Message

From: Lutz, Craig [Lutz.Craig@epa.gov]
Sent: 1/23/2012 2:46:21 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Re: U.S. Ecology

http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/62FF7E11D5D6E13D8525670F006C0D3B/$file/13657.pdf

Here's a link the memo on thermal desorbers and the criteria for being classified as an incinerator.

Craig Lutz
(214) 665-2190

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From: Evan Pearson/R6/USEPA/US

To: Ryan Rosser/R6/USEPA/US@EPA
Cc: Craig Lutz/R6/USEPA/US@EPA
Date: 01/20/2012 10:40 AM
Subject: U.S. Ecology

Your comments please on a proposed e-mail to HQs regarding the noncontainerized gases being a hazardous waste.

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the

vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) which states that "fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.
In RO 12272, the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. It also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state.

In 54 Fed. Reg. 50968, 50970 (December 11, 1989), EPA stated that "with the respect to the proposed listing of light ends [49 Fed. Reg. 5313 listed above], the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases.

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, whether the "light ends" or gaseous material was hazardous waste at the point of generation. However, EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

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Message

From: Galbraith, Michael [Galbraith.Michael@epa.gov]
Sent: 6/14/2012 3:57:35 PM
To: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Pearson, Evan [Pearson.Evan@epa.gov]
CC: Frank Behan [Behan.FrankLNDU@usepa.onmicrosoft.com]; Guernica, Mimi [Guernica.Mimi@epa.gov]
Subject: whether units designed similarly to rineco and tdx have been permitted as subpart x, subpart o, or exempt from permitting requirements

On next Tuesday's hazardous waste combustion permit writers call we will be generally raising the question of whether regions/states have operating units that are designed similarly with respect to rineco and tdx, and if so, how/whether they were regulated (subpart x, subpart O, exempt recyclers). We will then ask if they did not have any of these types of units units, how would they regulate them (subpart x, subpart O, exempt recyclers) if one popped up in their region/state..

We will not specifically reference or discuss the tdx or rineco facilities, but will simply ask the question in general terms, saying that this issue has come up periodically over time and that we would like to get a better sense of how often this system design is used, and if it is, how consistent the regulatory applicability/permitting approaches have been nationwide (or how consistent they would be if similar facilities started operating in their state/region).

We were asked to check with you folks first to make sure you were OK with us doing this. Since we have to send out the agenda tomorrow, if you do have an issue with us raising this on Tuesday's call, we need to know by noon (our time) tomorrow.

Thanks.

Mike Galbraith
Permits Branch (5303P)
Program Implementation/Information Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Phone: (703) 605-0567
Fax: (703) 308-0509

Message

From: Reagan, Mary [mreagan@mcginnislaw.com]
Sent: 6/14/2012 9:46:23 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Head, JD [JDHead@fbhh.com]
Subject: RE: U. S. Ecology Texas Inc./TD*X Associates, L.P.

Evan,

You may provide Part III and Part IV.C to the TCEQ; however, we request that you indicate in your forwarding e-mail to Diane Goss that the document is part of a confidential settlement communication and should be managed by the TCEQ accordingly. Thanks so much.

Regards,
Mary
J. D. (with permission)

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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Thursday, June 14, 2012 3:36 PM
To: Reagan, Mary
Cc: Head, JD
Subject: Re: U. S. Ecology Texas Inc./TD*X Associates, L.P.

I was wondering if you would have any problems with EPA sending the compliance order portion of the CAFO to TCEQ.

Evan L. Pearson
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communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

From: "Reagan, Mary" <mreagan@mcginnislaw.com>
To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Head, JD" <JDHead@fbhh.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, "Carl Palmer" <cpalmer@tdxassociates.com>, "Gregg Meyers" <gmeyers@tdxassociates.com>, "Mark John" <MJOHN@usecology.com>
Date: 06/14/2012 02:55 PM
Subject: U. S. Ecology Texas Inc./TD*X Associates, L.P.

CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Evan,

Attached is a redline of the June 6, 2012 revised draft consent agreement and final order (CAFO) containing the joint comments of U.S. Ecology Texas, Inc. (USET) and TD*X Associates, L.P. (TD*X). As per your June 13, 2012 email, the deadline for submitting comments on Sections III and IV.C of the revised draft CAFO was extended to COB today, June 14, 2012. The attached document provides comments on these sections but includes comments on other sections of the CAFO as well in an effort to facilitate settlement negotiations, with the exception of Section IV.A relating to penalty assessment for which comments are due June 20, 2012. Due to the complexity of the issues and the brief time allowed for comments, even with the one-day extension, USET and TD*X reserve their rights to provide additional comments on the June 6, 2012 revised draft CAFO and to modify any position expressed in the attached redline as a result of settlement negotiations.

While consistent with the general framework outlined for these negotiations, the attached comments reflect a slight change in approach from your June 6, 2012 draft. Instead of requiring interim operating requirements to be established through a review and approval process, the attached draft would establish the interim operating requirements in the CAFO itself. Similarly, interim operating parameters for the TDU are specified the attached draft CAFO as well as the performance standards for performance testing of the TDU. These operating requirements, parameters and standards have been primarily selected from the 40 CFR Part 264, Subpart AA, and 40 CFR Part 63, Subpart EEE, as appropriate to TD*X's specific technology. This approach is true to the regulatory approach embodied in 40 CFR Part 264, Subpart X, which provides that permit terms and conditions should be based on "appropriate" provisions from specified rules in these Parts.

We are planning to meet with you and other EPA personnel beginning on Thursday, June 21, 2012, to discuss our comments further; however, please do not hesitate to contact us in the meantime if you have any questions.

Regards,
Mary
J. D. (with permission)

Mary Reagan
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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 6/14/2012 8:35:50 PM
To: Reagan, Mary [mreagan@mcginnislaw.com]
CC: Head, JD [JDHead@fbhh.com]
Subject: Re: U. S. Ecology Texas Inc./TD*X Associates, L.P.

I was wondering if you would have any problems with EPA sending the compliance order portion of the CAFO to TCEQ.

Evan L. Pearson
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From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Head, JD" <JDHead@fbhh.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, "Carl Palmer" <cpalmer@tdxassociates.com>, "Gregg Meyers" <gmeyers@tdxassociates.com>, "Mark John" <MJOHN@usecology.com>
Date: 06/14/2012 02:55 PM
Subject: U. S. Ecology Texas Inc./TD*X Associates, L.P.

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other sections of the CAFO as well in an effort to facilitate settlement negotiations, with the exception of Section IV.A relating to penalty assessment for which comments are due June 20, 2012. Due to the complexity of the issues and the brief time allowed for comments, even with the one-day extension, USET and TD*X reserve their rights to provide additional comments on the June 6, 2012 revised draft CAFO and to modify any position expressed in the attached redline as a result of settlement negotiations.

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We are planning to meet with you and other EPA personnel beginning on Thursday, June 21, 2012, to discuss our comments further; however, please do not hesitate to contact us in the meantime if you have any questions.

Regards,
Mary
J. D. (with permission)

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/30/2012 3:08:22 PM
To: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Shah, Harry [shah.harry@epa.gov]
CC: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Lutz, Craig [lutz.craig@epa.gov]
BCC: Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Subject: U.S. Ecology - Potential Subpart X Permit

Although we have not yet communicated this to U.S. Ecology and TD*X, we are planning on negotiating a CAFO requiring a Subpart X permit for a reconfigured TDU so that non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the combustion chamber of the TDU. Thus, it will be similar to Rineco. We still plan on requiring compliance with Subpart EEE. My question is, does EPA, along with TCEQ, still approve the permit modification, or is TCEQ the sole permitting authority for a Subpart X permit?

FYI - also, our current plan is to require a risk burn and a site-specific risk assessment, but EPA will be the only entity approving the risk burn and risk assessment (Guy - please correct me if I misunderstood what you told me yesterday).

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Message

From: Potts, Mark [Potts.Mark@epa.gov]
Sent: 5/17/2012 9:24:59 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Seager, Cheryl [Seager.Cheryl@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Subject: Re: Proposed Response to USET's May 15th E-Mail

I discussed with Steve/John - here's a revision form that discussion

In your May 14, 2012 letter to EPA, you requested a meeting with EPA and TCEQ. In your e-mail dated May 15, 2012, you reiterated your request and asked for a status of your meeting request. Settlement discussions with all three parties are problematic, because of EPA's policy restrictions limiting communications with outside parties regarding enforcement actions (copy attached below). ~~However, we are evaluating your proposal internally, and will be discussing our conclusion with TCEQ and any concerns they have related to the permitting requirements.~~ We are encouraged with USET's proposal and would like to meet with USET as soon as possible to more fully explore the proposed reconfiguration. Until then, it is premature to meet with the State.

From: Evan Pearson/R6/USEPA/US

To: Cheryl Seager/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Mark Potts/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA
Date: 05/16/2012 02:25 PM
Subject: Proposed Response to USET's May 15th E-Mail

Here is my proposed response. Please let me know what you think.

In your May 14, 2012 letter to EPA, you requested a meeting with EPA and TCEQ. In your e-mail dated May 15, 2012, you reiterated your request and asked for a status of your meeting request. Settlement discussions with all three parties are problematic, because of EPA's policy restrictions limiting communications with outside parties regarding enforcement actions (copy attached below). However, we are evaluating your proposal internally, and will be discussing our conclusion with TCEQ and any concerns they have related to the permitting requirements.

Evan L. Pearson
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----- Forwarded by Evan Pearson/R6/USEPA/US on 05/16/2012 02:20 PM -----

From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: <earl.lott@tceq.texas.gov>, "Renbarger, Bob" <Bob@fbhh.com>, "Head, JD" <JDHead@fbhh.com>, "Andrew Marshall" <amarshall@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Gregg Meyers" <gmeyers@tdxassociates.com>, "Carl Palmer" <cpalmer@tdxassociates.com>
Date: 05/15/2012 01:46 PM
Subject: RE: Joint Response

CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Evan,

U.S. Ecology and TD*X are in receipt of your e-mail acknowledging our May 14th response containing our proposal for reconfiguration of the TDU. In that e-mail you state that our proposal will have to reviewed "with appropriate persons in EPA." In our May 14th response, we requested a meeting with all parties, including the TCEQ, at which our proposal can be discussed on the merits in an effort to achieve a mutually acceptable technical resolution. We want to reiterate this request for a meeting and confirm with you that your statement is not intended to foreclose such a meeting for this purpose. Please advise as soon as possible as to the status of our meeting request.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Monday, May 14, 2012 4:39 PM
To: Reagan, Mary; jdhead@fbhh.com
Cc: earl.lott@tceq.texas.gov
Subject: Joint Response

Thank you for your response. We will have to review your proposal with the appropriate persons in EPA. However, please note that my reference to the Rineco case or any document referenced in my April 26, 2012 letter was not intended to imply (nor should have been be taken to imply) that rerouting the gases to a thermal oxidizer will result in the TDU being permitted as a Subpart X unit. Any such determination is made on a case-by-case basis.

Also, to ensure to that the appropriate persons are briefed as needed, all future communications from USET and/or TD*X shall be directed to me alone. I will make sure the appropriate persons are notified, as needed.

Evan L. Pearson
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Message

From: Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Sent: 5/8/2012 8:33:16 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Fw: enforcement confidential

FYI

Michael C. Barra
Office of Regional Counsel (6RC-ER)
US EPA Region 6
1445 Ross Avenue
Dallas, TX 75202
(214)665-2143
barra.michael@epa.gov
----- Forwarded by Michael Barra/R6/USEPA/US on 05/08/2012 03:32 PM -----

From: Mark Potts/R6/USEPA/US

To: Guy Tidmore/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA
Date: 05/08/2012 03:30 PM
Subject: enforcement confidential

any news here? I need to get back to Jim. Thanks.
----- Forwarded by Mark Potts/R6/USEPA/US on 05/08/2012 03:29 PM -----

From: John Blevins/R6/USEPA/US

To: "Mark Potts" <Potts.Mark@epamail.epa.gov>, "Mr. Mark Hansen" <Hansen.Mark@epamail.epa.gov>
Date: 05/08/2012 09:21 AM
Subject: Fw: Hello (and TDX...)

FYI
John Blevins
CAED
US EPA REGION 6
214-665-2210 (w)
214-437-9810 (c)

----- Original Message -----
From: James Cummings
Sent: 05/07/2012 06:20 PM EDT
To: John Blevins
Subject: Hello (and TDX...)

John,

You are one peripatetic guy. While you've been doing all your moving around since last we spoke, 'all' I have done is move 3 miles closer to town. Actually, to complete my story, the move was to a smaller house, smaller lot and a (much) bigger mortgage (oh yeah, and six more kids to raise)(and 2 dogs)

Anyway reason for this message is that I got a call from Carl Palmer of TDX regarding his 'situation' - i.e., notice from R 6 that they needed to apply for a Subpart 'O' permit.

Reason he called me is that I go way back w/ the XTRAX unit which was the predecessor of the current unit reclaiming oil in your backyard. I was on site when they did their first pilot test in the god-awful outback of CWM's Kettleman Hills landfill. I also consulted in an informal way as Carl Swanstrom, the father of the XTRAX unit designed his unit to be the antithesis of a Subpart 'O' incinerator.

Since then I have spent a fair amount of time supporting the proposition that whatever they - and similar indirect-fired units are - they are not incinerators. In a similar vein, I have held them up as a/the exemplar of what a thermal desorber could/should be. I was also around when the Subpart 'X' reg was written, in part to address these kinds of calls.

After I got the call from Carl Palmer, I did some homework in preparation to sending you this note.

I checked in w/ Dodi Dohara who wrote permits for XTRAX as an 'alternative technology'. He reaffirmed his earlier conclusion that the unit was not an incinerator, even though some of the vent gas reportedly went into the furnace (as appears to be the case with the current TDX unit - which distinguishes it slightly from the original XTRAX unit which only condensed the off-gases and collected them on carbon)

Not knowing for sure how they ended up in the potential Subpart 'O' (penalty) box, but assuming that it might be the vent gas, I also checked in with Sonya Sasseville of ORCR. She did not know whether we have ever specifically addressed the situation where de minimis levels of vent gas might be involved. I am in the process of checking in with other ORCR folks.

Not trying to crash the party, but was wondering if I might get a sense of how you/we got to this point, and to offer assistance as/if appropriate (on the other hand, w/ my 'six more kids' revelation, my judgement may well be suspect).

Regards/

Jim Cummings
Technology Assessment Branch/OSRTI/OSWER
USEPA (5102G)
1200 Pennsylvania Ave NW
Washington, DC 20460
703-603-7197

Message

From: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Sent: 4/25/2012 6:28:51 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Tidmore, Guy [tidmore.guy@epa.gov]; Susan Spalding [Spalding.Susan@epa.gov]; Shah, Harry [shah.harry@epa.gov]
Subject: Fw: Comments on the draft CAFO -- US Ecology (blue fonts)

Evan:

Here are our comments. Please note that they are only for MACT EEE requirements and schedule. Because of lack of information, we are not in a position to comment on: (a) Subpart O vs.X determination, and (b) exempt vs non-exempt waste allowed in TDU. In short, our focus has been MACT EEE requirements for a Subpart O/X unit.

Thanks

Kishor

------ Forwarded by Kishor Fruitwala/R6/USEPA/US on 04/25/2012 01:13 PM ------

From: Harry Shah/R6/USEPA/US

To: Kishor Fruitwala/R6/USEPA/US@EPA
Date: 04/24/2012 06:13 PM
Subject: Comments on the draft CAFO -- US Ecology (blue fonts)

3. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, ~~a plan for establishing and monitoring the following operating parameters~~ along with draft NIC, a interim limits on the operating parameters including but not limited to listed below:

a. maximum hazardous waste feed rate to the rotary dryer;

b. limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl2 and HCl);

c. minimum rotary dryer temperature;

d. maximum gas/vapor flow rate to the Off-Gas Condensing Recovery System;

e. maximum Off-Gas Condensing Recovery System outlet temperature;

f. minimum combustion chamber temperature;

g. maximum gas/vapor flow rate to the combustion chamber,

h. other Off-Gas Condensing Recovery Systems OPLs, and

i. any other OPLs for air pollution control devices used.

The Respondents shall implement ~~the plan as~~ the operating parameter limits as approved or modified by EPA and TCEQ.

4. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

5. Within ninety (90) days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use a carbon monoxide and a hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. These CEMS shall be located in compliance with 40 CFR Part 60 requirements on the for both stack for combustion chamber and the rotary drier emission point. The Respondents shall operate the TDU in a manner that the one minute and hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R.
§ 63.1209(a).

6. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/23/2012 9:32:30 PM
To: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
CC: Shah, Harry [shah.harry@epa.gov]; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Susan Spalding [Spalding.Susan@epa.gov]; Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
Subject: Re: Fw: US Ecology Permitting Timeline

Response to Items Raised Below:

1. Timeline - I have some questions/comments.

A. What is the difference between waste feed limitations and operating parameters. The CAFO includes all of these items as "operating parameters". See paragraph 68.A.5.

B. First, for item 2.D. you stated that they are to submit an initial Notification and a final Notice of Intent to Comply. The CAFO calls it a draft Notice of Intent to Comply and Initial Notification. 40 CFR 63.1210(b) & (c) both use the term "draft" instead of "final". The draft is what goes out for public comment. If they submit a final Notice of Intent to Comply, when do they submit the draft Notice of Intent to Comply? It makes no sense to send out a final Notice of Intent to Comply for public comment. After the CPT, you submit a Notice of Compliance.

C. Feed Stream analysis plan. As I previously noted, this requirement is included in the CPT Plan [40 CFR 63.1207(f)(1)], so there was no need to include it separately. I also don't see a requirement in 40 CFR 63.1207 for a separate feed stream analysis plan.

D. FYI - If you are going to approve the operating parameter limits (submitted 7 days after CAFO), you will have to hurry, because they would get thirty days after your comments to submit revised operating limits.

<u>It would be helpful if you have any specific comments on the CAFO to propose alternative language for the CAFO, rather than just comments.</u>

2. Reference to 30 month deadline - Paragraph 68.B.5 uses 2 1/2 years. I have added the term "30 months" to this paragraph.

3. Paragraph 20 used the term "thermal destruction unit". This was incorrect. I changed it to thermal desorption unit.

4. TDU, TDU rotary dryer, TDU combustion chamber - All of these terms were used as needed to cite to the violation in question. The TDU refers to the entire unit. In Paragraph 46, the term rotary dryer was used in order to describe the treatment that takes place in the dryer. This is needed to prove a violation of Count 2. Count 2 alleges a violation for illegally processing hazardous waste. This violation would apply even if the TDU was not required to have a RCRA permit of any kind. The TDU's combustion chamber is cited in Count 3 because we are alleging that treatment (destruction) takes place, thus requiring a RCRA Subpart O permit.

5. I would consider the condensers part of the TDU **(Guy - Do you agree?)**

6. EPA has stated that a “thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds. . . .” RCRA Online 13657. I don't think you can treat the rotary dryer and combustion chamber separately for permitting purposes (only permit combustion chamber not dryer. You may only establish limits for the combustion chamber, but I think you would have to call the two parts together an incinerator. The condenser would seem to be treated separately.

7. Changes made.

8. The federally approved Texas regulation operates in lieu of the federal reg. The Texas reg includes solid waste,

so I included that.

9. The TDU has a combustion chamber where destruction takes place.

10. The definition of incinerator in 40 CFR 260.10 uses the term "any enclosed device that uses controlled flame combustion". See also response to No. 6. I don't see how we can just call the combustion chamber an incinerator, since I wouldn't consider the combustion chamber a "device". We may need to talk to Guy about this.

11. I don't quite understand your comment. First, you want to change this provision from 30 days to 7 days. Second, you state that "will need to specify the maximum feed rate . . . uncondensed gas fraction that is burned in the incinerator. Is this what you mean?

Paragraph 68A.5. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval applicable operating parameters for the TDU. The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, minimum firebox temperature, and for the combustion chamber, limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic).

If not, could you please propose language for this item that we can put in the CAFO.

12. Change made.

We may need a meeting tomorrow (Tuesday) to discuss some of these issues.

New Timeline

1. **Immediately**

   a. Waste feedstock limitations - ¶ 68.A.1

2. **Within 7 days**

   a. Submit operating parameters for TDU - ¶ 68.A.5 **(see comments 1.A and 11 above)**

3. **Within 90 days (3 months)**

   a. Install/monitor/operate automatic hazardous waste feed cutoff - ¶ 68.A.3
   b. Install /monitor/operate continuous emissions monitors - ¶ 68.A.4
   c. Submit Class 3 RCRA permit modification - ¶ 68.B.1
   d. Submit draft Notice of Intent to Comply and Initial Notification - ¶ 68.C.1 **(see comment 1.B above)**

   (No mention of feed stream analysis plan - see comment 1.C above)

4. **Within 120 days (4 months)**

   a. Submit Startup, Shutdown, and Malfunction Plan - ¶ 68.D.1
   b. Submit Comprehensive Performance Test Plan - ¶ 68.E.2
   c. Submit Continuous Monitoring System Performance Test Plan - ¶ 68.E.2
   d. Submit Risk Burn Plan - ¶ 68.F.1

5. **Within 1 year (12 months)**

   Obtain Approval of CPT and Risk Burn Plans

6. **Within 90 days after approval of CPT and Risk Burn Plans**

   Complete CPT and Risk Burn - ¶¶ 68.E.5 and 68.F.3

7. **Within 90 days after completion of CPT test**

Submit Notification of Compliance - ¶ 68.E.8

8. **Within 120 days after Risk Burn**

Submit Risk Burn Certification and Risk Assessment Report - ¶ 68.F.7

9. **No later than 2 ½ years (30 months)**

RCRA Permit Decision - ¶ 68.B.5

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
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E-Mail - pearson.evan@epa.gov

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From: Kishor Fruitwala/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Susan Spalding/R6/USEPA/US, Harry Shah/R6/USEPA/US, Mark Hansen/R6/USEPA/US@EPA
Date: 04/23/2012 01:54 PM
Subject: Fw: US Ecology Permitting Timeline

Evan:

Harry and I have reviewed the 4/18 draft CAFO you sent to us. Since we don't have any descriptive, operational or detail process information, our comments are based on the sketch flow diagram and discussion during the past couple of weeks, as follows:

1. Please use the timeline provided below. All deadlines in the letter and the CAFO should match.

2. In the CAFO, we did not see any reference to the 30-month deadline to obtain RCRA permit.

3. It is not clear what TDU is. Is it 'Thermal Desorption Unit' or 'Thermal Destruction Unit'? Technically, it carries different meaning and may have different applicability of regs. If it is Thermal Destruction unit, it may not be exempt and will be subject to Subpart O requirements. Thermal desorption is defined in § 268.45 (Table 1 - Alternative Treatment Standards for Hazardous debris".

4. TDU is mentioned in CAFO as: (a) TDU [only], (b) TDU rotary dryer, and (c) TDU combustion chamber. It is critical that we use appropriate terms because they have different applicability of regs.

5. Is condenser unit part of TDU, or is it treated as an independent unit?

6. We suggest that TDU Rotary Dryer, TDU Combustion Chamber, and Condenser are treated separately from regulatory standpoint.

7. Par 27 - recyclable material is defined in § 261.6 (a) (1) .

8. Par 44 -- Thermal processing (thermal treatment) as defined in § 261.10 mentions only hazardous waste...

9. Par 56 - TDU is an enclosed device and to our understanding no combustion takes place.

10. Par 58 - TDU cannot be called incinerator if there is not combustion taking place inside it. "TDU" word should be replace with "TDU's combustion chamber"

11. 68.A.5 - within 7 days of effective date of this CAFO... will need to specify that the maximum feed rate limits and limits on ash, SVM, LVM, Hg, and Total Chlorine will apply to uncondensed gas fraction that is burned in the combustion chamber.

12. # 6.....third line....delete 'during a CPT'. (analytical data is not available for 30-45 days after the test)

I hope this helps.

Thanks

Kishor

Kishor Fruitwala, Ph.D., P.E.
Chief, RCRA Facility Assessment Section
Multimedia Planning and Permitting Division
214-665-6669

----- Forwarded by Kishor Fruitwala/R6/USEPA/US on 04/23/2012 12:22 PM -----

From: Kishor Fruitwala/R6/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA
Cc: Susan Spalding/R6/USEPA/US, Harry Shah/R6/USEPA/US
Date: 04/20/2012 03:10 PM
Subject: US Ecology Permitting Timeline

Evan:

The draft CAFO I received today did not use the timeline I had sent you on 4/19. Please use the timeline below in both the cover letter and CAFO. We will send you additional comments on Mon/Tue.

Please let me know if you have any comments.

Thanks

Kishor

x6669

---

1. Within seven days, submit:

    a. Waste feed limitations (waste feed rate, composition, limits on waste feed chlorine, metals, SVM/LVM, ash)
    b. All operating parameters limits (OPL) for TDU (subject to approval by EPA)

2. Within 90 days (3 months):

    a. Install automatic hazardous waste feed cutoff,
    b. Install continuous emissions monitors for both CO and H/C (and conduct calibration/RATA test),
    c. Submit Class 3 RCRA permit modification, and
    d. Submit Initial Notification and final Notice of Intent to Comply (based on EPA-approved OPLs for TDU).

3. Within 120 days (4 months), submit:

    a. Startup, Shutdown, and Malfunction Plan
    b. Comprehensive Performance Test (CPT) Plan
    c. Risk Burn Plan
    d. Feed stream analysis plan
    e. Continuous Monitoring System Performance Evaluation Test plan

All submitted plans will be complete and approvable, and must address all technical and regulatory requirements such that there is only one round of comments by TCEQ and EPA, and response from the facility.

4. Within 365 days (12 months), obtain approval of CPT and Risk Burn Plans from EPA and TCEQ.

5. Within 90 days after approval of CPT and Risk Burn Plans, complete CPT and Risk Burn.

6. Submit Notice of Compliance within 90 days after completion of CPT.

7. Submit Risk Burn Certification and Risk Assessment Report within 120 days after completion of Risk Burn.

8. Obtain RCRA permit decision no later than 2½ years (30 months).

Message

From: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Sent: 4/23/2012 6:54:04 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Susan Spalding [Spalding.Susan@epa.gov]; Shah, Harry [shah.harry@epa.gov]; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]
Subject: Fw: US Ecology Permitting Timeline

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12. # 6.....third line....delete 'during a CPT'. (analytical data is not available for 30-45 days after the test)

I hope this helps.

Thanks

Kishor

Kishor Fruitwala, Ph.D., P.E.
Chief, RCRA Facility Assessment Section
Multimedia Planning and Permitting Division
214-665-6669

----- Forwarded by Kishor Fruitwala/R6/USEPA/US on 04/23/2012 12:22 PM -----

From: Kishor Fruitwala/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Susan Spalding/R6/USEPA/US, Harry Shah/R6/USEPA/US
Date: 04/20/2012 03:10 PM
Subject: US Ecology Permitting Timeline

Evan:

The draft CAFO I received today did not use the timeline I had sent you on 4/19. Please use the timeline below in both the cover letter and CAFO. We will send you additional comments on Mon/Tue.

Please let me know if you have any comments.

Thanks

Kishor
x6669

---

1. Within seven days, submit:

    a. Waste feed limitations (waste feed rate, composition, limits on waste feed chlorine, metals, SVM/LVM, ash)
    b. All operating parameters limits (OPL) for TDU (subject to approval by EPA)

2. Within 90 days (3 months):

    a. Install automatic hazardous waste feed cutoff,
    b. Install continuous emissions monitors for both CO and H/C (and conduct calibration/RATA test),
    c. Submit Class 3 RCRA permit modification, and
    d. Submit Initial Notification and final Notice of Intent to Comply (based on EPA-approved OPLs for TDU).

3. Within 120 days (4 months), submit:

    a. Startup, Shutdown, and Malfunction Plan
    b. Comprehensive Performance Test (CPT) Plan
    c. Risk Burn Plan
    d. Feed stream analysis plan
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All submitted plans will be complete and approvable, and must address all technical and regulatory requirements such that there is only one round of comments by TCEQ and EPA, and response from the facility.

4. Within 365 days (12 months), obtain approval of CPT and Risk Burn Plans from EPA and TCEQ.

5. Within 90 days after approval of CPT and Risk Burn Plans, complete CPT and Risk Burn.

6. Submit Notice of Compliance within 90 days after completion of CPT.

7. Submit Risk Burn Certification and Risk Assessment Report within 120 days after completion of Risk Burn.

8. Obtain RCRA permit decision no later than 2½ years (30 months).

Message

From: Elliott, Ross [Elliott.Ross@epa.gov]
Sent: 4/24/2012 7:46:21 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Frank Behan [Behan.FrankLNDU@usepa.onmicrosoft.com]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]
Subject: Fw: U.S. Ecology/TD*X Associates RCRA Case

Evan, these excerpts seem consistent with our discussion today, though Sonya admits she did not spend alot of time on them, so keep that in mind. If you have further questions, you might want to talk to Sonya.
----- Forwarded by Ross Elliott/DC/USEPA/US on 04/24/2012 03:43 PM -----

From: Sonya Sasseville/DC/USEPA/US

To: Ross Elliott/DC/USEPA/US@EPA
Cc: Jim Berlow/DC/USEPA/US@EPA, Betsy Devlin/DC/USEPA/US@EPA, Frank Behan/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Mimi Guernica/DC/USEPA/US@EPA, Richard Robinson/DC/USEPA/US@EPA
Date: 03/16/2012 05:02 PM
Subject: Re: Fw: U.S. Ecology/TD*X Associates RCRA Case

I haven't had much time to focus on this today. I threw together some thoughts - - they're rather disjointed but hopefully they're helpful.

One memo that might be helpful is the Giant Cement memo from 1992. (Search for Giant Cement in RCRAOnline.) Some key relevant paragraphs are:

For systems of two or more hazardous waste
treatment units in series, our general guideline is that a
case-by-case determination of how the overall system is classified
and what standards and permit conditions are applied should be
based on the dominant design, operating, feed, and emissions
characteristics of the system, and the most specific standards
applicable to that type of system.
.....
You also state that Giant argues that off-gases from the
resource recovery kilns fed to the cement kiln cannot be classified
as a hazardous waste. We agree with the Regions' interpretation
that this distinction is irrelevant when determining our regulatory
authority over the gases. Off-gases from the resource recovery
kilns are regulated under RCRA since they originate from treatment
of hazardous waste.

A follow-on to the Giant memo (9498.1994(08)
CLARIFICATION REGARDING SINGLE EMISSION POINT, MULTI-DEVICE COMBUSTION FACILITIES) says:

However, in the same example, if the cement kiln were to add
an afterburner which is not hazardous waste-fired, the Agency would
not view this action as adding an incinerator. By not separately

combusting hazardous waste, the hypothetical afterburner is not separately engaged in hazardous waste treatment. Rather, it is simply treating emissions from a hazardous waste treatment device, and so is considered part of that device. In such a case no regulatory approval under the change during interim status provisions is needed to add the device, and the afterburner becomes part of the interim status cement kiln.

(Again, the key point is we don't make a separate solid waste determination on the gases going into the afterburner - - it's viewed as one haz waste treatment unit)

Also in RCRA Online (CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS - 1994)

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit".

Also possibly applicable: 9431.1994(02)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
APPLICABILITY OF RCRA REGULATIONS TO A PROPOSED FUMING/ GASIFICATION UNIT
November 15, 1994

Message

From: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Sent: 4/19/2012 2:18:09 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Shah, Harry [shah.harry@epa.gov]
Subject: Fw: US Ecology Permitting Timeline

See our comments in red.

