

9441.1995(17)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 3, 1995

Ralph J. Colleli, Jr , Esq.
American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005

Dear Mr. Colleli:

This responds to the American Petroleum Institute's (API) request for clarification and/or reconsideration of certain provisions contained in the Environmental Protection Agency's (EPA) final rule on recovered oil. (59 FR 38536, July 28, 1994). Specifically, API requested clarification on: 1) the regulatory status of recovered oil from petroleum refineries with petrochemical processing units located at the facility; and 2) the regulatory status of recovered oil from petroleum refineries that share their wastewater treatment systems with co-located petrochemical facilities. In addition, API requested that the Agency reconsider portions of the rule pertaining to: 1) the requirement that recovered oil be inserted into the refining process "prior to distillation or catalytic cracking"; 2) the regulatory status of primary oil/water separators; and 3) the regulatory status of petroleum cokers.

A. Request for Clarification of Recovered Oil Provisions

1) Status of Recovered Oil from Refineries with Synthetic Organic Chemical Manufacturing Industry (SOCMI) Units

The recovered oil rule provides an exclusion from RCRA regulation for oil that is recovered from "normal" petroleum refinery operations and inserted into the petroleum refining process prior to distillation or catalytic cracking (§261.4(a)(12)). Under this provision, oil recovered from a petroleum refinery's wastewater treatment system is excluded from RCRA regulation if it is inserted into designated refinery process points. Since promulgation of the recovered oil rule, API has pointed out that a number of petroleum refineries also operate

petrochemical processing units on-site and that wastewater from these units is discharged into the refinery's wastewater treatment system. According to API, the wastewater from these units represents 2%-12% of the total refinery wastewater volumes and rarely contains recoverable oil. The question posed by API is whether the recovered oil exclusion applies to oil recovered from petroleum refineries with SOCOMI units on-site.

While EPA did not specifically address this question in the recovered oil rule, the Agency intended that the exclusion apply to refineries with on-site petrochemical processing units. EPA views these SOCOMI units as part of the normal petroleum refining operation. Therefore, the presence of these units at a petroleum refining facility does not preclude the refinery's eligibility for the recovered oil exclusion.

2) Status of Recovered Oil from Co-Located Petroleum Refineries and Petrochemical Facilities

API also brought to EPA's attention the fact that petroleum refineries and petrochemical facilities that are proximally located often share the same wastewater treatment system. The co-located facilities are generally owned and operated by the same parent company. However, the facilities may be separately owned and operated in some instances. The question raised by API regarding co-located facilities is essentially the same as that posed by the previous situation involving on-site SOCOMI units, namely, whether the recovered oil exclusion applies to oil recovered from wastewater treatment systems that service both petrochemical and petroleum refining operations. The difference in this case is that the petrochemical processes are located off-site of the petroleum refining facility.

The Agency's intent in crafting the recovered oil exclusion was to limit its applicability to oil recovered from petroleum industry sources. Accordingly, the exclusion specifically does not apply to oil generated from non-petroleum industries. However, the exclusion does apply broadly to oil generated from both on- and off-site sources within the petroleum industry (e.g., the exclusion applies to oil generated from exploration and production activities. As previously noted, the relationship between petroleum refineries and petrochemical processing operations was not specifically addressed in the recovered oil rule. However, based on information provided by API and the Chemical

Manufacturers Association, EPA believes that, in cases where petrochemical and petroleum refining operations are co-located and share a common wastewater treatment system, the integration between the two facilities is such that the petrochemical facility falls within scope of the exclusion. In these situations, given the common wastewater treatment system and the predominance of petroleum refining wastewater, the petrochemical operation would be considered part of normal petroleum refining. The exclusion would therefore apply to oil recovered from a wastewater treatment system that a refinery shares with a co-located petrochemical facility. The exclusion would not, however, apply to recovered oil from a petrochemical facility that is sent to a petroleum refinery for recycling via any route other than a shared wastewater treatment system (e.g., via truck, rail, etc).

B. Request for Reconsideration of Recovered Oil Provisions

1) Point of Insertion

The recovered oil exclusion is limited to recovered oil that is inserted into the refining process "prior to distillation or catalytic cracking." This restriction is based on statutory language restricting insertion of recycled materials to points in the petroleum process where separation of contaminants occurs. API claims that, by specifying allowable insertion points (i.e., prior to distillation or catalytic cracking), EPA has too narrowly defined those petroleum refining processes in which contaminant removal occurs. API cites previous Federal Register notices as well as legislative history that support a broader interpretation of the types of refinery processes that perform separation of contaminants. In addition, API has provided examples of other petroleum refining process units in which contaminant removal occurs (e.g., fractionation units located downstream of the catalytic cracker). The Agency finds API's arguments to be compelling in this case and agrees that EPA erred by equating "separation of contaminants" with "distillation or catalytic cracking" in the recovered oil rule. The Agency plans to issue a technical correction to address this error as soon as possible given resource constraints.

2) Status of Primary Oil/Water Separators as Waste Management Units

API has requested that the Agency reconsider its position

regarding the regulatory status of refinery wastewaters and wastewater treatment systems. EPA considers refinery wastewaters to be discarded materials and therefore solid wastes potentially subject to regulation under RCRA. Likewise, primary wastewater treatment systems are potentially subject to regulation as hazardous waste management units under RCRA. For reasons clearly stated in the preamble to the recovered oil rule, the Agency does not believe that this determination warrants reconsideration.

3) Status of Petroleum Refinery Cokers

API has also asked that EPA review its position on how petroleum cokers that receive hazardous wastes are regulated under RCRA. API believes that cokers are part of the refining process and so should be designated as petroleum refining process units. It is important to note here that the regulatory status of petroleum cokers was in no way changed as a result of the recovered oil rule. The reference in the preamble to cokers as "exempt recycling units" was merely meant to clarify that these units are not regulated under RCRA.

EPA is currently reviewing the issue of how cokers that receive hazardous wastes should be regulated under RCRA. This review was prompted in part by concerns raised by API in response to the recovered oil rule. Additionally, however, EPA is reviewing the regulatory status of cokers in the context of the Agency's upcoming proposal on petroleum refining residuals of concern. As you know, EPA is required under a consent agreement with the Environmental Defense Fund to make listing determinations on 14 specifically identified petroleum refinery residuals. Since a number of these residuals are routinely fed to the coker, the question of whether this practice is part of the petroleum refining process or a form of waste management will have to be addressed within the listing proposal. EPA therefore hopes to use the listing proposal as a forum to address the general issue of how petroleum cokers should be regulated under RCRA. The listing proposal is scheduled to be published in August of 1995.

I hope this letter has addressed your concerns. Please feel free to call Mike Petruska of my staff at (202) 260-8551 with any additional questions or concerns you may have.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste