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MAY 14 1985

Mr. Stuart E. Russell, P.E.  
Project Manager  
Lawler, Matusky & Skelly Engineers  
One Blue Hill Plaza  
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Dear Mr. Bassell:

I am glad to clarify the issue that you raised in your letter of April 1, 1985. The identification of RCRA "P" and "U" wastes (chemical products that are hazardous wastes when discarded) is not as obvious as the identification of other listed wastes.

As you know, 40 CFR 262.11 outlines the generator's responsibility for identifying hazardous waste as follows: first, check to see if the waste is excluded from regulation under Part 261 Subpart D, second, see if the waste is listed in Part 261 Subpart D, third (if it is not a listed waste), determine whether it is a characteristic waste by testing or applying knowledge of the process producing the waste. Neither the flash nor the used formalin would qualify as a listed RCRA waste.

To clarify why the fish and the used formaldehyde are not listed waste, the reasoning is as follows: formaldehyde is listed (as U122) in 40 CFR 261.33(f). This listing refers only to discarded commercial chemical products, off-specification species, container residues, and spill residues having the generic name "formaldehyde." The comment in §261.33(d) explains that the term "commercial chemical product" refers to a substance manufactured for commercial use which is commercially pure or a technical grade and formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a process waste, that contains any of the substances listed in §261.33(e) or §261.33(f). To be considered a hazardous waste, such process wastes will be listed in either §§261.31 or 261.32 or be identified as a hazardous waste by characteristics, as set forth in the regulations.

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The comment excludes waste materials that contain any "P" and "U" substances unless the waste stream is listed (i.e., listing formaldehyde used as a preservative) or the waste meets a Part 261 Subpart C criteria. This means EPA regulates unused chemicals but not all wastes containing the same chemicals. There are regulatory efforts underway that may eliminate this discrepancy.

Of course, the generator also needs to determine that the discarded fish and formaldehyde are not hazardous on the basis of exhibiting any of the characteristics of hazardous waste. It is unlikely that the formalin will be found to be ignitable, corrosive, reactive, or EP toxic. If you have any other questions on the Federal policy of regulatory hazardous waste, feel free to contact me at (202) 382-4770. Of course, you need to comply with the New York Department of Environmental Conservation determination in the State of New York, since the State program is operating in lieu of the Federal program.

Sincerely yours,

Alan S. Corson  
Branch Chief

cc: James S. Moran, NYDEC

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