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1254. PCB Radioactive Wastes and Exception Reporting	ENCORE	NOV 21, 2017
1255. Satellite Accumulation Requirements and Container Inspections	ENCORE	NOV 30, 2017
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1257. Fluorescent Light Ballasts and PCB Annual Reporting		DEC 14, 2017
1258. 'Twas the Night Before Christmas – The Twenty-Fifth Annual Edition		DEC 21, 2017
1259. The Purpose of Keeping Containers Closed Except When Adding or Removing Wastes	ENCORE	DEC 28, 2017
1260. Satellite Accumulation and Product Vessel Cleanouts	ENCORE	JAN 4, 2018
1261. Conservative Declaration that Material is a Hazardous Waste	ENCORE	JAN 11, 2018
1262. Defining Criteria for Household Waste Exclusion	ENCORE	JAN 18, 2018
1263. The Household Waste Exclusion and Renovation Debris	ENCORE	JAN 25, 2018
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1267. Spent Lead-Acid Batteries and Accumulation Time Limits	ENCORE	FEB 23, 2018
1268. CERCLA Hazardous Substances – A Brief Definition	ENCORE	MAR 1, 2018
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1277. PCB Radioactive Wastes and Exception Reporting	ENCORE	MAY 3, 2018
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1280. Satellite Accumulation Areas and the Three-Day Time Limit for Excess Accumulation		MAY 24, 2018
1281. Satellite Accumulation of Aerosol Cans and Determining the 55-Gallon Limit	ENCORE	MAY 31, 2018
1282. Universal Waste and Basis for the One Year Accumulation Time Limit	ENCORE	JUN 7, 2018
1283. F001 Degreaser versus F002 Solvent	ENCORE	JUN 14, 2018
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1285. PCB Certificates of Disposal and Manifesting Between Related Facilities		JUN 28, 2018
1286. PCB Concentrations and 10,000 PPM	ENCORE	JUL 5, 2018
1287. PCB Concentrations and 1,000 PPM	ENCORE	JUL 12, 2018
1288. Satellite Accumulation Containers and the Date of Accumulation Marking		JUL 19, 2018
1289. Satellite Accumulation Requirements in Washington State	ENCORE	JUL 26, 2018
1290. Satellite Accumulation Areas and Under the Control of the Operator		AUG 2, 2018
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1299. Satellite Accumulation and the One Year LDR Prohibitions on Storage	ENCORE	OCT 4, 2018
1300. Purpose of the ≤90-day Hazardous Waste Accumulation Conditional Exclusion	ENCORE	OCT 11, 2018
1301. Regulatory Status of Used Oil Mixed with Diesel Fuel		OCT 18, 2019
1302. Recyclable Chemicals and Zombie Destruction	ENCORE	OCT 25, 2018
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1304. Manifest Exception Report Submittal Timeframes – RCRA vs. TSCA		NOV 8, 2018
1305. Smoke Detector Disposal and the NRC	ENCORE	NOV 15, 2018
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1310. 'Twas the Night Before Christmas - The Twenty-Sixth Annual Edition	ENCORE	DEC 20, 2018
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1312. RCRA Personnel Training and Classroom Training vs. Online Training	ENCORE	JAN 3, 2019
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1314. D002 Waste and Dilution as Adequate LDR Treatment	ENCORE	JAN 17, 2019
1315. The Definition of Good Housekeeping		JAN 24, 2019
1316. Commercial Chemical Products and Unused Batteries	ENCORE	JAN 31, 2019
1317. Recycling of Non-Listed Commercial Chemical Products	ENCORE	FEB 7, 2019

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TWO MINUTE TRAINING

TO: CH2M HILL PLATEAU REMEDIATION COMPANY

FROM: PAUL W. MARTIN, RCRA Subject Matter Expert
CHPRC Environmental Protection, Hanford, WA

