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

March 5, 1993

Mr. Christopher G. Swanberg
Senior Vice President
Separation and Recovery Systems
1762 McGaw Avenue
Irvine, California 92714-4962

Dear Mr. Swanberg,

Thank you for your letter dated November 12, 1992, concerning the use of the Separation and Recovery Systems (SRS) SAREX Process for the recycling of petroleum refinery oily wastes, and the status of this activity under the Resource Conservation and Recovery Act (RCRA). I apologize for the delay in responding to your inquiries. We appreciated the opportunity to meet with SRS personnel and Mr. Daniel Steinway (of Anderson, Kill, Olick and Oshinsky) on October 23, 1992, to discuss the issue in detail. You specifically requested that EPA concur with you that the SAREX Process, operating in the manner you described, meets the definition of "closed-loop" reclamation as provided in 40 CFR 261.4(a)(8). You also requested that EPA concur that if the SAREX Process was receiving listed hazardous wastes (e.g., K048 - K051), and met the conditions delineated in §261.4(a)(8), then the secondary materials within the process would no longer meet the definition of solid waste; and, residues exiting the SAREX Process (exclusive of recovered petroleum) (see footnote 1) would be subject to RCRA only if exhibiting a characteristic of hazardous waste.

Based upon the information provided by SRS, Mr. Steinway, and a careful review of the RCRA regulations, EPA does not agree that the SAREX Process meets the definition of "closed-loop" reclamation as defined in §261.4(a)(8). We would characterize the operation of the SAREX Process unit (as described by you) as meeting the definition of recycling, and therefore would not require a RCRA permit under the federal RCRA regulations (40 CFR 261.6(c)(1)); however, listed sludges and by-products being reclaimed in the process would remain solid and hazardous wastes within the unit, as

would any non-reclaimed residues exiting the unit (see footnote 1 concerning wastewater). The rationale for this determination is described below.

One condition of the closed-loop exclusion is that the reclaimed material cannot be used to produce a fuel, or to produce a product used in a manner constituting disposal (§261.4(a)(8)(iv)). Because the oil recovered using the SAREX Process is being returned to the refinery where it will be used to produce a fuel (or possibly to produce a product applied to the land), the closed-loop exclusion does not apply (see footnote 2).

If the oil is returned to part of the refining process where non-fuel (or non-land application) petroleum products are produced, it is possible that the SAREX Process might be eligible for the closed-loop exclusion. However, the SAREX Process must still be configured in a manner consistent with the other conditions of the closed-loop exclusion. EPA promulgated the closed-loop exclusion as part of the revised hazardous waste tank rules (51 FR 25422; July 14, 1986 Federal Register). Based upon comments received during the development of that rule, EPA determined that there was a substantial number of potentially regulated tanks engaged in "types of reclamation operations [that] are best viewed as part of the production process, not as a distinct waste management operation." 51 FR 25442. One of the conditions for the closed-loop exclusion that reflects the Agency's desire that the reclamation be integral to the production process is that "only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance" (§261.4(a)(8)(i)). Whether or not the SAREX Process will receive listed sludges and by-products directly from the production processes generating them, in a manner consistent with this provision, is a site-specific determination. This is especially true because the SAREX Process is designed to be installed at different refineries with potentially different configurations of production and the generation of listed sludges and by-products.

As you may know, the Definition of Solid Waste Task Force is presently revisiting the existing regulations governing the definition of solid waste and the recycling of hazardous secondary materials. The Task Force's goals include exploring ways to simplify the current regulatory system, in order to better encourage safe recycling and resource recovery. I can assure you

that the issues and ideas presented by SRS and Mr. Steinway during the meeting on October 23, 1992 (e.g., performance standards for recycling processes, definition of hazardous waste fuel) will be taken into consideration as the Task Force proceeds with its efforts. In addition, EPA is involved in an on-going dialogue with interested parties as part of the rulemaking process specifically related to the Hazardous Waste Identification Rule (HWIR), proposed on May 20, 1992 (57 FR 21450) and subsequently withdrawn on October 30, 1992 (57 FR 49280). Part of the original proposed rule discussed concentration-based exemption criteria (CBEC), whereby listed wastes would no longer be subject to Subtitle C requirements if treated to below certain constituent concentration levels. We would encourage you to participate in the on-going dialogue, specifically with regard to the types of materials entering the SAREX Process, and the residuals generated.

If you have any questions, please contact Ross Elliott of my staff at (202) 260-8551. Thank you for your interest in the safe recycling of hazardous wastes.

Sincerely,
Jeffery D. Denit
Deputy Director
Office of Solid Waste

cc: Mr. Daniel M. Steinway

- 1 With regard to wastewater effluent from the SAREX Process that is returned to the refinery's wastewater treatment system, EPA policy has been that if the refinery can show that the return water stream is chemically equivalent to the non-listed wastewater influent to the wastewater treatment device that originally generated the listed waste, then the return water stream is not derived-from hazardous waste. Return water that is "chemically equivalent" is defined for purposes of this policy as water that does not contain significantly higher levels of Appendix VIII constituents and total suspended solids (TSS).
- 2 However, the recovered oil returned to the refining process is exempt from hazardous waste regulations per 40 CFR 261.6(a)(3)(vi), as are the fuels produced from such oil (see §261.6(a)(3)(v) and (vii)).