



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 12 2000

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Mark Simonich, Director
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Mr. Simonich:

I am writing to revise an opinion I expressed in my letter to you dated May 26, 2000, concerning sulfuric acid generated at an acid plant at the primary smelter operated by Asarco in Helena, Montana. In that letter, I stated that the Office of Solid Waste considered this sulfuric acid, which is generated at the acid plant attached to the sintering furnace at this smelter, to be a sludge as defined at 40 CFR 260.10.

I have been made aware that the conclusion that this acid is a sludge is in direct conflict with a statement in the preamble to the January 4, 1985 final rule concerning the regulatory definition of "solid waste." In that preamble EPA identified sulfuric acid from smelters' metallurgical acid plants as an example of a co-product, rather than a waste (see 50 Federal Register 625). (Presumably, the examples provided in the preamble were based on the belief that they were legitimate co-products.) Consequently, I am retracting the statement made in my letter of May 26, 2000, describing such sulfuric acid as a sludge. I apologize for overlooking this preamble discussion.

OSW remains concerned that, according to the description in your original letter, the sulfuric acid you are addressing contains levels of lead, selenium, and mercury which can exceed the toxicity characteristic. The information you provided also indicates that there may be other metals at concentrations of concern. We are also concerned that, according to your letter, the acid may be extensively used as a pesticide (potato defoliant) and as a component in fertilizer manufacturing. If EPA were to reconsider the classification of this material in a future rulemaking, we might conclude that this material was a solid waste subject to Subtitle C regulation.

Of course, materials that are not solid wastes for the Subtitle C regulatory program can still be solid wastes under other provisions of RCRA. Sulfuric acid from air pollution control devices with the above-noted heavy metal concentrations, for example, may be a waste for the purposes of RCRA section 7003, which authorizes actions to abate imminent and substantial endangerments to human health or the environment.

If you have questions, please feel free to contact Ingrid Rosencrantz at 703-605-0709 or Marilyn Goode at 703-308-8800, of my staff.

Sincerely,



Elizabeth Cotsworth, Director
Office of Solid Waste

cc: Wanda C. Taunton, EPA Region VIII
John Wardell, EPA Region VIII Montana Office