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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

July 9, 1992

Mr. John C. Chambers, Jr.
McKenna & Cuneo
1575 Eye St. N.W.
Washington, D.C. 20005

Dear Mr. Chambers:

Thank you for your letter of May 14, 1992 regarding the regulatory status of coal tar distillates manufactured by Koppers Industries, Inc. I apologize for the delay in responding to your earlier inquiries.

According to the facts stated in your letter, the coal tar distillate produced by Koppers is sold to steel manufacturing facilities for material recovery value and fuel use. In a typical coal tar manufacturing operation, several product streams are produced, including distillate oils. Some of the distillate oils are formulated to meet fuel specifications and sold into fuel markets. You stated that Koppers had been selling the oils ("middle oils") into the fuel market for over fifty years, and that the heat value typically ranged from 149,000 btu to 155,000 btu per gallon.

From the facts that you have provided us, we have concluded that coal tar distillate marketed for fuel use is a co-product rather than a waste. This judgement is based upon the historical use of the substance as a fuel and the fact that it is apparently manufactured to specifications.

We also wish to clarify that this interpretation is consistent with the Agency's pending proposal to list certain coke by-product residues as hazardous wastes. As we understand your description of the material, it is different from wastes the Agency proposed to list as hazardous in the coke by-products listing determination (56 FR 35787, July 26, 1991). In that notice, the Agency proposed to list various storage and distillation residuals (i.e., tank

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bottoms, distillation bottoms, etc.) and not distillate products. Your client's product is a coke by-product process distillate, not a residue. Moreover, unlike the residues EPA proposed to list, it has an historical use as a fuel product. Thus, the interpretation in this letter does not reflect any inconsistency with interpretations discussed in the proposed coke by-products listing determination.

In addition, this letter addresses only the status of the distillate itself. If the distillate were to be mixed with hazardous waste, the mixture would normally become a hazardous waste-derived fuel subject to applicable regulations found principally in 40 CFR Part 266 Subpart H.

This interpretation reflects only the federal regulations. States with authorized RCRA programs have the authority to make regulatory determinations about the materials which constitute solid and hazardous wastes under their programs, and they may impose more stringent requirements. I urge you to contact each State in which your company conducts operations to ascertain their requirements.

I thank you very much for your patience. If you have any questions, please contact Marilyn Goode of my staff at (202) 260-8551.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste