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January 23, 2017

Louisiana Department of Environmental Quality
Public Participation Group
PO Box 4313
Baton Rouge, LA 70821

VIA Email. Deq.publicnotices@la.gov

SUBJECT: AI Number 198467,
Activity Number PER20160001

Dear Sir or Madame;

I have reviewed the December 22, 2016 Draft Solid Waste Standard Permit that approves the Thermaldyne LLC request to install a thermal desorption unit (TDU) and three centrifuges for the processing of oily solid wastes. This letter presents my comments on this most recent Draft permit. I am also providing comments on Thermaldyne's permit application documents as it relates to this matter.

The present draft permit provides minor revisions to the Department's previous draft that was published in May 2016. After that draft was published, Thermaldyne changed a US Government tax reporting code to change the designation of their principal activity to be SIC Code 2911 *Petroleum Refinieries*. These SIC codes are primarily used for tracking business economic activity in the US and do not undergo any review as to their suitability in regards to a particular business' claim. To be clear, the proposed Thermaldyne facility does NOT primarily or even in any way engage *in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes,* which is the exact literally prescribed definition of a 2911 facility. Any designation of the waste treatment activities at Thermaldyne that considers the facility to be a petroleum refinery is a sham, and is clearly a direct avoidance of the substantial and appropriate regulations enacted regarding the thermal treatment of regulated hazardous waste materials.

I have attached a letter that provides a very clear determination from USEPA in regard to this matter. Please refer to Attachment 1, a December 20, 2016 letter from USEPA Region 6 to Estuardo Silva at LDEQ. USEPA does not consider the Thermaldyne facility to be a petroleum refinery, and clearly states that waste treatment at Thermaldyne of hazardous secondary materials from petroleum refineries requires a RCRA hazardous waste permit.

If as stated in their June 15, 2016 letter to the Department, Thermaldyne intends to receive "excluded" oil bearing hazardous secondary materials from petroleum refineries and reclaim them to produce "residual fuel oils," this Thermaldyne statement confirms that their facility is indeed performing a regulated hazardous waste facility, and not engaged in "petroleum refining." As stated in the 1998 final rulemaking for the EPA's longstanding "petroleum refinery" exclusion from hazardous waste, that exclusion applies to oil bearing hazardous secondary materials that are *immediately recovered and used in the refining process.* The Thermaldyne facility includes no "refining process" but rather includes only a thermal desorption unit for waste treatment and three centrifuges for separation of oily waste water and sludge.

Generation of a residual fuel oil by thermal desorption treatment of refinery OBHSM at a reclamation facility that is separate from both the petroleum refinery generating the OBHSM and a refinery that is "inserting the recovered oil into the refining process" is a regulated hazardous waste thermal treatment activity. That is particularly true when the waste treatment activity is performed offsite from the generating petroleum refinery and the recovered oil is used as a residual fuel oil that is burned as a fuel.

Thermaldyne is proposing to install a rotary kiln thermal desorption unit at their recycling facility to process oily sludges from petroleum refineries and petrochemical plants that would normally be considered regulated hazardous waste. However, by claiming that the rotary kiln is really a "petroleum refinery" they are avoiding LDEQ, USEPA and public review for siting a new hazardous waste treatment facility. They are also avoiding being subject to numerous technical standards meant to protect both the environment and the public from releases of hazardous waste, as well as strict emission limits for air pollution from hazardous waste thermal treatment.

When Thermaldyne first proposed this facility in 2015 they made a promise to exclude hazardous wastes from their recycling activity. Now, with a last minute paperwork change they are trying to get permission to process tens of thousands of tons per year of toxic and flammable wastes from petroleum refineries and petrochemical plants. LDEQ and EPA normally require this type of hazardous waste thermal treatment facility to undergo years of exhaustive study and to install protections including engineered equipment and barriers to:

- verify that the facility meets requirements to prevent and contain spills,
- characterize waste prior to receipt,
- conditions and procedures to track materials to assure safe and legal treatment and disposal,

- control air emissions from the hazardous waste thermal treatment to extremely low levels for chemicals like hydrochloric acid, dioxins, mercury, lead, cadmium, arsenic, chromium, beryllium, and uncombusted toxic organic chemicals like benzene and benzo-a-pyrene,
- establish detailed procedures to guarantee that waste materials are properly disposed to prevent illegal mixing into commercial products or pollution of the land

If LDEQ and EPA accept Thermaldyne's claim that this waste processing facility is really a "petroleum refinery" they will allow Thermaldyne to avoid numerous hazardous waste laws. Thermaldyne will circumvent the protections provided by these hazardous waste laws and regulations. This will set a significant precedent in both Louisiana and the Gulf Coast. It is predictable considering the extensive refining and petrochemical industry in the region that Louisiana could become the host to more and more of these sham recycling facilities.

