

<u>SUBJECT</u>		<u>DATE</u>
1253. Used Oil Filter Regulation – The Feds vs. Washington State	ENCORE	NOV 16, 2017
1254. PCB Radioactive Wastes and Exception Reporting	ENCORE	NOV 21, 2017
1255. Satellite Accumulation Requirements and Container Inspections	ENCORE	NOV 30, 2017
1256. Disposing of PCB Ballasts with PCB Potting Material	ENCORE	DEC 7, 2017
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
1264. The Household Waste Exclusion and Renovation Debris – Part II	ENCORE	FEB 1, 2018
1265. The Mixtures Rule – Washington State vs. The Feds	ENCORE	FEB 8, 2018
1266. Spent Lead-Acid Batteries and Secondary Containment	ENCORE	FEB 15, 2018
1267. Spent Lead-Acid Batteries and Accumulation Time Limits	ENCORE	FEB 23, 2018
1268. CERCLA Hazardous Substances – A Brief Definition	ENCORE	MAR 1, 2018
1269. Radioactively Contaminated Lead-Acid Batteries and Hazardous Debris	ENCORE	MAR 8, 2018
1270. RCRA Treatment and the Two-Part Definition	ENCORE	MAR 15, 2018
1271. Who Wants to be a Generator!!!	ENCORE	MAR 22, 2018
1272. Who Wants to be a Generator Part 2!!!	ENCORE	MAR 29, 2018
1273. “No Smoking” Signs and Tobacco-Free Facilities		APR 5, 2018

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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: “NO SMOKING” SIGNS AND TOBACCO-FREE FACILITIES

DATE: APRIL 5, 2018

<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 Brian Dixon Eric Erpenbeck Stuart Hildreth Mike Jennings Stephanie Johansen 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 Sasa Kosjerina Jim Leary Anthony Nagel Robert Nielson 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 Ellen Mattlin Scott Stubblebine	Bill Bachmann Dean Baker Scott Baker Lucinda Borneman Paul Crane Tina Crane Ron Del Mar John Dorian Mark Ellefson Tom Gilmore Rob Gregory Gene Grohs 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: “No Smoking” Signs and Tobacco-Free Facilities

Q: [WAC 173-303-395\(1\)\(a\)](#) [40 CFR [264/265.17\(a\)](#)] states the “No smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive wastes.” If a RCRA treatment, storage and disposal facility (TSDF) has very strict no smoking policies and dedicated smoking areas, i.e., smoking cannot occur anywhere near ignitable or reactive wastes, must the TSDF still post “No smoking” signs wherever ignitable or reactive wastes are managed?

A: WAC 173-303-395(1), “Precautions for ignitable, reactive or incompatible wastes”, paragraph (a) states:

“The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. ‘No smoking’ signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”

The above regulation provides no relief for TSDFs from the requirement to post “No smoking” signs even if the TSDF has designated smoking areas. As further clarification, an EPA memo dated June 8, 1995, ([RO 14036](#)) to the Indiana Department of Environmental Management (IDEM) stated:

“For both permitted and interim status treatment, storage, and disposal facilities (‘TSDFs’), 40 CFR 264.17(a) [329 IAC 23.1-9-1&2] and 40 CFR 265.17(a) [329 IAC 3.1-10-1&2], respectively, require that a “No Smoking” sign must be conspicuously placed wherever there is a hazard from ignitable or reactive waste. There is no exemption for a facility with a “Tobacco-free” policy.”

Therefore, even if the TSDF is a totally tobacco-free facility, “No smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive wastes.

SUMMARY:

- WAC 173-303-395(1)(a) requires TSDFs to post “No smoking” signs wherever there is a hazard from ignitable or reactive wastes.
- TSDFs may have strict no smoking policies and dedicated smoking areas or even be totally tobacco-free facilities.
- Even so, TSDFs must still post “No smoking” signs wherever there is a hazard from ignitable or reactive wastes.

The June 8, 1995, EPA letter is attached. If you have any questions, please contact me at Paul_W_Martin@rl.gov or at (509) 376-6620.

FROM: Paul W. Martin

DATE: 4/5/18

FILE: 2MT\2018\040518.rtf

PG: 1

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TWO MINUTE TRAINING – ATTACHMENT

SUBJECT: “No Smoking” Signs and Tobacco-Free Facilities

9472.1995(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 8, 1995

Rosemary Cantwell, Chief
Hazardous Waste Enforcement Section
Office of Enforcement
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46206-6015

Re: Regulatory Assistance

Dear Ms. Cantwell:

The U.S. Environmental Protection Agency (U.S. EPA) is in receipt of the April 11, 1995, letter from Mr. Matthew Klein, of your staff. The letter requested guidance on the legal significance of "comments" in the Code of Federal Regulations (CFR), specifically in 40 CFR 265.176 [329 IAC 3.1-10-1&2]; whether generators who store ignitable or reactive waste in containers must post "No Smoking" signs pursuant to 40 CFR 265.17(a) [329 IAC 3.1-10-1&2]; and whether permitted treatment, storage and disposal (TSD) facilities which employ a facility wide "Tobacco-free" policy are exempt from posting "No Smoking" signs, as required by 40 CFR 264.17(a) [329 IAC 3.1-9-1&2]. The Region's interpretation of the issues raised in Mr. Klein's letter are as follows:

(1) Significance of "comments" in CFR:

Existing case law confirms the status of "comments" and "notes" in a statute as commentary, and not legal requirement, as would be the rule itself. A court may look at comments or notes to help interpret a provision, but the comments or notes are not themselves binding. See *United States v. Marathon Development Corp.*, 867 F.2d 96 (1st Cir. 1989); *Motorola, Inc. v. United States*, 729 F.2d 765 (C.A. Fed. 1984). See also *In re Valentine*, 146 B.R. 945 (Bkrcty. E. D. Va. 1991); *In re Taylor*, 45 B.R. 643 (Bkrcty. Pa. 1985); *Omaha Pollution Control Corp. v. Carver-Greenfield Corp.*, 413 F. Supp. 1069 (D.C. Neb. 1976) [latter cases discussing significance of comments in the Uniform Commercial Code]. Thus, on the basis of existing case law, the Indiana Department of Environmental Management (IDEM) cannot use the comment following 40 CFR 265.176 [329 IAC 3.1-10-1&2] to require a generator to comply with 40 CFR 265.17(a) [329 IAC 3.1-10-1&2], if it would not otherwise be subject to that requirement.

