

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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Mr. J. Thomas Wolfe  
Institute of Scrap Recycling Industries, Inc.  
1325 G Street, N.W., Suite 1000  
Washington, D.C. 20005-3104

Dear Mr. Wolfe:

Thank you for your June 10, 1997 letter to Administrator Browner in which your association, along with several other associations, requested the Agency to reconsider a regional Environmental Protection Agency ("EPA") policy interpretation regarding the regulatory status of metal-bearing secondary materials that are reclaimed for use in commercial fertilizers. Specifically, you raised concerns about the regulatory status of characteristic byproducts and sludges that are reclaimed and then used as an ingredient in a product that is "used in a manner constituting disposal."

While recycling is clearly one of the goals of the Resource Conservation and Recovery Act ("RCRA"), the Agency must ensure that recycling is conducted in a manner that is environmentally sound and protective of human health and the environment. The Agency believes that one of the significant protections provided under RCRA is to safeguard against placement of untreated hazardous wastes on the land. For this reason the Agency has developed more rigorous protections for hazardous secondary materials that are reclaimed for use in products that are placed on the land than for hazardous secondary materials that are reclaimed for use in products that are not placed on the land.

In your letter, you indicated that if metal-bearing byproducts and sludges are reclaimed, they are not solid wastes and, therefore, should be allowed to be used in fertilizer as a necessary soil nutrient without triggering hazardous waste regulatory requirements. Although the federal regulations provide, generally, that characteristic byproducts and sludges that are reclaimed are not solid wastes, the regulations expressly override that result when these materials are used for the following purposes: 1) used in a manner constituting disposal; 2) used to produce products that are applied to

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the land; 3) burned for energy recovery, used to produce a fuel, or contained in a fuel; 4) accumulated speculatively; or 5) considered inherently waste like. 40 C.F.R. §261.2(e)(2). Accordingly, metal-bearing characteristic byproducts and sludges that are reclaimed, but whose waste or reclaimed materials are then used or reused in a product (such as fertilizer) that is to be placed on the land (i.e., used in a manner constituting disposal) are solid wastes subject to the applicable Subtitle C regulatory requirements. The Agency has consistently interpreted this provision to apply without regard to whether the byproduct or sludge as a whole (or some portion of it that is recovered) is used as a product that is placed on the ground or used to produce a product that is placed on the ground.

Please note that the reclamation process itself is not regulated. A hazardous waste manifest is, however, required if some portion or all of the hazardous secondary material is to be used in a manner constituting disposal. The end-product itself (i.e., the fertilizer or other product to be placed on the land) must meet specified treatment standards before being placed on the land, unless specifically exempted (e.g., K061 waste derived products). The waste-derived product that meets the applicable treatment standards would not be subject to any manifest requirements. In short, the federal regulations do not prohibit the use of metal-bearing secondary materials in fertilizers, but place limitations and safeguards on such beneficial recycling.

The interpretation that you are seeking would require a regulatory change, and the Agency is not prepared, at this time, to commit resources to a separate rulemaking on this issue. We are, however, considering this portion of the rules as we consider significant changes to the definition of solid waste as a whole. The Agency is also monitoring the recent concerns and interests in waste-derived fertilizers and use constituting disposal and is considering whether any further government actions are needed.

In conclusion, I believe that the interpretation provided by Region VII is appropriate. To hold otherwise could lead to results that were not contemplated by the federal regulations and that may not be protective of human health and the environment. If an initial reclamation step that did not result in very high purity, clearly valuable, metal were to trump the subsequent use in a manner constituting disposal provision, then the RCRA regulatory safeguards for the placement of hazardous waste-derived products on the ground

could be avoided and inappropriate toxics might be released. Unfortunately it has not been possible in a national regulatory framework to establish a cut-off level to define "very high purity" because that would vary so dramatically among metals.

The interpretation provided above is based on federal regulations. Individual states may have more stringent regulatory requirements for such metal-bearing secondary materials. If you would like case-specific determinations on the status of metal-bearing secondary materials being recycled, please contact the appropriate state regulatory agency or EPA Regional Office.

Thank you for your interest in recycling issues, If you have any questions or would like additional information, please contact Jeff Hannapel in cur Office of Solid Waste at (703) 308-8826.

Sincerely,

Timothy Fields, Jr.  
Acting Assistant Administrator

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The Administrator has asked us to review your concerns. We will be responding to you within 30 days.

Thank you for your interest in this important matter. If you have any questions regarding this matter, please contact Jeff Hannapel in our Office of Solid Waste at (703) 308-8826.

Sincerely,

Elizabeth Cotsworth  
Acting Director  
Office of Solid Waste