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RCRA/Superfund/OUST Hotline Monthly Report Question

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2. Commercial Chemical Product Definition in §261.33

A manufacturer intends to discard an unused formulation which contains two chemicals that serve as active ingredients. Only one of the chemicals is listed in 40 CFR §261.33. A comment in §261.33(d) states that "[t]he phrase 'commercial chemical product or manufacturing chemical immediate having the generic name listed in...' refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient." (Emphasis added.) Does the term "sole active ingredient" refer only to chemicals which are listed in §§261.33(e) and (f)? If a product contains two active ingredients, only one of which is listed, would the discarded product be regulated as a P- or U-listed waste?

The discarded formulation would not be regulated as P- or U-listed waste when discarded. In order to be regulated as a P- or U-listed waste, a waste must meet all of the listing criteria. The listings in §261.33 do not include chemical mixtures where the listed chemical is not the sole active ingredient, and do not apply to chemicals that have been used for their intended purpose (54 FR 31335; July 28, 1989). In the scenario described above, while the discarded formulation meets the criterion of being unused, it contains more than one active ingredient. It is not necessary for a chemical to be listed in §§261.33(e) or (f) in order to meet the definition of an active ingredient. An active ingredient is defined as a component or mixture that performs the function of the product. "Sole active ingredient" means the active ingredient is the only chemically active component for the function of the product. If a formulation has more than one active ingredient, the formulation, when discarded, would not be within the scope of the listing in §261.33, regardless of whether only one or both active

ingredients are listed.

Generators, however, must be sure to correctly determine whether a particular constituent performs the function of the product, or only serves an ancillary function, such as mobilizing or preserving the active ingredient. For example, fillers, solvent carriers, propellants, and other components with no pesticidal role are functionally inert in pesticide formulations and therefore are not active ingredients. In cases where a hazardous constituent from §§261.33(e) or (f) is a functionally inert component of a commercial chemical product, e.g., a solvent carrier, its presence does not prevent the formulation containing another P- or U-listed constituent as the sole active ingredient from being a P- or U-list waste (internal Agency memorandum dated May 3, 1989).