FROM: Paul W. Martin

DATE: 4/5/18

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TWO MINUTE TRAINING – ATTACHMENT

SUBJECT: “No Smoking” Signs and Tobacco-Free Facilities

(2) Are generators who store ignitable or reactive waste in containers for less than 90 days subject to 40 CFR 265.17(a)?

Pursuant to 40 CFR 262.34(a)(1)(I) [329 IAC 3.1-7-1&2], a generator may accumulate waste on-site for 90 days or less without a permit or without having interim status provided that the waste is placed in containers and the generator complies with Subpart I of Part 265 [329 IAC 3.1-10-1&2].

Pursuant to 40 CFR 265.176 of Subpart I [329 IAC 3.1-10-1&2], containers holding ignitable or reactive waste must be located at least 50 feet from the facility's property line. A comment in this section directs the reader to additional requirements found at 40 CFR 265.17(a) [329 IAC 3.1-10-1&2].

The applicability of the requirements of 40 CFR Part 265 is found at 40 CFR 265.1(c)(7) [329 IAC 3.1-10-1&2]. Pursuant to this section, the requirements of Part 265 do not apply to generators accumulating waste on-site in compliance with 40 CFR 262.34 [329 IAC 3.1-7-1&2], except to the extent that such requirements are included in 40 CFR 262.34.

Pursuant to 40 CFR 262.34(a)(4) [329 IAC 3.1-7-1&2], a generator who accumulates hazardous waste on site for less than 90 days need not seek a permit or have interim status if it meets several requirements, including compliance with requirements for owners and operators in Subparts C and D in 40 CFR Part 265, with 265.16 (in Subpart B), and with 40 CFR 268.7(a)(4). Note that 40 CFR 265.17 specifically is not mentioned. Thus, 40 CFR 265.17(a) [329 IAC 3.1-10-1&2] is not included as one of the applicable sections for a generator meeting the requirements of 40 CFR 262.34 [329 IAC 3.1-7-1&2].

Can IDEM require a generator to post a sign advising that there should be no ignition sources near combustible material?

According to 40 CFR 265.31 of Subpart C [329 IAC 3.1-10-1&2], with which a generator must comply pursuant to 262.34(a)(4) [329 IAC 3.1-7-1&2], a facility must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned releases of hazardous waste or hazardous waste constituents which could threaten human health or the environment. Region 5 believes that 40 CFR 265.31 [329 IAC 3.1-10-1&2] is broad enough to allow IDEM to request (for example in a compliance order) that a generator post a sign near combustible waste advising that there is "no smoking" or there are "no ignition sources."

(3) Are permitted TSDFs with a "Tobacco-free" policy which store ignitable or reactive waste required to post "No Smoking" signs pursuant to 40 CFR 264.17(a)?

For both permitted and interim status treatment, storage, and disposal facilities ("TSDFs"), 40 CFR 264.17(a) [329 IAC 23.1-9-1&2] and 40 CFR 265.17(a) [329 IAC 3.1-10-1&2], respectively, require that a "No Smoking" sign must be conspicuously placed wherever there is a hazard from ignitable or reactive waste. There is no exemption for a facility with a "Tobacco-free" policy.

FROM: Paul W. Martin

DATE: 4/5/18

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TWO MINUTE TRAINING – ATTACHMENT

SUBJECT: “No Smoking” Signs and Tobacco-Free Facilities

The fact that a facility has a "Tobacco-free" environment may not fully address the human and environmental safety concerns stated in the regulation. The text of both these provisions clearly spells out that the purpose of the provision is to prevent the exposure of ignitable wastes to "Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks..., spontaneous ignition..., and radiant heat." 40 CFR 264.17(a) and 40 CFR 265.17(a) specify that when ignitable or reactive waste is being handled, the owner or operator must confine both smoking and open flame to specially designated areas. The regulations absolutely require posting at least a "No Smoking" sign.

Based on the information provided, the facility's argument that posting a "No Smoking" sign would encourage smoking is not viewed by the Region as a valid excuse for failing to comply with 40 CFR 265.17(a). In our view, IDEM is justified in arguing that the facility is free to post a "No Smoking or Ignitable Sources" sign, but the facility must, at a minimum, post a "No Smoking" sign.

We hope that the above comments are responsive to the issues raised in the April 11, 1995, letter. Should you have further questions, please do not hesitate to contact Barbara L. Wester, Assistant Regional Counsel, (312) 353-8514, or Michael Cunningham, RCRA Technical Enforcement Section at (312) 886-4464.

Sincerely yours,

T. Leverett Nelson
Acting Chief,
Solid Waste Emergency Response Branch

Thad Slaughter
Acting Section Chief
Technical Enforcement Section 1

cc: Matthew Klein, IDEM

RO 14036

FROM: Paul W. Martin

DATE: 4/5/18

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