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OCT 20 1986

Mr. A. L. Horner
Environmental Specialist
Albright & Wilson Inc.
P.O. Box 26229
Richmond, VA 23260-6229

Dear Mr. Horner:

I am writing in response to your request for a written determination as to the regulatory status of 36% phosphoric acid that is generated as part of the chemical polishing of aluminum.^{1/} In your letter, you state that this material is an effective substitute for 75% technical grade phosphoric acid and a variety of other potential nutrient materials used in wastewater treatment plants. In addition, you also state that it can be a substitute for 54% P₂O₅ wet acid used in specialty fertilizer producers.

As you know, 40 CFR 261.2(e) specifies which materials are not solid wastes when they are recycled. Among other things, materials that are used or reused as effective substitutes for commercial products, or materials that are used or reused as ingredients in an industrial process are not solid wastes provided; (1) that these materials are not used in a manner constituting disposal (or used to produce products that are applied to the land), (2) they are not burned for energy recovery (or used to produce a fuel or contained in fuels), or (3) they are not accumulated speculatively. Thus, 36% phosphoric acid used as wastewater conditioners are not solid waste. (See 50 FR 628, FN 15, January 4, 1985.)

1/ As described in your letter, the process which generates the 36% phosphoric acid involves the submerging of aluminum parts in phosphoric acid to increase the brightness of aluminum. After the phosphoric acid bath, the parts are rinsed with water; a specifically designed rinse operation is utilized to produce 36% phosphoric acid.

This is also the case (as provided below) for 36% phosphoric acid used to produce fertilizers however, we think this is a more difficult call. In particular, the general principle in the Agency's regulations is that hazardous secondary materials untimely applied to the land are hazardous wastes, as are the waste-derived products in which they are contained (See 40 CFR §261.2(c)(1).) However, if the anodizing phosphoric acid is purer in acid content, and no more contaminated than virgin phosphoric acid (as it has been described to us), we do not believe 35% of phosphoric acid generated as part of the chemical polishing of aluminum that is used to produce fertilizers can be viewed as a secondary material. Thus, such acid would not be considered a solid or hazardous waste under RCRA when used in the same manner as virgin phosphoric acid.

It should be noted that there is a provision in 40 CFR §261.2(f) associated with this exclusion more specifically, you must be able to demonstrate that the 36% phosphoric acid is being used as cited above, and not merely capable of such use of that it has been used for such purposes in the past. I suggest that you keep documentation to support your claim that the 36% phosphoric acid is being used in a manner that is within the scope of this exclusion.

Please feel free to call me if you have any further questions my telephone number is (20) 475-8551.

Sincerely,

Matthew A. Straus
Chief
Waste Characterization Branch