ATTACHMENT 1

EPA INTERPRETATION ON THE SHIPMENT OF HAZARDOUS WASTE TO AN EXEMPT WASTEWATER TREATMENT UNIT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

9452.1987(01)

FEB 24 1987

Mr. Phillip J. Sparta
Assistant Managing Director
Environmental Technology Southeast
1819 Albert Street
Jacksonville, Florida 32202

Dear Mr. Sparta:

This is in response to your letter of January 21, 1987 regarding the participation of a wastewater treatment unit in the manifest system.

Although you were previously informed that a generator of hazardous waste may designate a wastewater treatment unit on the manifest as a facility allowed to accept this waste, we now believe the previous interpretation is incorrect. In particular, under 40 CFR §§264.1(g)(6) and 270.1(c)(2), the substantive requirements of Part 264 and the permit requirements of Part 270 do not apply to owners or operators of wastewater treatment units. The interim status requirements of Part 265 also do not apply to such units. (See 40 CFR §265.1(c)(10).)

EPA's manifest system regulations (40 CFR §§262.20(b) and 263.21) require that a generator send hazardous waste only to a "designated facility." As provided in §260.10, a designated facility must have an EPA permit, interim status, or a permit from an authorized State, or must be a facility regulated under the special provisions of §261.6(c)(2). Because wastewater treatment facilities, other than publicly owned treatment works (POTWs) that are permitted-by-rule under §270.60, meet none of these conditions, they cannot be listed as a designated facility, and therefore, they cannot receive hazardous waste from off-site.

I apologize for any problems our previous interpretation may have caused you. Please contact Michael Petruska or Carolyn Barley of my staff at (202) 475-8551 if you have additional questions on this matter.

Sincerely,

Marcia [illegible] Williams
Director
Office of Solid Waste

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ATTACHMENT 2
REGULATORY ANALYSIS

This attachment presents the regulatory analysis of the management of terminal tank bottom water and truck loading area water if product recovery operations do not take place on-site and the streams are managed as follows:

(1) These materials can be shipped to a petroleum refinery or other product terminal as an off-specification or contaminated petroleum product. Through an oil/water separation process at the receiving refinery or terminal site, the product would be separated from the water.to separate the liquid material into the same constituent parts through an oil/water separation process. The recovered product would be placed into the refining process or used as a fuel. The water would be managed in compliance with the Clean Water Act. The refinery or off-site terminal would not be permitted to accept hazardous wastes from off-site sources.

(2) Another option would be to ship the material to a third party reclaimer to conduct oil/water separation operations The reclaimed hydrocarbons would be used for their intended purpose, as a fuel. The water would be managed in compliance with the Clean Water Act. Firms to be used for such reclamation activities would typically not be permitted to accept hazardous wastes.

Each of these options involve the recovery of useable petroleum product and the management of all residues from the recovery process in strict compliance with applicable rules and regulations. The following discussion summarizes the potential regulatory status of shipping the subject terminal streams for reclamation off-site.

40 CFR 261.2 defines a solid waste as any discarded or abandoned material. Contaminated waters that are processed to reclaim a finished fuel product are neither abandoned nor discarded. 40 CFR 261.2 also identifies five types of recycled materials that are solid wastes: spend materials, sludges, scrap metals, commercial chemical products. and by-products.

40 CFR 261.1(c)(1) defines a spent material as having been used and no longer is able to serve its original purpose without further processing. Spent solvents would fall under this definition. Clearly, water or solids containing unused petroleum product are not spent materials.

40 CFR 261.1(c)(2) defines sludges as being solid, semi-solid or liquid waste generated from a wastewater treatment plant, water supply treatment plant or air pollution control facility, excluding treated effluent from a wastewater treatment plant. Clearly, water or solids containing unused petroleum product are not sludges.

Obviously, none of the subject terminal streams are scrap metal.