1. Immediately (30 days?)

   a. **Waste feed limitations (waste feed rate, composition, limits on waste feed chlorine, metals, SVM/LVM, ash)**
   b. **Submit all operating parameters for TDU**

2. Within 90 days (3 months)

   a. Install automatic hazardous waste feed cutoff
   b. Install continuous emissions monitors for **both CO and H/C (and conduct calibration/RATA test)**
   c. Submit Class 3 RCRA permit modification
   d. Submit ~~draft~~ **final** Notice of Intent to Comply ~~and Initial Notification~~

3. Within 120 days (4 months), submit:

   a. Startup, Shutdown, and Malfunction Plan
   b. Comprehensive Performance Test Plan
   c. Risk Burn Plan
   d. **Feed stream analysis plan**
   e. **Continuous Monitioring System Performance Evaluation Test plan**

   All submitted plans will be complete and address all technical and regulatory requirements such that there will be only one round of comments by TCEQ and EPA, and response from the facility.

4. Within 360 days (12 months) (~~expected to take up to 270 days (9 months) to review and approve plan~~)

   Obtain approval of CPT and Risk Burn Plans.

5. Within ~~480 days (16 months) (~~or 90 days after approval of CPT and Risk Burn Plans, **complete CPT and Risk Burn.**

6. Submit NOC ~~Within 570 days (19 months) (~~or within 90 days after completion of CPT test.

7. ~~**Within 600 days (19 months) (or 120 days after risk burn)**~~

8. Submit Risk Burn Certification and Risk Assessment Report. **[Risk Assessment Report within 120 days after completion of Risk Burn]**

8. No later than 2 ½ years (30 months)

   RCRA Permit Decision

----- Forwarded by Kishor Fruitwala/R6/USEPA/US on 04/17/2012 03:59 PM -----

From: Harry Shah/R6/USEPA/US

To: Kishor Fruitwala/R6/USEPA/US@EPA
Date: 04/17/2012 11:06 AM
Subject: Fw: US Ecology Permitting Timeline

1. Immediately

   a. Waste feedstock limitations

2. Within 90 days (3 months)

   a. Install automatic hazardous waste feed cutoff
   b. Install continuous emissions monitors for **CO and H/C both(and calibration/RATA)**
   c. Operating parameters for TDU (**need to provide which ones within 30 days for Agencies' approval)**
   d. Submit Class 3 RCRA permit modification
   e. Submit draft Notice of Intent to Comply and Initial Notification **[final NIC ?]**

3. Within 120 days (4 months)

   a. Startup, Shutdown, and Malfunction Plan
   b. Comprehensive Performance Test Plan
   c. Risk Burn Plan
   d. Feed stream analysis plan
   e. CMS PET plan

4. Within 390 days (13 months) (~~**expected to take up to 270 days (9 months) to review and approve plan**~~)

   Approval of CPT and Risk Burn Plans

5. Within ~~**480 days (16 months) (o**~~r 90 days after approval of CPT and Risk Burn Plans)

   Conduct CPT test and risk burn

   completion of CPT/Risk Burn in 60 days

6. ~~**Within 570 days (19 months) (**~~or 90 days after completion of CPT test)

   Submit NOC

7. ~~**Within 600 days (19 months) (or 120 days after risk burn)**~~ **[NOC within 90 days after completion of CPT]**

   Submit Risk Burn Certification and Risk Assessment Report. **[Risk Assessment Report within 90 days after completion of Risk Burn]**

8. No later than 2 ½ years (30 months)

   RCRA Permit Decision

----- Forwarded by Harry Shah/R6/USEPA/US on 04/17/2012 10:40 AM -----

From: Evan Pearson/R6/USEPA/US
To: Harry Shah/R6/USEPA/US@EPA
Cc: Kishor Fruitwala/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA
Date: 04/17/2012 10:35 AM
Subject: US Ecology Permitting Timeline

This is a proposed time line I have prepared. Could you please check over the dates to see if I have them right.

Also, I made an error in the draft CAFO that I sent you. In paragraph 68.B.5, it should state 2 1/2 years, not 540 days. I have made that correction.

1. Immediately

   a. Waste feedstock limitations

2. Within 90 days (3 months)

   a. Install automatic hazardous waste feed cutoff
   b. Install continuous emissions monitors
   c. Operating parameters for TDU
   d. Submit Class 3 RCRA permit modification
   e. Submit draft Notice of Intent to Comply and Initial Notification

3. Within 120 days (4 months)

   a. Startup, Shutdown, and Malfunction Plan
   b. Comprehensive Performance Test Plan
   c. Risk Burn Plan

4. Within 390 days (13 months) (expected to take up to 270 days (9 months) to review and approve plan)

   Approval of CPT and Risk Burn Plans

5. Within 480 days (16 months) (or 90 days after approval of CPT and Risk Burn Plans)

   Conduct CPT test and risk burn

6. Within 570 days (19 months) (or 90 days after completion of CPT test)

   Submit NOC

7. Within 600 days (19 months) (or 120 days after risk burn)

   Submit Risk Burn Certification and Risk Assessment Report.

8. No later than 2 ½ years (30 months)

   RCRA Permit Decision

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
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Message

From: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Sent: 4/20/2012 8:10:04 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Susan Spalding [Spalding.Susan@epa.gov]; Shah, Harry [shah.harry@epa.gov]
Subject: US Ecology Permitting Timeline

Evan:

The draft CAFO I received today did not use the timeline I had sent you on 4/19. Please use the timeline below in both the cover letter and CAFO. We will send you additional comments on Mon/Tue.

Please let me know if you have any comments.

Thanks

Kishor
x6669

---

1. Within seven days, submit:

    a. Waste feed limitations (waste feed rate, composition, limits on waste feed chlorine, metals, SVM/LVM, ash)
    b. All operating parameters limits (OPL) for TDU (subject to approval by EPA)

2. Within 90 days (3 months):

    a. Install automatic hazardous waste feed cutoff,
    b. Install continuous emissions monitors for both CO and H/C (and conduct calibration/RATA test),
    c. Submit Class 3 RCRA permit modification, and
    d. Submit Initial Notification and final Notice of Intent to Comply (based on EPA-approved OPLs for TDU).

3. Within 120 days (4 months), submit:

    a. Startup, Shutdown, and Malfunction Plan
    b. Comprehensive Performance Test (CPT) Plan
    c. Risk Burn Plan
    d. Feed stream analysis plan
    e. Continuous Monitoring System Performance Evaluation Test plan

All submitted plans will be complete and approvable, and must address all technical and regulatory requirements such that there is only one round of comments by TCEQ and EPA, and response from the facility.

4. Within 365 days (12 months), obtain approval of CPT and Risk Burn Plans from EPA and TCEQ.

5. Within 90 days after approval of CPT and Risk Burn Plans, complete CPT and Risk Burn.

6. Submit Notice of Compliance within 90 days after completion of CPT.

7. Submit Risk Burn Certification and Risk Assessment Report within 120 days after completion of Risk Burn.

8. Obtain RCRA permit decision no later than 2½ years (30 months).

Message

From: Tidmore, Guy [Tidmore.Guy@epa.gov]
Sent: 4/16/2012 4:29:51 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Re: Potential U.S. Ecology/TD*X Resolution

Evan,

I can join by phone.

Guy Tidmore, Chief (6EN-HE)
Compliance Enforcement Section
Hazardous Waste Enforcement Branch
(214)665-3142 direct
(214)789-2586 cell
(214)665-7446 fax

From: Evan Pearson/R6/USEPA/US

To: Ross Elliott/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Sonya Sasseville/DC/USEPA/US@EPA
Date: 04/11/2012 04:01 PM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

Whatever works best so I can get an answer. I will try and set up a meeting for tomorrow afternoon. From a brief look at the scheduler, it doesn't appear that everyone will be available (I'm not sure who need to be on the call). We can give it a shot though.

Evan L. Pearson
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system.

From: Ross Elliott/DC/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Sonya Sasseville/DC/USEPA/US@EPA
Date: 04/11/2012 03:05 PM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

In the interest of minimizing lots of ideas flying around via email messages that might or might not be discoverable, I might suggest we let people think about this and set up a call to discuss. Perhaps a core group could then exchange ideas further. Just a thought.

As tempting as it may be, that's all I will say in email!

Thanks for sharing and my suggestion is only that...a suggestion.

From: Evan Pearson/R6/USEPA/US
To: Alan Carpien/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA
Cc: Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 04/11/2012 03:43 PM
Subject: Potential U.S. Ecology/TD*X Resolution

We met with U.S. Ecology and TD*X today. They proposed a potential resolution to the incineration issue, which I would like to run pas you.

To refresh your recollection, the following is a brief description of their process:

Listed hazardous waste is fed into a thermal desorption unit (TDU). Thermal desorption removes chemicals from materials by using heat to change the chemicals into gases. Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. A process vent is purged from the carrier gas in a closed vent system. This process vent stream, which includes nitrogen and non-condensable gases from the dryer, is filtered before it is injected into the combustion chamber of the TDU.

Assume that they taking hazardous waste which meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv)(C) - oil-bearing hazardous waste from petroleum refining, production, and transportation practices.

We have stated under that the current configuration, the unit would be classified as an incinerator. The combustion chamber is part of the TDU. The combustion chamber uses a controlled flame to treat the vent stream. Therefore, the TDU is an incinerator.

However, assume that after the process vent gases come off the gas treatment system and before the gases go into the combustion chamber, a carbon absorber is inserted. Then, any vent gases that pass through the carbon absorber would go into the combustion chamber.

1. Wouldn't the facility be in compliance, because the gases that pass through the carbon absorber be considered an uncontained gas, and thus not a solid waste? Or would it be subject to Subpart X, and not O?

2. Would the discarded carbon filters be considered a hazardous waste?

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/17/2012 3:35:13 PM
To: Shah, Harry [shah.harry@epa.gov]
CC: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
Subject: US Ecology Permitting Timeline

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   RCRA Permit Decision

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Message

From: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Sent: 4/17/2012 3:49:22 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Shah, Harry [shah.harry@epa.gov]
Subject: Re: US Ecology - Documentation of Compliance

Permit mod is required under RCRA. DOC is a MACT EEE requirement. The DOC specifies the operating parameters limits (OPLs). We review the OPLs for reasonableness. If they are out of line, we can question that. For a new unit, 100% compliance can be assured only after CPT/RCRA trial burn.

Kishor

From: Evan Pearson/R6/USEPA/US

To: Kishor Fruitwala/R6/USEPA/US@EPA, Harry Shah/R6/USEPA/US@EPA
Cc: Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA
Date: 04/16/2012 05:13 PM
Subject: US Ecology - Documentation of Compliance

The documentation of compliance requirement is found in 40 C.F.R. § 63.1211(c). This provision requires, among other things, for the owner/operator to certify that they are in compliance with the emission standards of Subpart EEE. They obviously cannot do this. How can do this as part of their RCRA permit application, since they haven't done a CPT among other things. Are you saying that the permit application would substitute for the DOC?

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/16/2012 10:13:41 PM
To: Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Shah, Harry [shah.harry@epa.gov]
CC: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
Subject: US Ecology - Documentation of Compliance

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Message

From: Sykes, Terry [Sykes.Terry@epa.gov]
Sent: 4/18/2012 2:29:31 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Re: U.S. Ecology Incinerator Issue

They are using the TDU burner as an after burner therefore, you can argue that it is like Rineco or you could argue that since it is one unit instead of two, they are using the main unit as an incinerator - this is quite clear. Since destruction is taking place in addition to material recovery, the destruction is always regulated. If you are engaged in regulated and exempt activities, you are regulated.

Either way, it's regulated as an incenerator either through the application of Subpart O through Subpart X or just straight Subpart O.. As we discussed yesterday, if all they were doing was reclamation of oil then they could be exempt if no destruction takes place. But they aren't doing 100 percent recycling - they also destroy waste.
Sent by EPA Wireless E-Mail Services

----- Original Message -----
From: Evan Pearson
Sent: 04/18/2012 07:32 AM CDT
To: Terry Sykes
Subject: Fw: U.S. Ecology Incinerator Issue

Your thoughts please.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
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----- Forwarded by Evan Pearson/R6/USEPA/US on 04/18/2012 07:31 AM -----

From: Evan Pearson/R6/USEPA/US

To: Alan Carpien/DC/USEPA/US@EPA, Rodney Elliott/R1/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA
Cc: Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA
Date: 04/18/2012 07:28 AM
Subject: U.S. Ecology Incinerator Issue

Your thoughts please?

[attachment "Rineco - EEE response 10-22-10.pdf" deleted by Terry Sykes/R6/USEPA/US]
[attachment "Final Signed Rineco Ltr AD.pdf" deleted by Terry Sykes/R6/USEPA/US]
[attachment "Response to Rineco AD Questions.pdf" deleted by Terry Sykes/R6/USEPA/US]
[attachment "2012_04-17_mbr_Pearson_LtrReFollow-UpTo04-11-12Meeting(final).pdf" deleted by Terry Sykes/R6/USEPA/US]

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/10/2012 1:05:38 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]
Subject: Fw: USET & TD*X Draft CAFO

FYI - I'll try and stop by and talk to him about the "O" versus "X" issue. You may want to do the same.

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----- Forwarded by Evan Pearson/R6/USEPA/US on 04/10/2012 08:04 AM -----

From: Mark Hansen/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Michael Barra/R6/USEPA/US@EPA
Date: 04/10/2012 08:03 AM
Subject: Re: USET & TD*X Draft CAFO

Excellent work, Evan. My only question is the issue of Subpart O vs Subpart X. I am comfortable with O, but need to make sure of the analysis that came to this conclusion.

If I can be of assistance or answer any questions, please contact me at (214)665-7548 or via email at hansen.mark@epa.gov.

Sincerely,

Mark Hansen
Associate Director for Hazardous Waste Enforcement
Compliance Assurance and Enforcement Division

U.S. EPA Region 6
1445 Ross Avenue (6EN-H)
Dallas, Texas 75202
Telephone: (214) 665-7548

EPA Cell Phone: (214)789-2162

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From: Evan Pearson/R6/USEPA/US

To: Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Harry Shah/R6/USEPA/US@EPA, Kishor Fruitwala/R6/USEPA/US@EPA

Cc: Mark Hansen/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA

Date: 04/09/2012 04:00 PM

Subject: USET & TD*X Draft CAFO

Attached is a draft CAFO for USET and TD*X Associates. I have not put it into e-routing because I have not yet received any written comments about the compliance plan that I sent everyone last week (the stipulated penalties section will be revised once I have a final compliance plan). I have raised a number of questions in the compliance plan that need to be addressed before we have a document which we can put into concurrence. The compliance plan is on pages 10 - 21 of the draft CAFO.

Even though this is a RCRA CAFO, it incorporates 40 C.F.R. Part 63, Subpart EEE requirements. Therefore, I need Air Enforcement's comments, in addition to RCRA Enforcement and RCRA Permitting. Also, a number of these issues are beyond my expertise, such as whether we need any additional interim operating limits and deadlines for submissions, etc.. The Rineco CD and CD Modification were not particularly helpful concerning deadlines, since the initial CD did not have, for example, a deadline for conducting the trial burn, but just that the permit had to be issued within one year after the submission of the permit application, or July 19, 2011. However, the CD modification states that a number of plans were submitted on September 29, 2011. Therefore the dates aren't particularly helpful. One option would be is to leave the dates blank for now, but just put in a final drop dead date. We could then let USET/TD*X proposed the initial dates. I also added a provision for a startup, shutdown, and malfunction plan, which is required by 40 C.F.R. §§ 63.6(c)(3) and 63.1206(c)(2). Please take a look at that to see if anything else is needed.

Please get me your comments ASAP, so we can get this CAFO finalized. Please use the track changes or redline/strikeout to indicate your proposed additions and/or deletions.

In addition, we have a call with TCEQ permits scheduled for Tuesday afternoon in which I will ask them about their standards for a site specific risk assessment.

Eva - How are you coming with the penalty calculation information?

[attachment "Draft USET-TDX CAFO.docx" deleted by Evan Pearson/R6/USEPA/US]

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Sent: 4/11/2012 9:01:38 PM
To: Elliott, Ross [Elliott.Ross@epa.gov]
CC: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Faison, George [Faison.George@epa.gov]; Tidmore, Guy [tidmore.guy@epa.gov]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]; Sasseville, Sonya [Sasseville.Sonya@epa.gov]
Subject: Re: Potential U.S. Ecology/TD*X Resolution

Whatever works best so I can get an answer. I will try and set up a meeting for tomorrow afternoon. From a brief look at the scheduler, it doesn't appear that everyone will be available (I'm not sure who need to be on the call). We can give it a shot though.

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From: Ross Elliott/DC/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Sonya Sasseville/DC/USEPA/US@EPA
Date: 04/11/2012 03:05 PM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

In the interest of minimizing lots of ideas flying around via email messages that might or might not be discoverable, I might suggest we let people think about this and set up a call to discuss. Perhaps a core group could then exchange ideas further. Just a thought.

As tempting as it may be, that's all I will say in email!

Thanks for sharing and my suggestion is only that...a suggestion.

From: Evan Pearson/R6/USEPA/US

To: Alan Carpien/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA

Cc: Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA

Date: 04/11/2012 03:43 PM

Subject: Potential U.S. Ecology/TD*X Resolution

We met with U.S. Ecology and TD*X today. They proposed a potential resolution to the incineration issue, which I would like to run pas you.

To refresh your recollection, the following is a brief description of their process:

Listed hazardous waste is fed into a thermal desorption unit (TDU). Thermal desorption removes chemicals from materials by using heat to change the chemicals into gases. Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. A process vent is purged from the carrier gas in a closed vent system. This process vent stream, which includes nitrogen and non-condensable gases from the dryer, is filtered before it is injected into the combustion chamber of the TDU.

Assume that they taking hazardous waste which meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv)(C) - oil-bearing hazardous waste from petroleum refining, production, and transportation practices.

We have stated under that the current configuration, the unit would be classified as an incinerator. The combustion chamber is part of the TDU. The combustion chamber uses a controlled flame to treat the vent stream. Therefore, the TDU is an incinerator.

However, assume that after the process vent gases come off the gas treatment system and before the gases go into the combustion chamber, a carbon absorber is inserted. Then, any vent gases that pass through the carbon absorber would go into the combustion chamber.

1. Wouldn't the facility be in compliance, because the gases that pass through the carbon absorber be considered an uncontained gas, and thus not a solid waste? Or would it be subject to Subpart X, and not O?

2. Would the discarded carbon filters be considered a hazardous waste?

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/9/2012 2:35:49 PM
To: Reagan, Mary [mreagan@mcginnislaw.com]
CC: JDHead@fbhh.com
Subject: RE: U.S. Ecology/TD*X Associates

EPA will have the following persons at the meeting:

Evan Pearson
Mark Hansen
Eva Steele
Guy Tidmore
Ryan Rosser
Brad Toups
Kishor Fruitwana

Who will be attending from USET & TD*X?

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From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Andrew Marshall" <amarshall@usecology.com>, <JDHead@fbhh.com>, Mark Hansen/R6/USEPA/US@EPA, "Simon Bell" <SBELL@usecology.com>
Date: 04/05/2012 02:42 PM
Subject: RE: U.S. Ecology/TD*X Associates

Thank you, Evan. We will see you then.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
McGinnis, Lochridge & Kilgore, L.L.P.
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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Thursday, April 05, 2012 9:09 AM
To: Reagan, Mary
Cc: Andrew Marshall; JDHead@fbhh.com; Mark Hansen; Simon Bell
Subject: RE: U.S. Ecology/TD*X Associates

Sorry, I thought I responded back to you. Yes, Wednesday, April 11, 2012 at 10 a.m. will work for us.

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Cc: Mark Hansen/R6/USEPA/US@EPA, "Andrew Marshall" <amarshall@usecology.com>, "Simon Bell" <SBELL@usecology.com>
Date: 04/03/2012 04:12 PM
Subject: RE: U.S. Ecology/TD*X Associates

Dear Evan,

We are available the morning of Wednesday, April 11th. Please let us know the time of the meeting. I think 10:00 a.m. would work for us. In addition, please let us know who will be in attendance from EPA in addition to you and Mr. Hansen. Thanks so much.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Monday, April 02, 2012 9:12 AM
To: Reagan, Mary; JDHead@fbhh.com
Cc: Mark Hansen
Subject: U.S. Ecology/TD*X Associates

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Date: 03/29/2012 11:26 AM
Subject: U.S. Ecology/TD*X Associates

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· Schedule a meeting with TCEQ in an effort to discuss potential permitting strategies and other considerations, including existing permit provisions that limit operating hours. We have already reached out to the TCEQ and are hoping to set up a meeting in Austin next week.
o TCEQ is the authorized permitting authority and must be in accord with the solution and regulatory basis.

· Work with EPA in an effort to better understand the technical and legal basis of EPA's conclusions including **specific** citations and associated regulatory basis.
o We have provided EPA with multiple EPA guidance documents, citations and rule references supporting our position that the thermal desorption unit is not an incinerator but to date the responsive information provided by EPA does not adequately explain EPA's technical analysis in our opinion.
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· Schedule a meeting with you, Mark Hansen, Suzanne Murray, Cheryl Seager, and other subject matter EPA experts to discuss the results of meetings with the TCEQ, to discuss the technical and regulatory basis of EPA's position, and to present potential compliance strategies. Assuming we are able to schedule meeting with TCEQ next week, we would then schedule meeting with EPA for the week of April 9-13th.

I will plan on calling you shortly to discuss the matter further. Please do not hesitate to contact me in the meantime with any questions. I greatly appreciate your continued assistance and involvement.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
McGinnis, Lochridge & Kilgore, L.L.P.
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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/2/2012 2:21:05 PM
To: mreagan@mcginnislaw.com; JDHead@fbhh.com; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]
BCC: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Toups, Brad [Toups.Brad@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]; Shah, Harry [shah.harry@epa.gov]; Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Subject: Fw: U.S. Ecology/TD*X Associates

One point I forgot to mention. We have 30 days to reach an agreement.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
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----- Forwarded by Evan Pearson/R6/USEPA/US on 04/02/2012 09:19 AM -----

From: Evan Pearson/R6/USEPA/US

To: mreagan@mcginnislaw.com, JDHead@fbhh.com
Cc: Mark Hansen/R6/USEPA/US@EPA
Date: 04/02/2012 09:12 AM
Subject: U.S. Ecology/TD*X Associates

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Regards,
Mary

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Message

From: Reagan, Mary [mreagan@mcginnislaw.com]
Sent: 4/5/2012 7:42:48 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Andrew Marshall [amarshall@usecology.com]; JDHead@fbhh.com; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Simon Bell [SBELL@usecology.com]
Subject: RE: U.S. Ecology/TD*X Associates

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Regards,
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Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
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Fax: (512) 505-6313
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Message

From: Reagan, Mary [mreagan@mcginnislaw.com]
Sent: 3/29/2012 4:26:35 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Jim Baumgardner [JBAUMGARDNER@usecology.com]; Simon Bell [SBELL@usecology.com]; Andrew Marshall [amarshall@usecology.com]; JDHead@fbhh.com
Subject: U.S. Ecology/TD*X Associates

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 3/29/2012 5:31:24 PM
To: Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]
Subject: Fw: U.S. Ecology/TD*X Associates

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
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----- Forwarded by Evan Pearson/R6/USEPA/US on 03/29/2012 12:30 PM -----

From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Mark Hansen/R6/USEPA/US@EPA, "Jim Baumgardner" <JBAUMGARDNER@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, <JDHead@fbhh.com>
Date: 03/29/2012 11:26 AM
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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/5/2012 2:08:36 PM
To: Reagan, Mary [mreagan@mcginnislaw.com]
CC: Andrew Marshall [amarshall@usecology.com]; JDHead@fbhh.com; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Simon Bell [SBELL@usecology.com]
Subject: RE: U.S. Ecology/TD*X Associates

Sorry, I thought I responded back to you. Yes, Wednesday, April 11, 2012 at 10 a.m. will work for us.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
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To: Evan Pearson/R6/USEPA/US@EPA, <JDHead@fbhh.com>
Cc: Mark Hansen/R6/USEPA/US@EPA, "Andrew Marshall" <amarshall@usecology.com>, "Simon Bell" <SBELL@usecology.com>
Date: 04/03/2012 04:12 PM
Subject: RE: U.S. Ecology/TD*X Associates

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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Monday, April 02, 2012 9:12 AM
To: Reagan, Mary; JDHead@fbhh.com
Cc: Mark Hansen
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From: Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]
Sent: 4/2/2012 2:16:13 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Subject: Re: U.S. Ecology/TD*X Associates

Evan - Please clarify that we have 30 days to reach agreement.

If I can be of assistance or answer any questions, please contact me at (214)665-7548 or via email at hansen.mark@epa.gov.

Sincerely,

Mark Hansen
Associate Director for Hazardous Waste Enforcement
Compliance Assurance and Enforcement Division

U.S. EPA Region 6
1445 Ross Avenue (6EN-H)
Dallas, Texas 75202
Telephone: (214) 665-7548
EPA Cell Phone: (214)789-2162

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From: Evan Pearson/R6/USEPA/US

To: mreagan@mcginnislaw.com, JDHead@fbhh.com
Cc: Mark Hansen/R6/USEPA/US@EPA
Date: 04/02/2012 09:12 AM
Subject: U.S. Ecology/TD*X Associates

We are willing to meet with you the week of April 9th. Please check your availability for the mornings of Tuesday, April 10th or Wednesday, April 11th. I will do the same for our team. Mark Hansen is planning to attend, but Cheryl and Suzanne will not. We are willing to go over our legal theory again, but I believe that we have fully explained our position. I think its more of a matter that you don't agree with our position. We are also working diligently to put together a draft consent agreement and final order, along with a proposed penalty demand. If we are unable to present these at the meeting, you should receive them shortly thereafter. If you have any questions, please feel free to call.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel

U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

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From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: Mark Hansen/R6/USEPA/US@EPA, "Jim Baumgardner" <JBAUMGARDNER@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, <JDHead@fbhh.com>
Date: 03/29/2012 11:26 AM
Subject: U.S. Ecology/TD*X Associates

Dear Evan,

I understand US Ecology's CEO and TD*X's owner recently contacted John Blevins and Mark Hansen to discuss concerns associated with the EPA's proposed issuance of a formal complaint that would include an allegation that an incinerator permit is required to operate components of the thermal desorption unit. Both US Ecology and TD*X communicated their belief to Mr. Blevins and Mr. Hansen that any unilateral issuance of an unresolved complaint would result in customers' suspending shipments to the facility, effectively shutting down the thermal recycling business . Based on these conclusions, I further understand that Mr. Blevins agreed to withhold filing of the complaint over the next 30-45 days to allow the parties an opportunity to work out a settlement. Due to these recent communications, I am taking the liberty of copying Mr. Hansen on this e-mail as immediate assurance to him and Mr. Blevins of our commitment to this process.

Accordingly, although we maintain strong disagreement with EPA's conclusion as to the permitting status of this unit, at the same time we are actively exploring potential options that would be acceptable to the EPA so that any complaint can be accompanied with a clear resolution to EPA's concerns. The following provides our immediate plans and needs to discuss alternatives that may address EPA's concerns:

- Schedule a meeting with TCEQ in an effort to discuss potential permitting strategies and other considerations, including existing permit provisions that limit operating hours. We have already reached out to the TCEQ and are hoping to set up a meeting in Austin next week.
    - TCEQ is the authorized permitting authority and must be in accord with the solution and regulatory basis.

- Work with EPA in an effort to better understand the technical and legal basis of EPA's conclusions including **specific** citations and associated regulatory basis.
  - We have provided EPA with multiple EPA guidance documents, citations and rule references supporting our position that the thermal desorption unit is not an incinerator but to date the responsive information provided by EPA does not adequately explain EPA's technical analysis in our opinion.
  - If we are to successfully develop a solution and an alternate permitting or other mutually satisfactory approach, it is important that we get more detail on the EPA's position, including the understanding of the relevance of the Rineco case which EPA has referenced in support of its position. It will be very difficult for us to address EPA's concerns and resolve this matter without a complete understanding of the technical and regulatory basis for EPA's conclusions. (As one example, it appears that EPA has concluded that the process used at U. S. Ecology's facility is comparable with Rineco's and based on this comparison, that the destruction of non-condensable gases in the combustion zone of the thermal desorption unit constitutes incineration. It appears, however, that Rineco uses a separate thermal oxidizer and EPA's consent decree with Rineco requires a Subpart X permit for a miscellaneous unit, not an incinerator permit.)

- Schedule a meeting with you, Mark Hansen, Suzanne Murray, Cheryl Seager, and other subject matter EPA experts to discuss the results of meetings with the TCEQ, to discuss the technical and regulatory basis of EPA's position, and to present potential compliance strategies. Assuming we are able to schedule meeting with TCEQ next week, we would then schedule meeting with EPA for the week of April 9-13th.

I will plan on calling you shortly to discuss the matter further. Please do not hesitate to contact me in the meantime with any questions. I greatly appreciate your continued assistance and involvement.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Web: www.mcginnislaw.com

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/2/2012 2:12:26 PM
To: mreagan@mcginnislaw.com; JDHead@fbhh.com
CC: Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]
BCC: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Toups, Brad [Toups.Brad@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]; Shah, Harry [shah.harry@epa.gov]; Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]
Subject: U.S. Ecology/TD*X Associates

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From: "Reagan, Mary" <mreagan@mcginnislaw.com>

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Cc: Mark Hansen/R6/USEPA/US@EPA, "Jim Baumgardner" <JBAUMGARDNER@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, <JDHead@fbhh.com>
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I will plan on calling you shortly to discuss the matter further. Please do not hesitate to contact me in the meantime with any questions. I greatly appreciate your continued assistance and involvement.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
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Message

From: Matt Straus [Straus.MattLNDU@usepa.onmicrosoft.com]
Sent: 3/16/2012 12:34:55 PM
To: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
CC: Pearson, Evan [Pearson.Evan@epa.gov]; Mark Hansen [Hansen.MarkLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Atagi, Tracy [Atagi.Tracy@epa.gov]; Devlin, Betsy [Devlin.Betsy@epa.gov]; Suzanne Rudzinski [Rudzinski.SuzanneLNDU@usepa.onmicrosoft.com]; CN=Jim Berlow/OU=DC/O=USEPA/C=US@EPA; Lutz, Craig [lutz.craig@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]; Garcia, David [Garcia.David@epa.gov]; Faison, George [Faison.George@epa.gov]; Marc Thomas [Thomas.MarcLNDU@usepa.onmicrosoft.com]; Michaud, John [Michaud.John@epa.gov]; Mary Andrews [Andrews.MaryLNDU@usepa.onmicrosoft.com]
Subject: Re: U.S. Ecology/TD*X Associates RCRA Case

I will look at over the weekend and get any thoughts I have.

From: Alan Carpien/DC/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA, Mark Hansen/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Cheryl Seager/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Tracy Atagi/DC/USEPA/US@EPA, Betsy Devlin/DC/USEPA/US@EPA, Suzanne Rudzinski/DC/USEPA/US@EPA, Jim Berlow/DC/USEPA/US@EPA, Matt Straus/DC/USEPA/US@EPA
Cc: Craig Lutz/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA, David Garcia/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Marc Thomas/DC/USEPA/US@EPA, John Michaud/DC/USEPA/US@EPA, Mary Andrews/DC/USEPA/US@EPA
Date: 03/15/2012 08:35 PM
Subject: Re: U.S. Ecology/TD*X Associates RCRA Case

I do not know why in a case dealing with the contained gas issue the Region does not let the ORCR office in on it. I have copied people I consider relevant to this issue.

