

December 21, 1993

Chester W. Matthews
Director, Safety, Health
and Environmental Protection
Bath Iron Works
700 Washington Street
Bath, ME 04530

Dear Mr. Matthews:

In response to your November 16, 1993 letter concerning my telephone conversation with Bath Iron Works personnel, I'd like to provide clarification on the issues you raised and on the BIW paint use/reuse issue in general.

Chapter 40 CFR, Section 261.2 provides the definition of solid waste and states,

"A solid waste is any discarded material that is not excluded by Section 261.4(a) or that is not excluded by variance..."

However, Section 261.2(e) explains that materials that are not solid waste when recycled include those that can be shown to be recycled by being used or reused as "effective substitutes for commercial products." Thus you need only document that there is a known market or disposition for the material (see Section 261.2(f)) to avoid its classification as solid waste and therefore a subject of RCRA Subtitle C regulation. This applies to materials that are not accumulated speculatively for recycling at some point in the future (see Section 261.1(c)).

In your letter you indicate correctly that the owner of a material must determine whether it is a solid waste as defined in 40 CFR, Section 261.2. You should base your determination on documentation from the paint's manufacturer indicating its effective life. You should also refer to the paint as a material, versus a "hazardous" material which is unnecessarily cautious.

Federal regulations offer no definition of the terms "intended use" or "original intended use". I offered my interpretation of these terms based on their intuitive meaning when I spoke with Mr. Arndt and Mr. Lewis. I understand through speaking with Denise Lord of the Maine Waste Management Agency that the state

initially offered a definition of use and reuse that are more strict than federal regulations. Since it is within the state's authority to do this, you should defer to the state's definition of these terms. If the State of Maine determines that the Military Specification date is the date at which the paint becomes a hazardous waste, then BIW will need to petition the state for a variance from its regulations.

I apologize for the delay in getting back to you on this issue; I got supporting information from other staff here which took some time. If you require additional clarification or assistance, please contact me at (617) 223-5529.

Sincerely,

Sally B. Mansur
Waste Management Division
Pollution Prevention Coordinator

cc: Matthew Hoagland, Chief, ME, NH & VT Waste Regulation
Section
Ken Rota, RCRA Support Section
Denise Lord, Maine Waste Management Agency

Mr. Al Nardone
Massachusetts Department of Environmental Protection
Division of Hazardous Materials
One Winter Street, 7th Floor
Boston, MA. 02108

Dear Mr. Nardone:

This letter responds to the questions you presented in a recent telephone conversation with Jim Gaffey of my staff concerning the permit renewal of a Massachusetts Laidlaw facility. Specifically, you requested EPA - New England's (EPA) position on dealing with permit conditions for base-program areas not currently a part of the state's authorized RCRA program. Examples included Air Emission Standards for Process Vents , Equipment Leaks and Tanks, Surface Impoundments and Containers (Subparts AA, BB, and the new CC), and the Toxicity Characteristic Rule (TCLP). The theme of your inquiry center around an important policy issue which warrants clarification by EPA. Since this issue is relevant to all authorized State programs, a copy of this response is being forwarded to the five other New England state program offices.

EPA encourages the incorporation of statutory standards into new permits and permit renewals in those instances where the state has adopted applicable regulations into law. For situations where the state has not yet adopted regulations, EPA recommends drafting permits without addressing such provisions in the permit. EPA, however, acknowledges that each facility's hazardous waste management operations must be attended to on a case-by-case basis. Situations may occur which warrant specifying permits conditions in areas where the state is not authorized and no state law exists. In those situations, we recommend using your omnibus provision to ensure protection of human health and the environment.

EPA's position relative to permit conditions for base-program areas not currently a part of the state's authorized RCRA program is based on the following points:

1. As a result of HSWA, self-implementing facility standards imposed by statute apply to all permitted facilities. (Note; the "permit as a shield" for Subparts AA and BB expires on June 5, 1995; the effective date for Subpart CC.)
2. Self-implementing provisions incorporated into a permit will act as a shield for those self-implementing requirements.
3. Permit writers will be called upon to negotiate permit conditions in new areas which may become resource intensive and focus attention away from other key permitting issues.

EPA also recommends describing the position taken in handling this permitting issue in the administrative record of a draft permit for the benefit of the general public and the permittee. You may also add a general facility standards-type permit condition mandating the permittee to comply with all applicable self-implementing provisions imposed by RCRA.

Thank you for bringing this matter to our attention. If you have any comments on this or other permitting matters, please contact James Gaffey of my staff at (617) 223-5542.

Sincerely,

Gary Gosbee, Chief
Permits and State Programs Section
Waste Management Division

cc:

Dave Sattler, CT DEP
Stacy Ladner, ME DEP
Pam Sprague, NH DES
Beverly Migliori, RI DEM
Steve Simoes, VT DEC
EPA RCRA State Coordinators
Fred Friedman, LAI