

9441.1994(24)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

August 30, 1994

Ms. Kristina M. Woods
Environmental Counsel
Law Department
Ashland Chemical Company
P.O. Box 2219
Columbus, Ohio 43216

Dear Ms. Woods:

Thank you for your letter dated August 3, 1994 requesting verification of Ashland Chemical's position regarding the regulatory status of high purity chemicals that are initially used by Ashland's high purity chemical customers and are then sold to other businesses for further use. Ashland's position is that reuse of the chemicals constitutes continued use of a product and that therefore, these materials are not subject to regulation as spent materials under the Resource Conservation and Recovery Act (RCRA) regulations.

Under the existing RCRA regulations, a "spent material" is "any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing." As you correctly note, the RCRA definition of spent material does not include materials that are reused for their original purpose, provided that the materials do not undergo reclamation or reprocessing prior to their reuse. For example, as you note, the reuse of a solvent (first used to clean circuit board) as a metal degreaser constitutes a legitimate use of a product for its original purpose. In this example, the fact that the solvent is "spent" in terms of its use as a circuit boards cleaner does not make it a spent material as defined by RCRA. Rather, as long as the solvent does not undergo reclamation prior to its reuse as a metal degreaser, it would be considered a product excluded from jurisdiction under RCRA. It is important to point out here that the determining factor is not whether a used chemical is marketable, but rather whether it is reused in a manner consistent

with its original use without prior reclamation.

Additionally, you should note that the Office of Solid Waste (OSW) recently established a Definition of Solid Waste Task Force to review the current system by which hazardous waste recycling is regulated. Over the past year, the Task Force has developed recommendations on how to improve the RCRA regulations to encourage the safe recycling of hazardous waste. The Task Force proposes a tiered regulatory system for hazardous waste recyclers based on the source of the recyclable materials and the recycling location. The Agency is currently considering revising its RCRA regulations based on these recommendations.

Under the Task Force proposal, Ashland's customers would be subject to regulation under RCRA as "Category A" recyclers. Category A includes spent materials directly reused off-site. (Under the Task Force' revised definition, the used chemicals that Ashland sells for reuse off-site would be considered spent materials.) As Category A recyclers, Ashland's customers would be subject to the minimum requirements for a RCRA recycler. These include notifying the Agency of recycling activities, use of a "recyclable materials" manifest for materials transport, and filing a biennial report on the volume and type of waste generated, how it was managed, and whether it was managed on- or off-site. The Agency will be making a decision on whether and to what extent to proceed with the Task Force recommendations over the next several months.

Finally, you should also note that EPA Regions and States authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some States have programs more stringent than the Federal hazardous waste program. I hope this addresses your concerns. Please call Mitch Kidwell at (202) 260- 8551 or Becky Daiss at (202) 260-8718 if you have any further questions.

Sincerely,

David Bussard, Director
Characterization and Assessment Division

Attachment

Ashland Chemical Company
Division of Ashland Oil Inc.
Law Department
P.O. Box 2219
Columbus, Ohio 43216

August 3, 1994

VIA CERTIFIED MAIL

Michael Shapiro
Director, Office of Solid Waste
U.S. Environmental Protection Agency
401 M. Street S.W.
Washington, D.C. 20460

Subject: Resale of High Purity Chemical Products

Dear Mr. Shapiro:

Ashland Chemical Company's Electronic Chemical Division (ECD) in support of our waste minimization efforts, requests that the U.S. EPA Office of Solid Waste review the enclosed position paper regarding the resale of high purity chemical products. The position paper provides the rationale for Ashland's position that this activity will not involve solid waste based on Federal regulations. Ashland is also basing this position on language from the Federal Register in which the United States EPA describes essentially the same activity we are proposing and exempts it from solid waste regulation. More specifically, Ashland relies on 50 Federal Register 614 Part II(I)(A)(1): Spent Materials, in which the Agency describes exemptions from the category of spent materials. "An example of this is where solvents used to clean circuit boards are no longer pure enough for that continued use, but are still pure enough for use as metal degreasers. These solvents are not spent materials when used for metal degreasing. The practice is simply continued use of a solvent. (This is analogous to using/reusing a secondary material as an effective substitute for commercial products.)"