In any event, my take on this is that we probably have good arguments that fume incinerator gases are not "contained gases" but that is not what we are dealing with her. I do not know how a "thermal oxidizer" compares to a "thermal desorption unit." As we discussed earlier, our argument on TDUs would simply say that the process deals with the emissions from treatment of hazardous wastes and, therefore, is an incinerator as opposed to a miscellaneous unit. The issue of contained gas is irrelevant.

You refer to the Texas EPA's opinion that thermal oxidizers do not burn contained gases. That may still allow EPA to argue that the opinion does not refer to TDUs -- unless they are not different from thermal oxidizers.

Regardless, since the potential defendants refer to the Rudzinski letter, the Region needs to get concurrence from her as to what that letter means and what you can do in your enforcement actions. Be advised that the Office of Air and Radiation is very interested in the contained gas issue also.

This matter, if you proceed to try to counter the facility arguments and the TCEQ arguments, could affect matters related to the Non-Hazardous Secondary Materials (NHSM) rule.

I'm not certain who in OECA at HQ should be consulted.

From: Evan Pearson/R6/USEPA/US

To: Mark Hansen/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Cheryl Seager/R6/USEPA/US@EPA
Cc: Craig Lutz/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA, David Garcia/R6/USEPA/US@EPA
Date: 03/15/2012 05:42 PM
Subject: U.S. Ecology/TD*X Associates RCRA Case

As you know, I am been instructed to prepare a RCRA complaint for filing against U.S. Ecology (USET) and TD*X Associates (TDX). One of the major issues in this case is whether the act of sending uncondensed gases from the treatment of hazardous waste and/or recyclable materials (which are hazardous waste) in the thermal desorption unit (TDU) into the combustion chamber of the TDU makes the TDU an "incinerator", and thus requiring a hazardous waste incineration permit. This issue turns on the issue of whether this uncondensed gas is a "solid waste". USET/TDX contend that this is a uncontainerized gas, and thus is not a "solid waste". They rely on a number of EPA Memos and Guidance documents for this position. Also, since this gas comes from the treatment of hazardous waste, they contend that under the derived-from rule, it is also an uncontainerized gas, and thus not a "solid waste". They have also provided a 1996 TCEQ memo regarding Duratherm that supports their position that uncondensed gases sent to a thermal oxidizer is not a solid waste.

In many cases, we can distinquish the EPA memos. For example, EPA has stated that fume incinerators which are used to destroy gaseous emissions from various industrial processes are not subject to RCRA because the input is not indentifiable as a solid waste. We can distinquish fume incinerators from the USET/TDX case because in that memo, the gases in question are process gases, that is, gases that are emitted from process units (at the point you make a hazardous waste determination). In other words, it was never a solid waste to begin with. In this case, we have hazardous waste in the solid form, that as result of heating, turns a portion of the material into a gas, which is then sent to the combustion chamber. EPA has stated that "heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste" and that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA." 54 Fed. Reg. 50968, 50973 (December 11, 1989). The purpose of this discussion is not to say that we shouldn't file the case, but to point out that there is a significant amount of litigation risk associated with the case. I will continue my discussions with HQs regarding this issue. I have attached a copy of USET/TDX's arguments, along with a copy the TCEQ memo regarding Duratherm. I have not prepared a formal written response to their arguments, but I can orally brief anyone regarding our counterarguments.

There is, however, another factor to consider. In our meeting with USET and TDX today, they stated that if they were required to get a hazardous waste permit, it would force them to shut down. First, they claim that the economics of the situation require that they run 24/7 (excluding maintenance downtime, etc.). However, under their current hazardous waste permit, they are only permitted to operate from 7 a.m. to 8 p.m. They don't think that TCEQ would allow them to run 24/7. Also, they don't believe that because of the public, that TCEQ would issue them a permit, and that there hasn't been a new incinerator permit for several years. They also contend that based on the TCEQ Duratherm memo, that TCEQ may not issue them a permit because the gases going to the combustion chamber are not a solid waste. Finally, they contend that there are a number of TDUs in the country, including a few in Region 6, that operate the same way and are not permitted.

Please let me know if you wish to discuss any issues in this case, or to discuss any options for addressing these issues. According to the RCRA Nationally Significant Issues Guidance, these issues would be considered nationally significant, and therefore need to be raised to HQs before the filing of the complaint or the beginning of negotiations.

[attachment "2012_02-22_mbr_Pearson_LtrReFollow-upTo02-14-12MeetingW-Attachs(Final).pdf" deleted by Matt Straus/DC/USEPA/US] [attachment "TCEQ Duratherm Memo.pdf" deleted by Matt Straus/DC/USEPA/US]

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
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Dallas, Texas 75202-2733
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Message

From: Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]
Sent: 2/15/2012 4:34:36 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I will look at this more closely either this afternoon or tomorrow but my initial thoughts are we just have to push back on the arguments about it being an uncontained gas - if it is clearly hw being treated, of course we have authority over it. What we have said we don't regulate under RCRA are gases from production processes. As far as MSW landfill gas, just because we choose to regulate it under the CAA, doesn't mean it's not a SW. We could have regulated it under RCRA D but we decided it made more sense to do it under the CAA. I have some letters/references in the office (I am home today) that may help so I will look at those tomorrow.

I also have asked Ross if anyone in our office has taken over Bob Holloway's role - I can help with the DSW aspect but once it gets into technical issue about incineration, I am out of my depth pretty quickly. I will let you know. Also, my branch chief, Charlotte Mooney, will be back from her detail next week and she has been involved in these issues in the past so I will run it by her too.

Mary Beth

-----Evan Pearson/R6/USEPA/US wrote: -----
To: MaryBeth Sheridan/DC/USEPA/US@EPA
From: Evan Pearson/R6/USEPA/US
Date: 02/14/2012 05:08PM
Cc: Ross Elliott/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA, Vishnu Katari/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

We had a meeting to with U.S. Ecology and TD*X regarding the TDU and whether it is an incinerator. As expected, they pushed back on this issue. TD*X's attorney prepared a memo arguing that the material in question is an uncontainerized gas, and thus not a solid waste. I would appreciate your thoughts on his memo. I have also attached selected pages from a RCRA Technical Guidance Document which he cited in his memo. Please let me know your thoughts. Thanks.

(See attached file: TDX Memo on Noncontainerized Gas.pdf)
(See attached file: RCRA Technical Guidance Document for Process Vents (Selected Pages).pdf)

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MaryBeth Sheridan---01/31/2012 08:19:04 AM---Evan, I can discuss this issue today if you have time and see if we need to do more research. My dir

From: MaryBeth Sheridan/DC/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA
Cc: Ross Elliott/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA
Date: 01/31/2012 08:19 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Evan, I can discuss this issue today if you have time and see if we need to do more research. My direct number is 703-308-4941. Mary Beth Sheridan

Alan Carpien---01/30/2012 11:57:14 AM---I meant to include Evan -- I apologize. ----- Forwarded by Alan Carpien/DC/USEPA/US on 01/30/2012

From: Alan Carpien/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA
Date: 01/30/2012 11:57 AM
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I meant to include Evan -- I apologize.
----- Forwarded by Alan Carpien/DC/USEPA/US on 01/30/2012 11:56 AM -----

From: Alan Carpien/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: MaryBeth Sheridan/DC/USEPA/US@EPA
Date: 01/30/2012 11:48 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Could you guys get together with Evan? He has to deal with these folks fairly shortly. I think we need to make sure we won't be having problems with the NHSM rule.

Ross Elliott---01/24/2012 10:23:34 AM---What is the timing on this? I am busy right now w/ CCR and other stuff...if these are the former Du

From: Ross Elliott/DC/USEPA/US
To: MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA
Date: 01/24/2012 10:23 AM
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

What is the timing on this? I am busy right now w/ CCR and other stuff...if these are the former Duratherm units (sold to US Ecology, I believe) they have operated under Subtitle C permits for years...now that U.S. Ecology operates them, they want to stop operating under C permits? Someone

should let the state know, via the Region, if it is indeed the case that US Ecology is maneuvering to a new operating standard as an exempt recycler. Someone should confirm that.

Regarding the specific issue, I think we have established that if a thermal desorption unit is processing hazardous waste, and use an afterburner, odds are that this is a RCRA permitted activity. Even w/out getting in to the contained gas thing in detail, I think we have established that combusting emissions from hazardous waste management units is a RCRA-regulated activity. I also recall from many discussions w/ Bob Holloway and Charlotte Mooney and others that if you have a thermal desorption unit recovering organics from a hazardous waste, while that might qualify as an exempt-recycling unit, once you add an afterburner, that's a different kettle of fish. That's an incinerator.

MaryBeth Sheridan---01/24/2012 09:34:40 AM---I forwarded to you, Ross, since it is a petroleum exclusion they are referencing. Have you been invo

From: MaryBeth Sheridan/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA
Date: 01/24/2012 09:34 AM
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I forwarded to you, Ross, since it is a petroleum exclusion they are referencing. Have you been involved at all? I will read it more carefully later today. Mary Beth
----- Forwarded by MaryBeth Sheridan/DC/USEPA/US on 01/24/2012 09:33 AM -----

From: Alan Carpien/DC/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA, Marilyn Goode/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Tracy Atagi/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Marc Thomas/DC/USEPA/US@EPA
Cc: Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Laurel Celeste/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Vishnu Katari/DC/USEPA/US@EPA
Date: 01/23/2012 09:51 PM
Subject: Re: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

In the Non-Hazardous Solid Material (NHSM) rule, we have been agonizing over the issue of what constitutes a "contained gas." It seems that people in ORCR, whom I have copied, should look at this.

Evan Pearson---01/23/2012 02:17:51 PM---I would like your opinion on whether a certain thermal desorption unit needs a RCRA permit. I got y

From: Evan Pearson/R6/USEPA/US
To: Vishnu Katari/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA, Laurel Celeste/DC/USEPA/US@EPA
Cc: Ryan Rosser/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 01/23/2012 02:17 PM
Subject: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I would like your opinion on whether a certain thermal desorption unit needs a RCRA permit. I got your names from the responsibility lists on the intranet (both OECA and OGC). If you are not the correct person to address this issue, could you please forward it to that person. A description of the process and the legal reasoning is set forth below.

A. Process Description

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

B. Legal Analysis

Assume for the sake of this analysis, that USET is accepting only wastes from petroleum refineries, and otherwise meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv). Does the fact that USET routes the uncondensed gases back into the combustion chamber/fire box subject the TDU to the incinerator requirements.

In RO 13657 (attached), EPA stated that "a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated, and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal unit would be subject to regulation as a 'miscellaneous unit'." Therefore, under this standard, the TDU would be considered an incinerator since it routes that uncondensed gases back into the combustion chamber.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) (attached) which states that "fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.

In RO 12272 (attached), the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. The memo also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984) (attached), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state."

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On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, the question was whether the "light ends" or gaseous material were hazardous wastes at the point of generation. In this case, the vent stream is produced as a result of the treatment of hazardous waste. EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

Therefore, Region 6 believes that the TDU should be regulated as an incinerator under 40 C.F.R. Part 264, Subpart O. However, if they stop routing the vent stream to the combustion chamber/fire box, they would be exempt from regulation [assuming that they meet the requirements of 40 C.F.R. § 261.6(a)(3)(iv)].

We would appreciate your thoughts on this issue. Thanks.

[attachment "Letter from USET to EPA dated 9-24-10.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 13657.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "47 FR 27520 (6-24-82).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 12272.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "49 FR 5313 (2-10-84).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "54 FR 50968 (12-11-89).pdf" deleted by Ross Elliott/DC/USEPA/US]

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[attachment "TDX Memo on Noncontainerized Gas.pdf" removed by MaryBeth Sheridan/DC/USEPA/US]
[attachment "RCRA Technical Guidance Document for Process Vents (Selected Pages).pdf" removed by MaryBeth Sheridan/DC/USEPA/US]

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 2/6/2012 5:21:48 PM
To: Vishnu Katari [Katari.VishnuLNDU@usepa.onmicrosoft.com]
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Evan L. Pearson
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------ Forwarded by Evan Pearson/R6/USEPA/US on 02/06/2012 11:21 AM ------

From: Alan Carpien/DC/USEPA/US

To: Ross Elliott/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA
Date: 01/30/2012 10:57 AM
Subject: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I meant to include Evan -- I apologize.

------ Forwarded by Alan Carpien/DC/USEPA/US on 01/30/2012 11:56 AM ------

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Regarding the specific issue, I think we have established that if a thermal desorption unit is processing hazardous waste, and use an afterburner, odds are that this is a RCRA permitted activity. Even w/out getting in to the contained gas thing in detail, I think we have established that combusting emissions from hazardous waste management units is a RCRA-regulated activity. I also recall from many discussions w/ Bob Holloway and Charlotte Mooney and others that if you have a thermal desorption unit recovering organics from a hazardous waste, while that might qualify as an exempt-recycling unit, once you add an afterburner, that's a different kettle of fish. That's an incinerator.

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Cc: Alan Carpien/DC/USEPA/US@EPA
Date: 01/24/2012 09:34 AM
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Message

From: Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]
Sent: 1/31/2012 2:19:03 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Elliott, Ross [Elliott.Ross@epa.gov]; Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
Subject: Re: Fw: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

Evan, I can discuss this issue today if you have time and see if we need to do more research. My direct number is 703-308-4941. Mary Beth Sheridan

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RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

B. Legal Analysis

Assume for the sake of this analysis, that USET is accepting only wastes from petroleum refineries, and otherwise meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv). Does the fact that USET routes the uncondensed gases back into the combustion chamber/fire box subject the TDU to the incinerator requirements.

In RO 13657 (attached), EPA stated that "a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated, and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal unit would be subject to regulation as a 'miscellaneous unit'." Therefore, under this standard, the TDU would be considered an incinerator since it routes that uncondensed gases back into the combustion chamber.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) (attached) which states that "fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.

In RO 12272 (attached), the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. The memo also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984) (attached), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state."

In 54 Fed. Reg. 50968, 50970 (December 11, 1989), (attached) EPA stated that "with the respect to the proposed listing of light ends [49 Fed. Reg. 5313 listed above], the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or

condensed gases."

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, the question was whether the "light ends" or gaseous material were hazardous wastes at the point of generation. In this case, the vent stream is produced as a result of the treatment of hazardous waste. EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

Therefore, Region 6 believes that the TDU should be regulated as an incinerator under 40 C.F.R. Part 264, Subpart O. However, if they stop routing the vent stream to the combustion chamber/fire box, they would be exempt from regulation [assuming that they meet the requirements of 40 C.F.R. § 261.6(a)(3)(iv)].

We would appreciate your thoughts on this issue. Thanks.

[attachment "Letter from USET to EPA dated 9-24-10.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 13657.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "47 FR 27520 (6-24-82).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "RO 12272.pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "49 FR 5313 (2-10-84).pdf" deleted by Ross Elliott/DC/USEPA/US] [attachment "54 FR 50968 (12-11-89).pdf" deleted by Ross Elliott/DC/USEPA/US]

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 1/20/2012 4:40:04 PM
To: Ryan Rosser [Rosser.Ryan@epa.gov]
CC: Lutz, Craig [lutz.craig@epa.gov]
Subject: U.S. Ecology

Your comments please on a proposed e-mail to HQs regarding the noncontainerized gases being a hazardous waste.

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

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propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases.

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, whether the "light ends" or gaseous material was hazardous waste at the point of generation. However, EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 6/14/2012 8:34:18 PM
To: Toups, Brad [Toups.Brad@epa.gov]
Subject: Fw: U. S. Ecology Texas Inc./TD*X Associates, L.P.
Attachments: 2012_06-14_(Final) USET - TDX CAFO.doc

Attached in the e-mail below is a draft CAFO from U.S. Ecology and TD*X. I was wondering if you would have time to look at their interim operating limits (Section III.A and their compliance demonstration plan (Section III.D), and provide comments on these provisions. We are meeting with them next Thursday (June 21st, so if I could get them by Tuesday, I would appreciate it. Thank you.

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----- Forwarded by Evan Pearson/R6/USEPA/US on 06/14/2012 03:26 PM -----

From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Head, JD" <JDHead@fbhh.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, "Carl Palmer" <cpalmer@tdxassociates.com>, "Gregg Meyers" <gmeyers@tdxassociates.com>, "Mark John" <MJOHN@usecology.com>
Date: 06/14/2012 02:55 PM
Subject: U. S. Ecology Texas Inc./TD*X Associates, L.P.

CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Evan,

Attached is a redline of the June 6, 2012 revised draft consent agreement and final order (CAFO) containing the joint comments of U.S. Ecology Texas, Inc. (USET) and TD*X Associates, L.P. (TD*X). As per your June 13, 2012 email, the deadline for submitting comments on Sections III and IV.C of the revised draft CAFO was extended to COB today, June 14, 2012. The attached document provides comments on these sections but includes comments on other sections of the CAFO as well in an effort to facilitate settlement negotiations, with the exception of Section IV.A relating to

penalty assessment for which comments are due June 20, 2012. Due to the complexity of the issues and the brief time allowed for comments, even with the one-day extension, USET and TD*X reserve their rights to provide additional comments on the June 6, 2012 revised draft CAFO and to modify any position expressed in the attached redline as a result of settlement negotiations.

While consistent with the general framework outlined for these negotiations, the attached comments reflect a slight change in approach from your June 6, 2012 draft. Instead of requiring interim operating requirements to be established through a review and approval process, the attached draft would establish the interim operating requirements in the CAFO itself. Similarly, interim operating parameters for the TDU are specified the attached draft CAFO as well as the performance standards for performance testing of the TDU. These operating requirements, parameters and standards have been primarily selected from the 40 CFR Part 264, Subpart AA, and 40 CFR Part 63, Subpart EEE, as appropriate to TD*X's specific technology. This approach is true to the regulatory approach embodied in 40 CFR Part 264, Subpart X, which provides that permit terms and conditions should be based on "appropriate" provisions from specified rules in these Parts.

We are planning to meet with you and other EPA personnel beginning on Thursday, June 21, 2012, to discuss our comments further; however, please do not hesitate to contact us in the meantime if you have any questions.

Regards,
Mary
J. D. (with permission)

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2012_06-14_(Fin...
USET - TDX CA...

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents deny any liability to the United States arising out of the transaction or occurrences alleged in this CAFO. Respondents also deny the truth of any allegations in this CAFO except the allegations pertaining to venue and subject matter jurisdiction in Section II.A. of this CAFO.~~admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.~~

4. The Respondents explicitly waives any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are either specifically set forth herein, or are alleged violations of 40 C.F.R. Part 61; Subpart FF, for which injunctive relief is specified in Section IV.C of this CAFO.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization,

government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

~~10.~~ The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R.

~~11.~~10. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

~~12.~~ The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R.

~~13.~~11. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

~~14.~~12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

~~15.~~13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

~~16.~~14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

~~17.~~15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

~~18.~~16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

~~19.~~17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

~~20.~~18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

~~21.~~19. ~~The Respondent USET has a~~An oil reclamation unit is located ~~on~~at the facility identified in Paragraph 16.

~~22.~~20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

~~23.~~21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

~~24.~~22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. ALLEGED VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

~~25.~~23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

~~26.~~24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~27.~~25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~28.~~26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as *that* term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [40 C.F.R. Parts 262 through 268, 270 or 124].

29. The Respondent USET notified the Texas Commission on Environmental Quality (TCEQ) ~~of this activity~~that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)~~.~~

~~29.~~ EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

30. ~~Hazardous wastes~~ Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

31. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

32. On various dates ~~between~~ after June 15, 2008, ~~and the present,~~ certain recyclable materials ~~hazardous wastes~~ were processed in the tanks identified in Paragraph 20.

33. Some of ~~T~~the ~~hazardous waste identified~~ recyclable materials referred to in Paragraph 30 did not meet the exemption ~~definition of "recyclable materials" as that term is defined in 430 T.A.C. § 335.24(a) [~~ in 40 C.F.R. § 261.6(a)(3~~1~~)(iv)(C)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices." ~~EPA has not promulgated a definintiondefinition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices in its regulations. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].~~

~~34. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~ Respondent USET ceased the receipt of the hazardous waste identified in Paragraphs ~~320~~-33~~1~~.

~~35.~~34. The Respondent~~s~~ TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

~~36.~~35. To date, neither the Respondent USET or Respondent TD*X ha~~ve~~s applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

~~37.~~36. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by processing (treating) hazardous waste without a permit~~.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

~~38.~~37. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~39.~~38. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~40.~~39. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~41.~~40. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]. ~~The Respondent USET notified the TCEQ of this activity.~~

42. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].

43. The Respondent USET notified the ~~Texas Commission on Environmental Quality (TCEQ)~~ that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

~~42.~~44. EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

~~43.~~45. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

46. On various dates ~~between~~ after June 15, 2008 ~~and the present~~, certain ~~hazardous wastes~~Recyclable Materials were fed into the TDU that did not meet the exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing

hazardous wastes from petroleum refining, production, and transportation practices."

Respondent USET ceased the receipt of these hazardous wastes.

~~44. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for to the hazardous waste identified in Paragraph 42.~~

~~45.~~47. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

~~46.~~48. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~47.~~49. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants ~~and to remove them~~ from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents~~,~~ ~~and transfers them~~ to a gas treatment

system using a nitrogen carrier gas. The oil is then recovered by condensing it vapor phase organic constituents in the gas treatment system. The noncondensable gases are recirculated to the heated rotary dryer. The An approximate 100 cfm vent stream of noncondensable gases is extracted to balance pressures within the system, filtered and injected into the combustion chamber of the TDU. filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned

48.50. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

49.51. To date, neither the Respondent USET nor Respondent TD*X has ve applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

50.52. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

51.53. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

52.54. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~53.~~55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

~~54.~~56. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].~~

~~55.~~57. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~56.~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion to indirectly heat a rotary dryer.

~~57.~~59. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

~~58.~~60. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it ~~thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion~~meets the criteria established in Paragraphs II.B.57 and 58.

[EPA NEEDS TO LAY OUT ITS ARGUMENT THAT WE ARE BURNING HAZARDOUS WASTE TO GET TO PARAGRAPH 60].

~~59.~~61. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

~~60.~~62. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.~~ The Respondent USET and the Respondent TD*X have proposed to reconfigure the TDU so that the vent stream of noncondensable gases is

routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

~~61.~~63. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~62.~~64. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

~~63.~~65. The roll-off boxes identified in Paragraph 6~~2~~3 contained material which ~~was destined for the TDU~~had entered the oil reclamation process and was~~ere~~ being temporarily staged ~~to~~ before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

~~64.~~66. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~65.~~67. The roll-off boxes identified in Paragraph 6~~2~~3 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~66.~~68. ~~To date, t~~The Respondent USET has~~d~~ not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y" between on or about March 9, 2010, and June 11, 2010.

~~67.~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA,

42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by storing hazardous waste without a RCRA permit or interim status~~.

III. COMPLIANCE ORDER

~~68.~~70. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and ~~transporation~~transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific Petroleum Refining Sources (F037, F038, K048, K049, K050, K051, K052, K169, K170, K171, AND K172). Also acceptable are materials generated from processes meeting the defini~~n~~tion established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the processes meeting the definition of aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and make a separate, independent determination based on information provided by the generator as to whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices~~ at the generator's facility~~.

3. ~~Within seven (7) 14 days of~~ Beginning on the effective date of this CAFO, the Respondents shall ~~submit to EPA and TCEQ for approval~~operate the TDU with~~,~~ the following interim limits on operating parameters~~, including, but not limited, to the following~~:

a. the maximum hazardous waste feed rate to the rotary dryer shall be 310 tons per day;

b. ~~limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);~~ dryer feed material limited to a maximum organic halogen content of~~at~~ 4000 ppm;

c. a minimum solids discharge temperature of 650°F from the rotary dryer or that treated product desorber solids must be considered to be untreated, be separately collected, and be reprocessed through the rotary dryers, except for the first two hours after start-up of feed when the product material does not contact the product thermocouple ~~temperature~~;

d. maximum internal pressure in the rotary dryer of 0.00 inches (W.C.) with a 60-second time delay while~~en~~ the dryer feed is on; ~~gas/vapor flow rate to the Off-Gas Condensing Recovery System;~~

e. maximum Off-Gas Condensing Recovery System outlet temperature of 130°F with a 5-minute delay when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F with a 5-minute delay in the rotary dryer external furnace while the dryer feed is on; and

g. maximum gas/vapor flow rate to the combustion chamber of 180 scfm.

~~h. other Off-Gas Condensing Recovery Systems operating parameter limits; and~~

~~i. any other operating parameter limits for air pollution control devices used.~~

~~The submittal shall include monitoring and recordkeeping requirements.~~ The Respondents shall perform ~~implement the~~ monitoring and maintain records relating to these operating parameter limits. ~~as approved or modified by EPA and TCEQ.~~

4. Within ninety ~~180 (180)~~ 90 days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU that

immediately and automatically cuts off the hazardous waste feed when any of the following conditions occurs: ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~

a. ~~O~~oxygen content in the process vent greater than 7% with 1-minute delay;

b. internal pressure in the dryer feed breach greater than 0.0 inches W.C. with 1-minute delay;

c. temperature at the outlet of the gas treatment system condensers greater than 130°F with 5-minute delay;

d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F with a 5-minute delay;

e. loss of operation of the gas treatment system carrier gas recirculation blower; and

f. valve position of the process vent injection verified as directing the process vent away from the dryer's external furnace combustion zone with a 1-minute delay.

5. Within ~~ninety 180 (180) days~~one year of the effective date of this CAFO, or within ninety (90) days after issuance of the permit required for installation of the reconfigured TDU under Tex. Health and Safety Code Chapter 382, whichever is later, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. ~~Within ninety 180 (180) days of~~Beginning on the ~~effective~~ date of ~~this CAFO~~initial operation of the TOU, ~~the~~ Respondents shall comply with ~~also submit to EPA and TCEQ for approval,~~ the following interim operating parameters for the TOU ~~including, but not limited to~~:

a. minimum ~~operating~~ temperature of 1,400°F in the TOU combustion chamber when the feed to the dryer is on; and

b. maximum flue gas flow rate based on a residence time of 0.5 seconds at 1400°F, as determined by engineering calculations at the measured process flow rate.

~~The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.~~

7. Within thirty (30)~~ninety 180 (180)~~ days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 264.1033(~~pf~~) applicable to process heaters~~63.1209(a)~~. Within sixty (60) days of the initial operation of the reconfigured TDU, ~~T~~the Respondents shall also install, calibrate and operate temporary continuous monitors to verify that ~~use~~ carbon monoxide ~~and~~ or hydrocarbon ~~CEMS to demonstrate and monitor~~ is in compliance with the carbon monoxide ~~and~~or hydrocarbon standards of 40 C.F.R. ~~Part 63, Subpart EEE~~§63.1203(a)(5), provided that any compliance demonstration required by that subsection shall be conducted pursuant to the performance test specified in Section III.D. of this CAFO. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. The~~se~~ CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements ~~for rotary dryer emission point (EP-1),~~ the combustion chamber emission point (EP2)~~, and~~~~following~~ for the TOU. The Respondents shall operate the TDU and the TOU in a manner that the ~~one minute and~~ hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a)(6). After thirty (30) days of operation of temporary CEMS, the Respondents are allowed to remove those

instruments provided that the CEMS required by §264.1033(f) actuates the AWFCO. The Respondents shall submit a written demonstration as to these findings to the TCEQ.

~~8. Within one hundred twenty270 (120270) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.~~

8~~9~~. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ, which contains ~~. The Report shall include~~ the following:

a. Identification of~~y~~ the customer, the customer's SIC and NAICS code, copies ~~of the relevant~~ waste approval documents, including the generator's certification that the oil-bearing hazardous waste is from petroleum refining, production and transportation practices, and manifests for the previous six month period.

[NEED TO DISCUSS DETAILS AND FORMAT OF INFORMATION NEEDED BY EPA]

~~b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.7.~~

b~~c~~. ~~The initial Report shall include d~~Documentation ~~showing the~~ of installation ~~dates~~ of the equipment required by Paragraphs 6~~9~~8.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ~~ninety (90) days~~ one year of the effective date of this CAFO, the Respondent shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33). ~~This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).~~

2. The permit application shall also include ~~relevant~~ requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, ~~including~~relating to ~~an engineering report,~~ waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351), except that with regard to continuous monitoring required by §264.347(a)(1) and (2), only continuous monitoring of combustion temperature shall be required.

3. The Respondents shall also request that the ~~final~~ issued RCRA permit ~~also~~ include the following:

a. ~~The relevant~~ Appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE;

b. ~~The f~~Feedstock limitations ~~set forth in Paragraph 68.F~~; and

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers~~; and~~.

~~d. Any risk-based terms and conditions necessary to protect human health and the environment.~~

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 69~~8~~.B.1 shall result in the termination of the Respondents'

authorization to operate the TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than ~~two~~ three and one-half years (~~30~~42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have a final~~ obtain issuance from the TCEQ of a RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~**C. Public NoticePublic Notice of Intent to Comply (NIC)/Public Participation**~~

~~1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).~~

~~2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.~~

~~3~~1. ~~The Respondents shall provide the following notices to the public:~~

~~a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C.~~

~~§§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;~~ and

~~b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and.~~

~~c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).~~

~~4~~2. ~~The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c)~~.

~~5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.~~

~~6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.~~

C~~D~~. Startup, Shutdown, and Malfunction Plan

1. Prior to operation of the reconfigured TDU, ~~Within one hundred twenty (120)~~240 ~~days of the effective date of this CAFO,~~ the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and ~~63.1206(c)(2)~~include provisions to comply with AWFCOs as per Section 698.A.4 of this CAFO during Startup, Shutdown and Malfunctions. The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or

submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

D~~E~~. ~~Comprehensive Performance~~ Compliance Demonstration Test (CD~~P~~T)

1. The Respondents shall perform a ~~comprehensive performance~~ compliance demonstration test (CD~~P~~T) as set forth below. The CD~~P~~T is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part ~~63~~264, Subparts O and AA ~~EEE~~, establish limits for the operating parameters ~~provided by 40 C.F.R. § 61.1209,~~ identified in the RCRA permit modification application required by Section III.B, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ ~~and EPA~~ for approval a ~~complete and approvable comprehensive performance test~~C~~P~~DT plan and a continuous monitoring system (CMS) performance test plan pursuant to the appropriate requirements of 40 C.F.R. §~~§ 63.7, 63.1207, and 63.1209~~270.62(b)(2). The CD~~P~~T plan shall ~~also~~ provide for a performance test to determine the ~~efficiency and~~ operating parameters of the condensers from the Off-Gas Condensing Recovery System, the overall equivalent~~capture efficiency,~~ destruction and removal efficiency of the TDU system including the TOU.~~, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.~~ Based on the principal operation of the TDU being the reclamation of oil-bearing hazardous waste from petroleum refining, production and transportation practices, the POHC for the DRE determination shall be the sum of all polynuclear aromatic hydrocarbon (PAH) compounds in the listings for K048-

K052, K169-K172, F037 and F038, because PAH compounds have the highest difficulty of incineration of the organic constituents that are the basis for listing of these wastes. Copies of the CDT plan and CMS test plan shall also be submitted to EPA.

