



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 2 1993

*Handwritten notes in red ink: "Rec'd PSP" and "2/11/93" with a signature.*

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Ms. Marcia E. Williams  
Williams & Vanino, Inc.  
11999 San Vicente Boulevard  
Suite 325  
Los Angeles, CA 90049

Subject: TSCA Definitions Applied to Recycling

Dear Marcia:

This is in response to your June 13, 1993 letter requesting the Agency's guidance on certain recycling and reclamation activities as they relate to the definition of manufacturer and processor under the Toxic Substances Control Act (TSCA). I apologize for the delay in responding; as you well know, the resolution of these types of issues requires research into past interpretations and may have implications affecting a broad range of programs.

Under TSCA, "manufacture" means "to import into the customs territory of the United States..., produce, or manufacture." TSCA section 3(7). TSCA does not include a definition of manufacturer, as implied in your letter. However, under several TSCA regulations, EPA has defined "manufacturer" as:

"a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance."

See, for example, 40 CFR §§ 704.3, 716.3, 720.3.

Under TSCA section 3(10), "Process" means:

"the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce--

*Handwritten notes in blue ink: "Tom", "Hanks", "1/10", and "67".*



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contains at least 50% recycled fiber

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture."

"Processor," under TSCA section 3(11), means "any person who processes a chemical substance or mixture."

The definitions of "manufacture" and "process" are further qualified for purposes of sections 5 and 8 by the condition that the manufacturing or processing be "for commercial purposes." See TSCA §§ 5(i) and 8(f), respectively.

As you recognize in your letter, there is some potential overlap in EPA's interpretation of the terms "manufacturer" and "processor." For example, the acts of extracting previously manufactured substances from byproducts or wastes, or reclaiming substances from materials that might otherwise be considered wastes or byproducts, could be considered "producing substances" (i.e., manufacturing under TSCA). Alternatively, these same activities could potentially be considered "the preparation of a chemical substance...after its manufacture, for distribution in commerce" (i.e., processing under TSCA).

Under several TSCA regulations, EPA has defined the term "manufacture for commercial purposes" as applying to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts that are separated from that other substance or mixture. See, for example, 40 CFR §§ 704.3, 716.3, 720.3(r)(2). However, while byproduct production is considered "manufacture," persons who recover existing chemical substances from byproducts have been viewed by EPA as processors, in certain circumstances. For example, EPA stated the following in the preamble to the final Inventory Reporting Regulations (40 CFR 710):

Persons who recover chemical substances from byproducts of the manufacture or processing of other chemical substances, mixtures, or articles would be processors of the chemical substances and need not report for the Inventory. There is no requirement that these persons report any chemical substance which is extracted or separated from a byproduct, including by means of heat or a chemical reaction, if the chemical substance that is recovered is

actually present in the byproduct or was an intermediate used in the manufacture of the byproduct, and if also, to the best of the knowledge of the person recovering the substance, the manufacturer of the substance is reporting the substance for inclusion on the inventory.

42 FR 64572, at 64587, December 23, 1977.

We believe it appropriate to extend the above interpretation, beyond recovery activities associated with manufactured "byproducts," to certain activities associated with production, processing, or use wastes.

In your letter you described five recycling activities; guidance on these activities as they relate to "manufacture" or "processing" under TSCA follows:

- Activity #1: Distillation of spent solvents or spent antifreeze to remove impurities so that the materials can be reused for their original purpose. The impurities are disposed.

The distillation of products, such as spent solvents or antifreeze, containing "existing chemical" substances (i.e., substances listed on the TSCA Inventory) to remove impurities to recover the "existing chemical" substances would be considered a processing activity. In contrast, distillation of a product for the purpose of separating and isolating "new chemical" substances (i.e., substances not included on the TSCA Inventory) or substances that were not used in the manufacture of, or contained in, the product would be viewed as a manufacturing activity.

- Activity #2: Regeneration of various spent organic streams so that they can be reused.

The regeneration of previously manufactured spent organic streams would be considered a processing activity if the chemical substances that are components of the spent and regenerated streams consist of "existing chemical" substances. Clarification on the regeneration process and more specific information on the exact components of the spent organic stream is needed before the Agency can provide further comment or guidance.

- Activities #3-5:

#3 Removal of zinc from baghouse dust for reuse.

