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RCRA/Superfund/OUST Hotline Monthly Report Question

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1. Groundwater "Contained in" Policy

The owner of a permitted facility determines that the groundwater beneath the facility has been contaminated by a listed RCRA hazardous waste that is generated on-site. The facility is directed to pump the contaminated groundwater and treat it to remove the hazardous waste component. Although the facility will eventually treat the groundwater, prior to treatment, the facility wants to use the groundwater in an on-site production process as a coolant. If the facility pumps the groundwater and stores the water in a tank prior to piping it to the production process, is the tank a regulated hazardous waste tank or just a groundwater storage tank?

EPA policy (see the June 19, 1989 letter from J. Cannon to T. Jorling), is that groundwater and other environmental media "[is] not considered a solid wastes] in the sense of being abandoned, recycled, or inherently waste-like as those terms are defined in the regulations." Therefore, a mixture of a hazardous waste and ground water is not considered a hazardous waste under the "mixture rule" in Section 261.3 (since "mixtures" under 261.3 are mixtures of hazardous wastes and solid waste). However, groundwater contaminated with a listed waste "contains" a hazardous waste until the hazardous waste has been removed from the groundwater. EPA interprets its regulations to require that groundwater and other media which contain hazardous wastes must be managed as hazardous wastes. This is known as the "contained in" interpretation.

Thus, the storage tank holding the contaminated groundwater prior to use as a coolant is regulated as a hazardous waste storage tank.

The question of how the contaminated groundwater is regulated downstream from the storage tank depends on whether the use meets the criteria for the regulatory exclusion for recycling hazardous waste. For example, is the use of the contaminated groundwater in this manner as effective as using water from other sources (see the

April 26, 1989 memo describing factors to be considered in making such a determination)? If the use is not legitimate, then all units in which the contaminated groundwater is managed may be subject to regulation as hazardous waste units. However, if the use is legitimate, the units downstream from the storage tank may be exempt recycling unit (see 40 CFR 261.6(C) (1)). The EPA Region or an authorized state must make the site-specific determination on whether a recycling process such as the one described here exempts the units downstream from the storage tanks from regulation.