~~3. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.~~

~~4~~3. The Respondents shall implement the CD~~P~~T Plan and the CMS performance test plan as approved by TCEQ~~ and EPA~~, within ninety (90) days after approval of the CD~~P~~T Plan and the CMS performance test plan, or within sixty (60) days after installation of the TOU, whichever is later. During the testing, the Respondents shall ~~comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g)~~ assure that each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. As a minimum during the CD~~P~~T, the Respondents shall demonstrate that the TDU and TOU achieve the following performance standards:

a. the equivalent "destruction and removal efficiency" (DRE) must be greater than 99.99% for one designated POHC fed to the TDU, as per 40 CFR 264, Subpart O, based on the mass feed rate of the POHC fed to the TDU and the mass emission rate of the same POHC present in the exhaust emissions from the combusted process vent, and the POHC shall be the total of the PAH compounds that are the basis for listing for waste codes K048-K052, K169-K172, F037 and F038;

b. the process vent must be controlled by combustion in a control device in accordance with RCRA emissions control standards for process vents as per 40 CFR Part 264, Subpart AA, by providing a minimum residence time of 0.50 seconds at a minimum temperature of 760°C;

c. the closed vent system emissions shall be controlled by combustion in a device that provides a minimum residence time of 0.5 seconds at a minimum temperature of 760°C (1,400°F), as per 40 CFR Part 61, Subpart FF; and

d. Dioxins and furans emissions shall be less than 0.40 ng TEQ/dscm corrected to 7 percent oxygen from the combusted process vent gas emission stream;

~~4~~5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, ~~except as provided in 40 C.F.R. § 63.1207(*l*)(1)~~. The Respondents must make this determination within forty-five (45) days following completion of the C~~P~~DT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~6~~5. All analyses required by the CD~~P~~T plan shall be performed by a NELAC -accredited laboratory or by a laboratory pre-approved by TCEQ.

~~7~~6. ~~Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), w~~Within ninety (90) days from completion of the C~~P~~DT and the CMS performance test, the Respondents shall prepare and submit to TCEQ ~~and EPA a comprehensive test report~~ CDT report that includes results for the analysis of samples, determination of emissions, and raw data, as well as the results of any performance tests, opacity or visible emission observations, continuous

monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted. ~~Submit a Notification of Compliance (NOC) to TCEQ and EPA~~ The report shall documen~~ting~~ compliance with the emission standards and continuous monitoring system requirements, and identify~~ing~~ the operating parameter limits ~~under 40 C.F.R. § 63.1209~~ for the minimum combustion chamber temperature. All data collected during the CD~~P~~T and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted as part of the CDT report~~to TCEQ and EPA along with the NOC test report~~. A copy of the CDT report shall also be submitted to the EPA.

~~8~~7. As of the date of the submission of the demonstration test report, the Respondents shall comply with all operating requirements of the CDT ~~demonstration NOC~~ report~~and the requirements of 40 C.F.R. §§ 63.1209 AND 63.1219~~.

~~9~~8. The failure to timely submit a~~n~~ ~~NOC~~ CDT report to TCEQ~~ and EPA~~ within ninety (90) days from completion of the CD~~P~~T and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, during that mode of operation under §261.6(a)(3)(iv)(C), feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes

listed waste from specific petroleum refining sources (F037, F038, K048, K049, K050, K051, K052, K169, K170, K171 AND K172). Also acceptable are materials generated from processes meeting the definition established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.F shall be construed to preclude Respondents from seeking authorization to process oil-bearing materials outside the scope of §261.6(a)(3)(iv)(C).

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and make a separate, independent determination based on information provided by the generator as to whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in the issued its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable responsed to any Notice of Deficiency (NOD) TCEQ and EPA within the thirty (30) days of receipt of time period specified by TCEQ in the NOD unless extendedcented by the TCEQ. In the event that the Respondents fail to submit a timely and completegood-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section V.F (Force Majeure) [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of thi~~s~~se CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable and appropriate requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

~~69.~~71 Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

~~70.~~72 Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the

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CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

~~71.~~73. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

~~72.~~74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

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~~73.~~75. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

~~74.~~76. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it. To the extent that this CAFO imposes obligations that are to be fulfilled specifically by one of the Respondents (including without limitation civil penalties imposed specifically against one Respondent or specific compliance actions that this CAFO indicates are to be taken specifically by one Respondent), only such Respondent shall be liable for the failure to fulfill such obligations. The other Respondent shall be required to use commercially reasonable efforts to mitigate and limit the effects of such failure.

C. ADDITIONAL REQUIREMENTS

~~75.~~77. The Respondents shall undertake the following additional requirements:

~~A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.~~

~~B~~A. ~~Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:~~

~~1. pumps;~~

~~2. compressors;~~

~~3. pressure relief devices;~~

~~4. sampling connection systems;~~

~~5. open-ended valves or lines;~~

~~6. valves;~~

~~7. connectors;~~

~~8. surge control vessels;~~

~~9. bottoms receivers; and~~

~~10. control devices and systems.~~

~~The Respondents shall assume all~~that ~~the~~ above-described ~~equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of~~ § ~~261.245(d).~~

~~C. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R. Part 61, Subpart V.~~

~~D. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.~~

~~E~~A. Pursuant to 40 C.F.R. § 61.343(a)(1), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-

vent system that routes all organic vapors from the following tanks set forth below to a control device: 1. Shaker Tank (T-30);

2. Surge Tank (T-34);

3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A); and

9. ~~Waste Water Tanks (M3, M6, S1,S2); and~~

~~10.~~ Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~B. Pursuant to 40 C.F.R. § 61.354(c), within ~~ninety (90)~~ 180 days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~C. Pursuant to 40 C.F.R. § 61.345(a), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

~~H~~D. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

~~I~~E. ~~Within ninety (90) 180 days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.~~

~~J~~F~~E~~. Within six (6) months of the effective date of the CAFO, the Respondents shall submit a written report to EPA. The Report shall include ~~the following:~~

~~1. A copy of the equipment list required by Paragraph 75.B;~~

~~2. A copy of the fugitive emission program required by Paragraph 75.C;~~

~~3. A copy of the notice required by Paragraph 75.D;~~

~~4. D~~documentation showing compliance with Paragraphs 75.~~E~~A, 75.~~F~~B, 75.~~G~~C, and 75.~~H~~D. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2).~~; and~~

~~5~~2. ~~A copy of the performance tests required by Paragraph 75.~~E~~I.~~

~~K~~F. The report must be accompanied by the following certification:

> "I certify to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~G. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~76.~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 6~~8~~9.A.3, 6~~8~~9.A.6, 6~~8~~9.A.8, 6~~8~~9.A.9, 6~~8~~9.C.1, 6~~8~~9.C.5, 6~~8~~9.D.1, and 6~~8~~9.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 6~~8~~9.A.4, 6~~8~~9.A.5, and 6~~8~~9.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~77.~~79. For the violations described in Paragraph IV.D.a.-d., "Noncompliance" shall not be deemed to have commenced, and the associated penalties shall not begin to accrue, unless such noncompliance remains uncured following seven (7) days written notice from EPA. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

~~79. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.~~

E. DISPUTE RESOLUTION

~~78.~~80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its

objections, and the basis for those objections, within ~~fifteen (15)~~ 30 calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

~~79.~~81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional ~~fifteen (15)~~ 30 calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

~~80.~~82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second ~~15~~30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second ~~15~~30-day period, the Division Director shall provide a written

statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

~~81.~~84. Any period of noncompliance and associated monetary penalties, shall be tolled during the period of any dispute resolution under this section IV.E., provided that such period shall not be tolled if the Associate Director or the Division Director, as applicable, determines in his or her reasonable discretion that the Respondents' objection was trivial or frivolous.

F. FORCE MAJEURE

~~82.~~85. A "force majeure event" is any event beyond the control of ~~the~~ either Respondent~~s~~, ~~their~~ its contractors, or any entity controlled by ~~the~~ a Respondent~~s~~ that delays the performance of any obligation under this CAFO despite ~~Defendant's~~ the Respondent's ~~best~~ commercially reasonable efforts to fulfill the obligation. "Commercially Reasonable~~Best~~ efforts" includes anticipating any ~~potential~~ reasonably foreseeable force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include ~~the~~ a Respondent's~~'~~ financial inability to perform any obligation under this CAFO.

86. The Respondent~~s~~ shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondent's~~'~~ first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondent~~s~~ shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondent~~s~~ first knew of, or by the exercise of

due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the ~~Respondent's'~~ past and proposed actions of the Respondent(s) to prevent or minimize any delay; a schedule for carrying out those actions; and the ~~Respondents'~~ rationale of the Respondent(s)for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent(s) from asserting any claim of force majeure.

~~83.~~87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

~~84.~~88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondent(s) to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

~~85.~~89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondent(s), the Complainant's position shall be binding, unless the Respondent(s) invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondent(s) bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondent(s) gave the notice required by the paragraph above, that the force majeure event

caused any delay ~~the Respondents'~~ claimed by the Respondent(s) ~~was~~ to be attributable to that event; and that the Respondent(s) exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondent(s) carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

~~86.~~90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

~~87.~~91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. ~~RETENTION OF ENFORCEMENT RIGHTS~~EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

~~88.~~92. This CAFO resolves the claims of the United States for the violations alleged in this CAFO and for any other alleged violation or area of concern under RCRA identified by EPA resulting from the June 8-11, 2010, June 14-17, 2010 and August 9-11, 2010 inspection and resulting investigation and any claims for injunctive relief relating to alleged violations of 40 C.F.R. Part 61, Subpart FF. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

~~89.~~93. Except as herein provided, ~~N~~nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of

hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. ~~Furthermore, nothing in this CAFO shall be construed~~ or to prevent or limit EPA's ~~civil and criminal~~ authorit~~ies~~y, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

~~90.~~94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. Except as herein provided, ~~T~~this CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

~~91.~~95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to ~~Section~~Paragraph I.92 of this CAFO.

~~92.~~96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any

aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

~~93.~~97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

~~94.~~98. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waive~~s~~ its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

~~95.~~99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

~~96.~~100. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. ~~This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.~~ This Final Order shall resolve only those ~~causes of action alleged herein~~claims identified in Section I.89 of the foregoing Consent Agreement. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

Message

From: Toups, Brad [Toups.Brad@epa.gov]
Sent: 6/14/2012 8:37:25 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Re: Fw: U. S. Ecology Texas Inc./TD*X Associates, L.P.
Attachments: 2012_06-14_(Final) USET - TDX CAFO.doc

Hi Evan,
Yes, I will look at it.
Brad

From: Evan Pearson/R6/USEPA/US

To: Brad Toups/R6/USEPA/US@EPA
Date: 06/14/2012 03:34 PM
Subject: Fw: U. S. Ecology Texas Inc./TD*X Associates, L.P.

Attached in the e-mail below is a draft CAFO from U.S. Ecology and TD*X. I was wondering if you would have time to look at their interim operating limits (Section III.A and their compliance demonstration plan (Section III.D), and provide comments on these provisions. We are meeting with them next Thursday (June 21st, so if I could get them by Tuesday, I would appreciate it. Thank you.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
Fax - (214) 665-3177
E-Mail - pearson.evan@epa.gov

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----- Forwarded by Evan Pearson/R6/USEPA/US on 06/14/2012 03:26 PM -----

From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Head, JD" <JDHead@fbhh.com>, "Simon Bell" <SBELL@usecology.com>, "Andrew Marshall" <amarshall@usecology.com>, "Carl Palmer" <cpalmer@tdxassociates.com>, "Gregg Meyers"

<gmeyers@tdxassociates.com>, "Mark John" <MJOHN@usecology.com>
Date: 06/14/2012 02:55 PM
Subject: U. S. Ecology Texas Inc./TD*X Associates, L.P.

CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Evan,

Attached is a redline of the June 6, 2012 revised draft consent agreement and final order (CAFO) containing the joint comments of U.S. Ecology Texas, Inc. (USET) and TD*X Associates, L.P. (TD*X). As per your June 13, 2012 email, the deadline for submitting comments on Sections III and IV.C of the revised draft CAFO was extended to COB today, June 14, 2012. The attached document provides comments on these sections but includes comments on other sections of the CAFO as well in an effort to facilitate settlement negotiations, with the exception of Section IV.A relating to penalty assessment for which comments are due June 20, 2012. Due to the complexity of the issues and the brief time allowed for comments, even with the one-day extension, USET and TD*X reserve their rights to provide additional comments on the June 6, 2012 revised draft CAFO and to modify any position expressed in the attached redline as a result of settlement negotiations.

While consistent with the general framework outlined for these negotiations, the attached comments reflect a slight change in approach from your June 6, 2012 draft. Instead of requiring interim operating requirements to be established through a review and approval process, the attached draft would establish the interim operating requirements in the CAFO itself. Similarly, interim operating parameters for the TDU are specified the attached draft CAFO as well as the performance standards for performance testing of the TDU. These operating requirements, parameters and standards have been primarily selected from the 40 CFR Part 264, Subpart AA, and 40 CFR Part 63, Subpart EEE, as appropriate to TD*X's specific technology. This approach is true to the regulatory approach embodied in 40 CFR Part 264, Subpart X, which provides that permit terms and conditions should be based on "appropriate" provisions from specified rules in these Parts.

We are planning to meet with you and other EPA personnel beginning on Thursday, June 21, 2012, to discuss our comments further; however, please do not hesitate to contact us in the meantime if you have any questions.

Regards,
Mary
J. D. (with permission)

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Web: www.mcginnislaw.com

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2012_06-14_(Fin...
USET - TDX CA...

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents deny any liability to the United States arising out of the transaction or occurrences alleged in this CAFO. Respondents also deny the truth of any allegations in this CAFO except the allegations pertaining to venue and subject matter jurisdiction in Section II.A. of this CAFO.~~admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.~~

4. The Respondents explicitly waives any right to contest the allegations and their right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are either specifically set forth herein, or are alleged violations of 40 C.F.R. Part 61; Subpart FF, for which injunctive relief is specified in Section IV.C of this CAFO.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization,

government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

~~10.~~ The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R.

~~11.~~10. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

~~12.~~ The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R.

~~13.~~11. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

~~14.~~12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

~~15.~~13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

~~16.~~14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

~~17.~~15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

~~18.~~16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA I.D. No. TSD069452340, Permit No. HW-50052-001.

~~19.~~17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

~~20.~~18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

~~21.~~19. ~~The Respondent USET has a~~An oil reclamation unit is located ~~on~~at the facility identified in Paragraph 16.

~~22.~~20. The Respondent TD*X owns and operates a thermal desorption unit (TDU), as well as the feed preparation system that includes a shaker tank (T-30) three mix tanks (T-31, T-32, and T-33), a centrifuge, and a surge tank (T-34) at the oil reclamation unit.

~~23.~~21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

~~24.~~22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation unit was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. ALLEGED VIOLATIONS

Count One – Processing Hazardous Waste Without a Permit or Interim Status

~~25.~~23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment),[1] storage, or disposal of hazardous waste.

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

~~26.~~24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~27.~~25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~28.~~26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as *that* term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)].

28. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [40 C.F.R. Parts 262 through 268, 270 or 124].

29. The Respondent USET notified the Texas Commission on Environmental Quality (TCEQ) ~~of this activity~~that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)~~.~~

~~29.~~ EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

30. ~~Hazardous wastes~~ Recyclable materials destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

31. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

32. On various dates ~~between~~ after June 15, 2008, ~~and the present,~~ certain recyclable materials ~~hazardous wastes~~ were processed in the tanks identified in Paragraph 20.

33. Some of ~~T~~the ~~hazardous waste identified~~ recyclable materials referred to in Paragraph 30 did not meet the exemption ~~definition of "recyclable materials" as that term is defined in 4~~30 T.A.C. § 335.24(a) [in 40 C.F.R. § 261.6(a)(3~~1~~)(iv)(C)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices." ~~EPA has not promulgated a definintiondefinition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices in its regulations. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].~~

~~34. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraphs 30 – 31.~~ Respondent USET ceased the receipt of the hazardous waste identified in Paragraphs ~~320~~-33~~1~~.

~~35.~~34. The Respondent~~s~~ TD*X "processed" (treated) hazardous waste as that term is defined in 30 T.A.C. § 335.1(117) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

~~36.~~35. To date, neither the Respondent USET or Respondent TD*X ha~~ve~~s applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

~~37.~~36. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by processing (treating) hazardous waste without a permit~~.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

~~38.~~37. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~39.~~38. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~40.~~39. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

~~41.~~40. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)]. ~~The Respondent USET notified the TCEQ of this activity.~~

42. Recyclable materials identified in 30 T.A.C. § 335.24(c) [40 C.F.R. §261.6(a)(3)] are not subject to regulation under Subchapters B-I or O of Chapter 335, 30 T.A.C. Chapters 1, 3, 10, 17, 20, 31, 39, 40, 50, 70, 80, 86, 261 or 305, except as provided in 30 T.A.C. § 335.24(g) and (h) [parts 262 through 268, 270 or 124].

43. The Respondent USET notified the ~~Texas Commission on Environmental Quality (TCEQ)~~ that it reclaims oil from oil-bearing hazardous wastes from petroleum refining, production and transportation practices in accordance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

~~42.~~44. EPA has not promulgated a definition of "oil bearing hazardous wastes from petroleum refining, production and transportation practices" in its regulations.

~~43.~~45. Recyclable materials ~~Hazardous wastes~~ destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

46. On various dates ~~between~~ after June 15, 2008 ~~and the present~~, certain ~~hazardous wastes~~Recyclable Materials were fed into the TDU that did not meet the exemption in 40 C.F.R. § 261.6(a)(3)(iv)(C) ~~definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)]~~ because the hazardous wastes were not "oil-bearing

hazardous wastes from petroleum refining, production, and transportation practices."

Respondent USET ceased the receipt of these hazardous wastes.

~~44. The exemption for recyclable materials in 30 T.A.C. §335.24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for to the hazardous waste identified in Paragraph 42.~~

~~45.~~47. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

~~46.~~48. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~47.~~49. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants ~~and to remove them~~ from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents~~,~~ ~~and transfers them~~ to a gas treatment

system ~~using a nitrogen carrier gas~~. The oil is ~~then~~ recovered by condensing ~~it~~ vapor phase organic constituents in the gas treatment system. The noncondensable gases are recirculated to the heated rotary dryer. ~~The~~ An approximate 100 cfm vent stream of noncondensable gases is extracted to balance pressures within the system, filtered and injected into the combustion chamber of the TDU. ~~filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned~~

~~48.~~50. The separation of the organic contaminants from the hazardous waste in the TDU's indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

~~49.~~51. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

~~50.~~52. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste without a permit~~.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

~~51.~~53. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~52.~~54. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~53.~~55. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

~~54.~~56. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

~~54. The burning of gases in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].~~

~~55.~~57. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

~~56.~~58. The combustion chamber of the TDU is an enclosed device that uses controlled flame combustion to indirectly heat a rotary dryer.

~~57.~~59. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

~~58.~~60. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it ~~thermally processes (thermally treats) hazardous waste by burning hazardous waste using controlled flame combustion~~meets the criteria established in Paragraphs II.B.57 and 58.

[EPA NEEDS TO LAY OUT ITS ARGUMENT THAT WE ARE BURNING HAZARDOUS WASTE TO GET TO PARAGRAPH 60].

~~59.~~61. To date, neither the Respondent USET nor Respondent TD*X has~~ve~~ applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

~~60.~~62. Therefore, the Respondent USET and the Respondent TD*X have violated ~~and continue to violate~~ Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.~~ The Respondent USET and the Respondent TD*X have proposed to reconfigure the TDU so that the vent stream of noncondensable gases is

routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

~~61.~~63. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

~~62.~~64. Between on or about March 9, 2010, and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

~~63.~~65. The roll-off boxes identified in Paragraph 6~~2~~3 contained material which ~~was destined for the TDU~~had entered the oil reclamation process and was~~ere~~ being temporarily staged ~~to~~ before undergoing subsequent stages of the reclamation process. The Respondent USET discontinued the use of the area called the "Y" for this purpose.

~~64.~~66. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

~~65.~~67. The roll-off boxes identified in Paragraph 6~~2~~3 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

~~66.~~68. ~~To date, t~~The Respondent USET ha~~s~~d not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y" between on or about March 9, 2010, and June 11, 2010.

~~67.~~69. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA,

42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] ~~by storing hazardous waste without a RCRA permit or interim status~~.

III. COMPLIANCE ORDER

~~68.~~70. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

1. As of the effective date of this CAFO, feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and ~~transporation~~transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes listed waste from specific Petroleum Refining Sources (F037, F038, K048, K049, K050, K051, K052, K169, K170, K171, AND K172). Also acceptable are materials generated from processes meeting the defini~~n~~tion established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follows:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the processes meeting the definition of aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and make a separate, independent determination based on information provided by the generator as to whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices~~ at the generator's facility~~.

3. ~~Within seven (7) 14 days of~~ Beginning on the effective date of this CAFO, the Respondents shall ~~submit to EPA and TCEQ for approval~~operate the TDU with~~,~~ the following interim limits on operating parameters~~, including, but not limited, to the following~~:

a. the maximum hazardous waste feed rate to the rotary dryer shall be 310 tons per day;

b. ~~limits on ash, semivolatile metals, low volatile metals, mercury, and total chlorine (organic and inorganic) (Cl_2 and HCl);~~ dryer feed material limited to a maximum organic halogen content of~~at~~ 4000 ppm;

c. a minimum solids discharge temperature of 650°F from the rotary dryer or that treated product desorber solids must be considered to be untreated, be separately collected, and be reprocessed through the rotary dryers, except for the first two hours after start-up of feed when the product material does not contact the product thermocouple ~~temperature~~;

d. ~~-~~maximum internal pressure in the rotary dryer of 0.00 inches (W.C.) with a 60-second time delay while~~en~~ the dryer feed is on; ~~gas/vapor flow rate to the Off-Gas Condensing Recovery System;~~

e. maximum Off-Gas Condensing Recovery System outlet temperature of 130°F with a 5-minute delay when the dryer feed is on;

f. minimum combustion chamber temperature of 1400°F with a 5-minute delay in the rotary dryer external furnace while the dryer feed is on; and

g. maximum gas/vapor flow rate to the combustion chamber of 180 scfm.

~~h. other Off-Gas Condensing Recovery Systems operating parameter limits; and~~

~~i. any other operating parameter limits for air pollution control devices used.~~

~~The submittal shall include monitoring and recordkeeping requirements.~~ The Respondents shall perform ~~implement the~~ monitoring and maintain records relating to these operating parameter limits. ~~as approved or modified by EPA and TCEQ.~~

4. Within ninety ~~180 (180)~~ 90 days of the effective date of this CAFO, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU that

immediately and automatically cuts off the hazardous waste feed when any of the following conditions occurs: ~~in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).~~

a. ~~O~~oxygen content in the process vent greater than 7% with 1-minute delay;

b. internal pressure in the dryer feed breach greater than 0.0 inches W.C. with 1-minute delay;

c. temperature at the outlet of the gas treatment system condensers greater than 130°F with 5-minute delay;

d. temperature in the combustion zone of the dryer's external furnace less than 1,400°F with a 5-minute delay;

e. loss of operation of the gas treatment system carrier gas recirculation blower; and

f. valve position of the process vent injection verified as directing the process vent away from the dryer's external furnace combustion zone with a 1-minute delay.

5. Within ~~ninety 180 (180) days~~one year of the effective date of this CAFO, or within ninety (90) days after issuance of the permit required for installation of the reconfigured TDU under Tex. Health and Safety Code Chapter 382, whichever is later, the Respondents shall reconfigure the TDU so that the non-condensable vent gases are routed to a thermal oxidizer unit (TOU) instead of the external combustion chamber of the TDU rotary dryer. After the reconfiguration has occurred, for the purposes of Section III and IV.C of this CAFO only, references to the TDU shall include the TOU, unless otherwise indicated.

6. ~~Within ninety 180 (180) days of~~Beginning on the ~~effective~~ date of ~~this CAFO~~initial operation of the TOU, ~~the~~ Respondents shall comply with ~~also submit to EPA and TCEQ for approval,~~ the following interim operating parameters for the TOU ~~including, but not limited to~~:

a. minimum ~~operating~~ temperature of 1,400°F in the TOU combustion chamber when the feed to the dryer is on; and

b. maximum flue gas flow rate based on a residence time of 0.5 seconds at 1400°F, as determined by engineering calculations at the measured process flow rate.

~~The Respondents shall implement the operating parameter limits as approved or modified by EPA and TCEQ.~~

7. Within thirty (30)~~ninety 180 (180)~~ days of the effective date of this CAFO, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 264.1033(pf) applicable to process heaters~~63.1209(a)~~. Within sixty (60) days of the initial operation of the reconfigured TDU, ~~T~~the Respondents shall also install, calibrate and operate temporary continuous monitors to verify that ~~use~~ carbon monoxide ~~and~~ or hydrocarbon ~~CEMS to demonstrate and monitor~~ is in compliance with the carbon monoxide ~~and~~or hydrocarbon standards of 40 C.F.R. ~~Part 63, Subpart EEE~~§63.1203(a)(5), provided that any compliance demonstration required by that subsection shall be conducted pursuant to the performance test specified in Section III.D. of this CAFO. The Respondents shall also use oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen. The~~se~~ CEMS shall be located in compliance with 40 C.F.R. Part 60, Appendix B requirements ~~for rotary dryer emission point (EP-1),~~ the combustion chamber emission point (EP2)~~, and~~~~following~~ for the TOU. The Respondents shall operate the TDU and the TOU in a manner that the ~~one minute and~~ hourly rolling averages are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(a)(6). After thirty (30) days of operation of temporary CEMS, the Respondents are allowed to remove those

instruments provided that the CEMS required by §264.1033(f) actuates the AWFCO. The Respondents shall submit a written demonstration as to these findings to the TCEQ.

~~8. Within one hundred twenty270 (120270) days of the effective date of this CAFO, the Respondents shall submit to EPA and TCEQ for approval, a feedstream analysis plan prepared in accordance with 40 C.F.R. § 63.1209(c)(2). The Respondents shall implement the plan as approved or modified by EPA and TCEQ.~~

8~~9~~. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA, with a copy to TCEQ, which contains ~~. The Report shall include~~ the following:

a. Identification of~~y~~ the customer, the customer's SIC and NAICS code, copies ~~of the relevant~~ waste approval documents, including the generator's certification that the oil-bearing hazardous waste is from petroleum refining, production and transportation practices, and manifests for the previous six month period.

[NEED TO DISCUSS DETAILS AND FORMAT OF INFORMATION NEEDED BY EPA]

~~b. All time periods in where there were exceedances of the one minute and hourly rolling averages required under Paragraph 68.A.7.~~

b~~c~~. ~~The initial Report shall include d~~Documentation ~~showing the~~ of installation ~~dates~~ of the equipment required by Paragraphs 6~~9~~8.A.4, A5, and A.7.

The Report may be submitted in an electronic format (i.e., compact disk). The Respondents may claim the report as confidential business information, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within ~~ninety (90) days~~ one year of the effective date of this CAFO, the Respondent shall submit to TCEQ and EPA, an application for a Class 3 RCRA Permit Modification to permit the TDU as a miscellaneous unit under 40 C.F.R. Part 264, Subpart X in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33). ~~This permit application will serve as the Documentation of Compliance required by 40 C.F.R. § 63.1211(c).~~

2. The permit application shall also include ~~relevant~~ requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU, the TOU, and the oil reclamation unit, ~~including~~relating to ~~an engineering report,~~ waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351), except that with regard to continuous monitoring required by §264.347(a)(1) and (2), only continuous monitoring of combustion temperature shall be required.

3. The Respondents shall also request that the ~~final~~ issued RCRA permit ~~also~~ include the following:

a. ~~The relevant~~ Appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE;

b. ~~The f~~Feedstock limitations ~~set forth in Paragraph 68.F~~; and

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers~~; and~~.

~~d. Any risk-based terms and conditions necessary to protect human health and the environment.~~

4. The failure to timely submit a Class 3 Permit Modification to TCEQ and EPA within the deadline set forth in Paragraph 69~~8~~.B.1 shall result in the termination of the Respondents'

authorization to operate the TDU on that date unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

5. By no later than ~~two~~ three and one-half years (~~30~~42 months) from the effective date of this CAFO, the Respondents must complete all permitting requirements and ~~have a final~~ obtain issuance from the TCEQ of a RCRA Subpart X permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subparts ~~A and~~ EEE. In the event that TCEQ does not issue a final RCRA Subpart X permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~**C. Public NoticePublic Notice of Intent to Comply (NIC)/Public Participation**~~

~~1. Within seven (7) days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b), and an initial notification pursuant to 40 C.F.R. § 63.9(b).~~

~~2. The Respondents shall make the draft NIC available to the public either (a) at least thirty (30) days prior to the public meeting pursuant to 40 C.F.R. § 63.1210(b)(2), or (b) at a time approved by EPA and TCEQ.~~

~~3~~1. ~~The Respondents shall provide the following notices to the public:~~

~~a. Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 T.A.C.~~

~~§§ 39.418 and 39.509. Notice of the public meeting required by 30 T.A.C. § 305.69(d)(4) shall be included with the Notice of Receipt of Application and Intent to Obtain Permit, as required by 30 T.A.C. § 39.418;~~ and

~~b. Notice to the public of the Notice of Application and Preliminary Decision pursuant to 30 T.A.C. §§ 39.419 and 39.509; and.~~

~~c. NIC public meeting required by 40 C.F.R. § 63.1210(c)(3).~~

~~4~~2. ~~The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d)(4) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) day comment period. This public meeting shall also be coordinated with the NIC public meeting required by 40 C.F.R. § 63.1210(c)~~.

~~5. The Respondents shall submit to TCEQ and EPA the final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.~~

~~6. The failure to timely submit the final NIC to TCEQ and EPA no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.~~

C~~D~~. Startup, Shutdown, and Malfunction Plan

1. Prior to operation of the reconfigured TDU, ~~Within one hundred twenty (120)~~240 ~~days of the effective date of this CAFO,~~ the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and ~~63.1206(c)(2)~~include provisions to comply with AWFCOs as per Section 698.A.4 of this CAFO during Startup, Shutdown and Malfunctions. The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or

submission of any additional information. A copy of the Startup, Shutdown, and Malfunction Plan shall also be submitted to EPA.

D~~E~~. ~~Comprehensive Performance~~ Compliance Demonstration Test (CD~~P~~T)

1. The Respondents shall perform a ~~comprehensive performance~~ compliance demonstration test (CD~~P~~T) as set forth below. The CD~~P~~T is required to demonstrate compliance with the emissions standards of 40 C.F.R. Part ~~63~~264, Subparts O and AA ~~EEE~~, establish limits for the operating parameters ~~provided by 40 C.F.R. § 61.1209,~~ identified in the RCRA permit modification application required by Section III.B, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within one hundred twenty (120) days of the effective date of this CAFO, the Respondents shall submit to TCEQ ~~and EPA~~ for approval a ~~complete and approvable comprehensive performance test~~C~~P~~DT plan and a continuous monitoring system (CMS) performance test plan pursuant to the appropriate requirements of 40 C.F.R. §~~§ 63.7, 63.1207, and 63.1209~~270.62(b)(2). The CD~~P~~T plan shall ~~also~~ provide for a performance test to determine the ~~efficiency and~~ operating parameters of the condensers from the Off-Gas Condensing Recovery System, the overall equivalent~~capture efficiency,~~ destruction and removal efficiency of the TDU system including the TOU.~~, and the actual nature, pattern, and quantity of emissions from EPN EP-2, the TOU, and any other fugitive or point source emissions of the TDU system capable of routing off-gas from the TDU to the atmosphere, including its air contaminant control systems, product recovery systems, and treated material handling system.~~ Based on the principal operation of the TDU being the reclamation of oil-bearing hazardous waste from petroleum refining, production and transportation practices, the POHC for the DRE determination shall be the sum of all polynuclear aromatic hydrocarbon (PAH) compounds in the listings for K048-

K052, K169-K172, F037 and F038, because PAH compounds have the highest difficulty of incineration of the organic constituents that are the basis for listing of these wastes. Copies of the CDT plan and CMS test plan shall also be submitted to EPA.

