Fact Sheets and Information Papers

Changes to the Hazardous Waste Identification Rule

October 2004

BOTTOM LINE: On 16 May 2001, the EPA issued a final rule that allows more wastes to take advantage of exclusions from hazardous waste regulation. With the new changes, all wastes **listed solely for** the characteristics of **ignitability, corrosivity, and/or reactivity** are not considered hazardous wastes if they no longer exhibit any of these characteristics.

DISCUSSION OF OLD RULES: In 40 CFR 261, the EPA describes the requirements for the identification and listing of hazardous waste under RCRA. Within Part 261, there are two rules, referred to as the "mixture" and "derived-from" rules, which help define which wastes are considered to be hazardous.

(1) The mixture rule, located in 40 CFR 261.3(a)(2)(iv), essentially states that mixtures of solid waste and listed hazardous wastes are still hazardous wastes. One exception is that mixtures of wastes listed solely for the characteristics of ignitability, corrosivity, and/or reactivity (ICR) which no longer exhibit any of these characteristics, are no longer hazardous waste. Currently, there are 29 waste codes in RCRA listed solely for ICR characteristics. These wastes are identified by the letter(s) "I", "C", and/or "R" in parentheses after the chemical name. For example, nitroglycerine (P081) is listed with the letter "R", meaning that it is listed as an acute hazardous waste solely for the characteristic of reactivity.

(2) The derived-from rule, found in 40 CFR 261.3(c)(2)(i) states that all solid wastes generated from the treatment, storage, or disposal of a listed hazardous waste remain regulated as hazardous wastes. These derived-from wastes include spill residues, sludges, and incinerator ash generated from listed hazardous wastes.

NEW CHANGES: Under the new regulatory revision—Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-from Rules; 66 FR 27266—all derived-from, mixtures, and as generated wastes listed solely for ICR are not regulated as hazardous waste if they no longer exhibit any characteristic of hazardous waste. These revisions modify the rules to better match the risks posed by certain chemical wastes.

SIGNIFICANCE TO THE ARMY: The Army currently generates many of the wastes listed solely for ICR characteristics. These include unused nitroglycerine, acetone, xylene, ethyl acetate, and methanol, along with F003, K044, K045 and K047 wastes. Many of these items do not actually exhibit hazardous characteristics, but are managed as hazardous waste because they meet the criteria for the original listing described in 40 CFR 261. For example, liquid nitroglycerine manufactured for medicinal purposes does not exhibit the reactivity characteristic, but it was required to be managed as a P081 waste when discarded because it met the criteria of the P-list (40 CFR 261.33), and there was no applicable exclusion. Similarly, still

bottoms/residues from methanol and xylene recycling units rarely exhibit the ignitability characteristic, but were required to be managed as F003 wastes under the old derived-from rule. The new revisions now allow these types of wastes to exit RCRA-C if they do not exhibit hazardous characteristics.

LDR APPLICABILITY: The EPA states that when a waste has been listed solely for ICR characteristics, and that waste does not exhibit any hazardous characteristics at the point of generation, then that waste is not subject to Land Disposal Restrictions (LDR) standards. However, if the characteristic is removed **after** the point of generation, the waste is still subject to all applicable LDR requirements in 40 CFR 268.

STATE VARIATIONS: As of 19 October 2004, the new rules were in effect in the following states: AK, AL, CO, CT, DE, FL, GA, IA, ID, IL, IN, KS, KY, MA, MD, ME, MI, MN, MS, MT, ND, NE, NH, NJ, NM, NY, OH, OK, OR, PA, RI, SD, TN, UT, VA, VT, WA, WI, WV, and Guam. If your state is not listed above, contact the Installation Environmental Office for assistance in petitioning the state to adopt the new rules and receive EPA authorization. Personnel in Arizona, Nevada, and North Carolina do not need to contact their environmental staff, as these states have already adopted the new rules, but were still waiting final authorization from EPA (as of October 2004).

ADDITIONAL REQUIREMENTS: In order to take advantage of the new exclusions, generators are only required to place a one-time notice in their files stating that they have determined the waste is excluded from the definition of hazardous waste. The notice must include a description of the waste generated, which particular exclusion is being claimed, and the final disposition of the waste.

Hazardous and Medical Waste Program, Mr. Matt Walter or CPT Alex Giambone
5158 Blackhawk Road, ATTN: MCHB-TS-EHM
Aberdeen Proving Ground, MD 21010-5403
(410) 436-3651, DSN 584-3651