

9441.1987(61)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

AUG 12 1987

Mr. Roy Lee Tate
804 Sugarloaf Lane
Anniston, Alabama 36201

Dear Mr. Tate:

This is in response to your letter of July 17, in which you requested an interpretation of whether and how the RCRA hazardous waste regulations apply to a zinc oxide dust being recycled. The dust is considered a sludge under 40 CFR §261.2. The status of the sludge is as follows:

1. If any material recovered from the sludge is sent for fertilizer use, the sludge is subject to 40 CFR §261.6(b) and (c), the requirements for recyclable materials. (When a sludge is used as fertilizer, it is a solid waste. See §261.2(3).)1/
2. The leach residues that are sent for metals recovery, once completely reclaimed, are not solid waste. (See §261.2(e).)

In the case where a given quantity of sludge is reclaimed both for metals recovery and for fertilizer use, the sludge would be subject to §261.6(b) and (c) prior to reclamation because some of the sludge was used in a manner constituting disposal.

Finally, you should note that the U.S. Court of Appeals for the District of Columbia reached a decision on July 31, 1987, that calls into question EPA's authority to regulate certain waste recycling activities. EPA is studying the opinion to determine its scope. Because the Court has not yet issued its mandate, the regulations currently in the Code of Federal Regulations defining what is "solid waste," and establishing regulations for recycled hazardous waste, remain in effect.

- 1/ In contrast, if the reclaimed zinc oxide is sent to produce zinc sulfate (and not for fertilizer), then the sludge is not solid waste and is not subject to the hazardous waste regulations. See §261.2(c)(3).

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If you have further questions in this area, please contact Mike Petruska of my staff at (202) 475-6676.

Sincerely,

Original Document signed

Matthew A. Straus, Chief
Waste Characterization Branch