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SUMMARY OF RCRA REGULATIONS

On Thursday, July 31, 1980, the Lead Industries Association, Inc., Zinc Institute Inc., and the Cadmium Council held a Seminar on the Resource Conservation and Recovery Act (RCRA) at the University Club in Washington, D.C. Dr. Jerome Cole and Dr. Donald Lynam of LIA/ZI/CC gave the introductory remarks. Dr. Cole discussed the background of the RCRA legislation and Dr. Lynam outlined the RCRA regulations. Ed Seeger, of the law firm, Prather, Seeger, Doolittle and Farmer, discussed detailed, specific requirements and T. Kafara, an Environmental Protection Specialist, U.S. EPA, discussed EPA's Perspective on RCRA requirements, with emphasis on notification requirements. There was also a panel discussion on RCRA with E. Seeger; B.J. Reilly, E. I. DuPont de Nemours and Company; W. Booth, Bunker Hill Company; J.A. Leed, General Battery Corporation; and D.R. Lynam and J.F. Cole as the panelists. The following summary outlines important points made at the seminar.

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General Requirements

With certain limited exceptions, all persons (including companies) who generate, store, transport, treat or dispose of hazardous wastes must file with the EPA by August 18, 1980, a form notifying EPA of those activities. All companies who store, treat or dispose of hazardous waste must apply to EPA by November 19, 1980, for a permit to continue storing, treating, or disposing of such waste. Companies required to file notification forms and permit applications need to be concerned about two kind of hazardous waste:

1. Those EPA has unilaterally listed as hazardous wastes under Sections 261.31, 261.32 and 261.33 of its RCRA regulations.
2. Those that companies themselves determine to be wastes which have the characteristics set forth in Sub-part C of Part 261 of the regulations: ignitability, corrosivity, reactivity, or toxicity.

Determining a Hazardous Waste

Companies who generate, transport, treat, store or dispose of solid wastes must determine whether these wastes are hazardous. The company should test the solid waste material to see whether it meets one of the four characteristics:

1. ignitability
2. corrosivity
3. reactivity
4. EP toxicity

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If a generator mixes a nonhazardous solid waste with a hazardous waste, the entire mixture becomes hazardous waste, regardless of the relative proportions of non-hazardous to hazardous waste in the mixture.

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Some "solid wastes" are listed by EPA as "hazardous wastes", and these listed hazardous wastes are automatically subject to the notification and permit application requirements unless and until they are "de-listed" pursuant to the delisting procedures discussed below. Certain other solid wastes have automatically been determined to be nonhazardous. These are:

1. household wastes
2. agricultural wastes
3. fly-ash waste
4. drilling fluids
5. mining overburden returned to the mine site

Exclusion Principle

A company or an individual facility generating and accumulating less than 1,000 kilograms of hazardous waste per month is exempt from RCRA regulations, but must obtain an EPA identification number covering the waste and either dispose of the waste on-site or at a state-permitted or EPA-permitted treatment, storage or disposal facility.

For certain types of wastes, the small quantity exemption limit is lower than 1,000 kg/month.

1. One kg of any commercial product or manufacturing chemical intermediate having the generic name listed in Section 261.33 (E)
2. One kg of an off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, could have the generic name listed in Section 261.33 (E)
3. Any containers identified in Section 261.33 (C) that are larger than 20 liters in capacity
4. Ten kilograms of inner liners from containers identified in Section 261.33 (C)
5. 100 kilograms of any residue or contaminated soil, water or other debris resulting from the clean-up of a spill, into or on any land or water, or any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Section 261.33 (E)

In order for hazardous waste to be excluded from regulation under the small quantity exemption, the generator must comply with the following requirements:

1. He must make the hazardous waste determination required by Section 262.11
2. He must either treat or dispose of the waste in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility permitted under RCRA regulations or a state-approved facility.

Recycling Exemption

Although waste is hazardous, it is not subject to the RCRA rules if it is:

1. Being beneficially used or re-used or legitimately recycled or reclaimed, or
2. If it is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation. The recycling exemption does not apply to any hazardous waste which is a sludge, is a listed hazardous waste or which contains a listed waste and is transported or stored prior to being used, re-used, recycled or reclaimed. Such hazardous wastes are subject to some, but not all of the requirements of the RCRA rules listed in Sections 261.6 (b) (1)-(6). EPA has indicated that it may wish to control recycled "wastes" in the future.

