

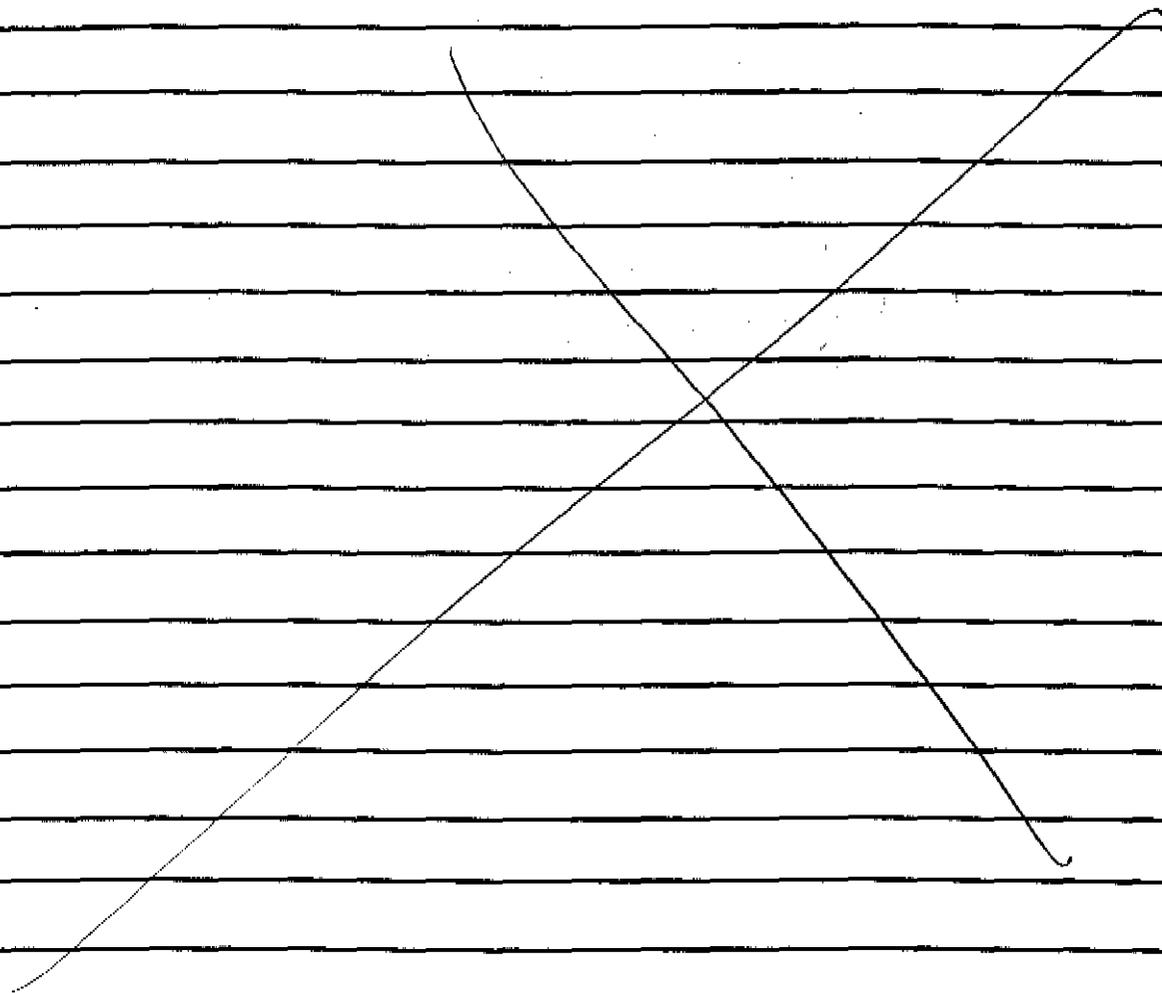
Documents in this folder had been brought in Jun 94 by Ms. Diane Turner - Div. secretary - and filed in Feb 95.

N.C. DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE
HAZARDOUS WASTE SECTION

Circle one:
G, I, P, GW, C, E
Div. Documents

FILE DOCKET

DATE	ITEM
① 7.25.91	^{memo} to: Meyer fr: Bullock Re: Judicial Review
② 1.7.91	Petition for Judicial Review



Edythe M. McKinney
Assistant Secretary for
Environmental Protection



TO: Bill Meyer

DATE: 1/29/91

RESPOND BY: _____

- PLEASE:
- _____ Draft a reply for the Secretary's signature and return to me.
 - _____ Reply, noting the letter was referred to you by me (copy to Secretary's Office).
 - _____ Draft a reply for the Governor's signature and return to me.
 - _____ Draft a reply for my signature and return to me.
 - _____ Reply, noting the letter was referred to you by Governor Martin (copy to Secretary's Office).
 - _____ For your information. + File
 - _____ Take appropriate action.
 - _____ Recommend appropriate action.
 - _____ Your comments and/or recommendations.
 - _____ For your approval.

REMARKS:

Is this something I will be hearing more about?

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
90 CVS _____

2

COUNTY _____

NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES
IN RE TO Tomie Cost
PE' BY Charles Williams
BY FROM Don DATE 11/27/90

PETITION FOR
JUDICIAL REVIEW

- For your information Keep Return
- File For your signature For your approval
- Note and see me about this, Please
- Prepare a reply
 - Your signature My signature
 - Send me a copy of reply
- Your comments
- Take charge of this, Please
- Attach requested information
- Initial and route to

seq., E.I. DuPont

and files this

from the Declaratory

attached hereto, issued

M.D., M.P.H., State

Department of Environment,

The Ruling and this

relates with the question of

generator fees, set out in

wastewaters treated on-site

at and totally enclosed

at Carolina facilities.

ACTION

1. DuPont is a foreign corporation authorized to do business in North Carolina.

2. DuPont owns and operates four facilities in North Carolina, which are relevant to this Petition, and which produce acid-caustic neutralized water through four different operations. The four facilities are located in Kinston, Cape Fear, Brevard, and Fayetteville. These facilities and the

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Office of the Deputy Secretary
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ENVIRONMENT, HEALTH
& NATURAL RESOURCES

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treatment

relevant portions of their operations are described further hereinbelow.

3. DuPont is an aggrieved party which has exhausted all administrative remedies available to it by statute or rule.

4. DuPont is entitled to pursue judicial review of the Ruling pursuant to N.C. Gen. Stat. § 150B-43 and other provisions of Article Four of the North Carolina Administrative Procedure Act, N.C. Gen. Stat. §§ 150B-1 et seq. (the "APA").

PROCEDURAL HISTORY

5. On September 12, 1989, DuPont filed with the DEHNR a Request for Declaratory Ruling pursuant to N.C. Gen. Stat. § 150B-17. Specifically, DuPont requested a ruling from the DEHNR on the following questions:

A. Are materials contained in properly permitted wastewater discharges at DuPont facilities as described hereinbelow not subject to reporting in a hazardous waste generator's annual hazardous waste generation report?

B. Are materials contained in properly permitted wastewater discharges at DuPont facilities as described hereinbelow not subject to hazardous waste generator fees under N.C. Gen. Stat. § 130A-294.1?

6. On October 23, 1990, DuPont received DEHNR's Ruling. In that Ruling, DEHNR found:

A. As Point I, that the fee system does not contain an exemption for wastewaters;

B. As Point II, that wastewaters are not excluded from the definition of solid waste while they are being generated, collected, stored or treated before-discharge; and

C. As Point III, that DuPont is required to report wastewater hazardous waste even if such wastewaters are managed in exempt units such as an elementary neutralization tank or in a totally closed system.

STATUTORY AND REGULATORY FRAMEWORK

7. Hazardous wastes are governed by the federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. §§ 6901 et seq. and the North Carolina Solid Waste Management Law (the "N.C. Solid Waste Law"). N.C. Gen. Stat. §§ 130A et seq. The North Carolina Health Services Commission ("HSC"), acting under its authority pursuant to the N.C. Solid Waste Law, promulgated the North Carolina Hazardous Waste Management Rules at 10 NCAC 10F (the "N.C. Rules"). The N.C. Rules are enforced and applied by personnel within the Solid Waste Management Section (the "Section") of DEHNR. The N.C. Rules largely mirror the regulations promulgated by the United States Environmental Protection Agency ("EPA") and codified in Title 40 of the Code of Federal Regulations (the "RCRA Rules").

8. The rules governing hazardous wastes are broken down into several broad categories based on the nature of the entity or activity giving rise to the waste. Included in these categories are the rules governing generators of hazardous waste, 40 C.F.R. Part 262 of the RCRA Rules, generally adopted by

reference at 10 NCAC 10F .0030 (the "RCRA Generator Rules"); and regulations applicable to persons who are permitted to treat, store or dispose of hazardous wastes, 40 C.F.R. Part 264 generally adopted by reference at 10 NCAC 10F .0032 (the "RCRA TSD Rules"). (Hereinafter, reference will generally be made to the Code of Federal Regulations citation.)

9. The fees at issue in the Ruling are annual tonnage fees imposed on the generators of hazardous wastes under the authority of Section 130A-294.1(g) of the N.C. Solid Waste Law. Section 130A-294.1(g) specifically directs DEHNR to impose an annual hazardous waste generation "tonnage fee of fifty cents (\$0.50) per ton or any part thereof of hazardous waste generated" up to an annual maximum of 25,000 tons of waste.

10. The scope of the definition of "hazardous waste" in the N.C. Solid Waste Law is limited by the definition of "solid waste," which explicitly states that "[w]astewater discharges . . . which are point sources subject to" permits issued under the National Pollution Discharge Elimination System (so-called "NPDES Permits") are not "solid wastes" under that statute. N.C. Gen. Stat. § 130A-290(18).

11. The RCRA statute's definition of "hazardous waste" also states that NPDES wastewater discharges are not "solid wastes," as does the definition of "hazardous waste" under the RCRA Rules. The definition of "solid waste" in the RCRA statutes excludes industrial wastewater subject to NPDES permits.

12. DuPont's materials and processes at issue here, involve industrial wastewater discharged through NPDES Permits.

13. Section 262.41 of the RCRA Generator Rules contains the requirement that each generator who ships any hazardous waste off-site to a TSD facility must prepare and submit a report on the wastes that are shipped off-site. These requirements do not apply to wastes that are kept on-site for treatment, storage or disposal. Section 262.10(b) lists the provisions that do apply to a generator's waste treated, stored or disposed of on-site. The list does not include the annual generator report requirement under Section 262.41.

14. Section 264.1(b) states that "the standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or Part 261 of this chapter." 40 C.F.R. § 264.1(b) (emphasis added). Section 264.1(g) specifically provides that "[t]he requirements of this part do not apply . . . to the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in § 260.10 of this chapter," Section 264.1(g)(6), or to "[t]he owner or operator of a totally enclosed treatment facility, as defined in § 260.10." Section 264.1(g)(5).

15. All of the discharges at issue here come from elementary neutralization units. In addition, almost all of the processes involve totally enclosed treatment facilities. This is not disputed by DEHNR in its Ruling.

STATEMENT OF FACTS

16. Four of DuPont's facilities in North Carolina produce acid-neutralized water through their operations, including their

facilities in Kinston, Cape Fear, Brevard, and Fayetteville. At these facilities, acid-caustic neutralized water is produced through four different operations. All four of the operations which produce these waters do not take place at each facility.

17. At all four facilities, demineralized water is necessary for the production of "Dacron®" polyester fibers, "Butacite®" safety glass laminate, "Nafion®" membranes, "Dymetrol®" strapping tape and "Cronar®" x-ray photographic film.

A. This demineralized water is produced by pumping the water supply through ionic exchangers containing both anion and cation resins. The exchangers remove trace amounts of impurities from the water supply, thus producing demineralized water. These impurities, if not removed, cause quality deficiencies in the final product.

B. As the water supply passes through the ionic exchangers, the hydrogen and hydroxyl ions chemically bonded to the resins are replaced by the impurity constituents in the water supply. Therefore, the ionic exchangers must be periodically shut down and recharged with a diluted acid and caustic treatment process. This recharging process is performed by pumping diluted sulfuric or hydrochloric acid through the anion resin exchanger and diluted sodium hydroxide through the cation resin exchanger. These water-diluted acid and caustic solutions displace the impurity constituents with hydrogen and hydroxyl ions on the ionic sites and reactivate the resins. After passing through the ionic exchangers, the spent diluted acid and caustic solutions are captured in totally enclosed tanks and sumps or

open retention basins, where they are neutralized by their own interaction. If further neutralization is necessary at this point, acid or caustic may be added. The regeneration procedure is performed several times monthly at each facility.

C. At three of the four sites, the neutralized solution is then meter pumped to a wastewater treatment facility owned and operated by DuPont under an NPDES permit. At the fourth site, the solution is discharged directly to the receiving water body along with other surface water run off, through an NPDES permit. The permit does not require treatment of this water prior to discharge. Collectively, these four facilities produce an estimated seventy five million (75,000,000) pounds of neutralized acid-caustic waters annually.

18. At the three DuPont facilities producing polyester-based products (Kinston, Cape Fear and Brevard), Dimethylteraphalate, the raw material for polyester production, is polymerized with ethylene glycol to produce a monomer which is continuously processed into film or fibers.

A. The continuous polymerization equipment consists of a series of heated vessels which must be periodically shut down and cleaned.

B. To clean the polymerization vessels, a water diluted solution of sulfuric acid followed by a water diluted neutralizing solution of sodium hydroxide are pumped through the vessels.

C. Both the acid and caustic solutions are captured in an on-site close-coupled totally enclosed tank where the solution is adjusted to neutral.

D. The neutralized cleaning solution is pumped to an on-site wastewater treatment system owned and operated by DuPont and discharged through an NPDES permit.

E. At the three sites which conduct this operation, DuPont has twenty (20) continuous polymerization production units of varying capacity. These units are shut down for cleaning on the average of one and one half times per year. DuPont estimates that three million and five hundred thousand (3,500,000) pounds of neutralized cleaning solution is produced annually from these sites combined.

19. At the Fayetteville facility, several caustic scrubbers are used to remove acid components from process off-gases. These caustic solutions are collected in both closed and open on-site tanks in the immediate area of the scrubbers. At the same site, raw material containing hydrochloric acid is scrubbed with water to remove the acid. This acidic water is collected in a second totally enclosed tank. The contents of the two tanks are fed to an open neutralizing tank where either sulfuric acid or potassium hydroxide are added as necessary to fully neutralize. This water is then added to other wastewaters and pumped to an NPDES permitted wastewater treatment system owned and operated by DuPont. This neutralized solution makes up approximately one hundred thousand (100,000) pounds annually.

20. At the Fayetteville site, nitric acid is used in a treatment step for plastic membranes. All four sites occasionally use passivating processes for cleaning stainless steel vessels and piping during shutdowns and maintenance. The

passivating process removes all oxidized substances from the metal surface so as not to contaminate the product. In both processes, the acid is collected in a tank, fed to a neutralizer, neutralized with either potassium or sodium hydroxide and discharged to an NPDES permitted outfall without treatment. These operations produce approximately two hundred thousand (200,000) pounds annually.

EXCEPTIONS

DuPont Takes Exception to Point III of the Ruling that Hazardous Wastewaters Managed in Exempt Units Are Subject to Reporting Under the N.C. Solid Waste Law and Rules.

21. DuPont, as a generator that treats its waste on-site, is not required to report the wastewaters described above on its generator reports under Part 262. Therefore, DuPont need not include in its annual generator reports any of the wastewaters treated on-site in the processes described above. DuPont, further, need not report these wastes under any of the RCRA TSD Rules because the waste treatment systems at the four DuPont facilities in North Carolina are all elementary neutralization units and some are totally enclosed treatment systems as those terms are defined at Section 260.10.

22. In Point III of its Ruling, the DEHNR ignores the clear language in the N.C. Solid Waste Law, N.C. Rules, and RCRA TSD Rules and bases its finding that such wastewater must be reported on a requirement stated on the EPA Hazardous Waste Report Form. Such a requirement, if not adopted as a statute or regulation, cannot be interpreted to supercede the mandated requirements of

an applicable statute or regulation. In that the requirements under the state regulations are so clear and are being properly complied with by DuPont, the DEHNR's finding is in error, and cannot be upheld.

23. The DEHNR, in Point III of its Ruling, has prejudiced the substantial rights of DuPont, by issuing a Ruling that is erroneous in both law and fact, arbitrary and capricious, unsupported by substantial evidence and applicable law and rule, and in excess of its statutory authority and jurisdiction.

