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March 3, 1999

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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*Via Hand Carry*

Re: Department of Environmental Protection, Notice of Final Rulemaking, Hazardous Waste Management (25 Pa. Code Chapters 260a-266a, 268a-270a)

Dear Mr. Smith:

On behalf of Goldschmidt Industrial Chemical Corporation, we appreciate the opportunity to present the following comments and concerns to the Independent Regulatory Review Commission regarding certain aspects of the Notice of Final Rulemaking filed by the Environmental Quality Board and Department of Environmental Protection relating to Hazardous Waste Management.

By way of background, GICC operates an inorganic chemical manufacturing and distribution facility in Robinson Township, Washington County. At that facility, GICC manufactures a variety of tin-bearing materials (stannate chemicals) for use in a wide range of industries, including automobile manufacturing, metal finishing, tin plating, electronics, and the chemical industry.

Many of GICC's customers generate materials which contain recoverable tin. Some of these materials are acidic spent tin solutions, while others are caustic tin bearing residuals. Various of these materials are spent tin solutions (i.e., those that have been used, but need to be regenerated to be of further utility). Some are sludges from tin-plating baths and wastewater treatment sludges from tin-using industries. Finally, there are tin residues collected from air pollution control devices use, for example, in the glass industry. Each of these materials are considered "hazardous" only because of their respective acidic or caustic (low or high pH) characteristics.

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GICC's competitors (located in other states) in the inorganic chemical business routinely accept back such tin-bearing residuals from these customers, for recycling and recovery of the valuable tin. Such tin-bearing residuals are classified as "recyclable materials" under the Federal regulations adopted pursuant to the Resource Conservation and Recovery Act. The applicable Federal rules (40 C.F.R. §261.6(c)) provide that while the storage of such materials in advance of the recycling process is regulated under Subparts A-L, AA, BB and CC of Parts 264 and 265, "[t]he recycling process itself is exempt from regulation except as provided in [40 C.F.R.] §261.6(d)." 40 C.F.R. §261.6(c)(1).

Under the current Pennsylvania regulations, although an exemption per se was not provided for such recycling, a streamlined "permit-by-rule" was accorded under 25 Pa. Code §266.100 *et seq.* for facilities engaged in the reclamation and recycling of such materials. The steps required to come under this permit-by-rule involved submission of a request for determination of applicability. 25 Pa. Code §266.102. That review included consideration of the prevalence of the recycling practice on an industry-wide basis, the value of the materials after they have been reclaimed, the degree to which the reclaimed materials is like an analogous raw material, product or coproduct, the extent to which an end market is guaranteed, and the extent to which the reclaimed materials is handled to minimize loss and release into the environment. The recycling of the subject tin-bearing materials meets all of these prerequisites for the existing permit-by-rule.

Ironically, as part of a package of regulations touted as helping to streamline Pennsylvania's regulatory program, and to conform it to the corresponding Federal RCRA rules, the Notice of Final Rulemaking developed by the Department actually undermines the legitimate recycling of these materials. The new rules would eliminate the permit-by-rule which Pennsylvania had previously utilized in lieu of the Federal regulatory exemption, while simultaneously refusing to adopt the corresponding Federal approach to such reclamation and recycling. The result (which we believe is unintended) would be to require virtually all entities now engaged in recycling under the §266.101 permit-by-rule to cease operation until they apply for and obtain an individual hazardous waste treatment permit – a process which can easily take a year or more.

To explain further the regulatory situation created by the Notice of Final Rulemaking, we would draw your attention to the following:

- Proposed §261a.6(b) states that 40 C.F.R. §261.6(c) is *not* incorporated by reference. In other words, the Federal exemption of recycling processes from the hazardous waste treatment permit requirement is not adopted in Pennsylvania.

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- Proposed §261a.6(c) states that instead of 40 C.F.R. §261.6(c), facilities that store *or treat* recyclable materials are to be regulated under all applicable provisions of 40 C.F.R. Parts 264 and 265, Subparts A-L, AA, BB, CC, DD, Subpart X of Part 264, Parts 266 and 270, plus corresponding provisions in the State rules. The only exception offered in §261a.6(c) is that the sizing, shaping or sorting of recyclable materials is not considered “treatment.”
- The preamble to the final rules indicates that “reclamation and recovery processes tend to resemble or replace a manufacturing process, and therefore, *the permit requirement is not intended to apply to the reclamation or recovery process itself.*” Preamble at pg. 11 (emphasis added). However, this stated intent is not carried out in the rules themselves. As noted above, the actual rules (§261a.6(c)) would require a permit for any facility that stores *or treats* recyclable materials. The Federal definition of “treatment” (adopted by cross-reference in §260a.1), encompasses

any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as *to recover energy or material resources from the waste*, or so as to render the waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

See 40 C.F.R. §260.10 (emphasis added).

- Thus, if a manufacturer engages in any process which recovers material from a waste (such as tin from spent tin solution), that reclamation process is considered “treatment” of the recyclable material, which ostensibly requires a permit under §261a.6(c).
- The final rules repeal the existing 25 Pa. Code Ch. 266, while the substitute Chapter 266a fails to contain a counterpart to the permit-by-rule found in current §266.100 *et seq.* At the same time, the new permit-by-rule provisions placed in proposed §270a.60(b) fail to contain any coverage for facilities that reclaim recyclable materials. Instead, the only potential permit-by-rule offered in §270a.60b would be restricted to facilities that solely treat or reclaim hazardous waste generated onsite, or (with special approval from DEP) wastes generated at other facilities operated by the same generator. The only other permits-by-rule in §270a.60(b) are limited to facilities involved in reclamation of spent lead-acid batteries, and recovery of *precious* metals.

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Upon publication, the impact of these provisions will be to render illegal those recycling facilities currently receiving recyclable materials from offsite who are operating under the Pennsylvania permit-by-rule. Instead, these facilities will be mandated to terminate recycling operations, and then apply for and obtain a new individual hazardous waste treatment permit from DEP. The net effect will be to place Pennsylvania businesses, who are providing a legitimate and valuable recycling service for their customers, at a considerable disadvantage in relation to their competitors in other States who are operating under the continuing Federal exemption. Whether or not intended, as currently worded, these rules could have an immediate and devastating impact on a number of Pennsylvania's reclamation and recycling operations, and the related chemical manufacturing and distribution businesses who provide recycling as an essential part of their customer services.

Although GICC supports many of the hazardous waste reform proposals contained in the Final Rulemaking package, this particular problem merits attention and correction *before* these rules are published as final.

We appreciate the opportunity to offer these comments. Should the Commission have any questions regarding the issues discussed above, please do not hesitate to contact me.

Very truly yours,



R. Timothy Weston

cc: Hon. James M. Seif  
Deputy Secretary Denise K. Chamberlain  
Mr. James P. Snyder  
Mr. Charles Zimmerman  
Mr. Russell Mait