



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 18 2003

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Curtis Lesslie
Project Manager
Trinity Consultants
25055 West Valley Parkway
Suite 101
Olathe, KS 66061

Dear Mr. Lesslie:

Thank you for your letter of October 2, 2002, regarding the regulatory status of a waste silica material generated by one of your clients. Your letter notes that the waste fails the Toxicity Characteristic (TC) regulation for chrome, but you believe that the waste meets the criteria for the trivalent chrome hazardous waste regulatory exclusion at 40 CFR 261.4(b)(6). Your letter requests a written determination regarding the status of the waste.

As noted in your letter, 40 CFR 261.4(b)(6)(i) identifies three criteria that wastes must meet to take advantage of the regulatory exclusion, and part 261.4(b)(6)(ii) identifies specific wastes that EPA has determined meet the criteria. The waste silica material generated by your client does not appear on the 261.4(B)(6)(ii) list; therefore, the waste does not currently qualify for this Federal exclusion.

If your client wishes to pursue this trivalent chrome exclusion, you should first determine the state(s) where the waste will be disposed. Most states are authorized to implement the RCRA regulatory program (including the TC regulations, or the EP Toxicity regulations that preceded the TC) under state authority. In authorized states, regulatory determinations under 40 CFR 261.4(b)(6)(i) are made by the state environmental agency, and your request should be directed to them. I recommend you contact the state agency before submitting a request, to understand the state's review and evaluation process and data needs.

If your client's waste will be disposed in an unauthorized state (Iowa, Alaska, or Puerto Rico), then their petition should be directed to this office at EPA headquarters. The Federal rulemaking petition process is described in 40 CFR 260.20, and involves decision making through a public notice and comment procedure. The Agency would make an initial determination to either grant or deny the petition, and publish this determination in the form of a proposed rulemaking to add the waste to 40 CFR 261.4(b)(6)(ii), or a proposed denial of the petition. In order to facilitate processing and evaluation of any petition your client might submit, I would urge that the petition be as specific and detailed as possible regarding waste characterization, the process which generates the waste, and waste management practices. The more information your client can provide to address the criteria in 40 CFR 261.4(b)(6)(i),

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the faster an assessment can be made. Relevant information would include any laboratory test results (bearing Agency data quality guidance in mind), process diagrams and descriptions, and description of waste management practices and facilities to be used for disposal.

I hope this addresses your questions about the trivalent chrome regulatory exclusion and how the exclusion might be applied to your client's waste. If you have further questions, please contact my office, or Gregory Helms at 703-308-8845 or helms.greg@epa.gov.

Sincerely,



Robert Springer, Director
Office of Solid Waste