

APRIL 15, 1987

Mr. Daryl Koch
Senior Hazardous Materials
Specialist
State of Idaho
Department of Health and Welfare
Division of Environment
Statehouse
Boise, Idaho 83720

Dear Mr. Koch:

Thank you for your letter of April 1, 1987, concerning small generator interpretations. I have answered each of your questions below. If anything is still unclear, give me a call at (202) 382-7737. Also note EPA's RCRA Hotline number: (800) 424-9346 (toll free) or (202) 382-3000.

1.A. Yes. The generator does not have to add the bottoms to his other wastes (to determine his generator status) because the solvents were already counted once. However, in your example, the generator exceeded 100 kg in the month due to his solvents, so he must manage all of his hazardous wastes under the hazardous waste regulations, including the still-bottom residues.¹ Note that if he can recycle without storing the solvents first, he need only count the bottoms, not the solvent. (See 40 CFR §261.5(d)(2).)

1.B. Yes. As explained above, the generator in your example is over the 100 kg/mos limit, so all of his hazardous waste is regulated.

2.A. An otherwise exempt SQG becomes subject to regulation if he exceeds 1000 kg in total hazardous waste accumulation. (See 40 CFR §261.5(g)(2).) This is not part of the "counting rules" in §261.5(a)-(f), but rather is a separate and independent condition a generator must meet to be exempt. You also asked what difference it would make for a generator to store larger quantities on-site (as opposed to shipping more often to a sanitary landfill). I don't think there is any grand logic to this point. EPA originally had a 1000 kg generation or accumulation limit. Congress changed only the generation limit and left the accumulation limit untouched, so it is still there.

¹ This assumes the bottoms are hazardous waste. If the solvents were hazardous only due to a characteristic, the bottom themselves would have to exhibit a characteristic to come under regulation.

I personally think having a separate accumulation limit does prevent SQG sites from becoming large-scale storage facilities (i.e., the purpose of the §261.5 exemption was to allow shipments to Subtitle D landfills, not to just let waste pile up at the generator's sites).

3. Yes. If waste is stored prior to reclamation, it counts vs. the 100 kg/mo limit.

Sincerely,

Michael Petruska
Acting Chief, Review Section

cc: Karen Brown, EPA Small Business
Ombudsman (A- 149c)

April 1, 1987

Mr. Michael Petruska
U.S. EPA
WH 562-B
901 M Street S.W.
Washington, D.C. 20460

Dear Mr. Petruska:

In recent weeks, we have begun to devote staff time towards assisting the small quantity generator; specifically, the generators of spent degreasing and paint solvents.

In trying to assist these small businesses, we have read the current regulations, the SQG rule preamble, talked with the RCRA Hotline and other states' hazardous waste staff. These sources are split about 50/50 on the question of whether or not still bottom residues are regulated if they are the result of a conditionally exempt or SQG activity. Therefore, we thought it was time to ask EPA to give its own interpretation.

Our State program has rules, which for the most part, are identical to the EPA treatment, storage, disposal and permitting, etc., regulations. We would also like to remain "equivalent" to EPA when we have to explain the rationale for our interpretation of a rule.

I would like you to respond to the following questions to assist us in our endeavor:

1. In a calendar month, a generator typically generates more than 220 but less than 2,200 lbs. of spent solvent and stores it in drums prior to on-site distillation. (A SQG in our opinion.) During the month or on the last day of the month, this SQG distills his spent solvents. The still-bottom residue does not exceed 220 lbs. in weight by the end of the month. Question:

A. Is the still-bottom residue a regulated hazardous waste in that any portion must be sent to an EPA or State permitted hazardous waste facility even though it did not exceed 220 lbs. in that month? Yes, because the gen. is already over 100kg. in that month. He does not have to count the residues in addition to the spent solvent because it's already been counted.

Note: If he could recycle without first storing, then he would only count the residue, not the solvent. (and then he would be exempt.)

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- 1.B. If stored on-site, is any of the <220 lbs/mo. still-bottom residue subject to the 6,000 kg. and 180/270 day storage requirements? Yes, because he is already a 100 - 1000kg/mo generator and the residue doesn't change his status.
2. A generator typically generates less than 220 lbs. of spent solvents in a calendar month. During the month, the solvent is distilled every time 5 gallons is accumulated. The resultant still-bottom residue in a month obviously does not exceed 220 lbs. Since this generator does not generate more than 220 lbs. of spent solvent in a month, he appears to be conditionally exempt.

In our opinion, all of the spent solvents which are not distilled and all still-bottoms from distillation are not regulated and could be sent off-site for beneficial re-use or sent to the local landfill, if approval was granted, since this generator is conditionally exempt.

However, if as stated in 40 CFR 261.5(g)(2) and on page 7 of the EPA publication Understanding the Small Quantity Hazardous Waste Generator Rules; A Handbook for Small Business, if the conditionally exempt generator ever accumulates more than 2,200 lbs. of hazardous wastes, then from that day forward his accumulated waste is brought into the SQG system and he is subject to the current SQG rules, including the 180/280 day and 6,000 kg. limitations.

- A. Since this conditionally exempt generator's spent solvent was already counted to determine generator status, and you do not have to count the still-bottom residue if you have already once counted the spent solvent, is any of the still-bottom residue regulated, no matter how much is accumulated on-site? Yes, Accumulation is another condition under §261.5, in addition to the 100kg/mo limit.

In other words, if the conditionally exempt generator can legally place his still-bottom residues in the company dumpster for shipment to the local landfill on a monthly basis, then what difference does it make if he simply stores a larger quantity (i.e., exceeding 2,200 lbs., and then decides to send it all at once or in increments to the same location)? The 1000kg total accumulation limit prevents over accumulation, i.e., just letting more and more waste accumulate at the site.

3. In our opinion, all degreasing "parts washer" solvent systems which utilize a hot or cold wash and spent solvent recycling/collection/storage tank, are considered a closed-loop system for purposes of the counting requirement (i.e., there is some storage of spent solvent below the washer but until the tank is changed, (new tank of fresh solvent put in place), the spent solvent is simply used over and over.

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Another type of system involves spent solvent collection and then separate storage in containers until a distillation unit is ran to recover the solvent. We feel that solvent collected in this case is counted for purposes of generator status. Yes, because this is ??? a ????? system, i.e., storage prior to ?????mation.

B.3. Do you agree on our determinations?

We appreciate any assistance you can provide to our staff on the SQG issue as it relates to spent solvent generators and on-site distillation of same.

Sincerely,

Daryl Koch
Sr. Hazardous Materials Specialist

cc: Small Business Office
A-149 C