Message

From: Atagi, Tracy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EBCFD670077440DFB63A691749F20AF2-TATAGI]
Sent: 5/7/2018 4:42:49 PM
To: Elliott, Ross [Elliott.Ross@epa.gov]
CC: Young, Jessica [Young.Jessica@epa.gov]
Subject: Tomorrow's meeting on Thermaldyne
Attachments: Feedstock Variance Request Response to NOD1.pdf; Thermaldyne Proposed Variance by LDEQ.pdf

[redacted]

From: Atagi, Tracy
Sent: Wednesday, May 2, 2018 6:11 PM
To: Fruitwala, Kishor; Luschek, Robert; Price, Lisa; Spalding, Susan; Patterson, Alima; Peace, Michelle; Jones, Bruced; Chang, Patrick; Smith, Melissa; King, Laurie
Cc: Young, Jessica; Elliott, Ross
Subject: Re: Tomorrow's meeting on VRE Exclusion

[redacted]

From: Fruitwala, Kishor
Sent: Wednesday, May 2, 2018 3:38 PM
To: Atagi, Tracy; Luschek, Robert; Price, Lisa; Spalding, Susan; Patterson, Alima; Peace, Michelle; Jones, Bruced; Chang, Patrick; Smith, Melissa; King, Laurie
Cc: Young, Jessica
Subject: RE: Tomorrow's meeting on VRE Exclusion

[redacted]

Thank you.

Kishor

Kishor Fruitwala, Ph.D.
Chief, RCRA Permits Section (6MM-RP)
Multimedia Division, EPA Region 6
214-665-6669

From: Carl Palmer [mailto:cpalmer@tdxassociates.com]
Sent: Tuesday, April 24, 2018 10:53 AM
To: Luschek, Robert <Luschek.Robert@epa.gov>
Subject: Re: Thermaldyne Variance from DSW

Robert,

In advance of your May 3 phone call, I am sending this summary information. I will continue to research the permit doctrine, and plan to provide significant comments to LDEQ prior to the close of the comment period on May 21.

I have attached the LDEQ public notice of the April 19 draft variance for Thermaldyne for reference.

The proposed variance is for Thermaldyne to receive Oil Bearing Hazardous Secondary Materials from petroleum refineries and process these otherwise listed and hazardous waste 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 associated thermal oxidizer.

LDEQ is using LAC33.V.105.O.1.b and 105.O.2.b to approve this variance. These code sections are exact incorporation of 260.31(b) and 260.34(b), respectively; ...Variances from Classification as a Solid Waste.
b. materials that are reclaimed and then reused within the original production process in which they were generated

Two of the key criteria for granting such a variance are:
260.34(b)(4) The location of the reclamation operation in relation to the production process;

260.34(b)(6) Whether the person who generates the material also reclaims it;
These were key review factors in the exemption of the exact same OBHSM under 261.4(a)(12)(ii) in 1998. In that rulemaking EPA and many commentors found that it was un-suitable for these petroleum refinery listed and characteristic wastes to be shipped as exempt from RCRA to an off-site third party that was not a

petroleum refinery for reclamation (and/or insertion into the refining process).

EPA guidance on these DSW variance criteria (50 FR Jan 4, 1985, page 654-655) is attached. Regarding criteria 34(b)(4), closed-loop recycling is what is considered exempt from RCRA, and that while "closed loop recycling situations can extend beyond the plant boundary." "However, the more physically close the reclamation operation is to the production process, the more likely the situation is to be viewed as closed-loop recycling." Regarding criteria 34(b)(6) EPA clearly states that "the reclamation and reuse must both be conducted by the same *person*, although not necessarily at a single plant site. (*Person* is defined in 260.10 and in RCRA as including among others single corporations and other legal entities)".

Thermaldyne's variance request (on page 6 of their pdf submittal) clearly states that they are not located at the location of the production process, but rather expect to receive OBHSM materials from 39 or more separate petroleum refinery facilities. Nor are they the generator of the material, stating that the petroleum refinery is the generator and that they are the reclaimer. (This is a 50MB document, so I can't attach it.)

Under 260.34(b)(7) "other relevant factors" there is a significant matter regarding the *prevalence of the recycling practice as an industry-wide practice*.... Federal regulations have specifically accommodated appropriate recycling of this petroleum refinery OBHSM stream either under 261.4(a)(12) and 261.6(a)(3)(iii), or at RCRA regulated recycling facilities permitted under various provisions of Part 264. This request to provide a variance for OBHSM from petroleum refineries is unnecessary and undermines the current promulgated regulations that were established to provide a minimum protection of the environment. The cited regulations are the current industry practice and provide a specific regulatory path for recycling this waste stream. There is no need for a specific solid waste variance to manage this material and if issued would compromise the protections established in the current regulations.

EPA's permit doctrine, as well as recent Region 6 enforcement actions against Rineco (2008) and US Ecology/TDX (2012) confirm that recycling of this petroleum refinery OBHSM at off-site third party locations is not exempt recycling, and does require full RCRA permitting under 264 Subpart X, incorporating appropriate technical factors from the MACT EEE standards. Furthermore, LDEQ has imposed these same Region 6 TDU requirements on Chemical Waste Management's Lake Charles facility that is installing two RCRA permitted TDUs just about 50 miles from the Thermaldyne facility.

Granting this variance from the definition of solid waste is inappropriate, and contradicts EPA permit doctrine and Region 6 consistent enforcement actions. It will allow a marginally sited and permitted facility to operate outside of RCRA and its multiple layers of design and operating standards, as well as important testing and record keeping requirements. The variance is also inconsistent with very clear regulatory policy in EPA and Region 6.

Looking forward to talking to you as this review proceeds.

Carl

Carl R. Palmer, P.E.
TD*X Associates LP
(919) 349-1583 mobile