

9444.1981(05)

September 18 1981

Mr. Reed Sato
Enforcement Division, Region IX
U.S. Environmental Protection Agency
215 Fremont Street
San Francisco, California 94105

Dear Mr. Sato:

I am writing in response to your letter of July 23, 1981 (E-5-3; IX81-RCRA-079) requesting clarification of 40 CFR 261.33(e).

You are correct in your interpretation that a material containing a compound listed in §261.33(e) as its sole active ingredient is a hazardous waste when discarded even though the original product has been diluted by the user. Thus if a person purchases a concentrated solution of the pesticide Aldicarb (P070) and then dilutes it to an application strength solution; disposal of the application strength solution is considered to be disposal of the product itself. A literal reading of the regulations would mean that even if the amount of chemical product prior to dilution was less than 1 kilogram; disposal of more than 1 kilogram/month of the application strength solution would require management as a hazardous waste.

It is important to keep in mind, however, the applicability of the "farmer exemption" discussed in §262.51. A commercial applicator working for a farmer may mix, apply, rinse and dispose of pesticide rinsate or unused pesticide solution on the farmer's property if done so in accordance with the instructions on the pesticide label. This exemption would not apply if the pesticide were being applied to more than one farmer's property and disposal only occurred at one farm, or if the waste was shipped off the farmer's property for disposal.

I trust that this explanation clarifies the issue for you. If you have any further questions, please feel free to give us a call.

Sincerely yours,

Original Document signed

David Friedman
Manager
Waste Analysis Program
Hazardous & Industrial Waste Division (WH-565)

cc: Fred Lindsey (WH-565)
A. Corson (WH-565)
D. Friedman (WH-565)
M. Straus (WH-565)
Amy Schaffer, Enforcement (WH-562-M)
Susan Bromm (WH-564)

RO 11021

Filomena Chau (WH-562)
RCRA Hotline

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region IX
215 Fremont Street
San Francisco, California 94105

July 23 1981

In Reply: E-5-3
Refer To: IX-81-RCRA-079

Mr. David Friedman, (WH-565)
Manager of Waste Analysis
Waste Characterization Branch
Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

Re: Request for Policy Statement regarding §261.33(e) of
Title 40 of the Code of Federal Regulations

Dear Mr. Friedman:

EPA Region 9 is currently engaged in an enforcement action which involves an interpretation of §261.33(e) of Title 40, Code of Federal Regulations.

It is our contention that a pesticide containing a listed §261.33(e) chemical product as its sole active ingredient which is diluted to application strength is a hazardous waste if discarded. We contend that such application-strength pesticide is a hazardous waste even where the chemical product prior to dilution is less than 1 kilogram. Therefore, so long as an applicator generates 1 kilogram of waste pesticide residues per month he is required to notify as a generator pursuant to section 3010 of RCRA.

Within our own technical section there has been some dispute as to whether the preceding analysis is correct. In order to obtain guidance on this matter I contacted your office on July 20, and explained our position to Mr. Matthew Straus. Mr. Straus stated that Region 9's interpretation of §261.33(e) is correct.

RO 11021

Furthermore, Mr. Straus indicated that if the applicator tanks were rinsed, that rinsate could be considered hazardous waste as well.

I am writing to obtain a written statement from your office which confirms Mr. Straus' conclusions. Such a statement will greatly assist us in the successful conclusion of our enforcement action. If you have any questions regarding this request please call me at FTS 556-8000.

-2-

Thank you for your assistance.

Sincerely yours,

Original Document signed

Reed Sato
Attorney-Advisor
Enforcement Division