

**APPLICABILITY OF RCRA HAZARDOUS WASTE MANAGEMENT REGULATIONS
TO THE *IN SITU* BURNING OF OIL SPILLS**

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SUMMARY

This fact sheet provides general information on how the hazardous waste management regulations implementing the Resource Conservation and Recovery Act (RCRA) may apply to the *in situ* burning (ISB) of oil spills. These regulations apply when the oil to be burned or ISB residue is defined as "hazardous waste" under RCRA. The regulations generally exempt oil spill responders from hazardous waste management requirements during the response to a spill. RCRA regulations may, however, apply fully to disposal or other actions taken after the response is over. The discussion below concerns only the Federal RCRA regulations. RCRA requirements generally are administered through State programs, which are based on but may be more stringent than the Federal regulations.

BACKGROUND

Subtitle C of RCRA is the primary Federal law governing the management of hazardous waste. The U.S. Environmental Protection Agency (EPA) has issued RCRA Subtitle C regulations (see 40 CFR parts 260-271). These regulations specify what is considered hazardous waste under RCRA, how such waste must be managed, and what documentation is required. RCRA, however, is generally implemented through State programs, which are based on but may be more stringent than EPA's regulations. State and local waste management laws also may apply.

This fact sheet is designed to assist RRTs and Area Committees in complying with the NCP, which states that disposal of recovered wastes shall occur in accordance with RCP and ACP guidelines (see 40 CFR 300.310(c)).

RCRA REQUIREMENTS & EXEMPTIONS FOR ISB (if spilled oil is RCRA hazardous waste)	
Stage	Requirement/Exemption
Prior to burn	Obtain EPA ID number
Combustion of oil (incl. use of igniters & burn agents)	Exemption from waste management & permit requirements during immediate response to discharges (not afterwards)
Collection of ISB waste (residue and contaminated materials)	Exemption from waste management & permit requirements during immediate response to discharges (not afterwards)
On-site storage of waste (after immediate response)	Permits not required for storage up to 90 days (up to 270 days in some cases); management requirements may apply
Emergency (during immediate response) transport of waste off-site	Exemption from manifest requirements if transport needed to protect human health or environment
Transport (after immediate response) of waste off-site	Manifest, reporting, recordkeeping requirements apply; transport & other handlers involved must have ID number and permit.

SPILLED OIL AS RCRA HAZARDOUS WASTE

RCRA hazardous wastes include: (1) specifically listed industrial process waste streams; (2) individual, specifically listed chemicals that have been discarded; and (3) any other wastes that are shown to possess EPA-defined hazard characteristics (see 40 CFR part 261, Subpart C). Spilled, unburned oil may be considered a RCRA hazardous waste if: (1) by being spilled, it is considered to be "discarded" (if it is still usable, it may not be considered waste); and (2) it contains, or exhibits the characteristics of, any of the RCRA hazardous wastes described above (e.g., it possesses the RCRA-defined characteristic of ignitability -- a characteristic that many oils are likely to have). The criteria for RCRA hazardous wastes are different than those for "hazardous materials" and "hazardous substances."

Testing the Oil. The spiller is responsible for testing the oil to determine whether it is a RCRA hazardous waste (see 40 CFR part 262, Subpart A). Unless such a determination was made prior to the spill, it may be advisable to assume that the oil is hazardous waste (testing during the spill response may be impractical). Note that, even if the spilled oil is not considered hazardous waste, the residue from ISB (see below) may be considered hazardous waste.

Need for EPA ID Number. If the oil is deemed to be hazardous waste, the spiller is termed the "generator" of the waste, and must apply to EPA (using EPA Form 8700-12) for an EPA Identification (ID) Number. Although it is an "EPA" number, the ID is usually obtained from the State (where the State has been authorized by EPA to implement RCRA). If the response to the spill is led by the OSC, the OSC may be considered the generator of the hazardous waste. In that case, oil testing and receipt of the EPA ID Number may be the OSC's responsibility. Regardless of who must obtain the ID number in a given situation, ISB planners should coordinate with EPA Regional or State staff to ensure that a practical, expeditious procedure for obtaining the EPA ID number is in place. It may be possible to obtain temporary ID numbers on short notice.

The Small Quantity Generator Exemption. The "small quantity generator" exemption (40 CFR 261.5) applies, with conditions, to generators of no more than 100 kilograms of hazardous waste

(or one kilogram of "acutely" hazardous waste) per month. This provision exempts the generator from the need to obtain an ID Number and from the other generator requirements described below. Given the small percentage of spilled oil that is left as residue after ISB, the provision may often be useful to ISB operations. However, any unburned oil collected also must be considered in determining whether this limit has been met.

