

9444.1990(02)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 22 1990

Richard A Jamison, Jr.  
Micron Diagnostics, Inc.  
Point Breeze Business Center  
2200-C Broening Highway  
Baltimore, Maryland 21224

Dear Mr. Jamison,

This letter responds to your March 14, 1990 correspondence regarding the regulatory status of your product, Micro-Clear.

In order for a material to be defined as a hazardous waste subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), it must first be defined as a solid waste according to the requirements set forth in 40 CFR 261.2. Unused commercial chemical products or manufacturing chemical intermediates do not qualify as solid waste unless they are discarded or intended to be discarded, burned for energy recovery or used to produce a fuel (if this is not their normal manner of use), or applied to the land (if this is not their normal manner of use). If a commercial chemical product is used, reused, recycled or reclaimed in lieu of being discarded, it does not qualify as a solid waste and cannot be a hazardous waste subject to regulations under Subtitle C of RCRA.

Your letter does not indicate the final disposition of the Micro-Clear, but you do state that Micro-Clear is a commercial product. Provided this commercial product is being used for its intended purpose, it would not qualify as a solid waste and would not be subject to RCRA Subtitle C jurisdiction. However, if this product could no longer be used for its intended purpose (e.g., it is off-specification or outlives its expiration date) and is intended for disposal, it would be a solid waste and could be subject to RCRA Subtitle C jurisdiction.

A generator of solid waste is required to perform a hazardous waste determination for this solid waste pursuant to 40 CFR 262.11. This regulation requires the generator to determine if his waste meets a listing of hazardous waste in Subpart D of 40 CFR Part 261. If the waste is not listed in Subpart D of 40 CFR Part 261, he must determine whether the waste exhibits a characteristic of hazardous

waste identified in Subpart C of 40 CFR Part 261.

Assuming that a quantity of Micro-Clear was intended for disposal and that you have previously determined that it does not meet a listing of hazardous waste, the test data supplied with your letter appears to demonstrate that Micro-Clear does not exhibit any of the characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. You should be aware, however, that although your data indicates that Micro-Clear does not exhibit any of the characteristics of hazardous waste, each individual generator is responsible for evaluating his own waste and making this determination. Furthermore, the EPA recently finalized the Toxicity Characteristic rule. This rulemaking amends 40 CFR 261.24 (Characteristic of EP Toxicity) by adding an additional 25 organic constituents of concern and establishes regulatory thresholds for these constituents. Your letter indicates that a sample of Micro-Clear was evaluated for most of the constituents found in Table 1 under 40 CFR 261.24 (cadmium is not included with the metals which were found to be non-detectable). However, after the effective date of the Toxicity Characteristic regulations, generators must evaluate their solid wastes for the presence of these additional toxic constituents.

Should you have further questions regarding the regulatory status of your Micro-Clear, I encourage you to contact the appropriate Regional office or authorized State regulatory agency. The regulatory interpretations provided in this letter apply to Federal requirements. State and local regulatory agencies may have regulations that are most stringent than those at the Federal level. You may want to contact the appropriate State regulatory agency to determine what, if any, additional requirements apply.

Sincerely,

Original Document signed

Devereaux Barnes  
Director  
Characterization and  
Assessment Division