

<u>SUBJECT</u>		<u>DATE</u>
1448.	Definitions of Inactive Portion, Active Portion and Closed Portion of a RCRA TSDF	AUG 12, 2021
1449.	Dangerous Waste Designations and Dangerous Waste Code Determinations	AUG 19, 2021
1450.	Method Detection Limits and Hazardous Waste Determinations	ENCORE AUG 26, 2021
1451.	Method Detection Limits and Hazardous Waste Determinations II	ENCORE SEP 2, 2021
1452.	Totals Analysis vs. TCLP and Dividing by 20	ENCORE SEP 9, 2021
1453.	Decharacterized RCRA Waste - Manifesting and LDR Reporting	ENCORE SEP 16, 2021
1454.	Decharacterized Hazardous Waste Listed Solely for Non-Toxic Characteristics	ENCORE SEP 23, 2021
1455.	Decharacterized Wastes and the LDR Dilution Prohibition	ENCORE SEP 30, 2021
1456.	The "Derived from Rule", the "Mixtures Rule", and the "Contained-In Policy"	ENCORE OCT 7, 2021
1457.	Hazardous Debris and Options to Exclude as a Dangerous Waste	OCT 14, 2021
1458.	Regulatory Status of Characteristic Baghouse Dust Destined for Reclamation	OCT 21, 2021
1459.	RCRA Point of Generation and Baghouse Dust Collection Systems	OCT 28, 2021
1460.	Pumps Containing Liquid Hazardous Wastes and Liquids in Landfill Prohibition	ENCORE NOV 4, 2021
1461.	Pumps Containing Liquid Hazardous Waste and Land Disposal Restrictions	ENCORE NOV 11, 2021
1462.	Pumps Containing Liquid Hazardous Wastes and RCRA Empty Containers	NOV 18, 2021
1463.	Multiple Characteristic Hazardous Waste Codes and Underlying Hazardous Constituents	ENCORE NOV 23, 2021
1464.	LDR Notifications/Certifications and Generator Permitted Treatment, Storage, or Disposal Facility	ENCORE DEC 2, 2021
1465.	Multiple Characteristic and Listed Hazardous Waste Codes and the "in lieu of" LDR Principle	ENCORE DEC 9, 2021
1466.	Universal Wastes - Recycling versus Disposal	ENCORE DEC 16, 2021
1467.	'Twas the Night Before Christmas – The Twenty-Eighth Edition	DEC 24, 2021
1468.	Spent Lead Acid Batteries vs., Universal Wastes	ENCORE DEC 30, 2021
1469.	Hazardous Debris and Radioactively Contaminated Cadmium Batteries	ENCORE JAN 6, 2022
1470.	Hazardous Debris and Radioactively Contaminated Lead-Acid Batteries	ENCORE JAN 13, 2022
1471.	Mercury Wet Cell Batteries - Debris or Not Debris	ENCORE JAN 20, 2022
1472.	Hazardous Debris and Non-Radioactive Lead Acid Batteries	ENCORE JAN 27, 2022
1473.	Hazardous Debris and LDR High/Low Mercury Subcategories	ENCORE FEB 3, 2022
1474.	Central Accumulation Areas and the ≤90-day Time Frame	ENCORE FEB 10, 2022
1475.	Central Accumulation Areas with Satellite Accumulation	FEB 17, 2022
1476.	Definition of RCRA Empty Tank	ENCORE FEB 24, 2022
1477.	RCRA Empty Acutely Hazardous Waste Containers	ENCORE MAR 3, 2022
1478.	The RCRA Definition of Acute Hazardous Waste	MAR 10, 2022
1479.	Regulatory Status of Liquids and Solids Separated from D001 High TOC Wastes	ENCORE MAR 17, 2022
1480.	Generator Accumulation at a Permitted Storage Facility	MAR 24, 2022
1481.	Generator Accumulation and Maximum Inventory of Dangerous Waste Onsite at a RCRA TSD	MAR 31, 2022
1482.	LDR Storage Prohibitions and the One-Year Rule	ENCORE APR 7, 2022

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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: LDR STORAGE PROHIBITIONS AND THE ONE-YEAR RULE

DATE: APRIL 7, 2022

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TWO MINUTE TRAINING

SUBJECT: LDR Storage Prohibitions and the One-Year Rule

Q: A customer has a container of land disposal restricted (LDR) waste that has been in permitted storage for one year and a day. Has a noncompliance occurred with the prohibition on storage of LDR waste?

A: It depends.

Per [40 CFR 268.50\(a\)](#), any storage of LDR hazardous wastes is prohibited unless certain conditions are being met. Those conditions being that storage in tanks, containers, or containment buildings is solely for accumulating such quantities of hazardous wastes as necessary to facilitate proper recovery, treatment, or disposal; and each tank or container is marked with its contents and the date each period of accumulation began. If these conditions are met, the customer can store LDR wastes for up to one year unless EPA or the authorized State can demonstrate that the storage is not for purposes of accumulating such quantities of hazardous waste for proper recovery, treatment or disposal. In other words, from day one of storage and up to one year, EPA or the State has the burden of proving that the LDR storage is noncompliant. After one year of storage, the burden of proof shifts to the customer that the LDR storage continues to be compliant, i.e., hazardous wastes are being accumulated to allow for proper recovery, treatment or disposal.