SUBJECT: RECYCLING OF NON-LISTED COMMERCIAL CHEMICAL PRODUCTS

DATE: FEBRUARY 7, 2019

<u>CHPRC Projects</u>	<u>CH PRC - Env. Protection</u>	<u>MSA</u>	<u>Hanford Laboratories</u>	<u>Other Hanford Contractors</u>	<u>Other Hanford Contractors</u>
Richard Austin Tania Bates Rene Catlow Richard Clinton Larry Cole John Dent Lorna Dittmer Eric Erpenbeck Stuart Hildreth Mike Jennings Stephanie Johansen Sasa Kosjerina Melvin Lakes Richard Lipinski Jim McGrogan Stuart Mortensen Dave Richards Phil Sheely Connie Simiele Jennie Stults Jeff Westcott Jeff Widney	Bob Bullock Bill Cox Laura Cusack Jim Leary Anthony Nagel Linda Petersen Fred Ruck Ray Swenson Wayne Toebe Daniel Turlington Dave Watson	Brett Barnes Jerry Cammann Jeff Ehlis Garin Erickson Panfilo Gonzalez Jr. Dashia Huff Mark Kamberg Jon McKibben Saul Martinez Jon Perry Christina Robison Lana Strickling Lou Upton	(TBD) <u>DOE RL, ORP, WIPP</u> Mary Beth Burandt Duane Carter Cliff Clark Tony McKarns	Bill Bachmann Dean Baker Scott Baker Lucinda Borneman Paul Crane Tina Crane Ron Del Mar John Dorian Mark Ellefson Tom Gilmore Rob Gregory James Hamilton Andy Hobbs Ryan Johnson Megan Lerchen Charles (Mike) Lowery Michael Madison Terri Mars Cary Martin Grant McCalmant Steve Metzger Tony Miskho Matt Mills Tom Moon Chuck Mulkey Kirk Peterson	Jean Quigley Dan Saueressig Merrie Schilperoort Joelle Moss Glen Triner Greg Varljen Julie Waddoups Jay Warwick Ted Wooley

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TWO MINUTE TRAINING

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

Q: Last week's Two Minute Training stated that per [WAC 173-303-016 \[40 CFR 261.2\]](#) Table 1, "commercial chemical products" (CCPs) are not solid wastes when recycled. However, an out-of-state customer notes that the equivalent Federal regulation at 40 CFR 261.2 Table 1 specifically states "commercial chemical products listed in [40 CFR 261.33](#)", e.g., the "U" and "P" listed hazardous waste codes. The customer has a CCP for recycle that is not "U" or "P" listed but would be regulated as a characteristic hazardous waste. Per the Federal regulations, is the customer's non-listed CCP a solid waste or not, when reclaimed?

A: Per an EPA memo dated February 23, 1993 ([RO 11726](#)), EPA stated:

"With regard to the reclamation of non-listed commercial chemical products, their status is the same as that for listed commercial chemical products, as we stated in the April 11, 1985 Federal Register. This has been the Agency's position since publication of that clarification, and has remained unchanged. However, we do recognize that the universe of non-listed commercial chemical products could present some recycling activities, which require careful analysis to verify that the recycling is legitimate; the burden of proof, however, remains with the person claiming that a material is not a solid waste (261.2(f))."

The [April 11, 1985](#), Federal Register on page 14219 clarified:

"A number of questions have been raised as to the regulatory status of commercial chemical products that are not listed in 261.33 but exhibit one or more of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity and extraction (EP) toxicity). [Note: EP is now TCLP]

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 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."

Therefore, the out-of-state customer's non-listed, characteristic CCP is not a solid waste when recycled.

SUMMARY:

- CCPs are not solid wastes when recycled.
- The Federal regulations specify CCPs listed in 40 CFR 261.33 (the "U" and "P" listed codes).
- However, EPA clarified that both listed and non-listed CCPs are not solid wastes when recycled.

The February 23, 1993 EPA memo is attached to the e-mail. If you have any questions, please contact me at [Paul W Martin@rl.gov](mailto:Paul_W_Martin@rl.gov) or at (509) 376-6620.

