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Vice Admiral Peter J. Rotz
Chief, Office of Marine Environment
and Systems
United States Coast Guard
2100 2nd St., S.W.
Washington, D.C. 20593

Dear Vice Admiral Rotz:

We have been asked by members of your staff to clarify the applicability of EPA's regulations under the Resource Conservation and Recovery Act (RCRA) to operational wastes from ships. The Coast Guard's Reception Facility Requirements for Waste Materials Retained On Board, issued under Annex I of MARPOL 73/78 (50 FR 36768, September 9, 1985), have raised a number of questions regarding the status of ships and terminals/ports under the RCRA regulations. In particular, we have been asked to determine who is the generator of oily waste that is produced on ships and required under the Coast Guard's September 9, 1985 regulations to be discharged to reception facilities at ports and terminals.

We have determined that, as a general matter, for any oily waste that is produced in product or raw material vessel units, such as those used for bulk shipment of oil, both the ship and, in some circumstances, the operator of the central facility involved in removing the waste from the ship would be considered hazardous waste generators. For other types of oily waste, such as bilge water in vessel engine rooms contaminated with engine lubricant drippings or solvents, only the ship would be deemed to be the hazardous waste generator.

1. Generator requirements

The RCRA regulations define a generator as any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation. 40 CFR §260.10. Any person who generates a solid waste must determine if that waste is hazardous, and if so, must receive an EPA identification (ID) number before treating, storing, transporting or disposing of the waste. If the generator plans to move the waste off-site for treatment, storage or disposal, he must comply with certain requirements in Part 262, including preparing an EPA manifest, marking the waste, keeping records and filing reports. In addition,

to 90 days without a permit if he complies with the requirements of §260.34(a)(1-4).

2. Types of waste subject to regulation

The oily wastes subject to Coast Guard regulation under MARPOL Annex I generally are produced in two ways. The first is through bulk shipment of oil, whereby sludges and sediments that settle out in the oil storage tank or unit must be periodically removed. Oil tankers also need to periodically dispose of oily ballast water and tank cleaning water. The second type of waste is produced from the use of oil as a fuel and lubricant in a ship's propulsion and auxiliary system. Bilge water that accumulates in engine rooms often contains high concentrations of oil from lubricant drippings and other routine losses. The bilge water may also be contaminated with other types of wastes. Both types of waste are solid wastes under §261.2.

Whether these wastes are hazardous wastes would be determined under §261.3. In general, the waste would have to be either (1) listed in Subpart D of Part 261;(2) identified in Subpart C of Part 261 (e.g., exhibits ignitability characteristic); (3) a mixture of solid waste and a listed hazardous waste; or (4) is derived from treating a listed hazardous waste. Under current EPA regulations, used oil is not listed as a hazardous waste.*/ and therefore, would have to meet (2), (3) or (4) above. We do not anticipate many situations in which one of these criteria would be met, with the possible exception of contamination of bilge water with spent solvents. (§261.31) However, even this possibility can be minimized if the bilge waters are segregated from other wastes generated on the ship.**/

*/ EPA's recent proposal to list used oil as a hazardous waste, if finalized, will change its current status under the RCRA regulations. See 50 Fed. Reg. 49212 (November 29, 1985).

**/ Under EPA's spent solvent listing, since a solvent is considered "spent" when it has been used and is no longer fit for use without being reclaimed or reprocessed, it is likely that solvents dripping from machinery and collecting in bilge water would not cause the wastewater to be hazardous. See 50 Fed. Reg. 53315,53316 (December 31,1985).

3. Regulation of oily waste under RCRA

The two types of oily waste from ships - - waste produced in product transport units and waste produced in the propulsion and auxiliary systems - - are treated differently under the RCRA regulations. Under §261.4(c), a hazardous waste generated in a product or raw material transport vessel is exempt from regulation until it exits the unit in which it was generated or unless it remains in the unit more than 90 days after the unit ceases to be operated for storage or transportation of the product or raw materials. These wastes are sludges and residues produced in tanks or holds that carry products or raw materials, where the products or raw materials are not in themselves hazardous wastes. See 45 Fed. Reg. 72024, 72026-27 (October 30, 1980).