HAZARDOUS WASTES IN ISB

The manner in which RCRA Subtitle C regulations may apply to ISB is described below for each stage of the ISB process.

Use of Igniters/Burning Agents. Materials used to ignite or aid in burning an oil slick (e.g., gelled gasoline) may not be considered hazardous waste if their application to the spill is considered "use" instead of "discarding," and they are consumed during ISB. Even if the materials are considered hazardous waste, if the oil to be burned also is a hazardous waste, the "treatment" of the oil with the igniters or burning agents may be covered by RCRA exemptions. Under 40 CFR 261.4(g)(8), EPA exempts from RCRA hazardous waste management requirements "...a person engaged in treatment or containment activities during immediate response to...a discharge of a material which, when discharged, becomes a hazardous waste." Similarly, 40 CFR 270.1(c)(3) exempts responders from the requirement to have a RCRA permit for treatment (or containment).

Combustion of Oil. The combustion (i.e., "treatment") of the oil itself may be exempt from RCRA treatment and permitting requirements in the same manner as described above for the combustion of igniters/burning agents.

Collection of ISB Residue. The thick, taffy-like residue from ISB also may be a hazardous waste. Because ISB residue may sink below the water's surface, the generator (which, as noted above, may be either the responsible party or the OSC) should be careful to locate and collect all residue. Such "containment" activity is exempted from RCRA's technical and permitting requirements by the regulatory provisions cited above.

Collection of Contaminated Material to be Discarded. If the residue or oil is a RCRA hazardous waste, materials that become contaminated by the residue or oil also may be RCRA hazardous waste. As such, management of these materials may be subject to the same regulations and exemptions that apply to the residue or oil. Examples of such materials include soil, dredge spoils, biomass, as well as any residue containers, personnel protective equipment (PPE), fire-resistant boom, or other equipment to be discarded.

Emergency Transport of the Hazardous Waste. In some cases, it may be advisable for the generator to have the hazardous waste transported to an off-site facility during the response. Although transporters are generally required to obtain a manifest of the hazardous waste from the generator and to have their own EPA ID Number (see below), 40 CFR 263.30 authorizes the OSC to waive these requirements if he or she "...determines that immediate removal of the waste is necessary to protect human health or the environment." The waste, however, should still be transported only to a treatment, storage, or disposal facility that has both an EPA ID Number and a RCRA permit.

On-Site Storage of the Hazardous Waste. In other cases, it may be best to have the generator store the hazardous waste from ISB on-site (e.g., in the vessel in which residue was collected, or in an on-shore facility near the spill site) for a brief period after the response is complete. The

regulatory exemptions from technical standards and permitting noted above cover only the "immediate response," so they do not apply here. A separate provision, however, generally allows the accumulation of hazardous waste on-site for up to 90 days without a permit (40 CFR 262.34). In some cases, hazardous waste may accumulate on-site without a permit for up to 270 days.

Transportation of the Hazardous Waste to an Off-Site Facility. To complete his or her handling of the residue and any other hazardous waste from ISB, the generator will likely need to contract with one or more firms for the transportation, storage, and disposal of the waste. RCRA regulations require that the generator: (1) prepare the waste for off-site transport; (2) ensure that any firms contracted with be certified; and (3) perform recordkeeping and reporting.

Pre-Transport Steps (see 40 CFR part 262, Subparts B and C): The generator must first prepare and sign a manifest for the hazardous waste to be transported using EPA Form 8700-22. Also, the generator (or transporter) must prepare the waste itself for transport by packaging it, and by labeling, marking, and placarding the container.

Certifications for Firms: Any firm that is to transport the hazardous waste must have its own EPA ID Number. Any firm that is to treat, store, or dispose of the hazardous waste must have its own EPA ID Number and a RCRA permit.

Recordkeeping and Reporting (see 40 CFR part 262, Subpart D): The generator must keep records of the waste for three years (longer in some cases). The generator also may be required to submit a report regarding the waste to EPA by March 1 of the first subsequent even-numbered year.

CONCLUSION

RCRA includes a variety of provisions that may apply to ISB, but it also includes several substantial exemptions from these provisions. State regulations may include additional provisions and/or more stringent versions of the Federal requirements.

To determine whether and how the requirements described above apply to a particular jurisdiction, ISB planners are encouraged to consult carefully with appropriate EPA Regional and State RCRA officials. Such consultation will help planners ensure that all stages of the ISB process are conducted in full compliance with RCRA and any related hazardous waste management regulations.

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