~~3. The Respondents shall make the CPT plan and CMS performance test plan available for public review upon issuance of the notice of NIC public meeting.~~

~~4~~3. The Respondents shall implement the CD~~P~~T Plan and the CMS performance test plan as approved by TCEQ~~ and EPA~~, within ninety (90) days after approval of the CD~~P~~T Plan and the CMS performance test plan, or within sixty (60) days after installation of the TOU, whichever is later. During the testing, the Respondents shall ~~comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g)~~ assure that each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. As a minimum during the CD~~P~~T, the Respondents shall demonstrate that the TDU and TOU achieve the following performance standards:

a. the equivalent "destruction and removal efficiency" (DRE) must be greater than 99.99% for one designated POHC fed to the TDU, as per 40 CFR 264, Subpart O, based on the mass feed rate of the POHC fed to the TDU and the mass emission rate of the same POHC present in the exhaust emissions from the combusted process vent, and the POHC shall be the total of the PAH compounds that are the basis for listing for waste codes K048-K052, K169-K172, F037 and F038;

b. the process vent must be controlled by combustion in a control device in accordance with RCRA emissions control standards for process vents as per 40 CFR Part 264, Subpart AA, by providing a minimum residence time of 0.50 seconds at a minimum temperature of 760°C;

c. the closed vent system emissions shall be controlled by combustion in a device that provides a minimum residence time of 0.5 seconds at a minimum temperature of 760°C (1,400°F), as per 40 CFR Part 61, Subpart FF; and

d. Dioxins and furans emissions shall be less than 0.40 ng TEQ/dscm corrected to 7 percent oxygen from the combusted process vent gas emission stream;

~~4~~5. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations) that they have exceeded any emission standard for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, ~~except as provided in 40 C.F.R. § 63.1207(*l*)(1)~~. The Respondents must make this determination within forty-five (45) days following completion of the C~~P~~DT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

~~6~~5. All analyses required by the CD~~P~~T plan shall be performed by a NELAC -accredited laboratory or by a laboratory pre-approved by TCEQ.

~~7~~6. ~~Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), w~~Within ninety (90) days from completion of the C~~P~~DT and the CMS performance test, the Respondents shall prepare and submit to TCEQ ~~and EPA a comprehensive test report~~ CDT report that includes results for the analysis of samples, determination of emissions, and raw data, as well as the results of any performance tests, opacity or visible emission observations, continuous

monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted. ~~Submit a Notification of Compliance (NOC) to TCEQ and EPA~~ The report shall documen~~ting~~ compliance with the emission standards and continuous monitoring system requirements, and identify~~ing~~ the operating parameter limits ~~under 40 C.F.R. § 63.1209~~ for the minimum combustion chamber temperature. All data collected during the CD~~P~~T and the CMS performance test (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted as part of the CDT report~~to TCEQ and EPA along with the NOC test report~~. A copy of the CDT report shall also be submitted to the EPA.

~~8~~7. As of the date of the submission of the demonstration test report, the Respondents shall comply with all operating requirements of the CDT ~~demonstration NOC~~ report~~and the requirements of 40 C.F.R. §§ 63.1209 AND 63.1219~~.

~~9~~8. The failure to timely submit a~~n~~ ~~NOC~~ CDT report to TCEQ~~ and EPA~~ within ninety (90) days from completion of the CD~~P~~T and the CMS performance test shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.F (Force Majeure).

F. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, during that mode of operation under §261.6(a)(3)(iv)(C), feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from petroleum refining, production and transportation practices. Oil-bearing hazardous waste from petroleum refining, production or transportation practices includes

listed waste from specific petroleum refining sources (F037, F038, K048, K049, K050, K051, K052, K169, K170, K171 AND K172). Also acceptable are materials generated from processes meeting the definition established for ~~facilities whose primary~~ Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) ~~are~~ as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Nothing in this Section III.F shall be construed to preclude Respondents from seeking authorization to process oil-bearing materials outside the scope of §261.6(a)(3)(iv)(C).

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to obtain a certification from the generator that the hazardous waste in question is oil-bearing hazardous waste from petroleum refining, production and transportation practices and make a separate, independent determination based on information provided by the generator as to whether the hazardous waste in question is "oil-bearing," and that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in the issued its Final RCRA permit.

G. Submission, Revision, and Approval Process

1. For all applications or plans required be submitted to TCEQ and/or EPA approval under this CAFO, TCEQ/EPA will review these applications or plans and issue only one Notice of Deficiency (NOD) to the Respondents in accordance with 30 T.A.C. §§ 281.3(c) and 281.19(a). The Respondents must provide an approvable responsed to any Notice of Deficiency (NOD) TCEQ and EPA within the thirty (30) days of receipt of time period specified by TCEQ in the NOD unless extendedcented by the TCEQ. In the event that the Respondents fail to submit a timely and completegood-faith approvable NOD response, the Respondents' authorization to operate the TDU shall terminate on the NOD response deadline unless that deadline has been extended pursuant to Section V.F (Force Majeure) [thirty (30) days from the date of receipt of the NOD].

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart X – Miscellaneous Unit in accordance with 30 T.A.C. § 335.152(a)(16) (40 C.F.R. Part 264, Subpart X), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, ~~270.19,~~ 270.23, and 270.30 – 270.33), and which incorporates ~~the applicable~~ appropriate requirements of 40 C.F.R. Part 264, Subparts I through O and AA through CC and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE.

2. The Respondents may seek relief under the provisions of Section IV.F of thi~~s~~se CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925(c)(3), 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable and appropriate requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subpart~~s A and~~ EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R.

§ 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.E of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

~~69.~~71 Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

~~70.~~72 Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the

CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

~~71.~~73. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

~~72.~~74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

~~73.~~75. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

~~74.~~76. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it. To the extent that this CAFO imposes obligations that are to be fulfilled specifically by one of the Respondents (including without limitation civil penalties imposed specifically against one Respondent or specific compliance actions that this CAFO indicates are to be taken specifically by one Respondent), only such Respondent shall be liable for the failure to fulfill such obligations. The other Respondent shall be required to use commercially reasonable efforts to mitigate and limit the effects of such failure.

C. ADDITIONAL REQUIREMENTS

~~75.~~77. The Respondents shall undertake the following additional requirements:

~~A. The Respondents agree that the oil reclamation unit and the TDU are subject to the requirements of 40 C.F.R. Part 61, Subparts V and FF.~~

~~B~~A. ~~Within thirty (30) days of the effective date of the CAFO, the Respondents shall identify the following equipment in the oil reclamation unit and the TDU that is in "volatile hazardous air pollutant" (VHAP) service, as that term is defined by 40 C.F.R. § 61.241:~~

~~1. pumps;~~

~~2. compressors;~~

~~3. pressure relief devices;~~

~~4. sampling connection systems;~~

~~5. open-ended valves or lines;~~

~~6. valves;~~

~~7. connectors;~~

~~8. surge control vessels;~~

~~9. bottoms receivers; and~~

~~10. control devices and systems.~~

~~The Respondents shall assume all~~that ~~the~~ above-described ~~equipment is in VHAP service unless otherwise demonstrated in accordance with the requirements of~~ § ~~261.245(d).~~

~~C. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondents shall implement a fugitive monitoring program in accordance with the requirements of 40 C.F.R. Part 61, Subpart V.~~

~~D. Within ninety (90)~~ 180 ~~days of the effective date of the CAFO, the Respondent shall submit the notice required by 40 C.F.R. § 61.247(a) to TCEQ.~~

~~E~~A. Pursuant to 40 C.F.R. § 61.343(a)(1), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate, and maintain a fixed roof and closed-

vent system that routes all organic vapors from the following tanks set forth below to a control device: 1. Shaker Tank (T-30);

2. Surge Tank (T-34);

3. Condensate Water Tanks (T-3A, T3-B);

4. T-10 Series Tanks (T-10, T-11, T-12, T-13);

5. T-30 Series Tanks (T-31, T-32, T-33);

6. Filtrate Mix Tank (T-5);

7. Filtrate Tank (T-6);

8. Filtrate Skim Tank (T-6A); and

9. ~~Waste Water Tanks (M3, M6, S1,S2); and~~

~~10.~~ Centrifuge.

The fixed-roofs shall meet the requirements of 40 C.F.R. § 61.343(a)(1)(i), and the control devices shall be designed and operated in accordance with the requirements of 40 C.F.R. § 61.349. The emissions from the tanks shall be routed to a carbon adsorption system when the TOU is not operating or out of service. The carbon in the carbon adsorption systems used as control device shall be replaced immediately when carbon breakthrough is indicated. The devices shall be monitored ~~on a daily basis when emissions are routed to the device,~~ as required by 40 C.F.R. § 61.354(d).

~~F~~B. Pursuant to 40 C.F.R. § 61.354(c), within ~~ninety (90)~~ 180 days of the effective date of this CAFO, the Respondents shall install, calibrate, maintain, and operate according to manufacturer's specifications, devices to continuously monitor the control devices operations required by 40 C.F.R. § 61.349.

~~G~~C. Pursuant to 40 C.F.R. § 61.345(a), within ~~ninety (90)~~180 days of the effective date of the CAFO, the Respondents shall install, operate and maintain covers on Bins 1, 2, 3, 4, and the Centrifuge solid bins that meet the requirements of 40 C.F.R. § 61.345(a)(1). The cover and openings shall be closed and secured at all time except for waste loading, removal, inspection or sampling, as required by 40 C.F.R. § 61.345(a)(1)(ii).

~~H~~D. The Respondents shall use a submerge fill pipe when transferring waste into the containers by pumping, as required by 40 C.F.R. § 61.345(a)(2).

~~I~~E. ~~Within ninety (90) 180 days of the effective date of the CAFO, the Respondents shall conduct performance tests for the TOU and the carbon adsorption system to demonstrate compliance with the requirements of 40 C.F.R. § 61.349. The performance tests shall be conducted in accordance with the requirements of 40 C.F.R. § 61.355.~~

~~J~~F~~E~~. Within six (6) months of the effective date of the CAFO, the Respondents shall submit a written report to EPA. The Report shall include ~~the following:~~

~~1. A copy of the equipment list required by Paragraph 75.B;~~

~~2. A copy of the fugitive emission program required by Paragraph 75.C;~~

~~3. A copy of the notice required by Paragraph 75.D;~~

~~4. D~~documentation showing compliance with Paragraphs 75.~~E~~A, 75.~~F~~B, 75.~~G~~C, and 75.~~H~~D. This includes documentation that the control devices meet the requirements set forth in 40 C.F.R. § 61.349(a)(2).~~; and~~

~~5~~2. ~~A copy of the performance tests required by Paragraph 75.~~E~~I.~~

~~K~~F. The report must be accompanied by the following certification:

> "I certify to the best of my knowledge and belief that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

~~L~~G. The Report shall be sent to the following:

Craig Lutz
Toxics Enforcement Section (6EN-AT)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

D. STIPULATED PENALTIES

~~76.~~78. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 6~~8~~9.A.3, 6~~8~~9.A.6, 6~~8~~9.A.8, 6~~8~~9.A.9, 6~~8~~9.C.1, 6~~8~~9.C.5, 6~~8~~9.D.1, and 6~~8~~9.E.2

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Certain Interim Operating Requirements – Paragraphs 6~~8~~9.A.4, 6~~8~~9.A.5, and 6~~8~~9.A.7

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

d. Failure to Comply with Additional Requirements – Section IV.C

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

~~77.~~79. For the violations described in Paragraph IV.D.a.-d., "Noncompliance" shall not be deemed to have commenced, and the associated penalties shall not begin to accrue, unless such noncompliance remains uncured following seven (7) days written notice from EPA. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

~~79. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.~~

E. DISPUTE RESOLUTION

~~78.~~80. If the Respondents object to any decision or directive of EPA in regard to Section III or IV.C, the Respondents shall notify each other and the following persons in writing of its

objections, and the basis for those objections, within ~~fifteen (15)~~ 30 calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

~~79.~~81. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional ~~fifteen (15)~~ 30 calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

~~80.~~82. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second ~~15~~30-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second ~~15~~30-day period, the Division Director shall provide a written

statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

83. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

~~81.~~84. Any period of noncompliance and associated monetary penalties, shall be tolled during the period of any dispute resolution under this section IV.E., provided that such period shall not be tolled if the Associate Director or the Division Director, as applicable, determines in his or her reasonable discretion that the Respondents' objection was trivial or frivolous.

F. FORCE MAJEURE

~~82.~~85. A "force majeure event" is any event beyond the control of ~~the~~ either Respondent~~s~~, ~~their~~ its contractors, or any entity controlled by ~~the~~ a Respondent~~s~~ that delays the performance of any obligation under this CAFO despite ~~Defendant's~~ the Respondent's ~~best~~ commercially reasonable efforts to fulfill the obligation. "Commercially Reasonable~~Best~~ efforts" includes anticipating any ~~potential~~ reasonably foreseeable force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include ~~the~~ a Respondent's~~'~~ financial inability to perform any obligation under this CAFO.

86. The Respondent~~s~~ shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondent's~~'~~ first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondent~~s~~ shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondent~~s~~ first knew of, or by the exercise of

due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the ~~Respondent's'~~ past and proposed actions of the Respondent(s) to prevent or minimize any delay; a schedule for carrying out those actions; and the ~~Respondents'~~ rationale of the Respondent(s)for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent(s) from asserting any claim of force majeure.

~~83.~~87. The Respondent also shall provide notice orally or by electronic or facsimile transmission to the other Respondent not later than 24 hours after the time Respondent first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event, provided that the failure to give such notice shall not limit either Respondent's responsibilities under this CAFO.

~~84.~~88. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondent(s) to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

~~85.~~89. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondent(s), the Complainant's position shall be binding, unless the Respondent(s) invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondent(s) bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondent(s) gave the notice required by the paragraph above, that the force majeure event

caused any delay ~~the Respondents'~~ claimed by the Respondent(s) ~~was~~ to be attributable to that event; and that the Respondent(s) exercised their reasonable best efforts to prevent or minimize any delay caused by the event. If the Respondent(s) carry this burden, the delay at issue shall be deemed not to be a violation of the affected obligation of this CAFO.

G. NOTIFICATION

~~86.~~90. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P.:

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

Section Manager
Industrial and Hazardous Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087 MC 130
Austin, TX 78711

H. MODIFICATION

~~87.~~91. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

I. ~~RETENTION OF ENFORCEMENT RIGHTS~~EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

~~88.~~92. This CAFO resolves the claims of the United States for the violations alleged in this CAFO and for any other alleged violation or area of concern under RCRA identified by EPA resulting from the June 8-11, 2010, June 14-17, 2010 and August 9-11, 2010 inspection and resulting investigation and any claims for injunctive relief relating to alleged violations of 40 C.F.R. Part 61, Subpart FF. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

~~89.~~93. Except as herein provided, ~~N~~nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of

hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. ~~Furthermore, nothing in this CAFO shall be construed~~ or to prevent or limit EPA's ~~civil and criminal~~ authorit~~ies~~y, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

~~90.~~94. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. Except as herein provided, ~~T~~this CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

~~91.~~95. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility or the oil reclamation unit, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to ~~Section~~Paragraph I.92 of this CAFO.

~~92.~~96. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any

aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

J. INDEMNIFICATION OF EPA

~~93.~~97. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

K. COSTS

~~94.~~98. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waive~~s~~ its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

L. TERMINATION

~~95.~~99. At such time as the Respondents believe they have completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

M. EFFECTIVE DATE

~~96.~~100. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____

TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. ~~This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.~~ This Final Order shall resolve only those ~~causes of action alleged herein~~claims identified in Section I.89 of the foregoing Consent Agreement. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law.. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copies of the CAFO were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

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WRITER'S DIRECT DIAL NUMBER:
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mreagan@mcginnislaw.com
Fax: (512) 505-6313

April 17, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

During the April 11, 2012 meeting EPA expressed it did not understand its conclusion related to the Rineco case and was unable to provide an explanation of how EPA concluded that Subpart X permitting was appropriate for Rineco's TMW unit. Additionally, EPA reiterated its need to be consistent in its determinations and that the conclusions EPA has established in U.S. Ecology's case are consistent with prior decisions. These comments appear contrary to each other and concern our team greatly on the reliance of the Rineco decision in our case and need for consistent application of EPA's interpretations.

We have provided below our analysis of the correspondence provided by EPA to the State of Arkansas stating its justification and conclusions that a Subpart X permit rather than a Subpart O permit was required. This clarification and understanding is imperative to ensure the application of these standards is consistent.

The July 12, 2010 letter from EPA to Thomas Rheaume at the Arkansas Department of Environmental Quality provides a process description that omits the condensing system between the thermal desorber and the Thermal oxidizer. As a result EPA concluded,

> the TOU is considered an *afterburner chamber* for the combustion process initiated in the TMWU. Subsequently, the two process units **together** (i.e., the TMWU followed by the TOU) are classified as an incinerator (emphasis added).

The letter offers two EPA interpretive memos to support its position, neither of which contemplates the applicability of these standards to RCRA exempt recycling units.

The January 4, 2011 letter from EPA to Mike Bates at Arkansas Department of Environmental Quality clarifies and provides a correction to that interpretation. The letter states that EPA did not consider the condensing system in the July 12, 2010 determination and stated that the condensing system changes the conclusions of the applicability of the incinerator standards. This one process difference resulted in EPA changing its conclusion that the units are "better classified as miscellaneous units under RCRA" and that "the two units are **not** 'hazardous waste combustors' as defined in 40 CFR §63.1201 (emphasis added)."

The interpretive memos provided by EPA support that the incineration standards are applicable if the thermal desorption unit is followed by an afterburner. EPA's conclusion clearly draws a distinction that the recovery of vapors in Rineco's primary and secondary condensers establishes that the thermal oxidizer is not acting as an afterburner, as originally referenced in EPA's July 12, 2010 letter. Therefore, the conclusion of Subpart X – Miscellaneous Unit applicability is based solely on the treatment activity that is occurring in the Thermal Metals Wash (TMW) Unit.

Like Rineco, the thermal desorption process at U.S. Ecology involves the condensation of gases immediately following the TDU. At U.S. Ecology, the **entire gas stream** is passed through condensers and the non-condensable fraction routed back into the TDU. A slip stream of non-condensable gases is routed through a process vent to the combustion chamber to maintain a pressure balance within the system. Thus, at a minimum, the combustion chamber does not qualify as an incinerator based on the analysis in EPA's January 4, 2011 applicability determination letter.

More importantly, however the TDU processes material specifically defined under RCRA's reclaimed oil exemption. Rineco's TMW, which was determined to be for material destruction, is distinguished from TD*X's TDU, which is for exempt material reclamation. Thus, establishing a consistent evaluation would recognize this distinction and conclude that TD*X's system is neither a hazardous waste combustor nor a Subpart X unit; rather, it is exempt from these requirements in §261.6(b), which provides that recyclable materials including reclaimed oil are not subject to regulation under Part 264, including Subparts O and X, relating to incinerators and miscellaneous units, respectively. Section 261.6(c)(1) further provides that the recycling process is exempt from regulation.

While generally exempting these recycling operations from regulation, §261.6 requires compliance with 40 CFR Parts 264 and 265, Subparts AA and BB, as applicable, for recycling units located at permitted hazardous waste management facilities. As we discussed at our April 11, 2012 meeting, regulation of the oil reclamation process as a distillation operation under Subpart AA is an appropriate mechanism under RCRA to address EPA's concerns about any air emissions associated with the combustion chamber's process vent. Using this approach not only addresses EPA's specific process vent concern but also ensures programmatic consistency highlighted by EPA at our meeting as a key objective.

Sincerely,

Mary Reagan

MBR/rrh

cc: Mark Hansen, EPA
Earl Lott, TCEQ
Simon Bell, USET
Andrew Marshall, USET
J.D. Head
(via e-mail)

Message

From: Toups, Brad [Toups.Brad@epa.gov]
Sent: 4/16/2012 6:32:18 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
Subject: Re: Draft USET - TD*X CAFO
Attachments: Draft USET-TDX CAFO.docx

Hi Evan,
I suggest the following additional language (in italics) to your referenced paragraph E.2:

2. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System *and the capture efficiency, destruction and removal efficiency, and actual nature, pattern, and quantity of emissions from EPN EP-2 and any other fugutive or point source of emissions of the Thermal Desorption Unit system capable of routing off-gas from the Thermal Desportion Unit to atmosphere including its air contaminant control systems, product recovery systems, and treated material handling system*. A copy of the CPT Plan shall be submitted to EPA.

Thanks
Brad

From: Evan Pearson/R6/USEPA/US

To: Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Brad Toups/R6/USEPA/US@EPA
Date: 04/16/2012 10:29 AM
Subject: Draft USET - TD*X CAFO

I need a few questions answered before I can finalize the CAFO (copy attached).

Eva - Please answer the questions related to Paragraphs 68.A.2 and 3.

Craig/Brad - Please answer the question related to Paragraph 68.E.2.

Thanks.

Draft USET-TDX
CAFO.docx

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
US ECOLOGY TEXAS, INC., and TD*X ASSOCIATES LP	)	DOCKET NOS. RCRA-06-2012-0936 and RCRA-06-2012-0937
RESPONDENTS	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and US Ecology Texas, Inc. and TD*X Associates L.P. (Respondents) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties and the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondents admits the jurisdictional allegations herein; however, the Respondents neither admits nor denies the specific factual allegations contained in this CAFO.

4. The Respondents explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waive all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

6. The Respondents consent to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. US Ecology Texas, Inc. (USET) is a corporation incorporated under the laws of the State of Delaware and authorized to do business in the State of Texas.

8. TD*X Associates LP (TD*X) is a limited partnership authorized to do business in the State of Texas.

9. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2], and Section 1004(5) of RCRA, 42 U.S.C. § 6903(15) as "an individual, corporation, organization, government or government subdivision or agency, business trust, partnership, association, or any other legal entity."

10. The Respondent USET is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

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11. The Respondent TD*X is a "person" as defined by 30 T.A.C. § 3.2 (25) [40 C.F.R. § 260.10], and Section 1004 (15) of RCRA, 42 U.S.C. § 6903 (15).

12. "Owner" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

13. "Operator" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "whoever has legal authority and responsibility for a facility that generates, transports, processes, stores or disposes of any hazardous waste."

14. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

15. "Facility" is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof)."

16. The Respondent USET owns and operates a hazardous waste treatment, storage, and disposal (TSD) facility located at 3327 County Route 69, Robstown, TX 78380, EPA ID No. TSD069452340, Permit No. HW-50052-001.

17. The TSD identified in Paragraph 16 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59) (40 C.F.R. § 260.10).

18. The Respondent USET is the "owner" and/or "operator" of the facility identified in Paragraph 16, as those terms are defined in 30 TAC § 335.1(107) & (108) [40 C.F.R. § 260.10] and 40 C.F.R. § 270.2.

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19. The Respondent USET has an oil reclamation unit located on the facility identified in Paragraph 16.

20. The Respondent TD*X owns and operates a thermal destruction unit (TDU), as well as the feed preparation system that includes four mix tanks, a centrifuge, and a surge tank at the oil reclamation unit.

21. The Respondent TD*X began operating the TDU and related equipment on or about June 15, 2008.

22. On or about June 8 – 11, 2010, June 14 – 17, 2010, and August 9 – 11, 2010, the Respondent USET's TSD facility and the oil reclamation operation was inspected by representatives of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

B. VIOLATIONS

Count One – Storing Hazardous Waste Without a Permit or Interim Status

23. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

24. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

25. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

26. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

27. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

28. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

29. Storage is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) as "the holding of [hazardous] waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere."

30. On various dates between June 15, 2008 and the present, certain hazardous wastes were held in the tanks identified in Paragraph 20.

31. The hazardous waste identified in Paragraph 30 did not meet the definition of "recyclable materials" as that term is defined in 40 T.A.C. § 335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

32. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 31.

33. The Respondents "stored" hazardous waste as that term is defined in 30 T.A.C. § 335.1(143) (40 C.F.R. § 260.10) in the tanks identified in Paragraph 20.

34. To date, neither the Respondent USET or Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste in the tanks identified in Paragraph 20.

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35. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

Count Two – Processing Hazardous Waste Without a Permit or Interim Status

36. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment)[1], storage, or disposal of hazardous waste.

37. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

38. "Recyclable materials" is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] as "hazardous wastes that are recycled".

39. The Respondent USET receives "hazardous waste" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

40. The Respondent USET receives "recyclable materials" from off-site generators, as that term is defined by 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

41. Hazardous wastes destined for oil reclamation are transferred to the Respondent TD*X by the Respondent USET.

---

[1] The Texas Administrative Code uses the term "processing" instead of "treatment". The term "processing" as used by Texas is essentially equivalent to the term "treatment" as used in the federal statute and regulations.

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42. On various dates between June 15, 2008 and the present, certain hazardous wastes were fed into the TDU that did not meet the definition of "recyclable materials" as that term is defined in 30 T.A.C. §335.24(a) [40 C.F.R. § 261.6(a)(1)] because the hazardous wastes were not "oil-bearing hazardous wastes from petroleum refining, production, and transportation practices."

43. The exemption for recyclable materials in 30 T.A.C. §335. 24(c) [40 C.F.R. § 261.6(a)(3)] is not applicable for the hazardous waste identified in Paragraph 42.

44. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.").

45. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

46. The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants and to remove them from the hazardous waste feed material, and transfers them to a gas treatment system using a nitrogen carrier gas. The oil is then recovered by condensing it in the gas treatment system. A process vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, and burned.

47. The separation of the organic contaminants from the hazardous waste in the indirectly heated rotary dryer constitutes thermal processing (thermal treatment) as that term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

48. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in the TDU.

49. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste without a permit.

Count Three - Processing Hazardous Waste Without a Permit or Interim Status

50. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

51. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901

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et seq."

52. Thermal processing (thermal treatment) is defined in 30 T.A.C. § 335.1(149) (40 C.F.R. § 260.10) as follows:

> the processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

53. Processing (treatment) is defined in 30 T.A.C. § 335.1(117) [40 C.F.R. § 260.10] as follows:

> The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

54. The burning of the gas in the TDU's combustion chamber constitutes thermal processing (thermal treatment), as term is defined in 30 T.A.C. § 335.1(149) [40 C.F.R. § 260.10].

55. An incinerator is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] as

"any enclosed device that: (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (B) meets the definition of infrared incinerator or plasma arc incinerator."

56. The TDU is an enclosed device that uses controlled flame combustion.

57. The TDU does not meet the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; nor meets the definition of infrared incinerator or plasma arc incinerator."

58. The TDU is an "incinerator" as that term is defined in 30 T.A.C. § 335.1(75) [40 C.F.R. § 260.10] because it thermally processes (thermally treats) hazardous waste by burning the hazardous waste using controlled flame combustion.

59. To date, neither the Respondent USET nor Respondent TD*X have applied for nor received a RCRA permit or interim status to allow the thermal processing (thermal treatment) of hazardous waste in an incinerator.

60. Therefore, the Respondent USET and the Respondent TD*X have violated and continue to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by thermally processing (thermally treating) hazardous waste in an unpermitted incinerator.

Count Four – Storing Hazardous Waste Without a Permit Or Interim Status

61. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a RCRA permit or interim status is required for the processing (treatment), storage, or disposal of hazardous waste.

62. Between on or about April 12, 2010 and June 11, 2010, the Respondent USET stored roll-off boxes in the area called the "Y" at the facility.

63. The roll-off boxes identified in Paragraph 62 contained material which was destined for the TDU.

74. "Hazardous waste" is defined in 30 T.A.C. § 335.1(69) [40 C.F.R. § 261.3] as "any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§ 6901 *et seq.*"

65. The roll-off boxes identified in Paragraph 62 contained "hazardous waste" as that term is defined in T.A.C. § 335.1(69) [40 C.F.R. § 261.3].

66. To date, the Respondent USET has not applied for nor received a RCRA permit or interim status to allow the storage of hazardous waste at the area called the "Y".

67. Therefore, the Respondent USET has violated Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e), and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by storing hazardous waste without a permit.

III. COMPLIANCE ORDER

68. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondents are hereby **ORDERED** to take the following actions and provide evidence of compliance within the time period specified below:

A. Interim Operating Requirements

Commented [ELP1]: Do we need any additional operating requirements, such as feed rate, ppm concentration, inspections, etc.

Do we need any recordkeeping requirements?

1. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the TDU in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. § 264.351). All materials from the closure of the TDU are considered hazardous waste, and shall be disposed of in a

RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

2. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the rolling bins for the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(7) (40 C.F.R. § 264.178). All materials from closure of the rolling bins are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP2]: Are any other containers involved?

3. Within thirty (30) days of the effective date of this CAFO, the Respondents shall close the Shaker Deck Mix Tank, the 3 Mix Tanks, and the Centrifuge in the oil reclamation unit in accordance with 30 T.A.C. § 335.152(a)(8) (40 C.F.R. § 264.197). All materials from closure of the tanks are considered hazardous waste, and shall be disposed of in a RCRA permitted disposal facility. The Respondents shall submit a written closure report to TCEQ and EPA within fifteen (15) days after closure is completed.

Commented [ELP3]: Is the centrifuge a tank? Is this the correct list? Are there more?

IRL response states "four mix tanks, a centrifuge, and a surge tank"

Commented [ELP4]: Need to evaluate tanks to see if need permit - i.e., are the tanks integral to the recycling process?

4. Upon completion of the closure activities set forth in Section 81.A.1, 2, and 3 above, the Respondents shall notify EPA at least ten (10) days prior to the proposed re-start of the TDU. Unless otherwise notified by EPA, the Respondent may restart the TDU on the proposed re-start date.

5. Feedstock into the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title

1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site preparation and related construction activities performed on a contract or fee basis)	213112	Support Activities for Oil and Gas Operations
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

6. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility.

7. Prior to restart of the TDU, the Respondents shall install, monitor, and operate an automatic hazardous waste feed cutoff at the TDU in accordance with the requirements of 40 C.F.R. § 63.1206(c)(3).

8. Prior to restart of the TDU, the Respondents shall install, calibrate, and operate continuous emissions monitors in accordance with the requirements of 40 C.F.R. § 63.1209. The Respondents shall use either a carbon monoxide or hydrocarbon CEMS to demonstrate and monitor compliance with the carbon monoxide and hydrocarbon standards of 40 C.F.R. Part 63, Subpart EEE. The Respondents shall also use an oxygen CEMS to continuously correct the carbon monoxide or hydrocarbon level to 7 percent oxygen.

