

May 9, 1985

Honorable John F. Seiberling
House of Representatives
Washington, D.C. 20515

Dear Mr. Seiberling:

This letter is in response to the concerns raised by your constituent regarding the Agency's recent hazardous waste recycling regulations. In this letter, Mr. Dennis Brady expresses some concern that any regulation of recycling activities will make this activity uneconomical. He also states that applying any regulation to hazardous waste recycling is inconsistent with EPA's mandate under the Resource Conservation and Recovery Act (RCRA).

As way of background, on January 4, 1985, EPA promulgated a regulation which dealt with the question of which secondary materials being recycled (or held for recycling) are solid and hazardous wastes; at that time we also set out our regulatory strategy for regulating hazardous waste recycling activities. (See enclosure.) However, this regulation only applies to those secondary materials that are also hazardous (i.e., either exhibits one or more of the hazardous waste characteristics or is specifically listed in Subpart D of Part 261). To make this point as clear as possible, we adopted a clarifying provision in 40 CFR 261.1(b) which states that the rule "does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled." Thus, this does not apply to the recycling of non-hazardous secondary materials.

Mr. Brady expressed concern that by regulating these activities, we will be discouraging the recycling of these materials which is in conflict with one of the objectives of RCRA. Although we agree that promoting hazardous waste recycling is important and one of the objectives under RCRA, we also believe that the major objectives under RCRA is to control the management of hazardous waste point of generation to point of final disposition. Further, wastes destined for recycling can present the same

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potential for harm as wastes destined for treatment and disposal. In fact, recycling operations account for some of the most notorious hazardous waste damage incidents; it should be noted that those incidents did not involve sham operators who merely held themselves out as recyclers. Rather, operators of these facilities engaged in some recycling and meant to recycle the wastes they received. You should also be aware that in comments filed with the Agency on the proposal to the January 4, 1985 regulation, generators of hazardous wastes, states and members of the recycling community stated that some regulation is needed to ensure both the public and generators that their wastes will not be mishandled when sent to recyclers. These persons maintained that regulation of these activities will encourage wastes both to be recycled, and recycled in a responsible manner.

Therefore, we believe the regulation that was promulgated on January 4 is not inconsistent with Congressional intent and should not have a discouraging effect on recycling. Please feel free to give me a call if I can be of any further assistance.

Sincerely yours,

Jack W. McGraw Acting Assistant Administrator

Enclosure

Hon. Lee Thomas
Administrator
Environmental Protection Agency
Washington, D.C. 20460

Dear Mr. Thomas:

I am writing on behalf of my constituent Dennis Brady who is in the recycling business and is concerned about regulations recently issued to reclassify chemicals, which are being recycled, as hazardous wastes.

Mr. Brady is under the impression that these regulations will cover virtually all chemicals which are being recycled, even if they are not hazardous in and of themselves. I would be most appreciative if you would review his comments, which I have attached, and advise as to the applicability of the regulations to the entirety of the recycling industry. If all recycling is not covered, it would be helpful to Mr. Brady if you could provide a listing of those chemicals which will be included or those which will not be. Of course, any other information you might have further explaining this new system would be helpful as well.

Thank you for your assistance on this matter.

Sincerely,

JOHN F. SEIBERLING, M.C.