

**February 13, 1997**

MEMORANDUM

SUBJECT: Universal Waste Questions and Answers Document

FROM: Mike Shapiro /S/  
Office of Solid Waste

TO: Senior RCRA Policy Managers  
Regions I-X

Since the promulgation of the May 11, 1995 Universal Waste rule (60 **FR** 25492), several States have begun to adopt the Federal program. As a result, many questions have been raised with respect to State implementation and enforcement for hazardous wastes covered under the Universal Waste Federal program. Further, States have asked the Environmental Protection Agency (EPA) Regional Offices for guidance on adding other types of hazardous waste to their State universal waste programs. To assist those States during their implementation process and to provide you with the Agency's position on these issues, the Office of Solid Waste has prepared a Questions and Answers (Q&A) document. The Q&A document also addresses other issues related to universal waste management (e.g., universal waste generation and transportation issues). I have attached the document for your information and encourage you to share it with the appropriate State Officials.

If you have any questions regarding State authorization, please contact Wayne Roepe at (703) 308-8630. If you have other questions regarding universal waste management, please contact Bryan Groce of my staff at (703) 308-8750.

Attachment

cc: RCRA Branch Chiefs, Regions I-X  
State Authorization Section Chiefs, Regions I-X  
RCRA Community Relations Coordinators, Regions I-X  
RCRA Enforcement Branch Chiefs, Regions I-X

## QUESTIONS AND ANSWERS -- UNIVERSAL WASTES (UW)

1. Can a state include additional wastes in its UW program at the same time that it establishes the program and then submit both the program and the additional UW to EPA for authorization review at the same time? For example, can a state adopt a UW rule that regulates fluorescent bulbs and antifreeze as UW?

Yes, a state can designate additional waste streams as UW at the same time that it creates its own UW rule. However, it must find that the wastes meet its criteria for inclusion in the UW program, and its criteria must be analogous to the federal criteria set out in 273.81. See preamble to final UW rule at 60 FR 25512, 25537. The state need not submit the new wastes to EPA for authorization. EPA will review and authorize the state's UW program (including the criteria for adding wastes to the program) and the 3 waste streams included in the federal program. EPA will not conduct any authorization review on any additional, state-only UW.

EPA, however, requests that states send copies of tentative decisions to include new wastes (and proposed management standards for such wastes) to the appropriate EPA Regional Office to give EPA an opportunity to comment. See the response to question 5 for more detail on this process.

2. Can a state itself petition the Agency to add wastes to the federal UW rules - or does the petition have to come from a private party?

A state itself can petition.

3. a. How will the petition process work at the state level? Will it require public participation and rulemaking to add a UW to an authorized state program?

EPA is requiring states to adopt petition procedures equivalent to the federal petition procedures. This requires states to provide notice and an opportunity for public comment on any tentative decision to grant or deny a petition to include new universal wastes. See the preamble at 60 FR 25537. EPA also assumes that the state will need to follow its normal rulemaking procedures to create any new management standards needed for the new UW.

b. How will EPA adopt a UW - using the Federal Register and public comment process?

Yes. As required by 40 CFR 260.20 (c), if EPA receives a UW petition, it will publish a notice of tentative decision and announce a comment period in the Federal Register. After considering all comments, EPA will publish notice of its final decision in the Federal Register. The same process applies to both decisions to grant and to decisions to deny petitions.

4.a. Can a state add wastes that are state-only hazardous wastes?

Yes. State hazardous waste programs can be more stringent and broader in scope than federal programs. Consequently, states may regulate as "state-only" hazardous wastes materials that are only solid wastes under the federal program. States may streamline their regulation of these "state-only" hazardous wastes by including them in their UW programs.

b. Can a state add wastes that are non-hazardous?

Yes. A state could add non-hazardous solid wastes to its UW program by designating such wastes as state-only hazardous wastes and then designating them as UW wastes. Such wastes would be subject to the state's ordinary hazardous waste requirements for treatment and disposal. EPA assumes that states would want this result, because they probably would designate nonhazardous wastes as universal wastes to divert them from the nonhazardous waste disposal facilities that currently handle them. If, however, a state determined that some aspects of its hazardous waste management regime should not apply to these state-only hazardous wastes, it could create exemptions. (Exemptions would be permissible since the wastes would not be regulated as hazardous wastes under the federal program.)

