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

March 30, 1994

Mr. T. L. Nebrich, Jr.
Technical Director
Waste Technology Services, Inc.
640 Park Place
Niagara Falls, New York 14301

Dear Mr. Nebrich:

Thank you for your letter of March 3, 1994, requesting clarification of the RCRA regulations as they apply to free flowing mercury which is distilled and then sold as an ingredient in an industrial process.

The determination of whether a material is regulated as a solid waste under RCRA is made at the point of generation and is based in part on the manner in which the material is generated (i.e., whether it is generated as a by-product, a spent material, etc.). Unfortunately, your letter did not provide enough information on how the free flowing mercury is generated to make a specific determination regarding its regulatory status under RCRA. As a point of clarification, however, the fact that the free flowing mercury is distilled prior to sale as an ingredient does not, in and of itself, mean that the mercury is solid waste and not a commercial chemical product under RCRA. In particular, we have stated that metals that are suitable for direct use, or that only have to be refined to be useable are products, not wastes. 50 FR at 634 (January 4, 1985). In addition, I have enclosed a letter that specifically addresses the regulatory status of mercury with a high degree of purity, but must still undergo further refinement for a particular end use.

The "ingredient" exclusion that you refer to applies to materials that are not solid wastes when recycled. Under 40 CFR 261.3(e)(1)(i), materials are not solid wastes when they can be shown to be recycled by being used or reused as ingredients in an

industrial process, provided they are not being reclaimed. You ask whether a waste, which needs to be distilled prior to use as an ingredient, is ineligible for this exclusion and therefore must be identified as a hazardous waste and manifested. In general, a waste that undergoes reclamation (including distillation) prior to being used as an ingredient would not qualify for exclusion from RCRA regulation under §261.3(e)(1)(i). However, the reclaimed mercury that results from distillation may then qualify for the exclusion, provided that it can be used without further processing or with only refining. As previously noted, however, we cannot give you a specific answer to this question as it applies to the free flowing mercury referred to in your letter without further information on how the mercury is generated.

Finally, you ask how the RCRA regulations apply to free flowing mercury which is spent. Spent materials going for reclamation are regulated as solid wastes under RCRA.

It is important to 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. For the type of case-specific regulatory determination you are seeking, you should contact the appropriate state agency or EPA regional office.

If you have further general questions on this or other RCRA related issues, you may call Mitch Kidwell at (202) 260-8551 or Becky Daiss at (202) 260-8718.

Sincerely,
David Bussard, Director
Characteristic and Assessment Division

Enclosure