

US EPA ARCHIVE DOCUMENT

Inert ingredients	Limits	Uses
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance

[FR Doc. 94-3760 Filed 2-22-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 266

[SW-FRL-4841-3]

Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today proposing to amend § 266.20, which contains provisions for conditionally exempting hazardous waste-derived products used in a manner constituting disposal (i.e., applied to or placed on land) from the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. Specifically, the Agency is proposing to amend § 266.20 so that non-encapsulated uses of slag residues produced from high temperature metal recovery (HTMR) treatment of electric arc furnace dust (EPA Hazardous Waste No. K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations. This action is being taken to partially implement a settlement agreement entered into by the Agency on August 13, 1993 with the Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC). If today's proposed rule is finalized, non-encapsulated uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, will be prohibited unless there is compliance with all Subtitle C standards applicable to land disposal. This rule would not prohibit encapsulated uses of wastes that meet § 266.20 requirements. The rule also would not prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). The Agency is currently assessing and also seeks comments on whether the necessary data are available

to establish risk-based generic exclusion levels for HTMR slags used in non-encapsulated manner.

DATES: EPA is requesting public comments on today's proposed rule and criteria used for defining non-encapsulated uses. Comments must be submitted by March 25, 1994. Since the Agency has entered into a settlement agreement to promulgate this rule by August 12, 1994, no extension to the comment period will be granted.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-94-SSHP-FFFFF, room 2616 (Mail Code 5305), 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. A maximum of 100 pages may be copied at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION, CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For specific questions concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (202) 260-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing Regulations for Hazardous Wastes Used in a Manner Constituting Disposal

Currently, hazardous wastes that are used in a manner constituting disposal (applied to or placed on land), as well as waste-derived products that are produced in whole or in part from hazardous wastes and used in a manner constituting disposal, are not subject to hazardous waste disposal regulations provided the products produced meet two conditions. First, the hazardous wastes must undergo a chemical reaction in the course of becoming products so as to be inseparable by physical means (see § 266.20(b)). A second condition for exemption is that the waste-derived products must meet best demonstrated available technology (BDAT) treatment standards under the

land disposal restrictions program for every prohibited hazardous waste that they contain before they are placed on land (see § 266.20(b)). Note that hazardous waste-derived fertilizers that utilize hazardous waste K061 as a source of zinc are exempt from regulation without complying with either of these two conditions (see also § 266.20(b)).

The exemption in § 266.20 is used for residuals ("slag") generated from the treatment of hazardous waste K061 (and, to a limited extent, F006) using high temperature metal recovery (HTMR) processes. Section 266.20 is applicable because the majority of this slag is used in highway construction materials (e.g., as road-base), and a limited amount is also used by directly applying it to road surfaces (i.e., as an anti-skid or deicing agent). (See 56 FR 15020, April 12, 1991.)

On August 18, 1992 (see 57 FR 37194), the Agency finalized a generic exclusion for nonwastewater slag residues generated from the HTMR treatment of several metal-bearing hazardous wastes (K061, K062, and F006). This rule expanded a generic exclusion EPA originally published that applied only to HTMR slag from K061 (see 56 FR 41164, August 19, 1991) to include slags from F006 and K062. These HTMR slag residues (i.e., from K061, K062, and F006) are currently excluded from the hazardous waste regulations provided they meet designated concentration levels for 13 metals, are disposed of in subtitle D units, and exhibit no characteristics of hazardous waste (see § 261.3(c)(2)).

The generic exclusion levels for the metals were based on the use of the EPA Composite Model for Landfills (EPACML), which predicts the potential for groundwater contamination from wastes that are placed in a landfill. The Agency limited the generic exclusion to residues disposed of in a Subtitle D unit because it could not properly evaluate concerns over potential releases to other media resulting from uses of the HTMR slag as product, especially as an anti-skid material on road surfaces. In the original rule proposing the generic exclusion for K061 HTMR slag (see 56 FR 15020, April 12, 1991), the Agency solicited comment to identify other significant routes of exposure for product uses of the slag. The rule

specifically sought suggestions for methods to evaluate exposures from the use of the slag as anti-skid material. Although EPA received comments concerning possible risks from road uses, no useful data, methods, or models were submitted to assist the Agency in evaluating exposures from releases to media other than groundwater.

