

QUESTION: Facility A places its spills of commercial chemical products (CCP) into tanks and surface impoundments. The tanks and surface impoundments are subject to NPDES. By the May 19, 1980, 261.3 definition of hazardous waste, the CCP spill contents are Subpart D listed hazardous wastes. The facility is, therefore, subject to RCRA and operates under interim status requirements (Part 265). According to the November 17, 1981 Federal Register, however, the tanks and surface impoundments contain “de minimis” spills which are not subject to RCRA (261.3(a) (2) (iv) (D)). The facility does not have to be permitted for any of its present activities because of the mixture rule, and it does not plan to need a permit for any of its future work. Does the November 17, 1981, mixture rule mean that the facility does not have interim status because it does not handle hazardous waste, or does the facility have interim status that would require 265 closure in lieu of a permit application?

ANSWER: Facility A is still subject to interim status requirements for the time between November 19, 1980, and November 17, 1981. The mixture rule does not negate waste meeting the 261.4(a) (2) (iv) (D) description that was generated prior to November 17, 1981. Since the facility does not plan to manage hazardous waste in the future, the tanks and surface impoundments will not be permitted. The facility may elect to perform closure and any applicable post-closure requirements under 265, or the facility may elect not to furnish a part B as grounds for termination under 124. Until 124 proceedings have been culminated after 265 closure or in response to not having an application submitted, the facility maintains its interim Status and is able to have changes according to 270.72.

SOURCE: Deborah Wolpe

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