Notification and Compliance

- A. If the waste is hazardous, is not excluded under Section 261.4, does not meet the small quantity exemption or the recycling exemption, the generator must notify EPA that a hazardous waste is being generated. The notification must comply with the notification requirements published in the Federal Register on May 19, 1980.
- B. All generators should develop a plan for the treatment, storage, and disposal of wastes. The plan should specify how the generator intends to comply with the requirements for treatment, storage or disposal of wastes.
- C. The generator is required to follow the manifest system, and is required to prepare a manifest before shipping the wastes. The information on the manifest must:
 1. Identify the waste
 2. Identify the facility to handle the waste
 3. Indicate the quantity of the waste
 4. Identify the generator
 5. Have a manifest document number
- D. Records which must be kept by generators:
 1. Copy of each manifest returned to the generator by a hazardous waste management facility
 2. Records of test results and waste analyses of wastes generated by the facility
 3. Copy of the annual report and exception report

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E. Generators must make the following reports:

1. An annual report of off-site shipments of hazardous waste on EPA form 8700-13
2. For on-site treatment, storage, and disposal, an annual report similar to that required for a hazardous waste management facility under Parts 264, 265, 266 and 122
3. An exception report for all manifests not returned to the generators within 45 days of shipment of the hazardous waste

Companies That Do Not Need Permits

1. Those that have wastes on site for less than 90 days
2. Farmers disposing hazardous waste pesticides from their own use
3. Persons handling small quantities

Delisting

The delisting procedure allows any company to petition the EPA to exclude a waste generated at that company's facility from EPA's list of hazardous wastes. In order to delist, the company must demonstrate that the waste does not meet the Sub-part B criteria or the Sub-part C criteria (those that individuals use to determine whether untested wastes are hazardous). In the case of mixtures of hazardous wastes and other solid wastes, any company may petition to exclude the waste from the regulations insofar as that particular company's facilities are concerned.

Confidentiality Claims

When filing for confidentiality claims, it is important to answer the six questions listed under Confidential Information in the instruction booklet.

1. Which portions of the information do you claim are entitled to confidential treatment?
2. How long do you want this information treated confidential?
3. What measures have you taken to guard against undesired disclosure of the information to others?
4. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
5. Has EPA or any other Federal Agency made a pertinent confidentiality determination? (If so, include a copy of this determination or reference it, if available).
6. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between the disclosure and the harm?

It is important to remember that if you don't indicate confidentiality at first, you are barred forever from doing it.

Definitions

EPA's RCRA regulations define "solid waste" as "any garbage, refuse, sludge, or any other waste material except:

1. Domestic sewage
2. Mixtures of domestic and other sewage fed to a publicly-owned treatment works for treatment
3. Industrial point source discharges subject to the Federal Water Pollution Control Act
4. Irrigation return flows
5. Certain nuclear material
6. Materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process"

There are five things which should be noted about the definition of "solid waste":

1. The term "solid" is misleading - a liquid or gas can be a solid waste
2. The regulations do not define the term "waste" and therefore companies subject to the regulations have to do considerable interpreting to figure out whether any given material is a "waste"
3. A sludge (which the regulations define as solid, semi-solid or liquid "waste" from wastewater, or water supply treatment plants or air pollution control facilities) is automatically a solid waste, which leaves open the question as to which sludges are wastes and which are not, since many sludges from these facilities can be recycled.
4. No one is exactly sure what EPA means by "Sometimes is discarded," and, even the term "discarded" does not mean what one would ordinarily think it means. (See below)
5. Manufacturing and mining by-products that are sometimes discarded are defined as solid wastes.

EPA's regulations state that a material is "discarded" if it is:

1. Disposed of
2. Burned (except as a fuel) or incinerated
3. Physically, chemically or biologically treated prior to being disposed of.

EPA's regulations say that a material is disposed of if it is:

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"...discharged, deposited, injected, dumped, spilled, leached or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters."

Thus, a material is "discarded" and becomes a waste if it is "disposed of", and it is "disposed of" if the company processing the material deposits it or places it on the ground so as to expose the material to the environment.

Wastes with Monetary Value

All wastes that have monetary value cannot necessarily be classified as recycled. EPA claims that this is a changing situation and has denied considering the monetary value of wastes.

Information Numbers and Organizations

If there is any question about the substance that has been listed as a hazardous waste such as propanediol and urethane (two substances that are presently being questioned by members of the Battery Council) comments should be sent to LIA, where they will be aggregated and sent to EPA.

For further information on the interpretation of the regulations, call:

Allan Corson (EPA)
(202) 755-9187

or

Mat Strauss (EPA)
(202) 755-9787

For information on the notification process, call David Friedman (EPA) at (202) 755-9150.

For information on RCRA instructions and regulations, call Bernard J. Reilly, E.I. DuPont de Nemours and Company at (302) 774-2117.

For information on the identification and listing of hazardous waste, call Mr. Ed Cox (EPA) at (513) 684-5362.

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