

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-0001



Robert F. Flacke
Commissioner

October 6, 1982

Ms. Gail F. Burke
Sr. Environmental Engineer
Bausch & Lomb
42 East Avenue
P.O. Box 743
Rochester, NY 14603

Re: Declaratory Ruling - 27-09
In the Matter of BAUSCH
AND LOMB, ROCHESTER, NEW YORK

Dear Ms. Burke:

This letter is in response to your June 18, 1982 request for a declaratory ruling concerning the applicability of the state hazardous waste regulations (viz. 6NYCRR Parts 365 and 366) to three materials, identified in said petition which are generated as a result of a gold plating process. As stated in the petition these materials are: 1) gold cyanide dragout concentrate; 2) nitric acid strip; and 3) gold filters.

We conclude that these materials are not solid wastes as defined in Part 366 and therefore not hazardous wastes. The generation and transportation of these materials are not subject to any of the substantive requirements of the state's hazardous waste regulations (viz. Part 365).

The question presented was addressed in a different context in the Department's recently issued declaratory ruling, In the Matter of General Electric, Waterford, New York, July 30, 1982. As in General Electric, petitioner conceded that if the materials in question are solid wastes, then they are hazardous wastes.

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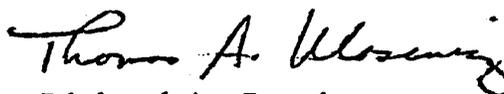
It was determined in General Electric, that the "sometimes discarded" standard used in Part 366 is to be applied on an industry-wide basis. In that case, although General Electric made a satisfactory showing that its Waterford plant never discarded the material in question, spent sulfuric acid, no showing was made that the material was never discarded in the industry. The burden lies with the petitioner to demonstrate that the material in question never is discarded on an industry-wide basis.

In the instant case, petitioner has made a satisfactory showing that the three materials referenced above are never discarded on an industry-wide basis. We rely chiefly upon the finding made by the United States Environmental Protection Agency (EPA) that "...These solutions and sludges [from precious metals electroplating and metal heat treating operations] are instead always sent to metal recovery operations due to the value of the contained precious metals." 45 Fed. Reg. 74887.

We conclude that the materials in question are not solid wastes and therefore not hazardous wastes subject to Part 365 requirements.

Should the facts as stated in both the Petition and this Ruling differ in the future, this determination may require appropriate modification.

Sincerely,


for Richard A. Persico
General Counsel/
Deputy Commissioner

RHF/tc
bcc: R. Feller
Y. Ulasewicz
✓ R. Persico