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Hotline Questions and Answers

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1. Solid Waste Determination for Spilled Commercial Chemical Products

According to 40 CFR 261.2, Table 1, hazardous commercial chemical products, when recycled, are exempt from RCRA because they are not solid wastes. If a manufacturer spills a commercial chemical product into the soil and intends to reclaim the spill residue, is the spill residue exempt from RCRA standards?

The intent to recycle a commercial chemical product spill residue does not exempt the material from RCRA jurisdiction. In fact, EPA has stated that contaminated soils and other cleanup residues generally are solid wastes because of the difficulty associated with recycling wastes contained within environmental media (54 FR 48494; November 22, 1989). Sometimes, however, a spill residue can be returned to a process or otherwise put to use, and thus remain exempt from RCRA standards.

In order to demonstrate that a spill residue is not a solid waste, the generator has the burden of proving that legitimate recycling will take place. The Agency has adopted objective considerations to evaluate a generator's claim that a spilled product will be legitimately recycled. The length of time the spill residue has existed is one such consideration. In order to prove that legitimate recycling will occur, a generator may also show that recycling has already begun, the material is valuable, the material can feasibly be recycled and/or the company has recycled such material in the past (55 FR 22671; June 1, 1990).

In the absence of strong, objective indicators of recycling or intent to recycle a spill residue, "the materials are solid wastes immediately upon being spilled because they have been abandoned" (54 FR 48494; November 22, 1989), and must be managed in accordance with all applicable RCRA standards.