

9441.1989(29)

June 15, 1989

Michael Lodick
President
North Coast Associates, Inc.
361 Delaware Avenue, Suite 405
Buffalo, New York 14202

Dear Mr. Lodick:

This letter responds to your March 20, 1989 letter to Ms. Wendy Grieder in the Office of International Activities. In your letter, you requested confirmation from U.S. EPA that the export of a secondary material not deemed to be a waste is not subject to notice requirements under the U.S.-Canadian Bilateral Treaty. The secondary materials of concern in this case are spent abrasive from sandblasting which may or may not exhibit the hazardous characteristic for lead (D008) as found at 40 CFR 261.24. You claim that these secondary materials are used, without prior reclamation, as a substitute for silica, aluminum and iron in the manufacture of Portland cement and that these materials contain only contaminants that are similar to and no greater than those found in the analogous raw materials.

The regulatory status of these secondary materials depends upon several factors. If indeed these secondary materials are legitimate substitutes for an analogous raw material, the next consideration is how these materials are being recycled. In this case, the secondary materials most likely are being used in a manner constituting disposal (i.e., the Portland cement manufactured from these secondary materials will be, or is likely to be, placed on the land). As stated at 40 CFR 261.2(e)(2)(i), materials used in a manner constituting disposal are solid wastes (and thus, if hazardous, hazardous wastes). Therefore, if these secondary materials do, in fact, exhibit a hazardous characteristic, they must be managed as a hazardous waste, including manifest requirements.

As a hazardous waste requiring a manifest, such secondary materials are subject to the export notification requirements under the U.S.-Canadian Bilateral Treaty, even though such materials may not be considered a waste in Canada. Were such materials to be recycled in the same manner in this country, the recycling facility (i.e., the cement manufacturer) would be

required to have a RCRA storage permit. However, assuming the cement no ??? exhibited a characteristic, the cement would not be hazardous waste. If the cement did exhibit a hazardous characteristic, it would be subject to 40 CFR Part 266 Subpart C.

On the subject of the responses you received from Michigan and Pennsylvania, States are required to provide equivalent (i.e., at least as stringent) regulations as the Federal program to obtain authorization. Therefore, authorized State requirements must cover, at a minimum, all hazardous wastes covered by the Federal program. If the appropriate personnel in the State regulatory agencies wish to discuss the conclusions presented in this letter, I would be happy to accommodate them. Also, should you have any further questions regarding the Federal regulatory status of the spent abrasive material, you may contact me at (202) 382-4637.

Sincerely,

Matthew A. Straus
Deputy Director
Characterization and
Assessment Division