

From: Erin CONLEY
To: McCambridge, Mike
Date: 4/14/2008 10:11:50 AM
Subject: Fwd: lost

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R07-5/R07-14
PC 5
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STATE OF ILLINOIS
Pollution Control Board

Mike McCambridge - Fwd: lost

From: Erin CONLEY
To: McCambridge, Mike
Date: 4/14/2008 10:11 AM
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Erin:

I need some basic background instruction on 721.104. What does it mean if a waste is not a solid waste for the purposes of Part 721? I thought we were only concerned with hazwaste?

From: Mike McCambridge
To: Connelly, Deborah
Date: 4/15/2008 4:10:27 PM
Subject: Re: lost

John Therriault: Please print this e-mail and attach it as the end of the e-mail that I gave you marked PC 5 in docket R07-5/R07-14. Use the your usual designation indicating this as an e-mail and attached reply.

Deborah Connelly:

Due to a potentially serious mechanical problem at home that I had to promptly repair, I was unable to respond to your questions before today. Sorry for the delay in this response.

Since Erin left for another job today, I will respond to you directly. This is how we will operate in the future. I look forward to working with you. This is the first of three questions that you addressed to Erin yesterday. I hope this response addresses your question adequately. Please feel free to ask again if you need more from me. The other two responses will follow immediately and separately.

I would guess that this question about solid waste arises from the USEPA conditional exclusion of CRTs from regulation as waste. By determining that certain CRTs are not a solid waste if managed in certain ways, USEPA has determined not to include those materials in any level of regulation as waste. This is instead of considering them solid waste that is not subject to hazardous waste regulation so long as the conditions are fulfilled, which is the case for "universal waste" regulated under Part 733 (corresponding with 40 C.F.R. 273).

The short answer is that it cannot be a hazardous waste unless it is a solid waste. Thus, the solid waste issue is a threshold issue. The more substantial answer requires understanding of the structure of the hazardous waste regulations and a brief reference to their history.

The hazardous waste regulations, at Section 721.102 (corresponding with 40 C.F.R. 261.2 define "solid waste." Section 721.103 (corresponding with 40 C.F.R. 261.3) goes on to define "hazardous waste" based on what has been defined as solid waste. The preamble of Section 721.103 (corresponding with 40 C.F.R. 261.3) defines a hazardous waste, stating in significant part as follows: "A solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste" This provision goes on to define which solid wastes are hazardous wastes.

Section 721.104 (corresponding with 40 C.F.R. 261.4), which is the provision questioned by JCAR, contains the many exclusions from regulation. It includes two distinct exclusions. First, subsection (a) of Section 721.104 excludes certain materials from the universe of "solid waste." Subsection (a)(1) of Section 721.102 prefaces the definition of solid waste with the following: "A solid waste is any discarded material that is not excluded by Section 721.104(a)" Second, subsection (b) of Section 721.104 excludes certain solid wastes from the universe of materials that are hazardous wastes. Subsection (a) of Section 721.103, qualifies the universe of hazardous waste with the following statement: "It is not excluded from regulation as a hazardous waste pursuant to Section 721.104(b) . . ."

Thus, the hazardous waste analysis is a multi-tiered one that requires a series of determinations in sequential order. The first determination is whether the material is a solid waste, as defined in Section 721.102, that is not excluded from regulation under Section 721.104(a). Only then does the analysis proceed to a determination whether the material is a hazardous waste, as defined in Section 721.103, that is not excluded from regulation under Section 721.104(b).

RCRA includes a number of titles. Title C regulates hazardous waste. Title D regulates municipal solid waste. Overall, RCRA is concerned with all solid wastes, and it addresses the improper disposal of solid wastes, which is called "open dumping."

As to non-hazardous solid waste, RCRA started out by mandating that USEPA provide guidance to the states as to modes of disposal that did not constitute open dumping. With the Hazardous and Solid Waste Amendments of 1985 (HSWA), however, RCRA Subtitle D mandated that USEPA establish minimum federal standards for the disposal of municipal solid waste (which resulted in the Municipal Solid Waste Landfill (MSWLF) rules adopted by USEPA in 1991, and subsequently by the Board in 1993, to comport with the HSWA requirements.

As to hazardous waste, RCRA has always mandated that USEPA establish minimum federal standards for the management of hazardous waste, since Congress adopted it in 1976. USEPA adopted the first set of hazardous waste regulations in May 1980. The Board adopted corresponding rules in 1982.

Michael J. McCambridge

Illinois Pollution Control Board
312-814-6924

>>> "Connelly, Deborah" <connelly@ilga.gov> 4/7/2008 3:26 PM >>>
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