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MAR 31 1987

MEMORANDUM

SUBJECT: Reuse of Spent Pickle Liquor

FROM: Matthew A. Straus, Chief  
Waste Characterization Branch, OSW (WH-562B)

TO: William H. Miner, HWEB Chief  
EPA Region V

This is in response to your memorandum of January 14, 1987, in which you request a regulatory interpretation regarding the "reuse" of spent pickle liquor for purposes of neutralization. In particular, you ask: (1) whether the treatment (reuse) process conducted at a specific facility would be considered "use constituting disposal" and (2) whether the recycling of spent pickle liquor for purposes of neutralization would be considered re-use as an effective substitute. The answer to these two questions is as follows:

- (1) Is the treatment (reuse) process conducted and described in your memorandum considered to be used in a manner constituting disposal?

No. The "Use Constituting Disposal" regulations applies to those wastes or waste-derived products 1/ that are applied to or placed on the land for beneficial use (i.e., those materials that are recycled by being placed on the land). Wastes that are stored or treated in units (i.e., surface impoundments) that are on the land are not considered within this provision (i.e., they are not being applied to the land for beneficial use). Rather, these units and the wastes they contain would be evaluated based on other aspects of the Subtitle C regulations to determine their regulatory status.

1/ A waste derived product is defined as those products which contain hazardous waste that are applied to the land that are themselves hazardous.

- (2) Is the recycling of spent pickle liquor for purposes of neutralization considered to be reuse?

The answer to this question depends on a number of factors. As we state in the preamble to the final rules, corrosive materials that are neutralized are normally considered wastes. However, where such corrosive material can be shown to: (1) meet relevant specifications with regard to contamination levels; (2) be as effective as the virgin material for which they substitute (i.e., the same amount of waste acid would generally be needed as the virgin acid which it replaces); (3) be used under controlled conditions (i.e., stored in a manner commensurate with its alleged status as a new material, which storage in an impoundment rarely or ever would be; 50 FR 652 n. 44 (January 4, 1985)); and (4) that in a two party transaction, there be consideration (usually monetary) for use of the material, we believe such materials may not be wastes. See 50 FR 638, January 4, 1985. Based on the information provided in your memorandum, I would question whether the neutralization process in a reuse process; rather it appears to constitute waste management. However, whether or not the use of spent pickle liquor as a neutralizing agent is excluded from regulation in the particular situation described in your memorandum will need to be evaluated based on the particular facts. (See attached letters for successful demonstration with respect to this provision.) Pickle liquor stored without being used for neutralization is indisputably a solid waste. 48 FR 14488 n. 32 (April 4, 1983).

With respect to the argument made by the company (who I assume is Dundee Cement) that the language of the preamble cannot change the effect of the regulatory language, we believe that both the rule and the preamble are consistent. In particular, the rule specifically excludes from being solid wastes those materials that are reused as "effective substitutes." The question therefore, is what is meant as an effective substitute; the preamble discussion lays out what the Agency considers to be an effective substitute where neutralization is occurring. As the Agency's contemporaneous interpretation

and explanation of its own regulation--in fact dealing with the precise point at issue--the preamble is entitled to, and would receive great deference from any reviewing court (see, e.g., *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 556 (1980); *General Electric Co., v. Gilbert*, 429 U.S. 125, 129 (1976)). In addition, the preamble language is detailed and well-reasoned, draws on the Agency's technical expertise, and is in accord with the general statutory scheme, all further factors which would lead a court to consider the interpretation with great deference. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *Ford Motor Co.*, *supra*, 444 U. S. at 568-69. Therefore, we do not agree with the company that the preamble is inapplicable to this situation.

You also ask, to what degree does the preamble influence the interpretation of the regulations from an enforcement standpoint and to what extent can it be used to support an administrative or other enforcement action. As we've indicated previously, your primary argument in any administrative or enforcement action must be based on the language of the rule.<sup>2/</sup> However, the language of the preamble or any other document can and should be used where it supports the language of the rule; in this case, the language in the preamble can be used as explanation and interpretation of the term "effective substitute."

Please feel free to give me a call if you have any further questions.

#### Attachments

cc: Solid Waste Branch Chiefs (EPA Region I-X)  
Gary Geunther (Mich. DNR)  
Larry Aubuchan (Mich. DNR)

<sup>2/</sup> In addition to the language in 40 CFR §261.2(e), you can also refer to 40 CFR §260.10 (definition of treatment and elementary neutralization unit); 40 CFR 264.1(g)(6); and 40 CFR 265.1(c)(10).