Detailed Analysis of Thermaldyne's "Petroleum Refinery" Claim

In order for Thermaldyne's claim to be successful, it must show compliance with the regulatory exclusions in 40 CFR 261.4(a)(12)(i) and (ii) relating to oil-bearing hazardous secondary materials that are generated at a petroleum refinery and recovered oil; and in 40 CFR 261.4(a)(18) if hazardous secondary materials are reclaimed from "associated petrochemical manufacturing facilities." Thermaldyne's principal hurdle remains to be showing that their facility comes within the definition of "petroleum refinery," and in the case of petrochemical waste reclamation that the oil generated from a petrochemical manufacturing facility is associated with a facility that is physically co-located with a petroleum refinery.

Section 261.4(a)(12)(i) excludes from hazardous waste regulation oil-bearing hazardous secondary materials that are generated at a petroleum refinery (SIC 2911) and are inserted into the petroleum refining process unless the material is placed on the land, or speculatively accumulated before being recycled. This section allows oil-bearing hazardous secondary materials to be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded from hazardous waste regulation.

Thus, the exclusion allows for refinery oil-bearing hazardous secondary material to be sent off-site for processing. However, the oil-bearing material must either be generated by a petroleum refinery or sent off-site to another petroleum refinery. There is no definition of the term "petroleum refinery" in 40 CFR 261; however, EPA defined the term in the preamble to a proposed rule amending the exclusion:

> Petroleum refineries are defined as "establishments primarily engaged in the production of gasoline, distillate fuel oils, residual fuel oils, naptha, liquefied refinery gases, and lubricants through the integration of fractionation and/or straight distillation of crude oil, re-distillation of unfinished petroleum derivatives, cracking, or other processes" (Office of Management and Budget, 1987). 60 *Fed. Reg.* 57750 (Nov. 20, 1995).

It is clear from this preamble definition that petroleum refineries must generally be engaged in the processing of crude oil. This criterion clearly disqualifies Thermaldyne's proposed facility from consideration as a petroleum refinery. The portion of the above definition specifying "straight distillation of crude oil" or "re-distillation of unfinished petroleum derivatives" is especially important as it relates to Thermaldyne, given that their proposed installation does not include a crude oil distillation column, or even a remotely similar process, to justify consideration of their facility as a petroleum refinery. This portion of EPA's definition requires either distillation of crude oil or re-distillation of "unfinished petroleum derivatives." Distillation at Thermaldyne's facility must be either distillation of crude oil or re-distillation of unfinished petroleum derivatives. Thermaldyne proposes neither, and therefore they would not be considered a petroleum refinery and Thermaldyne's activity is not eligible for an exclusion under 40 CFR 261.4(a)(12)(i).

Secondly, under 40 CFR 261.4(a)(12)(ii), in order for the recovered oil produced by Thermaldyne to be excluded from regulation, it must be "recycled in the same manner and with the same conditions" described in 40 CFR 261.4(a)(12)(i). Therefore, if Thermaldyne fails to meet the criteria in paragraph (i), the oil recovered from that process will not be excluded from regulation either. Paragraph (ii) further provides that "[r]ecovered oil is oil that has been reclaimed from secondary materials . . . generated from *normal* petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incidents thereto" (emphasis added). The use of the word "normal" to describe the refining practices from which the recovered oil must be generated should dictate strict application of EPA's definition of "petroleum refinery" discussed above, rather than a loosely-held variation that would allow mere construction of a distillation column to determine regulatory status. Applying a strict definition is especially important in this context where so much rides on this determination: depending on the outcome, the facility will either be fully regulated or completely excluded from regulation under RCRA.

