

9441.1995(24)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 30, 1995

Mr. Douglas W. Crim
Miller, Canfield, Paddock and Stone, P.L.C.
1200 Campaul Square Plaza
99 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503

Dear Mr. Crim:

In your June 2, 1995 letter to Paul Borst of my staff, you request EPA concurrence on behalf of your client, American Bumper and Manufacturing Company (American Bumper) that the secondary material which American Bumper intends to transport to Canada to a copper smelter is not a solid waste and therefore exempt from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). The secondary material you describe in your letter is dried metal hydroxide solids in pellet powder form generated from treatment of wastewaters produced from electroplating of nickel and chrome bumpers. You state that you believe that these materials are not solid wastes because they are used or reused directly without prior reclamation per 40 CFR §261.2(e).

Based on the description in your letter, the material that American Bumper wishes to export appears to meet the definition of F006 wastewater treatment sludges from electroplating operations, a listed hazardous waste. Assuming that the sludges are being sent to the copper smelter for metal recovery, they are solid wastes that are also hazardous wastes because they are sludges that have been listed by EPA and are being sent for reclamation. 40 CFR §261.2(c)(3). The regulatory exclusions from the definition of solid waste you cite at 40 CFR §261.2(e) are not applicable because reclamation is occurring. (see footnote 1)

Although based on your description it appears these materials are a solid waste, these materials may be eligible for a variance from the definition of solid waste. Your letter indicates that these materials have been dried and pelletized prior to

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shipment. Because EPA considers dewatering a form of reclamation (see 50 FR 614, 639 January 4, 1985), these sludges are materials which have been reclaimed but must be reclaimed further in order to be completely reclaimed.

Materials which have been reclaimed but must be reclaimed further may be eligible for a variance which, if granted, would exclude them from the definition of solid waste. 40 CFR §260.30(c). This variance may be granted by an authorized State and relies on factors enumerated at 40 CFR §260.31(c). These factors include:

- the degree of processing the material has undergone and the degree of further processing that is required;
- the value of the material after it has been reclaimed;
- the degree to which the reclaimed material is like an analogous raw material;
- the extent to which an end market for the reclaimed material is guaranteed;
- the extent to which a material is managed to minimize loss;
- other relevant factors. 40 CFR Section 260.31 (These factors are discussed in greater detail in the regulatory preamble at 50 FR at 655.)

To obtain more information about this variance, we recommend that you contact the appropriate State regulatory agency to inquire if they have this variance in their regulations (many States adopt the Federal program essentially verbatim). Also, please be aware that States, have the authority under Section 3009 of RCRA to regulate more stringently than the Federal program.

You should know that the EPA is currently undergoing two initiatives to help encourage environmentally sound recycling. First, the Agency has ongoing activities related to the Common Sense Initiative (CSI) which relies on an industry-by-industry rather than a pollutant-by-pollutant approach to environmental protection. One of the six sectors included in the CSI is metal finishing. The Agency is currently working with representatives of the metal finishing industry as well as states, environmental groups and other stakeholders to find ways to encourage more recycling of wastes and other materials from metal finishing operations. We are currently in the process of developing a pilot project to assist the Agency evaluate the potential for some materials previously classified as wastes to be considered

commodities.

Second, EPA is in the process of reevaluating the definition of solid waste to become simpler, clearer and more relevant to RCRA's environmental goals. To this end, we have developed a program plan (enclosed) to be used as the basis for developing a proposed rule in the fall of 1996. We envision developing a proposed rule that would exclude some materials destined for recycling from RCRA jurisdiction which more closely resemble normal manufacturing than traditional waste management. We also expect that those materials which remain wastes under RCRA jurisdiction would be subject to a more simplified, self-implementing set of management standards to encourage recycling.

We appreciate your interest in environmentally sound recycling. If you have any further questions, please contact Paul Borst of my staff at (202) 260-6713.

Sincerely,

David Bussard, Director
Characterization and Assessment Division

Enclosure

Footnotes

1 See 40 CFR §261.1(c)(5) defining use and reuse and limiting its applicability for use as an ingredient. "However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials)." 40 CFR §261.1(c)(5)(i).

Attachment

LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
A PROFESSIONAL LIMITED LIABILITY COMPANY
1200 CHAMP SQUARE PLAZA
99 MONROE AVENUE, N.W.
GRAND RAPIDS, MICHIGAN 49503

June 2, 1995

Mr. Paul Borst
RCRA Enforcement Division
U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
Washington, D.C. 20460

Re: Exemption of Secondary Materials from
Regulations/Notification to Export - American Bumper & M.G.
Co.

Dear Mr. Small:

American Bumper and M.G.. Company seeks the Environmental Protection Agency's concurrence that the secondary material American Bumper intends to transport to Canada is exempt from RCRA regulation. The secondary material is dried metal hydroxide solids in pellet/powder form, generated from treatment of wastewaters produced from electroplating of nickel and chrome automotive bumpers. These secondary materials will be transported to Limited, Copper Cliff Smelter, Copper Cliff, Ontario, Canada. The secondary materials will not be treated, reclaimed or otherwise altered prior to its use in the Into nickel process. American Bumper has a contract with Into whereby Into purchases the secondary materials from American Bumper.

Under 40 CFR 261.2(e) the secondary materials are not solid waste. Therefore, American Bumper requests EPA's concurrence in a determination that the secondary material is not a solid waste. If you need any more information in this regard, please call me.

Pending your review of the issue of whether American

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Bumper's secondary materials are solid waste, American Bumper has submitted a Notice of Intent to Export to Bob Small of the Policy Analysis and Coordination Section of RCRA Enforcement Division.

If you have any questions in regard to the matters discussed in this letter or American Bumper's Notice of Intent to Export, please call me at your earliest convenience.

Sincerely,

Doug W. Crim

D.C./pd.

cc: Laura Shears
Craig Smith