

9441.1988(23)

JUN 6 1988

Ms. Margaret R. Tribble
Legal Department
American Cyanamid Company
One Cyanamid Plaza
Wayne, NJ 07470

Dear Ms. Tribble:

This letter is response to your March 30, and May 3, 1988 request for clarification regarding the regulatory status of used sulfuric acid. Specifically, you requested a clarification of the applicability of the RCRA Subtitle C regulations to certain recycling practices. Examples given in your letter are secondary uses as a fertilizer, a metal oxide removal agent, a scrap iron digest, an ingredient in the production of aluminum sulfate, and using the acid to acidulate phosphate rock. Below is an explanation of the regulations found in 40 CFR 261.2 and 261.4, which determine the regulatory status of a secondary material. Please keep in mind that the discussion below is only a general review of the existing regulations and preamble discussions. Each generator must make his own determination as to whether he has a solid and hazardous waste and must have adequate documentation to support any exemption claims. (See 40 CFR Sections 262.11 and 261.2 (f).)

In each of the recycling situations presented in your letter, it is necessary to determine what the material is (spent material, by-product, co-product) and how it is being recycled to determine its regulatory status. The special case of spent sulfuric acid which is recycled to make virgin sulfuric acid was explained in the January 4, 1985 Federal Register (50 FR 642). The exemption found in §261.4(a)(7) refers to the special case where spent sulfuric acid is not a solid waste unless accumulated speculatively. The Agency never intended for the regulated community to infer that because there is such an exemption, all other spent sulfuric acid is always a solid waste. Indeed, a careful reading of the regulations would lead the reader from §261.2(a) to §261.4(a) and then to §261.2(b) [if §261.4(a)(7) does not apply to the reader's situation].

Section 261.2(a) states that materials which are abandoned or which are inherently waste-like are always solid wastes. Secondary materials which are recycled must be classified according to the type of secondary material and the manner of recycling. It is impossible to make an all-inclusive statement concerning the regulatory status of used sulfuric acid; in addition, insufficient information was provided in your letters to provide a more detailed response. In some cases, used acid is a spent material; in other cases, such as the sulfonation, alkylation, and dehydration reactions described in your letter, used acid is a by-product or a co-product. The regulatory status of used acid will depend on whether the acid is a spent material, a by-product, or a co-product, and the manner in which the used acid is recycled. In general, hazardous secondary materials used as ingredients in production of new products, or as substitutes for commercial products, are not solid wastes. (See 40 CFR Section 261.2(e)(1).) Please note however, that under certain conditions, materials used in this manner are still solid and hazardous waste, e.g., when the product being produced is a fuel or a fertilizer. (See 40 CFR Section 261.2(e)(2).)

Each generator of used or spent acid should evaluate the material in light of the Federal regulations as well as any applicable State laws or regulations. If a generator needs assistance in making a determination, or wishes an official confirmation of his own determination, he should contact the appropriate EPA regional office, or in authorized States, the appropriate State regulatory agency.

Please feel free to contact Michael Petruska at (202) 475-9888 if you have further questions.

Sincerely,

Devereaux Barnes
Director, Characterization and
Assessment Division