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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUL 31 1989

Joe Haake  
Hazardous Waste Coordinator  
Dept. 441C, Mail Code 0801800  
McDonnell Douglas  
P.O. Box 516  
Saint Louis, Missouri 63166-0516

Dear Mr. Haake:

This responds to your May 9, 1989 request for a regulatory interpretation regarding the "recycling" of unused off-specification jet fuels into new jet fuel. You state in your letter that waste fuel is not spent material because it has never been used, resulting instead from the overflow during fueling and from fuel drained from tanks/lines following testing. However, because of the stringent military fuel specifications, it cannot be used as jet fuel without reclamation or reprocessing.

Although you currently manage the off-spec fuel as a hazardous waste (D001), you intend to sell the fuel to a refining company as a feedstock to produce jet fuel. You therefore believe that as an ingredient in an industrial process, the off-spec fuel would not be solid waste. However, as I understand from your letter, the Missouri Department of Natural Resources (MDNR) believes that as a material used to produce a fuel, the off-spec fuel would remain a solid waste.

EPA Headquarters does not agree with either interpretation. In particular, we believe that the "recycling" activity described in your letter is not "use as an ingredient in an industrial process." Although the off-spec fuel may go through a manufacturing process, the activity is here characterized as reclamation (i.e., the jet fuel that does not meet the purity specifications is reprocessed into jet fuel meeting the required purity specifications).

Also, MDNR's regulatory interpretation, as stated in your letter, differs from the Federal interpretation. While MDNR states that because the material being used to produce a fuel (i.e., burning for energy recovery) it remains a solid waste, the Agency considers the material's original intended purpose when commercial chemical products are involved. Under the existing regulations, commercial chemical products (or off-spec commercial chemical products) that are reclaimed are not solid waste even if the material is used to produce fuel if that is the materials intended purpose. Thus, this off-spec jet fuel, if used to produce jet fuel, is not a solid waste (i.e., an

off-spec fuel is being reclaimed to be used as a fuel -- its intended purpose). Although the regulatory language found at -2-

40 CFR 261.2(c)(2)(ii), which states that in such cases a commercial chemical product is not a solid waste if it itself is a fuel, only addresses commercial chemical products listed in section 261.33, it is implicit in the rules that the same reasoning applies to commercial chemical products that are not listed. A clarifying discussion of this is found in the April 11, 1986 Federal Register notice (50 FR at 14219), the technical correction notice to the January 4, 1985 Definition of Solid Waste final rule (50 FR 614).

The Agency's interpretation is that you are reclaiming an off-specification commercial chemical product (which would otherwise be a hazardous waste because it exhibits a characteristic of a hazardous waste) for its intended purpose and, therefore, is not a solid waste. Although the reclaimed commercial chemical product is burned for energy recovery, it is not a solid waste because this was its intended purpose.

The State of Missouri is authorized to implement the hazardous waste program under RCRA and may promulgate State regulations or make regulatory interpretations. You must also comply with MDNR's regulations.

Should you have further questions of a more general nature, you may contact the RCRA Hotline at 1-800-424-9346, or Mitch Kidwell, of my staff, at (202) 475-8551. For questions of a more site-specific nature, you should contact the Missouri Department of Natural Resources and the EPA Region VII office.

Sincerely,

Original Document signed

Devereaux Barnes  
Director  
Characterization and  
Assessment Division

cc: Kenneth J. Davis  
Missouri Department of Natural Resources  
Lynn Harrington, Chief  
Permits Branch  
Region VII