



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

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

JUN 27 2005

Mr. T. L. Nebrich, Jr.
Technical Director
Waste Technology Services, Inc.
640 Park Place
Niagara Falls, NY 14301

Dear Mr. Nebrich:

Thank you for your letter of February 19, 2004, regarding the RCRA Land Disposal Restrictions (LDRs) requirements for F003 and D001 wastes. In your letter, you seek clarification on requirements for disposal, notification and treatment of these wastes.

The first issue you raise is whether a generator with a mixture of F003 waste (containing spent acetone) and water, which now does not exhibit the characteristic of ignitability, is required to dispose the waste in a Subtitle C land disposal facility. Since the waste does not exhibit a characteristic, it is no longer hazardous and does not have to be disposed of in a Subtitle C facility (55 FR 3871, January 31, 1991). However, if the waste was hazardous at the point of generation, the waste must meet any LDR treatment requirements, which are listed in 40 CFR 268.40, prior to land disposal. See 40 CFR 268.40(e). In your case, it appears that the characteristic of ignitability has been removed after the point of generation because the waste was somehow mixed with water. Thus, you would have to meet the treatment standard for the F003 constituents, as well as for any underlying hazardous constituents (UHCs) that were reasonably expected to be present in the D001 waste at the point of generation. As explained below, the UHC requirement for D001 wastes is not waived by the "in lieu of" provision under 40 CFR 268.9(a). Of course, dilution is prohibited as a substitute for adequate treatment (see 40 CFR 268.3).

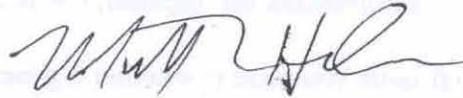
Your second question asks which hazardous waste codes from your example waste need to be included on the one-time LDR notification under 40 CFR 268.7. In your example, the generator would need to list both the F003 and D001 waste codes. The generator would also need to list the F003 constituent(s) of concern and any underlying hazardous constituents in the D001 waste, unless the waste will be treated and monitored for all constituents. These requirements are included in the Generator Paperwork Requirements Table found at 40 CFR 268.7(a).

You also asked whether the "in lieu of" principle in 40 CFR 268.9(b) would apply to your example F003 and D001 waste. The "in lieu of" principle is not applicable in this situation. As you point out, the "in lieu of" principle applies where the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Appendix VII to Part 261, Basis for Listing Hazardous Waste, includes no hazardous constituents for F003. Instead, the term N.A. appears, which is defined as: "Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity or reactivity." Therefore, because there is no constituent specified as the basis for the F003 listing, it is not possible to ascertain that the LDR treatment standard for the F003 waste would address the constituent(s) that caused the D001 waste to display the characteristic of ignitability.

Please be aware that this letter addresses only the federal hazardous waste regulations. State regulations may be more stringent than the federal regulations. You may wish to contact the appropriate state environmental agency to determine how their regulations apply to the issues you have raised.

I hope that this information will be helpful in resolving your issues. If you have any further questions, please contact Laurie Solomon on (703) 308-8443.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Hale", written in a cursive style.

Matthew Hale, Director
Office of Solid Waste