

G 565



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

September 20, 1996

Mr. R.L. Caleen, Jr.
Watkins, Tomasello & Caleen, P.A.
1315 East Lafayette Street, Suite B
Tallahassee, Florida 32301

RE: FDEP Interpretation of 40 CFR Parts 261.5, 261.3 (a)(2)(iv)(D),
and Parts 261, 262.

Dear Mr. Caleen:

The Florida Department of Environmental Protection (FDEP) Hazardous Waste Regulation Section has received your letter dated July 25, 1996, requesting interpretation of some RCRA regulations. The following addresses your inquiries as they pertain to RCRA regulations in the State of Florida.

Q1) Under 40 CFR 261.5 (e), if a CESQG generates more than 1 kg of acute hazardous waste in a month, would the generator become subject to full regulation for only that acute hazardous waste or also for all non-acute hazardous waste generated during that month?

ANS: We agree with USEPA's interpretation that if a CESQG generates more than 1 kg of acute hazardous waste in a calendar month then only that acute hazardous waste would be subject to full regulation and the other non-acute hazardous waste generated in that calendar month (as long as it is less than or equal to 100 kg) would not be subject to full regulation. Also we do agree with USEPA that acute hazardous waste is counted and managed separately from non-acute hazardous waste.

Q2) Does the lab exemption from the mixture rule contained in 40 CFR 261.3 (a)(2)(iv)(E) apply to acute hazardous (H) wastes listed in Subpart D as well as to toxic (T) listed waste?

ANS: Yes. Our Department feels that the lab exemption from the mixture rule contained in 40 CFR 261.3 (a)(2)(iv)(E) also applies to acute hazardous (H) wastes listed in Subpart D, as long as the wastewater is discharged to a POTW. If the wastewater is discharged to a permitted pretreatment facility, then this

exemption will not apply and the generator cannot discharge acutely toxic waste through the drain.

Q3) In making the generator quantity determinations of 40 CFR 261 and 262, is the generator required to include:

- a) "empty" aerosol cans, per 40 CFR 261.7, if the cans are disposed of as waste in a Class D landfill rather than recycled as scrap metal and thereby excluded from Subtitle C regulation by 40 CFR 261.6 (a)(3);

ANS: No. It is not counted towards the generator quantity determinations of 40 CFR 261 and 262 if the empty cans are disposed of as waste in a Class D landfill. Pursuant to 40 CFR 261.7(a)(1) and 49 CFR 173.29(2)(ii), if the aerosol cans are empty of both product and propellant under both EPA and DOT rules, it is not subject to RCRA regulation under Parts 261 through 265, 268 and Parts 270 and 124 of this chapter or to the notification requirements of Section 3010 of RCRA. Although the empty cans are not subject to RCRA regulation and can be sent to a subtitle D solid waste landfill, FDEP recommends the puncturing of empty aerosol cans to ensure safety during transportation and also recommends recycling of empty aerosol cans.

- b) spent fluorescent lights, e.g. mercury containing lamps, which will be handled and disposed as waste rather recycled by a mercury reclamation facility; and

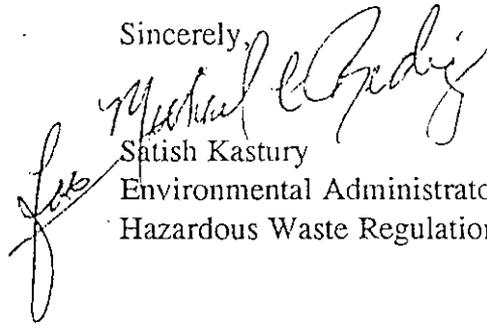
ANS: Yes, if the lamps exhibit the toxicity characteristic per 40 CFR Part 262.11 and Part 261 Subpart C.
No, if the lamps do not exhibit toxicity characteristic.

- c) spent fluorescent lights, e.g. mercury containing lamps, which will be shipped to and recycled at a mercury reclamation facility.

ANS: No. Pursuant to 62-737.400(1), if generators are shipping the spent lamps and mercury-containing devices to a storage, volume reduction, mercury recovery or mercury reclamation facility operating in accordance with this Chapter, or to a mercury recovery or reclamation facility located in another state, then the spent lamps and mercury-containing devices destined for recovery or reclamation will not be counted towards a generator's hazardous waste generation status under 40 CFR Parts 261.5 or 262.

Mr. R.L. Caleen, Jr.
Watkins, Tomasello & Caleen, P.A.
Page Three

If you have any questions please call Mike Redig, Subra Putcha or Mahnaz Massoudi in the Hazardous Waste Regulation Section at (904) 488-0300.

Sincerely,

Satish Kastury
Environmental Administrator
Hazardous Waste Regulation Section

SK/mm

- CC: Subra Putcha, FDEP-HWR
- Susan Horlick, FDEP-HWR
- Diana Coleman, FDEP-OGC
- District Waste Program Administrators
- Districts Technical Assistance Committee Members
- Reading File

WATKINS, TOMASELLO
& CALEEN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

R. L. CALEEN, JR.
THOMAS G. TOMASELLO
W. DAVID WATKINS

July 25, 1996

Satish Kastury, Environmental Administrator
Bureau of Solid and Hazardous Waste
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

RE: FDEP Interpretation of 40 C.F.R. §§261.5, 261.3 (a)(2)(iv)(D), and Parts 261, 262.