Following your review, please provide written verification that

RO 11868

Ashland's position is consistent with the U.S. EPA's solid and hazardous waste regulations. Ashland has been in contact with the appropriate agency in Texas, the location of the proposed activity, to determine the appropriate state regulations that might affect transporting, manifesting and management of this process. The Texas Water Commission (now Texas Natural Resources Conservation Commission) agreed with our position. (See attached letter.)

Thank you for your assistance with this matter. If you have any questions or comments, please feel free to contact me at the above number or Herb Richardson in our Electronic Chemicals Division at (614) 889-4551.

Very truly yours,

Kristina M. Woods

cc: Herb Richardson

Enclosure

TEXAS WATER COMMISSION

John Hall, Chairman

Pam Reed, Commissioner

Peggy Garner, Commissioner

March 23, 1993

Mr. Don E. Gebhardt

Environmental Engineer

Ashland Chemical, Inc.

P.O. Box 2219

Columbus, Ohio 43216

Re: Review of Position Paper on the Resale of Spent High
Purity Chemical Products

Dear Mr. Gebhardt:

We have reviewed the position paper for the resale of spent high purity chemical products at your Electronic Chemical Division, submitted to the Texas Water Commission (TWC) on March 17, 1993. From the information submitted to TWC, it appears that your proposed activity is not subject to permitting requirements.

If you have any questions regarding this matter, please contact Mr. Srinath Venkataramiah, at (512) 908-6382.

Sincerely,

Chris Peckham, Supervisor

Facility Team I

Industrial and Hazardous Waste Permits Section

Enclosure

Ashland Chemical Company
Electronic Chemicals Division

Regulatory Position
Regarding: "Spent" High Purity Chemical Product Sales

The Electronic Chemicals Division of Ashland Chemical Company ("Ashland") is proposing to develop a clearing house to collect and distribute "spent" High Purity chemicals from our high purity chemical customers. (We are using the term "spent" in the sense that these chemicals are no longer suitable for use in the production of semiconductors; but they are suitable for use in other applications. Thus, they are not spent by RCRA definition.) The intent of this service is to help our customers minimize their waste disposal through the reuse of the spent chemicals by other industries. We also believe that without this clearing house many of these products would be neutralized and discharged to sanitary sewers or disposed of as hazardous waste. Ashland, as the clearing house, will utilize its existing technical grade customer base and high purity chemical customer, base to conserve resources and minimize the waste generated by our customers.

To further explain our position it is important that you understand that our current business is unique. Ashland's primary customers are semiconductor manufacturing plants. These are extremely clean operations which require that Ashland supply products mixed in a clean room environment, filtered and particle counted, and packed in specifically designed containers which preserve chemical integrity. Most product specifications require that even the lowest grade clean room chemicals contain no more than 300 parts per million of metallic impurities. Higher quality products are sold with a guarantee that they contain less than one part per billion per element of metallic contaminant. In contrast, the standard chemical blending, packaging, and distribution business does not depend on extremely low particle counts, and metal contaminants are usually not even measured. The proposed clearing house(s), at an, as yet undetermined site(s), would essentially consist of collecting, and in some cases consolidating, these streams and redistributing them to other markets with no further processing. The materials that would initially be collected and redistributed would include sulfuric acid, isopropyl alcohol, hydrochloric acid,

hydrofluoric acid, and phosphoric acid.

Ashland will establish an extensive paper trail and quality control program to assure that all materials collected are marketable. All materials prior to receipt will be extensively characterized. Due to the nature of the generator operations it is expected that product variability will essentially be non-existent. Records of all product pick ups, on-site storage, and shipments will be well documented, readily available for review and retained for a period of five years. Documentation of the purchaser's use will also be maintained to demonstrate that product use can not be construed to be "use constituting disposal".

Regulatory Requirements:

It is Ashland's position that under Title 40 of the Code of Federal Regulations, specifically 261.2(e)(1), the materials would not be classified as a solid waste and, therefore, the materials would not be a hazardous waste. This section states:

Materials are not solid wastes when they can be shown to be recycled by being:

- (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
- (ii) Used or reused as effective substitutes for commercial products; or
- (iii) Returned to the original process from which they were generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

Based on this citation, it is our position that we are not required to file permit applications or notices of activity since this operation will not involve any hazardous or residual waste. If necessary, Ashland will file for local building, operating and air permits should new facilities or tankage be required.