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TITLE: Scope of the Term "Abandoned" under Revised 40
CFR 261.2

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LEVEL OF DRAFT

- ☐ A — Signed by AA or DAA
- ☐ B — Signed by Office Director
- ☐ C — Review & Comment

REFERENCE (other documents):

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Key Words: Discarded Materials, Storage

Regulations: 40 CFR 261.2, 261.2(a)(2)(i), 261.2(b)(1), 260.10

Subject: Scope of the Term "Abandoned" under Revised 40 CFR 261.2

Addressee: John A. Quinlan, Legal Assistant, Evans, Kitchel, and Jenckes, P.C.,
2600 North Central Avenue, Phoenix, Arizona 85004-3099

Originator: Matthew A. Straus, Chief, Waste Identification Branch

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Summary:

The Agency generally does not intend to regulate those secondary materials that are bona fide products (e.g., secondary materials used as ingredients or feedstocks in production processes or as a substitute for commercial chemical products) even though they are stored on the land. Therefore, a listed emission control dust stored in piles on the land and used as an ingredient in a production process would not be defined as a solid waste if the material is not speculatively accumulated.

However, if the material escaped from the unit (leaching), it would constitute disposal and meet the definition of abandoned and therefore be defined as a solid waste.

JUL 1 1985

Mr. John A. Quinlan
Legal Assistant
Evans, Kitchel, and Jenckes, P.C.
2600 North Central Avenue
Phoenix, Arizona 85004-3099

Dear Mr. Quinlan:

This letter is in response to your letter dated May 1, 1985, regarding the scope of the term "abandoned" under revised 40 CFR §261.2. In particular, you indicate that §261.2(a)(2)(i) provides that a material may be discarded by being abandoned and §261.2(b)(i) defines abandoned to mean disposed of. You further state that disposal (as defined in §260.10) includes the "placing of any solid waste or hazardous waste into or on any land or water..." Therefore, you are concerned that read together, these sections would state that any material that is placed on the land is a solid waste, and that if the material is hazardous (i.e., if listed in Subpart D of Part 261 or exhibits one or more of the characteristics in Subpart C of Part 261), the regulations relating to hazardous wastes would apply.

As we discussed previously, the Agency generally does not intend to regulate those secondary materials that are bona fide products (e.g., secondary materials used as ingredients or feedstocks in production processes or as a substitute for commercial chemical products) even though they may be temporarily stored on the land. Thus, a listed emission control dust that is stored in piles on the land and is used as an ingredient in a production process would not be defined as a solid waste, provided that the material is not speculatively accumulated.^{1/} This position is supported (as you state in your letter) by the parenthetical

^{1/} A material is considered speculatively accumulated if it is being accumulated without having a known recycling market or disposition, or no feasible means of recycling, and during a one-year calendar period, 75 percent of the material is not recycled, or transferred to a different site for recycling.

comment in the preamble, "By saying "abandoned," we do not intend any complicated concept, but simply mean thrown away." See 50 FR 627; January 4, 1985.

On the other hand, if the material were to escape from the unit (i.e., leach from the waste and contaminate ground-water), this action would constitute disposal and meet the definition of abandoned and, thus, would be defined as a solid waste. In addition, if the material is hazardous, pursuant to §261.3, the material would be subject to the hazardous waste regulations. This point is discussed in the preamble to the regulations where we indicate "In addition, we note that black liquor that is disposed of and not recycled is a waste, and if hazardous, a hazardous waste. This includes black liquor that leaks, leaches, or overflows from an impoundment and is not recycled." See 50 FR 642, 1st column.

I hope this letter adequately responds to your question. 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

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