

9441.1986(85)

November 19, 1986

Markus K. Straume  
Colonel, USAF  
Director, Directorate of  
Environmental Protection  
Defense Logistics Agency  
Defense Utilization and Marketing Service  
Federal Center  
74 N. Washington  
Battle Creek, MI 49017-3902

Dear Colonel Straume:

This is in response to your letters of April 23, June 20, and September 30, 1986, regarding the regulatory status of certain precious metals that are recycled through the Defense Reutilization and Marketing Service. First, I would like to apologize for taking so long in responding to your request; I hope this delay has not caused you any problems. With respect to your specific requests, I will respond to them in the same order that they are presented in your April 23 letter.

- \* Management of solid items such as buttons, eyeglass frames, insignia from uniforms, and electronic scrap.

To the extent that these materials are not hazardous (i.e., do not exhibit any of the hazardous waste characteristics--ignitability, corrosivity, reactivity, or extraction procedure (EP) toxicity), I agree with you that these materials are not solid wastes and, therefore, are not subject to the Federal hazardous waste rules. If, however, these materials are hazardous, and they do not meet the definition of scrap metal, they would be subject to regulation under Subpart F of Part 266 of RCRA, since they would be defined as spent materials.

- \* Management of silver recovery cartridges

Although the silver recovery cartridges are used to recover silver, the reclamation operation is not yet completed (as I understand the operation); rather the cartridges are further processed to recover the silver. Therefore, I do not agree with your assessment. As we stated in the preamble to the final rules, "The Agency proposed a clarifying amendment to 261.3(c)(2) (the

"derived from" rule) to indicated that commercial products reclaimed from hazardous wastes are also products, not wastes, and so are not subject to the RCRA Subtitle C regulations....The principle also does not apply to wastes that have been processed minimally, or to materials that have been partially reclaimed but must be reclaimed further before recovery is completed." See 50 FR 634, January 4, 1985; see also 40 CFR 261.3(c)(2) where it says "...materials that are reclaimed from solid waste and that are used beneficially are not solid wastes..." Therefore, the silver recovery cartridges are solid wastes and subject to regulation under Subpart F of Part 266 if they exhibit one or more of the hazardous waste characteristics. You should be aware that some preliminary data provided to the Agency by the National Photographic Manufacturers Association indicates that silver recovery cartridges may not be EP toxic. Therefore, I suggest you test these cartridges to determine the hazardousness.

\* Management of batteries containing silver

For the same reasons described in the previous paragraph, the residues from the burning operation are defined as solid wastes and are subject to regulation under Subpart F of Part 266, provided the exhibit one or more of the hazardous waste characteristics (i.e., the burning operation only partially reclaims the silver; the burning residue must be further processed for silver recovery). In addition, you also should be aware that if the batteries are hazardous and if the unit they are burned in is an incinerator (i.e., it is neither a boiler (as defined in 40 CFR 260.10) nor an industrial furnace (as defined in 40 CFR 260.10), the burning device is subject to regulation under Subpart O of Parts 264 and 265. As we stated in the preamble to the proposed rule, "...materials being burned in incinerators or other thermal treatment devices, other than boilers or industrial furnaces, are considered to be "abandoned" by being burned or incinerator...whether or not energy or material recovery also occurs...In our view, andy such burning (other than in boilers and industrial furnaces) is waste destruction subject to regulation either under Subpart O of Part 264 or Subpart O of Part 265. If energy or material recovery occurs, it is ancillary to the purpose of the unit -- to destroy wastes by means of thermal treatment -- and so does not alter the regulatory status of the device or the activity." See 48 FR 14484, April 4, 1983.

Finally as you stated in your letter, States may choose to regulate these materials differently under the State hazardous

-3-

waste programs. Therefore, you need to contact representatives in the various States to determine the regulatory status of these materials under the State hazardous waste rules.

Please feel free to give me a call at (202) 475-8551 if I can be of any further assistance.

Sincerely,

Matthew A. Straus  
Chief  
Waste Characterization Branch

RO 11197