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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JAN 25 1988

MEMORANDUM

SUBJECT: New Jersey Zinc Company

FROM: Marcia E. Williams, Director
Office of Solid Waste (WH-562)

TO: Robert E. Greaves, Chief
Waste Management Branch (3HW30)

This is in response to your memo dated November 3, 1987 in which you requested that the Office of Solid Waste (OSW) provide assistance on a number of regulatory issues surrounding the New Jersey Zinc Company site in Palmerton, PA.

AMC v EPA

A Federal Register notice (attached) interpreting the AMC decision was signed by the Administrator December 31, 1987. Our reading of the AMC opinion is that the New Jersey Zinc Company's operation is not affected by the AMC opinion, i.e., it still involves solid waste management (at least up until it is burned in a industrial furnace) and the company must still obtain a RCRA permit for their K061 storage pile. Further, we do not think the opinion affects EPA's speculative accumulation provisions at all. (You should note, however, that the speculative accumulation provisions determines when certain secondary materials are solid wastes; it does not distinguish between storage and disposal. "Disposal" is defined in the regulations at Section 260.10.)

The last of your first set of questions concerned partially reclaimed zinc oxide that requires further reclamation. Normally, a partially reclaimed solid waste remains a solid waste as long as it must still be reclaimed before use, and the Section 261.3(c)(2)(i) "derived-from" rule would make the partially reclaimed material a hazardous waste. As I understand the situation at New Jersey Zinc, the partially reclaimed zinc

oxide is both a solid and a hazardous waste. However, as is discussed below in the context of the Waelz Kiln residue, if New Jersey Zinc were to change their process so that the only hazardous waste they were to burn in the kiln was K061, the residues from that kiln may then not be hazardous waste.

Regulatory Status of Waelz Kiln Residue

The regulatory status of the kiln residue (and the partially reclaimed zinc oxide) depends on the type of feed to the kiln. As I understand the process currently employed at New Jersey Zinc, I concur with Sam Rotenberg's assessment that the residue is a hazardous waste via the derived-from rule, and further, that the residue has been a hazardous waste since 1980. The following are the factors upon which this determination is based.

The kiln residue is not exempt under RCRA Section 3001(b)(3)(A)(ii) because the K061 feedstock is a waste from the primary steelmaking industry. Steelmaking constitutes an alloying process, which the Agency has determined not to be "processing of ores or minerals." Waste produced by reclamation of other minerals from non-Bevill waste is not itself a Bevill Waste.

The "indigenous secondary material" discussions that have appeared in the Federal Register over the last 3 years (see 50 FR 630-1, January 4, 1985; 50 FR 49167, November 29, 1985; and 52 FR 16989-91, May 6, 1987) are not applicable to this unit because I understand that F006 and F019 are introduced to the furnace -- these wastes are certainly not indigenous to a zinc smelting process.^{1/}

^{1/} Your letter also stated that K062 is added to the furnace. We would not view K062 as indigenous to zinc smelting either, but as I understand it, what is actually introduced to the furnace is sludge from lime stabilization from waste pickle liquor that is exempt from the derived-from rule under Section 261.3(c)(2)(ii). Therefore, introducing this exempt sludge into the furnace does not affect the regulatory status of the kiln residue.

You should note that New Jersey Zinc might be able to change the status of the kiln dust by ceasing to add any hazardous waste but K061 to the Kiln. Under the May 6, 1987 proposal (52 FR 16990), K061 would be considered indigenous to a zinc smelting operation because K061 is generated in furnaces used in primary steel production. (i.e., both are forms of metal smelting). If this rule is finalized as proposed, then the derived-from rule will no longer apply to residue from smelting of K061. Of course, if New Jersey Zinc continues to add F006 and F019 to the kiln, the kiln residue would continue to be hazardous no matter what is decided concerning K061. In fact, as a final point, the introduction of F006 and F019 to the kiln calls into question the kiln's status as a reclamation device. (See 50 FR 630-1, January 4, 1985.) That is, the F006 and F019 wastewater treatment sludges are not ordinary associated with zinc smelting, and these wastes may contain Appendix VIII constituents different than normal zinc smelter feed materials. (Id.) The kiln, as it is currently operated, may be more properly classified as a hazardous waste incinerator as opposed to a reclamation furnace.

Regulating Exempted Waste Under RCRA Corrective Action

Your second set of questions concerned the applicability of RCRA Section 3004(u) corrective action authority to releases from exempt units. The units you asked about are:

1. Bevill exempt;
2. Pre-RCRA inactive units and
3. AMC opinion exemptions.

(1) The question about units containing Bevill wastes was settled recently when EPA issued the second HSWA Codification Rule, signed by the Administrator on November 16, 1987. EPA determined that the RCRA Section 3001(b)(3) exemptions (i.e., those established for "Bevill wastes") do not extend to section 3004(u). this decision is explained fully in the preamble of the second Codification Rule. (See FR 45790, December 3, 1987.)

(2) Releases from pre-RCRA inactive units are certainly within the authority of RCRA Section 3004(u). 40 CFR Section 264.101 provides that an owner or operator of a facility seeking a RCRA permit must institute correction action for releases from units at the facility, "...regardless of the time at which waste was placed in such unit."

(3) Releases from units excluded from RCRA jurisdiction under the AMC opinion, should there be such exclusions, would be handled the same as other product or process releases. That is, the unit holding the product is not a SWMU, but areas contaminated by "routine and systematic discharges" from the unit are SWMUs.

If you have further questions in these areas, contact Michael Petruska of my staff at FTS 475-9888.

Attachment