In the broad descriptions included in their permit application document, Thermaldyne also proposes to reclaim secondary materials from petrochemical plants. The regulatory status of this activity is governed by 40 CFR 261.4(a)(18), which provides an exclusion for petrochemical recovered oil from "an associated organic chemical manufacturing facility, where oil is to be inserted into the petroleum refining process . . . along with normal petroleum refinery process streams." First, notice that this exclusion is contingent on insertion of petrochemical materials into a petroleum refining process that process "normal" petroleum refinery process streams. Thus, in order for Thermaldyne to conform to this exclusion, it must be a petroleum refinery, as discussed above. Second, the refining process must involve "normal petroleum refinery process streams." It appears that Thermaldyne could be disqualified on both grounds by failing to conform to EPA's definition of petroleum refinery and by not processing materials that are "normally" considered to be petroleum refinery process streams.

In addition, paragraph (i) of this section limits the exclusion to oil that is hazardous only because it exhibits the characteristic of ignitability and/or toxicity for benzene. This condition would limit the types of petrochemical wastes that could be reclaimed at Thermaldyne, provided that it

could otherwise come within this exclusion. Paragraph (ii) of this section further limits applicability of the exclusion by defining "an associated organic chemical manufacturing facility" as a facility that (1) has an SIC code of 2869, and (2) is physically co-located with a petroleum refinery and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. Thus, in order to be able to process "excluded" petrochemical waste, Thermaldyne's "refinery" must be considered to be co-located with the petrochemical plant from which it is receiving the material. Even if EPA or LDEQ determines that Thermaldyne is a petroleum refinery, Thermaldyne could not process petrochemical wastes except from petrochemical plants with which it is co-located. In a preamble to the final rule promulgating this exclusion, EPA stated that "co-located" means "that the petroleum refinery and the organic chemical manufacturing facility are physically adjacent to one another, or otherwise share a common boundary." 63 *Fed. Reg.* 42130 (Aug. 6, 1998). This requirement severely curtails eligibility for this exclusion.

In conclusion, given that the Thermaldyne facility meets neither the definition of a "petroleum refinery" nor is it co-located with an "associated petrochemical facility" receipt and reclamation of hazardous secondary materials from either of these facilities would constitute regulated hazardous waste treatment. This would require a full RCRA Part B permit and cannot be legally performed under the proposed Solid Waste Permit for recycling. Any petroleum refinery or petrochemical plant generator of these hazardous secondary materials that shipped them to Thermaldyne for reclamation would be in violation of RCRA. Thermaldyne receiving them, storing them, subjecting them to reclamation by centrifuging or thermal desorption, and selling or shipping the reclaimed oil from them would all be activities that are in direct violation of RCRA.

Restatement of Previous Comments

In my June 30, 2016 comment letter to the Department I made numerous comments on the permit and permit application. The majority of those remain my comments, and have not been withdrawn. For completeness, I am repeating them, with expanded and slightly revised comments based on changes made to the Solid Waste Permit in this latest publication.

Both the draft Solid Waste Permit and the Thermaldyne permit application state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

This facility uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensable portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of

solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain numerous siting criteria, technical standards, operation and recordkeeping requirements, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

On another point, the Thermaldyne facility includes three centrifuges for the processing of solid waste liquids. These units will generate large quantities of waste water contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. The Operating Plan states that this water will be discharged to "the outfall." However, Thermaldyne has not requested or received any permission from LDEQ for a surface water discharge of this waste water. The Operating Plan is made a permit condition by reference in this Solid Waste Permit. However, that inclusion by LDEQ does not constitute permission for an unpermitted surface water discharge. Also, rainwater that falls in the waste processing area will become contaminated by pollutants, including sediment, free oil, volatile organic compounds and toxic metals. No storm water pollution prevention plan or discharge permit has been requested from or granted by LDEQ. In the absence of these permits and approvals, these waste waters would need to be shipped offsite for appropriate waste disposal. Their discharge to the local surface waters that include direct flows to the Mississippi river are unauthorized and inappropriate.

I have an additional comment related to the fact that Thermaldyne appears to be planning on generating a recycled oil from the processing of regulated solid waste liquids and solids in the TDUs and centrifuges. The Department should implement specific conditions of operation for both the TDUs and the centrifuges to preclude the disposal of hazardous waste in the "recycled oil" that is generated from these units. Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. These conditions would also prevent "sham recycling" of hazardous waste from being performed by Thermaldyne. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil," using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1,400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

I am also providing detailed itemized comments on both the published Draft Permit as well as the Thermaldyne permit application documents. These comments are provided on the following pages.

