

9494.1994(03)

SHAM RECYCLING POLICY AS IT PERTAINS TO THE BOILER AND
INDUSTRIAL FURNACE RULE

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

June 7, 1994

Mr. Curtis D. Lesslie
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Division of Environment
Bureau of Waste Management
Forbes Field Building 740
Topeka, Kansas 66620-0001

Dear Mr. Lesslie:

This is in response to your March 10, 1994, letter regarding the Agency's sham recycling policy as it pertains to the Boiler and Industrial Furnace (BIF) rule promulgated on February 21, 1991. You requested clarification on the applicability of the term "burning for legitimate energy recovery" and on the land ban requirements that apply to cement produced by a facility that has certified compliance and is burning hazardous waste with a heating value less than 5,000 Btu/lb. In addition, you asked whether the heating value limit applies to the as-generated or as-fired waste.

It is true that the BIF rule supersedes the Agency's sham recycling policy for a facility that has certified compliance with the emissions standards under interim status or is operating under a RCRA permit. See 56 Federal Register 7183. Thus, a BIF that has certified compliance may burn hazardous waste with a heating value lower than 5,000 Btu/lb (as-generated). However, if an industrial furnace burns a listed hazardous waste with a heating value less than 5,000 Btu/lb and the facility does not document that the waste is burned for legitimate energy recovery, then any product applied to or placed on the land in a manner that constitutes disposal (e.g., cement) would be a waste-derived product subject to regulation as hazardous waste. This waste-derived product, however, could be eligible for an exemption from regulation as a hazardous waste by compliance with the treatment standards for

land-disposed hazardous waste found in 40 CFR 268.42 - 268.44 and associated notification requirements (40 CFR 266.20(b)).

It is important to note that the "legitimate fuel" determination is on an as-generated, not as-fired, basis. Blending to augment the as-generated heating value cannot be used to meet the "legitimate fuel" test (i.e., either the waste must have a heating value of 5,000 Btu/lb, or the facility must document that lower heating value waste contributes significant, useable energy). However, the as-generated heating value of a hazardous waste may be increased to meet the "legitimate fuel" test by bona fide treatment (e.g., decanting).

I hope that this information will be helpful. If you have further questions or comments, please feel free to contact Frank Behan of my staff at 703-308-8476.

Sincerely yours,

Michael Shapiro, Director
Office of Solid Waste

cc: John Smith, EPA Region VII
Gene Evans, EPA Region VII
Bob Holloway
Frank Behan