

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Mr. Charles J. Umeda
Deputy District Attorney
Specialized Prosecutions Group
Office of the District Attorney
County of San Bernardino
412 West Hospitality Lane, Suite 301
San Bernardino, California 92415-0023

Dear Mr. Umeda,

Thank you for your January 21, 1998 and February 18, 1998 letters requesting clarification of the regulatory status of wastes generated at the Unocal/Molycorp Mountain Pass rare earth facility. Your letters raise a number of specific questions which I will answer in turn.

You have first asked EPA to clarify the application of 40 C.F.R. 261.4 to this facility. In particular, you have noted that Molycorp's legal counsel is taking a position that certain statements made by EPA in the course of promulgating 54 F.R. 36592, September 1, 1989, reflected an Agency position that wastes generated at Molycorp's Mountain Pass facility are subject to the Bevill exemption under section 3001(b)(3)(A) of the Resource Conservation and Recovery Act (RCRA). 54 Fed. Reg. 36592 et seq. established the criteria the Agency used to distinguish between wastes generated by extraction/beneficiation (which are subject to the Bevill exclusion) and mineral processing (which, with the exception of twenty special waste streams, are not covered by the exclusion). EPA disagrees with Molycorp's position that, in the 1989 rulemaking, the Agency determined that wastes from this facility continued to be subject to the Bevill exclusion as beneficiation wastes. While, during the rulemaking, the Agency briefly cited or mentioned wastes from the lanthanides sector as including wastes from beneficiation operations, those statements did not constitute a definitive finding as to how the regulation applied to each waste stream generated at the Molycorp facility. Rather, those statements were made generally in the context of describing the Agency's analysis of the potential economic impacts of the rulemaking for the mining industry. We agree, therefore, with your opinion that the discussion in the context of the economic analysis was not intended to constitute regulatory findings by the Agency as to the precise applicability of the rule to particular waste streams or facilities.

In 1991, EPA received a request from the California Department of Health

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Services, Toxic Substances Control Program, to clarify the regulatory status of specific waste streams at the Mountain Pass facility. The EPA responded to this request and issued a regulatory interpretive letter on May 14, 1991 which stated that mineral processing began after the "second leach step" and that tail wastes generated at the Mountain Pass facility after the "second leach step" were mineral processing wastes. If those wastes are characteristically hazardous, they are subject to regulation under RCRA Subtitle C.

In February 1992, the California Department of Health Services, Toxic Substances Control Program and Unocal/Molycorp both requested further clarification of waste streams at Mountain Pass. EPA conducted a site visit to the facility in February 1992 to collect additional information about operations. On April 7, 1992, EPA issued a letter to Unocal (see attachment 2) which reiterated the Agency's 1991 position that all wastes generated after the second leach step at Mountain Pass are mineral processing wastes. Therefore, if Molycorp was confused about EPA's views as to its Beville regulatory status in 1989, it clearly was informed of EPA's views as a result of the EPA's 1991 and 1992 letters.

You have also asked the Agency about the legal effect of these letters, and noted Molycorp's view that these letters do not constitute rulemaking and, therefore, do not have binding effect. These letters express the Agency's opinion as to how 40 C.F.R. 261.4 applies to certain wastes from this particular facility. These findings have not been adopted pursuant to a rulemaking proceeding, do not have the force or effect of law, and are not, therefore, legally binding on private parties or the courts. However, in any judicial enforcement action, the letters would constitute evidence of the Agency's interpretation of the applicable regulations and, given our role in the administration of the Act and our technical expertise in this area, we would anticipate that the court in such proceeding would accord deference to the Agency's views.

You indicated that Molycorp may have potentially discharged hazardous wastes onto the desert floor in the form of pipe scale escaping from waste water ruptures in a pipeline. Your letter noted that the pipeline carries waste water from the Mountain Pass facility to the Ivanpah evaporation pond. As noted earlier, all wastes generated after mineral processing begins are mineral processing wastes (see 54 F.R. 36619). If any of the waste waters originate anywhere in the Mountain Pass facility after the second leach step, those waste waters and resultant scale are mineral processing wastes. If either the waste waters or the pipe scale are characteristically hazardous, these wastes are subject to RCRA Subtitle C regulation.

If you have any questions regarding this matter, please feel free to contact me at 703-308-8895 or Stephen Hoffman at 703-308-8413.

Sincerely yours,

Matthew Hale
Acting Deputy Director