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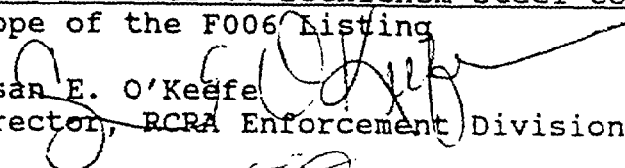
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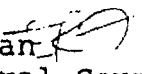


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Interpretation of the Seventh Circuit's Decision in
United States v. Bethlehem Steel Corp. Regarding the
Scope of the F006 Listing

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This memorandum sets out OECA's and OGC's interpretation of the September 26, 1994 opinion of the Seventh Circuit in United States v. Bethlehem Steel Corp., No. 93-2260. This memorandum responds to the potential for confusion regarding the court's statements on the scope of the F006 (wastewater treatment sludges from electroplating operations) hazardous waste listing.

The specific holding of the court was "that the F006 listing does not, independent of the mixture rule, include Bethlehem's mixed wastewater treatment sludges." Slip op. at 15 (emphasis added). The court considered significant that the electroplating wastewater stream entering Bethlehem's treatment plant was combined with non-hazardous wastewater streams. As a consequence of this combining of wastewater streams, according to the court, the entire sludge material that settled out in the treatment plant did not meet the F006 listing description. The court found that the listing did not contemplate expressly the generation of sludges from combined wastewater streams.

The court, however, acknowledged the parties' position that the sludge in the plant was a mixture of F006 and non-hazardous waste, and thus subject to the mixture rule. See, slip op. at

19. Implicit in the decision is the court's conclusion that or the portion of the sludge attributable to the electroplating operation met the F006 listing; that portion of the sludge which settled out from non-hazardous wastewater streams, however, did not come within the listing description. According to the court the sludge in the treatment plant was a mixture of these non-hazardous sludges and F006 sludges, which were generated simultaneously in the treatment plant, and thus were subject to the mixture rule, that had been vacated by the United States Court of Appeals for the District of Columbia Circuit in Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991).

Because Bethlehem's material was generated prior to the 1992 reinstatement of the mixture rule, the court held that the federal government had no jurisdiction over the sludge mixture under RCRA. It should be noted that wastewater from electroplating operations allegedly comprised less than 1% of the total wastewater entering the treatment plant. It should also be noted that the material in question had not been actively managed after the 1992 reinstatement of the mixture rule.

The court did not hold that no F006 waste had been generated. Rather, the entire sludge did not meet the listing description; only that portion attributable to the electroplating wastewater stream was F006. This decision represents the position of one federal court of appeals and is binding only on the district courts within that circuit. While it is the position of OECA and OGC that the court incorrectly interpreted the F006 listing, EPA is not seeking rehearing of the decision. The Agency is, however, working on an interpretation regarding the scope of the F006 and similar listings to clarify the status of wastes generated through integrated wastewater systems. Regions facing litigation in which the Bethlehem decision is raised should contact OECA.

Questions regarding the decision or this memorandum may be directed to Ann Kline (OECA) at 202-564-4007 or Mark Badalamente (OGC) at 202-260-9745.

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