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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

DEC 21 1990

Earl F. Bouse
Vice President
Minerals and Environmental Services
Pacific Basin Resources
3480 Buskirk Ave., Suite 205
Pleasant Hill, California 94523

Dear Mr. Bouse:

This responds to your letter dated September 13, 1990 to Mr. Bob Holloway concerning the regulatory status of using K048-KO52 filter cake as an ingredient in the manufacture of cement. Specifically, you requested a determination regarding whether such use will be allowed under the final rule for burning hazardous wastes in boilers and industrial furnaces (BIF rule), which has not yet been promulgated.

I am unable to address whether the process described in your letter will be allowed under a rulemaking that we are still in the process of evaluating and finalizing. The proposal published in the October 26, 1989 FEDERAL REGISTER (54 FR 43718) is the best guide available for you to use in making your assessment of what our final rule may require until the final rule is promulgated. We currently expect the final rule to be promulgated by January 1991.

As current Federal regulations provide at 40 CFR 261.2(e)(2)(i), the filter cake used to produce cement would meet the definition of a solid waste (and thus be classified as hazardous waste K048-KO52) because it is being used as an ingredient (i.e., a substitute for raw materials) to produce a product that is used in a manner constituting disposal (i.e., placement on the land). However, this does not answer the question of whether such use of the filter cake is legitimate recycling. This regulatory determination is made on a site-specific basis by the regulating agency (i.e., the State regulatory agency or EPA Regional Office) in the State in which the activity occurs. Additional, more specific information to supplement the information in your letter will be required to make such a determination.

Some of the criteria used in evaluating such situations at the Federal

level may be of assistance to you in preparing your request for a regulatory determination should you continue to seek such a determination. To evaluate whether a hazardous waste is being legitimately recycled as a substitute for, or being used as, an ingredient in a manufacturing process, a comparison must be made between the constituents contained in the hazardous waste and the constituents in the analogous raw material. Because the hazardous wastes and raw materials may change at each different site, this analysis is required on a site-specific basis.

There are several factors to consider in determining whether a hazardous waste is being used as a legitimate substitute in a manufacturing process. It is not enough to say that because a hazardous waste can be used as an ingredient and still result in a marketable product such usage is legitimate recycling (rather, this is a demonstration that the hazardous waste-derived product itself may be an effective substitute for a nonwaste-derived product, not a demonstration that the hazardous waste is a legitimate ingredient). Nor is it enough to say that such use of the hazardous waste does not have an adverse impact on the environment (rather, this may be a demonstration of a good hazardous waste treatment technology, not a demonstration of "legitimate" exempt recycling). One key consideration is the extent to which a hazardous waste contains hazardous constituents not otherwise found in analogous raw materials (e.g., volatile organics), or contains hazardous constituents at levels significantly higher than those found in the raw materials (e.g., lead and chromium). In such cases, the hazardous waste is generally determined to not be used as a legitimate substitute for raw materials in a manufacturing process, but rather is to be treated and/or disposed of by incorporation into a product. If such a determination is made, the process may require a hazardous waste treatment permit. (However, you may make a demonstration that the hazardous constituents are useful to the manufacturing process such that the hazardous waste actually functions better than the raw material it is replacing.) Again, this is a site-specific determination that is more appropriately made by the regulating agency.

If you have further questions regarding the factors considered in evaluating whether the use of the hazardous wastes is legitimate recycling under Federal regulations, you may contact Mitch Kidwell, of my staff, at (202) 475-8551. If you have questions regarding the regulatory status of the use of K048-KO52 as an ingredient in the manufacture of cement (or other site-specific regulatory determinations) you should contact the appropriate regulatory agency (i.e., authorized State agency or EPA Regional Office) in which the facility is located. For your information and reference, I am enclosing a list of EPA Regional offices and telephone numbers.

Sincerely,

Original Document signed

David Bussard
Director
Characterization and
Assessment Division

Enclosure

cc: Bob Holloway

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