

Greig R. Siedor
Chief Legal Officer Onyx Environmental Services
700 East Butterfield Road
Suit 201
Lombard, Illinois 60148

Dear Mr. Siedor:

In your letter of October 24, 2000, you request that we review your interpretation of the requirements of 40 CFR 268.3(c) as they apply to certain D003 explosive hazardous wastes that also exhibit hazardous characteristics for one or more TC metals. You correctly note that wastes that exhibit hazardous metal toxicity characteristics, EPA Hazardous Waste Codes D004 through D011, are among the metal bearing wastes prohibited from dilution in a combustion unit according to 40 CFR 268.3(c) unless they meet one or more of the six criteria enumerated in 268.3(c)(1) through (6). You request that we issue an interpretation of 40 CFR 268.3(c)(4) that would allow D003 explosive wastes that are also D004 through D011 to be incinerated when the D003 characteristic cannot be safely removed from the wastes through chemical oxidation or chemical reduction, even though combustion is not specifically required. However, contrary to your analysis we believe combustion is allowed for the subject wastes under 40 CFR 268.3(c)(5).

D003 wastes are not listed in 40 CFR 268 Appendix XI as wastes for which combustion is prohibited. As you note, the treatment standard for these wastes is Adeactivation@ for which the recommended technologies for nonwastewaters are

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chemical oxidation, chemical reduction, or incineration. Incineration is not a required method of treatment that would permit combustion under 40 CFR 268.3(c)(4).

It was our intent in setting deactivation as the treatment standard for explosive wastes to give the regulated community flexibility to use whichever treatment technology that best fits the waste (55 FR at 22552, June 1, 1990). Because a waste that is characteristic for a metal and that also exhibits the characteristic of reactivity is subject to federal requirements necessitating the reduction of the constituents which cause the waste to be reactive, we find that it is permissible to combust such wastes as a means of removing the explosive properties of the D003 waste. This is the case even when the wastes are also toxic for metals, because the hazardous concentrations of explosives in the wastes are organics, which must be removed or destroyed to deactivate the waste. In this instance, the organics are explosive agents such as pentaerythritol tetranitrate (PETN), cyclotrimethylene trinitramine (RDX), cyclotetramethylene tetranitramine (HMX), hexanitrostilbene, lead styphnate, and barium styphnate. Therefore, we find that combustion would be allowed for the subject wastes under 40 CFR 268.3(c)(5). However, State programs may differ from the Federal program in that they may contain elements which are more rigorous or limiting than the Federal program, or they may contain elements of control and regulation which have no Federal counterpart. Therefore, you should also consult your states program office regarding their regulations governing combustion of the subject wastes.

If you have further questions regarding the land disposal restrictions for reactive wastes, please feel free to contact me or John Austin of my staff at 703-308-0436.

Sincerely,

Elizabeth Cotsworth
Director, Office of Solid Waste

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