

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
JUL 15 1998**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Norman H. Nosenchuck, P.E.
Director
Division of Solid & Hazardous Materials
50 Wolf Road
Albany, NY 12233-7250

Dear Mr. Nosenchuck:

Thank you for your letter of December 3, 1997 seeking guidance on the scope of the exclusion from the definition of solid waste under the Resource Conservation and Recovery Act (RCRA) for characteristic by-products being reclaimed (40 CFR 261.2(c)). In your letter you ask whether a characteristic by-product destined for reclamation is disqualified from an otherwise applicable 40 CFR 261.2(c) "Table 1" exclusion if placed/stored in "waste piles" prior to reclamation in other than containment buildings.

The exclusion, found in 40 CFR 261.2(c)(3), states that a characteristic by-product (one that is hazardous only because it exhibits a hazardous characteristic) which is recycled by reclamation is not a solid waste. Therefore, under the Federal regulations, a characteristic by-product being reclaimed would not be subject to the RCRA hazardous waste regulations, including the prohibition on land placement.

In your letter, you cite preamble language (59 FR at 48015) promulgating a change to the 40 CFR 261.2(e)(1)(iii) exclusion to the definition of solid waste for "closed-loop" recycling and its applicability to this issue. The preamble discusses the condition that secondary materials be managed in a protective manner such that there is no placement on-the land in order to maintain the exclusion of the material from solid waste regulation (40 CFR 261.2(e)(1)(iii)) and that this condition is warranted to ensure that secondary materials that would otherwise be listed hazardous wastes, e.g., K069, would not begin to be managed in an unprotective manner. This condition, however, applies specifically to the "closed-loop" exclusion. It does not apply generally to the 40 CFR 261.2 (c) "Table 1" exclusion.

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,

RO 14268

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste