

October 9, 2003

Timothy J. Hylla  
Environmental Management Alternatives  
10627 Midwest Industrial Blvd.  
St. Louis, Missouri 63132

**RE: Letter of May 13, 2003 Regarding Ferric Chloride**

Dear Mr. Hylla:

In the above referenced letter you asked for the Department's written concurrence with a determination that the ferric chloride your company markets is exempt from the hazardous waste regulations and therefore not required to be shipped on a hazardous waste manifest.

First, it is important for me to point out that the Department's Rules and Regulations for Hazardous Waste Management as quoted below, clearly state that it is always the generator's responsibility to determine if his/her waste is a hazardous waste regardless of any other advisory opinions.

**5.08 Hazardous Waste Determination:** *The generator must determine if any of his wastes meet any of the definitions of a hazardous waste. He must first determine if his waste meets any of the federal definitions of hazardous waste as required by 40 CFR 262.11. If the waste does not meet any of the federal definitions, the generator must then determine if any of the Rhode Island waste types apply, as defined by Rule 3.67 of these regulations. Regardless of any advisory opinions or statements from any laboratory or government agency, it remains the generator's responsibility to properly characterize his wastes. Testing employed by the generator to determine if a material is hazardous waste must be an approved method set forth in 40 CFR 260.11 or 40 CFR 261 Subpart C. Equivalent testing methods are not allowed.*

Therefore we are offering this opinion as an effort to help your clients, be they generators, transporters or treatment facilities in determining their obligations.

It is our understanding that the waste in question typically exhibits the characteristic of corrosivity and therefore carries a waste code of D002. You are not disputing that the waste in question exhibits this characteristic and therefore if the material is landfilled or otherwise disposed of, it is a hazardous waste. The issue at hand is whether the material is a solid waste, or whether it is reused as an effective substitute for a virgin product and therefore qualifies for the recycling exemption in 40 CFR 261.2 (e).

From our telephone conversation you indicated that the recycling/reuse of this material in question is not performed in New England, therefore due to practical constraints we are not able to view the process. You did however submit documentation that Ohio EPA has evaluated the reuse in a

wastewater treatment system at the Clean Harbors Facility in Cleveland Ohio and has concluded that it “is used as an effective substitute for a commercial chemical product and is not a waste and therefore not a hazardous waste.” You also included a letter dated February 26,2001 from the Clean Harbors Facility confirming that the material is used as a substitute for a virgin product.

It is also our understanding as per our discussions that the material does not go through any processing prior to its addition into the wastewater treatment system and is essentially the same as what the virgin product is subjected to, and is therefore reused as opposed to being reclaimed.

Based on the above information, it is the opinion of this Office that the material is not a solid waste based on the exemption to the definition of a solid waste found in 40 CFR 261.2 (e) (ii). This information is based on the representations we have been given for the material and the process and the current State and Federal Regulations. Should any of these change in the future, the status of the material may also change.

I would also remind you and your clients that the materials in question may not be accumulated speculatively and may not be used in a manner constituting disposal as defined in 40CFR 261.2(e)(2)(i). Generators of this material must maintain adequate documentation to demonstrate that the material is not being speculatively accumulated and is not used in a manner constituting disposal.

If you have further questions please contact me at (401) 222-2797 extension 7112.

Sincerely,

Mark M. Dennen, Senior Environmental Scientist  
Office of Waste Management

cc: Laurie Grandchamp, RIDEM/OWM  
Yan Li, RIDEM/ OWM  
Robert Nero/ RIDEM/ OCI