One exception applies. A state may not designate as a UW any waste that is hazardous under the federal program due to a rule promulgated under HSWA authority for which the state is not authorized. (For example, a state that was not authorized for the Toxicity Characteristic could not designate a waste that exhibited the TC as a universal waste. See the preamble to the final rule at 25537.)

5. After a state has adopted and is authorized for the UWR - does the state have ultimate decision-making authority to add wastes or does EPA still have involvement? And what is EPA's role during the petition process, post authorization?

States authorized for the UW rule will not be required to submit program revisions for any addition of wastes to their UW program. EPA requests that states send a copy of their tentative findings and any draft regulations for managing the new, state-only

universal wastes to the appropriate EPA Regional Office. This will provide EPA with an opportunity to comment on the state's proposed action. EPA encourages states to coordinate EPA's review and comment with the opportunity to comment that the state must provide for the public.

If EPA finds that a state has added wastes that do not qualify, or that the management standards are not sufficiently protective, and that, as a result, the state's program is less stringent than the federal program, EPA has authority to withdraw authorization of the state's hazardous waste program as provided in Part 271.

EPA will not conduct any authorization review of the new state-only UW and new management standards. EPA takes the position that, when it authorizes a state to add wastes to the UW category, it authorizes in advance the state's new, state-only universal wastes and the management standards for such wastes. All changes to state regulations needed to implement a UW program for the new UW automatically become part of the authorized state program once they take effect under state law.

6a. When will the EPA rule on fluorescent lights be final (designation as a Federal UW vs. management as solid waste)?

EPA has not yet decided when it will promulgate a final rule regarding regulation of fluorescent lamps as discussed in the July 1994 proposal.

b. What happens if a state adds fluorescent lamps to its UWR and then EPA decides to come out with a conditional exemption for fluorescent lamps?

If the conditional exemption is less stringent than the state UW rule, the state would have the option of adopting the exemption, but would not be required to do so.

7.a. Where do LDR recordkeeping requirements fit in --- only at the final destination facility?

Yes.

b. Is the destination facility responsible (liable) for identifying the treatment standards/technologies and filling out certification forms?

Yes. The destination facility is the first entity that handles a UW that is responsible for compliance with any of the LDR

requirements, including recordkeeping. For UW handlers that are not subject to the LDR rules, the prohibitions on dilution under the UW program provide the same protection as the dilution prohibition under the LDR program. (See. e.g., 40 CFR 273.11.)

8.a. Are all batteries included in the Federal UWR, or just those considered hazardous?

EPA's federal UW program does not apply to all batteries. The exceptions are listed in 40 CFR 273.2(b). Generally, the battery must first be a waste. (Note that unused batteries are not always wastes -- someone must first make a decision to discard them (i.e., treat, recycle, or dispose of the unused batteries)). Next, the battery must be classified as a hazardous waste under either a hazardous waste listing or a characteristic test and must not be generated by a household. One category of batteries which are both wastes and hazardous wastes is nevertheless exempt from the UW regulations in Part 273: spent lead-acid batteries managed under 40 CFR Part 266. Finally, the recently enacted "Mercury-Containing and Rechargeable Battery Management Act" changes states' options for regulating some batteries which are hazardous waste under RCRA. Specifically, the law prohibits states from imposing requirements that are not identical to those found in the May 11, 1995 Universal Waste rule for the following types of hazardous waste batteries: used rechargeable batteries, lead-acid batteries not covered by 40 CFR part 266 subpart G, rechargeable alkaline products, certain mercury-containing batteries banned from domestic sale, and used consumer products containing rechargeable batteries that are not easily removable. The law does allow states to implement and enforce collection, storage, and transport requirements identical to those included in the Universal Waste rule.

b. Do lead acid batteries fall under the UWR or do they stay under the lead-acid battery exemption?

Under the federal program, lead acid batteries are managed under Part 266, subpart G rather than the UW program. EPA chose to retain the Part 266 standards for these batteries to avoid disrupting the existing recycling program for such batteries because they provide for protection of human health and the environment and because they have been highly successful (with recycling rates in excess of 90 percent). States, however, retain the authority to regulate lead-acid batteries more stringently. Hence, they may choose to regulate lead acid batteries under their UW programs.

