

MEMORANDUM

SUBJECT: Wood Mulch Derived from Waste Lumber Preserved with Chromated Copper Arsenate (CCA)

FROM: Robert Springer, Director
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TO: RCRA Division Directors
Regional Pesticide Program Leads
EPA Regions I to X

The purpose of this memorandum is to clarify whether or not wood mulch produced from CCA-treated wood is exempt from regulation as hazardous waste under the Resource Conservation and Recovery Act (RCRA), specifically under the exemption at 40 CFR 261.4(b)(9). The exemption, which was originally promulgated in 1980,¹ states that the following solid wastes are not hazardous wastes provided they meet specific criteria:

“Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials’ intended end use.”²

¹See the November 25, 1980 *Federal Register*, 45 FR 78530, for the rule exempting *arsenical*-treated wood. While today’s clarification focuses on wood treated with CCA (chromated copper arsenate), it applies to any and all arsenic-based wood preservatives.

²To further clarify what is meant by “D004 through D017,” this exemption applies to discarded wood that is a RCRA hazardous waste because it exhibits the Toxicity Characteristic

This exemption applies to CCA-treated lumber where “...the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials’ intended end use.” Any CCA-treated wood used to produce wood mulch is not the “...materials’ intended end use,” therefore wood mulch produced from CCA-treated wood is not exempt from regulation as hazardous waste under 40 CFR 261.4(b)(9). This is because the intended end uses of the CCA-treated wood products are as building materials, not for manufacturing mulch. For example, CCA-treated wood waste generated during construction using CCA-treated wood, is generated by persons using the wood for its intended end use, and therefore would not be regulated as hazardous waste under this exemption (unless of course this wood waste is then used to produce mulch). In contrast, persons who shred or chip waste CCA-treated lumber into wood mulch for uses such as in landscaping applications, are not using the treated wood for its intended end use. Therefore, the exemption at 261.4(b)(9) does not exempt wood mulch produced from discarded CCA-treated wood.

This clarification is consistent with the Consumer Awareness Program (CAP) for consumers and users of CCA-treated lumber, which instructs consumers that they “...should never burn CCA-treated wood or use it as compost or mulch.”³ Also, the Consumer Safety Information Sheet for Inorganic Arsenical Pressure-Treated Wood states:

“Do not use treated wood under circumstances where the preservative may become a component of food or animal feed. Examples of such sites would be *use of mulch from recycled arsenic-treated wood*, cutting boards, counter tops, animal bedding, and structures or containers for storing animal feed or human food.”⁴ [emphasis added].

This memorandum is being issued to ensure clarity and a consistent approach throughout the Regions so that CCA-treated wood is properly used for its intended purposes. It is important that the waste stream from CCA-treated wood is not diverted toward mulch manufacturing.

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(TC) for any of fourteen specific chemicals represented by D004 through D017 waste codes. However, although this exemption refers to the D004 through D017 waste codes, arsenic (D004) is the chemical that would most likely cause the wood to fail the TC; data indicate that freshly-treated wood, as well as some weathered wood, can exceed the regulatory level for arsenic.

³www.epa.gov/pesticides/factsheets/chemicals/cca_qa.htm

⁴www.epa.gov/pesticides/factsheets/chemicals/cca_consumer_safety.htm