Citation Case Study: Paint Drippings on the Ground a Hazardous Waste Violation

The following is an example of a hazardous waste citation given to a manufacturing facility by a state’s environmental regulatory agency. The company appealed to the state’s Office of Administrative Hearings. Although this particular citation was from a state regulatory agency, the citation referenced a federal hazardous waste regulation and thus this issue may be cited in any location.

Can this scenario be found at your facility?

**Scenario:**

A company had paint drips on the ground outside by their dumpster. The paint drips had accumulated over time since the company had been in the same location for over 10 years.

**The Citation:**

*40 CFR 265.31*

The company was cited for violation of hazardous waste rules for “Failure to prevent the possibility of fires, explosions or sudden releases of hazardous waste.”

The company tried to prove the paint drips came from exempt containers that were RCRA empty at the time of disposal into the dumpster, and the paint drips had accumulated over time.

**The Ruling in Appeal:**

In this appeals process, a judge reviewed the work of the state inspector and heard testimony by the cited company.

The first consideration was whether all wastes were removed from the can that could be removed, as required by regulation in order for the remaining contents to be exempt. KDHE and the Administrative Judge found that if the contents were able to drip from the cans upon transport to the dumpster, and in the quantity dripped, not all of the wastes were removed from the paint cans that could have been removed. As a handler of hazardous wastes, the company had a responsibility to take precautions to ensure that hazardous materials were not subject to a release "to air, soil, or surface water which could threaten human health or the environment."

The judge noted that spills were understandable; however, the failure to clean up the spills and mitigate the release is crucial.

With the premise that the hazardous waste contents of the paint cans were no longer exempt once they exited the paint can(s), the question is then whether the spills identified during the inspection violated 40 CFR 265.31. The regulation states: "Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment." The judge found that the company did not minimize the possibility of a fire or release of hazardous waste, and took the least restrictive means' of handling a hazardous waste, resulting in spills.

**Possible Solution:**

During the hearing a question was posed to the inspector as to what could have been done to prevent the spills. The inspector mentioned the possibility of using better bags for disposal or even double bagging the paint containers, and landfills are constructed to avoid release of hazardous wastes into the environment.

The company was told it must take precautions to mitigate release, at the very least until the waste reaches the landfill and the citation was upheld.