DuPont Takes Exception to Points I and II of the Ruling that Properly Permitted Wastewater Discharges At DuPont Facilities As Described Herein Are Hazardous Wastes and Are Subject To Hazardous Waste Generator Fees Under N.C. Gen. Stat. § 130A-294.1

24. In August 1988, the General Assembly enacted Chapter 1020 of the 1987 Session Laws (the "1988 Fee Bill"), amending N.C. Gen. Stat. § 130A-294.1, to clarify the bases and uses for the fees applicable to generators and TSDs to cover financing of the hazardous waste program. The 1988 Fee Bill also amended Section 130A-290 to include a definition for "Hazardous Waste Management Program" as "[t]he program and activities within the Department pursuant to Part 2 of this Article, for hazardous waste management."

25. Elementary neutralization units and totally enclosed treatment systems are not a part of this hazardous waste management program, pursuant to Section 264.1(g). Rather, they are a part of the extensive regulatory program for surface water discharges, through the NPDES and pretreatment programs. Wastewaters treated in the DuPont units are not regulated under

the hazardous waste management program. Further, the wastewaters treated in these systems cannot be considered "hazardous waste generated," subject to annual tonnage fees under N.C. Gen. Stat. § 130A-294.1. Therefore, there is no basis to assess fees on these systems or the wastewaters treated within them to support that program.

26. The DEHNR, in Points I and II of its Ruling, has prejudiced the substantial rights of DuPont, by issuing a Ruling that is erroneous in both law and fact, arbitrary and capricious, unsupported by substantial evidence and applicable law and rule, and in excess of its statutory authority and jurisdiction.

RELIEF SOUGHT

WHEREFORE, DuPont requests that the Court:

1. Reverse the Ruling and order that the State Health Director and the DEHNR enter a Declaratory Ruling that DuPont has not violated any statutes or rules administered by DEHNR as reflected in DuPont's Request for Declaratory Ruling and that DuPont shall not be assessed any penalties.

2. Reverse the Ruling and enter a Declaratory Ruling that wastewaters treated on-site in elementary neutralization units or totally enclosed treatment units are not hazardous wastes subject to annual reporting requirements under 40 C.F.R. Part 262 or hazardous waste tonnage fees under N.C. Gen. Stat. § 130A-294.1.

3. In the further alternative, reverse the Ruling and order that the Health Services Commission or the State Health Director and DEHNR conduct further proceedings in accordance with appropriate instructions by the Court.

4. Stay the Ruling pursuant to N.C. Gen. Stat. § 150B-48 pending a decision on the merits of this review.

5. Award DuPont reasonable attorneys' fee, costs and other expenses associated with the proceedings before the Health Services Commission and this Court, in addition to any other relief provided herein.

This the 26th day of November, 1990.

MOORE & VAN ALLEN

By: Charles D. Case
Charles D. Case

By: Elizabeth M. Powell
Elizabeth M. Powell

Post Office Box 26507
Raleigh, North Carolina 27611
Telephone: (919) 828-4481

ATTORNEYS FOR E.I. DUPONT de
NEMOURS & COMPANY, INC.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Petition for Judicial Review has been served this day by hand delivering copies thereof to the offices of:

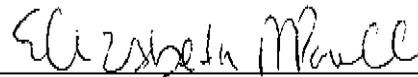
Mr. William Meyer
Solid & Hazardous Waste Management Branch
North Carolina Department of
Environment, Health & Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Judith Robb Bullock, Esq.
Associate Attorney General
Hazardous Waste Division
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Chris G. Hoke, Esq.
Assistant State Health Director
North Carolina Department of Environment,
Health and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

John C. Hunter, Esq.
General Counsel
North Carolina Department of Environment,
Health and Natural Resources
Archdale Building, Room 1442
Raleigh, North Carolina 27611

This the 26th day of November, 1990.



VERIFICATION

I, R. J. Hargitt the undersigned, first being duly sworn, say that this petition is true to my own knowledge, except as to matters stated on information and belief, and as to those, I believe them to be true.

E.I. DUPONT DE NEMOURS
& CO., INC.

DATE: Nov. 21, 1990

BY: R.J. Hargitt
(Name) R.J. Hargitt
(Title) N.C. Occupational Health and
Environmental Affairs Manager
(Address and Phone Number) _____

Sworn to and subscribed before me
this 21st day of November, 1990.

Catherine S. Garrett
Notary Public

My Commission Expires:

3-9-92

ATTACHMENT A

DECLARATORY RULING
IN RE: E. I. DUPONT DE NEMOURS AND CO., INC.
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Enclosed is the declaratory ruling issued by Ronald H. Levine, M.D., M.P.H., State Health Director, in the case, IN RE: E. I. Dupont de Nemours and Co., Inc.

Petitions for judicial review of this decision must be filed in Superior Court no later than thirty (30) days after receipt of this letter and decision.

 10-22-90
Chris G. Hoke, J.D. (Date)
Assistant State Health Director

Transmitted To: Elizabeth M. Powell
Judy Bullock
Bill Meyer

RECEIVED
OCT 23 1990

HAZARDOUS WASTE SECTION

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

IN RE:)
)
REQUEST FOR DECLARATORY RULING) DECLARATORY RULING
BY E. I. DUPONT DE NEMOURS)
& CO., INC.)

I, Ronald H. Levine, M.D., M.P.H., State Health Director, do hereby issue this Declaratory Ruling pursuant to N.C. Gen. Stat. §150B-17 under the authority granted to me by the Secretary of the Department of Environment, Health, and Natural Resources (DEHNR). This ruling will interpret the applicability of the hazardous waste generator fee schedule, set out in N.C. Gen. Stat. §130A-294.1(g), to wastewaters treated on-site in elementary neutralization systems by E. I. Dupont de Nemours & Co., Inc. (Dupont).

Four Dupont facilities, located at Kinston, Cape Fear, Brevard and Fayetteville, generate dilute acid and/or caustic (base) solutions from industrial manufacturing processes. These solutions are industrial wastewaters and are treated on-site by elementary neutralization, a process of mixing dilute acids and bases to neutralize the mixtures resulting primarily in water and soluble salts. The wastewater treatment occurs in closed vessels and/or tanks and the treated wastewater is discharged in accordance with NPDES permits which are issued pursuant to Section 402 of the Clean Water Act.

For the following reasons, I conclude that the wastewaters generated by Dupont facilities are classified as hazardous wastes prior to their discharge in accordance with NPDES permits and that the fee schedule contained in N.C. Gen. Stat. §130A-294.1 is applicable to such wastewaters. I also conclude that Dupont must report the hazardous wastewaters on its annual report. This ruling will be binding on the agency so long as the material facts stated herein are accurate, and the ruling only pertains to these facts. I reserve the right for this agency to make a prospective change in the interpretation which this ruling sets forth.

I. The fee system does not contain an exemption for wastewaters.

N.C. Gen. Stat. §130A-294(a)(7) authorizes DEHNR to "[e]stablish and collect annual fees from generators and transporters of hazardous waste, and from storage, treatment, and disposal facilities regulated under this Article as provided in N.C. Gen. Stat. §130A-294.1."

DECLARATORY RULING

E. I. Dupont de Nemours & Co., Inc.

p. 2

N.C. Gen. Stat. §130A-294.1(g) states:

A person who generates one kilogram or more of acute hazardous waste or 1000 kilograms or more of hazardous waste in any calendar month during the calendar year shall pay, in addition to any fee under subsections (e) and (g) of this section, a tonnage fee of fifty cents (\$.50) per ton or any part thereof of hazardous waste generated during that year up to a maximum of 25,000 tons.

The fee schedule does not contain an exemption for wastewaters.

II. Wastewaters are not excluded from the definition of solid waste while they are being generated, collected, stored or treated before discharge.

In order to be classified as a hazardous waste, a substance must be classified as a solid waste. N.C. Gen. Stat. §130A-290(a)(8). The definition of solid waste, contained in N.C. Gen. Stat. §130A-290(a)(35)b.3., excludes "wastewater discharges ... which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under N.C. Gen. Stat. §143-215.1 by the Environmental Management Commission."

Dupont argues that that exclusion applies to the wastewaters generated by it which are discharged in accordance with NPDES permits issued pursuant to Section 402 of the Clean Water Act. The exclusion, however, is limited to the wastewaters as they exist at the actual point of discharge. See, Comment to 40 CFR 261.4(a)(2), which is adopted by reference at 15A NCAC 13A .0006. Wastewaters as they exist at the point of generation and prior to the point at which they become a point-source discharge (prior to and during treatment) are not excluded from the definition of solid waste.

Since the wastewaters consist of acid or caustic solutions which are subject to the criteria and characteristics for hazardous waste as set forth in 40 CFR 261.3 as adopted by reference at 15A NCAC 13A .0006, the wastewaters are hazardous, as well as

DECLARATORY RULING

E. I. Dupont de Nemours & Co., Inc.

p. 3

solid wastes. Although there are certain exclusions from hazardous waste standards which apply to totally enclosed treatment facilities and elementary neutralization or wastewater treatment units, the exclusions only apply to some standards and do not exclude such wastewaters from the definition of hazardous waste.

Therefore, all wastewaters generated by Dupont that are hazardous are subject to the fee schedule.

III. Dupont is required to report wastewater hazardous wastes even if such wastewaters are managed in exempt units such as an elementary neutralization tank or in a totally closed system.

The fee schedule contained in N.C. Gen. Stat. §130A-294.1(g) is not limited to those wastes which are reported in an annual report. Dupont raised the question, however, as to whether it was responsible for reporting the wastewaters and, therefore, the issue will be addressed herein.

15A NCAC 13A .0015 requires that hazardous waste generators, treaters, storers and disposers file an annual report. North Carolina's annual reporting requirements for wastewaters are identical to the federal biennial reporting requirements. The 1989 Federal Hazardous Waste Report requirements include the following note regarding what wastes must be included for reporting purposes:

Wastes treated in exempt units are not to be counted in determining if a site is a Large Quantity Generator. However, if a site is required to file the Hazardous Waste Report, wastes treated in exempt units are to be reported. 1989 EPA Hazardous Waste Report Form 8700-13A/B, page 2.

Therefore, if a site only generates wastewaters which are treated in exempt units (i.e. - elementary neutralization in tanks or totally enclosed systems), then the site is not considered to be a large quantity generator and is exempt from the reporting requirement. However, if a site generates sufficient hazardous waste to qualify as a large quantity generator without regard to the wastewater hazardous waste, the site must report both the non-wastewater hazardous waste and the wastewater hazardous waste even though the latter is treated in exempt units.

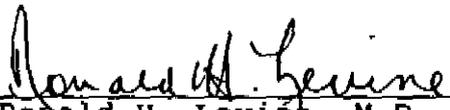
DECLARATORY RULING

E. I. Dupont de Nemours & Co., Inc.

p. 4

All four Dupont facilities were identified as large quantity generators, without regard to wastewaters, in 1987, 1988, and 1989. In addition to being large quantity generators, all four Dupont facilities shipped hazardous waste to off-site facilities. Therefore, Dupont is required to report wastewaters which exhibit a characteristic of hazardous waste even if such waste is managed in exempt units such as an elementary neutralization tank or in a totally closed system.

This the 22 day of October, 1990.



Ronald H. Levine, M.D., M.P.H.
State Health Director

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

1991 JAN -2 PM 3:39



WAKE COUNTY, C.S.C.

IN RE:)
PETITION FOR JUDICIAL REVIEW) MOTION FOR CONTINUANCE
BY E.I. DuPont de)
Nemours & Co., Inc.)

COMES NOW E.I. DuPont de Nemours & Co., Inc. ("DuPont") and the North Carolina Department of Environment, Health and Natural Resources ("DEHNR"), jointly, to request a continuance of the above-captioned case. This request is made pursuant to Tenth District Local Rules 4.1 and 9.8.

In support of this Motion For Continuance, DEHNR and DuPont state as follows:

1. The Record On Appeal was filed with the Court on December 19, 1990.
2. According to Tenth District Local Rule 9.2, DuPont Brief should be filed with the Court within twenty (20) days after this filing, or by January 8, 1991.
3. It is the intention of DuPont to pursue the issues raised in its Request For Declaratory Ruling before the North Carolina General Assembly in its upcoming Session which will begin on January 30, 1991. Should such efforts be successful, to the satisfaction of DuPont, there will then be no need to proceed with this appeal.
4. DEHNR concurs with the intentions of DuPont in this matter and in this Motion For Continuance.

5. No previous continuances have been requested or granted in this case.

For these reasons, DuPont and DEHNR request that the briefing schedule cited above be extended for a period of ninety (90) days, such that DuPont's Brief will be due on April 8, 1991.

Respectfully submitted this the 2 day of January, 1991.

MOORE & VAN ALLEN

By: Charles D. Case/cm
Charles D. Case

By: Elizabeth M. Powell
Elizabeth M. Powell

Post Office Box 26507
Raleigh, North Carolina 27611
Telephone: (919) 828-4481

ATTORNEYS FOR E.I. DUPONT DE
NEMOURS & CO., INC.

By: Judith R. Bullock
Judith R. Bullock

Post Office Box 629
Raleigh, North Carolina 27602
(919) 733-8352

ATTORNEY FOR NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT,
HEALTH AND NATURAL RESOURCES

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Motion For Continuance has been served this day by hand delivering copies thereof to the offices of:

Mr. William Meyer
Solid & Hazardous Waste Management Branch
North Carolina Department of Environment,
Health and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Chris G. Hoke, Esq.
Assistant State Health Director
North Carolina Department of Environment,
Health and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

John C. Hunter, Esq.
General Counsel
North Carolina Department of Environment
Health and Natural Resources
Archdale Building, Room 1442
512 N. Salisbury Street
Raleigh, North Carolina 27611

This the 2 day of January, 1991.

Elizabeth M. Powell
Elizabeth M. Powell

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE
WAKE COUNTY, C.S.C.

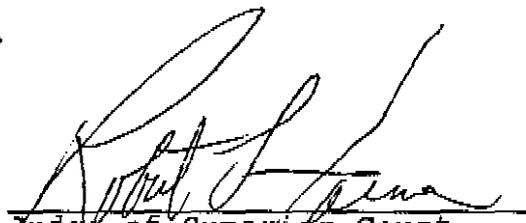
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
90 CVS 12777

IN RE:)
PETITION FOR JUDICIAL REVIEW) ORDER
BY E.I. DuPont de Nemours & Co., Inc.)

Upon consideration of the joint Motion For Continuance by E.I. DuPont de Nemours & Co., Inc. ("DuPont") and the North Carolina Department of Environment, Health and Natural Resources, and for good cause shown, and because no previous continuances have been requested or granted in this case;

IT IS HEREBY ORDERED that the briefing schedule shall be extended for a period of ninety (90) days, such that DuPont's Brief will be due on April 8, 1991.

This the 7th day of January, 1991.

By: 
Judge of Superior Court

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED 98 CVS
1991 JAN -2 PM 3:11



IN RE: PETITION FOR JUDICIAL REVIEW)
BY E.I. DuPont de Nemours & Co., Inc.)
WAKE COUNTY, C.S.C.)
BY _____)
MOTION FOR CONTINUANCE

COMES NOW E.I. DuPont de Nemours & Co., Inc. ("DuPont") and the North Carolina Department of Environment, Health and Natural Resources ("DEHNR"), jointly, to request a continuance of the above-captioned case. This request is made pursuant to Tenth District Local Rules 4.1 and 9.8.

In support of this Motion For Continuance, DEHNR and DuPont state as follows:

1. The Record On Appeal was filed with the Court on December 19, 1990.
2. According to Tenth District Local Rule 9.2, DuPont Brief should be filed with the Court within twenty (20) days after this filing, or by January 8, 1991.
3. It is the intention of DuPont to pursue the issues raised in its Request For Declaratory Ruling before the North Carolina General Assembly in its upcoming Session which will begin on January 30, 1991. Should such efforts be successful, to the satisfaction of DuPont, there will then be no need to proceed with this appeal.
4. DEHNR concurs with the intentions of DuPont in this matter and in this Motion For Continuance.

5. No previous continuances have been requested or granted in this case.

For these reasons, DuPont and DEHNR request that the briefing schedule cited above be extended for a period of ninety (90) days, such that DuPont's Brief will be due on April 8, 1991.

Respectfully submitted this the 2 day of January, 1991.

