Environmental Guidance Regulatory Bulletin

Office of Environmental Policy and Assistance RCRA/CERCLA Division (EH-413) October 1999

UNIVERSAL WASTE RULE: TECHNICAL AMENDMENTS

Effective Date: December 24, 1998

INTRODUCTION

On December 24, 1998, the U.S. Environmental Protection Agency (EPA or the Agency) promulgated technical amendments [63 FR 71225-71230] to the Universal Waste Rule [60 FR 25492, May 11, 1995, codified at 40 CFR 273], which is part of the Federal Resource Conservation and Recovery Act (RCRA) hazardous waste regulatory program. The technical amendments create no new regulatory requirements. Instead, they correct previous regulations.

This Regulatory Bulletin summarizes changes made by the technical amendments, and explains how, if at all, such changes affect DOE activities.

BACKGROUND

On May 11, 1995, EPA promulgated a rule [60 FR 25492] that streamlined hazardous waste management regulations governing the collection and management of certain widely generated wastes known as universal wastes. The specific wastes covered by the rule include: (1) hazardous waste batteries; (2) hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs; and (3) hazardous waste thermostats [see 40 CFR Part 273, Subpart A].

EPA intended the Universal Waste Rule to encourage proper treatment and/or recycling of universal wastes. Specifically, EPA wanted to facilitate separation of these wastes from the municipal waste stream by easing the regulatory burden on retail stores and establishments or individuals that generate or collect universal wastes. EPA expected such entities to direct universal wastes to appropriate treatment or recycling facilities governed by hazardous waste regulatory controls, instead of municipal solid waste landfills or combustors.

REASONS FOR THE TECHNICAL AMENDMENTS

After the Universal Waste Rule was promulgated in 1995, EPA decided that clarifications and corrections were needed because, as published, the final Universal Waste Rule inadvertently:

- Created confusion about requirements for handling spent lead-acid batteries destined for regeneration;
- Deleted management requirements for storing lead-acid batteries before reclaiming them;
- Defined “small quantity handler of universal waste” incorrectly; and
- Included in the preamble an incorrect citation for export requirements, which apply to destination facilities that export universal wastes.

COMPARISON OF THE TECHNICAL AMENDMENTS WITH THE ORIGINAL UNIVERSAL WASTE RULE

EPA’s technical amendments published on December 24, 1998, create no new regulatory requirements. Instead, they revise the regulations promulgated in the final Universal Waste Rule by: (1) clarifying the regulations governing the management of spent lead-acid batteries being reclaimed; (2) correcting the definition of a small quantity universal waste handler; and (3) clarifying the export requirements which apply to destination facilities acting as universal waste handlers.

1. Management of Spent Lead-Acid Batteries Being Reclaimed

EPA's regulations provide two options for managing lead-acid batteries: (1) Subpart G of 40 CFR 266 (i.e., 40 CFR 266.80); and (2) 40 CFR 273. Section 266.80 of 40 CFR, which pre-existed but was modified by the final Universal Waste Rule, *exempts* the following from hazardous waste regulations: (1) persons who generate, transport, or collect spent lead-acid batteries; (2) persons who store spent lead acid batteries, but do not reclaim them; and (3) persons who store lead acid batteries and reclaim them by regeneration. Part 273 of 40 CFR contains the Universal Waste Rule, which provides a streamlined system for managing hazardous waste batteries, including lead-acid batteries.

According to EPA, lead-acid batteries were included in the Universal Waste Rule, even though 40 CFR 266.80 already provided a successful exemption from hazardous waste regulation for lead-acid battery recycling activities, to give relief to generators and handlers who accumulate multiple types of spent hazardous waste batteries. Such generators and handlers who would have to sort out the lead-acid batteries and manage them separately to take advantage of the exemption in 40 CFR 266.80. In contrast, the Universal Waste Rule provisions in 40 CFR 273 provide the option to manage all types of hazardous waste batteries, not just lead-acid batteries, under a streamlined regulatory system; an approach which EPA believed might be easier in some cases.

