R09-16/R00-4 RCRA-C
PC 1

From: <Atagi.Tracy@epamail.epa.gov>
To: "Mike McCambridge" <MCCAMBM@ipcb.state.il.us>
CC: <goode.marilyn@epamail.epa.gov>, <Mooney.Charlotte@epamail.epa.gov>
Date: 12/18/2009 12:29 PM
Subject: Re: Regulatory Status of Reclaimed Materials Prior to the 2008 Amendments
Attachments: pic31717.jpg

Mike -

Thank you for your email. Here are some clarifications:

(1) You write: "The recyclable materials that are now designated HSM by virtue of the 2008 DSWR amendments, however, would not fall within any of the lists in subsections (a)(2) or (a)(3). They are therefore subject to the requirements of subsections (b) and (c), which appear to impose much less than the entire body of the generally applicable hazardous waste standards."

No, the HSM that falls under the 2008 DSWR exclusions does not meet the regulatory definition of "recyclable material" in 40 CFR 261.6(a)(1) because the DSW HSM is not a solid waste, and therefore not a hazardous waste. Thus the requirements of subsections (b) and (c) do not apply to the DSW HSM..

(2) "What confuses me is that I had assumed that reclamation is "treatment," as that term is defined in 40 C.F.R. 260.10, since it is using a "method, technique, or process . . . to change the physical character or composition of any hazardous waste . . . so as to recover energy or material resources from the waste . . . ." Treatment is governed under the T/S/D facility standards, and 40 C.F.R. 270.1(b) requires application for a RCRA permit to continue after a facility becomes subject to regulation. Further, while stating the subset of regulations that apply to facilities recycling recyclable materials, 40 C.F.R. 261.6 does not expressly state outside of the cited parenthetical that the recycling is not "treatment" that is subject to regulation."

Yes, reclamation does fall under the 260.10 definition of "treatment" but facilities managing recyclable materials as defined in 40 CFR 261.6 are generally excluded from TSD facility standards (see 40 CFR 264.1 (g)(2) and 40 CFR 265.1(c)(6)).

(3) "In many regards, it would appear that some segments of the 2008 DSWR amendments actually impose a greater burden of compliance on recycling facilities than did the prior rules based on the 1985 DSWR amendments. This is especially true for third-party reclamation outside the control of the HSM generator."

Yes, the 2008 DSW rule can impose more requirements than the 40 CFR 261.6 regulations, particularly for facilities with no storage prior to recycling. For example, facilities that are regulated under 261.6(c)(2) would not be required to have financial assurance, while third party DSW reclamation facilities would need to have financial assurance as a condition of the DSW exclusion..

I hope this helps - please let us know if you have any further questions.

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From: "Mike McCambridge" <MCCAMBM@ipcb.state.il.us>

To: Marilyn Goode/DC/USEPA/US@EPA

Cc: Tracy Atagi/DC/USEPA/US@EPA

Date: 12/17/2009 07:35 PM

Subject: Regulatory Status of Reclaimed Materials Prior to the 2008 Amendments

Examining the 2008 amendments to the Definition of Solid Waste Rule (2008 DSWR), I am trying to examine the regulatory status of reclaimed materials that are now designated "hazardous secondary materials" (HSM). I would like you to either confirm or deny my interpretation of the hazardous waste standards as they stood prior to the 2008 DSWR amendments.

I had always assumed that the full RCRA generator; transporter; and treatment, storage, disposal (T/S/D) facility standards of 40 C.F.R. 262, 263, 264, and 265 applied, as appropriate, since the material was hazardous waste. My examination, however, disclosed that 40 C.F.R. 261.6 would allow only selective application of the T/S/D facility standards. Reading the pertinent segment of the 1985 DSWR amendments (at 50 Fed. Reg. 614, 650 (Jan. 4, 1985)) does not fully clarify exactly what applies to reclaimed hazardous waste that was not formerly excluded from the definition of solid waste.

