

<u>SUBJECT</u>		<u>DATE</u>
1394. RCRA Empty vs. DOT Empty	ENCORE	JUL 30, 2020
1395. RCRA Empty vs. DOT Empty II	ENCORE	AUG 6, 2020
1396. Empty Containers and the "Empty" Label	ENCORE	AUG 13, 2020
1397. Exceptions to Free Liquids in Landfills Prohibition	ENCORE	AUG 20, 2020
1398. Dust Suppression in Landfills with Nonhazardous Liquids	ENCORE	AUG 27, 2020
1399. Treated Hazardous Wastes Used as Dust Suppressant	ENCORE	SEP 3, 2020
1400. Regulatory Status of Used Oil Mixed with Diesel Fuel	ENCORE	SEP 10, 2020
1401. RCRA Liquids, Free Liquids, and Releasable Liquids	ENCORE	SEP 17, 2020
1402. Available Regulatory Relief from Underlying Hazardous Constituent (UHC) Requirements	ENCORE	SEP 24, 2020
1403. Smoke Detector Disposal and the NRC	ENCORE	OCT 1, 2020
1404. DOT Shipping of Damaged, Defective, or Recalled Lithium Batteries	ENCORE	OCT 8, 2020
1405. Conservative Declaration that Material is a Hazardous Waste	ENCORE	OCT 15, 2020
1406. Manifest Exception Report Submittal Timeframes – RCRA vs. TSCA	ENCORE	OCT 22, 2020
1407. Characteristic Ignitable, Corrosive or Reactive Debris and Macroencapsulation	ENCORE	OCT 29, 2020
1408. RCRA Satellite Accumulation Areas and Applicability of Personnel Training		NOV 5, 2020
1409. The Hazardous Waste Generator Improvements Rule and Designation of Nonhazardous Waste		NOV 12, 2020
1410. RCRA Aisle Space Requirements and Washington State vs., EPA		NOV 19, 2020
1411. The Definition of Good Housekeeping	ENCORE	NOV 24, 2020
1412. Absorbent Additions and Treatment	ENCORE	DEC 3, 2020
1413. LDR Notifications and F001-F005 Constituents of Concern	ENCORE	DEC 10, 2020
1414. LDR Notifications and F001-F005 Constituents of Concern – Again!	ENCORE	DEC 17, 2020
1415. 'Twas the Night before Christmas – The Twenty-Seventh Edition		DEC 24, 2020
1416. LDR Notifications and F001-F005 Constituents of Concern - One Last Time!	ENCORE	DEC 31, 2020
1417. RCRA Empty Containers and Removing as Much Waste as Possible	ENCORE	JAN 7, 2021
1418. Universal Waste, Incandescent Bulbs and Nonhazardous Bulbs	ENCORE	JAN 14, 2021
1419. Listed Waste Codes and Pre-RCRA Wastes	ENCORE	JAN 21, 2021
1420. Commercial Chemical Products and Unused Batteries	ENCORE	JAN 28, 2021
1421. Recycling of Non-Listed Commercial Chemical Products	ENCORE	FEB 4, 2021

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TWO MINUTE TRAINING

TO: CENTRAL PLATEAU CLEANUP COMPANY

FROM: PAUL W. MARTIN, RCRA Subject Matter Expert
CPCCo Environmental Protection, Hanford, WA

