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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 16 1990

Ralph Eschborn
DuPont Recovery Management Systems
Suite 207, Webster Building
3411 Silverside Road
Wilmington, DE 19810

Dear Mr. Eschborn:

This letter is in response to your April 5, 1990 letter to Matt Straus regarding DuPont Recovery Management Systems' proposal to collect, fortify and recycle previously used fixer. In your letter you asked EPA to make a determination on the applicability of the Resource Conservation and Recovery Act (RCRA) Subtitle C requirements to the recycling process.

As I understand your proposed recycled process, photographic fixer that is used in the photographic film development process would be drawn from the working baths once its concentration of ammonium thiosulfate reaches a certain level (targeted at 175 g/l per attachments to your letter, and not to fall below 150 g/l per your letter). The used fixer solution would then be transported to your Regional Service Centers, "refortified," and then sold back to the customers for use in developing film.

The issue which is raised is whether or not the used photographic fixer solution meets the definition of a "spent material," as the RCRA regulations define the term in 40 CFR 261.1(c)(1). According to Section 261.2(c)(3), spent materials that are reclaimed are solid wastes (and, if they are also hazardous wastes, must be managed according to the RCRA hazardous waste regulations). The definition of a spent material is "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing." (The electrolytic treatment, filtration, and "fortifying" that you propose would appear to be a processing/reclamation activity.)

It appears that the used photographic fixer solution meets the definition of a spent material, even though it may still have enough ammonium thiosulfate to function effectively as a fixer. Because the

used fixer, as a result of contamination, is being removed for processing it is "spent" as far as the customer is concerned (even though, should the customer decide to do so, s/he could continue to use the fixer for its original purpose). You mention the similarities between this and the situation faced by persons reclaiming spent solvent. A similar situation exists with respect to solvent reclaimers who arrange regular pick-ups of used solvents (for example, in vapor degreasers). Although the solvent may still be useful in that its contamination level does not mandate its reclamation, when the reclaimer removes the customer's solvent, it is "spent" insofar as its potential use by the customer.

In contrast, we stated in the January 4, 1985 preamble to the regulation defining materials as solid wastes (50 Federal Register 624) that when solvents used to clean printed circuit boards are no longer pure enough for that purpose, but are still pure enough for use as metal degreasers, they are not yet wastes because the solvent can continue to be used for its solvent properties. Similarly, if you were to remove used fixer from one customer's site and sell it to another customer for use as photographic fixer, that continued use as a fixer would mean the fixer was not a waste. However, the recycling scheme you have proposed does not fit the "continued use" situation; the used fixer is being "fortified," or reclaimed. Thus the used fixer is a solid waste, and, if a hazardous waste, must be managed according to the hazardous waste regulations.

In the recycling situation you have outlined, there are reduced requirements in the federal hazardous waste program for reclaiming precious metals. (Silver is one of the precious metals that can be reclaimed under the reduced recycling regulations.) Handlers of recyclable materials from which precious metals are reclaimed are directed by 40 CFR 261.6(a)(2)(iv) to the reduced recycling regulations in 40 CFR Part 266, Subpart F. Those regulations require only that the generator, transporters, and storers notify EPA of their hazardous waste management activities, comply with the use of the manifest, and keep records to show that they are not accumulating the materials speculatively.

In addition, some of your customers may qualify for the exemption from use of the manifest found at 40 CFR 262.20(e); however, you have not provided us with information for us to make a determination whether they may qualify.

It is encouraging to learn that you are proposing a recycling strategy for hazardous wastes; EPA is investigating ways to encourage environmentally protective recycling.

Finally, the regulations described in this letter are the federal hazardous waste regulations. States and localities may have

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more stringent requirements, or requirements that are broader in scope. You will need to contact them to determine what their requirements are.

If you have further questions, please contact Becky Cuthbertson at (202) 475-9715, or John Lank at (404)347-4552.

Sincerely,

Original Document signed
"David Bussard Acting for"

Sylvia Lowrance, Director
Office of Solid Waste

cc: John Lank