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REGULATORY DETERMINATION - SPENT SOLVENT LISTINGS AND THE MIXTURE RULE

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

Enforcement Confidential--Not for Public Release

July 16, 1992

MEMORANDUM

SUBJECT: Request for Regulation Determination -- Spent Solvent Listings and the Mixture Rule

FROM: Sylvia R. Lowrance, Director
Office of Solid Waste

TO: Earl E. Devaney, Director
Office of Criminal Enforcement

Thank you for your memorandum of June 17, 1992, in which you requested a regulatory interpretation of the spent solvent listings as they relate to the mixture rule. Specifically, you wished to know if the Shell Oil decision on the mixture rule would affect interpretations of the scope of the listings and the status of materials as listed hazardous wastes. I will answer your questions in the order you presented them.

1. With regard to listed spent solvents (e.g., F001 or F002), the Criminal Enforcement Counsel Division advises that the combination of a solvent with the contaminants which cause the solvent to be spent does not involve the "mixture rule" at all. Therefore, the Shell Oil decision would have no impact. Does OSW agree?

ANSWER: The Office of Solid Waste agrees with your assessment that the Shell Oil decision does not affect the scope of the spent solvent listing. The F001 - F005 listings cover approximately 30 different substances that, when used as a solvent and are "spent," become listed hazardous wastes. The Agency defines

a "spent" solvent as one that "has been used [for its solvent properties] and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed." (See 50 FR 53316, December 31, 1985.)

From a practical standpoint, it is the combination of the solvent with the contaminants (acquired from use of the solvent) that causes the solvent to become a spent solvent and thus meet the listing description. According to 40 CFR 261.3(b), "A solid waste ... becomes a hazardous waste when ... (l) in the case of a waste listed in subpart D, when the waste first meets the listing description set forth in subpart D." The contamination of the solvent from use causes the waste to become a listed hazardous waste, and this determination is not affected by the mixture rule.

2. CECD also advises that a listed spent solvent does not lose its status as a listed hazardous waste just by virtue of its being transported, treated, stored, or disposed of in a manner which involves combining it with some other solid waste. Of course, absent the "mixture rule," the entire mixture of the listed waste and the solid waste would not be considered a listed waste. However, the listed spent solvent itself would remain a listed hazardous waste, and the Shell Oil decision would have no impact. Does OSW agree?

ANSWER: The Office of General Counsel is currently looking into this question with respect to several listed hazardous wastes, not just spent solvents. For the moment, we will defer responding to this question.

Thank you for your memorandum. If you have any questions on this response, please contact Ron Josephson at 260-6715.