The fact that our customer has stored LDR wastes for over one year does not in itself indicate noncompliance with the LDR storage prohibition. If the customer's accumulation did not meet the conditions described above, noncompliance would have occurred on day one of storage. However, EPA or the State - from day one and up to one year - would bear the burden of proving noncompliance with the LDR prohibition on storage. If the customer's accumulation meets the conditions described above, the customer can then store beyond the one-year time frame, however, the customer now has the burden of proving compliance with the LDR prohibition on storage.

Also note that if the customer exceeds the one-year time frame, there is no requirement to notify EPA or the State. This was clarified in a February 1987 EPA memo ([RO 12851](#)), which stated:

"The owner/operator does not have to notify the agency of storage for more than one year. The burden of proof only applies in the event of an EPA inspection or for enforcement purposes."

A December 1986 EPA memo ([RO 12794](#)) is also consistent with the February 1987 memo.

SUMMARY:

- Storage of LDR wastes is prohibited unless certain conditions are being met.
- For storage up to one year, the burden of proving noncompliance lies with EPA or the State.
- For storage greater than one year, the burden of proving compliance lies with the TSD owner/operator.
- If LDR storage exceeds one year, notification to EPA or the State is not required.

40 CFR 268.50, the February 1987, and the December 1986 EPA memos are 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.

FROM: Paul W. Martin

DATE: 4/7/2022

FILE: 2MT\2022\040722.rtf

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: LDR Storage Prohibitions and the One-Year Rule

40 CFR 268.50 Prohibitions on storage of restricted wastes

(a) Except as provided in this section, the storage of hazardous wastes restricted from land disposal under subpart C of this part of RCRA section 3004 is prohibited, unless the following conditions are met:

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in §§262.16 and 262.17 and parts 264 and 265 of this chapter.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(i) Each container is clearly marked to identify its contents and with:

(A) The words "Hazardous Waste";

(B) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste number(s);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(D) The date each period of accumulation begins.

(ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in §264.73 or §265.73.

(Paragraphs (3) – (5) are skipped due to inapplicability to this 2MT and to save space. PWMartin comment)

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Agency can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

FROM: Paul W. Martin

DATE: 4/7/2022

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TWO MINUTE TRAINING -ATTACHMENT

SUBJECT: LDR Storage Prohibitions and the One-Year Rule

Faxback 12851

9551.1987(05)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

FEBRUARY 87

4. Land Disposal Restrictions

The November 7, 1986, Federal Register (51 FR 40572), land disposal restrictions final rule, states that the storage of hazardous waste which is restricted from land disposal is prohibited unless conditions are met under §268.50.

A generator has interim status to store waste on-site. The generator wants to store his waste for up to one year to accumulate the waste as necessary to facilitate proper recovery, treatment and disposal in accordance with §268.50(b) (51 FR 40572). When does the one year begin?

Storage of restricted wastes by permitted or interim status facilities is allowed solely for the purpose of accumulating sufficient quantities to facilitate proper treatment, recovery or disposal. The one-year period acts as a bench-mark to determine which party (EPA or the storage facility) bears the burden of proof to demonstrate that storage is for the allowable reasons. For storage of one year or less, the burden is on EPA to demonstrate non-compliance. For storage more than one-year, the burden is on the facility owner or operator to demonstrate that such storage time is necessary. The owner/operator does not have to notify the agency of storage for more than one year. The burden of proof only applies in the event of an EPA inspection or for enforcement purposes.

For a generator with interim status or a permit to store hazardous wastes, the one year begins on the date the waste is first placed in the tank or container. If the generator accumulated the waste prior to the effective date of the land disposal restrictions final rule (51 FR 40572), the waste is not subject to the rule. Therefore, the generator can store his waste indefinitely since he has interim status to store a hazardous waste.

The November 7, 1986, land disposal restriction final rule (51 FR 40572) allows generators to gain interim status if compliance with the land disposal restrictions requires storage for more than 90 days.

Source: Mitch Kidwell (202) 382-4805

Research: Carla Rellergert (202) 382-3112

FROM: Paul W. Martin

DATE: 4/7/2022

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TWO MINUTE TRAINING - ATTACHMENT

SUBJECT: LDR Storage Prohibitions and the One-Year Rule

Faxback 12794

9551.1986(24)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

DECEMBER 86

8. Storage of Restricted Wastes

When is the storage of restricted wastes not prohibited?

In section 3004(j) of RCRA, Congress expressly prohibited the storage of any hazardous waste restricted from land disposal "unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal."

In the final rule (51 FR 40572, §268.5), EPA has incorporated this language directly into provisions for generator accumulation and storage by owners or operators of treatment, storage, or disposal facilities. "The Agency believes that a storage limit of up to one year should generally provide sufficient time for an owner/operator to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal of restricted hazardous wastes while meeting the intent of Congress to prohibit long-term storage as a means of avoiding the land disposal restrictions. The burden is on the Agency to demonstrate that storage of restricted waste for periods less than or equal to one year is not in compliance with the storage provisions. The Agency also recognizes that there may be instances where one year does not provide sufficient time to accumulate such quantities. Therefore, the Agency will allow an owner/operator to store restricted wastes beyond one year. Although, the owner/operator is not required to submit any data or application to EPA, in the event of an enforcement action, the burden of proving compliance with §268.50(b) is on the owner/operator. The Agency believes that this is reasonable because the record for this rulemaking indicates that less than one year should be sufficient. This provision does not apply to situations where back-ups at treatment or recovery facilities, operational difficulties, and repairs and maintenance result in additional delays" (51 FR 40583).