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BURNING CHARACTERISTIC OFF-SPECIFICATION PETROLEUM
PRODUCTS FOR ENERGY RECOVERY

DEC 23 1986

Mr. Francis L. Corden
Technical Consultant
Enviropact of Tampa Bay
Environmental Consulting and Analysis
11181 43 Street North
Clearwater, Florida 33520

Dear Mr. Corden:

This is in response to your November 6, 1986, letter requesting confirmation that waste petroleum products with a flash point below 100 F that are burned for energy recovery are not solid (or hazardous) wastes.

As Mike Petruska has indicated to you, off-specification or contaminated commercial chemical products that are burned for energy recovery are not solid wastes (and, thus, not hazardous wastes) if they are themselves fuel. For commercial chemical products listed in §261.33, the rules state explicitly that they are not wastes if they are themselves fuels and if the off-specification or contaminated product is burned for energy recovery. See 40 CFR 261.2(c)(2)(ii). The same principle applies to off-specification commercial products that exhibit one of the hazardous wastes characteristics (see the April 11, 1985, Federal Register, p. 14219, col. 1).

You mention that your client will mix the waste petroleum products with used oil prior to marketing to incinerators for use as a fuel. You should be aware that under RCRA regulations, materials are burned for energy recovery in either boilers or industrial furnaces. See 40 CFR 260.10 for definitions. Materials burned in incinerators are considered to be burned for destruction rather than energy recovery (see the January 4, 1985, Federal Register, p. 627, col. 3). Incinerators are defined in §260.10 as any enclosed device using controlled flame combustion that neither meets the definition of a boiler nor is designated as an industrial furnace. Thus, if your fuel mix is burned in an

incinerator, it would not be burned for energy recovery and would be subject to regulation as a hazardous waste assuming the fuel still has a flash point lower than 140 F (the characteristic of an ignitable hazardous waste). The hazardous waste transportation and storage standards would apply.

If, however, by mixing the waste petroleum products with used oil, the mixture no longer exhibits a characteristic of hazardous waste (e.g., the flash point is higher than 140 F), the fuel mix would no longer be subject to regulation as hazardous waste. Nonetheless, the waste petroleum products would be regulated as hazardous waste prior to such treatment to make them nonhazardous.

Finally, if, in fact, your client markets the fuel mix to boilers or industrial furnaces for energy recovery and if the fuel mix has a flash point below 100 F, the fuel would be regulated as off-specification used oil fuel under the November 29, 1985, rule. In this situation, you would be subject to regulation as a marketer of off-specification used oil fuel and would have to comply with the notification and recordkeeping requirements of that rule. Further, the off-specification used oil fuel could not be burned in nonindustrial boilers (e.g., residential, commercial, or institutional boilers).

I hope this addresses your concerns. If you have other questions, please contact Bob Holloway at (202) 382-7917.

Sincerely,

Original Document signed

Marcia E. Williams
Director
Office of Solid Waste