

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

MAY 23 1997

Mr. Don R. Clay
Don Clay Associates
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Clay,

Thank you for your October 17, 1996 letter to Mike Shapiro concerning the regulatory status of sulfur-containing secondary materials with a heating value greater than 5,000 Btu/lb that are burned in a sulfuric acid furnace to produce virgin sulfuric acid. Based upon your letter and subsequent conversations that we have had with your staff, I think it is necessary for me to clarify a couple of points that Mike Shapiro, then the Director of the Office of Solid Waste, made in a July 20, 1994 letter to Susan Ferguson of the Texas Natural Resource Conservation Commission (TNRCC), which you referenced in your letter.

The July 20, 1994 letter referenced language under 40 CFR 266.103(a)(5)(ii)(B) which states that 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. As we stated in the July 20 letter, EPA's interpretation of the plain language of 40 CFR 266.103(a)(5)(ii)(B) is that 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).

Although the regulations clearly use a heating value of 5000 Btu/lb to differentiate between a hazardous waste being burned as an ingredient (or for metals recovery) and a hazardous waste being burned for energy recovery, there is currently no regulatory provision that uses a heating value of 5000 Btu/lb to determine whether a secondary material meets the definition of solid waste (e.g., whether the material is a characteristic by-product being burned for energy recovery). However, there has historically been a strong presumption that the burning of secondary materials with a heating value of 5000 Btu or greater constitutes burning for energy recovery and, in fact, we are considering codifying this in the upcoming definition of solid waste rulemaking.

In closing, I would like to address another point that you raised in your letter concerning the exclusion for spent sulfuric acid used to produce virgin sulfuric acid found

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at 40 CFR 261.4(a)(7). This exclusion applies only to spent sulfuric acid and does not include other sulfur-containing materials.

Thank you for your letter and the time that you and your staff have spent discussing this issue with us. If you have any additional questions, please contact either Michele Anders at 703/308-8850 or Stephen Bergman at 703/308-7262.

Sincerely,

Elizabeth Cotsworth, Acting Director
Office of Solid Waste