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RAW MATERIAL TRANSPORT VASSEL EXCLUSION FOR ALL WASTES  
GENERATED ON SUCH VESSELS

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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Mr. Ernest J. Corrado  
Vice President  
American Institute of Merchant Shipping  
1000 16th Street, N.W., Suite 511  
Washington, D.C., 20036

Dear Mr. Corrado:

Thank you for your August 6, 1986, letter in which you set forth the maritime industry legal analysis on the application of the Resource Conservation and Recovery Act (RCRA) regulations to vessel wastes. While I do not agree with a number of the conclusions you have drawn regarding Congress' intent to limit RCRA jurisdiction to land disposal, I do agree that the Environmental Protection Agency (EPA) did in fact promulgate an exemption from RCRA regulation for raw material and product transport vessels.

In my February 5, 1986 letter to Vice Admiral Rots of the Coast Guard, we concluded that different types of wastes generated in vessels were regulated differently under the hazardous waste rules. This conclusion was based on the intent underlying EPA's exemption of hazardous waste generated in product or raw material transport vessels until the waste is purposely removed from the vessel. 40 CFR §261.4(c). We believe that the exemption was intended to cover only those hazardous sediments and residues produced in the units containing valuable product or raw material. As articulated in the preamble to the rule, EPA judged that:

[T]hese hazardous wastes are contained against release into the environment . . . and the risks they pose to human health or the environment are very low and are only incidental to the risks posed by the valuable product or raw material with which they are associated (emphasis added). 45 Fed. Reg. 72024, 72025 (Oct. 30, 1980).

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Since wastes generated on other parts of the ship, including engine room wastes, are not directly associated with the storage or transport of valuable product, we did not deem any other hazardous wastes generated aboard the ship to be covered by the §261.4 exemption. However, as a result of the points that you raised in the June 6, 1986 meeting with members of my staff, we have taken another look at this issue.

The language of §261.4(c) refers to hazardous waste generated in a product or raw material transport vessel as being exempted, rather than the product-containing unit itself. EPA defined the term "vessel" in §260.10 to include "every description of watercraft..." which describes the whole vessel rather than any particular tank or unit in the vessel. Thus, we believe that there is a regulatory basis for considering all waste generated in the vessel to be exempt from regulation until it is purposely removed. In addition, we understand that the regulated community has relied on this broader view of the exemption since 1980. Given the fact that there has been substantial reliance for some time on a legitimate, although unintended, reading of the regulatory language, we have become convinced that it is reasonable to view the exemption as extending to all hazardous waste management activity on the product or raw material transport vessel. However, as specified in §261.4(c), all hazardous wastes generated in the vessel become subject to RCRA regulation as soon as the waste is removed from the vessel (anywhere within U.S. waters) or within 90 days after the vessel is no longer operated as a product or raw material storage or transport vessel.

Therefore, when any hazardous waste is removed from the vessel, the owner of the product or raw material, the operator of the vessel, and the person purposefully removing the hazardous waste from the vessel would all be considered "generators", as defined in §260.10 of the regulations. Any of those parties deemed to be a "generator" of the waste, therefore, could perform any or all of the duties of the generator. As EPA pointed out in the October 30, 1980 preamble to the rule, the Agency would look initially to the operator of a central facility operated to remove sediments and residues from the vessel to perform the generator duties, which includes obtaining an EPA identification number. Of course, this should not be construed as requiring a central facility or terminal to remove hazardous waste from a vessel. In situations where hazardous wastes generated in the

vessel are not removed at a central facility, the Agency would look to the vessel operator to perform the generator duties. See 45 Fed. Reg. at 72027.

While we have some concern that the literal reading of §261.4(c) exempts from regulation some hazardous wastes that were not intended to be exempt when EPA promulgated the regulatory amendment (i.e., waste generated aboard vessels in other than product or raw material cargo tanks), we believe that such a literal reading of §261.4(c) poses low risk to human health and the environment for several reasons. First, as indicated in the February 5 letter, we do not believe that generation of hazardous wastes in units not related to product or raw material storage or transportation, such as bilges, to be a serious problem while aboard the vessel since the ship itself is designed to prevent leaks. Second, to the extent that oily residues from propulsion systems are not contaminated with listed wastes, such as spent solvents, the oily wastewater now required to be discharged to shoreside reception facilities under MARPOL would not meet the definition of hazardous waste. \*/ Finally, as noted above, any hazardous wastes generated in product or raw material transport vessels are subject to RCRA when they are discharged from or otherwise exit the vessel. Thus releases to the environment would still be regulated under RCRA.

I hope that this has been responsive to your concerns. Please do not hesitate to contact me if you have any further questions.

Sincerely,

Original Document signed

Marcia E. Williams, Director  
Office of Solid Waste

\*/ As you correctly point out, EPA has proposed to list used oil as a hazardous waste; however, EPA is reconsidering the entire used oil issue. Should the Agency move forward in finalizing rules in this area, those rules would take into consideration the special problems of shipboard wastes.