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

November 9, 1994

Prabhakar Kulkarni  
Quantum Tech, L.L.C.  
8660 Scranton, #B  
Houston, Texas 77075

Dear Mr. Kulkarni,

This letter responds to your request for a determination regarding the regulatory status of your waste reclamation system. The determination you are seeking is a site-specific determination that must be made by the EPA Region VI office in Dallas, Texas, or the Texas Natural Resource Conservation Commission. However, I can provide some clarification on the hazardous waste program as it relates to the recycling of hazardous wastes.

The generator of a hazardous secondary material is responsible for determining whether the material is a solid waste. This determination is dependent on the type of material (e.g., spent material, listed waste or characteristic by product/sludge) and how it is to be managed (e.g., treatment, or recycling through producing a product used in a manner constituting disposal). If the hazardous secondary material is used as an ingredient to produce a product other than a product that is burned for energy recovery or used in a manner constituting disposal (and provided the secondary material is not speculatively accumulated), the secondary material would be excluded from the definition of solid waste (40 CFR 261.2(e)(1)) at the point of generation, and thus, the management of the secondary material (including the transportation, storage and processing) would not be subject to RCRA regulations. If, however, the hazardous secondary material is used to produce a product burned for energy recovery or used in a manner constituting disposal (or is accumulated speculatively), then the secondary material meets the definition of solid/hazardous waste and is subject to regulation under RCRA (as are the products produced from the waste, assuming they meet the definition of a hazardous waste) (see 40 CFR 261.2(e)(2) and 261.3(c)(2)(i)).

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While the hazardous wastes are subject to regulation from the point of generation through recycling, there are special requirements for the products derived from (or produced) using the hazardous wastes as ingredients. When such products are used in a manner constituting disposal, the waste-derived products are subject to 40 CFR Part 266 Subpart C. When such products are burned for energy recovery, the burning of the waste-derived products (i.e., hazardous waste fuel) are subject to 40 CFR Part 266 Subpart H. The language you mentioned in your phone conversation with Mr. Mike Petruska, of my staff, pertaining to a material being "inseparable by physical means" relates only to those waste-derived products used in a manner constituting disposal (40 CFR 266.20), rather than to hazardous waste fuels.

If the hazardous secondary materials are listed hazardous wastes, and the recycling process is determined to be reclamation, then the secondary materials meet the definition of solid/hazardous waste and are subject to RCRA regulation. Likewise, if the secondary materials are spent materials being reclaimed, the secondary materials are subject to RCRA regulation (see Table I at 40 CFR 261.2).

The determination of whether the hazardous secondary materials processed in your recycling process are more appropriately defined as "reclaimed" or "used as an ingredient" is a case-specific determination, more appropriately made by the State regulatory agency or the EPA Regional office. Also, the State regulatory program may have regulations that differ from the Federal program, so you should contact them for a more definitive determination.

Thank you for your interest in the regulations applicable to the recycling of hazardous wastes. If you should have specific questions regarding the regulatory status of the secondary materials you wish to process, or the recycling process itself, you should contact the appropriate State regulatory agency, or the EPA Regional office. If you have general questions regarding the hazardous waste recycling regulations, you may contact Mitch Kidwell, of my staff, at (202) 260-8551.

Sincerely,

David Bussar  
Director  
Characterization and Assessment Division