MOORE & VAN ALLEN

By: Charles D. Case
Charles D. Case

By: Elizabeth M. Powell
Elizabeth M. Powell

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Raleigh, North Carolina 27611
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ATTORNEYS FOR E.I. DUPONT DE
NEMOURS & CO., INC.

By: Judith R. Bullock
Judith R. Bullock

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(919) 733-8352

ATTORNEY FOR NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT,
HEALTH AND NATURAL RESOURCES

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Motion For Continuance has been served this day by hand delivering copies thereof to the offices of:

Mr. William Meyer
Solid & Hazardous Waste Management Branch
North Carolina Department of Environment,
Health and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Chris G. Hoke, Esq.
Assistant State Health Director
North Carolina Department of Environment,
Health and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

John C. Hunter, Esq.
General Counsel
North Carolina Department of Environment
Health and Natural Resources
Archdale Building, Room 1442
512 N. Salisbury Street
Raleigh, North Carolina 27611

This the 2 day of January, 1991.

Elizabeth M. Powell
Elizabeth M. Powell



State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH

27602-0629

LACY H. THORNBURG
ATTORNEY GENERAL

July 25, 1991

Attorney-Client
Confidential
Privilege

MEMORANDUM

TO: Bill Meyer
Director, Division of Solid Waste Management

Jerry Rhodes
Chief, Hazardous Waste Section

FROM: Judy Bullock *JB*
Associate Attorney General

RE: Dupont Judicial Review,
90 CVS 12777

I am enclosing a copy of the brief I filed in Wake County Superior Court in the above matter. Thank you for your assistance.

I would suggest that we meet to discuss this prior to the oral argument. I am not certain of the date for argument yet and will keep you posted.

/cn

attachment

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
90 CV 4277
WAKE COUNTY, N.C.

IN RE:

PETITION FOR JUDICIAL REVIEW
BY E. I. DUPONT DE NEMOURS
& CO., INC.

BY _____

BRIEF IN OPPOSITION
OF PETITION FOR
JUDICIAL REVIEW

Pursuant to N.C. Gen. Stat. §150B-43 and Tenth District Local Rule 9.3, the North Carolina Department of Environment, Health and Natural Resources (DEHNR) hereby submits this Brief in response to the Brief submitted by E.I. DuPont de Nemours & Co., Inc. (DuPont) in support of its Petition for Judicial Review. This Petition was filed by DuPont on November 26, 1990 to challenge the Declaratory Ruling issued by DEHNR on October 22, 1990, which held that the wastewaters generated by DuPont facilities are properly classified as hazardous wastes prior to their discharge and that the fee schedule contained in N.C. Gen. Stat. §130A-294.1 is applicable to such wastewaters.

I. APPLICABLE STATUTES AND RULES

A. Regulation of Hazardous Wastes.

DEHNR agrees with the description of the regulatory authority outlined in DuPont's Brief.

B. Annual Hazardous Waste Generator Fees

The fees at issue in the Petition are annual tonnage fees imposed on the generators of hazardous waste pursuant to N.C. Gen. Stat. §130A-294.1(g) of the North Carolina Solid Waste Law (the "N.C. Fee Statute"). The N. C. Fee Statute does direct DEHNR to impose "a tonnage fee of fifty cents (\$.50) per ton or any part thereof of hazardous waste generated" up to an annual maximum of 25,000 tons of waste. (Emphasis added). DuPont is correct in its statement that the tonnage fees apply only to hazardous waste and, specifically, only to hazardous waste that is actually "generated."

Hazardous waste is defined in N. C. Gen. Stat. §130A-290(a)(8). In order to be a hazardous waste under this definition, the waste must first be a solid waste. The statutory definition of solid waste specifically exempts "[w]astewater discharges...which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L.

92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission." N.C. Gen. Stat. §130A-290(a)(35).

DEHNR agrees that DuPont's wastewaters are discharged pursuant to permits issued under Section 402 (National Pollutant Discharge Elimination System or NPDES Permits) and that these wastewater discharges are excluded from the definition of solid waste and, therefore, are also excluded from the definition of hazardous waste. As will be discussed later in this Brief, DEHNR contends that the exclusion from the definition of solid waste and, consequently, from the definition of hazardous waste, for industrial wastewater discharges, is limited to the wastewater as it exists at the actual point of the discharge (at the end of the pipe). The tonnage fee which is the subject of the Petition for Judicial Review is imposed on industrial wastewater as it exists at the point when it becomes a hazardous waste (prior to and during treatment), not at the point when it becomes a point-source discharge (at the end of the pipe), at which time the wastewater discharge is clearly exempt from the definition of solid waste in N.C. Gen. Stat. §130A-290(a)(35).

C. The RCRA TSD Rules

DuPont correctly states that Part 264 of the N. C. Rules contain the regulations applicable to owners and operators of all facilities which treat, store or dispose of hazardous waste. Section 264.1(g) of this Part does provide that Part 264 requirements do not apply to owners or operators of elementary neutralization units or totally enclosed treatment facilities. DuPont correctly notes that not all of its processes which generate hazardous waste occur within totally enclosed treatment facilities. While it is true that materials stored, treated or disposed of in either elementary neutralization units or in totally enclosed treatment facilities would be exempt from regulation under the TSD Rules, this decision to exempt these units and facilities does not mean that hazardous waste is not generated in these units or facilities.

It must be emphasized that the exclusions from the TSD Rules are limited to owner and operator permitting standards and do not extend to other parts of the hazardous waste regulations. DEHNR contends that these exclusions do not extend so far as to exclude the wastewater generated by DuPont from the definitions of solid and hazardous waste, and subsequently, from the fee requirement.

II. RELEVANT DUPONT FACILITIES AND PROCESS

DEHNR does not take issue with the description of the four DuPont facilities as set forth in DuPont's Brief.

III. DISCUSSION

MATERIALS CONTAINED IN PROPERLY PERMITTED WASTEWATER DISCHARGES AT DUPONT FACILITIES AS DESCRIBED HEREIN ARE SUBJECT TO HAZARDOUS WASTE FEES UNDER N.C. GEN. STAT. §130A-294.1(g).

A. DuPont's wastewaters do constitute hazardous wastes generated.

DuPont maintains that the wastewaters discharged from the facilities described in Section II are not "hazardous waste" because such wastewaters are excluded from the definition of hazardous waste under the N.C. Solid Waste Law. While it is true that DuPont's wastewater discharge is subject to an NPDES permit and is excluded from the definition of solid waste, it does not follow that the wastewater which eventually becomes a wastewater discharge is exempt from the fee provisions in N.C. Gen. Stat. §130A-294.1 which assesses fees based on the tonnage of "hazardous waste generated." (Emphasis added). DEHNR contends that the terms "wastewater" and "wastewater discharge" are not interchangeable. There is no dispute that wastewater discharges are not solid or hazardous waste and are exempt from the fee provisions. DEHNR contends that wastewater upstream from the point where it becomes a point source discharge is not exempt from the definitions or from the fee requirement.

It is true that, in its Brief below, the Division relied heavily on the comment within Section 40 CFR §261.4(a)(2), which is codified in the N. C. Rules at 15A NCAC 13A .0006, which states that the exclusion from the definition of solid waste is inapplicable to "industrial wastewaters while they are being collected, stored or treated before discharge." DEHNR strongly disagrees with Dupont's position that the rule exclusion from the solid waste definition and the CFR comment which has also been adopted by reference and is codified in the N.C. Rules should not be considered in determining the meaning of the term "hazardous waste" under the N.C. Solid Waste Law.

DEHNR does agree that the definition of "solid waste" in the N.C. Solid Waste Law should be ultimately relied upon in applying the N.C. Fee Statute. However, to the extent that the rule exclusion is not inconsistent with the statutory solid waste definition, the Court and DEHNR should be allowed to look to the rule for

additional guidance. While it is perfectly clear that the statutory definition of solid waste specifically exempts "wastewater discharges," the statutory definition simply does not address wastewater prior to the time it becomes a wastewater discharge as part of the exemption. If the Court chooses to look only to the statutory definition of solid waste as DuPont proposes, the plain language of the statutory definition of solid waste clearly limits the exemption to "wastewater discharges." A plain reading of the statute compels the conclusion that only wastewater discharges, as distinguished from wastewater, are exempt from the definition of solid waste.

DEHNR believes that an examination of the rule exclusion and its accompanying comment does not contradict the plain meaning of the statutory definition of solid waste, but merely confirms what the statute clearly states: only wastewater discharges are exempt from the definition of solid waste. It is true that the statutory definition does not contain the comment, but that does not mean that the comment is inconsistent with the plain meaning of the statutory definition. Looking at the statutory solid waste definition either in isolation or in conjunction with the rule exclusion and its companion comment compels the conclusion that wastewater, as distinguished from wastewater discharges, is not exempt from the definition of solid waste and, therefore, such wastewater is subject to the fee requirement.

DEHNR agrees that the N. C. Fees Statute only requires that tonnage fees be paid on hazardous waste which is generated. DuPont incorrectly asserts that its wastewater is not considered to be generated anywhere else in the hazardous waste program. 40 CFR 262.10(b) does require that a generator who treats, stores or disposes of waste on-site to comply with 40 CFR 262.11 by making a waste determination. DuPont contends that "a waste determination is not necessary because the treatment system addresses any hazardous characteristic and because sampling is already required under the NPDES program." (DuPont's Brief, page 12, Footnote 13.) DEHNR contends the waste is generated and must then be identified (determined) prior to any treatment in a treatment system. The fact that sampling is required for purposes of the NPDES program is irrelevant to the issue of whether a hazardous waste is generated and is subject to the waste determination process under the hazardous waste program. The wastewaters in question are generated prior to the point at which they leave the Dupont process via an exempt discharge and are, therefore, subject to state tonnage fees.

- B. EPA's preamble to the purpose of Section 261.4(a)(2) fails to indicate that wastewater treated in exempt units is never considered to be hazardous waste.

DEHNR contends that the regulatory comment referenced by the Division in its Brief below does establish that EPA contemplated that wastewaters which exist upstream from the point of discharge could be subject to regulation under the RCRA program. DuPont correctly notes that the preamble to the notice of the promulgation of Section 261.4 explains that the reason for exempting wastewater discharges from the definition of solid waste was to avoid the inevitable double regulation of the wastewater discharges into navigable waters under both the Clean Water Act and RCRA. The preamble goes on to explain that this potential for overlapping jurisdiction was not a concern in the case of industrial wastewaters as they exist prior to the point of discharge since there is no jurisdiction under the Clean Water Act to address wastewater at this stage.

DuPont correctly points out that EPA could have made a finding that wastewater being treated or stored in RCRA Subtitle C facilities was not a solid waste, which could have removed these facilities from RCRA regulation. EPA did not, however, make such a finding. Just because the wastewater at issue is treated in totally enclosed treatment units or elementary neutralization units which are exempt from RCRA TSD Rules, it does not necessarily follow that this wastewater is not solid waste. There is nothing in either the regulatory comment in 40 CFR 261.4(a)(2) or the preamble to the notice of the promulgation of Section 261.4 which supports DuPont's position that hazardous wastewater is not generated and is not subject to hazardous waste fees simply because the wastewater is generated upstream from a point source, in a process already exempt from Subtitle C. DEHNR maintains that a hazardous waste is generated upstream of the discharge point. It is true, as DuPont states on page 15 of its Brief, that EPA excluded certain units from RCRA permitting and TSD regulation after reviewing the environmental threat posed by units such as totally enclosed treatment systems and elementary neutralization tanks. While EPA may have recognized that the risk posed by these units was low enough to forego the RCRA permitting process, this does not mean that the wastewaters treated in totally enclosed treatment systems and/or elementary neutralization tanks do not constitute generated hazardous wastes.

- C. DuPont's facilities and the wastes in them are a part of the hazardous waste management program and should be assessed fees to support such a program.

It is true that the intent of the N.C. Fee Bill is to provide funding to support the State's hazardous waste management program. Even though elementary neutralization units and totally enclosed treatment systems are exempt from the RCRA permitting standards, the wastewater generated in such units is hazardous waste. As will be seen below, this waste is required to be reported. The wastewater discharge is, as previously acknowledged, part of the surface water discharge regulatory program through NPDES permitting and pretreatment programs, but these regulatory programs do not regulate wastewater upstream from the point where it becomes a point-source discharge. In the event that an NPDES permit for such a discharge was revoked or otherwise terminated, the wastewater would have to be addressed as a hazardous waste and managed as part of the hazardous waste program, which would have to provide additional aqueous capacity in the North Carolina Capacity Assurance Plan (CAP) as required by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et. seq.

D. DuPont's wastewaters are subject to reporting under the RCRA rules.

Contrary to DuPont's assertion in its Brief, wastewaters treated in elementary neutralization units and totally enclosed treatment systems are required to be reported on RCRA annual reports as part of the TSD annual report requirement.

The federal regulations require information to be submitted on the Federal Hazardous Report Form (Attachment 1). The North Carolina reporting form is substantially equivalent to the federal form (Attachment 2). It is essential for North Carolina to require substantially equivalent information in order to maintain its authorization to operate a state hazardous waste program. If North Carolina's program is not viewed as equivalent to and consistent with the Federal program, EPA may revoke North Carolina's authorization to operate the state hazardous waste program. In order to insure that there are no inconsistencies between the federal and state reporting requirements, North Carolina requires wastewater reporting which is virtually identical to the federal reporting requirements for wastewater.

The 1991 Federal Hazardous Waste Report Form contains the following statement regarding which wastes must be included in the report:

"RCRA hazardous waste managed in units that are exempt from RCRA permitting

requirements are not to be counted in determining if the site is a large quantity generator. However, if a site is required to file the 1991 Hazardous Waste Report, RCRA hazardous waste treated in exempt units are to be reported." (Emphasis added).

This statement means that if a site only generates a wastewater which is treated in exempt units (ie. - in elementary neutralization in tanks or totally enclosed treatment systems), then the site is not considered to be a large quantity generator and is exempt from the reporting requirement. However, without regard to wastewater generation, if a site generates sufficient non-wastewater hazardous waste (greater than 1000 kilograms in any month) to qualify as a large quantity generator, the site must report both the non-wastewater hazardous waste and the wastewater hazardous waste even though the latter is treated in exempt units.

On page 14 of the federal form, a specific list of RCRA hazardous waste streams generated on site which must be reported includes "all hazardous waste streams managed in units exempt from RCRA permitting requirements."

The Special Instructions which accompany the federal report form specifically addresses RCRA hazardous wastes which are managed in units exempt from RCRA permitting requirements as follows: "Reportable exempt processes specifically include wastewater treatment units and elementary neutralization units that are exempt from RCRA permitting requirements." (Page 49).

All four DuPont facilities were identified as large quantity generators, without regard to wastewater, in 1987, 1988 and 1989. In addition to being large quantity generators, all four DuPont facilities shipped hazardous waste to off-site facilities. Therefore, to the extent that any wastewater exhibits a characteristic of hazardous waste, even if it is managed in exempt units (elementary neutralization tanks or in totally enclosed treatment systems), DuPont is required to report the wastewater.

- E. The legislative history of the N.C. Fee Bill does not support a finding that the wastewaters are not subject to such fees.

Contrary to the position taken by DuPont, the General Assembly never decided that the hazardous waste tonnage fees do not presently apply to wastewaters. When the Division commented in its Brief below that it was "aware of the various perspectives on the legislative intent

with regard to the fee issue" it was merely acknowledging that DuPont, along with several other large wastewater generators, have expressed frustration at the present language of the N.C. Fee Bill and have also expressed their desire to have the statute amended to correct what they perceive to be an inequitable assessment which is not evenly applied. While DEHNR has no reason to doubt that the General Assembly may well agree with DuPont that the current Fee Bill is in need of revision, DEHNR cannot ignore the plain meaning of the statute as it currently exists, nor can it fail to enforce its provisions.

DEHNR contends that fees have been collected for the wastewaters reported on the annual reports with the knowledge and support of the General Assembly. In 1989, the Division submitted a report to the General Assembly entitled "North Carolina Wastewater Study for the 1989 General Assembly." (Attachment 3). One purpose of the report was to provide relevant information for the General Assembly to consider in determining whether to restructure the hazardous waste fee system. This report indicated that the Division was assessing fees for the wastewater now in issue. No changes were made as a result of the study, so the Division has continued to charge tonnage fees for wastewater in accordance with N.C. Gen. Stat. §130A-294.1(g).

