of the commercial chemical products having the generic chemical name listed in paragraph (e) or (f) of the section are hazardous wastes if and when they are discarded as described in § 261.2(a)(2)(i) -- (abandoned by being *disposed of*). Returning to the original example of gasoline spilled onto the land, assuming the product gasoline exhibits the hazardous characteristic of ignitibility and exceeds the TCLP benzene level of 0.5 mg\L, is the spill of this non-listed commercial chemical product regulated as a spill of hazardous waste, in the same manner as a spill of a commercial chemical product that is listed in § 261.33? At what point does the spilled gasoline become a hazardous waste; (1) when the material initially leaks from the storage tank, (2) when the gasoline makes contact with the ground or (3) when the gasoline spill becomes absorbed by and mixed with the soil?

The final question that I will pose to you is this: If a spill of a non-listed commercial chemical product that exhibits a characteristic of hazardous waste is, in fact, a disposal of a hazardous waste, and no containment or treatment activities were initiated by the generator of the spill, is this not an activity that requires a RCRA permit? Would the facility causing the spill be subject to all of the applicable requirements of Parts 264, 265 and 270 of 40 CFR? If you have any additional questions, please feel free to call be at 304-420-4635. Thank you for your assistance.

Sincerely yours,

Dale L. Gable

Dale L. Gable
Environmental Inspector
Compliance Monitoring and Enforcement