As the Agency noted in the final rule for the initial generic exclusion for K061 residues (see 56 FR 41164, August 19, 1991), the use of HTMR residues as anti-skid material was not prohibited, provided the residue meets the exemption conditions given in § 266.20. The Agency also noted in the same notice that it would further evaluate the uses of K061 HTMR residues that constitute disposal, and would consider amendments to § 266.20 for HTMR slags that might require further controls on such uses.

B. Summary of Petition and Settlement Agreement

The Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC), collectively "NRDC Petitioners", filed a petition for review challenging EPA's decision not to apply "generic exclusion levels"—levels at which K061 slags are deemed nonhazardous—to K061 slags used as waste-derived "products" and applied to or placed on land. The generic exclusion levels established for some metals in the K061 HTMR slags are lower than the BDAT standards that apply to K061. Therefore, while the generic exclusion requires that the nonhazardous K061 slag that meets exclusion levels be disposed of in a Subtitle D unit, K061 HTMR slag that may exhibit metal levels above the exclusion levels (but below BDAT) may be used as a product in a manner constituting disposal under the exemption in § 266.20(b). The petitioners pointed out the anomaly of the slag used in an uncontrolled manner being effectively subject to lesser standards than slag disposed in a controlled landfill.

On August 13, 1993, EPA entered into a settlement agreement with NRDC Petitioners which would address their concerns through two separate notice-and-comment rulemakings. EPA agreed to propose the first rule within 6 months of the settlement date (and issue a final rule within 12 months) to either establish generic exclusion levels for "non-encapsulated" uses of K061 slags, or effectively prohibit such uses of K061 slags on the land. EPA also agreed to propose a second rule within 16 months of the settlement date (and issue a final rule within 28 months), to establish

generic exclusion levels for encapsulated uses of K061 slags on the land. The agreement specified that the generic exclusion levels for K061 slags will be based on an evaluation of the potential risks to human health and the environment from the use of K061 slags as waste-derived products, taking into account all relevant pathways of exposure.

II. Proposed Decision

This rule proposes to prohibit non-encapsulated uses of products derived from hazardous HTMR slags (K061, K062, and F006), if these products are used in a manner constituting disposal. The term "non-encapsulated" use is being defined in this rule as a use in which: the material is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment. The uses of HTMR residues on roads as anti-skid or deicing materials are considered to be non-encapsulated product uses.

Accordingly, the Agency is proposing to amend the existing regulations under § 266.20 that conditionally exempt hazardous waste-derived products used in a manner constituting disposal from RCRA Subtitle C regulations to reflect this change. The language of § 266.20 would be revised to prohibit non-encapsulated uses of products derived from hazardous HTMR slags, unless they comply with all of the applicable Subtitle C standards (*i.e.*, permitting, minimum technology standards for land disposal units, financial responsibility, etc.). Since these requirements cannot realistically be met by entities that would use the HTMR slag in a non-encapsulated fashion (*i.e.*, entities are unlikely to seek land disposal permits for the placement of deicing materials on roads), the Agency is effectively proposing to prohibit non-encapsulated uses of the slags.

The Agency is proposing this action for the following reasons. First, non-encapsulated uses of HTMR slags may pose potential risk to human health and the environment, and this risk may be greater for non-encapsulated uses than for any other disposition of the slags. This is because the slags contain significant total concentrations of toxic metals of concern. For example, the concentrations of lead in the slags are typically in the range of 1000–2000 parts per million (ppm) and concentrations of chromium can approach 1000 ppm. (See data from the BDAT Background Document for K061 slag in the RCRA public docket for today's rule.) These slags may also potentially leach metals at levels that

would require regulation under subtitle C (*i.e.*, at levels greater than the generic exclusion levels in § 261.3(c)(2)).

Second, non-encapsulated uses of the slags may be viewed as uncontrolled disposition of the material. Thus, this may lead to many potential exposure pathways for the waste, not just those the Agency previously evaluated in assessing this wastes' hazardiousness. The major non-encapsulated use of K061 slag is as an anti-skid material on road surfaces. This involves spreading the material on road surfaces during icy or snowy conditions to provide traction for vehicles (see comments from Horsehead Resource Development Company on April 12, 1991 proposal). Although the K061-derived slag as applied to the road surface is initially relatively coarse, the wear caused by vehicular traffic will break down the slag into finer particles. These particles may then be dispersed through particulate releases to the air, or to surface and ground water by run-off during precipitation or melting ice/snow. Some commenters were concerned about potential exposure to metals in the K061 slag through inhalation of air releases and ingestion of nearby contaminated soils, concerns the Agency shares. Without a more detailed assessment of the risks posed by such non-encapsulated uses, the Agency believes it is appropriate to prohibit these uses at this time.

