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CLARIFICATION OF STATUS OF TREATMENT ASSOCIATED WITH FUEL BLENDING
ACTIVITIES

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

November 27, 1992

Jim Tichich
RCRA Engineering Section
Division of Hazardous Waste Management
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43266-0149

Re: Hazardous Waste Fuel Blending

Dear Mr. Tichich:

This letter responds to hazardous waste fuel-blending issues discussed in your phone conversation of August 11 with Chester Ozsman, and detailed in your subsequent letter of August 12, 1992. The letter raised the issue of whether or not treatment associated with hazardous waste fuel blending is regulated. In addition, you raised concerns about inconsistent correspondence addressing fuel-blending activities.

After review of the hazardous waste requirements, the Agency remains firm in its determination that treatment associated with hazardous wastes fuel blending is subject to regulation. 40 CFR 261.6(a)(2) clearly states that hazardous wastes which are recycled materials and are burned for energy recovery ". . . are regulated under Subparts C through H of Part 266 of this chapter and all applicable provisions in Parts 270 and 124 of this chapter." This reference to Part 270 provides the basis to regulate all hazardous waste fuel-blending activities.

40 CFR 266.34 was written with the understanding that hazardous waste fuel-blending activities were traditionally performed in containers or tank systems where the storage standards of Part 264 could be applied. The Agency believes that protection of human health and the environment is accomplished when the permit addresses the containment of the waste being treated. Therefore no direct reference to "treatment" was included in Section 266.34; treatment was understood to be implicitly in the regulation, as

RO 13577

shown by the reference in section 261.6 to the ". . . applicable provisions of Part 270." (Please note, effective August 21, 1991, Part 266, Subpart D has been superseded by Part 266, Subpart H.) EPA has in fact explicitly interpreted Section 266.34 to require tank storage standards to apply to tanks in which hazardous waste fuels are blended. See 52 FR 11820 (April 13, 1987).

More recently, it has come to the Agency's attention that fuel blenders may be using devices such as microwave units and distillation columns in their hazardous waste handling operations that differ from the traditional fuel-blending practices where storage requirements can be applied. These other-than-storage practices are, in fact, hazardous waste treatment activities requiring a RCRA permit, without which the unit cannot operate. According to section 270.1(c), "RCRA requires a permit for the treatment, storage, and disposal of any hazardous waste as identified or listed in 40 CFR Part 261.H" Additionally, preamble language from 50 FR 49196 (November 29, 1985) regarding storage requirements for hazardous waste fuel states ". . . today's rule expands existing requirements for storage so that all storage of all hazardous waste fuels is subject to regulation." Furthermore, "All hazardous wastes used to produce fuel and all hazardous waste fuel so produced are subject to today's storage requirements . . ." The regulations clearly indicate that hazardous waste fuel-blending activities are regulated, even if that activity includes some process other than storage. See 52 FR 11820.

Our understanding from discussion with Region V is that the examples of previous Region V correspondence you provided contain information supporting the Region's interpretation held early on in the regulatory process. The Region then adapted its position to more accurately reflect the Agency's ruling. If you have any questions concerning fuel-blending issues, please contact Jeffrey Gaines of my staff at (703) 308-8655.

Sincerely,
James F. Michael, Acting Chief
Assistance Branch (5303W)
Office of Solid Waste

cc: Ken Gigliello, OWPE; Sonya Sasseville, OSW; Steve Silverman, OGC; Chester Oszman, OSW; Jeffrey Gaines, OSW; Subpart X Permit Writers' Workgroup; Waste Combustion Permit Writers' Workgroup