

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Richard C. Fortuna
President
Strategic Environmental Analysis, Inc.
8828 Harness Trail
Potomac, MD 20854

Dear Mr. Fortuna:

This letter concerns the hazardous waste listing determination and definition of solid waste amendments EPA has undertaken for Petroleum Refining wastes. In a notice published on November 20, 1995 (60 FR 57747) EPA proposed to broaden existing RCRA exemptions for recycling of oil-bearing residuals. In response to comments and information received since the proposal, EPA has reexamined the proposed exclusion for oil-bearing residuals. The purpose of this letter is to notify you of the Agency's further evaluation and to provide you opportunity to comment on revisions to the proposed exclusion being considered by EPA.

EPA received comment that the proposed exclusion does not specify the regulatory Status of residuals that result from the insertion of oil-bearing hazardous materials into the refining process. In some cases there could be some residual material left over. For example, some refiners may recover oil from oil-bearing materials that otherwise would be listed and insert only the oil into the process. Under current rules, such residues are hazardous wastes either because they directly meet the listing descriptions of the waste, or because of the mixture or derived from rules. However, The proposal expands the current exclusion to all secondary materials, not just recovered oil. Therefore, residuals from oil reclamation could lose the hazardous waste listing because the residue might no longer be considered to be a mixture which includes a listed hazardous waste, or to be derived from the treatment of listed hazardous wastes.

Based On the objection made by the commenter, EPA now believes that the exclusion should probably be modified to correct what is being perceived as a "loophole" in the exclusion language. The exclusion was intended to be given at the point of

generation consistent with the existing general use/reuse exclusion (261.2(e)) and the current recovered oil exclusion. EPA, however, did not intend to change these residues' current status as hazardous waste. (The proposed RIA for example, did not reflect any difference in current regulatory status of these residues.) EPA is considering making this point explicit in a final regulation and invites you to comment on this possible approach.

EPA considered the following three options to deal with this issue:

Option 1 - Preamble language

Clarify in the preamble that EPA interprets the proposed exclusion to mean that residuals that are generated from reclamation (i.e., deoiling) of excluded sludges and are not themselves reinserted into the refinery retain the listing.

Option 2 - Conditional Exclusion

Add a condition to the exclusion such that the exclusion applies only if residuals from the reclamation of excluded materials which are not reinserted into the refining process are managed as listed hazardous wastes.

Option 3 - Expand the Listing

Change the listing description for refining wastes to include any residuals from the processing of the listed wastes, i.e., add a regulatory provision to the listing description (261.31) which states that residuals from the reclamation of EPA hazardous waste codes F037-38, K048-52 and any newly listed wastes that are not reinserted into the petroleum refining process retain the hazardous waste listing.

EPA believes all of these options would be seeking the same regulatory control with respect to these residuals--that they be managed as hazardous waste. EPA believes at this time that Option 3 is the option that communicates that intent most clearly and is most enforceable. Option 3 essentially maintains the status quo for listed sludges that are not being reinserted into the refinery. Option 1 could result in less optimum notice because the salient language would not be in the Code of Federal Regulations. Option 2 involves another condition which, if breached, would involve retraction of the exclusion at point of

generation (e.g., if a residual from an otherwise listed waste is sent from one refinery (without a coker) to another to be inserted into the refinery but gets diverted to disposal or a kiln for some reason). This would definitely complicate enforcement.

The Agency is reopening the comment period only for the limited purpose of obtaining information and views on the issue described in this letter, and is not opening-up any other aspects of the proposed definition of solid waste exclusions for comment. Comments on the information in this letter will be accepted up to 30 days from the date of this letter. Due to the limited time EPA anticipates will be available for promulgating the final rule, EPA does not plan to grant any extensions of the comment period.

Commenters must send an original and two copies of their comments referencing docket number F-97-PRA-FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, Virginia, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. If comments are not submitted electronically, EPA asks commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI

must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA, 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603-9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page.

If you have any questions related to this letter, please contact Max Diaz at (703) 308-0439 in the Office of Solid Waste (E-mail address: diaz.max@epamail.epa.gov)

Sincerely,

David Bussard, Director
Hazardous Waste Identification
Division