

Frequent Questions

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If you rinse a "RCRA empty" rail car that formerly contained a U-listed material, and the rinse water was tested and found to be hazardous, is it a hazardous waste or was the rinse water derived from non-hazardous residue?

Residues that remain in containers that have been rendered "empty" per 40 CFR 261.7 are not subject to RCRA hazardous waste regulations under CFR Parts 261 to 265, 268, 279 or 124. Tank cars are considered containers as defined in 40 CFR 260.10. ("A container means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.") Because residue remaining in the "empty" container is not subject to the mixture rule (40 CFR 261.3 (a)(2)(iv)), rinsate from the "empty" container would not carry the material's 40 CFR 261.33 (f) hazardous waste U-listing.







However, if rinsate water from an "empty" container exhibits one of the hazardous waste characteristics identified in Part 261, Subpart C, it is subject to Subtitle C regulation. Rinse water is not directly exempt under the empty container rule because it is not a waste "remaining in" an "empty" container. While 40 CFR 261.7 exempts residue remaining in an "empty" container from Subtitle C regulation, the Agency also has made it clear that when residue is removed from an "empty" container the residue is subject to full regulation under Subtitle C if the removal or subsequent management of the residue generates a new hazardous waste that exhibits any of the characteristics identified in Part 261, Subpart C (see 45 FR 78529, November 25, 1980, where it states "[C]ontainer cleaning facilities which handle only "empty" containers are not currently subject to regulation unless they generate a waste that meets one of the characteristics in Subpart D.").

Finally, it also should be noted that if the agent used to rinse an "empty" container includes a solvent (or other chemical) that would be a listed hazardous waste when discarded, then the rinsate from an "empty" container would be considered a listed hazardous waste. This is not due to the nature of the waste being rinsed from the "empty" container, but rather, because of the nature of the rinsing agent.

Related materials:


Memo, Springer to Coles, April 12, 2004 ([RCRA Online #14708](#))


Memo, Corson to Cherill, January 7, 1986 ([RCRA Online #12534](#))
Memo, Lowrance to Bailey; June 5, 1989 ([RCRA Online #11431](#))
Memo, Williams to Cookey; December 12, 1985 ([RCRA Online #12512](#))
Memo, Denit to Matis; September 20, 1993 ([RCRA Online #13626](#))


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