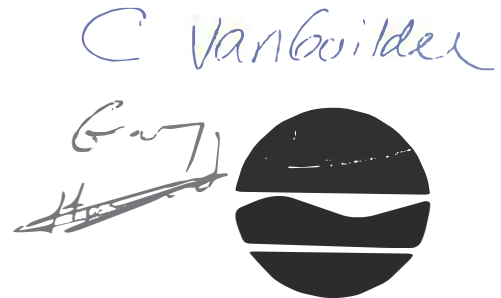


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233



Kevin Young, Esq.
Whiteman, Osterman & Hanna
Attorneys At Law
One Commerce Plaza
Albany, NY 12260

OCT 17 1991

Thomas C. Jorling
Commissioner

Dear Mr. Young:

This is in response to your letter of July 18, 1991, regarding the use of baghouse dust as the fine aggregate component of "block mix" for the manufacturing of lightweight aggregate concrete masonry units, at facilities owned by Norlite that burn listed hazardous waste as fuel.

The baghouse dust is currently exempt from classification as a hazardous waste in the State of New York under the mining waste exclusion (6 NYCRR 371.1 (e)(2)(vi)). Such exclusion is under revision in order to incorporate recent changes in corresponding federal regulations that limit this exclusion.

As it is mentioned in your November 16, 1990 letter to Mr. Randolph Hill of EPA, "lightweight aggregate has three major uses which include the application in concrete blocks (61%), highway surfacing (19%), and structural concrete (18%)."

Even in lightweight aggregate masonry units, the block mix could be used in foundations and underground-exterior walls. We must conclude that the block mix will, at times, be used in applications to land that constitute disposal. After a product is sold, the seller does not have further control over its final use by the customer and neither would DEC.

As an ingredient to make a product, used in a manner constituting disposal, the baghouse dust will be a listed hazardous waste in the State of New York (see 371.1 (c)(4)(i)(a)(2)), although currently exempted under the mining waste exclusion. This exclusion is under revision and will no longer apply to Norlite. As a solid and hazardous waste, the baghouse dust must be handled appropriately from its point of generation until it is actually incorporated into a product (e.g., it cannot be "land disposed" by placing it in a waste pile).

In making an assessment of the regulatory status of the block mix product and Norlite's process, we will consider: a) treatment standards in 40 CFR 268, b) effective use of the baghouse dust in place of other raw materials, and c) characteristics of the block mix, containing baghouse dust as its fine aggregate.

REGION IV HEADQUARTERS
176 GUILDFORD AVENUE
NEW YORK, NEW YORK

OCT 18 1991

RECEIVED

- A. Treatment Standards - According to data found in Table 3 of your July 18, 1991 letter, the fines constitute 80% of the block mix by weight. Baghouse dust is intended to become the fines component of the block mix. Since the baghouse dust meets the 40 CFR 268 treatment standards for those hazardous wastes burned by Norlite as fuel (as per Table 5), we are satisfied that the block mix will also. In accordance with 40 CFR 266.20, the equivalent of which New York State is in the process of adopting, such a product would not be subject to regulation as a solid or hazardous waste.
- B. Suitability of replacement of the raw material by the baghouse dust - This requirement can be evaluated by analyzing the hazardous constituents of the baghouse dust and the raw shale that could otherwise be used (i.e., fines are sometimes produced by crushing the larger shale product in the finishing crusher). In spite of differences in concentrations of lead and cadmium, we do not believe that the differences are significant and, therefore, the baghouse dust can be considered an appropriate substitute for the shale with regard to chemical composition as well as use.
- C. Characteristic of the block mix, containing baghouse dust as its fine aggregate - Having reviewed the absorption and compressive gross and net strength data, we can determine that the characteristics of the block mix, containing baghouse dust as its fine aggregate, are comparable to the characteristics of block mix made with crushed fines.

Having evaluated the above considerations, we conclude that the block mix product is not subject to regulation as long as it meets treatment standards for land disposal, but the baghouse dust remains a listed hazardous waste by derivation unless delisted. Norlite would not need to be permitted as a TSD facility in order to use the baghouse dust in this manner, pursuant to 373-1.1 (d)(1)(viii), but will be subject to permitting under Part 373 as a commercial burner of hazardous waste. Norlite is also responsible for compliance with the regulations for boilers and industrial furnaces, promulgated by EPA on February 21, 1991. Currently, administration and enforcement of these rules rests with EPA.

Kevin Young, Esq.

3.

If you need additional information, please call
Mr. Lawrence J. Nadler, of my staff, at (518) 457-6858.

Sincerely,

A handwritten signature in dark ink, appearing to read "N.G. Kaul", written in a cursive style.

N.G. Kaul, P.E.
Director
Division of Hazardous Substances
Regulation

cc: C. Van Guilder, Region 4
J. Sacco, Region 4