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40 CFR Parts 261 and 266

Hazardous Waste Management System; Definition of Solid Waste; Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections to the Definition of Solid Waste Final Rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. EPA issued technical corrections to this rule on April 11, 1985. Since that time, EPA has identified several other provisions that require technical correction or clarification. This notice makes these changes and modifies the previous publication accordingly.

EFFECTIVE DATE: These corrections become effective on August 20, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information contact Matthew A. Straus, Office of Solid Waste [WH-5628], U.S. Environmental Protection Agency, 401 M St. SE, Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

I. Technical Corrections to Rule

A. Interim Exemption for Hazardous Waste-Derived Fuels Produced From Wastes From Petroleum Refining, Production, or Transportation

On January 4, 1985, EPA amended its existing definition of solid waste. 50 FR 614. This rulemaking defined which materials being recycled (or held for recycling) are solid wastes. EPA promulgated certain technical amendments to these rules on April 11, 1985. 50 FR 14216. One of these corrections concerned the regulatory status of hazardous waste-derived fuels produced from oil-bearing hazardous wastes from petroleum refining, production, and transportation. The technical amendment clarified that such fuels are presently exempt from regulation, pending a substantive decision as to whether regulation is necessary to protect human health and the environment. See 50 FR 14216; also see 50 FR 26389, June 26, 1985, likewise stating that such fuels are presently exempt from regulation.

There is a drafting error in the April 11 technical rule, however, in that the interim exemption was placed in § 261.30 of the regulations. This provision applies to hazardous waste fuels burned in boilers or industrial furnaces; thus, the interim exemption would appear to apply only when the hazardous waste-derived fuel from petroleum refining is to be burned in these types of devices. But fuels can be burned in other devices—in certain space heaters or engines not of integral design, for example—and the Agency intended that these hazardous waste-derived fuels be exempt without regard for the type of unit in which they are burned. We consequently are placing the interim exemption in § 261.30(a)(3), which provision exempts recyclable materials from regulation. These particular hazardous waste's fuels thus are presently exempt from regulative... without regard for the nature of the device in which they are burned.

This exemption is also applicable to oil reclaimed from petroleum refining hazardous wastes prior to incineration or reinsertion into the petroleum refining process (and, as already stated in the preceding paragraph, to fuels resulting from refining of the reclaimed oil). Such reclaimed oil, i.e., oil reclaimed from petroleum refining hazardous waste, is not presently subject to regulation. This leaves in place the regulatory scheme of the May 19, 1980 rules, whereby such reclaimed oil is exempt from regulation. See 50 FR 6475. The Agency is determining if and how to regulate such reclaimed oil as part of the rulemaking on hazardous waste fuels proposed on January 11, 1985. See 50 FR 1694.

There are two further points of clarification. As drafted in the April 11 notice, the interim exemption applied to all fuels exempt from the labeling requirements of RCRA section 3004(r). Section 3004(r) applies to hazardous waste-derived fuels produced from, or otherwise containing, oil-bearing hazardous wastes from petroleum refining, production, and transportation that are reintroduced into particular parts of the petroleum refining process. Questions have been raised about the precise scope of some of the terms in section 3004(r). On reflection, EPA does not believe it necessary to refer to section 3004(r) for purposes of its intent to provide an interim exemption. Consequently, we are revising the interim exemption to refer to fuels from petroleum refining that include as ingredients (i.e., that are produced from or otherwise contain) oil-bearing hazardous wastes from normal petroleum refining, production, or transportation practices. We note that these hazardous wastes can be generated off-site, and the resulting fuels are covered by the interim exemption. (Cf. section 3004(r)(3) which also is not limited to wastes generated on-site.) We also note, as we did on April 11 (50 FR at 14218/2), that these wastes must be indigenous to the petroleum refining, production, or transportation process, and so would not include such wastes as spent pesticides.

Second, certain persons have raised the question of whether there is any regulatory distinction between fuels "produced from" hazardous waste and those "containing" hazardous waste, as these terms are used in amended 40 CFR 261.2(c)(2) (B) and (C). The Agency intends no such distinction. Nor did the Congress. See RCRA amended section 3004(q), noting that hazardous waste fuels are those produced from hazardous waste, or that "otherwise contains" hazardous waste (emphasis added). Fuels produced from hazardous waste thus are a subset of the class of fuels containing hazardous waste. EPA's amended definition of secondary materials that are wastes when burned for energy recovery is coextensive with this statutory provision. 50 FR 630 (January 4, 1985). The Agency also stated repeatedly in the preamble to the amended definition of solid waste that it claimed authority over all hazardous waste-derived fuels, without regard for how they are generated. Thus, EPA indicated that any fuels that "include hazardous wastes as ingredients" are themselves wastes; that any fuels "derived from these [hazardous] wastes [are] defined as solid wastes"; and that when hazardous wastes are "incorporated into fuels...fuels containing these wastes...remain solid wastes." 50 FR n.43, 820/3, and 836/1. Consequently, when a person uses a hazardous waste as a component in the fuel process, the output of the process is defined as a waste (assuming listed wastes are involved, or that the waste-derived fuel exhibits a hazardous waste characteristic). (The question of if and how to regulate such wastes remains for future rulemakings.)

