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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

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4. Fume Incinerators

A pesticide manufacturer has a fume incinerator which incinerates fumes from the pesticide production process. He also uses listed hazardous wastes as a supplemental fuel for the incinerator. The hazardous waste fuels have sufficient BTu value to constitute legitimate recycling (as determined by the enforcement guidance issued in the March 16, 1983, Federal Register (48 FR 11157)). May the manufacturer claim that since the listed hazardous wastes will be recycled for their energy value, then the unit in which the wastes are being recycled is itself not subject to regulation? In other words, must the fume incinerator burning listed hazardous wastes as a supplemental fuel operate under a RCRA permit?

The fume incinerator itself must be regulated under Subpart O of Parts 264 or 265. Two points must be clarified in answering the question. First, a fume incinerator used only to destroy gaseous emissions from an industrial process is not subject to RCRA regulation since the fume input, being an uncontained gas, is not a solid waste (per the June 24, 1982, Federal Register (47 FR 27530)). The fume incinerator would be subject to regulation under the Clean Air Act. However, this pesticide manufacturer's fume incinerator burns an additional and identifiable material which is a solid waste and a listed hazardous waste. A unit burning listed hazardous wastes for energy recovery is only exempt from Parts 264 or 265 Subpart O incinerator regulations if the unit is an industrial "boiler" or "industrial furnace" as defined in §260.10. The exemption is in §261.6(a)(2)(iii) of the November 29, 1985, Federal Register (50 FR 49203). There is no exemption for an incinerator burning hazardous wastes as fuel. Therefore, the pesticide manufacturer's fume incinerator must be operating either under RCRA interim status or final permit regulations.

Source: Bob Holloway (202) 382-7917
Research: Margaret Kneller