

QUESTION: EPA lists certain chemicals in 40CFR 261.33 as “Commercial Chemical Products” subject to the hazardous waste regulations when they are disposed or intended for disposal. How are these listed chemicals controlled if they are used prior to disposal?

ANSWER: If a commercial chemical product listed in 40CFR 261.33 is disposed of prior to use, then it is subject to the hazardous waste regulations. After the chemical is used, it is a hazardous waste only if it exhibits a characteristic identified in 40CFR 261 Subpart C. As an example, if tetrachloroethylene (TCE) is used in an electrical transformer, any unused or residual TCE is regulated as a commercial chemical product (U210) until the transformer is actually put in service. A leak of TCE from the transformer, prior to use, (such as at the manufacturer's site, wholesaler's warehouse, or during transportation) would still be a leak of a commercial chemical product. If a spill occurred or the fluid was disposed of after the transformer was put into service, the tetrachloroethylene would be a hazardous waste only if it exhibited one or more of the characteristics. This is true despite the fact that the chemical composition of the fluid before and after its use in the transformer is essentially unchanged. (Note: Under CERCLA Section 102 (b), the reportable quantity for tetrachloroethylene is one pound. If the spill is a release under CERCLA section 101(22), and the quantity spilled is one pound or greater, the spill must be reported to the National Response Center. For the report, required under CERCLA Section 103 (a), the specific hazardous waste identification under RCRA is not significant.