The technical amendments redraft and reorganize the version of 40 CFR 266.80 adopted with the final Universal Waste Rule, to clarify its scope and make the section more user friendly.

a. Requirements for Handling Spent Lead-Acid Batteries That Will Be Regenerated

Prior to the technical amendments, 40 CFR 266.80(a) read:

> Persons who generate, transport, or collect spent batteries, who generate spent batteries, or who store spent batteries but do not reclaim them (other than spent batteries that are to be generated) are not subject to regulation under parts 262 through 266 or part 270 or 124 of this chapter…."

Due to concerns about the clarity of the meaning of the phrase within the parenthesis, the technical amendments replace the entire sentence quoted above with a table [63 FR 71230]. EPA explains that this table reflects the originally intended meaning of the parenthetical phrase.

According to the table, the following activities are exempt from certain hazardous waste management requirements:

- Generating batteries that will be reclaimed through regeneration (such as electrolyte replacement);
- Generating, collecting, and/or transporting batteries that will be reclaimed through means other than regeneration;
- Storing batteries that will be reclaimed through means other than regeneration, but also not reclaiming them; and
- Reclaiming batteries through means other than regeneration, without first storing them.

Persons who conduct the activities listed above are exempt from the following hazardous waste management requirements, provided they comply with 40 CFR 262.11, which requires solid waste generators to determine whether the wastes they generate are hazardous wastes (as defined by 40 CFR 261, "Identification and Listing of Hazardous Waste"):

- 40 CFR 262, " Standards applicable to generators of hazardous waste"
- 40 CFR 263, "Standards applicable to transporters of hazardous waste"
- 40 CFR 264, "Standards for owners and operators of hazardous waste treatment, storage and disposal facilities"
- 40 CFR 265, "Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities"
- 40 CFR 266, "Standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities"
- 40 CFR 270, "EPA administered permit programs: the hazardous waste management program"
- 40 CFR 124, "Procedures for decisionmaking"
- Notification requirements in RCRA §3010

Persons who generate batteries that will be reclaimed through regeneration are also exempt from the land disposal restrictions requirements in 40 CFR 268. However, persons who conduct the activities listed above involving spent lead-acid batteries that will be reclaimed through means other than regeneration must comply with applicable requirements in 40 CFR 268.

Any person who stores batteries that will be reclaimed through means other than regeneration, and also reclaims them, must comply with the hazardous waste management requirements specified in 40 CFR 266.80(b), which are described below.

b. Requirements for Storing Lead Acid Batteries Before Reclaiming Them

The technical amendments reinstall into the regulation at 40 CFR 266.80(b) management requirements for storing lead-acid batteries before reclaiming them through means other than regeneration. According to EPA, the reinstalled requirements are similar to storage provisions that were mistakenly deleted by the Universal Waste Rule. The restored storage provisions are re-organized and re-formatted to clearly distinguish between requirements for interim status facilities and permitted facilities.

Interim Status Facilities. The technical amendments impose seven requirements on interim status facilities, including: (1) notification requirements under section 3010 of RCRA; (2) all applicable provisions in subpart A of 40 CFR 265 (general provisions); (3) all applicable provisions in subpart B of 40 CFR 265 (general facility standards), except those governing waste analysis; (4) all applicable provisions in subparts C and D of 40 CFR 265 (preparedness and prevention, and contingency plan and emergency procedures); (5) all applicable provisions in subpart E of 40 CFR 265 (manifest system, record-keeping, and reporting), except those addressing the use of the manifest and manifest discrepancies; (6) all applicable provisions in subparts F through L of 40 CFR 265 (ground-water monitoring, closure and post-closure, financial requirements, use and management of containers, tank systems, surface impoundments, and waste piles); and (7) all applicable provisions of 40 CFR 270 and 40 CFR 124.