F. Subjecting such wastewaters to tonnage fees does not result in the overlapping of regulatory programs.

DEHNR agrees that wastewater discharge permits are subject to annual fees as set forth in N.C. Gen. Stat. §143-215.3(a)(1a). However, subjecting hazardous waste water to the fees set forth in N.C. Gen. Stat. §130A-294.1(g) does not constitute a double charge because, as discussed above, wastewater and wastewater discharges are separate and distinct entities. It is true that the wastewater discharged pursuant to NPDES permits is regulated and monitored by the Division of Environmental Management (DEM). There is no overlapping jurisdiction between DEM and the Division of Solid Waste Management (DSWM) because DEM regulates the discharge while DSWM has regulatory authority over the wastewater prior to the point of discharge. Because wastewaters are solid waste and also hazardous waste, assessment of a tonnage fee under N.C. Gen. Stat. §130A-294.1 does promote the hazardous waste management purposes set forth in N.C. Gen. Stat. §130A-294.1(b).

IV. CONCLUSION

Industrial wastewaters which are collected, stored or treated before discharge are solid waste and, it follows, hazardous waste, and are subject to hazardous waste generator fees pursuant to N.C. Gen. Stat. §130A-294.1.

This the 25th day of July, 1991.



Judith Robb Bullock
Associate Attorney General
N. C. Dept. of Justice
Post Office Box 27687
Raleigh, N. C. 27611-7687
(919) 733-8352
N. C. State Bar No. 9435

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attached BRIEF IN OPPOSITION OF PETITION FOR JUDICIAL REVIEW upon Petitioner's attorney by depositing in the United States main with adequate postage and addressed as follows:

Charles D. Case
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

Elizabeth M. Powell
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

This the 25th day of July, 1991.



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State of North Carolina

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LACY H. THORNBURG
ATTORNEY GENERAL

July 25, 1991

Attorney-Client
Confidential
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TO: Bill Meyer
Director, Division of Solid Waste Management

Jerry Rhodes
Chief, Hazardous Waste Section

FROM: Judy Bullock *JB*
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RE: Dupont Judicial Review,
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COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
94 JUN 25 1990
90 CVS 4277
WAKE COUNTY, C.S.C.

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BY E. I. DUPONT DE NEMOURS
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MATERIALS CONTAINED IN PROPERLY PERMITTED WASTEWATER DISCHARGES AT DUPONT FACILITIES AS DESCRIBED HEREIN ARE SUBJECT TO HAZARDOUS WASTE FEES UNDER N.C. GEN. STAT. §130A-294.1(g).

A. DuPont's wastewaters do constitute hazardous wastes generated.

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additional guidance. While it is perfectly clear that the statutory definition of solid waste specifically exempts "wastewater discharges," the statutory definition simply does not address wastewater prior to the time it becomes a wastewater discharge as part of the exemption. If the Court chooses to look only to the statutory definition of solid waste as DuPont proposes, the plain language of the statutory definition of solid waste clearly limits the exemption to "wastewater discharges." A plain reading of the statute compels the conclusion that only wastewater discharges, as distinguished from wastewater, are exempt from the definition of solid waste.

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DEHNR agrees that the N. C. Fees Statute only requires that tonnage fees be paid on hazardous waste which is generated. DuPont incorrectly asserts that its wastewater is not considered to be generated anywhere else in the hazardous waste program. 40 CFR 262.10(b) does require that a generator who treats, stores or disposes of waste on-site to comply with 40 CFR 262.11 by making a waste determination. DuPont contends that "a waste determination is not necessary because the treatment system addresses any hazardous characteristic and because sampling is already required under the NPDES program." (DuPont's Brief, page 12, Footnote 13.) DEHNR contends the waste is generated and must then be identified (determined) prior to any treatment in a treatment system. The fact that sampling is required for purposes of the NPDES program is irrelevant to the issue of whether a hazardous waste is generated and is subject to the waste determination process under the hazardous waste program. The wastewaters in question are generated prior to the point at which they leave the Dupont process via an exempt discharge and are, therefore, subject to state tonnage fees.

- B. EPA's preamble to the purpose of Section 261.4(a)(2) fails to indicate that wastewater treated in exempt units is never considered to be hazardous waste.

DEHNR contends that the regulatory comment referenced by the Division in its Brief below does establish that EPA contemplated that wastewaters which exist upstream from the point of discharge could be subject to regulation under the RCRA program. DuPont correctly notes that the preamble to the notice of the promulgation of Section 261.4 explains that the reason for exempting wastewater discharges from the definition of solid waste was to avoid the inevitable double regulation of the wastewater discharges into navigable waters under both the Clean Water Act and RCRA. The preamble goes on to explain that this potential for overlapping jurisdiction was not a concern in the case of industrial wastewaters as they exist prior to the point of discharge since there is no jurisdiction under the Clean Water Act to address wastewater at this stage.

DuPont correctly points out that EPA could have made a finding that wastewater being treated or stored in RCRA Subtitle C facilities was not a solid waste, which could have removed these facilities from RCRA regulation. EPA did not, however, make such a finding. Just because the wastewater at issue is treated in totally enclosed treatment units or elementary neutralization units which are exempt from RCRA TSD Rules, it does not necessarily follow that this wastewater is not solid waste. There is nothing in either the regulatory comment in 40 CFR 261.4(a)(2) or the preamble to the notice of the promulgation of Section 261.4 which supports DuPont's position that hazardous wastewater is not generated and is not subject to hazardous waste fees simply because the wastewater is generated upstream from a point source, in a process already exempt from Subtitle C. DEHNR maintains that a hazardous waste is generated upstream of the discharge point. It is true, as DuPont states on page 15 of its Brief, that EPA excluded certain units from RCRA permitting and TSD regulation after reviewing the environmental threat posed by units such as totally enclosed treatment systems and elementary neutralization tanks. While EPA may have recognized that the risk posed by these units was low enough to forego the RCRA permitting process, this does not mean that the wastewaters treated in totally enclosed treatment systems and/or elementary neutralization tanks do not constitute generated hazardous wastes.

- C. DuPont's facilities and the wastes in them are a part of the hazardous waste management program and should be assessed fees to support such a program.

It is true that the intent of the N.C. Fee Bill is to provide funding to support the State's hazardous waste management program. Even though elementary neutralization units and totally enclosed treatment systems are exempt from the RCRA permitting standards, the wastewater generated in such units is hazardous waste. As will be seen below, this waste is required to be reported. The wastewater discharge is, as previously acknowledged, part of the surface water discharge regulatory program through NPDES permitting and pretreatment programs, but these regulatory programs do not regulate wastewater upstream from the point where it becomes a point-source discharge. In the event that an NPDES permit for such a discharge was revoked or otherwise terminated, the wastewater would have to be addressed as a hazardous waste and managed as part of the hazardous waste program, which would have to provide additional aqueous capacity in the North Carolina Capacity Assurance Plan (CAP) as required by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et. seq.

D. DuPont's wastewaters are subject to reporting under the RCRA rules.

Contrary to DuPont's assertion in its Brief, wastewaters treated in elementary neutralization units and totally enclosed treatment systems are required to be reported on RCRA annual reports as part of the TSD annual report requirement.

The federal regulations require information to be submitted on the Federal Hazardous Report Form (Attachment 1). The North Carolina reporting form is substantially equivalent to the federal form (Attachment 2). It is essential for North Carolina to require substantially equivalent information in order to maintain its authorization to operate a state hazardous waste program. If North Carolina's program is not viewed as equivalent to and consistent with the Federal program, EPA may revoke North Carolina's authorization to operate the state hazardous waste program. In order to insure that there are no inconsistencies between the federal and state reporting requirements, North Carolina requires wastewater reporting which is virtually identical to the federal reporting requirements for wastewater.

The 1991 Federal Hazardous Waste Report Form contains the following statement regarding which wastes must be included in the report:

"RCRA hazardous waste managed in units that are exempt from RCRA permitting

requirements are not to be counted in determining if the site is a large quantity generator. However, if a site is required to file the 1991 Hazardous Waste Report, RCRA hazardous waste treated in exempt units are to be reported." (Emphasis added).

This statement means that if a site only generates a wastewater which is treated in exempt units (ie. - in elementary neutralization in tanks or totally enclosed treatment systems), then the site is not considered to be a large quantity generator and is exempt from the reporting requirement. However, without regard to wastewater generation, if a site generates sufficient non-wastewater hazardous waste (greater than 1000 kilograms in any month) to qualify as a large quantity generator, the site must report both the non-wastewater hazardous waste and the wastewater hazardous waste even though the latter is treated in exempt units.

On page 14 of the federal form, a specific list of RCRA hazardous waste streams generated on site which must be reported includes "all hazardous waste streams managed in units exempt from RCRA permitting requirements."

The Special Instructions which accompany the federal report form specifically addresses RCRA hazardous wastes which are managed in units exempt from RCRA permitting requirements as follows: "Reportable exempt processes specifically include wastewater treatment units and elementary neutralization units that are exempt from RCRA permitting requirements." (Page 49).

All four DuPont facilities were identified as large quantity generators, without regard to wastewater, in 1987, 1988 and 1989. In addition to being large quantity generators, all four DuPont facilities shipped hazardous waste to off-site facilities. Therefore, to the extent that any wastewater exhibits a characteristic of hazardous waste, even if it is managed in exempt units (elementary neutralization tanks or in totally enclosed treatment systems), DuPont is required to report the wastewater.

- E. The legislative history of the N.C. Fee Bill does not support a finding that the wastewaters are not subject to such fees.

Contrary to the position taken by DuPont, the General Assembly never decided that the hazardous waste tonnage fees do not presently apply to wastewaters. When the Division commented in its Brief below that it was "aware of the various perspectives on the legislative intent

with regard to the fee issue" it was merely acknowledging that DuPont, along with several other large wastewater generators, have expressed frustration at the present language of the N.C. Fee Bill and have also expressed their desire to have the statute amended to correct what they perceive to be an inequitable assessment which is not evenly applied. While DEHNR has no reason to doubt that the General Assembly may well agree with DuPont that the current Fee Bill is in need of revision, DEHNR cannot ignore the plain meaning of the statute as it currently exists, nor can it fail to enforce its provisions.

DEHNR contends that fees have been collected for the wastewaters reported on the annual reports with the knowledge and support of the General Assembly. In 1989, the Division submitted a report to the General Assembly entitled "North Carolina Wastewater Study for the 1989 General Assembly." (Attachment 3). One purpose of the report was to provide relevant information for the General Assembly to consider in determining whether to restructure the hazardous waste fee system. This report indicated that the Division was assessing fees for the wastewater now in issue. No changes were made as a result of the study, so the Division has continued to charge tonnage fees for wastewater in accordance with N.C. Gen. Stat. §130A-294.1(g).

F. Subjecting such wastewaters to tonnage fees does not result in the overlapping of regulatory programs.

DEHNR agrees that wastewater discharge permits are subject to annual fees as set forth in N.C. Gen. Stat. §143-215.3(a)(1a). However, subjecting hazardous waste water to the fees set forth in N.C. Gen. Stat. §130A-294.1(g) does not constitute a double charge because, as discussed above, wastewater and wastewater discharges are separate and distinct entities. It is true that the wastewater discharged pursuant to NPDES permits is regulated and monitored by the Division of Environmental Management (DEM). There is no overlapping jurisdiction between DEM and the Division of Solid Waste Management (DSWM) because DEM regulates the discharge while DSWM has regulatory authority over the wastewater prior to the point of discharge. Because wastewaters are solid waste and also hazardous waste, assessment of a tonnage fee under N.C. Gen. Stat. §130A-294.1 does promote the hazardous waste management purposes set forth in N.C. Gen. Stat. §130A-294.1(b).

IV. CONCLUSION

Industrial wastewaters which are collected, stored or treated before discharge are solid waste and, it follows, hazardous waste, and are subject to hazardous waste generator fees pursuant to N.C. Gen. Stat. §130A-294.1.

This the 25th day of July, 1991.



Judith Robb Bullock
Associate Attorney General
N. C. Dept. of Justice
Post Office Box 27687
Raleigh, N. C. 27611-7687
(919) 733-8352
N. C. State Bar No. 9435

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attached BRIEF IN OPPOSITION OF PETITION FOR JUDICIAL REVIEW upon Petitioner's attorney by depositing in the United States main with adequate postage and addressed as follows:

Charles D. Case
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

Elizabeth M. Powell
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

This the 25th day of July, 1991.


Judith Robb Bullock
Associate Attorney General
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HW
page

file
Dupont Judicial
Review - Hwy waste
files for waste water
return 7/29/91

State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH

27602-0629

LACY H. THORNBURG
ATTORNEY GENERAL

July 25, 1991

Attorney-Client
Confidential
Privilege

MEMORANDUM

TO: Bill Meyer
Director, Division of Solid Waste Management

Jerry Rhodes
Chief, Hazardous Waste Section

FROM: Judy Bullock *JB*
Associate Attorney General

RE: Dupont Judicial Review,
90 CVS 12777

I am enclosing a copy of the brief I filed in Wake County Superior Court in the above matter. Thank you for your assistance.

I would suggest that we meet to discuss this prior to the oral argument. I am not certain of the date for argument yet and will keep you posted.

/cn

attachment

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
91 JUL 25 5 28 90 CVS 12777
WAKE COUNTY, N.C.

IN RE:)

PETITION FOR JUDICIAL REVIEW)
BY E. I. DUPONT DE NEMOURS)
& CO., INC.)

BY _____

BRIEF IN OPPOSITION
OF PETITION FOR
JUDICIAL REVIEW

Pursuant to N.C. Gen. Stat. §150B-43 and Tenth District Local Rule 9.3, the North Carolina Department of Environment, Health and Natural Resources (DEHNR) hereby submits this Brief in response to the Brief submitted by E.I. DuPont de Nemours & Co., Inc. (DuPont) in support of its Petition for Judicial Review. This Petition was filed by DuPont on November 26, 1990 to challenge the Declaratory Ruling issued by DEHNR on October 22, 1990, which held that the wastewaters generated by DuPont facilities are properly classified as hazardous wastes prior to their discharge and that the fee schedule contained in N.C. Gen. Stat. §130A-294.1 is applicable to such wastewaters.

I. APPLICABLE STATUTES AND RULES

A. Regulation of Hazardous Wastes.

DEHNR agrees with the description of the regulatory authority outlined in DuPont's Brief.

B. Annual Hazardous Waste Generator Fees

The fees at issue in the Petition are annual tonnage fees imposed on the generators of hazardous waste pursuant to N.C. Gen. Stat. §130A-294.1(g) of the North Carolina Solid Waste Law (the "N.C. Fee Statute"). The N. C. Fee Statute does direct DEHNR to impose "a tonnage fee of fifty cents (\$.50) per ton or any part thereof of hazardous waste generated" up to an annual maximum of 25,000 tons of waste. (Emphasis added). DuPont is correct in its statement that the tonnage fees apply only to hazardous waste and, specifically, only to hazardous waste that is actually "generated."

Hazardous waste is defined in N. C. Gen. Stat. §130A-290(a)(8). In order to be a hazardous waste under this definition, the waste must first be a solid waste. The statutory definition of solid waste specifically exempts "[w]astewater discharges...which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L.

92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission." N.C. Gen. Stat. §130A-290(a)(35).

DEHNR agrees that DuPont's wastewaters are discharged pursuant to permits issued under Section 402 (National Pollutant Discharge Elimination System or NPDES Permits) and that these wastewater discharges are excluded from the definition of solid waste and, therefore, are also excluded from the definition of hazardous waste. As will be discussed later in this Brief, DEHNR contends that the exclusion from the definition of solid waste and, consequently, from the definition of hazardous waste, for industrial wastewater discharges, is limited to the wastewater as it exists at the actual point of the discharge (at the end of the pipe). The tonnage fee which is the subject of the Petition for Judicial Review is imposed on industrial wastewater as it exists at the point when it becomes a hazardous waste (prior to and during treatment), not at the point when it becomes a point-source discharge (at the end of the pipe), at which time the wastewater discharge is clearly exempt from the definition of solid waste in N.C. Gen. Stat. §130A-290(a)(35).

C. The RCRA TSD Rules

DuPont correctly states that Part 264 of the N. C. Rules contain the regulations applicable to owners and operators of all facilities which treat, store or dispose of hazardous waste. Section 264.1(g) of this Part does provide that Part 264 requirements do not apply to owners or operators of elementary neutralization units or totally enclosed treatment facilities. DuPont correctly notes that not all of its processes which generate hazardous waste occur within totally enclosed treatment facilities. While it is true that materials stored, treated or disposed of in either elementary neutralization units or in totally enclosed treatment facilities would be exempt from regulation under the TSD Rules, this decision to exempt these units and facilities does not mean that hazardous waste is not generated in these units or facilities.