Third, these potential risks are ones that are very difficult for the Agency to evaluate with certainty with available methodology, particularly given the current lack of data the Agency has on non-encapsulated uses of the slags and the tight timeframe for this rule. Because of this, some of the potential exposure pathways, such as ingestion, inhalation or surface water runoff pathways, cannot be readily evaluated. Additionally, commenters to the August 19, 1991 rulemaking did not provide any reliable means for assessing the risks posed by non-encapsulated uses of these slags. (See 56 FR 41172.)

The Agency is again soliciting information that may be used to estimate potential risks for non-encapsulated uses of HTMR slag and the likely exposure pathways of greatest concern. When used as an anti-skid agent, HTMR materials could accumulate on the road surface and travel to nearby receptors. Particulates could be inhaled by people downwind or transported in the air and deposited on land or water bodies. Storms can also wash HTMR materials to the roadside. At the edge of the road, constituents in the slags could either travel overland to water bodies or percolate into the

ground and reach the groundwater. Ingestion of contaminated soil could occur either from the deposition of HTMR slag particulates or from highway run-off. The Agency requests comment on other potentially significant exposure pathways.

Although there are techniques that may be used to estimate pollutant loadings from roads, these techniques would have to be tailored to the characteristics of non-encapsulated uses of HTMR slags. The following paragraphs describe potential approaches to estimate the risks from these pathways and the data or assumptions necessary to construct estimates of potential risks.

Airborne Particulates

With the appropriate data, the Agency believes it is possible to estimate the rate at which particulates become airborne from road surfaces. Critical parameters include the traffic volume, the mean vehicle speed, the type of road surface (e.g., unpaved or paved), particle density, and particulate size. The Agency believes that HTMR slags are most likely to be applied as an anti-skid agent on paved roads. Many State transportation departments have traffic volume estimates for most significant roads in their jurisdiction which could be used to estimate particulate generation rates. The Agency does not have adequate data regarding the distribution of particle size in HTMR anti-skid material or how that distribution could change after weathering and vehicular traffic.

Another critical parameter is the frequency at which HTMR slags would be applied to roads as a de-icing agent. The Agency does not have direct measurements of application rates of HTMR materials as de-icing agents. In 1981, the Federal Highway Administration (FHWA) reported that application rates of de-icing salt ranged from 400 to 1200 pounds per mile of two-lane road. The Agency requests comment on whether HTMR materials would be applied at rates comparable to that of de-icing salt or other compounds.

Run-off

Modeling pollutants in run-off from road surfaces requires estimating rainfall and run-off rates, accumulation rates of pollutants on the road surface, pollutant wash-off during run-off, and constituent loading at potential receptors. While the Agency often relies on standard techniques to predict rainfall and run-off (e.g., see docket for approach used to estimate soil run-off in USDA Handbook, No. 282, 1978), accumulation of HTMR slags will

depend on the application rates. The FHWA has also developed an approach that relates pollutant accumulation with traffic volume. Combining the FHWA techniques and the loading rates discussed above would yield an estimate of total accumulation of a constituent on a road surface. The FHWA also has estimated pollutant wash-off rates for various types of road surfaces, including rural roads with flush, unpaved shoulders. The Agency requests comment on this approach to estimate run-off rates and pollutant loadings.

Once run-off reaches the side of a road, it can either flow along natural contours or be channeled by engineering controls. Many roads are constructed with catch basins, swales, or other structures designed to control water and sediment flow. (See docket for examples from Chapter 11 in Highway Engineering, by Oglesby and Hicks, 1982.) Engineered barriers may significantly retard or block the flow of constituents of concern from reaching receptors adjacent to the road or from nearby water bodies. The Agency requests comment on the prevalence and effectiveness of these controls.

Groundwater

If HTMR Materials accumulate on a road surface, the paving will likely block any leaching of constituents from the materials into the subsurface. However, if run-off transports the material off the road, constituents could leach into the subsurface. The Agency requests comments on how to estimate the flux rate of metals from the HTMR slag into the subsurface.

