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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

September 23, 1993

Mr. Ronald B.L. Jones
Environmental Consulting
15 Hollow Road
Watertown, Connecticut 06795

Dear Mr. Jones,

Thank you for your letters dated June 1, 1991, December 30, 1991, April 2, 1992, and January 12, 1993, requesting clarification of the Resource Conservation and Recovery Act (RCRA) regulations as they pertain to the manufacture and use of waste-derived fertilizer. I apologize for the long delay in responding to your requests.

Your letters reference a scenario described in the EPA guidance document RCRA Regulation of Recycled Hazardous Waste, in which a characteristically hazardous material (flue dust) is used to produce a commercial fertilizer. You correctly assert that, in this scenario, the flue dust is a sludge used in a manner constituting disposal, and under 40 CFR 261.2 is classified as a solid waste. You then ask whether the classification of the flue dust would be the same if:

- The resulting fertilizer does not exhibit any characteristics of hazardous waste;
- The flue dust is reacted to generate a different compound in the process of producing a fertilizer; and
- Payment to the generator for flue dust exceeds the cost of delivery.

The answer in each of these cases is that the classification remains the same. The solid waste determination for a recycled material is made at the point the waste is generated and takes into

account the entire waste recycling process. The determination is based on the type of material (in this case sludge) and the type of recycling activity (in this case use constituting disposal). None of the aforementioned factors would change either the type of material or the type of recycling activity, and therefore do not change the classification of flue dust as a solid waste.

While our current policy is clear in its application to the scenarios you present, your letters do raise some valid concerns regarding the regulation of waste-derived fertilizers. We agree that a reevaluation of our existing waste-derived products policy may be warranted. As a first step in this process, the Office of Solid Waste (OSW) is currently conducting a broad review of the system by which hazardous waste recycling is regulated under RCRA. The Definition of Solid Waste Task Force was established to evaluate many of the issues surrounding the definition of solid waste, hazardous waste recycling, and waste-derived products. The Task Force will be submitting their recommendations to me later this year on how to improve the regulatory and/or statutory framework to encourage the safe recycling of hazardous waste. For more information on the Task Force, please contact Mr. Jim Berlow at (202) 260-8104.

In the meantime, please note that EPA Regional offices and States authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some States have programs more stringent than the Federal hazardous waste program. If you have a facility-specific situation, you may contact the appropriate Region or State for a determination on your specific situation. Your EPA headquarters contact on this issue of the RCRA regulations is Stephen Bergman who can be contacted at (202) 260 8551.

Sincerely,
Jeffery D. Denit
Acting Director
Office of Solid Waste