Section 261.6(a)(1) designates recycled hazardous waste as "recyclable material." It provides that the requirements of subsections (b) and (c) apply to recyclable materials not specifically listed in either of subsections (a)(2) or (a)(3). Subsection (a)(2) lists the wastes that are recycled under the provisions of 40 C.F.R. 266. Subsection (a)(3) lists the special-case wastes of industrial ethyl alcohol, scrap metal that is not excluded scrap metal, three specified fuels produced from oil-bearing petroleum refinery wastes, used oil that is not listed hazardous waste, and exported hazardous waste. Subsections (a)(2) and (a)(3) also list alternative management standards that apply to each specified type of waste.

The recyclable materials that are now designated HSM by virtue of the 2008 DSWR amendments, however, would not fall within any of the lists in subsections (a)(2) or (a)(3). They are therefore subject to the requirements of subsections (b) and (c), which appear to impose much less than the entire body of the generally applicable hazardous waste standards.

Subsection (b) imposes the RCRA notification requirement and the full body of the hazardous waste generator and transporter requirements on generators and transporters of recyclable materials. That is as I would have expected. It is the body of requirements that applies to persons engaging in recycling the recyclable materials that surprises me.

Subsection (c) divides the universe of recycling facilities into (1) those facilities that store recyclable materials before recycling and (2) those facilities that recycle the recyclable materials without storing them. There is a great difference between the requirements that apply to each respective type of facility.

The facilities that store recyclable materials before recycling are subject to all of the T/S/D facility standards except those relating to land treatment (40 C.F.R. 264, subpart M and 265, subpart M), landfills (40 C.F.R. 264, subpart N and 265, subpart N), incinerators (40 C.F.R. 264, subpart O and 265, subpart O), thermal treatment units (40 C.F.R.

265, subpart P), chemical, physical, and biological treatment units (40 C.F.R. 265, subpart Q), corrective action management units and temporary units (40 C.F.R. 264, subpart S and 265, subpart S), drip pads (40 C.F.R. 264, subpart W and 265, subpart W), miscellaneous units (40 C.F.R. 264, subpart X and 265, subpart X), containment units (40 C.F.R. 264, subpart DD and 265, subpart DD), and munitions and explosives (40 C.F.R. 264, subpart EE and 265, subpart EE). With only a few possible exceptions, nearly all of the pertinent T/S/D facility standards apply to facilities storing recyclable materials.

The facilities that recycle the recyclable materials without prior storage bear a much-reduced regulatory burden. They must comply with the RCRA notification requirement and T/S/D facility use-of-manifest requirements (40 C.F.R. 265.71 and 265.72). Such a facility is also subject to the air emissions requirements for equipment leaks and tanks, containers, and vessels (40 C.F.R. 264, subparts AA and BB and 265, subparts AA and BB) if it is subject to the RCRA permit requirements.

Reinforcing the fact that the RCRA T/S/D facility standards do not apply to recyclable materials recycling (but only to the storage of these materials) is the parenthetical statement in subsection (c)(1) which states: "The recycling process itself is exempt from regulation except as provided in § 261.6(d)." Thus, recycling operations appear to be largely exempt from the RCRA T/S/D facility standards except where they store recyclable materials before recycling or where they are subject to the RCRA permit requirements. Where the recycling facility is subject to the RCRA permit requirements, the air emissions standards would apply.

What confuses me is that I had assumed that reclamation is "treatment," as that term is defined in 40 C.F.R. 260.10, since it is using a "method, technique, or process . . . to change the physical character or composition of any hazardous waste . . . so as to recover energy or material resources from the waste . . . ." Treatment is governed under the T/S/D facility standards, and 40 C.F.R. 270.1(b) requires application for a RCRA permit to continue after a facility becomes subject to regulation. Further, while stating the subset of regulations that apply to facilities recycling recyclable materials, 40 C.F.R. 261.6 does not expressly state outside of the cited parenthetical that the recycling is not "treatment" that is subject to regulation.

In many regards, it would appear that some segments of the 2008 DSWR amendments actually impose a greater burden of compliance on recycling facilities than did the prior rules based on the 1985 DSWR amendments. This is especially true for third-party reclamation outside the control of the HSM generator.

Please explain, and tell me if I am missing something here.

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