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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 22 1986

Mr. Randall F. Andrews
Industrial and Agricultural Chemicals, Inc.
Route 2
Box 521-C
Red Springs, N.C. 28377

Dear Mr. Andrews:

This is in response to your letter of December 27, 1985, concerning the regulatory status of the copper plating solution that you receive at your plant site. As I understand your situation, you obtain from a copper plating operation a copper sulfate bath (which exhibits the characteristic of corrosivity) at your plant site and react it with a chelating agent to produce a material that is registered with the North Carolina Department of Agriculture as a commercial fertilizer. This material no longer exhibits the corrosivity characteristic. This material is then sold to farmers for use as a fertilizer or is sold to fertilizer companies for inclusion into fertilizer for resale.

Under this scenario, the copper sulfate bath that you receive at your plant site is a solid and hazardous waste and is subject to the transportation and storage requirements under the hazardous waste regulations. The material that is produced at your plant site (i.e., the commercial fertilizer), however, is no longer subject to regulation under the hazardous waste rules and may be managed as such. The basis for this decision is as follows: On January 4, 1985, EPA promulgated its final rules which deal with the question of which materials are solid and hazardous wastes when they are recycled. Among other things, these rules state that all hazardous secondary materials that are placed on the land for beneficial use or incorporated into products (referred to as waste-derived products) that are placed on the land for beneficial use are solid and hazardous wastes. (See enclosed copy of regulations.) In the Agency's view, these practices are virtually the equivalent

RO 11124

of unsupervised land disposal, a situation RCRA is designed to prevent. The many damage incidents resulting from wastes being placed on the land for beneficial use bear out the Agency's concern. This type of recycling activity has also been a particular concern of Congress. In particular, in a number of Congressional reports, they describe various damage incidents involving wastes that are placed on the land for beneficial use. These reports reflect not only Congress' concern but its intent that EPA regulate this type of activity. Therefore, we believe that this type of recycling activity constitutes waste management and need be subject to regulatory control.

By asserting jurisdiction over waste-derived products that are placed on the land, we are also asserting jurisdiction (and regulating) the materials that go into these products, provided these materials are hazardous (i.e., exhibit one or more of the hazardous waste characteristics or are specifically listed). Therefore, since the copper plating solution is corrosive, it is subject to regulation. More specifically, the generator and transporter of this material is subject to the appropriate generator and transporter standards, including the hazardous waste manifest, while you (being the recycler) would be subject to the appropriate storage standards. (See 40 CFR 261.6(b) and (c) for specific regulatory requirements.) As indicated earlier, however, the material that is produced at your facility -- the commercial fertilizer -- is no longer subject to regulation since this material is no longer defined as hazardous.

Since this regulation has gone through formal rulemaking, your only alternative (at this time) is to submit a rulemaking petition under 40 CFR Part 260.20 (See enclosure for specific information requirements). 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 (WH-562B)

RO 11124