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

July 20, 1994

Ms. Susan Ferguson
Director, Industrial and
Hazardous Waste Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

Dear Ms. Ferguson:

Thank you for your letter dated April 7, 1994, requesting clarification of the exclusion from the Resource Conservation and Recovery Act (RCRA) regulation for secondary materials that are used or reused directly as ingredients in an industrial process to make a product (40 CFR 261.2(e)(1)(i)). Specifically you asked for an interpretation of this exclusion as it applies to a process employed by Rhone-Poulenc in which a secondary material that has a high heating value and is high in sulfur content is being burned in a sulfuric acid regeneration furnace.

EPA addressed the question of how the burning of high heating value secondary materials is regulated in its February 21, 1991 Final Rule on Burning of Hazardous Wastes in Boilers and Industrial Furnaces (BIF) (56 FR 7134). In that rule, the Agency makes a distinction between the excluded activity of burning hazardous waste solely as an ingredient (§261.2(e)(1)(i)), and the regulated activity of burning hazardous waste for energy recovery. Specifically, as provided under §266.103(5)(ii)(B) of the interim status standards for BIFs, a hazardous waste is burned for a purpose other than solely as an ingredient if the hazardous waste has a heating value of 5,000 Btu/lb or more, as generated or as-fired. Under this provision, hazardous waste with a 5,000 Btu/lb or greater heating value is considered to be burned as fuel (i.e., burning for energy recovery).

EPA also relied on this distinction in crafting a conditional

exemption from RCRA regulation for smelting, melting, and refining furnaces that burn waste to recover metals. Under 40 CFR 266.100(c), burning hazardous waste in a BIF for metals recovery is exempt only when the device burns hazardous waste exclusively for metal recovery and not partially for destruction or energy recovery as well. Again, to clarify what constitutes energy recovery, the rule provides that a waste with a heating value of 5,000 Btu/lb or more (either as generated or as fired) is burned (at least partially) as a fuel.

The regulatory distinction between burning as an ingredient and for energy recovery provided in the BIF rule is applicable to the situation you describe in which a high sulfur content, high heating value secondary material is fed into a sulfuric acid regeneration furnace where the sulfur in the stream is converted to sulfuric acid. Consequently, under existing regulations, even though sulfur is being used to produce sulfuric acid in this situation, EPA would consider this practice to be a type of burning for energy recovery rather than use of an ingredient to produce a product because of the high Btu/lb value of the secondary material (i.e., 12,000-16,000 Btu/lb.). As provided under §261.2(e)(2)(ii), secondary materials that are burned for energy recovery are solid wastes even if they are recycled by being used or reused as an ingredient in an industrial process to make a product. In other words, if the materials are being burned for energy recovery, the §261.2(e)(1)(i) "use as an ingredient" exclusion does not apply.

In its letter to the Texas Natural Resource Conservation Commission, Rhone-Poulenc argues that the secondary materials are covered under §261.4(a)(7) which exempts spent sulfuric acid that is used to produce virgin sulfuric acid. In this case, however, the §261.4(a)(7) exclusion does not apply because the secondary materials in question are not spent sulfuric acid.

Having provided you with a determination of how existing RCRA regulations would apply in the situation you describe, you should note that EPA is in the process of developing of a comprehensive hazardous waste combustion strategy. A key component of the combustion strategy is the review and evaluation of the current regulations for incinerators and BIFs burning hazardous waste in order to make them more readily implementable, clarify ambiguities, and address concerns that have arisen since the regulations became effective. The combustion strategy staff would be happy to meet with you or representatives of Rhone Poulenc to discuss concerns

they have raised about the Agency's burning for energy recovery policy as well as any ideas they have for revising the regulations to address those concerns. Please contact Bob Holloway at (703) 308-8461 if you wish to revisit this matter in the context of the combustion strategy effort.

If you have additional questions regarding application of the existing RCRA regulations as they pertain to this case or in general, please contact Mitch Kidwell at (202) 260-8771 or Becky Daiss at (202) 260-8718.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste