

Mr. T. L. Nebrich, Jr, CHMM, QEP, REM
Technical Director
Waste Technology Services Inc.
640 Park Place
Niagra Falls, New York 14301

Dear Mr. Nebrich:

Thank you for your letter dated March 1, 2001, in which you request clarification of the land disposal restrictions (LDR) requirements for characteristic wastes.

The first question is whether a characteristic waste that is mixed with a solid waste so that it no longer exhibits the characteristic is subject to the treatment standards found at 40 CFR 268.40. The answer is yes for nonwastewaters, but no for wastewaters. The LDR requirements attach at the point of generation of the characteristic waste (i.e., before mixing). Therefore, such nonwastewaters are subject to the applicable treatment standards of 40 CFR 268.40, including the requirement to identify and treat underlying hazardous constituents (see 40 CFR 263.2(i) and 268.9(a)) prior to placement in a RCRA-regulated landfill. On the other hand, characteristic wastewaters may be mixed with solid wastes or otherwise diluted and then injected into deep underground wells or placed in surface impoundments subject to controls imposed by the Clean Water Act (CWA) without meeting 268.40 treatment standards (40 CFR 268.1(c)(3) and (4)). This exemption for wastewaters was created to avoid duplicative regulation under both RCRA and CWA.

Your second question is whether a characteristic waste that is spilled on environmental media and that does not exhibit a hazardous characteristic at the time of active management is subject to the 268.40 treatment standards. The answer is no if the spill is promptly addressed, as explained below.

As a general matter regarding spills of hazardous wastes, an accidental spill of hazardous waste that is promptly cleaned up is not considered placement of hazardous waste into a land disposal unit. Of course, if hazardous waste treatment activities or other hazardous waste management activities continue after the immediate phase of a spill response is over, all applicable hazardous waste management and permitting requirements would apply.

Assuming that an immediate response has not been taken to address the spill, there are three important principles to consider when determining whether the LDR treatment standards apply to the hazardous soil. First, LDR treatment standards only apply to contaminated soils that contain hazardous waste. Soil contains hazardous waste when it exhibits a characteristic of hazardous waste or when it contains listed hazardous waste. Second, LDRs attach to prohibited hazardous waste (or hazardous contaminated soil) when it is generated (e.g., excavated) and when it is going to ultimately be placed in a land disposal unit. Third, once LDR treatment standards become applicable to a waste (generally at the point of generation), they continue to apply until they are met, regardless of any change of waste status from hazardous to nonhazardous. In other words, once LDRs have attached to soil that exhibits a characteristic, LDR treatment standards, including those requiring treatment of underlying hazardous constituents, must be met prior to land disposal of the soil, even if the characteristic is subsequently eliminated. (See 63 FR 28617-18.) This principle applies regardless of whether the spilled waste is ignitable, corrosive, reactive or displays a characteristic of toxicity.

It is conceivable that soil could be contaminated with a characteristic hazardous waste and yet not display a hazardous characteristic at the point of generation due to dilution in the soil matrix or to breakdown or alteration of the constituents in the soil environment. If this soil does not exhibit a characteristic when it is generated (excavated), then LDR requirements do not apply. However, treatment of the soil may still be required under cleanup authorities.

It should also be noted that any dilution of a prohibited contaminated soil (or of a prohibited hazardous waste with soil) as a substitute for adequate treatment to achieve compliance with LDR treatment standards or to circumvent the effective date of an LDR prohibition is considered a type of impermissible dilution and is illegal. Therefore, any deliberate mixing of prohibited hazardous waste with soil in order to change its treatment classification (i.e., from waste to contaminated soil) is illegal (see 63 FR 28621).

I hope you find this information useful. If you have further questions, please contact Rhonda Minnick of my staff on 703-308-8771. In addition, please note that authorized states have their own regulations and policies which may be more stringent than federal regulations and policies. In authorized states, questions about application of the LDRs to soil, including the interpretations put forth in this letter, should be referred to the appropriate state agency. Mr. Ray Basso of EPA's Region 2 office is available to help you identify the appropriate state contacts by calling him on 212-637-4109.

Sincerely,

James R. Berlow, Director
Hazardous Waste Minimization and Management
Division