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*From the Desk of*
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October 5, 2018

U.S. EPA
Alima Patterson
Regional Authorization/Codification Coordinator, RCRA Permit Section (6MM-RP)
Multimedia Division
EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

VIA Federal eRulemaking Portal: www.regulations.gov
Full Document Download Link: https://tdxassociates.egnyte.com/dl/jIur8IVWH

**SUBJECT: Docket ID Number EPA-R06-RCRA-2018-0395, FRL-9982-64-Region 6 Louisiana: Final Authorization of State Hazardous Waste Management Program Revision**

Dear Ms. Patterson;

TD*X Associates has reviewed the subject notice published in 83 Federal Register 45061, September 5, 2018. This letter provides comments specific to the Louisiana Department of Environmental Quality (LDEQ) program elements that relate to the implementation of the Federal court vacated Verified Recycler Exclusion (VRE) standards.

EPA's subject notice clearly acknowledges the status of the Federal VRE standards as being vacated by a Federal court. Among other things, the 2017 court decision found that the VRE standards were arbitrary, and in particular that the Verified Reclamation Facility (VRF) variance process had no definitive criteria for judging whether an applicant's request should be granted. In the absence of either a VRF variance, or a VRE status based on the recycling facility having a full RCRA permit that addresses the recycling activity, a hazardous secondary material (HSM) must be managed as regulated hazardous waste material, even when it is legitimately recycled. Therefore, at the present time, with the VRE being court vacated, RCRA standards establish the baseline protective criteria for management of HSM within a legitimate recycling activity. It is

important to note from the beginning, that LDEQ, and for that matter essentially all other State RCRA programs, have not adopted the 2008 Transfer Based Exclusion (TBE). That is because those standards are widely deemed as being inappropriate to rely upon for a positive enforceable determination as to the appropriate criteria for operation of the recycling facility; for either a RCRA regulated hazardous waste generator, or a recycling facility that accepts hazardous waste secondary materials. For just that reason the TBE was never adopted by States, nor were State agencies encouraged to adopt the rule by waste generators or regulated recycling facility operators. In summary, the TBE is not protective or enforceable for many HSM recycling activities. The TBE should not be held up to the regulated community as the baseline for protective management of HSM.

LDEQ as well as some other State programs have adopted the 2015 VRE. While I admit it is a bit difficult to wade through Federal policy on whether a State program is "broader in scope" (BIS) or "more stringent" (MS), it is none-the-less not difficult at all to see that the TBE should not be used to judge whether a legitimate recycling activity that is permitted under RCRA is more protective than one that has been reviewed under the arbitrary criteria of a VRF variance.

Therefore, I submit that the LDEQ program that employs both the VRE and the associated VRF variance process is not protective of human health and the environment, and does not implement the State's legally mandated requirement to enforce regulations for the management of designated hazardous waste materials that are at least are stringent as the RCRA regulations (that presently do not include either the VRE or VRF variance). Based on that set of facts, the following conclusions and comments are provided pursuant to the subject notice:

1. The LDEQ State program should not be authorized if it includes any of the court vacated VRE language and conditions because they are not protective of human health and the environment. EPA Region 6 may issue a limited program authorization that excludes any reference to either the VRE or VRF variance process.
2. If the State program is authorized including any of the VRE language, all references to LDEQ being allowed to issue a VRF variance should be struck. The only VRE "verified facilities" that are protective are those that have been issued a RCRA permit that addresses the recycling activities. It was clearly stated in the 2015 DSW final rule that only those RCRA permitted recycling facilities *presumptively* satisfy the mandatory containment requirement. Containment was essential to the promulgation of the VRE HSM exemption, and a cornerstone of EPA's response to the court case that vacated the 2008 TBE and replaced it with the 2015 VRE.
3. If the State program is authorized including any of the VRE language, especially including any of the VRF variance process, then a specific reference or condition should be included in the EPA authorization requiring that LDEQ not issue any VRF variance for a "recycling" facility that employs a treatment method that EPA has designated as requiring a specific RCRA permit. Explicitly stated: No incinerator facility requiring a Subpart O permit should be approved on a VRF variance. No land treatment unit requiring a Subpart M permit should be approved on a VRF variance. No landfill disposal unit requiring a Subpart N permit should be approved on a VRF variance. No hazardous waste combustor requiring approval either as a 40 CFR Part 266 Subpart H, or a Part 264 Subpart X Miscellaneous

Unit, that employs combustion of the HSM should be approved on a VRF variance. Etc.

4. In any event, eliminate the statement on page 45066, Section G: *For the purposes of RCRA section 3009, the Agency has determined that the broader in scope provisions are more protective/stricter, thus being within the State's authority to maintain them as part of the State's RCRA program.* As is conclusively shown in this letter and its Enclosure, the first example of a VRF variance that LDEQ has drafted is certainly not protective of human health and the environment, and EPA should not categorically make the abovementioned declarative statement without extensive review of the Thermaldyne matter and how LDEQ has proposed to issue a variance without any emission limits of the toxic hazardous waste constituents, or protective disposal requirements for the "recycling" facility residuals.

As a compelling example of why the above 4 comments are directly applicable to the subject notice and require immediate action by EPA with respect to the authorization of the LDEQ RCRA program I refer to the Enclosure. This document is a 537 page public comment letter prepared in response to LDEQ proposal to issue a VRF variance for the Thermaldyne, Port Allen, LA "recycling" facility. That facility uses a hazardous waste combustor to treat RCRA regulated listed and characteristic hazardous waste materials that are specifically and directly identified by EPA as hazardous wastes from petroleum refining activities. The combustor has no enforceable emission limits on known toxic hazardous waste air pollutants in either the variance as written, or in the State issued air permit; none. Operation of the unit will emit more than 7000 times more mercury than if the facility were regulated under protective RCRA permits requiring compliance with appropriate MACT EEE emission limits.

