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RCRA/Superfund/OUST Hotline Monthly Report Question

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1. Speculative Accumulation Calculation

In March 1991, a facility generated 200 kg of sludge that exhibited the toxicity characteristic (TC) or lead (D008.) The operator of the facility placed these materials in storage to await reclamation of lead. As the same time the facility was not accumulating any other recyclable materials. Since the sludge will be reclaimed, it is not considered a solid waste while stored prior to reclamation (40 CFR §261.2(c)(3)). On December 31, 1991, the facility still had not recycled any of this material. Is the sludge accumulated speculatively under §261.1(c)(8), since 75 percent was not recycled in the year, and therefore subject to management as a solid and hazardous waste?

No, the sludge would not be accumulated speculatively. Although it is accumulated before being recycled, it is not accumulated speculatively if the person accumulating it can show that (1) the material is potentially recyclable and has a feasible means of being recycled, and (2) during the calendar year (commencing on January 1) the amount of material that is recycled or sent for recycling equals at least 75 percent of the amount of that material accumulated at the beginning of the period (§261.1(c)(8)). A facility owner/operator must show that he or she has recycled 75 percent of the material in storage on January 1 of that year. "Under this provision, the amount of material turned over in a year is critical, not the total amount accumulated at the end of the year" (48 FR 14490; April 4, 1983). For the above facility, the amount of material in storage on January 1, 1991, was zero, so on December 31, 1991, the operator does not have to show that any amount was recycled during the calendar year. On January 1, 1992, however, 200 kg of D008 sludge are in storage. Thus, the facility must be able to show that 75 percent of this material, or 150 kg, has been recycled or sent for recycling by December 31, 1992. If the operator cannot demonstrate this 75 percent recycling rate, the sludge remaining in storage is said to be accumulated speculatively

and becomes subject to regulation as a solid waste. Because it exhibits a characteristic, the generator must begin to handle the material as a hazardous waste. The Agency notes that "this approach could allow essentially a free year to accumulate where a generator starts a year with little or no waste" (48 FR 14490; April 4, 1983). The period of one calendar year starting on January 1 was selected, however, to facilitate enforcement and achieve uniformity (50 FR 635; January 4, 1985).

In making the above calculation, the 75 percent requirement applies to all materials of the same class being recycled in the same way. If this facility also generated a by product that exhibited the TC for chromium D007) and reclaimed it, the owner/operator would make a separate speculative accumulation calculation for this by-product (50 FR 635-6; January 4, 1985).

The RCRA regulations provide that certain materials, which would otherwise be considered hazardous waste, will not be regulated as solid waste (and therefore hazardous waste) when they are reclaimed (§261.2(c)(3)). The requirement that materials accumulated speculatively be regulated as solid waste was intended to prevent abuse of this exemption. It is only applicable to certain situations, including the reclamation of characteristic sludges and by-products, materials used or reused as ingredients, commercial product substitutes, black liquor, sulfuric acid, and precious metals reclamation. The rule is not applicable to spent materials being reclaimed, listed sludges being reclaimed, or listed by-products being reclaimed, because these materials are already considered solid wastes when awaiting recycling (50 FR 635; January 4, 1985). It also does not apply to commercial chemical products that are stored prior to reclamation, because, by definition, these materials are not regulated as solid wastes until they are abandoned or intended for discard (48 FR 14489; April 4, 1983).