Permitted Facilities. The technical amendments also specify that permitted facilities must comply with seven requirements. However, for permitted facilities the requirements, which are slightly different, include: (1) notification requirements under section 3010 of RCRA; (2) all applicable provisions in subpart A of 40 CFR 264 (general provisions); (3) all applicable provisions in subpart B of 40 CFR 264 (general facility standards), except those governing waste analysis; (4) all applicable provisions in subparts C and D of 40 CFR 264 (preparedness and prevention, and contingency plan and emergency procedures); (5) all applicable provisions in subpart E of 40 CFR 264 (manifest system, record-keeping, and reporting), except those addressing the use of the manifest and manifest discrepancies; (6) all applicable provisions in subparts F through L of 40 CFR 264 (releases from solid waste management units, closure and post-closure, financial requirements, use and management of containers, tank systems, surface impoundments, and waste piles); and (7) all applicable provisions of 40 CFR 270 and 40 CFR 124.

2. Definition of a Small Quantity Universal Waste Handler

The technical amendments revise the definition of a “small quantity handler of universal waste” at 40 CFR 273.6 by harmonizing it with the definition provided in the preamble of the Universal Waste Rule. The correction is designed to remove any potential confusion by making a clear distinction between small and large quantity handlers of universal waste. The following table juxtaposes the old definition under the Universal Waste Rule and the revised definition under the technical amendments. The affected sections of the old and new definitions are italicized in this bulletin to pinpoint the language change.

Table. Definition of "Small Quantity Handler of Universal Waste.

Old Definition Under the Universal Waste Rule	Revised Definition Under the Technical Amendments
A small quantity handler of universal means a universal waste handler (as defined in this section) who does not accumulate *more than 5000 kilograms* total of universal waste	A small quantity handler of universal means a universal waste handler (as defined in this section) who does not accumulate *5000 kilograms or more* total of universal waste

3. Export Requirements for Destination Facilities Acting as Universal Waste Handlers

The preamble of the final Universal Waste Rule contained two technical errors concerning export requirements for destination facilities acting as universal waste handlers. However, no errors were made in the final promulgated regulatory text. Therefore, while the preamble to the technical amendments acknowledges and explains the errors, the technical amendments themselves do not affect the export requirements for universal wastes.

The first error (60 FR 25533-34) was the Universal Waste Rule preamble's reference to "subpart E, §273.63" as being the provision containing the export requirements for destination facilities (i.e., those facilities treating, disposing of, or recycling a particular category of universal waste, except for certain management activities). The cited section does not exist. Therefore, the preamble to the technical amendments clarifies that destination facilities sending universal wastes to foreign destinations (i.e., outside the United States) are subject to either: (a) §273.20 (small quantity handlers of universal wastes) or §273.40 (large quantity handlers of waste); or (b) §273.56 (universal waste transporters).

The second error (60 FR 25534, first paragraph) pertained to a parenthetical statement in the preamble to the final Universal Waste Rule referring the reader to section "III.F.10" for a discussion of issues related to exports of universal waste. The preamble of the technical amendments clarifies that the proper citation should have been section "IV.E.10."

EFFECTS OF THE TECHNICAL AMENDMENTS

Effect on DOE Activities. EPA's technical amendments to the final Universal Waste Rule create no new regulatory requirements. They reinstate regulatory language that was mistakenly changed in a previous EPA rule. Moreover, the amendments clarify existing regulatory requirements. Therefore, DOE universal waste management activities should not be affected by the Universal Waste Rule technical amendments.

Effect on State Authorization. The technical amendments, which, like the Universal Waste Rule, have been promulgated under legal authorities other than the Hazardous and Solid Waste Amendments of 1984 will not be effective in RCRA-authorized States until these States adopt EPA's clarifications and the Agency approves them. Since EPA considers the technical amendments to be less stringent than existing waste regulations, RCRA-authorized States are not required to make program adjustments. In contrast, the technical amendments take effect immediately in those States that do not have RCRA authorization.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Regulatory Bulletins unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Regulatory Bulletin to:

Atam P. (Al) Sikri, Ph.D.
Office of Environmental Policy & Assistance,
RCRA/CERCLA Division,
EH-413
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Phone: (202) 586-1879
E-mail: atam.sikri@eh.doe.gov