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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SEP 20 1990

Philip F. Fox
Heritage Remediation/Engineering, Inc.
P.O. Box 51020
Indianapolis, IN 46251

Dear Mr. Fox:

This letter is in response to your letter dated July 16, 1990, requesting several regulatory interpretations of the Federal hazardous waste regulations in 40 CFR Parts 260 - 271. In your letter, you had outlined your assumptions about the Federal hazardous waste regulations' applicability in certain situations. You also requested answers to a number of questions related to listed hazardous wastes from petroleum refining, as well as the exemption from permitting requirements available for certain wastewater treatment units (WWTU's).

My staff has prepared responses to the assumptions about the regulations that you outlined in Sections I and II of your letter, and to the questions in Section III of your letter. The responses are enclosed. However, please note that State or local regulatory agencies may have regulations that are more stringent or are broader in scope than the Federal hazardous waste regulations. Thus, any facility-specific questions must be addressed by the EPA Regional Offices, authorized States, and/or localities. If you have questions on the responses provided here, please contact Becky Cuthbertson of my staff at (202) 475-9715.

Sincerely,

Original Document signed

Sylvia Lowrance, Director
Office of Solid Waste

Enclosures

RO 11561

Enclosure 1

I. Response to Section I.

This section responds to certain points in Section I of the July 16, 1990 letter that we would like to clarify.

□ In Part A., Wastewater Treatment Unit Exemption, your discussion refers to facilities in several places. Please be aware of the specific meaning attached to the word "facility" in the federal hazardous waste regulations; the wastewater treatment unit exemption only applies to wastewater treatment units that, among other things, meet the definition of "tank" in 40 CFR 260.10.

□ In your discussion of the 1981 Lehman letter, the broad interpretation of "tank" in the Lehman letter refers to "unit operations which are not obviously tanks such as filter presses, filters, sumps, and many other types of processing equipment." It does not specifically mention filter pressing and cake drying. [You should also be aware that EPA has proposed regulating sludge drying units that do not qualify for the wastewater treatment unit exemption. See Enclosure 2 (the July 18, 1990 Federal Register, 55 FR 29230).]

□ At Line 70, the tank systems you refer to are subject to permitting requirements if they are not eligible for another exemption (including, but not necessarily limited to, the 90-day exemption).

□ In Part B., Ninety Day Storage Exemption, we presume you meant 40 CFR 262.34 (a) (1) - (4).

II. Response to Section II.

The discussion of the regulations in II.A. and II.B. of the July 16, 1990 letter is fairly accurate. The determination of petroleum refinery listing applicability is not addressed here; we presume that the listing applicability has been correctly determined at the refineries in question.

The discussion in II.C. of the July 16, 1990 letter contains three terminology problems:

□ In Line 155, the exemption includes tanks and ancillary equipment - not all process units.

□ In Line 156, we would say "which treat or store a sludge of a wastewater treatment plant" - the term by-product has a specific meaning and use in the Part 261 regulations (□ 261.1 and bottoms are specifically listed under □261.32 as K052, and by-products that are specifically listed are hazardous wastes when reclaimed (40 CFR 261.2(c)(3)).

□ In lines 208 through 214, you state broadly that 40 CFR Parts 262 - 270 apply to recyclable materials. However, certain recyclable materials are not subject to regulation, or are subject to reduced requirements, when they are managed according to the terms of their exemption in Section 261.6.

III. Response to Section III.

Listed below are portions of the questions in Section III of your July 16, 1990 letter, along with responses.

A.I. Does the refinery stand to lose its coverage under the exemption if it accepts wastewater treatment sludges from other facilities, such as neighboring refineries, for dewatering at its facility?

We initially addressed this question in the July 31, 1981 letter from John Lehman to Richard Boynton. In this letter, Mr. Lehman explains that although the Agency contemplated limiting the exemption to on-site wastewater treatment units, the Agency decided not to differentiate between on-site versus off-site wastewater treatment units. This policy was reiterated in the September 2, 1988 Federal Register (53 FR 34079), where we explained that "the applicability of the exemption does not depend on whether the on-site wastewater treatment facility also treats wastewater generated off-site." Accordingly, the refinery may be able to use the wastewater treatment unit exemption in 40 CFR 270.1(c)(2)(v) when accepting wastewater from off-site. However, your question asked about wastewater treatment sludge; while wastewaters may be accepted under the exemption, the Lehman letter goes on to state that the facility can receive wastewaters, but not concentrated chemicals or non-aqueous wastes. As long as the wastewater treatment sludge is not a

concentrated chemical or non-aqueous waste, the receiving facility may receive it and still be potentially eligible for the wastewater treatment unit exemption.