It is appropriate for the Department to grant Themaldyne approval to receive, recycle and process non-hazardous oil bearing materials. The source of those materials must be exclusively from non-hazardous waste sources. Appropriate sources would be excluded and non-hazardous oily materials from petroleum exploration and production (E&P) operations, and similarly regulated materials. It is completely inappropriate through this Solid Waste Permit for the Department to grant approval for Thermaldyne to receive or process any hazardous waste materials, including oil bearing hazardous secondary materials from petroleum refineries.

Sincerely,

Carl R. Palmer 2017.01.23 11:50:32 -05'00'

Carl R. Palmer, P.E.

Cc:	Ann Finney	LDEQ (via email)
	Susan Spalding	USEPA Region 6 (via email)
	Guy Tidmore	USEPA Region 6 (via email)
	Evan Pearson	USEPA Region 6 (via email)
	Dr. Kishor Fuitwala	USEPA Region 6 (via email)
	Robert Luschek	USEPA Region 6 (via email)
	Wren Stegner	USEPA Region 6 (via email)
	Jim Payne	USEPA Region 6 (via email)
	Lisa Price	USEPA Region 6 (via email)
	Bruce Jones	USEPA Region 6 (via email)
	Betsy Devlin	USEPA HQ (via email)
	Ross Elliott	USEPA HQ (via email)
	Traci Atagi	USEPA HQ (via email)

ITEMIZED COMMENTS ON LDEQ DRAFT PERMIT

Conditions R-45, R-51
Issuance of Standard Permit Letter to Richard A. Cates

These three instances clearly state that the facility is prohibited from accepting hazardous waste materials for processing. This prohibition is also included in the Comprehensive Operating Plan and Waste Acceptance Plan that are incorporated by reference in Attachment 1. This prohibition of hazardous waste receipt is clearly stated by both LDEQ and Thermaldyne, without nuance or qualification. LDEQ further states both in a letter to Thermaldyne and in the permit fact sheet that no variances are being requested or approved as part of this solid waste permit. All of those facts are essential, because the processing of hazardous waste materials, including hazardous secondary materials, would be unauthorized and against LDEQ and EPA regulations because this facility does not meet the technical and administrative requirements for processing either of those material types.

The Thermaldyne TDU combusts a portion of the solid waste that is processed in the associated thermal oxidizer. If either hazardous waste, or hazardous secondary materials are received and placed in the TDU, that would constitute regulated hazardous waste thermal treatment. That determination remains the same regardless of the claim that recycling is being performed, or that recycled oil is being returned to the generator or sold as a recycled product. No solid waste permit, or even a variance can authorize the unpermitted thermal treatment of hazardous waste. A RCRA hazardous waste permit would be required for the Thermaldyne facility in that case. This regulatory approval process is mandatory, and LDEQ would require Thermaldyne to submit a full RCRA hazardous waste permit application meeting all of the technical and administrative requirements.

Consider including a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste in conditions R-45, R-51. Also, consider requiring Thermaldyne to include similar prohibitions and procedures in their Comprehensive Operation Plan and Waste Acceptance Plan, permit application attachments 35 and 58, that are incorporated by reference in the Draft SW Permit.

Please remove from the LDEQ documents the following paragraph that is present in the "Issuance of Standard Permit" letter, in the "Attachment 2 Fact Sheet," and Specific Requirement R-53.

> *In accordance with LAC 33:V.105.D.1.l.i, oil-bearing secondary materials that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911) are not solid wastes the purposes of the hazardous waste regulations. However, residuals generated from processing or recycling materials excluded under this Subsection, where such materials as generated would*

have otherwise met a listing under LAC 33:V.Chapter 49, are designated as F037 listed wastes when disposed of or intended for disposal. The facility shall store and dispose of these wastes in accordance with all applicable hazardous waste regulations.

My request for removal of this paragraph is not because it is incorrect. LDEQ has provided an essentially correct statement regarding the recycling of oil bearing hazardous secondary materials at a petroleum refinery. However, considering that the Thermaldyne facility is clearly not a petroleum refinery, the inclusion of this section gives the impression that LDEQ agrees with Thermaldyne's incorrect and inappropriate claim. As strongly stated in EPA's letter to LDEQ (attached), Thermaldyne's facility is not a petroleum refinery and if they receive these hazardous wastes from petroleum refineries they would require a RCRA hazardous waste permit.

