

| | <u>SUBJECT</u> | | <u>DATE</u> |
|-------|---|--------|--------------|
| 1188. | RCRA Empty Containers vs. TSCA PCB Decontaminated Containers - Scenario II | ENCORE | AUG 11, 2016 |
| 1189. | RCRA Empty Containers vs. TSCA PCB Decontaminated Containers - Scenario III | ENCORE | AUG 18, 2016 |
| 1190. | Product Spills and Waste Determinations | ENCORE | AUG 25, 2016 |

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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: PRODUCT SPILLS AND WASTE DETERMINATIONS

DATE: AUGUST 25, 2016

| <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> |
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TWO MINUTE TRAINING

SUBJECT: Product Spills and Waste Determinations

Q: A customer spills some product diesel fuel onto soil. The soil contaminated with diesel fuel is thoroughly remediated and placed in a 55-gallon container. At what point is this spilled material of product diesel considered a waste and subject to hazardous waste and dangerous waste determinations?

A: Per an EPA RCRA Hotline "Questions and Answers" memo dated May 1985 ([RO 13743](#)), it basically states that if product material in contaminated soil can be recycled, the spill residues are not solid wastes and are therefore not subject to RCRA. However, the generator bears the burden of proving that legitimate recycling will take place. The May 1985 memo specifically states:

"... contaminated soils and other cleanup residues generally are solid wastes because of the difficulty associated with recycling wastes contained in environmental media", i.e. soils and waters.

The May 1985 memo also states:

"In the absence of strong, objective indicators of recycling or intent to recycle a spill residue, 'the materials are solid wastes immediately upon being spilled because they have been abandoned' (54 FR 48494; [November 22, 1989](#))".

The diesel fuel spilled onto soil is not a solid waste, if the customer can legitimately recycle the spilled product. If the diesel fuel cannot be recycled, the diesel fuel is a solid waste immediately upon being spilled onto the soil because it has been abandoned. Once the diesel contaminated soil is determined to be a solid waste, the customer must determine if the material is a hazardous or dangerous waste. This customer's diesel contaminated soil does not meet an F, K, U or P hazardous waste code listing and does not exhibit any characteristics, and specifically does not exhibit the D001 ignitability characteristic since the diesel/soil mixture does not meet the criteria for D001 ignitable hazardous waste at [WAC 173-303-090\(5\)](#) [40 CFR 261.21 - [40 CFR 261.21](#)]. Also this customer's diesel contaminated soil does not meet any Washington State Dangerous Waste criteria for toxicity or persistence. Therefore this diesel contaminated soil is not regulated as a hazardous or dangerous waste.

SUMMARY:

- A product spilled onto soil and capable of being recycled may not be a solid waste.
- EPA has stated that contaminated soils are generally solid wastes due to recycling difficulties and that generators bear the burden of proving intent to legitimately recycle.
- If not recycled, materials are solid waste immediately upon being spilled due to abandonment.

The May 1985 EPA RCRA Hotline "Questions and Answers" memo and excerpts from WAC 173-303-090(5) and 40 CFR 261.21 are attached to the e-mail. If any questions, contact me at Paul_W_Martin@rl.gov or at (509) 376-6620.

FROM: Paul W. Martin

DATE: 8/25/16

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: Product Spills and Waste Determinations

Faxback 13743

9441.1995(20)

Hotline Questions and Answers

May 1995

1. Solid Waste Determination for Spilled Commercial Chemical Products

According to 40 CFR §261.2, Table 1, hazardous commercial chemical products, when recycled, are exempt from RCRA because they are not solid wastes. If a manufacturer spills a commercial chemical product into the soil and intends to reclaim the spill residue, is the spill residue exempt from RCRA standards?

The intent to recycle a commercial chemical product spill residue does not exempt the material from RCRA jurisdiction. In fact, EPA has stated that contaminated soils and other cleanup residues generally are solid wastes because of the difficulty associated with recycling wastes contained within environmental media (54 FR 48494; November 22, 1989). Sometimes, however, a spill residue can be returned to a process or otherwise put to use, and thus remain exempt from RCRA standards.

In order to demonstrate that a spill residue is not a solid waste, the generator has the burden of proving that legitimate recycling will take place. The Agency has adopted objective considerations to evaluate a generator's claim that a spilled product will be legitimately recycled. The length of time the spill residue has existed is one such consideration. In order to prove that legitimate recycling will occur, a generator may also show that recycling has already begun, the material is valuable, the material can feasibly be recycled and/or the company has recycled such material in the past (55 FR 22671; June 1, 1990).

In the absence of strong, objective indicators of recycling or intent to recycle a spill residue, "the materials are solid wastes immediately upon being spilled because they have been abandoned" (54 FR 48494; November 22, 1989), and must be managed in accordance with all applicable RCRA standards.

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: Product Spills and Waste Determinations

WAC 173-303-090 **Dangerous waste characteristics.**

(5) Characteristic of ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C (140 degrees F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D93-06, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D3278-96 (2004)e1 as incorporated by reference at WAC 173-303-110 (3)(h)(v) and (vi);

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard;

(iii) It is an ignitable compressed gas....

(iv) It is an oxidizer. An oxidizer for the purpose of this subsection is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(b) A solid waste that exhibits the characteristic of ignitability must be designated DW, and assigned the dangerous waste number of D001.

40 CFR §261.21 **Characteristic of ignitability**

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93-79 or D 93-80 (incorporated by reference, see §260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78 (incorporated by reference, see §260.11).

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

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