

PPC 9502.1986(15)

WOOD TREATMENT CYLINDER CREOSOTE SUMPS

SEP 12 1986

MEMORANDUM

SUBJECT: Regulatory Status of Wood Treatment Cylinder
Creosote Sumps

FROM: Marcia Williams, Director
Office of Solid Waste

TO: Patrick M. Tobin, Director
Waste Management Division, Region IV

Your memorandum of July 9 requests a determination of the RCRA regulatory status of underground sumps which collect waste creosote from production pipelines and treatment cylinders at wood treatment facilities. Based on our understanding of the case presented, and after discussions with your staff, we offer the following guidance.

As we understand the sump described in your memo, it is routinely used to collect drippage, leakage, or other spillage of creosote from wood treatment cylinders and associated piping, and the material is not collected for recycling. The creosote appears to qualify as a solid waste as defined in section 261.2(a)(2) as, among other things, any material which is discarded by being abandoned. Section 261.2(b)(3) defines abandoned material as that being accumulated, stored, or treated (but not recycled) before or in lieu of being disposed of, burned or incinerated. Since the creosote is not a hazardous waste, the sump would not be a unit requiring interim status or a permit.

From the description provided in your memorandum, it appears that the sump in questions is a discernible unit (presumably a tank) in which solid wastes have been managed. As such, the sump would be considered a solid waste management unit (SWMU) for purposes of implementing corrective action under RCRA §3004(u) or §3009(h). (See the discussion of SWMUs at 50 FR 28712, July 15, 1985.)

Please be aware, if you are not already, that the Agency is currently developing a proposed regulation (expected to be published in the Federal Register in the spring of 1987) which may list as hazardous wastes certain wood preservation and treatment wastes. Such a listing may affect the regulatory status of the sump in question. (For additional information contact Dr. Cate Jenkins at FTS 382-4786.) In addition, you may also wish to review a draft memorandum entitled "RCRA Regulatory Interpretation Assistance Request - Cleanup of Residues of Commercial Chemical Products Within a Warehouse Storage Area," which was circulated to the Regions for review on June 3, and which deals with issues related to those posed in your memorandum.

The recent decision by Judge Yost in *In re Brown Wood Preserving Co., Inc.* (RCRA-84-16-R) does not require EPA to publish this memorandum. That decision takes the position that the Administrative Procedure Act requires the Agency to publish policy memoranda and interpretive statements that set out new rules or substantially modify existing rules. This memorandum merely offers an opinion as to whether the facts you have outlined for this facility fit the existing definitions of "solid waste," "hazardous waste," and "solid waste management units." It does not establish a general policy of treating all process sumps at wood preserving facilities as "solid waste management units." Nor does it create or change any other rule or policy.

I appreciate that we need to be careful to go through notice and comment on decisions that might be interpreted as expanding regulatory controls beyond what is evident from existing rules or statutory language. For example, if we list certain wood preservation wastes we may want to discuss in the Federal Register the regulatory status of areas in which environmental releases from treated wood are routine and expected.

However, publishing statements of general policy would not solve the entire problem presented in the Brown case. The Regions also need to ensure that the facts of each case show a violation of the statute or regulations. Complicated scientific or technical issues may require you to use experts to present or explain the evidence.

Applying these ideas to the facility described in your memorandum, to regulate the sump as a SWMU you would have to collect facts demonstrating, for example, that the creosote in the sumps

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was in fact "discarded," and that the sump is a "discrete" unit. This memorandum cannot substitute for firm factual evidence concerning the specific facility at issue.

If you have additional questions, please contact Michele Anders at FTS 382-4534.

cc: Gene Lucero, OWPE

Attachment