

9441.1985(21)

June 6, 1985

Mr. Bruce Bzura
Vice-President
Madison Industries, Inc.
Old Waterworks Road
Old Bridge, New Jersey 08857

Dear Mr. Bzura:

This letter is in response to your letter dated May 3, 1985, concerning the regulatory status of brass dross skimmings that is to be recycled by a domestic or foreign refinery or a domestic or foreign processor. First, let me apologize for not getting back to you sooner; I have been very busy and hope my lateness has not created a problem for you. With regard to your questions, I will answer them in the same order as you presented them in your letter.

- * Is the brass dross skimmings a by-product or a scrap metal?

These skimmings would be defined as a by-product. (See preamble discussion on pg. 624 of the January 4, 1985 Federal Register (c. Definition of Scrap Metal and Regulatory Distinctions Between Scrap Metal and Other Metal-Containing Wastes That Are recycled for a detailed explanation.)

- * If this material is sent to a domestic refinery, does it have to be manifested?

These skimmings (defined as a by-product) under the rules would be sent for reclamation (as you correctly noted in your letter). Since this material is not currently listed as a hazardous waste, it must be hazardous due to its exhibiting one or more of the hazardous waste characteristics (i.e., if this material were not hazardous, the hazardous waste rules would not apply). Under the rules, the reclamation of a nonlisted by-product would not be defined as a solid waste (provided the material is not

speculatively accumulated.¹/ As a result, this material would not be a hazardous waste and, thus, need not be manifested or subject to any of the other applicable requirements. This answer is the same if it is sent to a foreign refinery.)

- * A processor processes the brass skimmings by separating the metal from the oxides. If the oxides are said to be a domestic or foreign fertilizer company, does the material have to be manifested?

Yes. Under the rules, any material (whether it is a spent material, sludge, by-product, commercial chemical product or scrap metal) that is placed directly on the land or incorporated into a product that is placed on the land is defined as a solid waste and if hazardous, a hazardous waste. Thus, the oxide material (assuming it exhibits a hazardous waste characteristic) would need to be manifested to the fertilizer company and the domestic fertilizer company would need to get a storage permit for this material. (The processor also would have to comply with the other applicable regulatory requirements.) It should also be noted that the brass skimmings would have to be manifested from the brass mill to the processor and the processor would need a storage permit if the ultimate destination of this material (i.e., the oxides) is to be placed on the land or incorporated into a product that is placed on the land.

- * If the oxide material were used as an ingredient to make a new product would the oxides have to be manifested?

Under the rules, any material that is used or reused as an ingredient to make a new product would not be defined as a solid waste, provided the material is not speculatively accumulated. (The exception to this is when the material is used as an ingredient in waste-derived fuels or in waste-derived products that will be placed on the land. In these situations, both the material being incorporated and the waste-derived product remains subject to RCRA jurisdiction.)

Subsequently, this material would not have to be manifested or subject to any of the other applicable requirements.

1/ A material would be speculatively accumulated if: (1) it is being accumulated for recycling but no recycling market exists (or no feasible recycling market exists), or (2) 75% of the material is not recycled within one-year period. See 40 CFR 261.1(a)(8).

(The answer is the same if it is sent to a foreign chemical processor.)

I hope this letter responds to your questions. Please give me a call if I can be of any further assistance; my telephone number is (202) 475-8551.

Sincerely yours,

Matthew A. Straus, Chief
Waste Identification Branch