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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

December 27, 1993

MEMORANDUM

SUBJECT: Precious Metal Recovery Furnaces

FROM: Michael Shapiro, Director
Office of Solid Waste

TO: Conrad S. Simon, Director Air and Waste
Management Division Region II

Headquarters has received correspondence (see footnote 1) from the New York State Department of Environmental Conservation (NYDEC) requesting a regulatory determination on the status of precious metal recovery furnaces. The State would like EPA to clarify the relationship between the applicability of Parts 264 and 265, Subpart O (incinerator requirements) and Part 266, Subpart F (standards for recyclable materials utilized for precious metal recovery). Specifically, NYDEC wants to know if the Subpart F exemption for recyclable materials utilized for precious metal recovery extends to the thermal reduction furnaces used by precious metal reclaimers to burn precious metal bearing wastes such as papers, filters and circuit boards. In addition, the State wants to know whether these units are subject to Subpart O requirements as incinerators if Subpart F does not apply.

EPA's position has been that when these units are legitimately recovering precious metals from recyclable materials that they are within the Subpart F exemption and not subject to Subpart O incinerator requirements. EPA has previously interpreted these units to be generally exempt from the BIF rule (56 FR 42504, 42508, August 27, 1991) (see footnote 2).

However, these units are subject to a one time notification requirement (40 CFR §266.100(f)) that requires owner/operators of precious metal recovery furnaces to notify the State Director and

certify that hazardous waste is burned for legitimate recovery of precious metal. Also to qualify for the BIF exemption, owner/operators claiming the exemption must sample and analyze precious metal as needed to document that the recovery is legitimate.

If precious metal recovery furnaces are not legitimately recovering precious metals from recyclable materials, then they may be subject to several Subtitle C regulatory requirements, including Subpart O incinerator requirements. EPA has previously identified several indicators of legitimacy:

> "...The Agency indicated in the January 4, 1985 solid waste definition regulations some of the indicia of legitimate precious metal recovery operations. ...These include presence of economically significant amounts of precious metals, efficient recovery operations, no land disposal of wastes destined for recovery, and payment by the reclaimer to the waste's generator. Industry members indicate further that materials destined for precious metal reclamation are normally batch segregated into distinct and identified batches of like material, that generators and recovery facilities normally enter into written contracts before materials are transferred specifying compensation to the generator and when transfer is to occur, and that true precious metal recovery is characterized by net financial return to the generator (i.e, a price sufficient to cover all charges for transport, storage and processing).... Presence of air pollution control equipment to recover any precious metals contained in emissions would be a further indication of a legitimate operation. Conversely, the absence of one or more of these features could serve as potential indications of a sham recycling operation, which would, of course, be subject not only to the BIF rules but to all other subtitle C provisions as well.... Furthermore, under 261.2(f), persons ostensibly engaged in precious metal reclamation of hazardous wastes have the burden of proving (normally through recordkeeping plus presence of appropriate recovery equipment) that they are engaged in legitimate recovery activities...."
> (56 FR 42504, 42509 August 27, 1991).

Although EPA currently considers these furnaces to be generally exempt from Subtitle C regulation (except for the notification requirement mentioned above), you should be aware that questions have been raised as to whether these units should remain generally exempt from Subtitle C regulation. Please also note that the Agency will be examining this issue as part of the Draft Waste Minimization and Combustion Strategy. I hope that this helps to clarify the current status of precious metal recovery furnaces. If you have any further questions, please contact Mike Petruska of my staff at (202) 260-8551.

1 This correspondence consisted of two letters of January 19, 1993 and October 1, 1992 from William A. Yeman of NYDEC to Sonya Sasseville of EPA.

2 In the August 1991 FR notice, EPA also clarified that the conditions of the BIF rule where burning solely for metal recovery (§266.100(c)(2)) do not apply to the legitimate recovery of precious metals, which are generally exempt from the BIF rule.