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PICKLE LIQUOR RECOVERY UNIT AS AN INDUSTRIAL FURNACE

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

NOV 10 1987

Elihu I. Leifer, Esq.
Sherman, Dunn, Cohen, Leifer & Counts
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

Dear Mr. Leifer:

Thank you for your letter of October 19, 1987, in which you requested guidance and a clarification of our position regarding the regulatory status of the spent pickle liquor to be generated at the USS/POSCO facility at their plant in Pittsburg, California. Since we have been involved, the Agency has reviewed information provided by both the Contra Costa Building and Construction Trades Council and USS/POSCO. This information was provided to assist us in reaching a decision as to whether the spent pickle liquor at the POSCO facility was considered a hazardous waste and subject to the Resource Conservation and Recovery Act (RCRA) hazardous waste rules. We regret that we could not provide an answer before the Council's October 20 meeting.

While we appreciate and understand your desire to resolve this matter as soon as possible, the Court of Appeals decision in American Mining Congress v. EPA, 824 F. 2d 1177 (D.C. Cir. 1987), has complicated our decision. In particular, the court held that EPA's authority over hazardous waste recycling activities is limited to those activities that, in some sense, involve discard. In addition, the court indicated that EPA has no authority under Subtitle C of RCRA regarding those activities involving the recycling of hazardous secondary materials that are recycled in on-going, manufacturing-type processes. The activity to be conducted at the USS/POSCO facility in Pittsburg, California, may involve such type of recycling. The Agency intends to deal with questions regarding the scope of the

court's opinion by issuing Federal Register notices interpreting the opinion and clarifying which portions of the existing rules must be amended. Because these issues affect the entire regulated community, and not just individual facilities, we believe that use of rulemaking procedures is a fairer and more appropriate way of proceeding. As we have indicated previously, we expect to publish these notices within the next one to three months. However, we will provide an update in three to four weeks.

In the meantime, we have reviewed the available information to determine whether the spent pickle liquor generated at the USS/POSCO facility is abandoned by being incinerated. We believe the spent pickle liquor is being processed in an industrial furnace to produce the usable products hydrogen chloride and ferrous oxide. Therefore, the spent pickle liquor is not being incinerated. We consider the reclamation furnace to be an industrial furnace under the expansive definition of "smelting, melting, and refining" furnaces designated as industrial furnaces under 40 CFR 260.10. Specifically, we believe the furnace is an integral component of the finishing process. We also believe that the finishing process is an extension of the smelting, melting, and refining process because it processes on-site intermediary products produced by those operations. The pickle liquor recovery unit is an integral component of the finishing operation because the feedstock, pickle liquor, is generated on-site by the finishing process, and one or more products produced by the recovery unit are reintroduced into the smelting, melting, or refining (or finishing) process.

We believe that an expansive definition of smelting, melting, and refining furnaces is justified. The recovery unit clearly meets the criteria for designation as an industrial furnace. It produces usable products--hydrogen chloride and ferrous oxide. The unit is not used to destroy a waste by incinerating organic compounds. In addition, in 1985, when EPA changed the definition of an incinerator from a test based on the primary purpose of the combustion device (i.e., use for destruction of wastes) to a test based on the physical characteristics of the device (i.e., enclosed device using controlled flame combustion but not meeting the definition of a boiler or industrial furnace), the Agency stated that "this

change is essentially a clarification of the existing rules which should have little effect on the number or identity of units already subject to [regulation as incinerators]". (See 50 FR 617 (January 4, 1985).) Given that the primary purpose of the recovery unit is not to destroy waste but, rather, to produce products, the Agency did not intend to destroy abandoned materials, but rather to recover usable products.

In closing, I want to assure you that we are closely examining the issue at USS/POSCO and will do our best to get an answer to you as soon as possible on EPA's authority to regulate the spent pickle liquor.

Sincerely,

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J. Winston Porter
Assistant Administrator