It must be emphasized that the exclusions from the TSD Rules are limited to owner and operator permitting standards and do not extend to other parts of the hazardous waste regulations. DEHNR contends that these exclusions do not extend so far as to exclude the wastewater generated by DuPont from the definitions of solid and hazardous waste, and subsequently, from the fee requirement.

II. RELEVANT DUPONT FACILITIES AND PROCESS

DEHNR does not take issue with the description of the four DuPont facilities as set forth in DuPont's Brief.

III. DISCUSSION

MATERIALS CONTAINED IN PROPERLY PERMITTED WASTEWATER DISCHARGES AT DUPONT FACILITIES AS DESCRIBED HEREIN ARE SUBJECT TO HAZARDOUS WASTE FEES UNDER N.C. GEN. STAT. §130A-294.1(g).

A. DuPont's wastewaters do constitute hazardous wastes generated.

DuPont maintains that the wastewaters discharged from the facilities described in Section II are not "hazardous waste" because such wastewaters are excluded from the definition of hazardous waste under the N.C. Solid Waste Law. While it is true that DuPont's wastewater discharge is subject to an NPDES permit and is excluded from the definition of solid waste, it does not follow that the wastewater which eventually becomes a wastewater discharge is exempt from the fee provisions in N.C. Gen. Stat. §130A-294.1 which assesses fees based on the tonnage of "hazardous waste generated." (Emphasis added). DEHNR contends that the terms "wastewater" and "wastewater discharge" are not interchangeable. There is no dispute that wastewater discharges are not solid or hazardous waste and are exempt from the fee provisions. DEHNR contends that wastewater upstream from the point where it becomes a point source discharge is not exempt from the definitions or from the fee requirement.

It is true that, in its Brief below, the Division relied heavily on the comment within Section 40 CFR §261.4(a)(2), which is codified in the N. C. Rules at 15A NCAC 13A .0006, which states that the exclusion from the definition of solid waste is inapplicable to "industrial wastewaters while they are being collected, stored or treated before discharge." DEHNR strongly disagrees with Dupont's position that the rule exclusion from the solid waste definition and the CFR comment which has also been adopted by reference and is codified in the N.C. Rules should not be considered in determining the meaning of the term "hazardous waste" under the N.C. Solid Waste Law.

DEHNR does agree that the definition of "solid waste" in the N.C. Solid Waste Law should be ultimately relied upon in applying the N.C. Fee Statute. However, to the extent that the rule exclusion is not inconsistent with the statutory solid waste definition, the Court and DEHNR should be allowed to look to the rule for

additional guidance. While it is perfectly clear that the statutory definition of solid waste specifically exempts "wastewater discharges," the statutory definition simply does not address wastewater prior to the time it becomes a wastewater discharge as part of the exemption. If the Court chooses to look only to the statutory definition of solid waste as DuPont proposes, the plain language of the statutory definition of solid waste clearly limits the exemption to "wastewater discharges." A plain reading of the statute compels the conclusion that only wastewater discharges, as distinguished from wastewater, are exempt from the definition of solid waste.

DEHNR believes that an examination of the rule exclusion and its accompanying comment does not contradict the plain meaning of the statutory definition of solid waste, but merely confirms what the statute clearly states: only wastewater discharges are exempt from the definition of solid waste. It is true that the statutory definition does not contain the comment, but that does not mean that the comment is inconsistent with the plain meaning of the statutory definition. Looking at the statutory solid waste definition either in isolation or in conjunction with the rule exclusion and its companion comment compels the conclusion that wastewater, as distinguished from wastewater discharges, is not exempt from the definition of solid waste and, therefore, such wastewater is subject to the fee requirement.

DEHNR agrees that the N. C. Fees Statute only requires that tonnage fees be paid on hazardous waste which is generated. DuPont incorrectly asserts that its wastewater is not considered to be generated anywhere else in the hazardous waste program. 40 CFR 262.10(b) does require that a generator who treats, stores or disposes of waste on-site to comply with 40 CFR 262.11 by making a waste determination. DuPont contends that "a waste determination is not necessary because the treatment system addresses any hazardous characteristic and because sampling is already required under the NPDES program." (DuPont's Brief, page 12, Footnote 13.) DEHNR contends the waste is generated and must then be identified (determined) prior to any treatment in a treatment system. The fact that sampling is required for purposes of the NPDES program is irrelevant to the issue of whether a hazardous waste is generated and is subject to the waste determination process under the hazardous waste program. The wastewaters in question are generated prior to the point at which they leave the Dupont process via an exempt discharge and are, therefore, subject to state tonnage fees.

- B. EPA's preamble to the purpose of Section 261.4(a)(2) fails to indicate that wastewater treated in exempt units is never considered to be hazardous waste.

DEHNR contends that the regulatory comment referenced by the Division in its Brief below does establish that EPA contemplated that wastewaters which exist upstream from the point of discharge could be subject to regulation under the RCRA program. DuPont correctly notes that the preamble to the notice of the promulgation of Section 261.4 explains that the reason for exempting wastewater discharges from the definition of solid waste was to avoid the inevitable double regulation of the wastewater discharges into navigable waters under both the Clean Water Act and RCRA. The preamble goes on to explain that this potential for overlapping jurisdiction was not a concern in the case of industrial wastewaters as they exist prior to the point of discharge since there is no jurisdiction under the Clean Water Act to address wastewater at this stage.

DuPont correctly points out that EPA could have made a finding that wastewater being treated or stored in RCRA Subtitle C facilities was not a solid waste, which could have removed these facilities from RCRA regulation. EPA did not, however, make such a finding. Just because the wastewater at issue is treated in totally enclosed treatment units or elementary neutralization units which are exempt from RCRA TSD Rules, it does not necessarily follow that this wastewater is not solid waste. There is nothing in either the regulatory comment in 40 CFR 261.4(a)(2) or the preamble to the notice of the promulgation of Section 261.4 which supports DuPont's position that hazardous wastewater is not generated and is not subject to hazardous waste fees simply because the wastewater is generated upstream from a point source, in a process already exempt from Subtitle C. DEHNR maintains that a hazardous waste is generated upstream of the discharge point. It is true, as DuPont states on page 15 of its Brief, that EPA excluded certain units from RCRA permitting and TSD regulation after reviewing the environmental threat posed by units such as totally enclosed treatment systems and elementary neutralization tanks. While EPA may have recognized that the risk posed by these units was low enough to forego the RCRA permitting process, this does not mean that the wastewaters treated in totally enclosed treatment systems and/or elementary neutralization tanks do not constitute generated hazardous wastes.

- C. DuPont's facilities and the wastes in them are a part of the hazardous waste management program and should be assessed fees to support such a program.

It is true that the intent of the N.C. Fee Bill is to provide funding to support the State's hazardous waste management program. Even though elementary neutralization units and totally enclosed treatment systems are exempt from the RCRA permitting standards, the wastewater generated in such units is hazardous waste. As will be seen below, this waste is required to be reported. The wastewater discharge is, as previously acknowledged, part of the surface water discharge regulatory program through NPDES permitting and pretreatment programs, but these regulatory programs do not regulate wastewater upstream from the point where it becomes a point-source discharge. In the event that an NPDES permit for such a discharge was revoked or otherwise terminated, the wastewater would have to be addressed as a hazardous waste and managed as part of the hazardous waste program, which would have to provide additional aqueous capacity in the North Carolina Capacity Assurance Plan (CAP) as required by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et. seq.

D. DuPont's wastewaters are subject to reporting under the RCRA rules.

Contrary to DuPont's assertion in its Brief, wastewaters treated in elementary neutralization units and totally enclosed treatment systems are required to be reported on RCRA annual reports as part of the TSD annual report requirement.

The federal regulations require information to be submitted on the Federal Hazardous Report Form (Attachment 1). The North Carolina reporting form is substantially equivalent to the federal form (Attachment 2). It is essential for North Carolina to require substantially equivalent information in order to maintain its authorization to operate a state hazardous waste program. If North Carolina's program is not viewed as equivalent to and consistent with the Federal program, EPA may revoke North Carolina's authorization to operate the state hazardous waste program. In order to insure that there are no inconsistencies between the federal and state reporting requirements, North Carolina requires wastewater reporting which is virtually identical to the federal reporting requirements for wastewater.

The 1991 Federal Hazardous Waste Report Form contains the following statement regarding which wastes must be included in the report:

"RCRA hazardous waste managed in units that are exempt from RCRA permitting

requirements are not to be counted in determining if the site is a large quantity generator. However, if a site is required to file the 1991 Hazardous Waste Report, RCRA hazardous waste treated in exempt units are to be reported." (Emphasis added).

This statement means that if a site only generates a wastewater which is treated in exempt units (ie. - in elementary neutralization in tanks or totally enclosed treatment systems), then the site is not considered to be a large quantity generator and is exempt from the reporting requirement. However, without regard to wastewater generation, if a site generates sufficient non-wastewater hazardous waste (greater than 1000 kilograms in any month) to qualify as a large quantity generator, the site must report both the non-wastewater hazardous waste and the wastewater hazardous waste even though the latter is treated in exempt units.

On page 14 of the federal form, a specific list of RCRA hazardous waste streams generated on site which must be reported includes "all hazardous waste streams managed in units exempt from RCRA permitting requirements."

The Special Instructions which accompany the federal report form specifically addresses RCRA hazardous wastes which are managed in units exempt from RCRA permitting requirements as follows: "Reportable exempt processes specifically include wastewater treatment units and elementary neutralization units that are exempt from RCRA permitting requirements." (Page 49).

All four DuPont facilities were identified as large quantity generators, without regard to wastewater, in 1987, 1988 and 1989. In addition to being large quantity generators, all four DuPont facilities shipped hazardous waste to off-site facilities. Therefore, to the extent that any wastewater exhibits a characteristic of hazardous waste, even if it is managed in exempt units (elementary neutralization tanks or in totally enclosed treatment systems), DuPont is required to report the wastewater.

- E. The legislative history of the N.C. Fee Bill does not support a finding that the wastewaters are not subject to such fees.

Contrary to the position taken by DuPont, the General Assembly never decided that the hazardous waste tonnage fees do not presently apply to wastewaters. When the Division commented in its Brief below that it was "aware of the various perspectives on the legislative intent

with regard to the fee issue" it was merely acknowledging that DuPont, along with several other large wastewater generators, have expressed frustration at the present language of the N.C. Fee Bill and have also expressed their desire to have the statute amended to correct what they perceive to be an inequitable assessment which is not evenly applied. While DEHNR has no reason to doubt that the General Assembly may well agree with DuPont that the current Fee Bill is in need of revision, DEHNR cannot ignore the plain meaning of the statute as it currently exists, nor can it fail to enforce its provisions.

DEHNR contends that fees have been collected for the wastewaters reported on the annual reports with the knowledge and support of the General Assembly. In 1989, the Division submitted a report to the General Assembly entitled "North Carolina Wastewater Study for the 1989 General Assembly." (Attachment 3). One purpose of the report was to provide relevant information for the General Assembly to consider in determining whether to restructure the hazardous waste fee system. This report indicated that the Division was assessing fees for the wastewater now in issue. No changes were made as a result of the study, so the Division has continued to charge tonnage fees for wastewater in accordance with N.C. Gen. Stat. §130A-294.1(g).

F. Subjecting such wastewaters to tonnage fees does not result in the overlapping of regulatory programs.

DEHNR agrees that wastewater discharge permits are subject to annual fees as set forth in N.C. Gen. Stat. §143-215.3(a)(1a). However, subjecting hazardous waste water to the fees set forth in N.C. Gen. Stat. §130A-294.1(g) does not constitute a double charge because, as discussed above, wastewater and wastewater discharges are separate and distinct entities. It is true that the wastewater discharged pursuant to NPDES permits is regulated and monitored by the Division of Environmental Management (DEM). There is no overlapping jurisdiction between DEM and the Division of Solid Waste Management (DSWM) because DEM regulates the discharge while DSWM has regulatory authority over the wastewater prior to the point of discharge. Because wastewaters are solid waste and also hazardous waste, assessment of a tonnage fee under N.C. Gen. Stat. §130A-294.1 does promote the hazardous waste management purposes set forth in N.C. Gen. Stat. §130A-294.1(b).

IV. CONCLUSION

Industrial wastewaters which are collected, stored or treated before discharge are solid waste and, it follows, hazardous waste, and are subject to hazardous waste generator fees pursuant to N.C. Gen. Stat. §130A-294.1.

This the 25th day of July, 1991.



Judith Robb Bullock
Associate Attorney General
N. C. Dept. of Justice
Post Office Box 27687
Raleigh, N. C. 27611-7687
(919) 733-8352
N. C. State Bar No. 9435

CERTIFICATE OF SERVICE

This is to certify that I have this day served the attached
BRIEF IN OPPOSITION OF PETITION FOR JUDICIAL REVIEW upon
Petitioner's attorney by depositing in the United States mail with
adequate postage and addressed as follows:

Charles D. Case
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

Elizabeth M. Powell
Attorney at Law
Moore & Van Allen
Post Office Box 26507
Raleigh, North Carolina 27611

This the 25th day of July, 1991.


Judith Robb Bullock
Associate Attorney General
N. C. Dept. of Justice
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Raleigh, N. C. 27611-7687
(919) 733-8352
N. C. State Bar. No. 9435

OMB #: **DRAFT** Expires

United States
Environmental Protection Agency

1991 Hazardous Waste Report

**INSTRUCTIONS
AND
FORMS**

Public reporting burden for this collection of information is estimated to average 19 hours per response. The reporting burden includes time for reviewing instructions, gathering data, and completing and reviewing the questionnaire.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Chief, Information Policy Branch
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

and

Office of Management and Budget
Paperwork Reduction Project
Washington, DC 20503

WHAT MUST BE REPORTED

If your site is required to file the 1991 Hazardous Waste Report, the following must be included in your report:

- All RCRA hazardous waste streams and acute hazardous waste streams that were generated, shipped off site, or treated, disposed or recycled at your site;
- All RCRA hazardous waste streams that were received from off site;
- All hazardous waste streams regulated by your State (if required by your State);
- All hazardous waste streams managed in units subject to RCRA permitting requirements;
- All hazardous waste streams managed in units exempt from RCRA permitting requirements;
- Radioactive wastes if they are mixed with RCRA hazardous waste streams;
- Hazardous waste streams generated as a result of RCRA Corrective Action or other remedial activity;
- RCRA hazardous waste streams generated at Superfund remediation sites;
- For on-site hazardous waste management units subject to RCRA permitting requirements, the RCRA and total capacity, influent, and effluent; and
- For on-site hazardous waste management units exempt from RCRA permitting requirements, the RCRA and total capacity, influent, and effluent.

WHICH FORMS TO COMPLETE

This report contains five forms:

Form IC All sites required to submit the 1991 Hazardous Waste Report must complete Form IC.

Form GM A site required to submit the 1991 Hazardous Waste Report must complete Form GM if it generated or shipped any quantity of RCRA hazardous waste streams during 1991.

A complete, separate, and independent Form GM must be submitted for each RCRA hazardous waste stream if:

- The hazardous waste stream was generated on site from a production process or service activity.
- The hazardous waste stream was the result of a spill cleanup, equipment decommissioning, or other remedial cleanup activity.
- The hazardous waste stream was derived from the management of a non-hazardous waste stream.
- The hazardous waste stream was received from off site, was subsequently shipped off site and was not recycled or treated on site.
- The hazardous waste stream was a residual from the on-site treatment, disposal, or recycling of previously existing hazardous waste streams.

Form WR A site required to submit the 1991 Hazardous Waste Report must complete Form WR if, during 1991, it received RCRA hazardous waste from off site.

(Continued on next page)

Section IV: SIC Code information

Enter the Standard Industrial Classification (SIC) Code(s) that best describes the principal product or group of products produced or distributed or the services rendered at the site. Enter more than one SIC Code only if no one industry description includes the combined activities of the site. A complete list of SIC Codes begins on page 59. SIC Codes are organized by major industrial sectors, listed below. Space is provided for four SIC Codes. If you do not require four codes, enter "NA" in the unused spaces.