As a result of this exemption, parties who remove the waste from the ship at a central facility by either emptying the product-holding unit or cleaning the holding tank are deemed to be generators under 40 CFR §260.10 because their actions cause the hazardous waste to become subject to regulation. In addition, the actions of both the operator and owner of the vessel and the owner of the product or raw material result in production of the hazardous waste. Thus, these parties, and any others that fit the generator definition, are jointly and severally liable as generators. See *Id.* at 72026.

The Agency looks primarily to the central facility operated to remove sediments and residues to perform the generator duties, since it is the party best able to perform such generator duties as determining whether the waste is hazardous. Where the wastes are not removed at a central facility, however, the Agency looks to the operator of the vessel to perform the generator duties. *Id.* at 72027.

Engine-related wastes are treated quite differently in that they are regulated from the moment they are produced. since that operation of the ship's propulsion system produces the oily wastes, the ship's owner and/or operator are generators. The facility involved in removing this waste from the ship is not a generator because it is not causing the waste to become subject to regulation - - this waste is already subject to regulation when produced in the ship. The facility may be a transporter (Part 263) or a treatment storage or disposal (TSD) facility (Parts 264-265) , depending upon the actions it takes.

The Coast Guard's requirement that certain ports and terminals be certified to have available adequate reception facilities for ship' oily wastes does not necessarily determine the role of the

port or terminal in the RCRA regulatory scheme.*/ For example, a port or terminal that has available an independent waste hauler who transfers engine room waste directly into a tank truck does not appear to fit the definition of generator, transporter or TSD facility. The waste hauler, or whoever is engaged in the offsite (i.e., off the ship) transportation of the waste, would be deemed the transporter.

Of course, if the manifested waste is stored for any period of time in tanks or containers at the port or terminal, or if the waste is removed to and stored in a barge, both the port and barge storing the waste would be deemed TSD facilities subject to the requirements of Parts 270,264, and 265. If whoever is transporting the manifested waste from the ship stores the waste in containers meeting the requirements of §262.30 at a transfer facility, such as a loading dock, the waste may be stored for 10 days without being subject to regulation under Parts 270, 264, and 265. See 40 CFR §263.12.

The ship, as the generator, is also a TSD facility to the extent that it is storing hazardous waste on board. Under §262.34, a generator may accumulate hazardous waste on site for 90 days or less without having a permit provided certain requirements are met. EPA is currently finalizing a proposed regulation that would extend this accumulation period for generators who generate between 100 - 1000 kilograms of hazardous waste per month. See 50 Fed. Reg. 31278 (August 1, 1985).

The Agency believes that the application of the RCRA regulations in this way will be workable for the ships and reception facilities subject to Coast Guard regulations. In situations where ships' owners or operators are unable to perform the generator duties, ships' agents that are available at ports or terminals to handle fueling and other necessary functions, such as carrying out Customs requirements, may perform these duties on behalf of the ship. The Agency would expect the shipping company or agent handling the required manifesting and record keeping functions to retain records either at its U.S. business headquarters or at the local agent's office located near the port or terminal where the ships have their waste removed.

*/ Similarly, potential liability of parties under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is not necessarily determined by RCRA responsibilities. For example, under CERCLA §107 persons who arrange for transportation, disposal or treatment of hazardous substances are liable for certain costs, so that parties who are not "generators" under RCRA may nonetheless have certain CERCLA liabilities.

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Also, any parties liable for performing generator duties may designate among themselves the person who will actually carry out those functions. For example, where both the ship and a central waste removal facility are deemed to be generators, they may mutually agree that the central facility will perform the generator duties.

We hope that this has been responsive to the Coast Guard's concerns regarding the interaction between the MARPOL and RCRA regulations. Please don't hesitate to contact me or Bruce Weddle of my staff at 382-4746 if you have any further questions.

Sincerely,

Original Document signed

Marcia Williams
Director
Office of Solid Waste

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