

May 26, 2000

Mr. Mark A. Simonich, Director
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Mr. Simonich:

Thank you for your letter of July 19, 1999 regarding the regulatory status under the Resource Conservation and Recovery Act (RCRA) of sulfuric acid used as a fertilizer and pesticide. I understand from your letter that the material in question is sulfuric acid generated from an acid plant attached to a sintering furnace at a primary lead smelter operated by Asarco, Inc. The acid plant was designed to mitigate emissions of sulfur dioxide from the sintering plant pursuant to a stipulated agreement between Asarco and the State of Montana. Control of sulfur dioxide is also required by the national ambient air quality standards at 40 CFR Part 50. When the acid plant removes sulfur dioxide from the sinter plant emissions, it is converted to sulfuric acid. The acid has been used as a fertilizer and as a registered pesticide because of its acidic properties.

You expressed concern in your letter about potential agricultural contamination resulting from constituents present in pesticides and fertilizer derived from this sulfuric acid (such as lead, selenium, and mercury). However, in further conversations with Marilyn Goode of my staff, you clarified that your main concern is whether and how the Land Disposal Restrictions (LDRs) would apply to these materials. The following paragraph provides a brief explanation of how the federal RCRA regulations apply to the circumstances of this case.

From the factual situation described in your letter, it appears that the acid plant in question is an air pollution control device, and that the sulfuric acid residue resulting from the emissions control operation is a sludge as defined in 40 CFR 260.10. Pursuant to 40 CFR 261.2(c)(1), if recyclable materials (such as sludges) are applied to or placed on the land, they are considered to be Aused in a manner that constitutes disposal@ because such use is analogous to land disposal of wastes. Specific requirements for recyclable materials used in a manner constituting disposal vary according to the nature and use of such materials. However, in all cases such products must meet the applicable land disposal treatment standards in subpart D of

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40 CFR Part 268 for each recyclable material (i.e., hazardous waste) that they contain. For a characteristic waste, this generally includes meeting treatment standards for all underlying hazardous constituents, as well as the standards for the hazardous waste characteristics that the waste exhibits. Therefore, use of the sulfuric acid as either a fertilizer or a pesticide would have to meet LDR standards in Part 268 for all appropriate waste codes.

I hope this letter addresses your concerns. If you have any further questions, please have your staff contact Marilyn Goode of my staff at 703-308-8800.

Sincerely,

Elizabeth Cotsworth, Director
Office of Solid Waste

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May 10, 2000

NOTE TO REVIEWERS

FROM: Marilyn Goode

SUBJECT: OSW #9953 (Application of Sulfuric Acid as Fertilizer/Pesticide)

The incoming on this control (from Montana DEQ) is rather complicated. I therefore discussed the letter with Montana DEQ and Region VIII to obtain clarification about their basic concern, which is the application of LDR requirements to fertilizers and pesticides placed on the land. The response reflects these concerns, rather than all the issues raised in the incoming. Let me know if you have any questions.