

Mr. Francis Clarke
1734 Manatuck Blvd.
Bayshore, NY 11706

Dear Mr. Clarke,

Thank you for your letter of May 8, 2001 which you submitted to the EPA Headquarters Information Resource Center requesting information on asbestos removal and the disposal of oil sludge from old oil tanks. Your letter was referred to the Office of Solid Waste to address your questions about the oil sludge from old oil tanks. Your questions about asbestos removal will be addressed separately by the appropriate office within the EPA.

In your letter, you describe a situation where an apprentice for a heating, ventilation, and air conditioning (HVAC) company is required to cut open and clean out old oil tanks. You explain that in the process of cleaning the apprentice is required by his employer to mix the oil sludge remaining at the bottom of the tanks with an absorbent material called "Speedy Dry". This Speedy Dry/oil sludge mixture is then placed in plastic bags and disposed in a dumpster. The apprentice has been told (and you have confirmed through research) that this mixture is not considered to be a hazardous waste. You ask the following questions about this situation: (1) does EPA agree with the conclusion about the non-hazardous nature of the waste, (2) who might be liable if this conclusion is not correct, and (3) why is it that the amount of a substance has a bearing on whether the waste is considered hazardous or not. The following discussion will hopefully answer your questions.

Federal regulations addressing the disposal of oil and oil sludge wastes are extensive and thorough. These regulatory controls implement the Resource Conservation and Recovery Act (RCRA), which addresses the management of solid wastes and hazardous wastes. How these regulations apply to the specific situation you present depends on a number of factors. Specifically, it is difficult to confirm the regulatory status of this oil sludge waste without knowing more information about (a) what kind of oil is in the tanks (i.e., used or unused), (b) the source of the oil tanks, such as whether they were removed from households or commercial facilities and whether they were used underground or above ground, and (c) whether the oil sludge is considered a hazardous waste under State or Federal regulations.

Assuming your question pertains to the most likely situation where the oil sludge in the tanks is a residual from unused oil, then there must be a determination as to whether the sludge is a hazardous waste before the sludge is managed and ultimately disposed. Such determination

can be made through testing or through knowledge of the waste. It is possible the HVAC firm has already made a determination that this oil sludge waste is a nonhazardous waste. In such a case, liquid oil that has been determined to be nonhazardous usually is mixed with an absorbant material before disposal since liquids cannot be disposed of in municipal landfills.

In the event the HVAC firm determines that the oil waste is hazardous, the waste must then be managed in accordance with State and Federal hazardous waste regulations. Under these regulations, there are several special exemptions which may apply. For example, if the amount of hazardous sludge generated at a location is less than a certain amount (100 kg/month of hazardous waste or 1kg/month of acutely hazardous waste), it is excluded from Federal hazardous waste management regulations. Such wastes are still required to be disposed of in a municipal landfill which is designed to prevent releases into the environment. The reasoning behind this exclusion, known as the 'small quantity generator exclusion,' is to minimize the regulatory burden for persons who generate small quantities of hazardous wastes. Note that this is a Federal exclusion which may not be allowed by certain State regulations.

Regarding who gets in trouble if this waste is not handled properly, it is the generator of a hazardous waste who would primarily be liable. A 'generator' is defined as the proprietor of a business or facility whose processes or procedures produce a hazardous waste. Therefore, in the situation you describe, it would likely be the HVAC firm that is responsible for properly managing any hazardous waste. Generally, however, under RCRA any 'person' may be liable for violating applicable Federal hazardous waste regulations. Please bear in mind that OSHA may pursue responsibility for health risks differently and we cannot address that portion of your question.

The State of New York, whose hazardous waste program is authorized to operate in lieu of the Federal waste regulations, may have more stringent or more specific waste management regulations that address your concerns over the disposal of oil waste. You may wish to contact Mr. Larry Nadler of the New York Department of Environmental Conservation, whose address and phone number are shown below:

Mr. Larry Nadler
Technical Determination Section
Division of Solid and Hazardous Materials
NY Department of Environmental Conservation
625 Broadway, 8th Floor
Albany, NY 12233-7251
(518) 402-8633

If you have additional questions about the Agency's solid and hazardous waste programs, you may call the Agency's RCRA Hotline. The toll-free number is (800)424-9346. You may also contact Ms. Marie Boucher of my staff at (703)308-8754 for more specific questions about the Agency's hazardous waste identification program.

I hope this information is helpful in responding to your concerns. I appreciate your interest in protecting human health and the environment.

Sincerely,

Frank McAlister, Chief
International and Special Projects Branch
Office of Solid Waste

cc: Larry Nadler, NY DEC

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