#4 Removal of lead from batteries and other lead products for reuse in new lead products.

#5 Removal of mercury from mercury containing lamps for distillation and reuse.

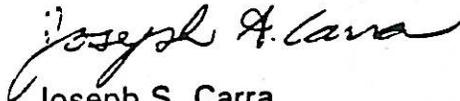
In activities 3-5, the recovery of a component from a waste or byproduct would be viewed as processing if the recovered substance is an "existing chemical" substance already present in the waste or byproduct or an "existing chemical" substance used in the production of the byproduct or waste.

Because of the broad array of activities that can be considered "recycling," the guidance contained herein should be applied cautiously to scenarios other than those presented in your letter (and re-stated above).

\* Although not directly on point with the activities described in your letter, it should be noted that under certain circumstances, extraction, refinement, or purification activities may be considered "manufacturing" under TSCA. Under the Preliminary Assessment Information Rule (40 CFR Part 712), for example, EPA has stated that the extraction of a substance from a natural source to make it marketable is "manufacturing." (See 40 CFR 712.5(b) and 47 FR 26992, at 26993, June 22, 1982). In addition, in certain cases, the processing of PCBs for disposal (e.g., distillation of rinse solvents to separate PCBs for disposal and the rinse solvents for reuse/recovery) is considered disposal and requires a disposal approval.

If you have specific questions regarding our response, please contact Miriam Wiggins-Lewis at (202) 260-3937, or Chris Blunck at (202) 260-1636. Please contact me if I can be of further assistance.

Sincerely,



Joseph S. Carra  
Deputy Director  
Office of Pollution Prevention  
and Toxics

cc: C. Auer



WILLIAMS ENVIRONMENTAL MANAGEMENT, INC.

Environmental Management  
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June 13, 1993

Mr. Joe Carra  
Deputy Director, OPPTS - 792  
US Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Re: TSCA Definitions Applied to Recycling

Dear Joe:

Over the last two years, I have worked with several clients to supplement their internal TSCA environmental management programs. One important definitional question has surfaced in these efforts. As you know, the TSCA definition of manufacturer is extremely broad and overlaps with the TSCA definition of processor. This confusion is particularly problematic with recycling operations. In my conversations with OPPTS staff, I understand that work is ongoing to address overlaps within the definitions of processor and distributor. I have reviewed the materials prepared on that issue but they don't address the concerns that affect my clients. Thus, I am writing this letter in the hope that you can provide some near term clarification.

The definition of manufacturer is "a person who imports, produces or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance". This definition would appear to cover the following types of recycling operations:

- . Distillation of spent solvents or spent antifreeze to remove impurities so that the materials can be reused for their original purpose. The impurities are disposed.
- . Regeneration of various spent organic streams so that they can be reused.
- . Removal of zinc from baghouse dust for reuse.
- . Removal of lead from batteries and other lead products for reuse in new lead products.
- . Removal of mercury from mercury containing lamps for distillation and reuse.

Manufactures  
& extracted  
solvents -  
Proc. of  
materials  
recycled  
OK.

However, the TSCA processing definition also appears to cover these activities. Processing for commercial purposes includes

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"preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included."

While TSCA has the ability to regulate manufacturers and processors, its current regulatory framework for manufacturers is far more comprehensive. This is particularly true with regard to the section 8(b) inventory update rule and the other section 8 reporting rules.

I believe that it makes more sense to consider these recycling and reclamation activities as processing rather than manufacturing activities. From an inventory update standpoint, it is misleading to double count materials that have already been counted once. In fact, aggressive recycling should ultimately lead to a reduction in the amount of needed virgin manufacturing. Yet if EPA counts these activities as manufacturing, EPA will be unable to accurately track reductions in virgin manufacturing output.

I recognize that due to the press of many other priorities, it is unlikely that EPA will promulgate a regulatory clarification in the near future. However, it is important for affected parties to understand how EPA will interpret the current rules in this type of a confusing situation. An EPA statement will allow affected companies to design appropriate compliance programs without putting them at a competitive disadvantage by having them assume a different interpretation than is assumed by their competitors.

I would appreciate a written response at your earliest convenience. If additional examples or more detail would be helpful, you or your staff can reach me at 310-472-2726. I look forward to hearing from you.

Sincerely,



Marcia E. Williams,  
President