9. Prior to restart of the TDU, the Respondents shall submit to EPA and TCEQ applicable operating parameters for the TDU that the Respondents estimate will enable the TDU to meet a destruction and removal efficiency (DRE) of 99.99%. The operating parameters shall include, but are not limited to, maximum feed rate, maximum condenser outlet temperature, and minimum firebox temperature.

10. The Respondents shall operate the TDU in a manner that the one-hour and 12-hour rolling averages for the operating parameters are not exceeded. The rolling averages shall be calculated in accordance with 40 C.F.R. § 63.1209(b).

11. Within six (6) months after the effective date of this CAFO, and every six months thereafter until this CAFO is terminated, the Respondents shall send a report to EPA. The Report shall include the following:

a. Identify the customer, the customer's SIC and NAICS code, copies of the relevant waste approval documents, and manifests for the previous six month period.

b. All deviations from the CEMS monitoring required by Paragraph 68.A.8.

c. All time periods in where there were deviations of the one-hour and 12-hour rolling averages of the operating parameters required under Paragraph 68.A.9.

The Report shall be submitted in an electronic format (i.e., compact disk). The Respondent may claim the report CBI, in accordance with the requirements of 40 C.F.R. Part 2.

B. RCRA Permit Modification

1. Within _____ days of the effective date of this CAFO, the Respondents shall submit to TCEQ, an application for a Class 3 RCRA Permit Modification, to permit the TDU as a Subpart O Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. A copy of the application shall also be submitted to EPA.

Commented [ELP5]: Any suggestions as to the time needed to prepare an application?

Commented [ELP6]: Does TD*X need to be on the permit application/permit, since they are the owner/operator of the TDU (which is located at the USET facility)?

Will they have to get a new separate permit because USET has the HW permit, and TD*X owns and operates the TDU on USET's property?

Commented [ELP7]: Harry & Kishor - I assume that permitting this new unit this would be a Class 3 modification? Is this correct?

Commented [ELP8]: How do we handle the coordination between TCEQ and EPA. Who will be involved with this?

2. The permit application shall also include relevant requirements of 40 C.F.R. Part 264 that are appropriate for the operation of the TDU and oil-reclamation facility, including the waste analysis, monitoring and inspection requirements, and closure requirements set forth in 30 T.A.C. § 335.152(a)(13) (40 C.F.R. §§ 264.341, 264.347, and 264.351).

3. The Respondents shall also request that the final RCRA permit also include the following:

a. The requirements of 40 C.F.R. Part 63, Subparts A and EEE;

b. The feedstock limitations set forth in Paragraph 68.F;

c. Operating parameters for the condensers from the Off-Gas Condensing Recovery System, including appropriate monitoring and recordkeeping requirements for the condensers; and

Commented [ELP9]: Craig/Brad - Is this language sufficient?

d. Any risk-based terms and conditions necessary to protect human health and the environment in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities.

4. The failure to timely submit a Class 3 Permit Modification to TCEQ within the deadline set forth in Paragraph 68.B.1 shall result in the termination of the Respondents' authorization to operate the TDU on that date.

5. By no later than _____ from the effective date of this CAFO, the Respondents must complete all permitting requirements and have a final RCRA permit authorizing it to operate the TDU. In the event that TCEQ does not issue a final RCRA permit for the TDU as described above by the above deadline, the Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP10]: Need a deadline

6. Upon the issuance of a Clean Air Act Title V permit to the Respondents and incorporation of the requirements of Subpart EEE for the TDU and the oil reclamation facility into the Title V permit, the requirements of Subpart EEE may be removed from the RCRA Permit upon request of the permittee(s).

C. Notice of Intent to Comply (NIC)/Public Participation

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ and EPA a draft Notice of Intent to Comply (NIC) pursuant to 40 C.F.R. § 63.1210(b).

Commented [ELP11]: Any suggestion as to how long they need to do this?

2. The Respondents shall make the draft NIC available to the public upon issuance of the notice of public meeting pursuant to 40 C.F.R. § 63.1210(c)(3).

3. The Respondents shall provide notice to the public of a permit modification request pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)].

4. The Respondents shall hold a public meeting pursuant to 30 T.A.C. § 305.69(d) [40 C.F.R. § 270.42(c)] no earlier than fifteen (15) days following publication of the notice and no later than fifteen (15) days before the close of the sixty (60) days comment period. The information public meeting will also include information related to the risk burn set forth in Paragraph 60.F below.

5. The Respondents shall submit final NIC pursuant to 40 C.F.R. § 63.1210(b)(3) no later than 60 days following the public meeting.

6. The failure to timely submit the final NIC no later than 60 days following the public meeting shall result in the termination of the Respondents' authorization to operate the TDU on that date.

D. Startup, Shutdown, and Malfunction Plan

1. Within ___ days of the effective date of this CAFO, the Respondents shall submit a Startup, Shutdown, and Malfunction Plan to TCEQ for approval. This plan shall be prepared in accordance with 40 C.F.R. §§ 63.6(e)(3) and 63.1206(c)(2). The Respondents shall comply with any instructions or directives from TCEQ regarding approval, disapproval, or submission of any additional information.

Commented [ELP12]: Do we need any additional information?

E. Comprehensive Performance Test (CPT)

1. The Respondents shall perform a comprehensive performance test (CPT) as set forth below. The CPT is required to demonstrate compliance with the emissions standards of

40 C.F.R. Part 63, Subpart EEE, establish limits for the operating parameters provided by 40 C.F.R. § 61.1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

2. Within ___ days of the effective date of this CAFO, the Respondents shall submit to TCEQ for approval a draft comprehensive performance test (CPT) plan pursuant to the requirements of 40 C.F.R. §§ 63.7 and 63.1207. The CPT plan will also provide for a performance test to determine the efficiency and operating parameters of the condensers from the Off-Gas Condensing Recovery System. A copy of the CPT Plan shall be submitted to EPA.

Commented [ELP13]: Any suggested time as to how long they need to complete the CPT plan?

Commented [ELP14]: Craig and Brad - Is this language sufficient?

3. The CPT should be integrated with the Risk Burn to produce a consistent set of proposed enforceable permit conditions.

4. The Respondents shall make the CPT plan available for public review upon issuance of the notice of NIC public meeting.

5. The Respondents shall implement the CPT Plan as approved by TCEQ, according to the schedule set forth therein. During the testing, the Respondents shall comply with 40 C.F.R. §§ 63.7(e) and 63.1207(g).

Commented [ELP15]: Does EPA want input regarding approval of the plan?

Commented [ELP16]: Do we want actual notice in case we want to observe?

Commented [ELP17]: Do we want a NLT date, in case they have a problem with the CPT?

6. If the Respondents determine (based on CEM recordings, results of analyses of stack samples, or results of CMS performance evaluations), that they have exceeded any emission standard during a CPT for a mode of operation, they must cease hazardous waste burning immediately under that mode of operation, except as provided in 40 C.F.R. § 63.1207(l)(1). The Respondents must make this determination within forty-five (45) days following completion of the CPT. The Respondents' authorization to operate the TDU terminates on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP18]: This section could be very tricky.

7. All analyses required by the CPT plan shall be performed by a laboratory pre-approved by TCEQ.

8. Pursuant to 40 C.F.R. §§ 63.7(g), 63.9(h), 63.1207(j), and 63.1210(d), within ninety (90) days from completion of the CPT, the Respondents shall submit a Notification of Compliance (NOC) to TCEQ and EPA documenting compliance with the emission standards and continuous monitoring system requirements, and identifying operating parameter limits under 40 C.F.R. § 63.1209. All data collected during the CPT (including, but not limited to, field logs, chain-of-custody documentation, monitoring data, sampling and analytical results, and any other data or calculations supporting the emissions calculations or operating parameter limits) must be submitted to TCEQ and EPA along with the NOC.

9. As of the date of the submission of the NOC, the Respondent shall comply with all operating requirements of the NOC, and the requirements of 40 C.F.R. §§ 63.1209 and 63.1219.

10. The failure to timely submit an NOC to TCEQ and EPA within ninety (90) days from completion of the CPT shall result in the termination of the Respondents' authorization to operate the TDU on that date, unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP19]: This section could be very tricky.

F. Risk Burn

1. To collect emissions data for evaluation in a site-specific risk assessment, as part of its RCRA permit application for the TDU, within ___ days of the effective date of this CAFO, the Respondents must prepare and submit to TCEQ for approval, a risk burn plan in accordance with the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. The risk burn plan shall

Commented [ELP20]: Do we need a site-specific risk assessment?

Commented [ELP21]: Any idea of how long they need to prepare a risk plan?

include a schedule for conducting the risk burn. A copy of the risk burn plan shall be submitted to EPA.

2. The risk burn should be integrated with the Comprehensive Performance Test to produce a consistent set of proposed enforceable permit conditions.

3. The Respondents shall implement the risk burn plan as approved by TCEQ, according to the schedule set forth therein.

Commented [ELP22]: Does EPA want input regarding approval of the plan?

4. All analyses required by the risk burn plan shall be performed by a laboratory pre-approved by TCEQ.

5. The risk burn performed by the Respondents shall collect fugitive and stack emissions data and define the operating requirements for the TDU based on control parameters identified in Chapters 4 through 7 of the Risk Burn Guidance for Hazardous Waste Combustion Facilities. During the risk burn, the Respondent shall evaluate each of the constituents in Chapters 4 through 7 of Risk Burn Guidance including the dioxins, furans, other organics, metals, particulate matter, hydrogen chloride, and chlorine identified therein.

6. During the risk burn (or as soon after the burn as is practicable), the Respondents shall make the determinations set forth for the Risk Burn Guidance for Hazardous Waste Combustion Facilities, and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities deemed appropriate by the TCEQ. During the risk burn, the Respondent must demonstrate that the emissions from the TDU do not present a risk to human health or the environment.

7. Within ninety (90) days after completion of the risk burns, the Respondents must submit to TCEQ and EPA a certification that the risk burns have been carried out in accordance with the approved risk burn plans, and must submit the results of all the determinations by the

risk burn plan. The Respondents must also submit a complete and approvable Risk Assessment Report consistent with the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA530-R-05-006, September 2005. All data collected during the risk burns must be submitted to TCEQ and EPA along with the certification.

8. A copy of the risk burn plan shall be made available to the public upon issuance of the notice of public meeting pursuant set forth in Paragraph 68.C.3 above.

9. The failure to timely submit a risk burn certification and the Risk Assessment Report to TCEQ and EPA within ninety (90) days from completion of the risk burn shall result in the termination of the Respondents' authorization to operate the TDU on that date. unless that deadline has been extended pursuant to Section IV.E (Force Majeure).

Commented [ELP23]: This section could be very tricky.

G. Compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C)

1. If the Respondent desires to comply with 40 C.F.R. § 261.6(a)(3)(iv)(C) after it receives its RCRA Permit Modification, feedstock to the TDU shall consist only of non-hazardous waste, and oil-bearing hazardous waste from facilities whose primary Standard Industrial Classification (SIC) codes and corresponding North American Industry Classification System (NAICS) codes (i.e., petroleum refining, production, and transportation practices) are as follow:

SIC Code	SIC Description	NAICS Code	NAICS Title
1311	Crude Petroleum & Natural Gas	211111	Crude Petroleum and Natural Gas Extraction
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction
1381	Drilling Oil & Gas Wells	213111	Drilling Oil and Gas Wells
1382	Oil & Gas Field Exploration Services (except geophysical mapping & surveying)	213112	Support Activities for Oil & Gas Operations
1389	Oil and Gas Field Services, NEC (except construction of field gathering lines, site	213112	Support Activities for Oil and Gas Operations

	preparation and related construction activities performed on a contract or fee basis)		
2911	Petroleum Refining	324110	Petroleum Refineries
4612	Crude Petroleum Pipelines	486110	Pipeline Transportation of Crude Oil
4613	Refined Petroleum Pipelines	486910	Pipeline Transportation of Refined Petroleum Products
4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation)	488999	All Other Support Activities for Transportation
4922	Natural Gas Transmission	486210	Pipeline Transportation of Natural Gas
4923	Natural Gas Transmission and Distribution (distribution)	221210	Natural Gas Distribution
4923	Natural Gas Transmission and Distribution (transmission)	486210	Pipeline Transportation of Natural Gas
5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)	488999	All Other Support Activities for Transportation
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

2. Using feedstock from the aforementioned SIC/NAICS Codes does not constitute compliance with 40 C.F.R. § 261.6(a)(3)(iv)(C) or this CAFO. The Respondents are required to make a separate, independent determination whether the hazardous waste in question is "oil-bearing", or that the hazardous waste actually came from petroleum refining, production, or transportation practices at the generator's facility. The Respondents shall request that this provision be placed in its Final RCRA permit.

H. Additional Conditions

1. To comply with this CAFO, the Respondents must obtain a RCRA permit for the TDU as a Subpart O – Incinerator Unit in accordance with 30 T.A.C. § 335.152(a)(13) (40 C.F.R. Part 264, Subpart O), 30 T.A.C. Chapter 305 (40 C.F.R. §§ 270.10 – 270.14, 270.19, 270.30 – 270.33), and incorporates the applicable requirements of 40 C.F.R. Part 63, Subparts A and EEE

(unless those provisions have been incorporated into a Clean Air Act Title V permit) and the Risk Burn Guidance for Hazardous Waste Combustion Facilities, OSWER, EPA530-5-01-001, July 2001 and the Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, OSWER, EPA-R-05-006, September 2005.

2. The Respondents may seek relief under the provisions of Section IV.E of the CAFO (Force Majeure) for any delay in the performance of any such obligations resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the Respondent has submitted a timely and complete application and has taken all other actions necessary to obtain such permit or approval.

I. EPA Review and Comment

1. Nothing in this CAFO shall limit EPA's rights under applicable environmental laws or regulations, including, but not limited to, Section 3005(c)(3) of RCRA, 42 U.S.C. § 6925, 40 C.F.R. § 270.32 and 40 C.F.R. § 271.19, to review, comment, and incorporate applicable requirements of 40 C.F.R. Parts 264 and 40 C.F.R. Part 63, Subparts A and EEE directly into the permit or establish other permit conditions that are based on those parts; or take action under Section 3008(a)(3) of RCRA,42 U.S.C. § 6928(a)(3), against the Respondents on the ground that the RCRA permit for the TDU does not comply with a condition that the EPA Region 6 Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. If the Respondent disputes an action taken by EPA pursuant to 40 C.F.R. § 270.32 or 40 C.F.R. § 271.19, the Defendant may invoke Dispute Resolution in accordance with Section IV.D of this CAFO.

J. Submissions

In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondents by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

69. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the seriousness of the alleged violations, the Respondents' good faith efforts to comply with the applicable regulations, and the June 2003 RCRA Civil Penalty Policy, it is hereby **ORDERED** that the Respondent U.S. Ecology Texas, Inc. be assessed a civil penalty of _____ **DOLLARS ($_____)**, and the Respondent TD*X Associates L.P. be assessed a civil penalty of _____ **DOLLARS ($_____).**

70. Within thirty (30) days of the effective date of this CAFO, the Respondents shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire

transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers RCRA-06-2012-0936 (Respondent USET) and RCRA-06-2012-0937 (Respondent TD*X) shall be clearly typed on the respective checks to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondents shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondents' adherence to this request will ensure proper credit is given when penalties are received in the Region.

71. The Respondents agree not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

72. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

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73. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

74. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. STIPULATED PENALTIES

75. In addition to any other remedies or sanctions available to EPA, the Respondent(s) shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

a. Failure to Timely Submit Reports, Notices, or Plans - Paragraphs 68.A.1, 2, 3, 4, 9, and 11, 68.C.1, 68.D.1, 68.E.2, and 68.F.1

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

b. Failure to Comply with Restart Requirements – Paragraphs 68A.7 and 8

Period of Noncompliance	Penalty Per Violation Per Day

1st through 15th day	$ 1,500
16th through 30th day	$ 2,500
31st day and beyond	$ 5,000

c. Failure to Comply with any Other Provision of Section III of this CAFO

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 500
16th through 30th day	$ 1,000
31st day and beyond	$ 1,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

76. The Respondent(s) shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 70 herein. Interest and late charges shall be paid as stated in Paragraphs 72 - 73 herein.

77. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent(s) violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

D. DISPUTE RESOLUTION

78. If the Respondents object to any decision or directive of EPA in regard to Section III, the Respondents shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6

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1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

79. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondents shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondents, the agreement shall be reduced to writing and signed by the Associate Director and the Respondents and incorporated by reference into this CAFO.

80. If no agreement is reached between the Associate Director and the Respondents within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondents shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondents, the resolution shall be reduced to writing and signed by the Division Director and the Respondents and incorporated by reference into this CAFO. If the Division Director and the Respondents are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondents, which shall be binding upon the Respondents and incorporated by reference into the CAFO.

81. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.G (Modifications).

E. FORCE MAJEURE

82. A "force majeure event" is any event beyond the control of the Respondents, their contractors, or any entity controlled by the Respondents that delays the performance of any obligation under this CAFO despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Respondents' financial inability to perform any obligation under this CAFO.

83. The Respondents shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time the Respondents' first knew of, or by the exercise of due diligence, reasonably should have known of, a claimed force majeure event. The Respondents shall also provide written notice, as provided in Section IV.F of this CAFO, within seven days of the time the Respondents first knew of, or by the exercise of due diligence, reasonably should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Respondents' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the Respondents' rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude the Respondent from asserting any claim of force majeure.

84. If the Complainant agrees that a force majeure event has occurred, the Complainant may agree to extend the time for the Respondents to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the Complainant agrees to an extension of time, the appropriate modification shall be made pursuant to Section IV.G of this CAFO.

85. If the Complainant does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Respondents, the Complainant's position shall be binding, unless the Respondents invokes Dispute Resolution under Section IV.D of this CAFO. In any such dispute, the Respondents bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the Respondents gave the notice required by the paragraph above, that the force majeure event caused any delay the Respondents' claim was attributable to that event; and that the Respondents exercised their reasonable best efforts to prevent or minimize any delay caused by the event.

F. NOTIFICATION

86. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

Complainant:

Chief, Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch

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U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent U.S. Ecology Texas, Inc.:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

Respondent TD*X Associates, L.P. :

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

Texas Commission on Environmental Quality

G. MODIFICATION

87. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of the Complainant and Respondent(s), and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

H. RETENTION OF ENFORCEMENT RIGHTS

88. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

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89. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent USET's facility or Respondent TD*X's oil reclamation unit and related equipment. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

90. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. This CAFO shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA or under other federal or state laws, regulations, or permit conditions.

91. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, other appropriate relief relating to this Facility, the Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

92. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits.

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The Respondents' compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant, does not warrant or aver in any manner that the Respondents' compliance with any aspect of this CAFO will result in compliance with provisions of the RCRA or with any other provisions of federal, State, or local laws, regulations, or permits.

I. INDEMNIFICATION OF EPA

93. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondents, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondents in carrying out the activities required by this CAFO.

J. COSTS

94. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondents specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

K. TERMINATION

Commented [ELP24]: May need some work.

95. At such time as the Respondents believe they has completed all of the requirements of this CAFO, they may request that EPA concur whether all of the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing within ninety (90) days of receipt of the request. This CAFO shall terminate when all actions required to be taken by this CAFO have

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been completed, and the Respondents have been notified by the EPA in writing that this CAFO has been satisfied and terminated.

L. EFFECTIVE DATE

96. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

US Ecology Texas, Inc.

FOR THE RESPONDENT:

Date: _____ _____
TD*X Associates, L.P.

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondents' (or their officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondents are ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Mary Reagan
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701

J.D. Head
Fritz, Bryne, Head & Harrison, PLLC
98 San Jacinto Boulevard
Suite 2000
Austin, TX 78701

_____

LAW OFFICES
McGINNIS, LOCHRIDGE & KILGORE, L.L.P.
600 CONGRESS AVENUE
SUITE 2100
AUSTIN, TEXAS 78701

HOUSTON, TEXAS OFFICE
1111 LOUISIANA STREET, SUITE 4500
HOUSTON, TEXAS 77002
(713) 615 - 8500
FAX (713) 615-8585

AUSTIN, TEXAS OFFICE
(512) 495 - 6000
FAX (512) 495 - 6093

WRITER'S DIRECT DIAL NUMBER:
495-6013
mreagan@mcginnislaw.com
Fax: (512) 505-6313

April 17, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

During the April 11, 2012 meeting EPA expressed it did not understand its conclusion related to the Rineco case and was unable to provide an explanation of how EPA concluded that Subpart X permitting was appropriate for Rineco's TMW unit. Additionally, EPA reiterated its need to be consistent in its determinations and that the conclusions EPA has established in U.S. Ecology's case are consistent with prior decisions. These comments appear contrary to each other and concern our team greatly on the reliance of the Rineco decision in our case and need for consistent application of EPA's interpretations.

We have provided below our analysis of the correspondence provided by EPA to the State of Arkansas stating its justification and conclusions that a Subpart X permit rather than a Subpart O permit was required. This clarification and understanding is imperative to ensure the application of these standards is consistent.

The July 12, 2010 letter from EPA to Thomas Rheaume at the Arkansas Department of Environmental Quality provides a process description that omits the condensing system between the thermal desorber and the Thermal oxidizer. As a result EPA concluded,

> the TOU is considered an *afterburner chamber* for the combustion process initiated in the TMWU. Subsequently, the two process units **together** (i.e., the TMWU followed by the TOU) are classified as an incinerator (emphasis added).

The letter offers two EPA interpretive memos to support its position, neither of which contemplates the applicability of these standards to RCRA exempt recycling units.

The January 4, 2011 letter from EPA to Mike Bates at Arkansas Department of Environmental Quality clarifies and provides a correction to that interpretation. The letter states that EPA did not consider the condensing system in the July 12, 2010 determination and stated that the condensing system changes the conclusions of the applicability of the incinerator standards. This one process difference resulted in EPA changing its conclusion that the units are "better classified as miscellaneous units under RCRA" and that "the two units are **not** 'hazardous waste combustors' as defined in 40 CFR §63.1201 (emphasis added)."

The interpretive memos provided by EPA support that the incineration standards are applicable if the thermal desorption unit is followed by an afterburner. EPA's conclusion clearly draws a distinction that the recovery of vapors in Rineco's primary and secondary condensers establishes that the thermal oxidizer is not acting as an afterburner, as originally referenced in EPA's July 12, 2010 letter. Therefore, the conclusion of Subpart X – Miscellaneous Unit applicability is based solely on the treatment activity that is occurring in the Thermal Metals Wash (TMW) Unit.

Like Rineco, the thermal desorption process at U.S. Ecology involves the condensation of gases immediately following the TDU. At U.S. Ecology, the **entire gas stream** is passed through condensers and the non-condensable fraction routed back into the TDU. A slip stream of non-condensable gases is routed through a process vent to the combustion chamber to maintain a pressure balance within the system. Thus, at a minimum, the combustion chamber does not qualify as an incinerator based on the analysis in EPA's January 4, 2011 applicability determination letter.

More importantly, however the TDU processes material specifically defined under RCRA's reclaimed oil exemption. Rineco's TMW, which was determined to be for material destruction, is distinguished from TD*X's TDU, which is for exempt material reclamation. Thus, establishing a consistent evaluation would recognize this distinction and conclude that TD*X's system is neither a hazardous waste combustor nor a Subpart X unit; rather, it is exempt from these requirements in §261.6(b), which provides that recyclable materials including reclaimed oil are not subject to regulation under Part 264, including Subparts O and X, relating to incinerators and miscellaneous units, respectively. Section 261.6(c)(1) further provides that the recycling process is exempt from regulation.

While generally exempting these recycling operations from regulation, §261.6 requires compliance with 40 CFR Parts 264 and 265, Subparts AA and BB, as applicable, for recycling units located at permitted hazardous waste management facilities. As we discussed at our April 11, 2012 meeting, regulation of the oil reclamation process as a distillation operation under Subpart AA is an appropriate mechanism under RCRA to address EPA's concerns about any air emissions associated with the combustion chamber's process vent. Using this approach not only addresses EPA's specific process vent concern but also ensures programmatic consistency highlighted by EPA at our meeting as a key objective.

Sincerely,

Mary Reagan

MBR/rrh

cc: Mark Hansen, EPA
Earl Lott, TCEQ
Simon Bell, USET
Andrew Marshall, USET
J.D. Head
(via e-mail)

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/11/2012 7:43:07 PM
To: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Faison, George [Faison.George@epa.gov]
CC: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Ryan Rosser [Rosser.Ryan@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]
Subject: Potential U.S. Ecology/TD*X Resolution

We met with U.S. Ecology and TD*X today. They proposed a potential resolution to the incineration issue, which I would like to run pas you.

To refresh your recollection, the following is a brief description of their process:

Listed hazardous waste is fed into a thermal desorption unit (TDU). Thermal desorption removes chemicals from materials by using heat to change the chemicals into gases. Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. A process vent is purged from the carrier gas in a closed vent system. This process vent stream, which includes nitrogen and non-condensable gases from the dryer, is filtered before it is injected into the combustion chamber of the TDU.

Assume that they taking hazardous waste which meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv)(C) - oil-bearing hazardous waste from petroleum refining, production, and transportation practices.

We have stated under that the current configuration, the unit would be classified as an incinerator. The combustion chamber is part of the TDU. The combustion chamber uses a controlled flame to treat the vent stream. Therefore, the TDU is an incinerator.

However, assume that after the process vent gases come off the gas treatment system and before the gases go into the combustion chamber, a carbon absorber is inserted. Then, any vent gases that pass through the carbon absorber would go into the combustion chamber.

1. Wouldn't the facility be in compliance, because the gases that pass through the carbon absorber be considered an uncontained gas, and thus not a solid waste? Or would it be subject to Subpart X, and not O?

2. Would the discarded carbon filters be considered a hazardous waste?

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
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U.S. EPA - Region 6
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WRITER'S DIRECT DIAL NUMBER:
495-6013
mreagan@mcginnislaw.com
Fax: (512) 505-6313

February 22, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

This letter follows up on certain issues discussed at the February 14, 2012 meeting between U. S. Ecology, TD*X Associates, and EPA concerning the permitting status of the thermal desorption unit ("TDU") under RCRA. You indicated at that meeting that because the process vent gases from the oil reclamation process are routed to the TDU, the TDU is an incinerator which requires a RCRA permit. However, as we pointed out in the meeting, this contention is incorrect because the process vent gases are not "solid wastes" subject to RCRA jurisdiction.

The term "solid waste" is defined in RCRA as any "solid, semi-solid, liquid, or *contained gaseous material.*" 42 U.S.C. § 6903(27) (West 2011) (emphasis added). The process vent gases originating at the TDU are uncontained gases; therefore, these gases are not regulated under RCRA because they are not solid waste subject to RCRA jurisdiction, permitting or otherwise. At our meeting we provided EPA with a copy of a document from the Office of Management and Budget ("OMB") reciting the longstanding EPA precedent that uncontained gas is not a solid waste. Another copy of this document is attached to this letter as Attachment "A." Among the precedent cited in this document is an EPA guidance document entitled "Hazardous Waste TSDF-Technical Guidance Document for RCRA Air Emission Standards for Process Vent and Equipment Leaks." Although relevant excerpts from this EPA guidance document were also provided to you at our meeting, another copy is attached to this letter as Attachment "B." We would draw your specific attention to the Note on pages 2-3, which directly addresses the regulatory status of process vent streams under RCRA, and states that "[n]containerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them." *See* also McCoy's RCRA Unraveled

(2009), § 14.5.3.1 (" . . . vent streams (i.e. gases and vapors) from hazardous waste management units are not classified as solid or hazardous wastes.")

As we discussed in our meeting, the definition of solid waste as including only "contained gaseous material," and not uncontained gases like the TDU's process vent stream, defines the jurisdictional boundaries between RCRA and the federal Clean Air Act. This precise point was made in a training document prepared for The Advanced RCRA Inspector's Institute discussing the "RCRA/Clean Air Act Interface," relevant excerpts of which are attached as Attachment "C." Prepared for the express purpose of training RCRA inspectors to conduct proper RCRA inspections, this document acknowledges that uncontained gases are not solid waste. Specifically, in discussing the regulatory status of organics in activated carbon units, it provides that "[t]rapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste."

The conclusion that uncontained gases are outside the scope of RCRA was articulated by EPA Headquarters as recently as May 13, 2011, in a letter from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery, EPA, to Tim Hunt, Senior Director Air Quality, American Forest and Paper Association. A copy of this letter is attached as Attachment "D." That letter recites:

> The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators (*as well as other combustion units*, including air pollution control devices that may combust gaseous material) does not involve treatment of other management of a solid waste (as defined in RCRA section 1004 (27))(emphasis added).

The letter which you relied on in our meeting (OSWER 9489.1994(01)) for EPA's position that the TDU is a RCRA-regulated incinerator is not on point. That letter concerns a general discussion of the regulatory status of thermal treatment units and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption. The unit referred to in the letter appears to be a hazardous waste treatment unit that is not operating under any RCRA exclusions or exemptions. The chlordane hazardous waste treatment requires a RCRA permit to treat the soil in the desorber unit without regard to how the vent gases from the unit are managed. The letter attempts to distinguish which provision under RCRA the unit should be permitted based on how the desorbed organic compounds are managed. The letter does not address whether the desorbed organics from the process are "uncontained gases," which is the premise of U.S. Ecology's position that uncontained gases are not regulated under RCRA. We do not disagree with the premise that the chlordane treatment unit described in the letter requires a RCRA permit. However, we continue to disagree that that a RCRA permit is required for the sole purpose of ducting uncontained vent gases to the combustion zone of the TDU. (It should also be noted that this letter is inconsistent on other grounds with your position that the TDU is

an incinerator. It states that desorption chambers with indirect heating are miscellaneous units, not incinerators.) A copy of this letter is attached as Attachment "E."

EPA's assertion that process vent gases from the TDU are solid waste because they are "derived from" the treatment of solid waste is equally invalid. Under the express terms of the "derived from" rule, materials must first be wastes before they can be RCRA-regulated because they are derived from the treatment, storage, and disposal of solid waste. *See* 40 CFR § 261.3 (c)(2)(i) ("[A]ny *solid waste* generated from the treatment, storage, or disposal of a hazardous waste . . . is a hazardous waste" (emphasis added)). As the foregoing EPA precedent unmistakably shows, the process vent gases are not solid wastes covered by the "derived from" rule. This point was specifically made in the training document provided in Attachment "C" to this letter in its conclusion that because the gas from activated carbon units was not solid waste, "any condensed organics do not derive from treatment of a hazardous waste."

In summary, the process vent gases produced at the TDU are not solid wastes; therefore, EPA lacks RCRA jurisdiction to assert that the introduction of these gases to the TDU is a waste management activity subject to permitting or enforcement under RCRA.

Sincerely,

Mary Reagan

MBR/rrh
Attachments

ATTACHMENT "A"

EPA's Prior Determinations That Landfill Gas is Not a Solid Waste

- Since 1986, EPA has determined under RCRA that landfill gas would be regulated as an "air pollutant", rather than as "solid waste" In that regard, the regulation of MSW landfill emissions was considered during deliberations under a RCRA subtitle D rulemaking. In 1986 and 1987 the Administrator decided to regulate these emissions under the authority of the Clean Air Act. See, e.g. March 6, 1986 Memorandum from Marcia Williams to H. Lanier Hickman, Jr. (attached), cited in Definition of Solid Waste Compendium, Volume U, (Un)-Contained Gases (December 2010)(attached) (see particularly page 9, which refers to the Hickman memorandum and which characterizes landfill gas as "uncontained" and therefore not "solid waste"). After further consideration, the EPA announced in the Federal Register on August 30, 1988 (53 Fed. Reg. 33,314) (attached) their decision to regulate MSW landfill emissions under section 111 of the CAA. This ultimately occurred through the promulgation of the landfill NSPS, 40 CFR Part 60, Subparts WWW and Cc in 1996.

