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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 3, 1995

Michael W. Sternberg
Morgan, Lewis & Bockius
1800 M street, N.W.
Washington, D . C. 20036

Dear Mr. Sternberg:

This replies to an issue you raised in a July 7, 1995, letter to Alan Carpaine, U.S. EPA Office of General Counsel, on behalf of your client, F.C. Corporation, with respect to EPA's interpretation of the Agency's carbamate listing rule promulgated on February 9, 1995. 60 Fed. Reg. 7824.

This response specifically deals with issues regarding the Agency's interpretation of the exemption in 40 CFR 261.3(a)(2)(iv)(F), a new section of EPA's regulations added by the carbamate listing rule. This new section provides an exemption from the hazardous waste listing designated as K157, which encompasses wastewaters from the production of carbamate and carbamoyl oximes.

The exemption provides that wastewaters are not considered hazardous waste if the maximum weekly usage of four constituents -- formaldehyde, methyl chloride, methylene chloride, and triethylamine total -- divided by the weekly flow of process wastewater (prior to any dilutions into the headwork of the facility's wastewater treatment system) contains less than 5 parts per million by weight. Calculation of the maximum weekly usage of the four constituents includes "all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized."

In your letter you object to EPA's inclusion of volatilized solvents in the calculation of maximum weekly usage. You claim that the rule unduly interposes RCRA regulations into the production process, as opposed to the disposition of wastes.

The Agency believes you have incorrectly interpreted the requirement and believes that an explanation of the carbamate rule preamble would clarify the issue and, perhaps, allay the concerns you have expressed.

First, the requirement to calculate volatilized solvents does not cover activities in the production process, but instead begins with the point of generation of wastes. EPA believes this is clear from the preamble to the rule, which states that "the appropriate compliance point for application of the K157 exemption is the point of generation prior to aggregation with other carbamate and non carbamate waste streams." 60 Fed. Reg. 7832. Thus, point of generation of the wastes is the applicable starting point for calculating the volatilized portion of the constituents of concern. The preamble goes on to explain that this prevents selective mixing of wastewater streams to meet the exemption criteria prevents generators from excluding storage tank and other treatment unit emissions and, thereby, meet the 5 ppm criterion.

Second, the Agency's risk assessment modeled air emissions that occur from waste accumulation prior to discharge or mixing with other wastewaters and volatilization during treatment. These were, thus, the areas of concern for effects on public health and the environment. Direct analysis during release from accumulation may not account for storage losses. A facility making the claim that a single point-of-compliance measurement meets the exemption, must be able to demonstrate that the compliance point is representative of the waste volume discharged and precludes any losses prior to the sampling point. In the event down stream units recover or destroy the constituents of concern, the mass captured or destroyed may be subtracted from the mass discharged. However, any volatilization during recovery or treatment may not be excluded from the calculation of discharge concentration.

Some confusion may have been generated by the following two statements in the preamble:

A facility can exclude that portion of the constituents of concern not disposed to wastewaters. No portion of the material of concern which is volatilized may be excluded from the calculation.

60 FR 7826. However, in view of the entire explanation in the

preamble and the rulemaking record, particularly the Agency's risk assessment modeling, the proper interpretation is that volatilization during production would not be calculated toward the 5 ppm.

In addition, the following preamble statement seems to need some clarification:

With regard to testing, the Agency does not preclude the direct measurement of the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine using quantitative analytical methods to demonstrate the exemption requirements are met. However, the Agency concludes that end-of-pipe analytical demonstrations alone do not prove compliance with the exemption criteria. All waste treatment emissions must be considered.

60 FR 7832. It was not the Agency's intent to preclude or require direct analytical testing of the waste discharged. As noted above it was the Agency's intent that the mass reaching the environment be accounted for, and that volatilization during storage not be discounted.

You also inquire as to the relationship between the new section 261.3(a)(2)(iv)(F) exemption and the exemption in section 261.3(a)(2)(iv)(B) ["B exemption"]. The B exemption was issued in 1981; 46 Fed. Reg. 56582, and applies to wastes resulting from the use of solvents subject to the non-specific source: or, "F," hazardous waste listings in 40 CFR 261.31. Thus, different standards would apply. Should there be a case where multiple waste codes apply, the Agency would view each in accordance with the applicable exemption. In such a case, both exemptions would have to be met in order for the waste to be exempt.

I hope, this explanation deals adequately with your concerns on the issues involved. If you have further questions, please contact John Austin at (202)260-4789.

Sincerely,

David Bussard Director
Characterization and Assessment Division