FROM: Paul W. Martin

DATE: 2/7/19

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PG: 1

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

Faxback 11726

9444.1993(01)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

February 23, 1993

Mr. N.G. Kaul, P.E.
Director, Division of Hazardous Substances Regulation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Dear Mr. Kaul,

Thank you for your letter dated November 9, 1992, concerning the definition of solid waste under the Resource Conservation and Recovery Act (RCRA). In your letter, you raised two specific issues involving certain secondary materials: 1) clarification of the definition of commercial chemical products that are not found on the U- or P-lists in 40 CFR 261.33, and 2) the status of these non-listed commercial chemical products when recycled. I hope that this response will help clarify the federal regulations regarding these issues.

In addition, you may already be aware that the Director of the Office of Solid Waste (OSW) has recently formed a Definition of Solid Waste Task Force to re-evaluate the definition of solid waste. The Task Force is soliciting input from ASTSWMO, individual states, industry, and others on implementation issues such as the one raised in your letter. Overall, the Task Force is looking at ways to reduce the complexity of our current definition of solid waste, reduce disincentives for safe recycling and innovative technology development, and address concerns regarding the use of recycled hazardous waste in products. I understand that some of your staff have already met with the Task Force (prior to your letter being sent). Again, this response to your questions is based on the current federal regulations.

Definition of Non-Listed Commercial Chemical Products

Presently, the Agency interprets "non-listed commercial chemical products" under RCRA to include all types of unused commercial products that exhibit a characteristic of hazardous waste, whether or not these products would commonly be considered chemicals (e.g., unused circuit boards, batteries, etc.). Of course, these determinations are not always straightforward regarding certain types of commercial products, such as machinery, electronics, and other items containing various components, only some of which cause the overall item to exhibit a hazardous waste characteristic. We would expect these determinations to be site-specific.

FROM: Paul W. Martin

DATE: 2/7/19

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

You stated that you were uncertain as to what types of "recycling" would qualify a non-listed commercial chemical product for the solid waste exemption in 261.2(c)(3), which is further clarified in the April 11, 1985 Federal Register (50 FR 14219). As you know, EPA defines "recycling" as including use/reuse, and reclamation (see 40 CFR 261.2(c)(4),(5), and (7)). Reclamation is further defined to be either regeneration, or the recovery of a usable product. With regard to the use/reuse provisions, any type of secondary material recycled in this manner would not be a solid waste, provided that the applicable conditions listed in 261.2(e) are met, and that the recycling is legitimate (see 261.2(f)).

With regard to the reclamation of non-listed commercial chemical products, their status is the same as that for listed commercial chemical products, as we stated in the April 11, 1985 Federal Register. This has been the Agency's position since publication of that clarification, and has remained unchanged. However, we do recognize that the universe of non-listed commercial chemical products could present some recycling activities, which require careful analysis to verify that the recycling is legitimate; the burden of proof, however, remains with the person claiming that a material is not a solid waste (261.2(f)).

You provided an example of off-specification paint, produced by a manufacturer and never used; we would define this material as a non-listed commercial chemical product. You then described this paint as being reclaimed to recover the solvent, resulting in a stillbottom containing the pigments and associated metals. We would view the off-specification paint, to be reclaimed, as excluded from the definition of solid waste. Although the reclamation process is recovering a usable product from the paint (i.e., solvent), and is not regenerating the paint to make new paint, this activity is nevertheless reclamation and therefore the off-specification paint is not a solid waste. Of course, the residual stillbottoms generated during reclamation, if characteristically hazardous, would be subject to Subtitle C requirements at the point of generation (i.e., when removed from the distillation unit), assuming they are to be discarded.

Finally, I would like to emphasize that if a person is claiming that a material is excluded or otherwise exempt because it is going to be recycled, the burden of proof rests with that person to show that the recycling activity is legitimate. For example, if a reclamation process recovers only a minimal amount of material, of questionable value, while the remaining residue is discarded, this would appear to be more like regulated waste treatment than recycling. If non-listed commercial chemical products, exhibiting a hazardous waste characteristic, are being processed in order to treat them (and not to recover a usable product or to regenerate them), then the material is not excluded from the definition of solid waste under 261.2(c)(3).

If you have any other comments or questions, please call me, or you or your staff could talk with Ross Elliott of my staff at (202) 260-8551. Thank you very much.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

FROM: Paul W. Martin

DATE: 2/7/19

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