- In the proposed Landfill NSPS standards published on May 30, 1991 (56 Fed. Reg. 24,468) (attached), EPA again reiterated its decision to treat landfill gas as a Clean Air Act pollutant (rather than as solid waste).

- The issue was re-raised during public comment for the proposed NSPS. In response, EPA specifically stated in response: "the RCRA subtitle D establishes a framework for controlling the management of nonhazardous solid waste. Because the intent of this rule is to regulate emissions of landfill gas, and not solid waste, this regulation has been developed under the CAA instead of under RCRA. Some requirements in the RCRA subtitle D regulation are referenced within the NSPS and EG and are necessary to achieve compliance with these regulations." See Air Emissions From Municipal Solid Waste Landfills – Background Information for Final Standards and Guidelines, EPA-453/R-94-021 (December 1995), at pages 1-4, 2-31 to 2-34 (attached). Thus, the concept of utilizing RCRA authority and regulating landfill gas as solid waste was specifically rejected by EPA at that time. "Although one commenter suggested that LFG emissions should be regulated under RCRA authority, the EPA continues to consider Section 111 NSPS and EG to be the appropriate statutory approach for regulating these emissions because the adverse health and welfare effects of concern result from air emissions. Therefore, the final notice added MSW landfills as a source category for regulation under Section111(b)(1)(A) of the CAA to the priority list in 40 CFR 60.16." See id.

- On January 16, 2003, EPA issued National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 Fed. Reg. 2,227), which ensured that landfill gas collection and treatment and/or control systems (including combustion units and landfill gas used on or offsite in beneficial use projects) achieved MACT level controls.

- EPA again noted on March 22, 2004, in revisions to its Criteria for Municipal Solid Waste Landfills, Final Rule for Research, Development and Demonstration Permits for Municipal Solid Waste Landfills:

"With the exception of explosive gas control requirements, landfill gas controls are not regulated pursuant to Subtitle D of RCRA: rather landfill gas emissions are regulated under the Clean Air Act (CAA). The air criteria in 40 CFR 258.24 refer to CAA requirements by requiring compliance with the applicable State Implementation Plan provisions under section 110 of the CAA. Specific requirements pertaining to landfill gas emissions from MSWLF units are addressed in 40 CFR Part 60,Subparts Cc and WWW. Recently, EPA promulgated National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 FR 2227, Jan. 16, 2003). This rule includes requirements for initiating landfill gas collection and control in bioreactor landfills. See 40 CFR Part 63, Subpart AAAA.... [C]onsistent with section 1006(b) of RCRA, EPA sees no need for additional requirements under RCRA to address air emissions in today's rule."

See Final Rule, Research, Development and Demonstration Permits for Municipal Solid Waste Landfills, 69 Fed. Reg. 13,242 (2004) (attached).

- Thus, by 2004, all landfills regulated under WWW were regulated under the Section 112 Landfill MACT standards promulgated at 40 CFR Part 63, Subpart AAAA. In all instances, the notion was that landfill gas would be combusted either in open flares, enclosed combustors (enclosed flares, turbines, engines or boilers), or the gas would be treated (compressed, filtered to 10 microns or less, and cooled or chilled) and routed for use as fuel as either onsite or offsite. When combusted in turbines, engines or boilers, the landfill gas is either controlled to NSPS-specified treatment limits, or it is "treated" as per the NSPS for end use.

- Having exercised its asserted authority under RCRA Section 4004 to regulate air emissions from landfills as a "designated air pollutant" under the Clean Air Act rather than as solid waste under RCRA, the combustion of this designated air pollutant in a flare, turbine, boiler or engine should not be deemed to be the combustion of a solid waste. Stated differently, something cannot be a designated air pollutant and a solid waste at the same time.

- For purposes of Section 129, the term "solid waste' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act. The meaning established for many years by the Administrator pursuant to the Solid Waste Disposal Act (RCRA) was that landfill gas would not be treated as solid waste, and its combustion would not be treated as solid waste combustion, but rather, as an uncontained gaseous emission regulated as a designated air pollutant by the Clean Air Act. There is nothing in the Non-Hazardous Secondary Materials Rule (NHSM) that establishes that landfill gas is a solid waste, and the regulatory impact analysis for the CISWI rule gave no consideration of landfill gas as a source type for establishment of MACT. Indeed, the NHSM establishes that solid waste follows the meaning of solid waste for purposes of Subtitle D, 40 CFR 258.2. That definition excludes uncontained gas from the definition of solid waste, and has via rulemaking always excluded landfill gas.

Longstanding EPA Precedent that Uncontained Gas is not a Solid Waste

- The statutory definition of "solid waste" includes "contained gaseous material." 42 USC § 6903(27).

- EPA interpretation of the term "contained gaseous material" demonstrates that RCRA only applies to "contained" gases, to the exclusion of "uncontained" gases.

- EPA's interpretation of "contained" has been limited to gas present inside "containers."

    - In a 1989 preamble to a final rule dealing with the listing of certain hazardous substances under RCRA, EPA stated that EPA "believes our authority to identify or list a waste as hazardous under RCRA is limited to *containerized* or condensed gases (i.e., section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes). *See* Hazardous Waste Management System: Identification and Listing of Hazardous Waste, 54 Fed. Reg. 50968, 50973 (Dec. 11, 1989).

    - The CISWI Rule promulgated in 2000 defined contained gaseous material as limited to "gases that are in a container when that container is combusted." (EPA provided no explanation for deletion of this definition, which was not mandated or even discussed in the D.C. Circuit's *NRDC* decision.)

    - Similarly, 40 CFR Part 60, Subpart EEEE, governing Other Solid Waste Incineration Units, includes the same definition of "contained gaseous material."

- EPA has a longstanding policy providing that fume incinerators are subject to regulation only under the CAA, and not also RCRA.

    - For example, in the preamble to a 1982 dealing with regulation of incinerators that burn hazardous waste, EPA stated that "fume incinerators are subject only to regulation under the Clean Air Act . . . . Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste." See The Hazardous Waste Management System, Interim Final Amendments to Interim Final and Final Rules, 47 Fed. Reg. 27,520, 27,530 (June 24, 1982). See also, RCRA Superfund Hotline Monthly Summary, 9488.1986(03) available at RCRA Online.

    - EPA has reaffirmed this position on subsequent occasions. For example, in the 1989 preamble discussed above, EPA stated that "fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste." 54

Fed. Reg. 50,973 n.5. See also, Memorandum from Matthew Straus, Chief, Waste Characterization Branch, to Clifford Ng, Engineer, EPA Region II, dated June 17, 1987, available at RCRA Online ("Methanol-laden air from the drying and granulation step of the process does not meet the definition of solid waste under RCRA because it is in vapor form and not confined in a container.")

- On a few occasions, some in EPA attempted to take a broader view of contained gas (e.g. piping was enough) but that view was rejected by the courts or the administrative tribunal. See, e.g. In re BP Chemicals America, Inc., RCRA Appeal No. 89-4, 1991 EPA App. LEXIS 27; 3 E.A.D. 667 (EPA Admin., Aug. 20, 1991) (The Administrator specifically rejected Region V's argument that gaseous emissions were "contained" by the process units they passed through, associated piping or the facility itself, holding that the Agency's definition of the term "contained" has consistently been confined "in the narrower sense of being in an individual container such that the gas is amenable to shipment"). See also In re: Chemical Waste Management of Indiana, Inc., RCRA Appeal No. 95-4, *1995 EPA App. LEXIS 31*(EPA Environmental Appeals Board, Aug. 23, 1995) (emissions from microencapsulation of hazardous debris) (The EAB concludes the air emissions are excludable from Subtitle C regulation "because the air emissions that the Region seeks to regulate are not containerized.")

- In the landfill gas context, that view was similarly rejected by stakeholder groups assigned to review combustion issues. See, e.g., Recommendation from the Incinerator Workgroup on Section 112 Subcategories April 28, 1998 ("Section 129 Requirements. Section 129 applies to "solid waste combustion." Because solid waste is defined to exclude gases (except gases which are in containers), Section 129 does not apply to landfill gas flares.") (available at http://www.epa.gov/ttn/atw/iccr/incin/rec-112.pdf).

- The final Boiler MACT rule expressly recognizes that landfill gas constitutes a "gaseous *fuel*." (76 Fed. Reg. 15,684)

- See also:

  - Burning of Hazardous Waste in Boilers and Industrial Furnaces, Final Rule, 56 Fed. Reg. 7134, 7200 (Feb. 21, 1991) (activated carbon units used as air emission control devises are not subject to RCRA because "the gas originally treated is not a solid waste (it is an uncontained gas)." See also RCRA Online Determinations 12783 (November 20, 1986) (Volatile organics released to the air are not hazardous waste because they are not solid wastes. (They do not fit the definition established in §1004(27) of RCRA as "contained gaseous materials.")"

  - Hazardous Waste TSDF - Technical Guidance RCRA Air Emission Standards for Process Vents and Equipment Leaks, EPA-450/3-89-021 (July 1990) at pages 2-3: "Air standards have been promulgated for the control of air emissions from permitted hazardous waste incinerators. 40 CFR Part 264, Subpart O. These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those

primary organic hazardous constituents listed in the facility permit However, the process vent stream (i.e. gases and vapors) from a hazardous waste management unit would not be classified as a hazardous wastes. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement."

- Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF): Background Information for Promulgated Organic Air Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA/453/R-94/076b (November 1994) (since organic vapors emitted from hazardous waste are not solid or hazardous waste, control devices installed to comply with Subpart CC organic vapor control requirements are not hazardous waste management units and do not require RCRA permits).

ATTACHMENT "B"

United States Environmental Protection Agency

Office of Air Quality Planning and Standards Research Triangle Park NC 27711

EPA-450/3-89-021
July 1990

Air

EPA

Hazardous Waste TSDF - Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks

RCRA

The standards for process vents contain requirements that specific control-device operating parameters be monitored continuously (Sections 264.1034 and 265.1034) and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. Operating parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. While minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95 percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. A recovery device must be designed for a particular application and monitored to ensure that it is being operated within design specifications. (Note: This is an important point for permit writers/reviewers to keep in mind when evaluating control device efficiencies.) Proper design shall be determined through and documented by engineering calculations, vendor certification, and/or emission testing, although the use of emission testing to determine compliance with efficiency requirements is expected to occur only rarely. For facilities with final RCRA permits, periods when monitoring data indicate that control device operating parameters exceed established tolerances for design specifications for more than 24 hours must be reported on a semiannual basis. The records and reports must include dates, duration, cause, and corrective measures taken. (Note: Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR 264, Subpart O). These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. However, the process vent stream (i.e., gases and vapors) from a hazardous waste management unit would not be classified as a hazardous waste. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore, combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement.)

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The Advanced RCRA Inspector's Institute

Swissotel Boston
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Monday 12/13	1:30 - 2:30	Welcome and an Introduction
	2:45 - 4:30	Exploring Inspection Paradigms
Tuesday 12/14	8:30 - 9:45	Waste Minimization/Pollution Prevention Part 1
	10:00- 11:30	WMIN/PP Part 2
	12:30 - 1:30	Concurrent Sessions: BIF/Combustion Inspections
		Air Emissions (AA/BB)
	1:45 - 3:00	(Cont'd)
	3:15 - 4:30	(Cont'd)
Wednesday 12/15	8:30 - 9:30	Enforcement Initiatives Part 1
	9:45 - 10:15	Initiatives Part 2
	10:30 - 12:00	Import Export Inspections
	1:00 - 2:15	RCRA Interface with Other Laws
	2:30 - 3:45	Multimedia Inspections Part 1
	4:00 - 4:45	MM Part 2
Thursday 12/16	8:30 - 9:30	New Waste Issues
	9:45 - 10:45	Gray Areas In the Definition of Solid Waste Part 1
	11:00 - 12:00	Gray Areas Part 2
	1:00 - 2:00	Enforcement Case Development Part 1
	2:15 - 3:15	Enf. Case Development Part 2
	3:30 - 4:30	RCRA Civil Penalty Policy
Friday 12/17	8:30 - 10:00	Federal Facilities Enforcement
	(10:00 - 10:30)	(Extended break for check-out)
	10:30 - 11:30	Inspection Paradigms Revisited
	11:30 - 12:00	Complete evaluations and collect certificates

(Some time may also be made available throughout the course for individual's to address the specific questions or ideas to all participants)

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United States Environmental Protection Agency | Office of Solid Waste and Emergency Response | November 1992

EPA

RCRA/Clean Air Act Interface

A Quick Reference Fact Sheet

Background

RCRA and the Clean Air Act (CAA) both have regulatory programs to address emissions onto the environment. The CAA comprises a series of interlocking programs designed to protect health and the public welfare from emissions polluting the ambient (outdoor) air.

The 1990 amendments to CAA contain several innovative approaches to air regulation. The Act is subdivided into a number of titles including provisions for attainment and maintenance of National Ambient Air Quality Standards (NAAQS), mobile sources, air toxics, acid rain control, permits, ozone protection, enforcement and other miscellaneous provisions.

Potential Issues

The following examples highlight RCRA regulations that interface with CAA.

Chlorofluorocarbon (CFC) Reclamation Exclusion — The CAA requires that all ozone depleting emissions from all kinds of refrigeration be reduced to the lowest level possible through recycling, recovery, and other controls. Specifically, Title VI of CAA prohibits venting during servicing and disposal of refrigerants after July 1, 1992. To be consistent with Title VI, and because CFC refrigerants would display the toxicity characteristic under RCRA, used CFC refrigerants from totally enclosed heat transfer equipment, provided the refrigerant is reclaimed for further use — is not subject to regulation as a hazardous waste (§261.4 (b)(12)). Additionally, to qualify for the exclusion, the persons performing the reclamation activities and the equipment they use must be certified under CAA.

This exclusion is only applicable to the actual CFC refrigerant, any oils or other waste removed from the equipment is subject to hazardous waste determination.

Air Emission Control Devices — Air emission control devices located at RCRA hazardous waste facilities but regulated under CAA, can generate residues that may be defined as a hazardous waste. For example, activated carbon units used as air emission control devices of gaseous industrial process emissions will not necessarily be regulated under RCRA. Trapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste. However, the non gas residues from these devices could be hazardous wastes if they are listed or if they display a characteristic.

Stationary Sources — The CAA of 1990 includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants. The list of source categories must include:

- "Major sources" - emitting 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics
- "Area Sources" - smaller sources emitting less than 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics.

Several types of facilities regulated under RCRA Subtitle C may qualify as "major" or "area" sources of toxic air pollutants subject to CAA. Specific small businesses that may be regulated under both programs include dry cleaners, gasoline stations, printers, auto body repair shops, metal finishers, surface coating and painting operations, and solvent degreasing operations.

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ATTACHMENT "D"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 13 2011

Mr. Tim Hunt
Senior Director, Air Quality
American Forest and Paper Association
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hunt:

I would like to thank you and other representatives of forest products industries for meeting with my staff on April 26, 2011, to discuss your concerns with the Identification of Non-Hazardous Secondary Materials That Are Solid Waste (NHSM) final rule. We are evaluating a number of the concerns you raised, but wanted to get back to you quickly on the "contained gas" issue that you raised in that meeting and in an issue paper that you forwarded to us on April 13, 2011. We understand that our response to the fourth comment in Part 3b.I.3. of the document *Responses to Comments Document for the Identification of Non-Hazardous Materials that are Solid Waste* (February 2011) has created concerns among the regulated community that the Environmental Protection Agency (EPA) has changed a long-standing interpretation of what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA). We have not changed our prior interpretation but would like to clarify the response.

EPA was responding to a comment requesting that we include in the NHSM final rule a definition of "contained gaseous material." The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning.

The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators[1] (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004 (27)).

---

[1] See, for example, 47 FR 27530, June 24, 1982, where it states "Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA.

We also note that since the Agency did not solicit comment on this issue in the proposal, and did not analyze or address it in the preamble to the final rule or in the Regulatory Impact Analysis (RIA) for the rule, it is clear that the Agency did not intend to issue an interpretation that would change previous EPA statements regarding how "contained gaseous material" is interpreted for purposes of RCRA and for purposes of section 129 of the Clean Air Act.

Thank you for your continued interest in protecting the environment. If you have further questions you may contact George Faison, of my staff, at faison.george@epa.gov or 703-305-7652.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

ATTACHMENT "E"

9489.1994(01)

CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS

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

February 23, 1994

Mr. David D. Emery
President
Bioremediation Service, Inc.
P.O. Box 2010
Lake Oswego, Oregon 97035-0012

Dear Mr. Emery:

This is in response to your December 21, 1993, letter requesting clarification on the distinction between thermal desorbers and incinerators. In particular, you questioned whether temperature was a criterion for distinguishing between desorbers and incinerators and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption.

Under the Environmental Protection Agency's (EPA's) regulations, thermal treatment units that are enclosed devices using controlled flame combustion and that are neither boilers nor industrial furnaces are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. Definitions of boilers, industrial furnaces, and incinerators are established in 40 CFR 260.10. Thermal treatment units that do not use controlled flame combustion and that are not industrial furnaces are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit". Thus, in response

to your questions, temperature is not a criterion that is used to determine the regulatory status of a thermal desorber.

EPA's regulations for miscellaneous units are not prescriptive given the variety of devices that fall into this category. Rather, the regulations require the permitting official to establish permit conditions that are necessary to protect human health and the environment. For "miscellaneous" thermal treatment units, permit writers will generally require compliance with all of the Subpart O incinerator standards that are appropriate for the technology and then determine if additional controls are needed to ensure that emissions are safe.

Please note that I have described EPA's regulatory classification approach for thermal desorbers. Under the Resource Conservation and Recovery Act, EPA authorizes the States to implement the hazardous waste management regulatory program. State regulations may be more stringent or broader in scope than EPA's. Therefore, you should check with the State in which the facility in question is to be located to identify any applicable standards.

With respect to your question as to whether chlordane contaminated soil can be effectively and safely treated by low temperature desorption, you should contact EPA's technical expert on thermal desorption, Paul de Percin, Office of Research and Development, for assistance. Mr. de Percin can also be consulted about TCDD conjugation but, without full thermodynamic and kinetic data regarding the process involved, it may be difficult to give you any definitive assistance. He can be reached at 513-569-7797.

I hope that this information will be helpful. If you have further questions about the regulatory classification of thermal desorbers, please contact Bob Holloway of my staff at 703-308-8461.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

cc: Paul de Percin; Bob Holloway

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Jeanne Philquist, Manager
Air Section
Enforcement Division

Date: 7/25/96

Thru: Troy Dalton, P.E., Supervisor
Case Team, Engineering Services Section
Enforcement Division

From: Lou DeCuir, P.E.
Case Team, Engineering Services Section
Enforcement Division

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm).
Account No. GB-0101-M

The Air Section has requested that the Engineering Services Section (ESS) provide an opinion on the following three questions:

1. Does 30 TAC 120 Subchapter A apply to a thermal oxidizer unit at a DuraTherm waste processing facility?

2. Do 40 CFR 264.1033(c) and 30 TAC 115.121(a)(1) and (a)(2) apply to the thermal oxidizer?

3. If these sections do not apply, then under what regulations can DuraTherm be cited for improper thermal oxidizer operation?

DuraTherm (formerly known as Bird Environmental Gulf Coast [BEGC]) was issued a Notice of Violation (NOV) for violations of 30 TAC 120.21(a)(1), Title 40 Code of Federal Regulations (40 CFR) 264.1033(c) [the NOV actually cited 264.1033(2)(c), which doesn't exist; 264.1033(c) was the intended subsection], and 30 TAC 115.121(a)(1) and (a)(2) for allegedly failing to comply with their permit by not operating the thermal oxidizer at the temperature specified in their permit application (1400 degrees Fahrenheit [1400°F]) and in Texas Natural Resource Conservation Commission (TNRCC) regulations (1300°F). In their response, the company claimed that 30 TAC 120 Subchapter A (regarding Facility Permit Requirements) and 30 TAC 115 (concerning Vent Gas Control) were not applicable, but offered no company position concerning 40 CFR 264.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

ESS has reviewed these question and offers the following conclusions:

The thermal oxidizer is not regulated by 30 TAC 120 Subchapter A, 40 CFR 264, or 30 TAC 115, but *is* regulated by Standard Exemption 88, 30 TAC 116, and 30 TAC 101. The NOV correctly noted that a violation had occurred, but cited the wrong regulatory provisions, in ESS's opinion, since specific exemptions are relevant.

ESS's analysis concerning the applicability of Chapter 120 is as follows:

The relevant Chapter 120 exemption is contained in §120.3(d). Section 120.3(d) exempts certain facilities from Subchapter A of Chapter 120 by stating:

> "The air quality permitting requirements of this subchapter do not apply to facilities in existence before September 1, 1987, except for facility units which incinerate or burn hazardous or solid waste."

Section 120.3(a) explains that "in existence before September 1, 1987" refers to:

> "...a hazardous waste management facility...that is used for the storage, processing, or disposal of hazardous waste and is authorized by a hazardous waste permit or is physically present and awaiting final action on an application submitted pursuant to §§335.2(c), 335.43(b), and 335.45(b) of this title..."

Based on a direct reading of the rule language, a facility would be exempt from the permitting requirements of Subchapter A if it meets the following three conditions: it is a hazardous waste management facility, it was in existence before 1987 as defined by §120.3(a), and it doesn't include a facility unit which burns hazardous waste. Since Subchapter A deals only with facility permit requirements, the facility would be completely exempt from Subchapter A if it meets these conditions.

The facility is presently permitted as a hazardous waste management facility under Permit No. HW-50355-001. The company that formerly operated this facility, Petro Processors, Incorporated, filed

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

an interim status permit application in accordance with 30 TAC 335.2(c) on May 27, 1986 and had been operating the facility for three years at the time. This makes the facility a hazardous waste management facility that was physically present and awaiting final action on a permit application prior to September 1, 1987, so it meets the first two of the three conditions for exemption. If the thermal oxidizer does not "incinerate or burn hazardous waste," then it would meet the third condition and would be completely exempt from Subchapter A.

According to their current permit, DuraTherm is "authorized to store, and process hazardous waste," but the input to the thermal oxidizer is not considered to be hazardous waste. Hazardous waste, under the rules of the federal Resource Conservation and Recovery Act (RCRA), have meanings as specified in Title 40, Code of Federal Regulations (40 CFR) 261.2 and 261.3. TNRCC regulations follow the RCRA definitions closely. Title 30 TAC 101.1, relating to General Rules, defines hazardous wastes as follows:

> "Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code (USC) 6901 et seq. as amended."

Thus, according to this definition, a waste must be considered a solid waste in order to be classified as a hazardous waste. According to the RCRA definition [42 USC 6903(27)], a solid waste is:

> "any garbage, refuse, sludge...or other discarded material including solid, liquid semisolid, or contained gaseous material..."

RCRA requires the U. S. Environmental Protection Agency (EPA) to list specific hazardous wastes and to establish criteria by which wastes which are not specifically listed may be identified as hazardous. In adopting interim final amendments to RCRA regulations (47 FR 27530), EPA ruled that the input to a fume incinerator or thermal oxidizer is not a hazardous waste, as follows:

> "Fume incinerators which are used to destroy *gaseous* emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general the RCRA standards do not apply to fume incinerators *since the input is not identifiable as a solid waste*, according to the definition set forth in (40 CFR) §261.2." (emphasis added)

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Thus, EPA has taken the position that a gaseous input to a thermal oxidizer or fume incinerator is not a hazardous waste. The EPA has subsequently reaffirmed this position with regard to substances that are gases at standard temperature and pressure. In proposed rule amendments (49 FR 5314), EPA explained that it believed that:

> "the exclusion from RCRA of gaseous materials that are not contained applied only to 'true gases'--namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our [EPA's] concern was that a plant could evade regulation by designing a process to keep process emissions in a gaseous state."

Upon reconsideration, EPA stated in the final adoption (54 FR 50973) that their "authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases [*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes]." So the previously issued guidance--that RCRA standards do not apply to fume incinerators--currently remains in effect because the input is an uncontainerized gas. However, according to an EPA policy memorandum (see April 30, 1996 memo from John P. Lehman, Director, Waste Management and Economic Division), the exclusion from consideration as a hazardous waste only applies if the incinerator is burning gases, not liquids. If the thermal oxidizer is accepting condensed liquids in addition to vapors, the waste stream could be considered a hazardous waste.

The thermal oxidizer at the DuraTherm facility is a unit which uses a direct, enclosed flame to burn waste gases from the waste processing units, truck loading terminals, wastewater treatment system, and fixed-roof storage tanks. The thermal oxidizer is designed to burn gases, and the inputs to the thermal oxidizer generally consist only of gaseous products. To ensure that the input does not contain entrained condensed liquids, DuraTherm utilizes a knockout pot to remove trapped liquid particles from all process vapors before being sent to the thermal oxidizer. When the process units are operating, vapors also pass through a natural gas-fired thermal desorption system and process condenser, which are upstream of the thermal oxidizer, to remove and extract trapped liquids. Thus, the facility includes units which are designed to ensure that the process vapors are completely in a gaseous state before they are burned by the thermal oxidizer.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Title 30 TAC 120.3(b), if improperly interpreted, could appear to apply the permitting requirements of Chapter 120 to the thermal oxidizer. Section 120.3(b) applies Subchapter A to certain units subject to air quality permitting requirements under 30 TAC 116, by stating:

> "Hazardous or solid waste management facility units which otherwise would not be subject to TWC permitting requirements, but would be subject to the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification)...shall be regulated by the air quality permitting requirements of this subchapter."

A hazardous waste management unit, according to 30 TAC 101.1 is an "improvement on land used to manage hazardous waste." Because the gaseous waste stream is an uncontainerized gaseous material and is not considered to be a solid or hazardous waste by EPA, the thermal oxidizer cannot be considered a hazardous waste management facility unit. Therefore, subsection (b) does not apply to the thermal oxidizer, does not cause it to be regulated under Subchapter A, and does not contradict the exemption allowed by §120.3(d).

Since the input to the thermal oxidizer is not a hazardous waste, and since facilities in existence prior to 1987 that do not burn hazardous waste are exempt from the permitting requirements of Subchapter A and Subchapter A deals only with facility permit requirements, ESS has determined that DuraTherm's facility is exempt from regulation under 30 TAC 120 Subchapter A. The NOV issued to DuraTherm was incorrectly written, since it cited the company for a violation of part of Subchapter A.

ESS's analysis concerning the applicability of 40 CFR 264 is as follows:

Subsection 264.1030(b), relating to applicability of Subpart AA (of which §264.1033 is a part), states:

> "this subpart applies to process vents...that manage hazardous wastes with organic concentrations of 10-ppmw, if these operations are conducted in: (1) Units that are subject to the permitting requirements of part 270, or (2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270."

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

The thermal oxidizer is not subject to Subpart AA because, as previously discussed, it does not manage hazardous wastes. It is not subject to the permitting requirements of part 270 and is not a hazardous waste recycling unit. Thus, 40 CFR 264.1033(c) does not apply and the company was incorrectly cited for a violation of part 264.

ESS's analysis concerning the applicability of 30 TAC 115 is as follows:

DuraTherm's violation cited 30 TAC 115.121(a)(1) and (a)(2), which requires vent gas streams to be burned in accordance with §115.122(a)(1). Section 122(a)(1), relating to Control Requirements, requires certain vent gas streams to be burned at a temperature greater than 1300°F. Section 115.127 lists exemptions to vent gas regulations (§§115.121 - 115.129), by stating in §115.127(a)(3)(A) that "a vent gas stream having a combined weight of VOC equal to or less than 100 pounds in any continuous 24-hour period" is exempt. DuraTherm has argued that §115.121 does not apply, since the vent gas stream sent to the thermal oxidizer was less than 100 lb/day. In order to demonstrate compliance with this exemption limit, DuraTherm has attempted to show tests or calculations and daily operating parameters which document that emissions at maximum operating conditions don't exceed 50% of the exemption limit, as allowed by §115.126(a)(3).

ESS has requested the required records from DuraTherm to determine if they meet the exemption criteria of §115.127(a)(3)(A). In response, DuraTherm, produced emission calculations which showed that, on a claimed worst case day, VOC vapors vented to the thermal oxidizer during 1995 totaled 36.24 lbs/day, which is less than 50% of the 100 lb/day exemption limit. This analysis was based on estimating methods contained in the EPA document AP-42, *Compilation of Air Pollution Emission Factors*, using maximum filling rates from process tanks. DuraTherm has also produced daily records for an entire year, based on process rate calculations using data from daily operating logs, which showed that the actual filling rates for the tanks were below the worst-case daily maximum filling rates used in the analysis, as required by §115.126(a)(3)(B). In ESS's opinion, DuraTherm has met the 100 lb/day exemption allowed by §115.127(a) and has adequately maintained records to show that actual operating conditions did not exceed those on which the worst case calculations were based. Therefore, DuraTherm was cited incorrectly for violating §115.121(a)(1) and (a)(2).

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

The following is ESS's opinion concerning which regulations may have been violated by improper thermal oxidizer operation:

Although the thermal oxidizer is not regulated by Chapter 120, the RCRA permit, or §115.121 vent gas regulations, it is not an entirely unregulated unit. The thermal oxidizer is authorized by Standard Exemption No. 88, according to a September 15, 1993 TNRCC letter to BEGC from James E. Crocker, Manager, Combustion Section, Office of Air Quality. Standard Exemption 88 specifies that:

> "Each direct flame incinerator shall be automatically controlled to maintain a minimum temperature of 1,400 degrees Fahrenheit in the combustion chamber (secondary chamber if dual chambered) and a gas retention time of 0.5 second or greater."

Therefore, the thermal oxidizer is required to maintain a minimum temperature of 1400°F, according to this standard exemption.

DuraTherm has argued that Standard Exemption 88 no longer applied since the company was issued a RCRA permit which had received an air quality review. The RCRA permit was issued in 1994 under "one-stop" permitting procedures pursuant to the Texas Solid Waste Disposal Act, which provided for an air review of permits issued for hazardous waste facilities. Section 361.073 of this Act specifies that "The Texas Air Control Board shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility." Since the thermal oxidizer is not a hazardous waste management facility, the Solid Waste Disposal Act did not provide for it to be technically reviewed for its air quality impact, and it is not addressed by the RCRA permit.

The permit, under "Facility Units and Functions Authorized" states that "The permittee... is authorized for the following functions, subject to the limitations contained herein" and, thereafter, lists authorized units and functions. Nowhere in this list does the permit mention the thermal oxidizer, nor do the air quality provisions refer to thermal oxidizer operation. ESS, therefore, concludes that the thermal oxidizer is not authorized by this permit, so Standard Exemption 88 still applies.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Thus, ESS has determined that the failure of DuraTherm to operate their thermal oxidizer at a minimum temperature of 1400° is a violation of Standard Exemption No. 88, which is also a violation of 30 TAC 116.211. The NOV is correct in noting that a violation had occurred, but cited the wrong regulatory provisions by referring to 40 CFR 264.1033 and 30 TAC 120.21(a)(1).

