

10-11-99 Now



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Edwin F. Lowry, Director
400 P Street, 4th Floor, P.O. Box 806
Sacramento, California 95812-0806

Gray Davis
Governor

November 10, 1999



Ms. Jeane Martin
Area Environmental Compliance Coordinator
Pacific Area
United States Postal Service
400 Oyster Point Boulevard
South San Francisco, California 94099-0421

RECYCLING OF METAL SHAVINGS FROM BRAKE REPAIR ACTIVITIES

Dear Ms. Martin:

Thank you for your October 22, 1999 letter requesting that the California Department of Toxic Substances Control (DTSC) comment on the recycling of metal shavings generated from brake repair activities at vehicle maintenance facilities operated by the United States Postal Service (USPS).

Background

According to your letter, USPS vehicle maintenance facilities, situated throughout the State of California, perform brake repair activities using brake lathes to machine brake drums. The metal shavings from those operations are recycled by a metal recycler. Your letter states that, to your knowledge, "the recycled brake shavings are free of contaminants" and that the metal shavings "are larger [than] 100 micrometers and therefore are not a fine powder." During an "audit" performed by a Certified Unified Program Agency (CUPA), one of your facilities "was cited for the practice of recycling the metal shavings." The CUPA inspector required that the shavings be characterized, and "as would be expected," you said, "the shavings were found to be high in chromium." Your letter specifically requests that DTSC comment on the correct disposal and recycling method for the aforementioned metal shavings.

Status of the Material Under Federal Law

"Scrap metal" is defined in section 261.1(c)(6) of Title 40 of the Code of Federal Regulations (40 CFR), in pertinent part, to include bits and pieces of metal (e.g., "turnings") which when worn or superfluous can be recycled. The federal definition of "scrap metal" is not predicated on particle size or chemical composition.¹ Under current federal law, "scrap metal" is a solid waste when discarded,² and is subject to regulation as a hazardous waste when discarded but, pursuant to 40 CFR 261.6(a)(3)(ii), is specifically exempted from regulation as a hazardous waste when discarded by being recycled. Metals shavings that are discarded by being disposed would be subject to regulation as hazardous wastes under federal law if those metal shavings exhibit a characteristic of hazardous waste, or are contaminated with listed hazardous wastes.³

Based on the information provided in your letter, and on the provisions of federal law cited in the immediately preceding paragraph, DTSC concludes that the metal shavings generated from brake repair operations at USPS vehicle maintenance facilities meet the federal definition of "scrap metal," and therefore, are not subject to regulation as hazardous wastes under federal law when recycled, irrespective of the manner in which the metal shavings are recycled, or the sizes or chemical characteristics of the metal shavings. Any metal shavings that are disposed obviously are not recycled, and therefore are not eligible for the recycling exemption specified in 40 CFR 261.6(a)(3)(ii).

Status of the Material Under State Law

The manner in which a waste or material is regulated under federal law, indicates how the waste or material may be regulated under State law. California's hazardous waste control law is generally more stringent and broader in scope than corresponding federal law. A waste or material subject to regulation under State law must be managed as required by State law, regardless of whether the waste or material is regulated under federal law, and, usually, irrespective of a how the waste or material is regulated under federal law.

¹ However, the U.S. Environmental Protection Agency has explained that a metal-containing waste with a "significant liquid component" is not "scrap metal." See the January 4, 1985 Federal Register, Volume 50, Number 3, page 624 (50 FR 624).

² A material is "discarded" when the material is, among other things, either recycled or disposed. See 40 CFR 261.2(a)(2) for the complete definition of "discarded material."

³ See 57 FR 37237.

Ms. Jeane Martin
November 10, 1999
Page 3

California's definition of "scrap metal" differs from the United States Environmental Protection Agency's definition of "scrap metal" cited above. As you are obviously aware, the State's definition of "scrap metal" does not include "fine powder," which is defined in section 66260.10 of Title 22 of the California Code of Regulations (22 CCR) as a metal, in dry powder form, having a particle size of less than 100 micrometers in diameter. Also, the State's definition of "scrap metal" excludes metal contaminated with hazardous waste (e.g., asbestos) such that the contaminated metal exhibits any characteristic of hazardous waste set forth in Article 3 of Chapter 11 of 22 CCR. Pursuant to 22 CCR 66261.6(a)(3)(B), "scrap metal," as defined in 22 CCR 66260.10, is exempted from regulation under State law, when recycled. "Scrap metal" that is disposed rather than recycled is subject to regulation as a hazardous waste under State law, if the metal exhibits any characteristic of hazardous waste or is contaminated with listed hazardous waste.

Based on the information contained in your letter, and on the provisions of State law cited in the immediately preceding paragraph, DTSC concludes that the metal shavings generated in the course of brake repair operations conducted at USPS facilities are not subject to regulation as hazardous wastes under State law, **provided** those metal shavings meet the definition of scrap metal specified in 22 CCR 66260.10, and are recycled. DTSC is not able to conclude that the metal shavings actually meet the definition of "scrap metal" in 22 CCR 66260.10. Your letter asserts that the metal shavings are not fine powders, but your letter did not include analytical reports or other verifiable information regarding particle size. Additionally, you stated that "to your knowledge" the metal shavings are not contaminated with other substances, but your letter did not include copies of analytical reports or other information demonstrating that representative samples of the waste were evaluated and found to be free of any contaminants.

Conclusion

Based on the information provided in your October 22, 1999 letter, and on the provisions of law cited above, DTSC concludes that the subject metal shavings would meet the definition of "scrap metal" and therefore, would be exempted from regulation when recycled, **provided** those metal shavings are not fine powders, and are not contaminated with hazardous wastes or constituents (e.g., characteristically hazardous fine powders, or asbestos) to such an extent that the metal shavings exhibit one or more characteristics of hazardous waste due to the presence of those contaminants.

Ms. Jeane Martin
November 10, 1999
Page 4

Under existing federal and State law, generators are responsible for determining whether their wastes are hazardous wastes. If you require assistance determining whether your metal shavings are hazardous wastes, please contact DTSC's Consultative Services office at (916) 255-3671, or DTSC's Waste Evaluation Unit at (916) 322-7676. If you have additional questions regarding the federal or State "scrap metal" definitions or exemptions, or hazardous waste recycling in general, please contact me at (916) 324-1806 or at the letterhead address.

Sincerely,



Norman E. Riley, Chief
Resource Recovery Section

Enclosure

cc: Mr. Rich Vaille, Chief
State Programs and Compliance Branch
U.S. Environmental Protection Agency
Region IX (H-4)
75 Hawthorne Street
Sacramento, California 94105

Acting Chief
Compliance, Monitoring and Enforcement Section
U.S. Environmental Protection Agency
Region IX (WST-3-1)
75 Hawthorne Street
Sacramento, California 94105

Ms. Cheryl Nelson
U.S. Environmental Protection Agency
Region IX (WST-3-1)
75 Hawthorne Street
Sacramento, California 94105

Ms. Jeane Martin
November 10, 1999
Page 5

cc: Mr. Lief Peterson
Consultative Services
Department of Toxic Substances Control
10151 Croydon Way
Sacramento, California 95827-2106

Mr. Ron Pilorin
Waste Evaluation Unit
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

Mr. Paula Rasmussen, Chief
State Regulatory Programs Division
5796 Corporate Avenue
Cypress, California 90630

Mr. Larry Matz, Chief
Statewide Compliance Division
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

Mr. Sangat Kals, Ph.D., Chief
Unified Program Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806