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## RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

MAY 86

### 3. Treatment Without A Permit

A facility generates a waste that is in powder form and which exhibits the characteristic of EP toxicity. The waste is stored in a tank pursuant to the standards specified in 40 CFR 262.34. When the tank is partially full, the generator pours in sand, and mixes the contents of the tank until a homogenous mixture is formed. The sand dilutes the original waste. The resulting mixture no longer exhibits a characteristic of a hazardous waste. How is the generator regulated under RCRA? Can the State in which the facility is located require the facility to get a permit?

Under federal law, if the facility did not accumulate the waste for longer than the applicable time period specified in §262.34 (90 days), then the facility would only have to comply with the applicable provisions of §262.34. Rendering a characteristic hazardous waste non-hazardous by dilution is treatment; however, such treatment does not require a permit if §262.34 is followed. The EPA clarified this interpretation in the March 24, 1986 Federal Register which states, "Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of §262.34 and Subparts J or I

of part 265. Nothing in §262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste...the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards." (51 FR 10168)

States with existing standards may administer and enforce them as a matter of State Law. Further, a State with appropriate authorization could require a generator that treats hazardous

waste in a tank to operate under a RCRA permit or interim status if the requirement was incorporated in the State's approved program.

Of course, a non-listed characteristic hazardous waste that is treated so that it no longer exhibits a characteristic of hazardous waste need not be disposed of at a RCRA Subtitle C facility, instead, the waste could be disposed of at an approved State or local facility according to the applicable Subtitle D standards.

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