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APRIL 21 1989

Mr. Thomas R. Mastalerz
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Greenbrier, Tennessee 37073-0903

Dear Mr. Mastalerz:

This letter is in response to your letter dated July 31, 1989, in which you asked for clarification of Resource Conservation and Recovery Act (RCRA) regulations as they pertain to "U" and "P" listed wastes found at 40 CFR Section 261.33(e) and (f).

When characterizing any commercial chemical product (CCP) as a hazardous waste under Subtitle C or RCRA, a person must first determine if the CCP can be defined as a solid waste (see 40 CFR 261.2). If the CCP is a solid waste, the CCP would also be a hazardous waste if it is either a "U" or "P" listed waste in 40 CFR Section 261.33(e) or (f) and/or if it exhibits a characteristic of a hazardous waste as defined in 40 CFR Subpart C or Part 261. If the CCP is not defined as a solid waste, it cannot be a hazardous waste.

As stated in 40 CFR Section 261.33(b), "The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded...any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) and (f) of this section." Section 261.33(d) provides that commercial chemical products on the "U" and "P" lists would also include commercially pure grades and technical grades of that chemical.

The July 28, 1989 Federal Register (54 FR 31336) explains that the "U" and "P" lists do not apply to chemicals that have been used for their intended purposes. If the laboratory's "chemical A (U????)" described in your letter is "unused" and still remains a technical grade of that chemical after the 0.5% - 5.0% contamination you indicated, then the chemical must be classified as a U listed waste when discarded or intended for discard/disposal. In addition, if the laboratory's "unused" chemical A was no longer considered a technical or commercially

pure grade due to contamination, it would be considered an off-specification species of that chemical. As the November 25, 1980 Federal Register (48 FR 78540) explains, "off-specification"

-2-

materials that, if they met the specification, would be commercial chemical products or manufacturing chemical intermediates" would be listed hazardous wastes when discarded or intended for discard/disposal.

If you have a CCP that has been used, then it would not be a "U" or "P" listed waste. It may, however, still exhibit one or more of the characteristics of a hazardous waste defined in 40 CFR Part 261 Subpart C. It is the responsibility of the generator to make this determination.

You should also be aware of the fact that if the CCP were a solvent (i.e., used for its solvent properties) and it was spent, it may meet one of the spent solvent hazardous waste listings found at 40 CFR Section 261.31 (Hazardous Waste Nos. F001 through F005).

Finally, please be advised that States may have regulations that are more stringent or broader-in-scope than those of the Federal government. You should always check with the appropriate state agency.

If you should have any further questions, please call the RCRA/Superfund Hotline at 1-800-424-9346.

Sincerely,

Devereaux Barnes
Director
Characterization and
Assessment Division