

# Advice & Counsel



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## RCRA Recriminations

Dear Advice & Counsel,

Our company operates a wastewater treatment system that handles rinsewater from an anodizing operation. Included in the raw wastewater stream are rinses from anodizing and all rinses prior to and following anodizing (we do not use chromic acid sealing so the raw rinsewater is free of hexavalent chromium). One wastewater stream going to this system is the rinse after our dyeing operation. Some dyes used in this process contain organic compounds that, according to the supplier, contain as much as 5 percent by weight trivalent chromium as an integral part of the dye.

We recently were inspected by our state EPA representative, who found the following violations:

- a. Two containers on site of the dried sludge from the above waste treatment system. Each box was full, closed and marked "hazardous waste," along with a description of the waste that included the EPA code F-019.
- b. Neither hazardous waste container had a date of accumulation.
- c. The company had not notified EPA that it was a generator of hazardous waste.
- d. No contingency plan was available.
- e. No personnel training had been conducted.
- f. No inspection schedule or logs had been prepared.

The reality is that we have never thought this waste truly is hazardous. We only felt that it was better to "play it safe" by treating it as an F-019. Because the waste is in fact not hazardous, don't you agree that this inspector is going overboard?

Signed,  
Safe N. Sorry

Dear Sorry,

The complicating factor in your situation is that such wastes are regulated by both Federal and State regulations. In many states, the Federal regulations are simply adopted and therefore there is a close match between the State and Federal regulations. In some states, however (such as yours), the state decides to go its own way. Let's first look at the applicable regulations:

### (a) Federal Regulations

Under USEPA RCRA regulations, the waste from the treatment system is neither F-006 nor F-019, because the waste is clearly exempted by 40CFR part 261 language. Specifically, it is not F-006 because the waste comes from sulfuric acid anodizing of aluminum, and it is not F-019 because the waste does not come from a chemical conversion coating process. Dyeing of anodized aluminum involves absorption of the dye into the porosity in the anodic coating, while a "chemical conversion process" is defined by a chemical process that reacts with the surface of a metal to produce a new coating (my definition).

### (b) State Regulations

According to the documents you submitted for review, your state has reviewed all documents and data and initially concluded that the waste was F-019 because your facility performed conversion coating, but has since concluded that it does not matter whether the waste is hazardous or not, since the **generator** (you) considered the waste F-019. Based on your own designation you needed to comply with all applicable requirements of a hazardous waste generator, including all of the above citations the inspector gave you.

I should mention that your company is not the first to go through this kind of purgatory (or you might call it hell). Because the letter of the law may apply here, it is clear to me that you did not violate the spirit of the

law. It's time to talk with an attorney who can argue this position for you.

This may be a good time to point out to all hazardous waste generators one of the more commonly encountered violations that is treated quite seriously by inspectors: **Be sure that all hazardous waste containers are labeled properly.** Failure to have a label on a container or failure to enter an accumulation date on such a label will expose your company to potentially serious consequences. Some inspectors have even insisted that vessels associated with the treatment of hazardous waste be labeled. In one case they insisted that the hopper from a dryer be labeled.

A second common violation is to store the waste in an unmarked area of the plant. The inspector will look for a label that reads: "Hazardous Waste Storage Area—Unauthorized Personnel Keep Out!"

The third most common violation is failure to train all personnel that handle/work with hazardous waste. Such personnel must know what the regulations are and what activities related to hazardous waste are not allowed.

The fourth most common violation is to not have an up to date contingency plan, a designated emergency coordinator or inspection logs for all hazardous waste containers and storage areas.

Experience with inspected companies indicates that when an inspector finds that you quickly can hand him your records of training, contingency plan and inspection logs, the rest of the inspection tends to go rather smoothly. If the inspector finds that you are having difficulty finding these items, they tend to have a "throw the book at them" attitude.

One of the best metal finishing facilities I have ever visited has a designated, locked set of file drawers near the conference room (actually in the conference room), so that a visiting inspector is quickly handed whatever required records she wants to see. *P&SF*