SIC Code Major Industrial Sector

Agriculture	page 59
Mining	page 59
Construction	page 59
Manufacturing	page 59-61
Transportation and Utilities	page 61-62
Wholesale Trade	page 62
Retail Trade	page 62
Finance, Insurance and Real Estate	page 62-63
Services	page 63
Public Administration	page 64
Nonclassifiable Establishments	page 64

	SIC Codes, page 59.
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Section V: Certification

Do not complete Section V until all forms required for submission are present, complete, and accurate. The 1991 EPA Hazardous Waste Report Submission Checklist at the back of this booklet is provided to assist you. After you have completed all required forms, enter your full name and title, and the date. Read the certification statement, and sign the form. Refer to pages iv through vii for the mailing address for your completed report.

Section VI: Generator Status

Enter the site's EPA ID number. Complete Box A and follow the instructions to complete Box B or skip to Section VII.

Box A: 1991 RCRA generator status

Check one box to indicate the site's RCRA hazardous waste generation status in 1991.

If the site did generate any RCRA hazardous waste during 1991, review the definitions of LQG, SQG, and CESQG on the next page to determine your generator status. Then check the appropriate box.

If your site did not generate RCRA hazardous waste during 1991, check "4-Non generator" and proceed to Box B.

A site that generates solid waste must determine if that waste is a RCRA hazardous waste, or if it is excluded from regulation under 40 CFR 261.4(b). RCRA hazardous waste managed in units that are exempt from RCRA permitting requirements are not to be counted in determining if a site is a large quantity generator. However, if a site is required to file the 1991 Hazardous Waste Report, RCRA hazardous waste treated in exempt units are to be reported. If a waste is excluded, or if it is regulated only by your State, its quantity should not be counted in determining RCRA generator status.

(Continued on next page)

FORM GM

WASTES TO BE REPORTED

All RCRA hazardous waste streams generated on site need to be reported including:

- All RCRA hazardous waste streams and acute hazardous waste streams that were generated, shipped off site, or treated, disposed or recycled at your site;
- All RCRA hazardous waste streams that were received from off site;
- All hazardous waste streams regulated by your State (if required by your State);
- All hazardous waste streams managed in units subject to RCRA permitting requirements;
- All hazardous waste streams managed in units exempt from RCRA permitting requirements;
- Radioactive wastes if they are mixed with RCRA hazardous waste streams;
- Hazardous waste streams generated as a result of RCRA Corrective Action or other remedial activity;
- RCRA hazardous waste streams generated at Superfund remediation sites;
- For on-site hazardous waste management units subject to RCRA permitting requirements, the RCRA and total capacity, influent, and effluent; and
- For on-site hazardous waste management units exempt from RCRA permitting requirements, the RCRA and total capacity, influent, and effluent.



NOTE: RCRA hazardous wastes treated in units exempt from RCRA permitting requirements are to be reported on this form.

Example 1:

A plant's on-site degreasing operations generate a hazardous waste solvent (F001), and the plant therefore completes a Form GM for this waste stream. The plant manages this stream by recovering solvents through a batch distillation system. The still bottoms generated as residuals from batch distillation are, by the "derived from" rule, RCRA hazardous waste (F001).

- Complete Form GM for hazardous waste solvent, F001
- Complete a separate Form GM for still bottoms, F001

Example 2:

A pretreatment operation for nonhazardous wastewaters generates a sludge that fails the EP Toxic test for metals. A Form GM is required for the sludge, but not for the nonhazardous wastewaters entering the pretreatment process.

- Complete Form GM for the sludge
- Do not complete Form GM for the nonhazardous wastewaters

Example 3:

Rinse waters from an electroplating operation contain chromium above the characteristic limit and are therefore reported on a Form GM as D007. They are treated in an on-site wastewater treatment system that generates a RCRA hazardous wastewater treatment sludge (F006); this sludge must be reported on a separate Form GM as a residual from hazardous waste management.

- Complete Form GM for rinse waters, D007
- Complete a separate Form GM for the RCRA hazardous wastewater treatment sludge, F006

SPECIAL INSTRUCTIONS

(Continued)

Wastes from Conditionally Exempt Small Quantity Generators (CESQG)

Waste management facilities sometimes receive hazardous wastes from large numbers of Conditionally Exempt Small Quantity Generators (CESQGs), or other sites that do not have RCRA EPA Identification Numbers. To minimize response burden, you may aggregate these wastes across generating sites, in accordance with the following guidelines:

- 1) All the wastes must have the same EPA Waste Code (Form WR, Box B), State Hazardous Waste Code (Form WR, Box C), Form Code (Form WR, Box G), RCRA-Radioactive Mixed Code (Form WR, Box H), and System Type Code (Form WR, Box I).
- 2) Wastes received from different States must be reported separately. In Form WR, Box D, the entry should include the two letter postal code of the originating State, followed by the letters "CESQG". For example, wastes received from several CESQG sites in the State of Alaska (AK) could be aggregated onto a single Form WR Waste Section, entered in Box D as "AKCESQG".

In Box E, report the total quantity of wastes received from the shipping State that share a common EPA Waste Code, State Hazardous Waste Code, Form Code, RCRA-radioactive Mixed Code, and System Type Code.

Wastes from foreign countries

Report on Form WR all wastes shipped to your facility from a foreign site. If the foreign site has an EPA Identification Number, report receipts from that site just as you would report receipts from a domestic site. If the site does not have an EPA Identification Number, call the Assistance Help Line at 1-800-000-0000 for instructions on how to report.

RCRA hazardous wastes managed in units exempt from RCRA permitting requirements

Do not count RCRA hazardous wastes treated in units that are exempt from RCRA permitting requirements in determining if your site is required to file the 1991 Hazardous Waste Report. If you determine that your site is required to file the Report, you must report these wastes and any on-site processes, exempt or permitted, that manage them. Reportable exempt processes specifically include wastewater treatment units and elementary neutralization units that are exempt from RCRA permitting requirements. These data are used by States to analyze adequacy of hazardous waste management capacity.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE MANAGEMENT

1990 HAZARDOUS WASTE ANNUAL REPORT
(Generators & On-Site TSD Facilities)

INSTRUCTIONS

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE MANAGEMENT

1990 HAZARDOUS WASTE ANNUAL REPORT
(Generators & On-Site TSD Facilities)

INTRODUCTION

This report consists of a minimum of two pages. Page 1 is for facility identification and certification. It also contains general survey questions. Page 2 begins a detailed accounting of individual waste streams you generated during calendar year 1990. This listing is continued (if necessary) on the "Continuation Sheet".

Your responses on this report are very important to the proper management of hazardous waste in North Carolina. Please read these instructions carefully before attempting to complete this form. Return one copy of the completed form to :

N.C. Hazardous Waste Section
Department of Environment, Health & Natural Resources
P.O. Box 27687
Raleigh, NC 27611-7687

DETAILED INSTRUCTIONS

Page 1 - Facility Identification & Certification

- I. **Facility Information**
Enter the facility name, address and EPA ID number in the spaces provided.
- II. **Quantity Verification**
Check the method most appropriate to show how you measured the weight you reported . Estimate the percent error of this method.
- III. **Certification**
Your authorized company representative should sign the certification statement.

Page 2 - Waste Generation & Management

- I. **Waste Identification**
All information in this section should be entered by line number.

EPA Hazardous Waste Number

Enter the EPA Hazardous Waste Number that best describes this waste. For a list of hazardous waste number consult 40 CFR Part 261, Subparts C & D. For a waste mixture enter each of the applicable waste numbers. If more space is needed, continue on the next line(s) and leave all other information on that line blank.

Waste Form Code

Review the list of waste form codes on pages 4-5 and choose the one form codes which best describes the waste.

Waste Source Code

Review the list of waste source codes on page 6 and choose the one form codes which best describes the waste.

Quantity Generated in 1990

Enter the amount of RCRA hazardous waste, to the nearest pound, generated on-site during 1990

II. On-Site Management

This section should detail the handling of wastes managed on-site.

On-Site Handling Code

Enter the handling code from page 7 that most closely represents the technique used to treat, store, dispose, or recover hazardous waste on-site. Enter one handling code for each waste line entry. Where several handling steps have occurred during the year, report only the handling code representing the waste's status at the end of the reporting year or its final disposition. Indicate storage only for wastes generated during 1990 that were still on-site as of December 31, 1990.

Quantity Stored, Treated, Disposed, or Recovered

Enter the amount, to the nearest pound, of wastes you stored, treated, disposed, or recovered on-site for each handling method you specified above.

III. Off-Site Waste Management

This section details the handling of wastes shipped off-site.

Off-site Handling Code

Enter the handling code from page 7 that most closely represents the techniques used to treat, store, dispose, or recover hazardous waste off-site. Enter one handling code for each waste line entry. Pages 10-15 contain a list of handling codes from various TSD facilities. Use this list only as a guide. Consult with your TSD to make sure your handling codes are correct.

Quantity Shipped

Enter the amount, to the nearest pound, of wastes you shipped off-site during 1990.

TSD Facility EPA Identification Number

Enter the EPA ID Number of the facility to which you shipped this waste. A separate line should be used for each facility to which you shipped waste.

IV. Waste Minimization

Production Index

The production index is a measure of changes in economic and other factors that affect the quantity of hazardous waste generated in 1990, compared with 1989. The index is used to distinguish inter-year quantity changes that resulted from waste minimization activity from those that are attributable to economic or other factors. For some sites it may be impractical or impossible to calculate a meaningful production index. If it is impossible to calculate a production index for your site enter "NA".

To calculate the production index first choose an appropriate measure of productivity. Products manufactured, raw material usage, or total employee hours worked are all examples of such a measure. Divide the 1990 value of this factor by its 1989 value to achieve a production index.

Waste Minimization Activity Code

Review the list of waste minimization activity codes on pages 8-9 and choose up to three codes which describe efforts you use to minimize your wastes.

V. Miscellaneous Instructions

Reporting of Hazardous Wastewaters

Wastewater from industrial processes (such as electroplating rinse water) must be counted as hazardous waste if, prior to treatment, it exhibits a characteristic identified in 40 CFR, Subpart C. Handling codes "D11" and "D21" should be used to track the management of this waste.

Reporting of Solvents Recovered On-Site

Solvent waste you recover on-site should be reported only once as generation. However, still bottoms from subsequent recovery of this waste must be reported.

For example, suppose you generated 100 lbs of waste solvent which you treat in a still. From this treatment you recover clean solvent and generate 10 lbs of still bottoms. You should report this as 100 lbs of waste generated, 100 lbs of waste treated by the "R01" handling method and 10 lbs of still bottoms shipped off-site. The clean solvent you recovered does not need to be counted as generation the next time it is used, but still bottoms resulting from its recovery (again) do need to be counted.

RCRA Remedial Waste

Wastes generated from RCRA remedial actions is exempt from fees. This waste should be reported with source code "A53".

Generator Status

If you were a large generator during any part of calendar year 1990 then you must file an annual report. The annual report should cover that period for which you were a large generator and must be filed even if no waste was generated.

Receiving Waste From Off-Site

If your company received waste from off-site you must report this waste on a form 3036 which is available from this office.

FORM CODES

Code Waste Description

Lab Packs

Lab Packs - Lab packs of mixed wastes, chemicals, lab wastes

B001 LAB PACKS OF OLD CHEMICALS ONLY
 B002 LAB PACKS OF DEBRIS ONLY
 B003 MIXED LAB PACKS
 B009 OTHER LAB PACK SPECIFY IN COMMENTS

Liquids

Inorganic Liquids - Waste that is primarily inorganic and highly fluid with low suspended solids and low organic content

B101 AQUEOUS WASTE WITH LOW SOLVENTS
 B102 AQUEOUS WASTE WITH LOW OTHER TOXIC ORGANICS
 B103 SPENT ACID WITH METALS
 B104 SPENT ACID WITHOUT METALS
 B105 ACIDIC AQUEOUS WASTE
 B106 CAUSTIC SOLUTION WITH METALS BUT NO CYANIDES
 B107 CAUSTIC SOLUTION WITH METALS AND CYANIDES
 B108 CAUSTIC SOLUTION WITH CYANIDES BUT NO METALS
 B109 SPENT CAUSTIC
 B110 CAUSTIC AQUEOUS WASTE
 B111 AQUEOUS WASTE WITH REACTIVE SULFIDES
 B112 AQUEOUS WASTE WITH OTHER REACTIVES
 E.G., EXPLOSIVES
 B113 OTHER AQUEOUS WASTE WITH HIGH DISSOLVED SOLIDS
 B114 OTHER AQUEOUS WASTE WITH LOW DISSOLVED SOLIDS
 B115 SCRUBBER WATER
 B116 LEACHATE
 B117 WASTE LIQUID MERCURY
 B119 OTHER INORGANIC LIQUIDS (SPECIFY IN COMMENTS)

Organic Liquids - Waste that is primarily organic and highly fluid with low inorganic solids

B201 CONCENTRATED SOLVENT-WATER SOLUTION
 B202 HALOGENATED (E.G., CHLORINATED) SOLVENT
 B203 NON-HALOGENATED SOLVENT
 B204 HALOGENATED/NON-HALOGENATED SOLVENT MIXTURE
 B205 OIL-WATER EMULSION OR MIXTURE
 B206 WASTE OIL
 B207 CONCENTRATED AQUEOUS SOLUTION OF OTHER ORGANICS
 B208 CONCENTRATED PHENOLICS
 B209 ORGANIC PAINT, INK, LACQUER, OR VARNISH
 B210 ADHESIVES OR EPOXIES
 B211 PAINT THINNER OR PETROLEUM DISTILLATES
 B212 REACTIVE OR POLYMERIZABLE ORGANIC LIQUID
 B219 OTHER ORGANIC SLUDGES

Solids

Inorganic Solids - Waste that is primarily inorganic and solid, with

Code Waste Description

low organic content; not pumpable

B301 SOIL CONTAMINATED WITH ORGANICS
 B302 SOIL CONTAMINATED WITH INORGANICS ONLY
 B303 ASH, SLAG, OR RESIDUE FROM INCINERATION OF WASTES
 B304 OTHER "DRY" ASH, SLAG, OR THERMAL RESIDUE
 B305 DRY LIME OR METAL HYDROXIDE SOLIDS CHEMICAL FIXED
 B306 DRY LIME OR METAL HYDROXIDE SOLIDS NOT FIXED
 B307 METAL SCALE, FILINGS, OR SCRAP
 B308 EMPTY OR CRUSHED METAL DRUMS OR CONTAINERS
 B309 BATTERIES OR BATTERY PARTS, CASINGS, CORES
 B310 SPENT SOLID FILTERS OR ADSORBENTS
 B311 ASBESTOS SOLIDS AND DEBRIS
 B312 METAL-CYANIDE SALTS/CHEMICALS
 B313 REACTIVE CYANIDE SALTS/CHEMICALS
 B314 REACTIVE SULFIDE SALTS/CHEMICALS
 B315 OTHER REACTIVE SALTS/CHEMICALS
 B316 OTHER METAL SALTS/CHEMICALS
 B319 OTHER WASTE INORGANIC SOLIDS

Organic Solids - Waste that is primarily organic and solid, with low inorganic content; not pumpable

B401 HALOGENATED PESTICIDE SOLID
 B402 NON-HALOGENATED PESTICIDE SOLID
 B403 SOLID RESINS OR POLYMERIZED ORGANICS
 B404 SPENT CARBON
 B405 REACTIVE ORGANIC SOLID
 B406 EMPTY FIBER OR PLASTIC CONTAINERS
 B407 OTHER HALOGENATED ORGANIC SOLIDS
 B409 OTHER NONHALOGENATED ORGANIC SOLIDS

Sludges

Inorganic Sludges - Waste that is primarily inorganic, with moderate to high water content and low organic content and pumpable

B501 LIME SLUDGE WITH METALS
 B502 LIME SLUDGE WITH METALS/METAL HYDROXIDE SLUDGE
 B503 WASTEWATER TREATMENT SLUDGE WITH TOXIC ORGANICS
 B504 OTHER WASTEWATER TREATMENT SLUDGE
 B505 UNTREATED PLATING SLUDGE WITHOUT CYANIDES
 B506 UNTREATED PLATING SLUDGE WITH CYANIDES
 B507 OTHER SLUDGE WITH CYANIDES
 B508 SLUDGES WITH REACTIVE SULFIDES
 B509 SLUDGES WITH OTHER REACTIVES
 B510 DEGREASING SLUDGE WITH METAL SCALE OR FILINGS
 B511 AIR POLLUTION CONTROL DEVICE SLUDGE
 B512 SEDIMENT OR LAGOON DRAGOUT WITH ORGANICS
 B513 SEDIMENT OR LAGOON DRAGOUT WITH INORGANICS ONLY
 B514 DRILLING MUD
 B515 ASBESTOS SLURRY OR SLUDGE
 B516 CHLORIDED OR OTHER BRINE SLUDGE
 B519 OTHER INORGANIC SLUDGES

