

9441.1988(33)

EXEMPTION FOR COMMERCIAL CHEMICAL PRODUCTS BURNED FOR
ENERGY RECOVERY

JULY 27 1988

Ms. Paige Murphy-Young
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007

Dear Ms. Murphy-Young:

This is in response to your letter of March 22, 1988, to Mary Cunningham of my staff, requesting clarification as to how the §261.2(c)(2)(ii) exemption for commercial chemical products burned for energy recovery might apply to waste-derived fuel products of a solvent regeneration facility operated by Bud's Oil Service (BOS). We have also reviewed two other letters on this subject sent to my staff--the February 19, 1988, letter from Charles A. Peterson of BOS to Mike Petruska, and the June 21, 1988, letter from David Kimball, an attorney representing BOS, to Bob Holloway. We have conferred with our Regional Office in San Francisco, and they asked that we respond to you directly. We are responding to both Mr. Peterson's and Mr. Kimball's letters by copy of this letter.

BOS Solvent Reclamation

We understand that BOS regenerates spent solvents to produce commercial gun wash solvent. We understand that BOS also markets the regenerated solvent as a fuel. BOS asserts that the commercial gun wash product is exempt under §261.3(c)(2)(i), and that the waste-derived fuel is exempt under §261.2(c)(2)(ii). These issues are addressed below.

Is the Reclaimed Solvent Excluded Under §261.3(c)(2)(i)?

The reclaimed solvent would be excluded under §261.3(c)(2)(i) if the solvent is reclaimed from solid wastes and is used beneficially and the reclaimed solvent is not reclaimed further, burned for energy recovery, or used in a manner constituting disposal. Thus, the solvent that is reclaimed by BOS and used as

a commercial gun wash solvent is not a solid waste.

Are Products Produced by the Reclamation Process Exempt When Used as Fuel?

Reclaimed materials burned for energy recovery are solid waste, and, if hazardous by listing or characteristic, are hazardous waste. See §261.3(c)(2)(i). See also 50 FR 634 (January 4, 1985). Thus, the exclusion at §261.2(c)(2)(ii) would not apply to the solvents BOS reclaims for fuel use. Further, the waste-derived fuel product that is produced by BOS is subject to regulation under Subpart D, Part 266. Subpart D subjects hazardous waste fuels to RCRA storage and transportation standards and places administrative controls on marketers and burners.

Although the exclusion provided by §261.2(c)(2)(ii) would not apply to the waste-derived fuel, the exclusion could apply to solvent product that was off-specification and, in lieu of its intended purpose, burned for energy recovery. To be exempt under this provision, the off-spec solvent would also have to be a fuel itself. The use of acetone-derived solvents, for example, would be precluded by the fuel requirement.

We note that the statement that is quoted on page 2 of the June 21 letter from Mr. Kimball to Mr. Holloway taken from the "Guidance Manual on the RCRA Regulation of Recycled Hazardous Wastes" is incorrect. That statement is an incorrect summary of preamble discussion provided at 50 FR 634 (January 4, 1985) regarding the regulatory status of reclaimed products. The preamble states that the exclusion for commercial products reclaimed from hazardous waste does not apply when the output of the reclamation process is burned for energy recovery or placed on the land. As discussed above, §261.2(c)(2)(ii) does not provide an exclusion for the waste-derived fuel.

Finally, we think it is important to emphasize the underlying policy of the Agency's rules. If a person could simply purify a waste (by settling, regulation or blending) and then burn it without being subject to RCRA, then the Agency's rules and Congressional command to control burning of hazardous waste-derived fuels would have little meaning. It was for this reason that EPA explicitly stated that the exclusion in §261.3(c)(2) does not apply to materials ultimately burned for energy recovery.

hope this addresses your concerns. If you have further questions, please do not hesitate to call Mary Cunningham of my staff at (202) 382-7935.

Sincerely,

Original Document signed

Sylvia K Lowrance
Director
Office of Solid Waste

cc: Charles A. Peterson, Bud's Oil Service
David P. Kimball, Evans, Kitchel & Jenckes, P.C.
Frances Schultz, Region IX
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Bob Holloway, OSW
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