



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Wood Treaters/Resource Conservation and Recovery Act: U.S. Environmental Protection Agency Interpretive Letter Response to Treated Wood Council Query

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United States Environmental Protection Agency ("EPA") Office of Resource Conservation and Recovery Deputy Director Andrew Baca transmitted an October 8th Interpretive Letter addressing issues involving wood treatment.

Mr. Baca was responding to a June 25th request from Jeffrey T. Miller of the Treated Wood Council ("TWC") posing certain requests/guidance related to the Resource Conservation and Recovery Act ("RCRA") hazardous waste regulations.

The Interpretive Letter first addresses a request that EPA clarify that the September 24, 2003, memo titled *Options for CCA Wood Treatment Plants Converting to Preservatives that Do Not Generate Hazardous Waste* also applies to wood treaters that convert to using non-hazardous wood treating chemicals from chemicals that are regulated as F032 and F034 RCRA listed wastes when discarded. EPA notes in part:

...The EPA's 2003 guidance was specifically directed toward wood treaters that convert from using chromated copper arsenate (CCA), which is regulated as F035 hazardous waste when discarded, to a preservative that is non-hazardous waste when discarded. The memo stated that these wood treaters have three compliance options: continued operation, phased closure, and clean closure.

EPA notes that its response to 2022 Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") comments confirms that the 2003 memo remains in effect and the closure options it presents are available to wood treaters generating F032 listed waste. However, it clarifies that they would still need to comply with the documentation and cleaning and/or replacement requirements in Section 261.35.

The Interpretive Letter further states that it is EPA's interpretation that the 2003 memo and the 2022 response to the FIFRA comments may apply to wood treaters using any wood treating chemicals that are listed hazardous waste when discarded. This is stated to include F032 and F034. However, a caveat is noted that wood treaters that use or have previously used chlorophenolic preservatives are subject to additional documentation and cleaning and/or replacement requirements under 40 CFR Section 261.35.

The memo also states that it is not EPA's intent to make any changes to the decontamination standards. Therefore, any waste that is generated using equipment that has not been appropriately decontaminated will continue to bear the waste code or codes of the listed waste that was previously used.

The October 18th Interpretive Letter notes EPA's agreement that subpart W drip pads used by wood treaters are a type of accumulation unit to which the closure flexibilities in Section 262.17(a)(8) apply (noting drip pads are listed in the opening sentence). Such flexibilities allow generators that close only a hazardous waste accumulation unit to place a notice of closure in the operating record and perform the clean closure requirements in Section 262.17(a)(8)(iii) at a later date when the facility closes as a whole. Still, the flexibility is only available in states that have adopted this provision of the 2016 Hazardous Waste Generator Improvements Rule.

A copy of the Interpretive Letter can be downloaded [here](#).