

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Paul G. Wallach
Hale and Dorr, LLP
1455 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mr. Wallach:

This is in response to our meeting on June 12, 1997 and your July 9 and July 18, 1997 letters regarding the regulatory status of Pfizer's used Raney nickel catalyst. The questions at issue are first, whether or not this material is a solid waste, and second, if it is a solid waste, whether or not it is a hazardous waste.

Based on all the information presented to us on whether or not the used catalyst is a solid waste, we believe the interpretation by U.S. EPA, Region I, that the used catalyst is a solid waste being reclaimed, is consistent with federal regulations.

40 CFR 261.1(c)(4) states "A material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents." [Emphasis added.]

The discussion of processes that recover distinct components as separate endproducts is not the definition of reclamation, but is simply one clear (and not comprehensive) example of what is not encompassed in the definition of "used/reused" in 261.1(c)(5). While not relying on the following, we also note that the facility receiving the spent catalyst has stated in writing to State regulatory authorities that its facility is a "reclamation" facility. We see no need to further clarify the recycling provisions as outlined in 40 CFR 261 in this instance as they apply to reclamation of metals values from spent materials. Such clarification is not necessary for the Region to make a determination with respect to this specific spent catalyst and the facility to which it is being sent for metals recovery. In addition, we have not evaluated the metals recovery operation against the legitimacy criteria as to whether this is legitimate recycling or treatment. Assuming it is legitimate recycling, we agree with the Region's decision that the spent Raney nickel catalyst is a spent material being reclaimed and therefore, a solid waste.

With regard to the hazardous waste determination, it is the generator's obligation to make a determination. For the hazardous characteristics, this determination is made by evaluating the waste using a required test or by comparing the properties of the

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waste with the narrative standards. The narrative standard is what is enforced if there is no applicable test that is required by the regulations. For the characteristics of ignitability of solids and reactivity, there is no test method specified as to the operational definition of the characteristic, and we have therefore given reasonable deference to the operational experience of the waste generator or facility. However, we agree with the Region that this is not a blanket shield from consideration of information or test data in the case where there is reason to question the generator's RCRA determination. In fact, in this case, we believe the Region has a reasonable position in that the manufacturers of the catalyst routinely inform users of the potential hazards of the catalyst, that they often advise users to treat the spent catalyst to remove the potential hazard, and that Pfizer's own material safety data sheet (MSDS) indicated that Pfizer considered the material to pose a potential hazard. Given these circumstances, I believe it is totally appropriate for the Region to obtain and consider test information that illustrates the properties of the waste along with other information in determining whether or not this material meets one or more of the narrative standards of the hazardous characteristics.

We will continue to provide technical assistance to the Region at their request. In addition, we will continue to consider the desirability of national guidance or rulemaking regarding the definition of solid waste, and/or the RCRA characteristics, and weigh those against competing priorities.

Sincerely,

David Bussard, Director
Hazardous Waste Identification Division

cc: Andrea Simpson, Region 1
Cynthia Huber, Department of Justice