

PPC 9441.1996(05)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 19, 1996

Mr. Norman H. Nosenchuck Director
Division of Solid and Hazardous Materials
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7250

Dear Mr. Nosenchuck:

Thank you for your letter of May 7, 1996 concerning the jurisdictional status under the Resource Conservation and Recovery Act (RCRA) of certain metal-rich sludges. You inquired whether the "use-reuse" exclusion of 40 CFR 261.2(e)(1)(I) would apply to wastewater treatment sludges (F006) sent to primary smelters for copper extraction by manufacturers of printed wire boards (if certain conditions were met). You also inquired whether EPA would consider applying the "use-reuse" exclusion on a pilot basis, in accordance with a Project XL proposal.

In response to your first question, it appears that the sludges in question are solid wastes (and thus not eligible for the "use-reuse" exclusion) because reclamation is occurring. EPA has stated that a material will not satisfy the use-reuse condition if distinct components of the materials are recovered as separate end products, as when metals are recovered from metal-containing secondary materials (see 40 CFR 261.1(c)(5)(I)).

However, based on the facts you have described, it is possible that the sludges are partially reclaimed materials needing further reclamation. If so, they may be eligible for a variance from the definition of solid waste for such materials under 40 CFR 260.30(c). This variance may be granted by an authorized State and relies on several enumerated factors to be weighed by the State.

In reply to your second question, if the company involved is interested in participating in Project XL, we would carefully

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consider any application submitted. The "use-reuse" conditions you mentioned in your letter (designed to demonstrate that the partially reclaimed material is commodity-like and will be managed as a commodity) are highly relevant factors in deciding whether to proceed with a Project XL.

As you are aware, EPA has also undertaken two initiatives which will encourage environmentally sound recycling. The first is a Common Sense Initiative (CSI) which relies on an industry-by-industry rather than a pollutant-by-pollutant approach to environmental protection. One of the six sectors included in the CSI is metal finishing. We are currently beginning a study to gather and evaluate information about the recycling of F006, which we hope will lead to recommendations on both recycling and pollution prevention.

In addition, the Agency is planning to modify the definition of solid waste to make it simpler and clearer and to remove disincentives to environmentally sound recycling. The proposed rule will exclude from RCRA jurisdiction those forms of recycling that resemble manufacturing more than waste management. We also expect that those recyclable materials which remain under RCRA jurisdiction would be subject to simpler management standards. The proposed changes to the definition should be published in early 1997.

I hope this letter addresses your concerns. If you have any questions, please have your staff contact Marilyn Goode at 703-308-8800.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste