

Joseph Martella

From: Simpson, Greg - Corporate EHS [gsimpson@Textron.com]
Sent: Thursday, November 02, 2006 8:13 AM
To: Joseph Martella
Cc: Brian Wagner; Schiff, Jamieson; McCabe, Dave
Subject: Former Gorham Manufacturing Site - Slag Information



letter to J.
Schiff.PDF



Enclosures to Schiff
Letter.PD...

Joe:

As indicated in my e-mail of 10/26, Textron does not agree that soil in proximity to the slag material requires TCLP testing under the hazardous waste regulations. The first reason is that the slag material is itself excluded from the being considered hazardous waste under 40 CFR 261.4(b)(7)(ii)(B) as "slag from primary lead processing" under the so-called Bevill exemption. Therefore, neither would be the soil. The second reason is that, even if the slag and soil were not excluded, only material failing the TCLP that is "actively managed" is subject to the RCRA regulations.

In terms of the Bevill exemption, the slag material was generated decades ago by the former on-site smelter. As such, the slag is excluded from being considered hazardous waste without regard to whether it passes the TCLP or not. Section 261.4(b) provides:

"The following wastes are not hazardous wastes....(ii)(7) Slag from primary lead processing." Primary lead processing operations "include techniques that often change the chemical composition of the ore or mineral, such as smelting, electrolytic refining and acid attack or digestion." (emphasis added) (USEPA web page on Bevill Amendment Issues Training).

However, even if this were not the case, soil material, even if it fails the TCLP, would not necessarily be subject to RCRA. Such soil would only be subject to RCRA regulations if it is "actively managed", meaning it is removed from the ground. Please see the attached legal opinion with attachments from Kenneth Kastner, Esq. on this issue. Mr. Kastner is a nationally recognized legal expert on the RCRA regulations, including their scope. Please go to <<http://www.hhlaw.com/kmkastner/>> for further information on Mr. Kastner's qualifications in this regard.

If you would like to discuss this matter further please let me know. Otherwise, we look forward to receiving RIDEM's comments on our Slag Area Supplemental Removal Action work Plan.

Gregory L. Simpson
Project Manager, Site Remediation
Textron, Inc.
40 Westminster Street
Providence, RI 02903
(401) 457-2635
(401) 457-6028 - fax
gsimpson@textron.com

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