

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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Mr. David J. Lennett  
Law Office of David J. Lennett  
P.O. Box 71, Dermis Hill Road  
Litchfield, ME 04350

Dear Mr. Lennett:

Thank you for your letter of December 4, 1997 regarding the regulation of precious metal recovery under the Resource Conservation and Recovery Act (RCRA) (40 CFR 266.70). In your letter you ask whether a generator paying \$1,000 per ton in recycling fees to a metal reclaimer can properly claim that the waste contains "economically significant amounts" of precious metal in order to qualify for exclusions associated with precious metal recovery. 40 CFR Part 266 Subpart F (266.70) applies to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, irridium, osmium, rhodium, ruthenium, or any combination of these.

EPA's position has been that when a recyclable waste is being processed to legitimately recover precious metals it is within the Subpart F applicability. In the 50 FR 648-649 (January 4, 1985) EPA indicated some of the indicia of legitimate precious metal recovery operations. These include presence of economically significant amounts of precious metals, efficient recovery operations, no land disposal of wastes destined for recovery, and payment by the reclaimer to the waste's generator.

Industry members indicate further that materials destined for precious metal reclamation are normally batch segregated into distinct and identified batches of like material, that generators and recovery facilities normally enter into written contracts before materials are transferred specifying compensation to the generator and when transfer is to occur, and that true precious metal recovery is characterized by net financial return to the generator (i.e. a price sufficient to cover all charges for transport, storage, and processing). Conversely, the absence of one or more of the features mentioned above, amounts of precious metals too low to be economically recoverable, or payment from the generator to a reclaimer to accept wastes could serve as potential indications of recycling operations that may not be eligible for the 40 CFR 266.70 exemption, and thus would be subject to full Subtitle C requirements (56 FR 42504, 42509 August 27, 1991).

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Furthermore, under 261.2(f), persons ostensibly engaged in precious metal reclamation of hazardous wastes have the burden of proving (normally through recordkeeping plus presence of appropriate recovery equipment) that they are engaged in legitimate recovery activities.

It is important to note that EPA regional offices and states authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some states have programs more stringent than the Federal solid and hazardous waste programs. For the type of case-specific regulatory determination you are seeking, you should contact the appropriate state agency or EPA regional office.

I hope you find this information helpful. Thank you for your interest in the solid and hazardous waste regulations. If you need further information, you may contact Javier Garcia of my staff at (703) 308-2628.

Sincerely,

Elizabeth A. Cotsworth  
Acting Director, Office of Solid Waste

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December 4, 1997

Elizabeth Cotsworth, Acting Director  
Office of Solid Waste  
EPA  
401 M Street, SW  
Washington, DC 20460

Re: Request for Regulatory Interpretation of 40 CFR 266.70

Dear Ms. Cotsworth:

The Environmental Defense Fund (EDF) and Natural Resources Defense Council (NRDC) hereby request that EPA determine whether a generator paying \$1,000/ton or a comparable amount in "recycling fees" to a metal reclaimer can properly claim that the gold or other precious metal content of the waste is present and recoverable in "economically significant amounts" to qualify for the much less stringent RCRA rules applicable to precious metal recovery activities pursuant to 40 CFR 266.70(a). Under the rules governing precious metal recovery activities, generators are subject to notification and manifest requirements only, thereby creating a substantial incentive to stretch the application of these rules.

Our reason for seeking this interpretation is far from theoretical. In the record supporting the recently proposed Molex solid waste variance for newly generated sludge at the facility, there is information regarding how the previous sludge was managed at the facility. This information indicates Molex invoked the precious metal recovery rules while paying 50 cents per pound to ship the sludge offsite to recover the apparently small amount of gold in the waste.

While the old sludge is no longer generated at that facility, other generators may be making similar claims. Moreover, in my conversations with David Doyle of EPA Region VII, he indicated Molex stated it had sought a regulatory interpretation from the Agency and the State of Nebraska as to the propriety of the claim, and ultimately decided to proceed when the company could not obtain a definitive answer from either regulatory agency on this matter. The lack of certainty regarding the scope of the precious metal recovery rules should not continue, hence the filing of this request.

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