

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 261**

[FRL 2664-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule and denial of rulemaking petition.

SUMMARY: The Environmental Protection Agency (EPA) is today amending the hazardous waste management regulations under the Resource Conservation and Recovery Act of 1976 (RCRA), by expanding the household waste exclusion to include wastes from bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. The Agency is also publishing its denial of a rulemaking petition, by the American Retail Federation, to exempt from RCRA regulation wastes from "consumer-household products" which have left manufacturer control. This action is in response to petitions submitted by the U.S. Department of Agriculture, the U.S. Department of the Interior, and the American Retail Federation.

DATES: Final rule effective May 13, 1985.
DRESSES: The public docket for this final rule is in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 and available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, including legal holidays.

FOR FURTHER INFORMATION CONTACT: EPA Hotline, toll free at (800) 424-9346 in Washington, D.C. at 382-3000. For technical information, contact Susan Comm, Office of Solid Waste (WH-101B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:**Background**

The regulations implementing the hazardous waste management system under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, are published in the 40 of the Code of Federal Regulations (CFR) in Parts 260 to 265, 271, and 274. These regulations include a list of solid wastes which are defined as hazardous wastes and which are not subject to the Subtitle C requirements. Included in this list of exclusions is "household waste" (40 CFR 261.4(b)(1)). In the Federal Register

of May 19, 1980 (45 FR 33120), the Agency characterized this provision as an exclusion of a waste stream—namely "household waste"—when generated by consumers. EPA excluded household wastes because the legislative history of RCRA indicated an intent to exclude such wastes, though *not* because they necessarily pose no hazard (see Senate Report No. 94-988, 94th Cong., 2d Sess., at 16 (1976)). Since the wastes generated at hotels and motels are essentially the same as those generated by consumers in their households, EPA decided that such wastes should also be within the exclusion. In response to comments to its original proposal of the hazardous waste regulations, EPA also indicated that Federal agencies could not, as a class, qualify as households. Therefore, the regulations as promulgated did not categorically exclude Federally owned facilities from regulation under this provision (see 45 FR 33099, May 19, 1980).

II. Reason and Basis for Today's Amendment

The Agency received three rulemaking petitions concerning this exclusion. In their petitions, the U.S. Department of Agriculture and the U.S. Department of the Interior requested that EPA expand the existing household waste exclusion to include "household type wastes" generated at federally owned campgrounds, picnic grounds, and administrative sites. The petitioners claimed that wastes generated from these types of Federal facilities are essentially the same as those generated by consumers in their households, and those generated by hotels and motels. In its petition, the American Retail Federation (ARF) requested that EPA exempt "consumer-household products" which have left manufacturer control, whether in the hands of households, retailers, transporters, or landfill operators.

On February 15, 1983, EPA responded by proposing to (1) amend the household waste exclusion to expressly include wastes generated at bunkhouses, ranger stations, crew quarters, campgrounds, and picnic grounds in response to the petitions from the Departments of Agriculture and Interior; and (2) deny ARF's petition. In the proposal, EPA explained that, based on legislative history, it was appropriate to apply two criteria to define the scope of the exclusion. First, the waste must be generated by individuals on the premises of a temporary or permanent residence for individuals; that is, a household. Second, the waste stream must be composed primarily of materials found in the wastes generated

by consumers in their homes. In EPA's view, a waste stream satisfying both criteria is a household waste for regulatory purposes. Under these criteria, ownership of the source (*i.e.*, Federal vs. non-Federal) does not determine whether the source is covered by the "household waste exemption."

Since bunkhouses (relatively permanent multiple residences), ranger stations (relatively permanent single residences), and campgrounds and picnic grounds (temporary residences) all generate wastes similar to wastes generated by consumers in their homes, EPA proposed to add these facilities to the household waste exclusion. Likewise, single and multiple residences on military installations generate wastes similar to those generated by consumers in their homes, so EPA proposed to exclude them as well.

In contrast, waste from establishments such as retail stores, office buildings, restaurants, and shopping centers do not meet the two criteria: They do not serve as temporary or permanent residences for individuals, and the waste generated at these establishments are not necessarily similar to wastes generated by consumers in their homes. Therefore, EPA proposed that ARF's petition be denied.

III. Final Rule and Denial of Petition for Rulemaking

EPA received five comments on the proposed rule and tentative determination. After carefully considering these comments, EPA has decided to promulgate the amendments to the household waste exclusion as they were proposed (with one addition) and to deny ARF's petition. The basis for the Agency's action is explained in Sections II and IV of this preamble and in the February 15, 1983, proposal.

In addition, in the course of developing this final regulation, EPA has determined that there is no basis for extending the household waste exclusion to wastes such as debris produced during building construction, renovation, or demolition in houses, or other residences, as EPA does not consider wastes from these sources to be similar to those generated by a consumer in the home in the course of daily living. Therefore, such wastes must be evaluated on the same basis as all other solid wastes which, if found to be hazardous, are subject to the hazardous waste regulations (or to the small quantity generator exclusion, if applicable).