9. A handler who transports UW is considered a UW transporter. Is this for any quantity of UW (i.e., in the used oil regulations

a used oil generator can transport up to 55 gallons of their own used oil without being considered a used oil transporter)?

Yes, all handlers who transport any quantity of UW must meet the UW transporter requirements. There is no de minimis exemption like the one in the used oil program.

10. Would a program consisting of a state-sponsored network of handler locations at private businesses be considered a "waste pesticide collection program"?

Yes. Part 273 does not require states to operate the waste pesticide collection programs described in 40 CFR §273.3(a)(2) in order for the pesticides managed under such programs to be eligible for the UW program.

11. As the UWR is implemented, do the traditional liability issues change? For example, who is liable for any mismanagement of a UW at a handler location, in transit, and at the destination facility? Are any and all handlers liable for mismanagement at a destination facility or at subsequent handlers? Or, just the "final handler" that chooses the destination facility? Do we lose cradle-to-grave responsibility with UWR?

Under the full Subtitle C program, only the waste handler that violates a hazardous waste regulation is "liable" (i.e., subject to enforcement) for that violation. Generators of hazardous waste are not responsible for mismanagement by subsequent waste handlers. The UW rule does not change this allocation of responsibility.

Generators are responsible for subsequent mismanagement under CERCLA, however. The UW rule does not change CERCLA liability. Since UW are still hazardous wastes, persons who generate UW remain liable under CERCLA for remediation of any releases of UW.

12. When UW is shipped to a destination facility, does it have to be relabeled as HW at that facility, or will UW labeling be sufficient?

Universal wastes remain hazardous wastes. Destination facilities must comply with all currently applicable requirements for hazardous waste management facilities. However, none of these regulations require facility owners or operators to relabel the containers holding universal wastes.

13.a Handlers can keep UW on site up to one year after the date it is received or generated. A year after a handler has received

a UW, can the UW go to another handler, or must it go to destination facility?

Universal waste can only be sent off-site to another universal waste handler, destination facility, or foreign destination. Theoretically, each receiving facility could accumulate the waste for an entire year before sending it off to another handler, however, the regulatory impact analysis EPA prepared for the UW rulemaking indicates that there is no economic incentive for retaining UW for such long periods.

b. Within that year, can the UW go to several handlers?

Yes, but states can adopt a more stringent rule that would prevent this. Also, although theoretically wastes could go from one collection facility to another forever, the regulatory impact analysis EPA prepared for the UW rulemaking indicates that there is no economic incentive for retaining UW for such long periods.

14. Pesticides that are included in FIFRA recalls can be managed under the UWR. Does this apply to pesticides that have been included in past FIFRA recalls or just recalls instituted after the UWR is adopted?

The timing of the recall is not significant. The UW rule is not limited to pesticides that are recalled after the UW rule takes effect.

15. Pesticides that are managed by farmers in accordance with 40 CFR 262.70 are not subject to the UW rules. Can farmers continue to dispose of pesticides recalled under FIFRA under 262.70?

Yes, if a recall under FIFRA allows a farmer to dispose of a pesticide on his own property, he may do so by complying with 262.70.

16. How are mixtures of UW and HW regulated -- as a HW if the HW is listed or the mixture exhibits a characteristic? If the HW is not listed, and the mixture of UW and HW does not exhibit a characteristic, does LDR apply to the mixture?

The UW rules apply only to wastes meeting the criteria for being classified as UW. They do not apply to mixtures of UW wastes and ordinary, "non-universal" hazardous wastes. Such mixtures are subject to the regular hazardous waste regulations.

However, the status of mixtures of characteristic UW and characteristic hazardous wastes needs clarification. If the mixture no longer exhibits a characteristic, it would no longer be classified as a hazardous waste, but would remain subject to

the land disposal restrictions. Formerly characteristic wastes are not excused from compliance with LDR treatment standards merely because they cease to exhibit a characteristic.

In addition, two exceptions apply. First, mixtures of UW and conditionally exempt small quantity generator (CESQG) hazardous wastes are subject to UW rules. This is because CESQG hazardous wastes are exempt from regular Subtitle C regulation. See the UW preamble at 25510. By the same logic, mixtures of UW wastes and hazardous wastes exempted under the household hazardous waste provision are subject to the UW provisions rather than the regular hazardous waste provisions.

