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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 1991

1. Reclaimed Spent Wood Preservative Exclusion in 40 CFR Section 261.4(a)(9)

In the December 6, 1990, Federal Register (55 FR 50450), EPA promulgated hazardous waste listings for three wastes generated from wood preserving processes: F032, F034, and F035. These listings include spent wood preserving solutions which are often collected on drip pads, reclaimed (usually by means of filtration or oil/ water separation), and reused again in wood preserving processes. If a wood preserving facility uses reclaimed spent preservative (F032, F034, or F035) to treat wood products which are subsequently placed on the land, would the reclaimed spent preservative be regulated as a hazardous waste under the derived-from rule (40 CFR §261.3(c)(2)) since it is derived from the treatment (reclamation) of a listed waste?

No. Although in the general case, materials reclaimed from hazardous wastes that are used in a manner constituting disposal continue to be regulated as solid and, if hazardous, hazardous wastes, an exclusion from regulation as solid and, thus, as hazardous wastes was promulgated with the new listings for reclaimed spent wood preserving solutions that are reused for their intended purpose.

Generally, the derived-from rule in 40 CFR §261.3(c)(2) classifies any solid waste derived from the treatment, storage, or disposal of a listed hazardous waste as that hazardous waste. There is an exception to this rule. In §261.3(c)(2)(i), a material that is reclaimed from a hazardous waste and used beneficially, e.g., used as a product, is no longer considered a solid waste, and thus is not a hazardous waste. This exception does not apply, however, when a reclaimed material is used, burned for energy recovery, or used in a manner constituting disposal. Because in this case the wood products treated with the reclaimed wood preserving solutions are placed on the land (used in a manner constituting disposal), the §261.3(c)(2)(i) exclusion would not apply to the reclaimed preservatives or to the treated wood products. Thus, the preservatives and the wood products would be regulated as derived-from listed hazardous wastes. In the December 6, 1990, final rule, however, the Agency stated that "regulating reclaimed spent preservative and products made with reclaimed spent preservative was

not and is not EPA's intent." To implement this intent, an exclusion from the definition of solid waste was promulgated under §261.4(a)(9), which excludes from the definition of solid waste those spent wood preserving solutions and waste waters that have been reclaimed and will be reused for their original intended purpose. Thus, under 40 CFR §261.4(a)(9), once spent wood preserving solutions are reclaimed and have been returned to the process (i.e., the work tank), the reclaimed solutions used for their intended purpose (wood preserving) are not solid wastes and thus not hazardous wastes. Note that this exclusion does not apply to the recycling process (the recycling unit would be exempt from permitting under §261.6(c)), or to any prior management of the spent preservative. Also, note that the wording of the §261.4(a)(9) exemption was corrected in the July 1, 1991, Federal Register notice. (56 FR 30192).