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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

AUG -5 1991

MEMORANDUM

SUBJECT: Regulatory Status of Residues From Secondary Lead  
Smelters That Recycle K069 Wastes

FROM: Sylvia K. Lowrance, Director  
Office of Solid Waste

TO: Waste Management Division Directors, Regions I-X

It has come to my attention that there is an issue about the status of wastes such as slags and drosses that result from secondary lead smelting when the smelter returns its emission control dust/sludge (Hazardous Waste K069) to the smelting furnace as feedstock. This memorandum reiterates that such residues are hazardous wastes subject to Subtitle C regulation if they exhibit a hazardous characteristic (e.g., toxicity for lead), and it discusses the Agency's intent regarding whether such residues are considered listed hazardous wastes pursuant to the "derived from" rule.

EPA stated in the February 21, 1991 "Boiler/Industrial Furnace" Final Rule ("BIF Rule") (56 Fed. Reg. 7134, 7144) that residues from metal recovery of listed hazardous wastes normally are considered to be "derived from" treatment of hazardous waste and thus listed hazardous waste themselves. Although this general principle remains valid, we note that EPA did not intend for the "derived from" rule to apply to K069 slags and drosses that result from returning the K069 to the smelting furnace as feedstock. The Agency initially attempted to achieve this result through application of the so-called "indigenous" principle to K069 slags. See August 17, 1988 "First Third" Land Disposal Restrictions Final Rule, 53 Fed. Reg. 31138, 31198-99. The June 1, 1990 "Third Third" Land Disposal Restrictions Final Rule (55 Fed. Reg. 22520, 22565-68) also presumed this result in its discussion of slags from secondary lead production, which were discussed exclusively in the context of D008 wastes. However, a subsequent decision by the U.S. Court of Appeals, in *American Petroleum Institute v. EPA*, 906 F.2d, 726, 740-42 (D.C. Cir. 1990), called into question the validity of the "indigenous principle" as EPA had applied it. (See BIF Rule, 56 Fed. Reg. at 7142, 7144, for a brief discussion of the court's decision.) Although EPA maintained in the BIF Rule that residues from treating listed hazardous wastes in metals recovery processes

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generally are subject to the "derived from" rule, the Agency overlooked the recycling practices in the secondary lead industry in promulgating that rule. It was not our intent that the "derived from" rule apply to secondary lead smelting residues that result when K069 dusts are recycled to the smelting process as feedstock.

We expect to address these issues more formally in the context of upcoming rulemakings. In the interim, please contact Mike Petruska at 475-8551 if you have any questions.

cc: Regional Counsel RCRA Branch Chiefs  
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