

Department of Toxic Substances Control

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November 10, 1999



TO: CERTIFIED UNIFIED PROGRAM AGENCIES AND PARTICIPATING AGENCIES

SUBJECT: SCRAP METAL RECYCLING

It has recently come to the attention of the Department of Toxic Substances Control (DTSC) that there may be some misunderstanding of the regulations regarding scrap metal recycling [see the enclosed letter]. DTSC is providing the following brief outline of scrap metal recycling to assist you in understanding how the related regulations operate. Please review the following information carefully. If, after reviewing the information, you have any additional questions regarding this subject, please contact your designated DTSC Liaison, or the Duty Officer at the DTSC office nearest you.

How is scrap metal defined and regulated under federal law?

"Scrap metal" is defined in section 261.1(c)(6) of Title 40 of the Code of Federal Regulations (40 CFR) as:

"... bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled."

Under federal law, scrap metal is essentially a product made of metal that becomes worn out (or is either off-specification, excess, or unwanted material) and is recycled to recover its metal content, or metal pieces that are generated from machining operations (i.e., turnings, stampings, etc.). Not all metal-containing wastes are considered to be scrap metals. As the United States Environmental Protection Agency (U.S. EPA) explained in the January 4, 1985 Federal Register (see 50 FR 624), materials not covered by the definition of scrap metal include "residues generated from smelting and refining operations (i.e., drosses, slags, and sludges), liquid wastes containing metals (i.e., spent acids, caustics, or other liquid wastes with metals in solution), liquid metals wastes (i.e., liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries."

Under current federal law, scrap metal is always a solid waste when discarded,¹ 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. Simply put, scrap metal that exhibits a characteristic of hazardous waste (or that is contaminated with a hazardous waste listed in 40 CFR 261.31, 261.32, or 261.33) is not regulated as a hazardous waste when recycled, but is regulated as a hazardous waste when disposed, if it exhibits a characteristic of hazardous waste (or is contaminated with a listed hazardous waste²).

How is scrap metal defined and regulated 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.

California's definition of "scrap metal" differs from U.S.EPA's definition of "scrap metal." Pursuant to section 66260.10 of Title 22 of the California Code of Regulations (22 CCR):

"'Scrap metal' means (a) any one or more of the following, except as provided in subsection (b) of this section:

- (1) manufactured, solid metal objects and products;
 - (2) metal workings, including cuttings, trimmings, stampings, grindings, shavings and sandings; or
 - (3) solid metal residues of metal production.
- (b) 'Scrap metal' excludes all of the following:

¹ 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." Also, the federal regulations address a category of material designated as "excluded scrap metal." Excluded scrap metal comprises "processed scrap metal," unprocessed home scrap metal," and unprocessed prompt scrap metal" [see 40 CFR 261.1(c)(9) through (c)(12)]. Pursuant to 40 CFR 261.(a)(13), excluded scrap metal **being recycled** is not a solid waste.

² See 57 FR 37237.

- (1) lead-acid storage batteries, waste elemental mercury, and water-reactive metals such as sodium, potassium, and lithium;
- (2) magnesium borings, trimmings, grindings, shavings and sandings and any other forms capable of producing independent combustion;
- (3) beryllium borings, trimmings, grindings, shavings, sandings and any other forms capable of producing adverse health effects or environmental harm in the opinion of the Department;
- (4) any metal contaminated with a hazardous waste, such that the contaminated metal exhibits any characteristic of a hazardous waste under article 3 of chapter 11 of this division;
- (5) any metal contaminated with an oil that is a hazardous waste and that is free-flowing;
- (6) sludge, fine powders, semi-solids and liquid solutions that are hazardous wastes."

Note that the State's definition of scrap metal does not include "fine powder," which is defined in 22 CCR 66260.10 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." The State's definition of scrap metal essentially covers those materials designated under federal law as "unprocessed home scrap metal" and unprocessed prompt scrap metal," but does not encompass those materials designated in the federal regulations as "processed scrap metal."

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**. Most scrap metal is recycled through smelting or other methods to recovery the metal value. The way in which scrap metal is recycled does not determine whether the scrap metal exemption applies. 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.

Summary

Scrap metal is exempted from regulation under both federal and State law, when recycled. Scrap metal is not exempted from regulation under either federal or State law when disposed, and therefore must be managed as a hazardous waste if the scrap metal exhibits a characteristic of hazardous waste or is contaminated with listed

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hazardous waste. The definitions of scrap metal are different under federal and State law. Some wastes (e.g., "fine powders") that meet the definition of "scrap metal" under federal law and that are exempted from regulation under federal law when recycled, do not meet the definition of scrap metal under State law, and therefore, whether recycled or disposed, have to be managed as hazardous wastes under State law, regardless of the fact that the material is considered to be scrap metal under federal law.

Sincerely,



Norman E. Riley, Chief
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Enclosure

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