

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

JUNE 3, 1997

Mr. Mitchell L. Press  
DuPont Engineering  
DuPont-Chamber Works ("B")  
EMSS Building  
Route 130  
Deepwater, NJ 08023

Dear Mr. Press:

This is in response to your June 20, 1996 letter to Mike Shapiro regarding the regulatory status of the units involved in the on-site recovery of process solvents from 1) an agricultural chemical manufacturing process, and 2) an automotive paint manufacturing process. According to the descriptions provided in your letter, you believe the two process solvent recovery systems meet the definition of a closed-loop system as described in 40 CFR 261.4(a)(8). The issue in the letter on which you requested clarification was whether the recovered solvents are still exempt if less than 100% of the product that is recovered is returned to the original process. In the DuPont scenario, a small percentage, under certain circumstances, cannot be returned to the original process for chemical reasons and would instead be sold as commercial-grade product.

According to your description of the agricultural chemical manufacturing process, all of the ethyl acetate and 80% of the xylene recovered will be returned to the original production process. The recovery system ends up with approximately 20% more xylene than the manufacturing process can use and this will be sold as commercial-grade product. In regard to the automotive paint manufacturing process, we understand that, at times, due to process chemistry and solvent mass balance, adjustments will need to be made to keep acetone at a certain percentage in the product, which may result in excess recovered solvent that will also be sold as commercial grade solvent.

The exclusion under §261.4(a)(8) states that secondary materials that are reclaimed and returned to the original process or processes in which they are generated where they are reused in the production process are not solid wastes provided:

- (i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
- (ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
- (iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
- (iv) The reclaimed material is not used to produce a fuel or used to produce products that are used in a manner constituting disposal.

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In the preamble to the rule promulgating the closed-loop exclusion, EPA clarified that a requirement of this exclusion is that the reclaimed materials be returned for reuse in the production process (51 FR 25442; July 14, 1986). The Agency goes on to explain in the preamble that the term production process is intended to include those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment. Because some of the secondary materials cannot be returned to the production process, the two situations you describe in your letter would not qualify for the closed-loop exclusion. As you are aware, however, under §261.6(c)(1), the recycling process (i.e., your solvent recovery process) itself is exempt from regulation except as provided in §261.6(d)(1). Furthermore, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes under §261.3(c)(2), unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal. Therefore, once recovered, your two commercial-grade products would no longer be considered solid wastes under RCRA as long as they are used beneficially.

In addition, please note that authorized states have their own regulations and policies that may be more stringent than federal regulations and policies. If you have any questions or require additional information, please call Mary Beth Clary of my staff at (703) 308-1532.

Sincerely,

Elizabeth A Cotsworth, Acting Director  
Office Solid Waste