

QUESTION: When a person calculates the amount of waste he generates either to determine if he is a small quantity generator or to determine the amount of waste he disposes of in order to calculate the amount of tax he owes under Subtitle C of CERCLA, should he include the weight of the containers in those calculations?

ANSWER: EPA has said (45 FR 78527) that the container is not considered a hazardous waste and it is only the material or residue in the container that the Agency intends to regulate (40CFR 261.7). EPA'S position is that when making weight determinations for small quantity generator status or reporting for the biennial report, the weight of the container is not counted. However, it is customary for the manifest to show the total weight (i.e., waste plus container) since a transporter charges on the basis of weight transported over a specified distance. The designated facility would probably calculate the CERCLA tax based on the total weight rather than removing the waste from the container. Thus, while EPA would not count the weight of the container, it is possible that the disposal facility (i.e., that person who indirectly collects the tax from the generator) would. The Internal Revenue Service has not issued any guidance or promulgated any regulations on the CERCLA tax aspects of this subject.

Source: Jacque Sales, Steve Silverman, and Bob Axelrad