

Revision Checklist 140 Summary

Rule Title:	Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities
Checklist Title:	Carbamate Production Identification and Listing of Hazardous Waste
Reference:	60 <u>FR</u> 7824-7859, 60 <u>FR</u> 19165-19167, and 60 <u>FR</u> 25619-25620
Promulgation Date:	February 9, 1995, April 17, 1995, and May 12, 1995
Effective Date:	August 9, 1995
Cluster:	RCRA Cluster V
Provision Type:	HSWA
Linkage:	Revision Checklist 159
Optional:	No

Summary: The February 9, 1995 final rule lists as hazardous six wastes generated from the production of carbamate chemicals based upon RCRA §§ 3001(e)(2) and 3001(b)(1). The rule provides an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. The February 9, 1995 rule also exempts from the definition of hazardous wastes biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity). The Agency also added 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based.

On April 17, 1995, EPA published a correction to the February 9, 1995 final rule which corrected typographical and omission errors in the list of wastes in 40 CFR §§ 261.33(e), 261.33(f), and Part 261, Appendix VIII. On May 12, 1995, a subsequent correction was published in the Federal Register to correct a typographical error in the April 17, 1995 Federal Register article.

On August 8, 1995, EPA published an interpretive rule in the Federal Register (see 60 FR 41817-41818) regarding a change in the Agency's interpretation of the February 9, 1995 rule that lists wastes from carbamate production as hazardous wastes under RCRA. Under this new interpretation, wastes from the production of non-carbamate intermediates that are used exclusively in the production of carbamates but are not produced at the ultimate site of manufacture of the carbamates will not be subject to the February 9, 1995 rule. These wastes are among those in the RCRA waste code designations K156 and K157 in that rule.

On November 1, 1996 the U.S. Court of Appeals for the District of Columbia Circuit (*Dithiocarbamate Task Force v. EPA, CA DC 95-1249, 11/1/96*) vacated the following carbamate wastes listed by the February 9, 1995 (60 FR 7824) listing rule: U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, U407, and K160. In addition, the court vacated the listing of K156, K157, and K158 in so far as they encompass 3-iodo-2-propynyl n-butylcarbamate (IPBC), which was listed as product waste U375.

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State Authorization: This rule is placed in RCRA Cluster V. The State modification deadline is July 1, 1996 (or July 1, 1997 if a State statutory change is necessary). All changes go into effect immediately because this rule was promulgated under HSWA authorities. Both interim and final authorization are available. Interim authorization expires January 1, 2003.

Note that Revision Checklist 140 does not contain the wastes vacated by U.S. Court of Appeals on November 1, 1996 because they are no longer required for State authorization for this listing rule. States may choose to list these vacated wastes as a matter of State law. In this case, a State which lists these wastes will be broader in scope or more stringent than the Federal requirements depending on whether or not the listed wastes also exhibit a 40 CFR 261, Subpart C hazardous waste characteristic.

The State Revision Application must include applicable regulations, AG statement addendum, Revision Checklist 140, other associated checklists and other application materials, i.e., a program description and an MOA, as determined by the Regional office. States adopting Checklist 140 should also adopt Checklist 159 at the same time.

Attorney General's Statement Entry: The following entries should be placed at Subsections I A(29), I FF, I GG and I HH in the Model Revision Attorney General's Statement.

- (29) Listing of five wastes generated during the production of carbamate chemicals (except to the extent that K156, K157 and K158 include IPBC), plus the listing of 34 commercial chemical products, 40 CFR 261.32, 261.33(e), 261.33(f), Part 261, Appendix VII and Part 261, Appendix VIII, as amended February 9, 1995 [60 FR 7824], April 17, 1995 [60 FR 19165], and May 12, 1995 [60 FR 25619] and affected by *Dithiocarbamate Task Force v. EPA, CA DC 95-1249, 11/1/96*, Revision Checklist 140.

FF. [OPTIONAL: This is a reduced requirement.] State statutes and regulations which exclude from being hazardous certain wastewaters from the production of carbamates and carbamoyl oximes of K157 provided the conditions in 261.3(a)(2)(iv)(F) are met as indicated in Revision Checklist 140.

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(a)(2)(iv)(E)&(F), as amended February 9, 1995 (60 FR 7824) and as affected by *Dithiocarbamate Task Force v. EPA, CA DC 95-1249, 11/1/96*.

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

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GG. [OPTIONAL: This is a reduced requirement.] State statutes and regulations which exclude from being hazardous certain wastewaters derived from the treatment of one or more wastes listed in 261.32, organic waste from the production of carbamates and carbamoyl oximes of K156, provided the conditions in 261.3(a)(2)(iv)(G) are met as indicated in Revision Checklist 140.

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(a)(2)(iv)(G), as amended February 9, 1995 (60 FR 7824) and as affected by *Dithiocarbamate Task Force v. EPA, CA DC 95-1249, 11/1/96*.

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

HH. [OPTIONAL: This is a reduced requirement.] State statutes and regulations which exclude from being hazardous biological treatment sludge from the treatment of organic wastes from the production of carbamates and carbamoyl oximes of K156 and wastewaters from the production of carbamates and carbamoyl oximes of K157 as indicated in Revision Checklist 140.

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(c)(2)(ii)(D), as amended February 9, 1995 (60 FR 7824) and as affected by *Dithiocarbamate Task Force v. EPA, CA DC 95-1249, 11/1/96*.

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Special Guidance for States that Incorporate by Reference: States that incorporate the CFR by reference should be careful in their incorporation, particularly those States that have a statutory or regulatory restriction against being more stringent or broader in scope than the Federal requirements. The carbamate waste vacatur was made by a Federal court and this decision may not be transferable to State law. However, some States have statutory or regulatory provisions which specify that all Federal vacatur are applicable to the State. A State's Attorney General should be consulted on this issue. If a State finds that the Federal vacatur is not transferable, the State should incorporate by reference the 60 FR 7824 rule, but exclude the vacated wastes from that incorporation as indicated in the following table:

Citation	Guidance
261.3(a)(2)(iv)(F)&(G)	exclude any wastes that encompass IPBC relative to K156 and K157

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Citation	Guidance
261.32	<p>! exclude the K160 listing</p> <p>! exclude the K156, K157 and K158 listings only to the extent that they encompass IPBC</p>
261.33(f)	<p>exclude the following listings: U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, and U407</p>
261, Appendix VII	<p>! exclude the basis for listing K160</p> <p>! exclude the basis for listing K156, K157, and K158 to the extent that they encompass IPBC</p>