

RCRA/SUPERFUND HOTLINE MONTHLY REPORT  
June 1999

1. Spent Sulfuric Acid Exclusion and Use Constituting Disposal

A facility uses spent sulfuric acid as a feedstock in an industrial furnace to produce virgin sulfuric acid. The facility subsequently incorporates the virgin sulfuric acid into a fertilizer that will be placed on the land. Spent sulfuric acid used to produce virgin sulfuric acid is excluded from the definition of solid waste, provided no speculative accumulation occurs (40 CFR Section 261.4(a)(7)). However, secondary materials that are recycled by being placed on the land in a manner constituting disposal are solid wastes (Section 261.2(c)(1)). Is the spent sulfuric acid considered a solid waste if the facility uses the resultant virgin sulfuric acid in a manner constituting disposal?

Spent sulfuric acid used to produce virgin sulfuric acid per Section 261.4(a)(7) is not a solid waste, regardless of how the facility subsequently utilizes the virgin sulfuric acid. A solid waste is any discarded material which is not excluded under Section 261.4(a) (Section 261.2(a)(1)). Thus, spent sulfuric acid is not subject to RCRA jurisdiction once it qualifies for the Section 261.4(a)(7) exclusion. Therefore, EPA does not consider the virgin sulfuric acid incorporated into a fertilizer as waste-derived, and does not regulate the use of the virgin acid on the land under Section 261.2(c)(1). Conversely, if the facility recycles, in a manner constituting disposal, a material that EPA has not specifically excluded from the definition of solid waste in Section 261.4(a), the facility may need to manage it as a hazardous waste. For instance, characteristic sludges that are reclaimed are generally not considered solid wastes (Section 261.2(c)(3)). However, a facility that first reclaims a characteristic sludge and then places it on the land must consider the entire recycling process, not just the first step in the process, and must classify the sludge as a solid waste, because the product was ultimately recycled in a manner constituting disposal (Section 261.2(c)(1)). The fertilizer product produced from the characteristic sludge would be subject to regulation under Part 266, Subpart C, including the requirement to meet land disposal restrictions prior to placement on the land.