Furthermore, the Thermaldyne "recycling" facility has been proposed by LDEQ to render the residuals derived from these listed and characteristic hazardous wastes into a "newly generated waste" that is not subjected to the RCRA Land Disposal Restrictions and is acceptable for disposal in Type 1 industrial solid waste landfills in the Baton Rouge, LA area if it passes only D-code testing for benzene toxicity. This facility embodies all of the aspects of sham recycling that the 1989 Lowrance Memo [RO 11426], and both the 2008 and 2015 DSW rulemakings were intended to prohibit. If granted, tens of thousands of tons per year of listed hazardous waste will be excluded from the RCRA disposal system, subjected to hazardous waste combustion without any protective emission limits, and have their partially reclaimed residues disposed outside of the treatment standards of the RCRA Land Ban. Soon to follow, additional facilities will be approved on LDEQ VRF variances to multiply this sham into the hundreds of thousands of tons per year, completely undoing the RCRA disposal system for listed refinery wastes (K048-52, K169-172, F037, F038). This is contrary to decades of permit doctrine that mandate treatment of these hazardous waste materials to nearly non-detectable residual toxic hydrocarbon and leachable -metals levels prior to placement in even secure hazardous waste landfills.

As detailed in the Enclosure and its Attachment 2, EPA Region 6 has already weighed in on the regulatory status and technical requirements for a legitimate recycling facility that employs combustion in a Thermal Desorption Unit. That is in the Rineco 2010 and US Ecology/TD*X 2012 enforcement actions. These facilities were issued civil penalties exceeding $2 million, and further required to perform injunctive relief costing at least that amount. EPA Region 6 determined that both facilities, even though operating at RCRA permitted sites under self-determined recycling

exclusions under 40 CFR 261.6(c)(1), that combustion of hazardous waste material in a TDU is fully regulated RCRA thermal treatment and is required to be permitted under 40 CFR Part 264 Subpart X with the appropriate criteria from 40 CFR Part 63 Subpart EEE (MACT EEE) applied to the technology thru the conditions of the facility's RCRA permit.

Now, LDEQ proposes to issue a VRF variance to Thermaldyne, who is not even located at a RCRA facility, with no technical requirements or emission limits, no requirements for disposal of residuals that are derived from hazardous waste in accord with the RCRA LDR, and Region 6 proposes to approve the LDEQ VRE and VRF variance program? Which is it? Is hazardous waste combustion a fully regulated RCRA thermal treatment activity? Or, is it fully excluded with no emission limits or residual disposal requirements? I respectfully request, in the strongest possible way, that EPA Region 6 provide a response to this question prior to approval of the LDEQ RCRA program. A program that includes the vacated VRE and its VRF variance process. Any less will likely authorize a portion of the LDEQ hazardous waste program that is not as stringent as the Federal regulations, is not protective of human health and the environment, and without a doubt explicitly authorizes the construction of one and probably multiple sham recycling facilities to divert possibly hundreds of thousands of tons of listed hazardous waste from the mandatory requirements of the RCRA disposal system.

Sincerely,

Carl R. Palmer 2018.10.05 10:49:40 -04'00'

Carl R. Palmer, P.E.

cc: Ben J. Harrison, USEPA Region 6
Wren Stenger, USEPA Region 6
Dr. Kishor Fruitwala, USEPA Region 6
Barnes Johnson, USEPA ORCR
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ENCLOSURE

Public Comment Letter, Carl R. Palmer, TD*X Associates to LDEQ Public Participation Group, July 30, 2018.

The full document download link for this July 30, 2018 letter is:
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July 30, 2018

Louisiana Department of Environmental Quality
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VIA Email. Deq.publicnotices@la.gov
Full Document Download Link: https://tdxassociates.egnyte.com/dl/LQd1eDT0R1

**SUBJECT: AI Number 198467,**
**Activity Number PER20170003**
**Public Comments and Hearing Request**

Dear Sir or Madame;

TD*X Associates has reviewed the June 21, 2018 Draft Variance from Classification as a Solid Waste For a Verified Reclamation Facility (VRF) that proposes to approve the Thermaldyne LLC request to install a thermal desorption unit (TDU) and three centrifuges for the processing of Resource Conservation and Recovery Act (RCRA) regulated oil bearing hazardous waste materials without applying for or receiving a hazardous waste permit for their treatment storage and disposal facility. This letter presents my preliminary comments on the Draft VRF variance. We are also providing comments on Thermaldyne's variance request documents as it relates to this matter.

Considering the significant nature of this Variance for approval of a hazardous waste combustor, using a regulatory mechanism that has never before been used for hazardous waste thermal treatment, we request that a public hearing be granted to allow for input from the public on this matter, and that the public comment period be extended at least sixty days or 14 days following conclusion of any public hearing, whichever is longer. Furthermore, I request the applicant be required to submit an environmental assessment statement (EAS) as set forth in R.S. 30:2018 and thereafter, the LDEQ conduct a public hearing concerning this EAS.

The proposed variance is for Thermaldyne to receive Oil Bearing Hazardous Secondary Materials (OBHSM) from petroleum refineries and to process these otherwise listed hazardous wastes as a third-party (i.e. a "person" not part of or associated with the manufacturing process) in both centrifuges, and a thermal desorption unit (TDU) that combusts all of the vent gases in an