SW Permit "Inventories" form TPOR0195

The weekly maximum capacity of the facility is given as 9800 wet tons/wk. Please include a footnote or some other operating or recordkeeping requirement that this capacity is for all solid waste received at the facility, to include both liquid solid waste (slurries of water, solids and oil) for centrifuge processing, and solid waste for TDU processing.

It is noted that these waste materials will be delivered to the Thermaldyne facility by truck. If the average net weight of waste delivered per truck load is 15 tons, then this means that approximately 650 trucks per week will be delivered to the facility. That is a very large amount of truck traffic, especially considering that these will all be regulated DOT hazardous materials shipment. Has LDEQ considered the impact of this large increase in the quantity of hazardous material truck traffic on the roads in the Parish?

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 35 Comprehensive Operation Plan

<u>Page 1. Section 1.0. Acceptable Types of Waste</u>

A bullet list is provided that includes *Oily sludge waste generated at oil refineries and petrochemical plants.*

It is noted that virtually all of this type of waste that is generated at an oil refinery is either a listed hazardous waste (K048-K052, K169-K172, F037, F038) or characteristically hazardous waste (D001, D018). These materials may be classified as oil bearing hazardous secondary materials by the refinery. Similarly most of these "oily sludge wastes" from a petrochemical plant are characteristically hazardous waste (D001, D018). Their "recycling" at an offsite waste treatment facility such as Thermaldyne, that combusts a portion of the solid waste in the recycling unit, requires that Thermaldyne have a hazardous waste operating permit allowing the regulated hazardous waste thermal treatment of these hazardous secondary materials.

Consider editing the second bullet list to say:

The facility will not accept:

- *Hazardous waste, hazardous secondary materials, and oil bearing hazardous secondary materials.*

Page 4. Section 6. Waste Minimization

The condensed desorbed materials will be stored temporarily on-site before being sent for recovery by the generator.

Presumably the "condensed desorber materials" are a recyclable oil product. Multiple generators are presumably sending solid waste to this facility. Procedures for return to the generator are not further defined, such as how to segregate one generator's oil from another. Further, if a generator does not accept recycled oil back from Thermaldyne, then it is possible that this oil would be a newly generated waste, subject to hazardous waste characterization.

Neither the Operating Plan nor the Waste Acceptance Plan provided by Thermaldyne include any provisions for testing of the "recycled oil" to establish that it is either not a hazardous waste, or derived from a hazardous waste. If the "recovered oil" is to be burned as a fuel, that may affect the status of the secondary materials that are received at the facility and render them hazardous wastes, as opposed to recyclable secondary materials. If the recovered oil is to be burned as a fuel, proper notification should be provided to LDEQ of that practice so that appropriate hazardous waste management determinations can be reviewed. As a minimum LDEQ should require that Thermaldyne manage the recovered oil material as a valuable product, protect it securely, prevent it from becoming spilled or discarded or placed on the land, establish contracts for its sale that incorporate consensus product quality specifications, and similar practices to establish that the material is not a waste. Otherwise, a new waste determination should be made for the appropriate management of the "recovered oil", using hazardous waste characteristic criteria. If the material exhibits a hazardous waste characteristic then it must be appropriately stored on site, manifested, and disposed at properly permitted facilities. At 1400 ton/day of permitted capacity, if the oil content of the solid waste materials is 15%, then the facility would be generating 50,000 gallons of "recovered oil" per day. This quantity of material could quickly become a problem.

Specific procedures need to be included for the management and waste characterization of the "recovered oil" either in this attachment, or the WAP in attachment 58.

Page 6. "Non-Recyclable Waste"

This section includes a statement that *the water generated will then go through the water*

treatment process with the other wastewaters gathered from the facility. The cleaned water will exit the facility through its permitted outfall.

It is noted that no permit can be found for any "permitted outfall" in the LDEQ EDMS documents for Thermaldyne (or their predecessor company Port Allen Land). At the present time, it does not appear that Thermaldyne has approval to discharge any treated waste water or storm water to a surface water at the site.

SW Permit Attachment 1 – Items Incorporated by Reference
Thermaldyne Attachment 58 Waste Acceptance Plan

Page 2.