The normal hazardous waste mixture rules would apply to mixtures of UW and nonhazardous solid wastes. If the UW waste were a listed waste, the mixture would be regulated as HW (although initial handlers would be subject only to the UW rules). If the UW were a characteristic waste, and the mixture ceased to exhibit the characteristic, the mixture would be nonhazardous but LDR treatment requirements would continue to apply.

17. A large quantity universal waste handler (LQHUU) is required to notify EPA of its universal waste management, unless it had already so notified and received an EPA ID number. However, won't the LQHUU have to modify the initial notification to explain this additional activity?

No. If a handler has previously notified EPA of his hazardous waste management activities, he is not required to renotify. First time notifiers can submit a one-time notification described in 40 CFR 273.32(b), or alternatively, the 8700-12 notification form. If the 8700-12 notification form is used, the LQHUU must write "LQHUU" or "Universal Waste" on the portion of the form where activity is checked.

18. Does the UWR prohibit a generator from handling a UW in accordance with full RCRA C requirements, if desired?

The UWR requires a generator to handle their UW under 273. However, if the generator handles UW under full RCRA C then it would likely be complying with 273.

19. If a generator originates a shipment of hazardous waste that is considered a UW in the receiving state, how does the generator get a signed manifest?

The initiating facility (i.e., the generator) would complete a manifest and give copies to the hazardous waste transporter as required under 40 CFR 262.23(a). The initiating facility must ensure that the manifest is forwarded to and signed by the UW receiving facility (i.e., the designated TSD facility) and then sent back to the initiating facility.

20. a. Because a manifest is now not required, how will handlers know how and when their UW finally arrives at an appropriate destination facility?

Depending on whether the UW are shipped to another UW handler or a UW destination facility, the initiating facility (i.e., the generator) may not know if their UW arrives at an appropriate destination facility. For example, if the universal waste is shipped to another universal waste handler (i.e., an interim facility) before it is shipped to a designated facility, the originating facility would only have knowledge of the initial receiving facility. (See response to question 11). However, if the originating facility (i.e., the generator) sent the universal waste to a destination facility, Part 273 requires the originating facility to receive prior consent by a receiving facility (i.e., the destination facility) before the waste can be sent off-site.

b. Does EPA intend for the original handler to "designate" all the handlers and final destination facility?

No. The original handler (i.e., the initiating facility) is only responsible for designating the next UW handler (though the original handler is free to elect to designate the final destination facility).

21. What happens when UWR is adopted by a state but is not yet authorized by EPA? What is EPA obligated to enforce?

EPA may only enforce the authorized state program. The authorized program would continue to impose regular hazardous waste management standards on UW handlers until EPA approved the state's UW rule. Note, however, that once the rule is approved, designations of new, state-only UW and management standards for such wastes become part of the authorized program without action by EPA. See the response to question 5 above.

The Agency has also issued a memorandum (See the April 10, 1996 Memorandum addressed to the Regional Administrators from Steven A. Herman, Assistant Administrator of the Office of Enforcement and Compliance and Elliot P. Laws, Assistant Administrator of the Office of Solid Waste and Emergency Response) which asks the EPA Regional offices to exercise

enforcement discretion (vis a vis unmanifested universal wastes) in States that are authorized for the RCRA base program and that are implementing the Part 273 standards but have not yet received final EPA authorization to do so. The memorandum further provides that the Regions should take enforcement actions involving universal waste only where handlers of such wastes are not in full compliance with the Part 273 standards. In other words, the Agency will not take federal action against handlers who manage hazardous waste batteries, hazardous waste pesticides, and mercury-containing thermostats pursuant to Part 273 standards in States that are currently in the process of adopting the universal waste rule. States, of course, may still pursue enforcement action against these handlers. The Agency hopes that the April 10, 1996 letter will facilitate implementation of the universal waste rule by states nationwide.

22. How are recycling facilities that receive UW regulated?

Recycling facilities are excluded from the definition of UW "handlers". See 40 CFR 273.6. They are subject to normal hazardous waste management requirements. Under those requirements, storage prior to recycling is regulated and requires a permit. See 40 CFR 261.6(c)(1). Many types of recycling processes are largely exempt from regulation (see 40 CFR 261.6(d)); others (such as burning to recover energy or materials) are regulated and require permits.