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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 6, 1995

Mr. John W. Osborne
Manager of Safety and Environmental Quality
United Beechcraft, Inc.
P.O. Box 2966
Wichita, Kansas 67201-2966

Dear Mr. Osborne:

Thank you for your letter dated October 18, 1994, requesting an interpretation regarding the regulatory status of residual aviation fuels that are burned for energy recovery.

As you correctly note in your letter, off-specification fuels, including gasoline, jet fuel, kerosene, diesel, etc. that exhibit a hazardous characteristic and are burned for energy recovery are excluded from regulation under RCRA as commercial chemical products. The RCRA regulations provide that commercial chemical products are not solid wastes when used as fuels (i.e., burned for energy recovery) if that is their intended purpose (40 CFR 261.2(c)(2)(ii)).

According to your letter, there are a number of different ways in which the residual aviation fuels are generated by your company (e.g., during maintenance of the aircraft, as a result of spills, etc.). You ask whether the manner in which the residual fuels are generated is a factor in determining whether they meet the definition of off-specification commercial chemical products under RCRA. The answer, in most cases, is no. The manner in which the fuels become off-specification is not generally a factor in determining how they are regulated. One exception is when the fuels have been mixed with or contaminated by non-fuel listed or characteristic hazardous wastes. In that case, the off-specification fuel would be regulated as a hazardous waste under RCRA even when burned for energy recovery.

There are also a number of potential uses for the off-specification aviation fuels that you generate, all of which involve burning for energy recovery,

according to your letter. The residual aviation fuel may be upgraded to specification by blending it with other types of fuel (e.g., gasoline, diesel, etc.) and then used to fuel aircraft or it may be used to power boilers and industrial furnaces. Your question is whether these uses would be considered "use within the intended purpose" as defined by RCRA. The answer is yes. As long as the residual fuels are being legitimately burned for energy recovery, they would be considered as being used for their intended purpose. EPA does not distinguish between different types of burning for energy recovery for purposes of determining the regulatory status of residual fuels under §261.2(c)(2)(ii).

It is important to note that EPA Regions and States authorized to implement the hazardous waste program make determinations regarding the requirements that apply to specific materials and facilities. Some States have programs more stringent than the Federal hazardous waste program. I hope this letter addresses your concerns. If you have additional questions, please call Becky Daiss of my staff at (202) 260-8718.

Sincerely,

Michael J. Petruska, Chief
Regulatory Development Branch

Attachment

United Beechcraft, Inc.
P.O. Box 2966
Witchita, KS 67201-2966

October 18, 1994

Mr. David Bussard, Director
Characterization and Assessment Division
EPA
401 M St. S.W.
Washington, D.C. 20406

Dear Mr. Bussard:

We would like to obtain an interpretation of the status of our residual/waste stream of aviation gasoline and jet fuel.

In a letter (copy attached) from Mr. Devereaux Barnes to Mr. Joe Haak a similar situation is discussed and interpreted. We want to be sure of any extension of the interpretation to our particular situation so that we remain in compliance with the regulations.

To put the interpretation request in context, our company is comprised of 17 on-airport facilities that provide a variety of services to the aviation community. As a result of the services and due to the stringent fuel quality specifications that must be adhered to in order to ensure safety of flight, a residual fuel is generated.

There are generally four situations that may generate this residual fuel as the following describes.

1. In the process of quality control of the fuel, we sump small quantities of fuel at various points in the storage-to-aircraft fueling system. The result is a residual fuel that has some water from condensation, rust particles and so on.

2. At times in the maintenance of the airplanes, fuel lines or tanks are required to be emptied in order to accomplish the

needed repair task. If the fuel can not be returned to the aircraft it came from, it is collected as a residual fuel.

3. In the process of receiving, storing and transferring of fuels or in the maintenance of the fuel system or aircraft refuelers small drippages result in the generation of residual fuel.

4. And the last case would be where we have had a leak or spillage and have used clean-up material to absorb the fuel.

We make note of two statements in the letter previously referenced. The first "a commercial chemical product is not a solid waste if it itself is a fuel" ... "it is implicit in the rules that the same reasoning applies to commercial chemical products that are not listed". Secondly, in the following paragraph "Although the reclaimed commercial chemical product is burned for energy recovery it is not a solid waste because this was its intended purpose".

While the McDonnel Douglas off-spec fuel would be used to produce apparently more aviation fuel our residual fuel would not be used for that specific purpose. However, it would be used for fuel, i.e. energy recovery. How broadly defined is "fuel" within the context of "intended purpose"? Aviation fuel only for aviation related purposes?

We have found our residual fuel could be used in three different ways as a fuel.

1. Our residual fuel is not up to aviation fuel specifications, but it is acceptable when blended with other types of fuel, e.g. automotive, diesel, etc., and it is used within the context of that fuel's intended purpose.

2. It could be used in kilns, boilers, generators as a fuel to power this equipment's use in a production process of some kind.

3. The fuel soaked clean-up material has enough Btu value to be used as a fuel to run kilns, boilers, etc.

Does how the residual fuel end up being used as a fuel make a difference in the interpretation of "intended purpose"?

It would be a fair statement to make that if 100 percent pure aviation fuel were delivered instead of the residual fuel, the pure product would not be handled substantially different by the fuel user - it is just fuel to them.

We would make a follow-on assumption the receiving process or facility would not need to have a Part B RCRA permit, provided the Agency saw our residual fuel as being used for its intended purpose.

It may be helpful to summarize our questions after having interwoven our specific situation with questions and issues.

1. How does your Agency's interpretation of "fuel" and "intended purpose" view our residual fuel?

2. Does the interpretation change based on how the residual fuel was derived based on the four general situations?

3. Does the interpretation change depending on how the residual fuel is used as a fuel in the end process?

4. Assuming your interpretation is that our residual fuel is a "fuel" and not a hazardous waste, then it would not be necessary for it to be handled and accumulated at our sites as a hazardous waste or dispose at a RCRA permitted site. Is that assumption correct?

Hopefully, this has given you all the pertinent information to the issues. If something has been overlooked please feel free to write or call me at (316) 676-7657. We do appreciate your attention as we are concerned about conducting our business in the proper manner.

John W. Osborne
Manager of Safety and Environmental Quality
United Beechcraft, Inc.

JWO:vlb

Attachment