FORM CODES

Code	Waste Description	Code	Waste Description
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Organic Sludges - Waste that is primarily organic, with moderate to high water content and low inorganic content and pumpable

B601	STILL BOTTOMS OF HALOGENATED SOLVENTS
B602	STILL BOTTOMS OF NONHALOGENATED SOLVENTS
B603	OILY SLUDGE
B604	ORGANIC PAINT OR INK SLUDGE
B605	REACTIVE OR POLYMERIZABLE ORGANICS
B606	RESINS, TARS, OR TARRY SLUDGE
B607	BIOLOGICAL TREATMENT SLUDGE
B608	SEWAGE OR OTHER UNTREATED BIOLOGICAL SLUDGE
B609	OTHER ORGANIC SLUDGES

Gases

Inorganic Gases - Waste that is primarily inorganic with a low organic content and is a gas at atmospheric pressure

B701	INORGANIC GASES
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Organic Gases - Waste that is primarily organic with a low inorganic content and is a gas at atmospheric pressure

B801	ORGANIC GASES
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SOURCE CODES

Code Waste Description

Code Waste Description

Cleaning & Degreasing

A01 STRIPPING
A02 ACID CLEANING
A03 CAUSTIC (ALKALI) CLEANING
A04 FLUSH RINSING
A05 DIP RINSING
A06 SPRAY RINSING
A07 VAPOR DEGREASING
A08 PHYSICAL SCRAPING AND REMOVAL
A09 CLEAN OUT PROCESS EQUIPMENT
A19 OTHER CLEANING AND DEGREASING

Surface Preparation & Finishing

A21 PAINTING
A22 ELECTROPLATING
A23 ELECTROLESS PLATING
A24 PHOSPHATING
A25 HEAT TREATING
A26 PICKLING
A27 ETCHING
A29 OTHER SURFACE COATING/PREPARATION

Processes Other than Surface Preparation

A31 PRODUCT RINSING
A32 PRODUCT FILTERING
A33 PRODUCT DISTILLATION
A34 PRODUCT SOLVENT EXTRACTION
A35 BY-PRODUCT PROCESSING
A36 SPENT CATALYST REMOVAL
A37 SPENT PROCESS LIQUIDS REMOVAL
A38 TANK SLUDGE REMOVAL
A39 SLAG REMOVAL
A40 METAL FORMING
A41 PLASTICS FORMING
A49 OTHER SURFACE PREPARATION

One-Time and Intermittent Processes

A51 LEAK COLLECTION
A52 LEACHATE COLLECTION
A53 CLEANUP OF SPILL RESIDUES
A54 OIL CHANGES
A55 FILTER/BATTERY REPLACEMENT
A56 DISCONTINUE USE OF PROCESS EQUIPMENT
A57 DISCARDING OFF-SPEC MATERIAL
A58 DISCARDING OUT-OF-DATA PRODUCTS OR CHEMICALS
A59 LABORATORY WASTES
A60 SLUDGE REMOVAL
A61 CLOSURE OF WASTE MANAGEMENT UNITS OR EQUIPMENT

Pollution Control or Waste Treatment Processes

A69 OTHER ONE-TIME OR INTERMITTENT PROCESSES
A71 FILTERING/SCREENING
A72 METALS RECOVERY
A73 SOLVENTS RECOVERY
A74 INCINERATION/THERMAL TREATMENT
A75 WASTEWATER TREATMENT
A76 SLUDGE DEWATERING
A77 STABILIZATION

A78 AIR POLLUTION CONTROL DEVICES
A79 OTHER POLLUTION CONTROL OR WASTE TREATMENT

Other Processes

A81 CLOTHING AND PERSONAL PROTECTIVE EQUIPMENT
A82 ROUTINE CLEAN-UP WASTES (E.G., FLOOR SWEEPINGS)
A89 OTHER

HANDLING METHODS

Treatment

- T01 Treatment in a Tank
- T02 Treatment in Surface Impoundments
- T03 Incineration
- T04 Chemical Treatment
Adsorption, Fixation, Oxidation, Precipitation, Reduction, Chlorination, Cyanide Destruction, Degradation
- T05 Physical Treatment
Blending, Centrifugation, Clarification, Coagulation, Encapsulation, Filtration, Evaporation, Leaching, Stripping, Sand Filter
- T06 Biological Treatment
Activated Sludge, Aerobic Lagoon, Aerobic Tank, Composting
- T07 Other Treatment

Disposal

- D11 Discharge to Sewer/POTW
- D21 Discharge to Surface Water under NPDES Permit
- D80 Landfills
- D84 Other

Resource Recovery

- R01 Solvent Recovery
- R02 Energy Recovery
- R03 Metal Recovery

Storage

- S01 Container (barrel, drums, etc.)
- S02 Tank
- S03 Waste Pile
- S04 Surface Impoundments
- S05 Other Storage

WASTE MINIMIZATION ACTIVITY CODES

RECYCLING ACTIVITY

- W01 On-site recycling
W02 Off-site recycling

SOURCE REDUCTION ACTIVITY

Good Operating Practices

- W11 Began to segregate types of hazardous to make them more amenable to recycling
W12 Began to segregate hazardous waste from non-hazardous waste
W13 Improved maintenance scheduling, recordkeeping or procedures
W14 Changed production schedule to minimize equipment and feedstock changeovers
W19 Other changes in operating practices

Inventory Control

- W21 Instituted procedures to ensure that materials do not stay in inventory beyond shelf-life
W22 Began to test outdated material for effectiveness
W23 Eliminated shelf-life requirements for stable materials
W24 Instituted better labelling procedures
W25 Instituted clearinghouse to exchange materials that would otherwise be discarded
W29 Other inventory control procedures

Spill and Leak Prevention

- W31 Improved storage or stacking procedures
W32 Improved procedures for loading, unloading, and transfer operations
W33 Installed overflow alarms or automatic shut-off valves
W34 Installed secondary containment
W35 Installed vapor recovery systems
W36 Implemented inspection or monitoring program

of potential spill or leak sources

- W39 Other spill prevention procedures

Raw Material Modifications

- W41 Increased purity of raw materials
W42 Substituted raw materials
W49 Other raw material modifications

Process Modifications

- W51 Instituted closed-loop recycling
W52 Modified equipment layout, or piping
W53 Changed process catalyst
W54 Instituted better controls on operating conditions
W55 Changed from small volume containers to bulk containers to minimize discarding of empty containers
W58 Other process modifications
Cleaning & Degreasing
W59 Modified stripping/cleaning equipment
W60 Changed to mechanical stripping/cleaning devices
W61 Changed to aqueous cleaners
W62 Reduced the number of solvents used, to make waste more amenable to recycling
W63 Modified containment procedures for cleaning units
W64 Improved draining procedures
W65 Redesigned parts racks to reduce dragout
W66 Modified or installed rinse systems
W67 Improved rinse equipment design
W68 Improved rinse equipment operation
W71 Other cleaning/degreasing modifications

WASTE MINIMIZATION ACTIVITY CODES

Surface Preparation and Finishing

- W72 Modified spray systems or equipment
- W73 Substituted coating materials used
- W74 Improved application techniques
- W75 Changed from spray to other systems
- W78 Other surface preparation/finishing modifications

Product Modifications

- W81 Changed product specifications
- W82 Modified design or composition
- W83 Modified packaging
- W89 Other product modifications

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
<u>ALABAMA</u>		
ALD031499033	ALLIED CORP.	T03
ALD046481032	SANDERLEAD COMPANY	D80,T03,T04,R03
ALD001221902	CIBA-GIGY	R01,T03
ALD000622464	CHEMICAL WASTE MANAGEMENT	D80,T03,R01,T06
ALD094476793	ALL WORTH ENTERPRISES	R01,T05
ALD070513767	M & M CHEMICAL COMPANY	T05,R01,R02
ALD981019045	GENERAL PORTLAND/SYSTech	T03
ALD981020894	FISHER INDUSTRIAL SERVICE	R01
ALD980842843	HUMPHREY SERVICES	S01
<u>ARKANSAS</u>		
ARD069748192	ENVIRONMENTAL SYSTEMS (ENSCO)	T05,T03
ARD981057870	RINECO CHEMICAL INC.	R01,R02,S01
<u>AIRZONA</u>		
AZD060624251	CYRTUS MIAMI MINING CO.	R03
<u>CONNECTICUT</u>		
CTD000604488	CECOS INTERNATIONAL INC	D80,T06,T05
CTD001184894	AMERICAN CHEMICAL & REFINING	T04,R03
CTD018656819	HANDY & HARMAN- FAIRFIELD	T04,R03
CTD093616613	ENVIRITE CORPORATION	T04
CTD981205271	SOUTH WINDSOR METALLURGICAL	T04
<u>DELAWARE</u>		
DED003930807	DUPONT EXPERIMENTAL STATION	T03
<u>FLORIDA</u>		
FLD004092839	GULF COAST LEAD CO.	T04,R03
FLD049765811	SCM GLIDCO ORGANICS	S01
FLD004059085	FLORIDA SOLITE CO.	T03
FLD980602734	RESOURCE RECOVERY OF AMERICA	R01,S01,T05
FLD980711071	QUADREX HPS INC.	S01
FLD980729610	TRICIL RECOVERY SERVICES	R01,R02,S01,T03,T05
<u>GEORGIA</u>		
GAD093380814	CHEMICAL CONSERVATION OF GA.	R01,S01,S02
GAD096629282	SOLID TEK, INC.	D80,T04,R01,T05,T06,T03
GAD000222083	SOUTHEASTERN WASTE TREATMENT	T03,T05,D80
GAD990740714	ARIVEC CHEMICALS, INC.	R01,S01
GAD045821170	M & J SOLVENTS	T05,T03,R01
GAD033582461	GEORGIA-ALT. ENERGY RESOURCES	T01,T03,T05,R01

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
GAD980842777	SAFETY-KLEEN-NORCROSS	R01,S01
GAD096683828	SAFETY-KLEEN	R01
GAD033842543	TRI-STATE STEEL DRUM CO.	D80,T03,R01,T06
GAD000616367	MKC ENTERPRISES INC.	S01
GAD000821934	HICKSON CORP.	D80
<u>ILLINOIS</u>		
ILD098642424	CWM-SAUGET	T03,S01
ILD000672121	CWM-SCA CHEMICAL SERVICES, INC	T03,S01
ILD062480850	CP-INORGANICS	T04
ILD005450697	SAFETY-KLEEN-CHICAGO	R01,S01
ILD000716894	AMERICAN WASTE PROCESSING LTD	T03
ILD051060408	SAFETY-KLEEN-ILLINOIS	R01
<u>INDIANA</u>		
IND058484114	HERITAGE	S01,R01,D80
IND093219012	ILWD INC.	S01,T03,T05
IND004320032	REA MAGNET WIRE	R01
<u>KANSAS</u>		
KSD980633259	GENERAL PORTLAND (CEMENT)	T03,S01
<u>KENTUCKY</u>		
KYD059568220	KENTUCKY SOLITE CO (KIIN)	T03
KYD088438817	LWD, INC.- CALVERT CITY	T03,S01
KYD053348108	MCKESSON	T04,T03,R01
KYD088438874	LWD, INC.- CLAY	T03,S01
KYD000821942	KYANA OIL, INC.	T05,T06
KYD006373922	M & T CHEMICAL	T03
<u>LOUISIANA</u>		
LAD000777201	CWM-CARLYSS	D80,T05,S01,T06
LAD000618298	CECOS INTERNATIONAL INC	D80,T06,S01
LAD000618256	CECOS BFI CHEMICAL SERVICES DIV.	T07,T02
LAD981057706	MARINE SHALE	T03,R02
LAD001890367	EI DUPONT	T01,T03
LAD079464095	HESCO	T04
LAD007946985	ROLLINS	T03,D80
LAD010375127	ROLLINS-BARTON ROUGE	T03,T06,D80,S01
LAD981055791	R & D FABRICATING	S01
LAD052510344	DELATTE	R01
LAD008161234	STAUFFER CHEMICAL	R01
LAD000778514	ROLLINS-PLAQUEMME	T02,S01
LAD010395127	ROLLINS ENVIRONMENTAL SERVICES	D80,T03,T06

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
<u>MASSACHUSETTS</u>		
MAD039322250	CLEAN HARBORS KINGSTON	S01
MAD053452637	CLEAN HARBORS	T06
MAD062179890	JET-LINE SERVICES, INC.	S01
<u>MARYLAND</u>		
MDD980554653	GSX SERVICES	S01,S02
MDD980555189	CHEM-CLEAR	T04,T05,T06
MDD000218008	SPECTRON	R01,T03,T05
<u>MICHIGAN</u>		
MID098011992	CYANOKEM	T04,T02,S01
MID096963194	CHEM-MET SERVICES	S01,T04,T06
MID000724831	MICHIGAN DISPOSAL INC.	T03,D80,T06
MID048090633	WAYNE DISPOSAL	D80
<u>MISSISSIPPI</u>		
MSD981026749	RESINALLOOF MISSISSIPPI	R02
<u>NEW JERSEY</u>		
NJD044654978	OMI INTERNATIONAL	S01
NJD002454544	MARISOL, INC.	T04,R01,T05
NJD000632240	CYLINDER RECOVERY	T07,S01
NJD053288239	ROLLING ENIRONMENTAL SERVICES	T03,S01
NJD002385730	EI DUPONT	T01,T03,T04,T05,T06
NJD047318043	DETREX	R01
NJD089216790	CWM-SCA NEWARK	T05,S01,T06
NJD002182897	SOLVENTS RECOVERY	R01,T05,S01
NJD049616832	GULBRANDSEN CO.	T04
NJD990753493	VANGUARD RESEARCH	T04
NJD080631369	ADVANCED ENV. TECH.	S01,T03
NJD980536593	AETC	S01,T03,T05
NJD980755367	JOHNSON MATTHEY CORP	T03
<u>NEW YORK</u>		
NYD043815703	FRONTIER CHEMICAL WASTE PROCESS	T02,T06,S01,D80
NYD000632372	BATTERY DISPOSAL TECHNOLOGY, INC.	T03,T05,S01
NYD049836679	SCA CHEMICAL SERVICES, INC.	D80,T06,R01

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
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NORTH CAROLINA

COMMERCIAL TSD'S

NCD079060059	SAFETY-KLEEN-CHARLOTTE	S01
NCD077840148	SAFETY-KLEEN-HIGH POINT	S01
NCD000776740	SAFETY-KLEEN-RALEIGH	S01
NCD980846935	SAFETY-KLEEN-ST. PAULS	S01
NCD088560032	ASHLAND CHEMICAL CO.- RALEIGH	S01
NCD061263315	ASHLAND CHEMICAL CO.-CHARLOTTE	S01
NCD024599011	ASHLAND CHEMICAL CO.-GREENSBORO	S01
NCD049773245	BETREX CHEMICAL IND.	R01,T05,S01
NCD980842132	ECOFLO	S01,T01
NCD000648451	GSX SERVICES	S01,T01
NCD000773655	OLDOVER CORPORATION	R02,T05,S01
NCD121700777	HERITAGE ENVIRONMENTAL	R02,S01
NCD986166338	AETC	S01

NON-COMMERCIAL TSD'S

NCD003213907	AT&T TECHNOLOGIES	S01
NC6170022580	US MARINE CORP BASE-BUILD 1103	S01
NC8210020121	US ARMY FT. BRAGG AIRBORNE CORPS	S01
NCD000604322	SINGER FURNITURE CO. PLT 33 & 4	T03
NCD000771964	LITHIUM CORPORATION OF AMERICA	R02
NCD003162336	BROYHILL FURNITURE CORP. & OCC #1	R02
NCD047373766	BURROUGHS WELLCOME CO	T03
NCD083682229	BROYHILL FURNITURE RUTHERFORD PLT	R02
NCD991278466	BROYHILL FURN MILLERHILL COMPLEX	S01
NCD062954147	BURLINGTON FURNITURE	R01,R02
NCD095119210	SAB NIFE, INC	S01
NCD991277856	NC DEPT OF AGRICULTURE	S01
NCD000830737	NC STATE UNIVERSITY	S01
NCD003203213	UNC-CHAPEL HILL	