Commercial chemical products are another type of recycled material that can be regulated as a solid waste. The residual petroleum fuels that are contained in

the subject terminal streams would most likely be considered commercial chemical products under the regulations due to their constituent components, and therefore, would be considered an off-specification commercial chemical product.

> 40 CFR 261.2 (c)(2)(ii) states:
>
> .....commercial chemical products listed in 261.33 are not solid wastes if they are themselves fuels.
>
> 40 CFR 261.2 (c)(3) states:
>
> .....materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed.
>
> Note that there is no "*" in column 3 of Table 1 for commercial chemical products listed in 40 CFR §261.33.

The USEPA has indicated in the January 4, 1985 issue of the Federal Register (50 Fed. Reg page 630) that materials intentionally produced for a commercial market and suitable as-is are not considered by-products. The agency further explained:

> Off-specification fuels burned for energy recovery are also not by-products, and so would not be considered to be wastes under this provision. An example... was natural gas pipeline condensate. The condensate contains many of the same hydrocarbons found in liquefied natural gas...that have energy value...This condensate is not considered to be a waste when burned for energy recovery. (50 Fed. Reg. page 630, Footnote 18.)

Based on the language from the Federal Register promulgating Part 261, there are sound reasons why tank bottom waters and loading rack runoff containing recoverable hydrocarbons can be considered an off-specification commercial product. Assuming this classification to be correct, the fuel exclusion at 40 CFR 2611.2(c) (2) (ii) would apply.

Although Phillips believes that the subject terminal streams are best characterized as off-specification commercial chemical product, it could be argued that they are by-products of the terminal operations.

> 40 CFR 261.1(c) (3) defines a by-product as a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms.
>
> Table I, in 261.2, establishes the circumstances in which a by-product becomes a solid waste. A by-product becomes a solid waste when used in a manner constituting disposal, when used for energy recovery or as a

fuel, when reclaimed (for wastes listed in Part 261.31 or 261.32) and when accumulated speculatively.

Part 261.2 (c) states that recycling/reclaiming of unlisted by-products is not a regulated activity unless:

> The unlisted by-product is recycled by being (a) placed on the land....(b) incorporated into a product that is placed on the land....(c) burned as a fuel, (d) incorporated into a fuel, or (e) accumulated speculatively.

If the by-product containing recoverable petroleum is not placed on the land, accumulated speculatively, burned as a fuel or incorporated into a fuel, it is not solid waste and, therefore, not subject to regulation. The petroleum contained in the by-product is already a refined, finished fuel product. Since the subject terminal streams are not placed on the land or accumulated speculatively, the issue is whether the regulations cover finished fuel products within the meanings of "burned as a fuel" or "incorporated into a fuel." If the regulations do not encompass finished fuel products within these meanings, the reclamation of recoverable petroleum from non-listed by-products is not regulated by Part 261.2.

In the January 4, 1985 issue of the Federal Register (50 Fed. Reg. page 629) USEPA addresses the issue of "burned as a fuel" or "incorporated into a fuel" In this reference the USEPA explained which by-products are wastes when burned as fuels:

> It is our opinion that by-products that are unlike commercial fuels - because they are residual materials not intentionally produced, and significantly different in composition from fossil fuels - are wastes when burned as fuels.

The hydrocarbons reclaimed from the subject terminal streams constitute a finished commercial fuel; consequently, they are not unlike commercial fuels. Moreover, they are intentionally produced as commercial fuels. Consequently, they are not solid wastes and, if they are not solid wastes, they cannot be considered hazardous wastes.

Consequently, none of the subject terminal streams are described by any of the five regulated categories when shipped off-site for reclamation. If a reclaimed material is not listed in these references, it is not a solid waste. Thus, if a material is not a solid waste by definition, it cannot be a hazardous waste.

USEPA and some individual states have dealt with many of these questions previously and copies of their interpretations are presented in Attachment 2-A for your information and reference.