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July 1, 1985

Mr. John A. Quinlan  
Legal Assistant  
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This letter is in response to your letter dated May 1, 1985, regarding the scope of the term "abandoned" under revised 40 CFR §261.2. In particular, you indicate that §261.2(a)(2)(i) provides that a material may be discarded by being abandoned and §261.2(b)(i) defines abandoned to mean disposed of. You further state that disposal (as defined in §260.10) includes the "placing of any solid waste or hazardous waste into or on any land or water..." Therefore, you are concerned that read together, these sections would state any material that is placed on the land is a solid waste, and that if the material is hazardous (i.e., if listed in Subpart D or Part 261 or exhibits one or more of the characteristics in Subpart C of Part 261), the regulations relating to hazardous wastes would apply.

As we discussed previously, the Agency generally does not intend to regulate those secondary material that are bona fide products (e.g., secondary materials used as ingredients or feedstocks in production processes or as a substitute for commercial chemical products) even though they may be temporarily stored on the land. Thus, a listed emission control dust that is stored in piles on the land is used as an ingredient in a production process would not be defined as a solid waste, provided that the material is not speculatively accumulated.<sup>1/</sup> This position is supported (as you stated in your letter) by the parenthetical comment in the preamble, "By saying "abandoned," we do not intend any complicated concept, but simply mean thrown away." See 50 FR 637, January 4, 1985.

<sup>1/</sup> A material is considered speculatively accumulated if it is being accumulated without having a known recycling market or disposition, or no feasible means of recycling, and during a one-year calendar period, 75 percent of the material is not recycled, or transferred to a different site of recycling.

On the other hand, if the material were to escape from the unit (i.e., leach from the waste and contaminate groundwater), this action would constitute disposal and meet the definition of abandoned and, thus, would be defined as a solid waste. In addition, if the material is hazardous, pursuant to §261.3, the material would be subject to the hazardous waste regulations. This point is discussed in the preamble to the regulations where we indicate "In addition, we note that black liquor that is disposed of and not recycled is a waste, and if hazardous, a hazardous waste. This includes black liquor that leaks, leaches, or overflows from an impoundment and is not recycled." See 50 FR 642, 1st column.

I hope this letter adequately responds to your question. Please feel free to 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