The Agency would need adequate estimates of the above key parameters (particulate generation, run-off, and leaching rate), in order to apply fate and transport models to estimate potential concentrations at receptors. EPA also has limited information as to where HTMR residuals are applied as an anti-skid agent, and what potential receptors could be exposed. Further, were the Agency to develop generic exclusion levels for non-encapsulated uses, EPA would need to ensure that these levels would be protective in a wide range of potential settings. Therefore, the Agency requests data on likely receptor points (e.g., water bodies, residences) that would be affected by non-encapsulated uses of HTMR slag, and what, if any, exposure assumptions the Agency could use to ensure an appropriate level of protection.

The Agency's present evaluation is that non-encapsulated uses of the slags may pose potential risks to human health and the environment that may

warrant control, and that the Agency lacks the necessary information and time for assuring that these non-encapsulated uses are safe. If the Agency were to receive sufficient data that would allow EPA to carry out a more complete evaluation of non-encapsulated uses, EPA will reconsider its present decision to effectively prohibit non-encapsulated uses of HTMR slag. However, EPA does not anticipate being able to complete the evaluation of any new data and assess the risks posed by non-encapsulated uses until the second rulemaking that EPA agreed to conduct as part of the settlement with the NRDC petitioners (i.e., the rule to establish generic exclusion levels for encapsulated uses of HTMR slags).

The Agency also considered another important factor in making the determination to effectively prohibit non-encapsulated uses of HTMR slags. Information available to EPA indicates that most HTMR slags are in fact used in an encapsulated manner, for example as road-base material with some form of cover or "cap". Encapsulation may prevent dispersal of the slag through the exposure pathways noted above. Indeed, as the Agency noted in the August 19, 1991 rulemaking, use of these slags as road-base may be analogous to a capped disposal unit. (See 56 FR 41172.) In meetings with EPA, industry representatives indicated that non-encapsulated uses account for a relatively small fraction (less than 15%) of the HTMR slag used in a manner constituting disposal. (See memorandum of a March 30, 1993 meeting with Horsehead Resource Development Co., Inc. in the RCRA public docket for today's rule.) Therefore, the Agency believes that there should be adequate capacity for all of the slag to be used in an encapsulated manner. An important part of the basis for today's proposal is the expectation that a prohibition on non-encapsulated uses would result in a more environmentally acceptable means of reuse of the material without significant dislocations.

This proposal would thus effectively prohibit non-encapsulated uses of HTMR slag, whether or not the slag meets the existing exclusion levels in § 261.3(c)(2). As noted earlier in this proposal, the methodology EPA used to set the generic exclusion levels was based on potential risks posed by releases to ground-water from HTMR slag in a landfill setting. The existing exclusion levels do not consider other possible exposures (e.g., through air releases) arising from non-encapsulated uses.

State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

VII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (see 58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues in terms of defining when products used in a manner constituting disposal should be regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an Agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility

analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

This amendment will not have any impact on any small entities, since the regulated community will continue to have other readily available options for using and managing HTMR slags. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies 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.

C. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: February 15, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR part 266 is proposed to be amended as follows:

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 is amended by adding a new paragraph (c) to read as follows:

§ 266.20 Applicability.

* * * * *

(c) Non-encapsulated uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation. Non-encapsulated uses are those uses in

which the HTMR slag is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment (e.g., uses as anti-skid or deicing materials).

[FR Doc. 94-4052 Filed 2-22-94; 8:45 am]

BILLING CODE 6560-60-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

RIN 3090-AF09

Removing Federal Supply Service Schedule Ordering Instructions

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposed amendment to the Federal Property Management Regulations (FPMR) that removes Federal Supply Service (FSS) schedule ordering instructions. FSS schedule ordering instructions will be restated in the form of non-regulatory principles. GSA's Federal Supply Service will issue and maintain these non-regulatory principles in the Federal Supply Service Program Guide. This document is issued simultaneously with another notice that similarly affects multiple award schedule ordering instructions contained in the Federal Information Resources Management Regulations (FIRMR).

When combined, these actions will result in uniform set of principles that empower Federal agencies to make "best value" buying decisions in a de-monopolized environment. These proposed changes are consistent with the Report of the National Performance Review (NPR), and are part of GSA's larger plans to create a Government that works better and costs less.

DATES: Comments are due in writing on or before April 25, 1994.

ADDRESSES: Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Nicholas Economou, FSS Acquisition Management Center (703-305-6936).

SUPPLEMENTARY INFORMATION:

A. Background

FPMR subpart 101-26.4 primarily contains FSS schedule ordering instructions. Over time, these instructions have become obsolete.