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AUG 1 1990

Mr. Michael J. Farley  
McGuire, Woods, Battle and Boothe  
One James Center  
Richmond, Virginia 23219

Dear Mr. Farley,

This letter responds to your January 11, 1990 request for a regulatory determination on a system developed by your client, AMUSON, to treat wastewater and associated solid wastes generated by radiator shops. I apologize for the delay in responding to your request.

As I understand your letter, the "AMUSON" system reclaims and reuses rinsewaters and generates metal-rich residues which the shops send to AMUSON for further shipment to a metals reclaimer. Your client's system is used to consolidate and treat two types of waste streams: 1) a pressure washer rinsewater and 2) the residues generated during each of the five cleaning operations (i.e., boilout tanks, ultrasonic cleaner, pressure washer, glass bead machine, and the test tank). These residues exhibit (or are likely to exhibit) a characteristic of hazardous waste. Neither your letter, nor the enclosed process diagram, indicate that the other rinsewaters (i.e., heated waste and alkaline solution from the boilout tank) are pertinent to the AMUSON treatment tank process or its regulatory status. Likewise, there is no indication that the system may involve the presence or generation of a listed hazardous waste (e.g., a spent solvent from a prior cleaning operation) which may impact the regulatory status of the system.

As I understand your client's system, the pressure washer rinsewater is recirculated within a closed system until it needs cleaning and is then pumped directly into the treatment tank thus initiating treatment). Additionally, small amount of residues generated in the other process operations are transferred directly into the treatment tank. It would appear that neither the pressure washer rinsewater nor the process residues would be counted when determining the regulatory status

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of the hazardous waste generator (i.e., to determine whether the generator qualifies as a conditionally exempt small quantity generator). However, this is dependent upon: 1) a determination by the appropriate regulatory agency (i.e., the State agency or EPA Regional office) that the treatment tank is a "reclamation unit" and 2) that no intervening storage of the rinsewater or residue occurs prior to those materials introduction into the treatment tank (see the preamble discussions found in the April 4, 1983 Federal Register (48 FR 14489) and March 24, 1986 Federal Register (51 FR 10152), respectively).

In your letter you state that radiator shops using the AMUSON system usually qualify as conditionally exempt small quantity generators. To substantiate this claim, you explain that these generators are not required to count the wastewater from the treatment tank because it is recycled back into the cleaning process and reused. However, in the January 4, 1985 Federal Register (50 FR 634), EPA addresses the regulatory status of "reclaimed" wastewater. While the regulatory language allows for flexibility in determining whether a reclaimed waste may be considered a product (thus losing its status as a solid waste), the preamble discussion indicates that reclaimed wastewaters are not to be considered products. The bases for this approach (i.e., that wastewaters are not ordinarily considered to be commercial products and are often discharged, and that the Agency did not intend to allow facilities to exempt their wastewater treatment surface impoundments from regulation by being classified as "recycling" facilities) are not necessarily applicable in this case. Accordingly, after the wastewater is reclaimed and fit for reuse, the regenerated rinsewater would lose its status as a solid waste pursuant to 40 CFR 261.3(c)(2)(i), provided it is truly reclaimed as an effective substitute for what is typically used in radiator shop cleaning processes (subject to the State regulatory agency's determination on a site-by-site basis).

The regulatory status of the treatment tank residues which are collected in the conical tank bottom depend upon whether the residues are being legitimately recycled rather than being subjected to further treatment under the guise of recycling. As Table 1 of 40 CFR 261.2(c) states, a characteristic sludge is not a solid waste (and thus, not a hazardous waste) when reclaimed. This status applies at the point of generation

(i.e., when the sludge is removed from the treatment tank). You should note that, pursuant to 40 CFR 261.2(f), your client would bear the burden of proof that the residue is not a solid waste (e.g., documentation that the sludge contains recoverable levels of metals and is processed by an appropriate metals reclaimer).

Your interpretation of two possible regulatory exemptions which may apply to your client is essentially correct. You have correctly stated that if the radiator shop qualifies as a conditionally exempt small quantity generator, the waste is subject to the reduced requirements of 40 CFR 261.5. In addition, the treatment tank may be exempt from regulation pursuant to the 90-day accumulation tank exemption found at 40 CFR 262.34. However, you should be aware that this interpretation is derived from Federal regulations. Thus, relevant provisions and interpretations of State regulations may differ. For example, some States may not allow a 90-day exemption for the accumulation of wastes in tanks; others may allow 90 days for accumulation of wastes in tanks, but may not allow treatment in the accumulation tanks without a permit. Regulatory determinations from the appropriate State regulatory agencies and/or the appropriate EPA Regional office could differ from site to site.

In summary, your assessment of the regulatory status of your client's process is essentially correct. There are, however, a number of variables which may require a case-by-case determination from the appropriate State or regional regulatory agency. If you have any further questions or require additional clarification, you may contact Mitch Kidwell, of my staff, at (202) 475-8551.

Sincerely,

David Bussard, Director  
Characterization and  
Assessment Division