Dear Mr. Kastury:

I would appreciate your indicating, in writing, how the Department interprets several RCRA regulations, which have also been adopted by the state. The questions below have been posed several times to me. When EPA's RCRA Hotline gives its interpretation, it typically suggests consulting with the authorized state.

I understand the Department's reluctance to respond to hypothetical questions and its preference for concrete facts. These questions, however, are not fact-specific and an FDEP interpretation of its rules, in the abstract, would "fill in the gaps" and reduce uncertainty in the regulated community.

Q. 1. Under 40 C.F.R. 261.5 (e), if a CESQG generates more than 1 kg of acute hazardous waste in a month, would the generator become subject to full regulation for only that acute hazardous waste or also for all non-acute hazardous waste generated during that month?

Discussion: The EPA RCRA Hotline advises that this regulation means that any non-acute hazardous waste generated in that month would not automatically be subject to full regulation. The non-acute hazardous waste would be subject to SQG or CESQG regulation, depending on the quantity generated. Only the acute hazardous waste would be subject to full regulation.

Sub 565
Please review
and respond
Have Dept. Colson
look over the
response
Shank
MSB
7/29/96

1315 EAST LAFAYETTE STREET, SUITE B
TALLAHASSEE, FLORIDA 32301
(904) 671-2644 FAX (904) 671-2732

RECEIVED
RCRA

JUL 29 1996

As support, the EPA RCRA Hotline cites a letter dated September 1987 from Marcia E. Williams, Director, Office of Solid Waste to Fred Hutchison, Safety Officer of the University of Idaho, a copy of which is attached. In that letter, EPA states that acute hazardous waste is counted and managed separately from non-acute hazardous waste. Where the acute hazardous would be subject to the full regulation (LQG) accumulation time limit (90 days), non-acute hazardous waste could be subject to the accumulation time limit (180 days) for SQGs.

This interpretation is consistent with the plain language of 40 C.F.R. 261.5 (e), which states that if more than 1 kg of acute hazardous wastes are generated in a calendar month, all quantities of that acute hazardous waste are subject to full regulation. To also subject non-acute hazardous waste generated during that month to full regulation would require one to ignore the necessary effect of the term that.

I would appreciate your indicating whether the Department agrees with EPA's interpretation of 40 C.F.R. 261.5 (e). If not, please provide the Department's interpretation, with the underlying rationale.

Q.2. Does the lab exemption from the mixture rule contained in 40 C.F.R. 261.3 (a)(2)(iv)(E) apply to acute hazardous (H) wastes listed in Subpart D as well as to toxic (T) listed wastes?

Discussion: By its expressed terms, this lab exemption applies to laboratory wastewater containing toxic (T) wastes listed in Subpart D. According to the RCRA Hotline, EPA interprets this exemption to also include acute hazardous (H) wastes listed in Subpart D. The only listed wastes excluded from the exemption would be wastes listed solely because they exhibit a characteristic. For example, under EPA's interpretation, P-coded wastes in 40 C.F.R. 261.33 (e) are included in the lab exemption. EPA's rationale is that these (H) listed wastes are a subset of (T) listed wastes and, therefore, properly included within the scope of the exemption.

Please indicate whether the Department agrees with EPA's interpretation of 40 C.F.R. 261.3(a)(2)(iv)(E). If it does not, please provide the Department's interpretation, with the underlying rationale.

Q.3. In making the generator quantity determinations of 40 C.F.R. 261 and 262, is the generator required to include:

- (a) "empty" aerosol cans, per 40 C.F.R. 261.7, if the cans are disposed of as waste in a Class D landfill rather than recycled as scrap metal and thereby excluded from Subtitle C regulation by 40 C.F.R. 261.6 (a)(3);

(b) spent fluorescent lights, e.g. mercury containing lamps, which will be handled and disposed as waste rather than recycled by a mercury reclamation facility; and

(c) spent fluorescent lights, e.g. mercury containing lamps which will be shipped to and recycled at a mercury reclamation facility.

Please call if you have any questions. Thank you, again, for your assistance.

Sincerely,



R.L. Caleen, Jr.

RLC/vp

Attachment

cc: Michael X. Redig, FDEP

JAN-07-95 WED 13:01

XXXXX

FAX NO.

P. 01

Attachment 1



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

SEP 2 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Mr. Fred Hutchison
- Radiation and Lab Safety Officer
Safety Office
University of Idaho
Moscow, Idaho 83843

Dear Mr. Hutchison:

Thank you for your July 29, 1987, letter concerning the accumulation time for acute hazardous waste and hazardous waste. Your understanding of accumulation time for acute hazardous waste and hazardous waste is correct. The Resource Conservation and Recovery Act/Superfund Hotline staff have given the correct answer to your question.

Acute hazardous wastes are counted and managed separately from hazardous wastes (§261.5(c)). In the examples given, the generator would have 90 days to send the acute hazardous waste off-site, but would have 180 days for the non-acute hazardous waste.

If I can be of any further assistance, please let me know.

Sincerely,


Patricia Williams
Director
Office of Solid Waste

FaxBack# 11288