IV Major Comments on Proposed Rule and Tentative Response

EPA received five comments on this proposal, four of which favored the proposal. A commenter suggested that EPA amend the wording of the household waste exclusion to include "day-use recreation areas." This term would refer to all types of recreation areas (such as fishing, access areas, hunting, access areas, boat launching areas, off-road vehicle areas, swimming areas, trail systems, field sports areas, swimming pools, golf courses, and tennis courts). The commenter's rationale is that areas such as these contain sanitary facilities which generate "household waste" (garbage, trash, and sanitary wastes in septic tanks). We agree with this suggestion, since it meets the two criteria which form the basis of this amendment. Thus, we are amending the final rule to exclude any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and *day-use recreation areas* (emphasis added).

One commenter suggested that EPA amend the rule to state that the exclusion does not apply to hazardous waste from maintenance and construction facilities often associated with parks, campgrounds, stations, etc. Although EPA believes it is not appropriate to attempt to specify in the rule itself what is *not* covered by the exclusions, it is clear that the exclusion only extends to those areas of administrative sites serving as temporary or permanent residences and not to any non-residential areas of such facilities as these areas do not meet either of the two criteria, namely they are neither residences nor do they necessarily generate consumer type household wastes. Another commenter suggested that the Agency modify the exclusion to cover field offices and work centers where "normal household products are used to maintain the facility." EPA does not believe such an extension of the exclusion is appropriate because such offices and centers do not serve as residences, and thus do not qualify for this exclusion.

One commenter disagreed with EPA's proposal to deny the ARF petition. This commenter stated that the household waste exclusion should apply to "consumer-household product" wastes of any origin because they feel that EPA has not established that such wastes could pose a threat to human health and the environment. In identifying

hazardous wastes through listings and characteristics, EPA does meet its burden to establish that such wastes can pose potential hazards to human health and the environment. EPA certainly has no basis to claim that "consumer household product" wastes can never pose the risks associated with hazardous wastes. In exempting "household wastes" EPA is not attempting to pass judgment on the health and environmental risks associated with those wastes. Instead EPA is simply honoring Congressional interest that wastes generated by consumers *in their households* be exempt from the Subtitle C regulation. Since "consumer household product wastes" are not generated by households, they do not qualify for the exemption.

The commenter also stated that, although some retailers are small quantity generators entitled to the small quantity generator exemption, they need to obtain a thorough understanding of the hazardous waste regulations to know whether they are small quantity generators. The commenter stated that the need to obtain this knowledge is excessively burdensome to the small business owner. This is a problem associated with RCRA implementation in general, and therefore does not justify excluding these particular wastes from regulation. In response to the general concern about the amount and extent of the small quantity generator waste, EPA is studying this issue and recognizes the need for an education program to accompany any new regulation of small quantity generators.

V Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This final regulation is not a major rule because it will not result in an effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are

available for public inspection in Room S-212 at EPA Headquarters.

VI. State Authority

A. Applicability in Authorized States

Under section 3036 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous wastes and the operation of facilities that treat, store, or dispose of hazardous waste in containers, tanks, piles, surface impoundments, land treatment facilities, landfills and incinerators.

Today's announcement promulgates standards for certain hazardous wastes under the Federal hazardous waste management program. Upon authorization of the State program, EPA suspends operation within the State of those parts of the Federal program for which the State is authorized. Therefore, today's promulgation would be applicable only in those States which have not been granted authorization.

B. Effect on State Authorization

States which have been granted final authorization will have to revise their programs, in accordance with 40 CFR 271.21, to cover those requirements in today's announcement which are more stringent or broader in scope than the States' current requirements. Generally, these authorized State programs must be revised within one year of the date of promulgation of these standards, or within two years if the State must amend or enact a statute in order to make the required revision. (See the amendment to 40 CFR 271.21 published in the May 22, 1984, Federal Register at 49 FR 21678-21682.) States need not revise their programs to accommodate Federal requirements which are less stringent than their extant program requirements.

EPA does not consider conforming revisions to this part of an authorized State program to be "substantial" under 40 CFR 271.21(b). The Agency believes that revisions to existing analogues in authorized States would not constitute a major change in the authorized program which warrants public review, since the impact and extent of this change is limited (*i.e.*, only one relatively small element of the State program would be revised). EPA does not consider this

promulgation to increase the stringency or scope of the Federal program; therefore, States need not make conforming revisions to their programs, although they are free to do so.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will generally have no adverse economic impact on small entities. Rather, it will reduce the population affected by EPA's hazardous waste management regulations, some of whom are small entities, and thus reduce the overall costs of these regulations. The denial of the American Retail Federation's petition means that the status of retailers and subsequent handlers of their wastes has not

changed. Therefore, if retailers generate hazardous wastes, they will either remain subject to the small quantity generator exclusion or, if they exceed the small quantity exclusion limits, they will be subject to full RCRA Subtitle C regulation. Since this amendment does not change the status quo for such entities, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

IX. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: November 1, 1984.
William D. Ruckelshaus,
Administrator.

PART 261—[AMENDED]

For the reasons set out in the

preamble, 40 CFR Part 261 is amended as follows:

1. The authority citations for Part 261 reads as follows:

Authority: Secs. 1008, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. 40 CFR 261.4 is amended by revising paragraph (b)(1) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (*e.g.*, refuse-derived fuel), or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

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