SUBJECT: RECYCLING OF NON-LISTED COMMERCIAL CHEMICAL PRODUCTS

DATE: FEBRUARY 4, 2021

<u>CPCCo Projects</u>	<u>CPCCo - Env. Protection</u>	<u>HMIS</u>	<u>Hanford Laboratories</u>	<u>Other Hanford Contractors</u>	<u>Other Hanford Contractors</u>
Richard Austin Tania Bates Rene Catlow Richard Clinton Larry Cole Laura Cusack Stuart Hildreth Stephanie Johansen Sasa Kosjerina Richard Lipinski Stuart Mortensen Dave Richards Sean Sexton Dave Shea Phil Sheely Connie Simiele Jeff Westcott	Jeff Bramson Bob Bullock Frank Carleo Danielle Collins Jennifer Copeland Jeanne Elkins Ryan Fisher Jonathan Fullmer Steve Heninger Julie Johanson Barry Lawrence Diane Leist Mitch Marrott Stewart McMahand Brian Mitcheltree Anthony Nagel Chris Plager Linda Petersen Brent Porter Dale Snyder Kat Thompson Wayne Toebe Daniel Turlington Britt Wilkins	Brett Barnes Michael Carlson Mike Demiter Kip George Jerry Cammann Jeff Ehlis Garin Erickson Panfilo Gonzalez Jr. Dashia Huff Mark Kamberg Jon McKibben Saul Martinez Matt Mills Carly Nelson Michelle Oates Eric Pennala Jon Perry Christina Robison Christian Seavoy David Shaw John Skoglie Lana Strickling Greg Sullivan	(TBD) <u>DOE RL, ORP, WIPP</u> Mary Beth Burandt Duane Carter Al Farabee Tony McKarns	Bill Bachmann Dean Baker Scott Baker Lucinda Borneman Paul Crane Tina Crane Ron Del Mar John Dorian Mark Ellefson Darrin Faulk Rob Gregory James Hamilton Andy Hobbs Ryan Johnson Megan Lerchen Mike Lowery Michael Madison Terri Mars Cary Martin Grant McCalmant Steve Metzger Tony Miskho Tom Moon Chuck Mulkey Kirk Peterson	Dan Saueressig Joelle Moss Glen Triner Greg Varljen Julie Waddoups Jay Warwick Ted Wooley

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TWO MINUTE TRAINING

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

Q: Last week's Two Minute Training stated that per [WAC 173-303-016 \[40 CFR 261.2\]](#) Table 1, "commercial chemical products" (CCPs) are not solid wastes when recycled. However, an out-of-state customer notes that the equivalent Federal regulation at 40 CFR 261.2 Table 1 specifically states "commercial chemical products listed in [40 CFR 261.33](#)", e.g., the "U" and "P" listed hazardous waste codes. The customer has a CCP for recycle that is not "U" or "P" listed but would be regulated as a characteristic hazardous waste. Per the Federal regulations, is the customer's non-listed CCP a solid waste or not, when reclaimed?

A: Per an EPA memo dated February 23, 1993 ([RO 11726](#)), EPA stated:

"With regard to the reclamation of non-listed commercial chemical products, their status is the same as that for listed commercial chemical products, as we stated in the April 11, 1985 Federal Register. This has been the Agency's position since publication of that clarification, and has remained unchanged. However, we do recognize that the universe of non-listed commercial chemical products could present some recycling activities, which require careful analysis to verify that the recycling is legitimate; the burden of proof, however, remains with the person claiming that a material is not a solid waste (261.2(f))."

The [April 11, 1985](#), Federal Register on page 14219 clarified:

"A number of questions have been raised as to the regulatory status of commercial chemical products that are not listed in 261.33 but exhibit one or more of the hazardous waste characteristics (i.e., ignitability, corrosivity, reactivity and extraction (EP) toxicity). [Note: EP is now TCLP]

Although we do not directly address non-listed commercial chemical products in the rules, their status would be the same as those that are listed in 261.33 - That is, they are not considered solid wastes when recycled except when they are recycled in ways that differ from their normal manner of use. This is the same relationship that exists between discarded commercial chemical products that are listed in 261.33, and those that exhibit a characteristic of hazardous waste. We believe this point is implicit in the rules, as it is implicit in existing [261.3](#) and 261.33."

Therefore, the out-of-state customer's non-listed, characteristic CCP is not a solid waste when recycled.

SUMMARY:

- CCPs are not solid wastes when recycled.
- The Federal regulations specify CCPs listed in 40 CFR 261.33 (the "U" and "P" listed codes).
- However, EPA clarified that both listed and non-listed CCPs are not solid wastes when recycled.

The February 23, 1993, EPA memo is attached to the e-mail. If you have any questions, please contact me at [Paul W Martin@rl.gov](mailto:Paul_W_Martin@rl.gov) or at (509) 376-6620.