The Agency also notes that these same principles apply with respect to waste-derived products that are used in a manner constituting disposal—they are wastes when a hazardous waste is used as a component of the process that produces them. See, e.g., 50 FR 627-628 (rejecting a standard based on simple mixing) and amended § 268.20(b) (EPA has jurisdiction over hazardous waste-derived products even where incorporated wastes have been
chemically reacted and are not separable by physical means).

In order to eliminate any possible uncertainty on this point, however, the Agency has decided to revise the language of § 261.2(c)(1) (use constituting disposal) and (c)(2) (burning for energy recovery) to recite the language from the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus, (a) hazardous secondary materials used to produce a fuel or used to produce a material that is applied to the land are defined as wastes; and (b) hazardous secondary materials otherwise contained in such waste-derived products are defined as wastes.

In both cases, the waste-derived product is defined as a waste (assuming it too is hazardous as provided in § 261.3) and is potentially subject to regulation under Subtitle C of RCRA.

3. Interim Exemption for Hazardous Waste-Derived Fuels From Iron and Steel Production

On April 11, 1985, EPA also clarified that hazardous waste-derived coke from the iron and steel industry is not subject to regulation when the only hazardous wastes used in the coke-making process and from iron and steel production. This interim exemption was also placed in § 266.30(b) and so is limited by the type of unit in which the waste-derived coke is burned. To avoid any unintended limitation on the scope of this interim exemption, we are now placing it in § 261.6(a)(3).

2. Regulation of the Process of Recycling

EPA stated in the preamble to the final rule that EPA does not presently regulate the actual process of recycling with the exception of certain uses (constituting disposal), only the storage, transport, and generation that precede 40 CFR 642/1. The Agency included this thought in §§ 261.6(c)(2) and 268.35 of the regulations, but forgot to include it in § 261.6(c)(1). We consequently are amending § 261.6(c)(1) to state that the enumerated requirements only apply to recyclable materials stored before they are recycled.

D. Correction to Subpart G of Part 266

Subpart G of Part 266 contains rules for spent lead-acid batteries being reclaimed. Due to a typographical error, this provision was misnumbered as § 266.30. The correct numbering is § 266.80. Today's notice corrects this error.

E. Clarification of Part A Permit Requirements

In the April 11, 1985 notice, EPA indicated that facilities located in States which do not have finally authorized or interim authorized permit programs need to submit new or amended Part A permit applications to EPA by July 5, 1985. 50 FR 14217/3. Although accurate for States without any EPA authorization, this statement was not correct with respect to Phase I interim authorized States. If a State has any form of authorization, its universe of wastes (as approved by EPA) defines the universe of RCRA regulated entities within the State. Program Implementation Guidance 82–1, November 20, 1981. Thus, a person managing a waste that is not yet part of such an authorized State's universe of hazardous waste is not presently required to submit a Part A application. The new or amended application would have to be submitted when the State's universe of wastes has been amended to reflect changes to Part 261 and has been authorized by EPA.

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice simply makes typographical and technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis was conducted.

List of Subjects in 40 CFR Parts 261 and 266

Hazardous wastes, Recycling.


Allyn M. Davis,
Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority section for Part 261 continues to read as follows:


2. In § 261.2(c)(1)(i), paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

(c) * * *

(i) * * *

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

* * * * *

3. In § 261.2(c)(2)(i), paragraph (C) is removed and paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

(c) * * *

(2) * * *

(i) * * *

(B) Used to produce a fuel or other product that is otherwise contained in a fuel (in which case the fuel itself remains a solid waste).

* * * * *

4. In § 261.6(a)(3), paragraphs (v), (vi), and (vii) are added to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(v) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(vii) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

* * * * *

5. In § 261.6(c) paragraph (1) is amended to read as follows:

§ 261.6 Requirements for recyclable materials.

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this Chapter and the notification requirement under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

* * * *
6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1008, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6922(a), and 6924).

7. Section 266.30(b) is amended by deleting paragraphs (b)(3) and (b)(4).

8. FR Doc. 85-3 published in the Federal Register of January 4, 1985 (50 FR 614), is corrected by changing the section number 266.30 under Subpart C to 266.80 on page 667.

40 CFR Part 799

Identification of Specific Chemical Substance and Mixture Testing Requirement; Diethylenetriamine

Correction

In FR Doc. 85-1242, beginning on page 21398, as Part III, in the issue of Thursday, May 23, 1985, make the following correction:

On page 21412, second column, § 799.1575(c)(2)(i)(C), the fifth line should have read: “section or in the in vivo cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produces a positive result.”

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

Modification of Footnote US275 to the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission amends Parts 2 and 97 of its Rules to prohibit secondary amateur operations in the 902–928 MHz band in the White Sands Missile Range. This action will provide protection to essential primary radiolocation and control operations at White Sands Missile Range.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by revising the text of footnote US275 as follows:

US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific and medical (ISM) devices, AVM systems and


2 See Report and Order in FR Docket No. 84-660 FCC 85-460 (adopted August 9, 1985).