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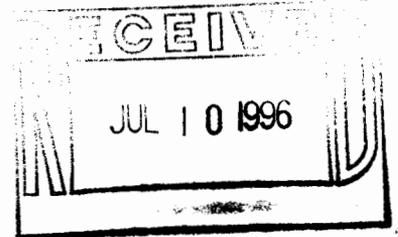
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July 5, 1996

BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William Gallagher
Delisting Program
Multimedia Planning and Permitting Division (6PD-0)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202

*copied & circulated -
MLC*

**Re: U.S. EPA Region 6 Proposed Hazardous Waste
Delisting - Docket No. F-96-NMDEL-GIANT**

Dear Mr. Gallagher:

Horsehead Resource Development Company, Inc. ("HRD") hereby submits the following comments (original and one copy) on U.S. EPA Region 6's proposal to grant a petition submitted by Giant Refining Company ("Giant") to delist, on a one-time basis, 2,000 cubic yards of contaminated soil classified as hazardous waste K051 (API separator sludge from the petroleum refining industry), which is located at Giant's refining facility in Bloomfield, New Mexico. See 61 Fed. Reg. 25175 (May 20, 1996) (the "proposed delisting").^{1/} Kindly date-stamp and return in the enclosed self-addressed, stamped envelope the extra copy of these comments.

^{1/} HRD is a leading example of hazardous waste recycling in the United States, carrying out on a national scale the efforts to protect human health and the environment mandated by the United States Congress. HRD operates the largest high temperature metals recovery ("HTMR") facilities in the United States, and recovers the greatest amount of valuable metals and other products from electric arc furnace dust of any operator.

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DISCUSSION

HRD strongly urges Region 6 to consider, review and determine whether Giant's petition for delisting, and future delisting petitions submitted to Region 6, comply with critical statutory mandates and policies prioritizing recycling and resource recovery over conventional treatment and disposal, as well as the Land Disposal Restrictions requirements of the Resource Conservation and Recovery Act ("RCRA"). The comments below are not intended to be exhaustive; rather, they are focused solely on the issues raised directly by Giant's delisting petition. In the case of the Giant's delisting petition, HRD has reviewed Region 6's summary of the proposal in the Federal Register, and believes that, based on the available information, the proposed delisting does not violate these statutory requirements, primarily because the waste proposed for delisting does not contain metals or other recyclable materials or properties in recoverable amounts.

Recycling and Resource Recovery Mandates

Both RCRA and the U.S. Pollution Prevention Act of 1990 establish a waste management hierarchy that prioritizes recycling and resource recovery over conventional treatment and disposal, which should be used only as a last resort. Specifically, after finding that millions of tons of recoverable materials in the United States were needlessly disposed of in landfills, Congress amended the Solid Waste Disposal Act in 1976 with the passage of RCRA. RCRA and subsequent amendments, including the Hazardous and Solid Waste Amendments of 1984 ("HSWA") expressly include resource recovery of materials from wastes as crucial objectives. RCRA defines the waste management hierarchy in the following terms:

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by --

. . . minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment

42 U.S.C. § 6902(a)(6). These objectives are stated by Congress in descending order of priority. Based on this hierarchy, Congress specifically mandated that "land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes." 42 U.S.C. § 6901(b)(7)

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(emphasis added). That finding alone demonstrates unquestionably that the national policy of this country is to support recycling and waste minimization whenever possible.

Most recently, the U.S. Pollution Prevention Act of 1990 ("PPA") reaffirms Congress' intention to mandate recycling and resource recovery technologies, and to discourage treatment and disposal, particularly if the waste contains recyclable materials in recoverable amounts. Consistent with RCRA, Congress declared the national policy of the United States to be in the following order of priority:

- Pollution should be prevented or reduced at the source whenever feasible;
- Pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;
- Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible;
- Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

42 U.S.C. § 13101(b) (emphasis added). This hierarchy, similar to RCRA's waste minimization and recycling mandates, compels EPA to encourage resource recovery of materials whenever possible.

In summary, Congress' directive to the Agency is clear: whenever possible, resource recovery of valuable materials should be selected and encouraged over treatment (i.e., stabilization and other "treat and dispose" technologies) and disposal of the same materials. Technologies such as high temperature metals recovery ("HTMR") satisfy these statutory mandates, while "treat and dispose" technologies such as stabilization and incineration may not satisfy the mandates if the wastes contain recyclable materials or properties in recoverable amounts.

Land Disposal Restrictions Requirements

Petitions to delist hazardous waste also must comply with the Land Disposal Restrictions ("LDR") program, which the U.S. Congress established in HSWA. The LDR program prohibits the disposal of hazardous waste unless it meets the treatment standards and is disposed in Subtitle C land disposal units.

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Therefore, EPA must be certain that the waste proposed for delisting does not continue to meet any of the criteria for which EPA originally listed the waste, as well as additional factors if such factors could cause the waste to continue to be regulated as "hazardous waste." See 40 C.F.R. § 260.22(a)(2).^{2/} Otherwise, EPA would risk delisting a waste which should have remained regulated as hazardous, thereby allowing the disposal of hazardous waste in non-Subtitle C land disposal units in violation of the HSWA LDR prohibitions.

Fundamentally, since the purpose of the LDR program is to minimize the land disposal of "restricted" hazardous wastes, HSWA limits the discretion of Federal and State authorities to grant hazardous waste delisting petitions. HSWA must be construed to give meaning to both the delisting provisions and the LDR requirements. Therefore, Region 6 should review the Giant delisting petition and future delisting petitions for consistency with these provisions of HSWA.

CONCLUSION

The recycling and resource recovery mandates of RCRA and the PPA, as well as the LDR provisions in HSWA, are important constraints on EPA's authority to grant hazardous waste delisting petitions. EPA therefore should deny delisting petitions that violate these statutory requirements. EPA also should avoid setting any precedent for the treatment and disposal of other hazardous wastes that contain valuable recyclable materials (including wastes for which current land disposal restrictions are based, directly or indirectly, on a BDAT of "recovery" or "recycling"). The granting of delisting petitions that violate these mandates communicates to the potential investor in either new recycling technology or recycling capacity based on existing technology that the regulatory risk is far too great to warrant the investment.

In the case of the Giant delisting petition, HRD has carefully reviewed Region 6's summary of the proposal in the Federal Register. Based on the analytical information for the waste proposed for delisting, HRD believes that the waste does not contain recyclable materials in recoverable quantities. Therefore, based upon the assumptions stated herein, the proposed delisting does not appear to violate the statutory recycling and

^{2/} For example, one of the factors EPA must consider is the impact of the delisting on the overarching mandates of RCRA and the PPA. If the delisting petition violates these mandates, EPA cannot lawfully delist the waste.

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LDR requirements. Accordingly, HRD does not oppose this delisting.

Please call me if you have any questions or comments about this information.

Very truly yours,

John N. Moore /kk

John N. Moore

Certified Mail Receipt No. P 266 703 131

cc: New Mexico Environment Department
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