TWO MINUTE TRAINING – ATTACHMENT

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

Faxback 11726

9444.1993(01)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

February 23, 1993

Mr. N.G. Kaul, P.E.
Director, Division of Hazardous Substances Regulation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

Dear Mr. Kaul,

Thank you for your letter dated November 9, 1992, concerning the definition of solid waste under the Resource Conservation and Recovery Act (RCRA). In your letter, you raised two specific issues involving certain secondary materials: 1) clarification of the definition of commercial chemical products that are not found on the U- or P-lists in 40 CFR 261.33, and 2) the status of these non-listed commercial chemical products when recycled. I hope that this response will help clarify the federal regulations regarding these issues.

In addition, you may already be aware that the Director of the Office of Solid Waste (OSW) has recently formed a Definition of Solid Waste Task Force to re-evaluate the definition of solid waste. The Task Force is soliciting input from ASTSWMO, individual states, industry, and others on implementation issues such as the one raised in your letter. Overall, the Task Force is looking at ways to reduce the complexity of our current definition of solid waste, reduce disincentives for safe recycling and innovative technology development, and address concerns regarding the use of recycled hazardous waste in products. I understand that some of your staff have already met with the Task Force (prior to your letter being sent). Again, this response to your questions is based on the current federal regulations.

Definition of Non-Listed Commercial Chemical Products

Presently, the Agency interprets "non-listed commercial chemical products" under RCRA to include all types of unused commercial products that exhibit a characteristic of hazardous waste, whether or not these products would commonly be considered chemicals (e.g., unused circuit boards, batteries, etc.). Of course, these determinations are not always straightforward regarding certain types of commercial products, such as machinery, electronics, and other items containing various components, only some of which cause the overall item to exhibit a hazardous waste characteristic. We would expect these determinations to be site-specific.

FROM: Paul W. Martin

DATE: 2/4/2021

FILE: 2MT\2021\020421.rtf

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TWO MINUTE TRAINING – ATTACHMENT

SUBJECT: Recycling of Non-Listed Commercial Chemical Products

You stated that you were uncertain as to what types of "recycling" would qualify a non-listed commercial chemical product for the solid waste exemption in 261.2(c)(3), which is further clarified in the April 11, 1985 Federal Register (50 FR 14219). As you know, EPA defines "recycling" as including use/reuse, and reclamation (see 40 CFR 261.2(c)(4), (5), and (7)). Reclamation is further defined to be either regeneration, or the recovery of a usable product. With regard to the use/reuse provisions, any type of secondary material recycled in this manner would not be a solid waste, provided that the applicable conditions listed in 261.2(e) are met, and that the recycling is legitimate (see 261.2(f)).

With regard to the reclamation of non-listed commercial chemical products, their status is the same as that for listed commercial chemical products, as we stated in the April 11, 1985 Federal Register. This has been the Agency's position since publication of that clarification, and has remained unchanged. However, we do recognize that the universe of non-listed commercial chemical products could present some recycling activities, which require careful analysis to verify that the recycling is legitimate; the burden of proof, however, remains with the person claiming that a material is not a solid waste (261.2(f)).

You provided an example of off-specification paint, produced by a manufacturer and never used; we would define this material as a non-listed commercial chemical product. You then described this paint as being reclaimed to recover the solvent, resulting in a still bottom containing the pigments and associated metals. We would view the off-specification paint, to be reclaimed, as excluded from the definition of solid waste. Although the reclamation process is recovering a usable product from the paint (i.e., solvent), and is not regenerating the paint to make new paint, this activity is nevertheless reclamation and therefore the off-specification paint is not a solid waste. Of course, the residual still bottoms generated during reclamation, if characteristically hazardous, would be subject to Subtitle C requirements at the point of generation (i.e., when removed from the distillation unit), assuming they are to be discarded.

Finally, I would like to emphasize that if a person is claiming that a material is excluded or otherwise exempt because it is going to be recycled, the burden of proof rests with that person to show that the recycling activity is legitimate. For example, if a reclamation process recovers only a minimal amount of material, of questionable value, while the remaining residue is discarded, this would appear to be more like regulated waste treatment than recycling. If non-listed commercial chemical products, exhibiting a hazardous waste characteristic, are being processed in order to treat them (and not to recover a usable product or to regenerate them), then the material is not excluded from the definition of solid waste under 261.2(c)(3).

If you have any other comments or questions, please call me, or you or your staff could talk with Ross Elliott of my staff at (202) 260-8551. Thank you very much.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste