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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 21 1986

Mr. Gary D. Meyers  
The Fertilizer Institute  
1015 18th Street, N.W.  
Washington, D.C. 20036

Dear Mr. Meyers:

This is in response to your letter of May 9, 1986, regarding the regulatory status of commercial fertilizers that contain emission control dust/sludge from the primary production of steel in electric furnaces (EPA Hazardous Waste No. K061) under the Federal hazardous waste rules. In your letter, you question an interpretation I have taken regarding the applicability of the hazardous waste rules to fertilizers produced using zinc flue dust as an ingredient. In particular, you disagree with my statement that such fertilizers are not exempt from regulation pursuant to 40 CFR §266.20(b) until they are in the physical form in which they were sold to the ultimate consumer. Rather, you believe that once the zinc flue dust has been incorporated into the product and has been properly processed, the material, while subject to our authority, is currently exempt from regulation because it is a "commercial fertilizer.<sup>1/</sup> (We both agree that the transportation and storage of zinc flue dust prior to its use in the production of fertilizer is regulated.)

1/ You also believe that the zinc flue dust would not be regulated after it is reacted with sulfuric acid, the first step in producing zinc micronutrient fertilizers, since it has undergone a chemical reaction making it inseparable from the product by physical means (see §266.20(b)). This would only be true if the material can be used as a fertilizer (and such fertilizer is produced for the general public's use) after the zinc flue dust is reacted with sulfuric acid. As you state in your letter, however, the zinc flue dust does not become a commercial fertilizer (i.e., a fertilizer that can be used by the general public) until it is reacted with sulfuric acid, granulated, and sized. I, therefore, believe this provision is not appropriate in this case.

In reviewing your letter as well as the information enclosed, I have reconsidered my interpretation and believe that your reading of the rules is correct; that is, once a zinc micronutrient commercial fertilizer is produced, it is exempt from regulation, provided it is being produced for the general public's use. Therefore, zinc flue dust that has been reacted with sulfuric acid, granulated, and sized<sup>2/</sup> would be exempt from regulation, except as described below, whether it is sold directly to the public for their use or to a third party who blends the zinc micronutrient fertilizer with other nutrients prior to their being sold to the general public.

The only exception to this is if the material is not handling in a manner commensurate with the management of zinc micronutrient fertilizers. In particular, in your letter you state "...the fertilizer is stored in bags or in bulk, awaiting shipment to customers. Because excessive moisture must not be allowed to contact the fertilizer until it is applied, the fertilizer is stored indoors and transported in covered (hard top or tarpaulin) trucks" (see page 4 of your letter). Therefore, if a person were to handle the "zinc fertilizer" in open piles outside of buildings or in ways that would not be typical for managing commercial fertilizers and such management is causing this material to escape into the environment, we believe the material would not be a commercial fertilizer and that the operation could be viewed as a sham situation where recycling is not in fact occurring.

2/ As stated in your letter, zinc micronutrient fertilizers do not become commercial fertilizers until they are reacted with sulfuric acid, granulated, and sized. Therefore, if a person were to just react the zinc flue dust with sulfuric acid or perform this step and the granulation step and then ship the material off-site to be granulated and sized or just sized, the material would be subject to the transportation and storage standards since the material is not yet a "commercial fertilizer" produced for the general public's use. In addition, any wastes from the fertilizer production process--such as filter cake left after reacting the waste flue dust--would be RCRA wastes, and would automatically be deemed to be listed wastes if they derive from treating a listed waste (such as waste K061).

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Please feel free to give me a call if you have any further questions; my telephone number is (202) 475-8551.

Sincerely,

Matthew A. Straus  
Chief  
Waste Characterization Branch

cc: Regional Branch Chiefs (Regions I-X)  
Karl Johnson, TFI  
Carl E. Schauble, Frit Industries  
Michael Steffensmeier, Neb. Dept. of Environmental Control