

9441.1990(28)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

OCT 18 1990

MEMORANDUM

SUBJECT: Status of Used Refrigerants under 40 CFR 261.2

FROM: Michael Petruska, Acting Chief (OS-332)  
Waste Characterization Branch

TO: Docket for F-90-CFIF-FFFFF

This memorandum documents EPA's position on the status of used refrigerants under 40 CFR 261.2. Several parties have informally petitioned EPA for a determination on whether used refrigerants can be classified as commercial chemical products, rather than as spent materials; if so classified, the used refrigerants would not be "solid wastes" under 40 CFR 261.2, when reclaimed.

There are two scenarios that are at issue when a refrigeration equipment servicer decides to remove used refrigerants from refrigeration equipment. In the first scenario, the equipment servicer collects the used refrigerant and then elects to reuse the refrigerant directly (i.e., without any filtration or other processing) as a refrigerant. (The equipment servicer could elect to reuse the refrigerant either with or without conducting analyses or tests - any such analyses may be recommended by the equipment manufacturer, or possibly required under future Clean Air Act regulations, but are not relevant to determining whether the used refrigerant is a solid waste under RCRA.) This type of reuse is similar to reuse of a solvent that has been used once, but can still be used for its solvent properties. See the January 4, 1985 Federal Register, 50 FR 624. In this situation, the equipment servicer is not managing a waste, but is merely continuing to use a commercial chemical product.

In the second scenario, the equipment servicer collects the used refrigerant for reclamation prior to reuse. Such reclamation could range from simple filtration to reinsertion into a chlorofluorocarbon manufacturing unit. The used refrigerants meet the definition of a "spent material" in 40 CFR 261.1(c)(1), and are solid wastes when reclaimed, according to 40 CFR 261.2. See 54 FR 31336, July 28, 1989, for an explanation of why used refrigerants are classified as "spent materials" rather than "commercial chemical products."

A more detailed analysis of specific points raised by the Alliance for Responsible CFC Policy is attached.

## Attachment

### Definition of Solid Waste Arguments Made by the Alliance for Responsible CFC Policy

#### Point #1:

The Alliance states that "in many cases removed refrigerant may simply be re-inserted in refrigeration and air conditioning equipment after testing, without any processing."

Under the current regulations, used refrigerant that is re-inserted into equipment for further use is not a solid waste (and thus, is not a hazardous waste). Some, but not most, CFC's would fall into this category.

#### Point #2:

The Alliance states that "in some cases removed refrigerant must be processed -- for example, to remove contamination -- before re-inserting in refrigeration and air conditioning equipment." The Alliance argues that the removed refrigerant is not a "spent material" but rather is a commercial chemical product, and thus is not a solid waste when reclaimed.

Under the current regulations, a "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing. Spent materials are solid wastes when reclaimed.

We stated clearly in a 1989 Federal Register notice clarifying the applicability of RCRA to used refrigerants that used refrigerants that are reclaimed are spent materials and not "commercial chemical products."

The Alliance argues that the refrigerant has not been "used" the way we define the term in the regulations, because it has not been "employed in a particular function or application as an effective substitute for a commercial product" but rather, is the commercial product. When we said "used" in the definition of spent material, we meant the ordinary, plain language definition of "used." However, because CFC recycling is analogous to very common hazardous waste recycling operations (i.e., solvents, used oils, batteries), the interpretation requested by the Alliance would have far-reaching implications.

#### Point #3:

The Alliance points out that, if classified as "by-products," the used refrigerants would not be solid wastes when reclaimed. However, in their analysis of the definition of by-product, they conclude that the term does not apply to used refrigerants.

Point #4:

Finally, the Alliance argues that a variance from the definition of solid waste should be granted if EPA decides not to suspend the TC rules and continues to consider the used refrigerant as a solid waste. They propose a variance under Section 260.31(b).

There are two problems with this approach:

- These variances are case-by-case determinations for the Regional Administrators to decide, rather than national policy decisions for entire wastestreams.
- The variance under Section 260.31(b) is for materials that are reclaimed and then reused as feedstock within the original primary production process where they were generated, if the reclamation is an essential part of the production process. The vast majority of used refrigerants would not fall in this category. (Any operations that do fall into this category are of course eligible for the variance.)