In addition, we note that the accepting refinery must qualify as a "designated facility" in order to accept hazardous waste shipments from off-site via air, rail, highway, or water (see the definition of "designated facility" in 40 CFR 260.10, recently revised at 55 FR 2353).

2. Does it matter whether the company that owns the refinery accepting sludge from the neighboring refineries also owns the neighboring refineries?

5. If the wastewater treatment unit exemption covers an onsite facility, is the exemption modified or endangered if the facility treats petroleum tank bottoms, either as a non-waste or as a recyclable material (hazardous waste)? Does it matter that the tank bottoms come from an offsite facility such as another refinery or a product terminal? Does it make any difference whether or not the exempted onsite facility's owner owns the tank bottoms?

Addressing your first question in this scenario, is the exemption modified if the facility treats tank bottoms [which are a non-waste] - we reiterate our explanation from Section II. that only in certain situations are the tank bottoms not a waste (i.e., if they are not listed and are reclaimed for use as feedstocks in a lubricating oil refining process and not in a process where fuels are made). In such situations, the placement of the tank bottoms in the wastewater treatment unit has no effect on the availability of the exemption, because the hazardous waste regulations govern only those materials that are hazardous wastes. Addressing the variation where the tank bottoms are a hazardous waste that is a recyclable material, the wastewater treatment unit exemption is not available because the tank bottoms are neither wastewater nor sludge (the two types of material that can be managed in an exempt wastewater treatment unit). The question of the tank bottoms' origin is thus moot, as is the question of who owns them.

6. Do the answers to any of the above questions depend on whether or not 50% or more of the treated waste is wastewater treatment sludge generated onsite at the facility operating under the wastewater treatment exemption?

No. There are no criteria that limit the exemption's availability based on the facility where the sludge is generated.

B.I. If the [listed sludges K048 and KOSI are] taken offsite to a facility owned by a third party who is in the hazardous waste treatment business and if the sludge treatment at the offsite facility consists of dewatering (centrifuge/belt press/filter press/or similar), is the offsite dewatering system eligible for the 40 CFR 270.1(c)(2)(v) wastewater treatment system exemption?

If the off-site facility meets the conditions in 40 CFR 260.10, then it may be eligible for an exemption under 270.1(c)(2)(v). The definition of wastewater treatment unit is specified in 260.10. Assuming the unit is a tank and is subject to regulation under sections 307(b) or 402 of the Clean Water Act, the remaining criterion specified in 260.10 is the type of material received and the activity conducted ("Receives and treats or stores an influent wastewater...generates and accumulates...or treats or stores a wastewater treatment sludge which is a hazardous waste..."). Mr. requirements. However, the wastewater treatment unit exemption itself is not altered by the TC.

5. Is the answer to the main question starting at Line 276 different if two or more refiners jointly own the offsite facility as a partnership and if the refinery partners each send their respective wastewater treatment sludges to the offsite facility?

The answer is not affected by the joint ownership (i.e., partnership) of the off-site facility receiving the sludge.

6. If the wastewater treatment unit exemption covers an offsite facility, is the exemption endangered or modified if the facility accepts petroleum tank bottoms, either as a non-waste or as a recyclable material (hazardous waste)?

The exemption's applicability is indeed "endangered," or rather the wastewater treatment unit's owner/operator would not be able to claim it, if s/he did not meet the terms of the exemption in the definition of wastewater treatment unit in 260.10. Specifically, the unit must receive and treat or store a wastewater, generate and accumulate a sludge, or treat or store a sludge. As explained in the response to question A.5., when the tank bottoms that are a hazardous waste are neither a wastewater nor a sludge, the exemption is not

available.

Note that if the recycling process where the tank bottoms are reclaimed is legitimate recycling, then under 261.6(c)(1) the recycling process is exempt from regulation.

When the tank bottoms are not a waste (i.e. in the limited case where they are being recycled for use as a lubricating oil refinery feedstock, and are not specifically listed) or when they are not a hazardous waste (i.e. are neither listed nor exhibit a characteristic of hazardous waste) the exemption's applicability is moot because the hazardous waste regulations apply only to hazardous wastes.

C.1. Can the refinery preserve the wastewater treatment unit exemption for units downstream of the storage tanks if it obtains RCRA Permits for the storage tanks for the offsite wastewater treatment sludge and/or for the petroleum tank bottoms?

The wastewater treatment unit exemption is not altered by the regulatory status of other storage tanks located at the same facility. If a hazardous waste storage tank does not meet the necessary criteria in the definition of wastewater treatment unit, that unit cannot be eligible for the wastewater treatment unit...