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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 31 1987

MEMORANDUM

SUBJECT: Regulatory Interpretation Regarding Briquetting  
of Flue Dust

FROM: Marcia E. Williams, Director  
Office of Solid Waste

TO: Judith Kertcher, Acting Chief  
Solid Waste Branch, Region V (5HS-13)

This is in response to your June 25, 1987, memorandum in which you asked for a regulatory interpretation regarding flue dust (K061) that is mixed with sodium silicate binder and pressed into briquettes for use in steel production by the original waste generators. The regulatory provision that covers this situation is 40 CFR §261.2(e)(1)(i), which provides that a material is not a solid waste when it is used or reused as an ingredient in an industrial process to make a product, without first being reclaimed. (See 50 CFR 638-639; January 4, 1985.) In the Dehli Industrial Products, Inc. case, you have indicated that the briquettes made from the flue dust are returned to the original generators (under batch toiling agreements) who use them in steel production. As explained below, our conclusion is that the flue dust is not a solid waste.<sup>1/</sup> The answers to your specific questions are as follows:

1. The fact that the flue dust is generated, removed from the site of generation, and later returned to the generator does not alter the regulatory status of the recycled material. The storage of the flue dust is not regulated either at the generator's or the recycler's site provided that the flue dust is not speculatively accumulated.

1/ In taking this position, we assume that the flue dust is actually providing materials useful to steel production. See the discussion at 50 FR 638-639, January 4, 1985, for guidance on identifying "sham recycling" operations.

2. The fact that batch tolling agreements are in place also does not affect the regulatory status of the recycled material.<sup>2/</sup> Such agreements would probably help a generator satisfy the burden of proof (§261.2(f)) to document that the generator's material is not solid waste.
3. The addition of sodium silicate binder to the flue dust does not change the regulatory status of the recycled material. EPA has said that briquetting of dry wastes to facilitate resmelting (and this would include the addition of a binding material) is not reclamation. (See 50 FR 639; January 4, 1985.)
4. The process in question is probably not a closed loop system. The issue here is not whether the waste is recycled on or off site, because nothing in §261.2(e)(1)(iii) limits the closed-loop exemption to on-site recycling. Rather, information available to EPA indicates that facilities such as Dehli (i.e., electric arc furnaces) typically use scrap steel as feedstock. As such, the operation does not meet the condition in §261.2(e)(1)(iii) that the recycled material be returned as a substitute for raw material feedstock, and that the process must use raw materials as principal feedstocks. In this case (scrap steel) the flue dust substitutes for a secondary material, not a raw material.

2/ On April 4, 1983, EPA proposed a conditional exemption for hazardous waste recycled under batch tolling agreements. (See 48 FR 14494-14495.) EPA rejected this exemption in the final rule. (See 50 FR 643; January 4, 1985.)