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OCT 7 1985

Mr. Frank J. Fox, Jr.  
Jones, Day, Reavis, and Pogue  
2300 LTV Center  
2001 Ross Avenue  
Dallas, Texas 75201

Dear Mr. Fox:

This letter will confirm our previous telephone conversations and is a response to your letter dated July 19, 1985, in which you requested an interpretation of the mixture rule of the hazardous waste regulations. In particular, you indicate that a characteristic hazardous waste and a listed hazardous waste (which is listed solely because it exhibits the ignitability characteristics) are mixed before they are combusted; the mixture is ignitable. The ash resulting from the incineration of this ignitable waste does not exhibit any of the hazardous waste characteristics, however. Based on your reading of the rules, you believe the ash is not a hazardous waste and thus, does not need to be delisted, even though it is derived from a listed waste.

I agree. Section 261.3(a)(2)(iii) of the regulations indicates that once a listed waste (that is listed solely because it exhibits a characteristic) has been mixed so that the mixture no longer exhibits any of the hazardous waste characteristics, the waste would no longer be considered hazardous.<sup>1/</sup> Therefore, the ash is not hazardous provided it does not exhibit any of the hazardous waste characteristics. You should be aware, however, that this provision may be modified. In particular, the Hazardous and Solid Waste Amendments of 1984 (HSWA) requires, among other things, that the Agency in evaluating delisting petitions consider all factors (including additional constituents)

1/ Although the waste is not considered to be non-hazardous until the waste is incinerated, we believe the same policy applies.

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other than those for which the waste was listed to determine the hazardousness of these wastes. This requirement applies to all listed wastes, including those that are listed solely because they exhibit a characteristic. Therefore, we believe §261.3(a)(2)(iii) is inconsistent with the intent of the new amendments. Until this rule is amended, however, the ash generated from the combustion process (as described above) is not subject to regulation.

Please feel free to give me a call if I can be of any further assistance; my telephone number is (202) 475-8551.

Sincerely yours,

Matthew A. Straus, Chief  
Waste Identification Branch

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