

12-23-93

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

Dear Mr. DeGabriel:

This letter responds to two questions presented in your October 15, 1993 letter. Your first question deals with the relationship between the State's listing of Class A recyclable materials and those materials included in that list that do not meet the definition of solid waste as set out in the Resource Conservation and Recovery Act (RCRA). You note that although the Class A Recyclables set out at 310 CMR 30.212(1-12) are composed of some State only, broader in scope categories, the regulation also contains categories that list Federal analogues.¹ Therefore, you ask us to identify those categories that EPA believes have Federally regulated analogues, and to identify which of those categories are not Federally regulated. Finally, you ask EPA to provide an opinion on the applicability of 310 CMR 30.351(2)(B)(3) to all Class A materials listed at 310 CMR 30.212.

The relationship between State and Federal requirements for recycled materials is relevant in determining whether a generator is a small or large quantity generator. Under federal regulations, one must determine whether a material can be defined as a solid waste by definition. Only if one determines that the material is a solid waste can one go on to determine if it is a hazardous waste. Under RCRA, any waste which cannot be defined as, or is exempt from the definition of solid waste, cannot be a hazardous waste. Therefore, such a waste would not be counted towards determining the rate of generation.

The following table which lists each Class A recyclable material should clarify the relationship between analogous State and Federal regulations. The materials listed below are those that are considered to be recyclable by the State and would not be considered in determining a company's hazardous waste generator status. Following the description of each material are the applicable State and Federal regulations.

CONCURRENCES

APPROVAL	TITLE 40 CFR §§261.1 AND 261.2.			
SIGNATURE	<i>[Signature]</i>			
DATE	12/23/93			

The materials followed by a Federal citation are exempt from the definition of solid waste, and therefore, would not be considered hazardous wastes. In determining how much hazardous waste is generated in a month at a particular company, federal standards would exempt all of the items below followed by Federal citations, when being reclaimed:

Class A Regulated Recyclable Materials

- 1) Materials that are neither used in manner constituting disposal, nor burned for energy recovery, nor accumulated speculatively and are either: used or reused as ingredients to make a product, provided that the materials are not being reclaimed; used or reused as substitutes for commercial chemical products; or returned as substitutes for feedstock in the original production process without being reclaimed. [310 CMR 30.212(1)(a)(c) / 40 CFR §261.2(e)(i)-(iii)]
- 2) Industrial ethyl alcohol. [31 CMR 30.212(2) / 40 CFR §261.6(a)(3)(i)]
- 3) Scrap metal which would be a hazardous waste if disposed of. [310 CMR 30.212(3) / 40 CFR §261.6(a)(3)(iv)]
- 4) Used batteries returned for regeneration to the manufacturer or other regeneration facility [310 CMR 30.212(4) / 40 CFR §261.6(a)(2)(v)]
- 5) A sludge having the characteristics of a hazardous waste when being reclaimed. [310 CMR 30.212(5) / 40 CFR §261.6(c)(3)]
- 6) A by-product having the characteristics of a hazardous waste when being reclaimed. [310 CMR 30.212(6) / 40 CFR §261.6(c)(3)]
- 7) A commercial chemical product listed in 310 CMR 30.133 or 30.136 which has never been used and which is being reclaimed. [310 CMR 30.212(7) / 40 CFR §261.6(c)(3)]
- 8) Waste oil, including, but not limited to waste oil that has the characteristics of a hazardous waste and is not hazardous waste fuel, if recycled in some other manner than being burned for energy recovery. [310 CMR 30.212(8) / 40 CFR §261.6(a)(3)(iii)]
- 9) Specification used oil fuel burned for energy recovery and otherwise handled in compliance with 310 CMR 30.250. [310 CMR 30.212(9) / no federal regulatory analogue]
- 10) A material recycled in a completely enclosed recycling system at the site of generation. [310 CMR 30.212(10) / 40 CFR §261.4(a)(8)]

- 11) A material that: a) has been given a variance from being defined as a RCRA solid waste pursuant to 40 CFR §§ 260.31 and 260.33, and; b) is approved by the Department in writing to be considered a Class A regulated recyclable material. [3110 CMR 30.212(12) / no federal regulatory analogue]

- 12) Waste oil collected at a waste oil collection center operated in compliance with 310 CMR 30.393, if recycled in compliance with 310 CMR 30.220 and 310 CMR 30.393(10). [310 CMR 30.212(12) / no federal regulatory analogue]

Please note that the federal regulation that addresses "closed loop recycling", Found at 40 CFR §261.4(a)(8), is not identical to the state regulation. The federal regulation addresses only secondary materials being returned to the original process under five conditions: (1) only tank storage is involved; (2) the entire reclamation process is entirely enclosed by pipe or other enclosed means of conveyance; (3) reclamation does not include controlled flame combustion; (4) the secondary materials are never accumulated in tanks for over twelve months, and; (5) the reclaimed materials are not used to produce a fuel or to produce products used in a manner constituting disposal. In reading this regulation, the State regulation may appear to the regulated community to be less stringent than the Federal. While EPA assumes that many of the provisions listed above were considered by the State in promulgating its more basic regulation, only in the instances above would materials be exempted from the definition of hazardous waste and not counted towards hazardous waste generation rate.

Your second question deals with EPA's interpretations of the "in one month " rule for calculating rate of generation in order to determine generator status. Both the federal regulations and the Biennial Report instructions state that a determination of generator status is to be made over a one month period rather than on an annual basis. Thus, EPA believes that, since there is no other way for EPA to track status changes, the MA DEP should use its discretion to determine whether an official change of status would be warranted. However, neither the Biennial Report nor the regulations require that the Agency be notified when intermittent occurrences of generation out of status occur.

If you have any further questions on these regulatory interpretations, please call Lisa Papetti of my staff at 573-5745.

Sincerely,



Gary Gosbee, Chief
MA & RI Waste Regulations Section

cc: Lisa Papetti, EPA
Jim Miller, EPA
Bill Sirull, MA DEP - Boston