

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

June 1, 1994

Mr. Raymond D. Hiley
Goodwin, Proctor, and Hoar
Exchange Place
Boston, Massachusetts 02109-2881

Dear Mr. Hiley:

Thank you for your letter of November 23, 1993, in which you inquire about the scope of the spent solvents hazardous waste listings, as published at 40 CFR 261.31. Specifically, you wished to know if contamination of manufacturing process wastes by solvents that are hazardous waste causes these wastes to meet the listing description of a spent solvent hazardous waste.

You are correct in pointing out that EPA's 1985 Hazardous Waste Listing Background Document Addendum draws a distinction between spent solvent wastes and other manufacturing process wastes not regulated as spent solvents. The Agency has also, from time to time, provided interpretations of the spent solvent hazardous waste listing regulations to provide guidance to EPA Regions, State agencies, and the public as to which industrial wastes are or are not properly classified under 40 CFR 261.31 as F001 - F005 spent solvent hazardous wastes (examples of which you provided). In general, such determinations are made on a case-by-case basis and are highly fact specific. The involvement of Agency Headquarters staff in such interpretations generally occurs at the request of and with the close coordination of Regional and/or State Agency personnel, and where all parties involved have a detailed knowledge of the facility, the processes involved, and the wastes generated.

With regard to the issue of manufacturing process wastes contaminated with small quantities of solvents, the Agency has not established specific numerical quantities of solvent constituents that would cause the contaminated process wastes to be hazardous. As noted above, such an interpretation is fact-specific and depends on the nature of the operation, the quantities of solvents used and disposed in the operation, and the manner in which they are used/disposed. I note that the Agency is concerned that facilities not use "process waste" or "cleaning residue" wastestreams to improperly dispose of larger than necessary quantities of spent solvents.

In most cases, the Agency leaves site-specific waste classification determinations to the authorized State or EPA Regional office. The State or Regional environmental authorities have a better knowledge of the status of a facility. Federal law does not preclude States from being more stringent in their rules and/or their interpretation of their rules. The State or Regional environmental agency

personnel may decide, based on the facts before it, that a waste meets a hazardous waste listing description, that it is mixed with a listed hazardous waste, that it contains a listed hazardous waste, or that the waste does not meet the listing description.

Finally, you ask about the scope of the mixture rule with regard to secondary or spent materials. Should these materials, subsequent to generation, become contaminated with spent solvents that are listed hazardous wastes, then the entire mixture is considered a hazardous waste under the mixture rule (40 CFR 261.3(a) (2) (iv)). Such materials remain a listed hazardous waste unless and until delisted. Also, according to 40 CFR 261.3(d) (2), any material which is a listed waste (under 40 CFR Part 261, subpart D), contains a listed waste, or is derived from a listed waste is itself a hazardous waste unless it has been delisted or granted some other form of regulatory exclusion (See 40 CFR Parts 260.20 and 260.22).

Please remember that the State in which your client's facility is located may have hazardous waste regulations more stringent than those of the Federal government. Accordingly, you should consult the appropriate authorities.

Thank you for your inquiry. The Agency's Headquarters will be happy to assist local authorities with your issues, if coordination is requested. If you have any other questions, please contact Mr. Ron Josephson or Mr. Anthony Carrell of my staff at (202) 260-4770.

Sincerely,

Michael H. Shapiro
Director
Office of Solid Waste

