

CORRESPONDENCE/MEMORANDUM

DATE: July 10, 2012

TO: Hazardous Waste Program Staff / Wisconsin Hazardous Waste Generators

FROM: Edward K. Lynch, P.E., Hazardous Waste and Mining Section Chief 

SUBJECT: Hazardous Waste Program Policy on Continued Use

Description of Continued Use

The term 'continued use' – where a material has been used and can be reused for its original intended purpose in another process – is not specifically defined in the state or federal hazardous waste regulations; however, the concept is discussed in EPA guidance. This memo is the WDNR Hazardous Waste Program's policy on continued use. It is based on EPA guidance that allows businesses and institutions to claim exclusion from hazardous waste regulation for continued use materials.

According to the State hazardous waste regulations, a generator must first determine if a waste is a solid waste under s. NR 661.02, Wis. Adm. Code. If it is a solid waste, they must also determine if it is a hazardous waste under s. NR 661.03. Some materials are excluded from definition as a solid waste under the rules, however, because they can still be used for their originally intended purpose after being used. Essentially, these materials are not hazardous waste because they are deemed not to have become wastes at all.

Criteria for Determination of Continued Use

All of the following criteria must be met for a used material to be excluded from designation as a solid waste under s. NR 661.02 (5)(a)(2) as a continued use material, and therefore also excluded from designation as a hazardous waste:

- First, to be considered continued use, a material must be used for its **original intended purpose**. In an August 21, 1998 a letter to Safety-Kleen Corp., EPA states:
 - “...when a used solvent is employed for another solvent use, this continued use indicates that the solvent remains a product. The used solvent in this case is a material continuing to be used as a solvent, the purpose for which it is intended, rather than a spent material being reused.”
- A continued use material must be similar to the original product material. It should not have hazardous constituents or characteristics that aren't present in the original product, and not vary significantly from the Material Data Safety sheet (MSDS) for the original product. The material should be 'lightly used'.
- The continued use material should be as effective as the original product material and used for a legitimate purpose or need. In the 8/21/98 letter to Safety-Kleen (link above), EPA provides an example of a legitimate use:
 - “The Agency would consider the continued use of the used solvents for drum washing to be legitimate in situations in which:
 - 1) The used solvents are effective for the drum-washing operation, especially if the used solvents substitute for solvents that would otherwise have to be purchased (if the used solvents would not be an effective washing agent for the drums, using the used solvents in lieu of other effective drum-washing agents would not be considered legitimate);
 - 2) The used solvents are used only for washing drums that actually need it (if the used solvents are used as drum-washing agent when the drums do not need washing, using the used solvents would not be considered legitimate); and

3) The used solvents are not used in excess of what would normally be required to wash drums (if the used solvents are being used in excess of the amount of solvents needed for the drum-washing operation, e.g., more than would be necessary to wash the drums effectively, using the used solvents would not be considered legitimate.”

- A material intended for continued use cannot be treated, processed or reclaimed before being reused. It also can't be combined with other cleaner materials, or blended to dilute contaminants or to make the material more amenable for reuse.
- The continued use exclusion does not apply to any of the following materials per s. [NR 661.02\(5\)\(b\)](#):
 1. Materials used in a manner constituting disposal, or used to produce products that are applied to the land.
 2. Materials burned for energy recovery, used to produce a fuel or contained in fuels.
 3. Materials accumulated speculatively.
 4. Materials listed in s NR 661.02(4) (a) and (b).

Documentation of Continued Use Materials

Generators or brokers who provide materials to continued use programs must be able to demonstrate there is a market for the material, and that they meet the terms of the exclusion or exemption. A generator or broker claiming a material falls under the continued use exclusion must maintain documentation to demonstrate the material is not a waste and is exempt from regulation. A demonstration can be made by documenting that the 'Continued Use Determination Criteria' above are met, and by documenting the following:

- A comparison of the MSDS of the original product and a laboratory analysis of the used material. To qualify as continued use, the used material should have similar physical and chemical characteristics and not vary significantly from the specifications of the virgin material. For example, a used solvent should not contain a water or solid (sludge) phase unless the original product solvent also does. If the used solvent will be re-used for degreasing, it should not contain other contaminants, such as paint, that make it less effective for cleaning.
- Written records identifying the name and location of the end user of the material and the intended reuse of the material. Keep records for a minimum of three years after discontinuing participation in the continued use program.
- A written contract or agreement from the end user of the continued use material and a description of how it will be legitimately reused.
- Shipping documents and records to clearly show the amounts of continued use material generated by your facility, and shipped to and received by the end user. Also obtain periodic reports from the end user to verify the continued use material was used legitimately, and consistent with the criteria in this memo. Keep documents and records for a minimum of three years after discontinuing participating in the continued use program.

Summary

While the WDNR Hazardous Waste Program supports and encourages the legitimate reuse of materials, it is the generator's responsibility to ensure that materials sent to a continued use program are legitimately re-used as a product. Contact a Regional Hazardous Waste Specialist if you have questions about how the criteria above apply to materials that may be eligible for a continued use program.

cc: Gary Victorine, EPA Region 5

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