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized as hazardous or nonhazardous it must first be characterized as solid waste. This facility will do so by following the definition of a solid waste from section 261.2 of RCRA Regulations.*

The Thermaldyne facility is a recycling facility. It is not located at the generator's site, nor is it a "closely held" entity of the generator. As such, the waste determination is made by the generators, not Thermaldyne. Thermaldyne has a duty to verify that the generator has properly characterized their waste and is not inappropriately offering prohibited hazardous waste for recycling at Thermaldyne.

Thermaldyne uses a TDU that is a thermal treatment unit for waste reclamation. The facility combusts a non-condensible portion of the waste received in an associated Thermal Oxidizer. When hazardous wastes are reclaimed, they remain hazardous waste under the EPA definition of solid waste (DSW) at 40 CFR 261.2. Hazardous waste reclamation facilities that combust a portion of the hazardous waste require a hazardous waste permit under the LDEQ regulations that implement EPA's RCRA regulations. Those permits contain substantial siting criteria, technical standards, operation and recordkeeping, and undergo an administrative process embracing substantial public participation. The Thermaldyne facility meets none of those requirements and is consequently unsuitable for either hazardous waste or hazardous secondary material reclamation.

This section should include a prohibition on the receipt of hazardous secondary materials, including Oil Bearing Hazardous Secondary Materials, along with the prohibition on the receipt of hazardous waste as required by the permit conditions. Recommend rewriting similar to as

follows:

> *The highest priority for this facility is ensuring waste accepted from a 3rd party is not hazardous waste, hazardous secondary materials, or oil bearing hazardous secondary materials. Wastes that do not meet regulatory requirements will not be accepted for treatment by Thermaldyne. The hazardous waste identification (HWID) process is crucial for maintaining and managing this system. Correctly determining whether a waste meets The Resource and Conservation and Recovery Act (RCRA) definition of hazardous waste is essential to determining how the waste must be managed and whether the waste is to be accepted or rejected. Before waste is characterized by the generator as hazardous or nonhazardous it must first be characterized as solid waste. This facility will ~~do so~~ review the generator's waste determination ~~by following the definition of a solid waste from section 261.2 of RCRA Regulations.~~ to confirm that materials offered for recycling at Thermaldyne are neither hazardous waste, nor hazardous secondary materials.*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

DEC 20 2016

Estuardo Silva
Administrator Waste Permits Division
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, Louisiana 70802

RE: United States Environmental Protection Agency (EPA) Region 6 Review of the Solid Waste Standard Permit Application (January 8, 2016) for the Thermaldyne, LLC facility located in Port Allen, West Baton Rouge Parish, Louisiana; EPA ID ARD089234884; Permit No. 11H-RN2.

Dear Mr. Silva:

We have completed our review of the solid waste permit application for the facility referenced above. In the application, the facility states that it is a refinery (SIC code 2911) and claims an exclusion for handling oil-bearing secondary materials based on L.A.C. 33:V.105.D.1.i. The federal reference for this exclusion is 40 CFR 261.4(a)(12)(i).

Based on our review of the application and the facility, we are of the opinion that this facility is not a refinery and would not qualify for the exclusion referenced above. Specifically, we do not find that the facility is engaged in processes that would be indicative of a refinery, such as using crude oil for fractionation, distillation, or cracking for the production of gasoline, kerosene, residual fuel oils, and lubricants. The Background Listing Document examined numerous refineries and their operations in order to establish the exclusion identified about. All the refineries reviewed shared at least two elements: the facility used (1) crude oil to develop a (2) finished product. This facility does neither. Rather, the facility is receiving a hazardous secondary material from a refinery to treat and recover an oil product that will be sent back to a refinery for further processing. As such, we would expect the facility to be permitted with a RCRA Subpart C Hazardous Waste Permit for the thermal treatment of a hazardous material.

Furthermore, generators will have to manifest this material as a hazardous waste with the responsibility to send it to a properly permitted RCRA facility for treatment. Failure to do so may result in an enforcement action on the generator of the hazardous waste.

If you have any questions regarding this letter, please contact me at (214) 665-6669.

Sincerely,

Kishor Fruitwala, Ph.D., P.E.
Chief, RCRA Permits Section
Multimedia Division, EPA Region 6

cc: Ann Finney (LDEQ)