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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APR 6 1988

R. Todd Grant
President
Tomar Services, Inc.
P.O. Box 233
Wexford, PA 15090

Dear Mr. Grant:

This is in response to your letter of March 14, 1988, to Michael Petruska, concerning the recycling of nickel, copper, and chromium-containing electroplating sludges. This is a complex area of regulation, and you may have misunderstood some of what Mr. Petruska explained in your March 2 meeting. My understanding of your operation is that you plan to recycle electroplating sludges by recovering certain metal values from dried material produced from sludge dryers. The two key questions in determining RCRA applicability are: (1) whether the sludge is listed in 40 CFR Part 261, Subpart D, and (2) whether the material is processed before use, i.e., "reclaimed".

Although the material will be fed to a metal smelting furnace, please note that such smelters are considered reclamation devices, and therefore the exclusions for direct use or reuse at 40 CFR Section 261.2(e)(1)(i) and (e)(1)(ii) do not apply. (See 50 FR 633; January 4, 1985.) Listed sludges that are reclaimed are solid waste, while sludges that are hazardous only because they exhibit a characteristic are not solid waste when reclaimed. Since electroplating sludges are specifically listed wastes, these wastes when reclaimed (i.e., processed in a metal smelting furnace) are subject to the hazardous waste rules. In particular, the generator and transporter rules apply when the material is shipped (40 CFR Parts 262 and 263) and the reclamation facility is subject to 40 CFR Section 261.6(c). Also, EPA has proposed rules for industrial furnaces in 40 CFR Part 266, Subpart D. (See 52 FR 16982; May 6, 1987.)

The dried material you plan to market to smelters would be considered a partially-reclaimed material, because further processing is required before the metal can actually be used. If you believe the material is commodity-like after drying, you may petition the Agency for a variance. (See 40 CFR Sections 260.30(c), and 260.31(c).) Under these provisions, the EPA Regional Administrator (or, in an authorized State, the Director of the State's RCRA program) with jurisdiction over the facility producing the material may grant a variance from classification of the material as solid waste.^{1/} The factors that are relevant in granting the variance are in Section 260.31(c), and are discussed at 50 FR 655 (January 4, 1985).

In summary, the process you describe would be subject to the RCRA hazardous waste regulations if listed sludges are reclaimed. If you seek a variance for the partially-reclaimed material, you should contact the appropriate EPA Region or State agency. Finally, I suggest you modify your certificate because the material would be, as EPA defines the term, "reclaimed".

If you have further questions in this area, please continue to deal with Mr. Petruska at (202) 475-9888.

Sincerely,

Sylvia K. Lowrance, Director
Office of Solid Waste

1/ The variance is only necessary for listed sludges. As noted above, characteristic-only sludges are not solid waste when reclaimed.

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