OHIO

OHD077786309	ALCHEM-TRON, INC.	S01
OHD980569438	GSX	T03,S01,R02
OHD083377010	ENVIRONMENTAL ENTERPRISES, INC.	T06
OHD980897656	CHEMICAL SOLVENTS, INC.-CLEVELAND	R01,S01
OHD052937885	CHEMICAL SOLVENTS, INC.	R01
OHD980587364	SAFETY-KLEEN-HERON	S01,R01,T01
OHD052324548	LIBERTY SOLVENTS & CHEM. CO.	R01,T01
OHD005048947	GENERAL PORTLAND-PAULDING	R02,T03
OHD980700942	ECOLOTEC-DAYTON	T04
OHD087433744	CECOS-WILLIAMSBURG	D80,T03,T06
OHD048415665	ROSS INCINERATION	T03,S01
OHD000816629	CECOS-CINCINNATI	T05,T06,S01
OHD097613871	MASTER METALS	T04
OHD980568992	ENVIRITE CORP.	T04

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
<u>OKLAHOMA</u>		
OKD000402396	CHEMICAL RESOURCES INC.	D84
OKD000632737	HRI	T03
<u>PENNSYLVANIA</u>		
PAD002389559	KEYSTONE PORTIANT CEMENT	T03,R02,S01
PAD981038227	WRC PROCESSING CO.	R03
PAD013944673	BAUMGARTNER OIL CO.	T03
PAD002390961	BETHLEHEM APPARATUS	T03,R03
PAD002395887	NEW JERSEY ZINC	T05,R03,S01
PAD010154045	ENVIRITE CORP.	T04,T06,S01
PAD085690592	WASTE CONVERSION INC.	T05,T06,S01
PAD009232745	B. E. S. ENVIRONMENTAL	T07
PAD064375470	DELAWARE CONTAINER CO.	T01
PAD083965897	MEDUSA CEMENT CO.	R02
PAD087561015	INMETCO	T05
PAD980707087	ENVIROTROL CORP.	T05
PAD990573089	EXIDE CORP.	T07
PAD990753089	GENERAL BATTERY CORP	R03
<u>RHODE ISLAND</u>		
RID040098352	STABLEX	S01
<u>SOUTH CAROLINA</u>		
SCD085754789	GROCE LABORATORIES	R01,T06,T03, S01
SCD063275626	SOUTHEASTERN CHEM. & SOLVENT	R01,S01
SCD062697735	ASHLAND CHEMICALS	T04
SCD380010330	GSX THERMAL OXIDATION	T03
SCD003360393	GSX THERMAL OXIDATION-ROEBUCK	T03,R01,S01
SCD070375985	GXS SERVICES-PINEWOOD	D80,T06
SCD044442333	STABLEX SOUTH CAROLINA INC	S01,T03,T04
SCD046503132	STOLLER CHEMICAL CO.	T05
SCD981031040	SAFETY-KLEEN GEER, S.C.	R01,S01
SCD981467616	GSX THERMAL OXIDATION-ROEBUCK	T03
SCD003159924	CELANESE FIBERS	R01
SCD000420141	STATEWIDE WASTE OIL & CHEM CORP.	R02,S01,R01
SCD003159928	CELANESE FIBERS	R01
SCD070371885	C P CHEMICAL, INC.	T04,R01
SCD077995488	SAFETY-KLEEN CO.-LEXINGTON	R01,T01,S01
SCD003351695	GIANT RESOURCE RECOVERY CO.	S02
SCD003351699	GIANT CEMENT CO.	R02
<u>TENNESSEE</u>		
TND991279480	AMERICAN RESOURCE RECOVERY CORP.	R02,T05,S01

TSD HANDLING CODES

EPA ID NUMBER	COMPANY NAME	HANDLING CODES
TND980515779	TREATMENT PLANT OIL SERVICES	T01
TND000614321	EARTH INDUSTRIAL WASTE MGT	R01,T03,T05
TND000645770	GSX SERVICES	T03,S01
TND000772277	TRICIL ENVIRONMENTAL SERVICES	T03,T05
TND034547141	DIVERSIFIED SYSTEMS	T05,T06,S01
TND000772186	CHEMICAL WASTE MANAGEMENT	T03
TND980847024	WALL CHEM	R02,T03
TND981920119	ALLWORTH INC.	S01
 <u>TEXAS</u>		
TXD055141378	ROLLINS ENVIRONMENTAL	T03,D80
TXD097673149	EMPAK INC.-DEER PARK	T03,S01,T04,T06,T05
TXD046844700	CHEMICAL RECLAMATION SERVICES	R01
TXD074196338	L TECH CHEMICAL AND SUPPLY	R01,S01,T03
 <u>UTAH</u>		
UTD991301748	U S POLLUTION CONTROL	S01
 <u>VIRGINIA</u>		
VAD098443443	OLDOVER CORP-ARVONIA	R02,T05
VAD055048532		R01,R02
VAD040159436	OLDOVER CORPORATION	R02,T05
VAD077942266	OLDOVER CORPORATION-CASCADE	R02,T05
VAD003111416	PRILLAMAN CHEMICAL CORP.	R02,T05
VAD041283342	PRILLAMAN CHEMICAL CORP.	S01
VAD981042955	SAFETY KLEEN PLANT 3-026	S01
 <u>WISCONSIN</u>		
WID006435895	HYDRITE CHEMICAL COMPANY	R01

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE MANAGEMENT

1990 HAZARDOUS WASTE ANNUAL REPORT
(Generators & On-Site TSD Facilities)

REPORT FORMS

1990 HAZARDOUS WASTE ANNUAL REPORT
(Generators & On-Site TSD Facilities)

I. FACILITY INFORMATION

Facility Name: _____ Facility EPA ID Number: _____

Location of Facility: _____
(Street or Route Number)

(City or Town) (County) (State) (Zip Code)

Facility Contact: _____
(Name) (Area Code) (Phone Number)

List EPA ID Number of each Transporter used during 1990: _____

II. QUANTITY VERIFICATION

The weights reported for each waste stream were determined from:

- ___ Actual weight
- ___ Gallons times the weight of water (8.34 lbs per gallon)
- ___ Gallons times the density of the waste
- ___ Other, specify _____

Estimated percentage of error in method used to determine weight: ___ %

Waste identification was determined from:

- ___ Knowledge of product/raw materials
- ___ Sampling results
- ___ Other, specify _____

III. CERTIFICATION

I certify a program is in place to reduce the volume and toxicity of hazardous waste generated to the degree to be economically practicable, and the proposed method of treatment, storage or disposal is that practicable method currently available which minimized the present and future threat to human health and the environment.

-AND-

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(Signature)

(Print of Type Name)

(Date Signed)

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE MANAGEMENT

1990 HAZARDOUS WASTE ANNUAL REPORT
(Generators & On-Site TSD Facilities)

Facility EPA ID Number: _____

Waste Identification					On-Site Waste Management		Off-Site Waste Management			Waste Minimization	
Line No.	Waste No.	Waste Form Code	Waste Source Code	Quantity Generated On-Site (lbs)	On-Site Handling Code	Quantity Stored** Treated/Recovered or Disposed On-Site (lbs)	Off-Site Handling Code	Quantity Shipped Off-Site (lbs)	Receiving Facility EPA ID Number	Production Index	Activity Code
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

For additional waste streams complete the "Continuation Sheet"

** As of December 31, 1990

NOTE: Read Instructions before completing form

**North Carolina
Waste Water Study
for
1989
General Assembly**

Rev. 1/5/89

NORTH CAROLINA

WASTE WATER STUDY

FOR

1989 GENERAL ASSEMBLY

James G. Martin
Governor

David T. Flaherty
Secretary, Department of Human Resources

Ronald H. Levine, M.D., M.P.H.
Director, Division of Health Services

William L. Meyer
Chief, Solid Waste Management Section

Jerome H. Rhodes
Head, Hazardous Waste Branch

January 5, 1989

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Executive Summary

All hazardous waste water was not reported in the 1987 Annual Report. Based on the results of the RCRA hazardous waste water survey only about 34% of the hazardous waste water was reported. That hazardous waste water which goes to NPDES (National Pollution Discharge Elimination System) permitted facilities is exempt from RCRA (Resource Conservation and Recovery Act) permitting requirements. Some companies have believed that waste water was also exempt from the Annual Report requirements in 10 NCAC 10F .0037. These wastes are reportable under North Carolina requirements.

The amount of hazardous waste the state generates is a factor in EPA's RCRA grant allocation to the state. Approximately 94% of the 1987 hazardous waste reported in N.C. was hazardous waste water. Including this waste in our total generation figure is necessary in order to receive funds needed to manage the hazardous waste program. Without waste water the state generation figure for 1987 would fall 94%. This would put the state at a disadvantage when compared to other states which count waste water in their total.

Based on the results of the RCRA Hazardous Waste Water survey only about 19% of the potential revenue from hazardous waste water was assessed in 1988 because of the 3,851,574 tons shown as being generated by the hazardous waste water survey only 1,316,956 (34%) was reported in annual reports submitted to the Branch.

Hazardous waste water is managed primarily through the NPDES permitting process and not the RCRA permitting process. Of the nine states surveyed only two impose waste water fees. There is also an argument that because of the very low concentration of hazardous constituents waste water should be assessed at a lower rate than other hazardous waste.

I. Introduction

During the 1988 session of the North Carolina General Assembly, House Bill 2623 was ratified which in part requires the North Carolina Department of Human Resources to study waste water tonnage fees assessed annually by the State's hazardous waste management program. This study includes a survey of facilities who may generate hazardous waste water; an analyses of waste water tonnage fees, alternate rates and methods of calculation of waste water tonnage fees; and recommendations on the overall fee schedule. We are collecting information on hazardous waste water from industrial NPDES (National Pollution Discharge Elimination System) permitting facilities, and RCRA (Resource Conservation and Recovery Act) facilities. The survey identified potential hazardous waste water quantities. The regulatory aspects of imposing a fee schedule is discussed.

We also surveyed waste water reporting and waste water fees in other states. Of the nine states surveyed only two states were identified which impose waste water fees (New York and Texas).

II. Considerations in Imposing Waste Water Tonage Fees (Regulatory Aspects)

There are two aspects of the tonnage fee application to waste water which justify exploration. The first is whether the Department has authority to require reporting of waste water. The second is whether fees should be imposed for that waste water. In dealing with the first issue, the following considerations should be addressed:

1a. 40 CFR 262.41 requires only generators who ship off-site to file annual reports.

1b. 3002(a) of RCRA does not limit reporting to those who ship off-site, and GS 130A 294.1 does not limit fees only to those required to file annual reports.

2a. 40 CFR 261.4(a) excludes from regulation as solid wastes those materials subject to regulation under the Clean Water Act.

2b. Prior to being discharged under controls imposed by the Clean Water Act, hazardous wastes are subject to RCRA for accumulation, storage, and treatment. Also, EPA's Biennial report requires that non-RCRA regulated units which are used to treat hazardous waste be reported.

3a. Waste water pre-treaters which generate a hazardous waste sludge report this material and pay a state fee for its generation. Some hazardous waste sludges are generated by the treatment of non-hazardous waste waters.

3b. Waste water not discharged to a Publicly Owned Treatment Works (POTW) or under a NPDES permit pose as great a burden to RCRA as other non waste water hazardous waste.

The following considerations should be addressed in dealing with the issue of imposing fees on waste water generators:

1a. Pre-treaters who generate a hazardous waste by that treatment already pay fees.

1b. Pre-treaters who generate hazardous waste by their treatment activities may be treating non-hazardous wastes.

2a. Waste water discharged under an NPDES permit or to a POTW is a greater burden to agencies implementing the Clean Water Act than to those implementing RCRA.

2b. Prior to discharge, hazardous waste waters would present a burden to RCRA implementing agencies. Generators without access to a POTW or those without an NPDES permit discharge must report the waste water and pay a tonnage fee.

3. Waste waters discharged to a POTW are subject to a charge by the municipality operating the POTW.

III. Waste Water Fees In North Carolina

G.S. 130A-294.1 describes hazardous waste tonnage fees in North Carolina. These fees apply also to hazardous waste water. The current rate is \$.50 per ton for generation up to the maximum of 25,000 tons and \$1.75 per ton for hazardous waste stored, treated or disposed at a commercial facility.

In FY 1988 hazardous waste fees assessed against companies for generation or handling of hazardous waste water totaled \$94,155.

The 1987 RCRA annual report indicates 1,316,956 tons of hazardous waste water were generated and managed at Clean Water Act (CWA) permitted facilities. An additional 1,636 tons of hazardous waste water was shipped off-site to commercial facilities for management. Most of this waste water came from either chemical companies or electroplaters. It included corrosive D002, chromium D007, lead D008, electroplating waste F006, and aluminum coating waste F019. See table below.

Hazardous Waste Water Generated
By RCRA Facilities & Managed at NPDES Facilities
(1987 Annual Report Survey)

	Tons	% Of Total
Corrosive (D002)	898,668	68.24
Chromium (D007)	63,718	4.84
Lead (D008)	1,094	.08
Electroplating Waste (F006)	350,774	26.63
Aluminum Coating Waste (F019)	<u>2,702</u>	<u>.21</u>
	1,316,956	100.00

IV. Waste Water Reporting and Fees In Other States

Region VIII/Colorado

Colorado's fees are based on manifested amounts shipped off-site and amounts reported in operating record for on-site. This is for TSD's only. Wastewater fees are not included.

Region X/Oregon

Oregon's fee system includes an application fee for TSD's (\$70,000 for new facilities, \$50,000 to reapply). It also includes a Compliance Determination Fee which is graduated based on design capacity. It applies to generators and TSDF's. The fee structure does not include wastewater.

Region IV/Alabama

Wastewater is not reported.

Region IV/Florida

Florida reports the exemption and criterion for wastewater but not the amount - they feel as long as it is being managed properly (CWA OR NPDES), they are not worried about it. No fees.

Region IV/Georgia

Reports wastewater if it is a hazardous waste. No fee system. A lot of generators do not report. Wastewater is difficult to track.

Region IV/South Carolina

Report flows of wastewater - The information is not that accurate and is difficult to track.

Region II/New York

Currently reports wastewater. Fees imposed for wastewater. There is a Bill in the Legislature to exempt reporting of wastewater.

Region I/Connecticut

Wastewater is not reported and no fees.

Region VI/Texas

Texas reports wastewater if it's a hazardous waste before treatment. In 1978 they educated industry on reporting; have a registration system similar to the biennial report for all new notifiers. Fees include wastewater. Tracking procedure works well because of the registration procedure. If treated and released to sewer or stream; the waste water is exempt from fee.

V. Waste Water Questionnaire

To collect data for this study we sent two questionnaires - one to NPDES and one to RCRA facilities. The number of facilities in each category are shown in the table below.

N.C. Potential Waste Water Generators

<u>Type of Facility</u>	<u>No.</u>
NPDES Permits (Industrial Only)	206
RCRA Generators	<u>622</u>
	828

VI. Findings of Waste Water Survey

The Hazardous Waste Branch has sent questionnaires to the following potential hazardous waste water generators: NPDES permitted facilities - 206; and RCRA generators - 622. The response to the questionnaires provides the information for this section of the report. Only hazardous waste water which exhibits a characteristic identified in 40 CFR part 261, Subpart C or hazardous waste water listed under 40 CFR part 261, Subpart D are included.

As of December 20, 1988 the Branch received a 69% response rate from the RCRA waste water survey and a 55% response rate for the NPDES permitted facilities survey.

Based on the results of the RCRA Waste Water Survey only about 19% of the potential revenue from hazardous waste water was assessed in 1988. The survey indicates 3,851,574 tons being generated but only 1,316,956 (34%) of this was reported in annual reports submitted to the Branch. No hazardous waste water was generated by non RCRA NPDES permitted facilities.

Response to RCRA Waste Water Survey

	<u>No.</u>	<u>Percentage Of Total No. Generators</u>
Generate Hazardous Waste Water	106	17
Do not generate Hazardous Waste Water	324	52
Did not respond to survey	<u>192</u>	<u>31</u>
	622.	100

Response to NPDES Permitted Facilities Waste Water Survey

	<u>No.</u>	<u>Percentage of Total No. NPDES Industrial Permits</u>
Generate Hazardous Waste Water	0	0
Do not generate Hazardous Waste Water	80	38.84
Did not Respond to Survey	92	44.66
RCRA Facilities which already Responded to Questionnaire	<u>34</u>	<u>16.50</u>
	206	100.00