This is also a violation of §101.7(a), which states:

> "All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered in good working order and operated properly when operated in a manner such that the facility is capable of operating within limitations established by permit and/or Texas Natural Resource Conservation Commission (TNRCC or Commission) regulations. Normal facility operations include any operation other than start-up or shutdown."

Please note that all policy statements are to be issued through TNRCC's Office of Policy and Regulatory Development (OPRD). However, in order to provide as timely a response as possible, ESS is providing the above opinion. If a definitive agency statement is required, this opinion, along with a formal policy request per OPRD's format, should be submitted to OPRD.

If you have any questions about this opinion, please contact me at extension 1513 or by E-mail at LDECUIR.

LND/db

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

bcc: Board, File
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Ms. Karen Atkinson, Air Program Manager, Houston
Mr. David Duncan, Senior Attorney/Air, Legal Division
Mr. Rich Lee, Supervisor, Enforcement Guidelines Team, Air Section, Enforcement Division
Ms. Susan White, Staff Attorney, Legal Division
Mr. Walt Ehresman, Staff Attorney, Legal Division
Ms. Sheila Smith, Enforcement Guidelines Team, Air Section, Enforcement Division
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February 22, 2012

VIA E-MAIL

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Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
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Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

This letter follows up on certain issues discussed at the February 14, 2012 meeting between U. S. Ecology, TD*X Associates, and EPA concerning the permitting status of the thermal desorption unit ("TDU") under RCRA. You indicated at that meeting that because the process vent gases from the oil reclamation process are routed to the TDU, the TDU is an incinerator which requires a RCRA permit. However, as we pointed out in the meeting, this contention is incorrect because the process vent gases are not "solid wastes" subject to RCRA jurisdiction.

The term "solid waste" is defined in RCRA as any "solid, semi-solid, liquid, or *contained gaseous material.*" 42 U.S.C. § 6903(27) (West 2011) (emphasis added). The process vent gases originating at the TDU are uncontained gases; therefore, these gases are not regulated under RCRA because they are not solid waste subject to RCRA jurisdiction, permitting or otherwise. At our meeting we provided EPA with a copy of a document from the Office of Management and Budget ("OMB") reciting the longstanding EPA precedent that uncontained gas is not a solid waste. Another copy of this document is attached to this letter as Attachment "A." Among the precedent cited in this document is an EPA guidance document entitled "Hazardous Waste TSDF-Technical Guidance Document for RCRA Air Emission Standards for Process Vent and Equipment Leaks." Although relevant excerpts from this EPA guidance document were also provided to you at our meeting, another copy is attached to this letter as Attachment "B." We would draw your specific attention to the Note on pages 2-3, which directly addresses the regulatory status of process vent streams under RCRA, and states that "[n]containerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them." *See* also McCoy's RCRA Unraveled

(2009), § 14.5.3.1 (" . . . vent streams (i.e. gases and vapors) from hazardous waste management units are not classified as solid or hazardous wastes.")

As we discussed in our meeting, the definition of solid waste as including only "contained gaseous material," and not uncontained gases like the TDU's process vent stream, defines the jurisdictional boundaries between RCRA and the federal Clean Air Act. This precise point was made in a training document prepared for The Advanced RCRA Inspector's Institute discussing the "RCRA/Clean Air Act Interface," relevant excerpts of which are attached as Attachment "C." Prepared for the express purpose of training RCRA inspectors to conduct proper RCRA inspections, this document acknowledges that uncontained gases are not solid waste. Specifically, in discussing the regulatory status of organics in activated carbon units, it provides that "[t]rapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste."

The conclusion that uncontained gases are outside the scope of RCRA was articulated by EPA Headquarters as recently as May 13, 2011, in a letter from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery, EPA, to Tim Hunt, Senior Director Air Quality, American Forest and Paper Association. A copy of this letter is attached as Attachment "D." That letter recites:

> The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators (*as well as other combustion units*, including air pollution control devices that may combust gaseous material) does not involve treatment of other management of a solid waste (as defined in RCRA section 1004 (27))(emphasis added).

The letter which you relied on in our meeting (OSWER 9489.1994(01)) for EPA's position that the TDU is a RCRA-regulated incinerator is not on point. That letter concerns a general discussion of the regulatory status of thermal treatment units and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption. The unit referred to in the letter appears to be a hazardous waste treatment unit that is not operating under any RCRA exclusions or exemptions. The chlordane hazardous waste treatment requires a RCRA permit to treat the soil in the desorber unit without regard to how the vent gases from the unit are managed. The letter attempts to distinguish which provision under RCRA the unit should be permitted based on how the desorbed organic compounds are managed. The letter does not address whether the desorbed organics from the process are "uncontained gases," which is the premise of U.S. Ecology's position that uncontained gases are not regulated under RCRA. We do not disagree with the premise that the chlordane treatment unit described in the letter requires a RCRA permit. However, we continue to disagree that that a RCRA permit is required for the sole purpose of ducting uncontained vent gases to the combustion zone of the TDU. (It should also be noted that this letter is inconsistent on other grounds with your position that the TDU is

an incinerator. It states that desorption chambers with indirect heating are miscellaneous units, not incinerators.) A copy of this letter is attached as Attachment "E."

EPA's assertion that process vent gases from the TDU are solid waste because they are "derived from" the treatment of solid waste is equally invalid. Under the express terms of the "derived from" rule, materials must first be wastes before they can be RCRA-regulated because they are derived from the treatment, storage, and disposal of solid waste. *See* 40 CFR § 261.3 (c)(2)(i) ("[A]ny *solid waste* generated from the treatment, storage, or disposal of a hazardous waste . . . is a hazardous waste" (emphasis added)). As the foregoing EPA precedent unmistakably shows, the process vent gases are not solid wastes covered by the "derived from" rule. This point was specifically made in the training document provided in Attachment "C" to this letter in its conclusion that because the gas from activated carbon units was not solid waste, "any condensed organics do not derive from treatment of a hazardous waste."

In summary, the process vent gases produced at the TDU are not solid wastes; therefore, EPA lacks RCRA jurisdiction to assert that the introduction of these gases to the TDU is a waste management activity subject to permitting or enforcement under RCRA.

Sincerely,

Mary Reagan

MBR/rrh
Attachments

ATTACHMENT "A"

EPA's Prior Determinations That Landfill Gas is Not a Solid Waste

- Since 1986, EPA has determined under RCRA that landfill gas would be regulated as an "air pollutant", rather than as "solid waste" In that regard, the regulation of MSW landfill emissions was considered during deliberations under a RCRA subtitle D rulemaking. In 1986 and 1987 the Administrator decided to regulate these emissions under the authority of the Clean Air Act. See, e.g. March 6, 1986 Memorandum from Marcia Williams to H. Lanier Hickman, Jr. (attached), cited in Definition of Solid Waste Compendium, Volume U, (Un)-Contained Gases (December 2010)(attached) (see particularly page 9, which refers to the Hickman memorandum and which characterizes landfill gas as "uncontained" and therefore not "solid waste"). After further consideration, the EPA announced in the Federal Register on August 30, 1988 (53 Fed. Reg. 33,314) (attached) their decision to regulate MSW landfill emissions under section 111 of the CAA. This ultimately occurred through the promulgation of the landfill NSPS, 40 CFR Part 60, Subparts WWW and Cc in 1996.

- In the proposed Landfill NSPS standards published on May 30, 1991 (56 Fed. Reg. 24,468) (attached), EPA again reiterated its decision to treat landfill gas as a Clean Air Act pollutant (rather than as solid waste).

- The issue was re-raised during public comment for the proposed NSPS. In response, EPA specifically stated in response: "the RCRA subtitle D establishes a framework for controlling the management of nonhazardous solid waste. Because the intent of this rule is to regulate emissions of landfill gas, and not solid waste, this regulation has been developed under the CAA instead of under RCRA. Some requirements in the RCRA subtitle D regulation are referenced within the NSPS and EG and are necessary to achieve compliance with these regulations." See Air Emissions From Municipal Solid Waste Landfills – Background Information for Final Standards and Guidelines, EPA-453/R-94-021 (December 1995), at pages 1-4, 2-31 to 2-34 (attached). Thus, the concept of utilizing RCRA authority and regulating landfill gas as solid waste was specifically rejected by EPA at that time. "Although one commenter suggested that LFG emissions should be regulated under RCRA authority, the EPA continues to consider Section 111 NSPS and EG to be the appropriate statutory approach for regulating these emissions because the adverse health and welfare effects of concern result from air emissions. Therefore, the final notice added MSW landfills as a source category for regulation under Section111(b)(1)(A) of the CAA to the priority list in 40 CFR 60.16." See id.

- On January 16, 2003, EPA issued National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 Fed. Reg. 2,227), which ensured that landfill gas collection and treatment and/or control systems (including combustion units and landfill gas used on or offsite in beneficial use projects) achieved MACT level controls.

- EPA again noted on March 22, 2004, in revisions to its Criteria for Municipal Solid Waste Landfills, Final Rule for Research, Development and Demonstration Permits for Municipal Solid Waste Landfills:

"With the exception of explosive gas control requirements, landfill gas controls are not regulated pursuant to Subtitle D of RCRA: rather landfill gas emissions are regulated under the Clean Air Act (CAA). The air criteria in 40 CFR 258.24 refer to CAA requirements by requiring compliance with the applicable State Implementation Plan provisions under section 110 of the CAA. Specific requirements pertaining to landfill gas emissions from MSWLF units are addressed in 40 CFR Part 60,Subparts Cc and WWW. Recently, EPA promulgated National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 FR 2227, Jan. 16, 2003). This rule includes requirements for initiating landfill gas collection and control in bioreactor landfills. See 40 CFR Part 63, Subpart AAAA.... [C]onsistent with section 1006(b) of RCRA, EPA sees no need for additional requirements under RCRA to address air emissions in today's rule."

See Final Rule, Research, Development and Demonstration Permits for Municipal Solid Waste Landfills, 69 Fed. Reg. 13,242 (2004) (attached).

- Thus, by 2004, all landfills regulated under WWW were regulated under the Section 112 Landfill MACT standards promulgated at 40 CFR Part 63, Subpart AAAA. In all instances, the notion was that landfill gas would be combusted either in open flares, enclosed combustors (enclosed flares, turbines, engines or boilers), or the gas would be treated (compressed, filtered to 10 microns or less, and cooled or chilled) and routed for use as fuel as either onsite or offsite. When combusted in turbines, engines or boilers, the landfill gas is either controlled to NSPS-specified treatment limits, or it is "treated" as per the NSPS for end use.

- Having exercised its asserted authority under RCRA Section 4004 to regulate air emissions from landfills as a "designated air pollutant" under the Clean Air Act rather than as solid waste under RCRA, the combustion of this designated air pollutant in a flare, turbine, boiler or engine should not be deemed to be the combustion of a solid waste. Stated differently, something cannot be a designated air pollutant and a solid waste at the same time.

- For purposes of Section 129, the term "solid waste' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act. The meaning established for many years by the Administrator pursuant to the Solid Waste Disposal Act (RCRA) was that landfill gas would not be treated as solid waste, and its combustion would not be treated as solid waste combustion, but rather, as an uncontained gaseous emission regulated as a designated air pollutant by the Clean Air Act. There is nothing in the Non-Hazardous Secondary Materials Rule (NHSM) that establishes that landfill gas is a solid waste, and the regulatory impact analysis for the CISWI rule gave no consideration of landfill gas as a source type for establishment of MACT. Indeed, the NHSM establishes that solid waste follows the meaning of solid waste for purposes of Subtitle D, 40 CFR 258.2. That definition excludes uncontained gas from the definition of solid waste, and has via rulemaking always excluded landfill gas.

Longstanding EPA Precedent that Uncontained Gas is not a Solid Waste

- The statutory definition of "solid waste" includes "contained gaseous material." 42 USC § 6903(27).

- EPA interpretation of the term "contained gaseous material" demonstrates that RCRA only applies to "contained" gases, to the exclusion of "uncontained" gases.

- EPA's interpretation of "contained" has been limited to gas present inside "containers."

    - In a 1989 preamble to a final rule dealing with the listing of certain hazardous substances under RCRA, EPA stated that EPA "believes our authority to identify or list a waste as hazardous under RCRA is limited to *containerized* or condensed gases (i.e., section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes). *See* Hazardous Waste Management System: Identification and Listing of Hazardous Waste, 54 Fed. Reg. 50968, 50973 (Dec. 11, 1989).

    - The CISWI Rule promulgated in 2000 defined contained gaseous material as limited to "gases that are in a container when that container is combusted." (EPA provided no explanation for deletion of this definition, which was not mandated or even discussed in the D.C. Circuit's *NRDC* decision.)

    - Similarly, 40 CFR Part 60, Subpart EEEE, governing Other Solid Waste Incineration Units, includes the same definition of "contained gaseous material."

- EPA has a longstanding policy providing that fume incinerators are subject to regulation only under the CAA, and not also RCRA.

    - For example, in the preamble to a 1982 dealing with regulation of incinerators that burn hazardous waste, EPA stated that "fume incinerators are subject only to regulation under the Clean Air Act . . . . Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste." See The Hazardous Waste Management System, Interim Final Amendments to Interim Final and Final Rules, 47 Fed. Reg. 27,520, 27,530 (June 24, 1982). See also, RCRA Superfund Hotline Monthly Summary, 9488.1986(03) available at RCRA Online.

    - EPA has reaffirmed this position on subsequent occasions. For example, in the 1989 preamble discussed above, EPA stated that "fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste." 54

Fed. Reg. 50,973 n.5. See also, Memorandum from Matthew Straus, Chief, Waste Characterization Branch, to Clifford Ng, Engineer, EPA Region II, dated June 17, 1987, available at RCRA Online ("Methanol-laden air from the drying and granulation step of the process does not meet the definition of solid waste under RCRA because it is in vapor form and not confined in a container.")

- On a few occasions, some in EPA attempted to take a broader view of contained gas (e.g. piping was enough) but that view was rejected by the courts or the administrative tribunal. See, e.g. In re BP Chemicals America, Inc., RCRA Appeal No. 89-4, 1991 EPA App. LEXIS 27; 3 E.A.D. 667 (EPA Admin., Aug. 20, 1991) (The Administrator specifically rejected Region V's argument that gaseous emissions were "contained" by the process units they passed through, associated piping or the facility itself, holding that the Agency's definition of the term "contained" has consistently been confined "in the narrower sense of being in an individual container such that the gas is amenable to shipment"). See also In re: Chemical Waste Management of Indiana, Inc., RCRA Appeal No. 95-4, *1995 EPA App. LEXIS 31*(EPA Environmental Appeals Board, Aug. 23, 1995) (emissions from microencapsulation of hazardous debris) (The EAB concludes the air emissions are excludable from Subtitle C regulation "because the air emissions that the Region seeks to regulate are not containerized.")

- In the landfill gas context, that view was similarly rejected by stakeholder groups assigned to review combustion issues. See, e.g., Recommendation from the Incinerator Workgroup on Section 112 Subcategories April 28, 1998 ("Section 129 Requirements. Section 129 applies to "solid waste combustion." Because solid waste is defined to exclude gases (except gases which are in containers), Section 129 does not apply to landfill gas flares.") (available at http://www.epa.gov/ttn/atw/iccr/incin/rec-112.pdf).

- The final Boiler MACT rule expressly recognizes that landfill gas constitutes a "gaseous *fuel*." (76 Fed. Reg. 15,684)

- See also:

  - Burning of Hazardous Waste in Boilers and Industrial Furnaces, Final Rule, 56 Fed. Reg. 7134, 7200 (Feb. 21, 1991) (activated carbon units used as air emission control devises are not subject to RCRA because "the gas originally treated is not a solid waste (it is an uncontained gas)." See also RCRA Online Determinations 12783 (November 20, 1986) (Volatile organics released to the air are not hazardous waste because they are not solid wastes. (They do not fit the definition established in §1004(27) of RCRA as "contained gaseous materials.")"

  - Hazardous Waste TSDF - Technical Guidance RCRA Air Emission Standards for Process Vents and Equipment Leaks, EPA-450/3-89-021 (July 1990) at pages 2-3: "Air standards have been promulgated for the control of air emissions from permitted hazardous waste incinerators. 40 CFR Part 264, Subpart O. These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those

primary organic hazardous constituents listed in the facility permit However, the process vent stream (i.e. gases and vapors) from a hazardous waste management unit would not be classified as a hazardous wastes. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement."

- Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF): Background Information for Promulgated Organic Air Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA/453/R-94/076b (November 1994) (since organic vapors emitted from hazardous waste are not solid or hazardous waste, control devices installed to comply with Subpart CC organic vapor control requirements are not hazardous waste management units and do not require RCRA permits).

ATTACHMENT "B"

United States Environmental Protection Agency

Office of Air Quality Planning and Standards Research Triangle Park NC 27711

EPA-450/3-89-021
July 1990

Air

EPA

Hazardous Waste TSDF - Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks

RCRA

The standards for process vents contain requirements that specific control-device operating parameters be monitored continuously (Sections 264.1034 and 265.1034) and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. Operating parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. While minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95 percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. A recovery device must be designed for a particular application and monitored to ensure that it is being operated within design specifications. (Note: This is an important point for permit writers/reviewers to keep in mind when evaluating control device efficiencies.) Proper design shall be determined through and documented by engineering calculations, vendor certification, and/or emission testing, although the use of emission testing to determine compliance with efficiency requirements is expected to occur only rarely. For facilities with final RCRA permits, periods when monitoring data indicate that control device operating parameters exceed established tolerances for design specifications for more than 24 hours must be reported on a semiannual basis. The records and reports must include dates, duration, cause, and corrective measures taken. (Note: Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR 264, Subpart O). These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. However, the process vent stream (i.e., gases and vapors) from a hazardous waste management unit would not be classified as a hazardous waste. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore, combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement.)

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ATTACHMENT "C"

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The Advanced RCRA Inspector's Institute

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Monday 12/13	1:30 - 2:30	Welcome and an Introduction
	2:45 - 4:30	Exploring Inspection Paradigms
Tuesday 12/14	8:30 - 9:45	Waste Minimization/Pollution Prevention Part 1
	10:00- 11:30	WMIN/PP Part 2
	12:30 - 1:30	Concurrent Sessions: BIF/Combustion Inspections
		Air Emissions (AA/BB)
	1:45 - 3:00	(Cont'd)
	3:15 - 4:30	(Cont'd)
Wednesday 12/15	8:30 - 9:30	Enforcement Initiatives Part 1
	9:45 - 10:15	Initiatives Part 2
	10:30 - 12:00	Import Export Inspections
	1:00 - 2:15	RCRA Interface with Other Laws
	2:30 - 3:45	Multimedia Inspections Part 1
	4:00 - 4:45	MM Part 2
Thursday 12/16	8:30 - 9:30	New Waste Issues
	9:45 - 10:45	Gray Areas In the Definition of Solid Waste Part 1
	11:00 - 12:00	Gray Areas Part 2
	1:00 - 2:00	Enforcement Case Development Part 1
	2:15 - 3:15	Enf. Case Development Part 2
	3:30 - 4:30	RCRA Civil Penalty Policy
Friday 12/17	8:30 - 10:00	Federal Facilities Enforcement
	(10:00 - 10:30)	(Extended break for check-out)
	10:30 - 11:30	Inspection Paradigms Revisited
	11:30 - 12:00	Complete evaluations and collect certificates

(Some time may also be made available throughout the course for individual's to address the specific questions or ideas to all participants)

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United States Environmental Protection Agency | Office of Solid Waste and Emergency Response | November 1992

EPA

RCRA/Clean Air Act Interface

A Quick Reference Fact Sheet

Background

RCRA and the Clean Air Act (CAA) both have regulatory programs to address emissions onto the environment. The CAA comprises a series of interlocking programs designed to protect health and the public welfare from emissions polluting the ambient (outdoor) air.

The 1990 amendments to CAA contain several innovative approaches to air regulation. The Act is subdivided into a number of titles including provisions for attainment and maintenance of National Ambient Air Quality Standards (NAAQS), mobile sources, air toxics, acid rain control, permits, ozone protection, enforcement and other miscellaneous provisions.

Potential Issues

The following examples highlight RCRA regulations that interface with CAA.

Chlorofluorocarbon (CFC) Reclamation Exclusion — The CAA requires that all ozone depleting emissions from all kinds of refrigeration be reduced to the lowest level possible through recycling, recovery, and other controls. Specifically, Title VI of CAA prohibits venting during servicing and disposal of refrigerants after July 1, 1992. To be consistent with Title VI, and because CFC refrigerants would display the toxicity characteristic under RCRA, used CFC refrigerants from totally enclosed heat transfer equipment, provided the refrigerant is reclaimed for further use — is not subject to regulation as a hazardous waste (§261.4 (b)(12)). Additionally, to qualify for the exclusion, the persons performing the reclamation activities and the equipment they use must be certified under CAA.

This exclusion is only applicable to the actual CFC refrigerant, any oils or other waste removed from the equipment is subject to hazardous waste determination.

Air Emission Control Devices — Air emission control devices located at RCRA hazardous waste facilities but regulated under CAA, can generate residues that may be defined as a hazardous waste. For example, activated carbon units used as air emission control devices of gaseous industrial process emissions will not necessarily be regulated under RCRA. Trapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste. However, the non gas residues from these devices could be hazardous wastes if they are listed or if they display a characteristic.

Stationary Sources — The CAA of 1990 includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants. The list of source categories must include:

- "Major sources" - emitting 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics
- "Area Sources" - smaller sources emitting less than 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics.

Several types of facilities regulated under RCRA Subtitle C may qualify as "major" or "area" sources of toxic air pollutants subject to CAA. Specific small businesses that may be regulated under both programs include dry cleaners, gasoline stations, printers, auto body repair shops, metal finishers, surface coating and painting operations, and solvent degreasing operations.

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ATTACHMENT "D"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 13 2011

Mr. Tim Hunt
Senior Director, Air Quality
American Forest and Paper Association
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hunt:

I would like to thank you and other representatives of forest products industries for meeting with my staff on April 26, 2011, to discuss your concerns with the Identification of Non-Hazardous Secondary Materials That Are Solid Waste (NHSM) final rule. We are evaluating a number of the concerns you raised, but wanted to get back to you quickly on the "contained gas" issue that you raised in that meeting and in an issue paper that you forwarded to us on April 13, 2011. We understand that our response to the fourth comment in Part 3b.I.3. of the document *Responses to Comments Document for the Identification of Non-Hazardous Materials that are Solid Waste* (February 2011) has created concerns among the regulated community that the Environmental Protection Agency (EPA) has changed a long-standing interpretation of what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA). We have not changed our prior interpretation but would like to clarify the response.

EPA was responding to a comment requesting that we include in the NHSM final rule a definition of "contained gaseous material." The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning.

The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators[1] (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004 (27)).

---

[1] See, for example, 47 FR 27530, June 24, 1982, where it states "Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA.

We also note that since the Agency did not solicit comment on this issue in the proposal, and did not analyze or address it in the preamble to the final rule or in the Regulatory Impact Analysis (RIA) for the rule, it is clear that the Agency did not intend to issue an interpretation that would change previous EPA statements regarding how "contained gaseous material" is interpreted for purposes of RCRA and for purposes of section 129 of the Clean Air Act.

Thank you for your continued interest in protecting the environment. If you have further questions you may contact George Faison, of my staff, at faison.george@epa.gov or 703-305-7652.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

ATTACHMENT "E"

9489.1994(01)

CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS

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

February 23, 1994

Mr. David D. Emery
President
Bioremediation Service, Inc.
P.O. Box 2010
Lake Oswego, Oregon 97035-0012

Dear Mr. Emery:

This is in response to your December 21, 1993, letter requesting clarification on the distinction between thermal desorbers and incinerators. In particular, you questioned whether temperature was a criterion for distinguishing between desorbers and incinerators and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption.

Under the Environmental Protection Agency's (EPA's) regulations, thermal treatment units that are enclosed devices using controlled flame combustion and that are neither boilers nor industrial furnaces are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. Definitions of boilers, industrial furnaces, and incinerators are established in 40 CFR 260.10. Thermal treatment units that do not use controlled flame combustion and that are not industrial furnaces are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit". Thus, in response

to your questions, temperature is not a criterion that is used to determine the regulatory status of a thermal desorber.

EPA's regulations for miscellaneous units are not prescriptive given the variety of devices that fall into this category. Rather, the regulations require the permitting official to establish permit conditions that are necessary to protect human health and the environment. For "miscellaneous" thermal treatment units, permit writers will generally require compliance with all of the Subpart O incinerator standards that are appropriate for the technology and then determine if additional controls are needed to ensure that emissions are safe.

Please note that I have described EPA's regulatory classification approach for thermal desorbers. Under the Resource Conservation and Recovery Act, EPA authorizes the States to implement the hazardous waste management regulatory program. State regulations may be more stringent or broader in scope than EPA's. Therefore, you should check with the State in which the facility in question is to be located to identify any applicable standards.

With respect to your question as to whether chlordane contaminated soil can be effectively and safely treated by low temperature desorption, you should contact EPA's technical expert on thermal desorption, Paul de Percin, Office of Research and Development, for assistance. Mr. de Percin can also be consulted about TCDD conjugation but, without full thermodynamic and kinetic data regarding the process involved, it may be difficult to give you any definitive assistance. He can be reached at 513-569-7797.

I hope that this information will be helpful. If you have further questions about the regulatory classification of thermal desorbers, please contact Bob Holloway of my staff at 703-308-8461.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

cc: Paul de Percin; Bob Holloway

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Jeanne Philquist, Manager
Air Section
Enforcement Division

Date: 7/25/96

Thru: Troy Dalton, P.E., Supervisor
Case Team, Engineering Services Section
Enforcement Division

From: Lou DeCuir, P.E.
Case Team, Engineering Services Section
Enforcement Division

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm).
Account No. GB-0101-M

The Air Section has requested that the Engineering Services Section (ESS) provide an opinion on the following three questions:

1. Does 30 TAC 120 Subchapter A apply to a thermal oxidizer unit at a DuraTherm waste processing facility?

2. Do 40 CFR 264.1033(c) and 30 TAC 115.121(a)(1) and (a)(2) apply to the thermal oxidizer?

3. If these sections do not apply, then under what regulations can DuraTherm be cited for improper thermal oxidizer operation?

DuraTherm (formerly known as Bird Environmental Gulf Coast [BEGC]) was issued a Notice of Violation (NOV) for violations of 30 TAC 120.21(a)(1), Title 40 Code of Federal Regulations (40 CFR) 264.1033(c) [the NOV actually cited 264.1033(2)(c), which doesn't exist; 264.1033(c) was the intended subsection], and 30 TAC 115.121(a)(1) and (a)(2) for allegedly failing to comply with their permit by not operating the thermal oxidizer at the temperature specified in their permit application (1400 degrees Fahrenheit [1400°F]) and in Texas Natural Resource Conservation Commission (TNRCC) regulations (1300°F). In their response, the company claimed that 30 TAC 120 Subchapter A (regarding Facility Permit Requirements) and 30 TAC 115 (concerning Vent Gas Control) were not applicable, but offered no company position concerning 40 CFR 264.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

ESS has reviewed these question and offers the following conclusions:

The thermal oxidizer is not regulated by 30 TAC 120 Subchapter A, 40 CFR 264, or 30 TAC 115, but *is* regulated by Standard Exemption 88, 30 TAC 116, and 30 TAC 101. The NOV correctly noted that a violation had occurred, but cited the wrong regulatory provisions, in ESS's opinion, since specific exemptions are relevant.

ESS's analysis concerning the applicability of Chapter 120 is as follows:

The relevant Chapter 120 exemption is contained in §120.3(d). Section 120.3(d) exempts certain facilities from Subchapter A of Chapter 120 by stating:

> "The air quality permitting requirements of this subchapter do not apply to facilities in existence before September 1, 1987, except for facility units which incinerate or burn hazardous or solid waste."

Section 120.3(a) explains that "in existence before September 1, 1987" refers to:

> "...a hazardous waste management facility...that is used for the storage, processing, or disposal of hazardous waste and is authorized by a hazardous waste permit or is physically present and awaiting final action on an application submitted pursuant to §§335.2(c), 335.43(b), and 335.45(b) of this title..."

Based on a direct reading of the rule language, a facility would be exempt from the permitting requirements of Subchapter A if it meets the following three conditions: it is a hazardous waste management facility, it was in existence before 1987 as defined by §120.3(a), and it doesn't include a facility unit which burns hazardous waste. Since Subchapter A deals only with facility permit requirements, the facility would be completely exempt from Subchapter A if it meets these conditions.

The facility is presently permitted as a hazardous waste management facility under Permit No. HW-50355-001. The company that formerly operated this facility, Petro Processors, Incorporated, filed

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

an interim status permit application in accordance with 30 TAC 335.2(c) on May 27, 1986 and had been operating the facility for three years at the time. This makes the facility a hazardous waste management facility that was physically present and awaiting final action on a permit application prior to September 1, 1987, so it meets the first two of the three conditions for exemption. If the thermal oxidizer does not "incinerate or burn hazardous waste," then it would meet the third condition and would be completely exempt from Subchapter A.

According to their current permit, DuraTherm is "authorized to store, and process hazardous waste," but the input to the thermal oxidizer is not considered to be hazardous waste. Hazardous waste, under the rules of the federal Resource Conservation and Recovery Act (RCRA), have meanings as specified in Title 40, Code of Federal Regulations (40 CFR) 261.2 and 261.3. TNRCC regulations follow the RCRA definitions closely. Title 30 TAC 101.1, relating to General Rules, defines hazardous wastes as follows:

> "Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code (USC) 6901 et seq. as amended."

Thus, according to this definition, a waste must be considered a solid waste in order to be classified as a hazardous waste. According to the RCRA definition [42 USC 6903(27)], a solid waste is:

> "any garbage, refuse, sludge...or other discarded material including solid, liquid semisolid, or contained gaseous material..."

RCRA requires the U. S. Environmental Protection Agency (EPA) to list specific hazardous wastes and to establish criteria by which wastes which are not specifically listed may be identified as hazardous. In adopting interim final amendments to RCRA regulations (47 FR 27530), EPA ruled that the input to a fume incinerator or thermal oxidizer is not a hazardous waste, as follows:

> "Fume incinerators which are used to destroy *gaseous* emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general the RCRA standards do not apply to fume incinerators *since the input is not identifiable as a solid waste*, according to the definition set forth in (40 CFR) §261.2." (emphasis added)

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Thus, EPA has taken the position that a gaseous input to a thermal oxidizer or fume incinerator is not a hazardous waste. The EPA has subsequently reaffirmed this position with regard to substances that are gases at standard temperature and pressure. In proposed rule amendments (49 FR 5314), EPA explained that it believed that:

> "the exclusion from RCRA of gaseous materials that are not contained applied only to 'true gases'--namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our [EPA's] concern was that a plant could evade regulation by designing a process to keep process emissions in a gaseous state."

Upon reconsideration, EPA stated in the final adoption (54 FR 50973) that their "authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases [*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes]." So the previously issued guidance--that RCRA standards do not apply to fume incinerators--currently remains in effect because the input is an uncontainerized gas. However, according to an EPA policy memorandum (see April 30, 1996 memo from John P. Lehman, Director, Waste Management and Economic Division), the exclusion from consideration as a hazardous waste only applies if the incinerator is burning gases, not liquids. If the thermal oxidizer is accepting condensed liquids in addition to vapors, the waste stream could be considered a hazardous waste.

The thermal oxidizer at the DuraTherm facility is a unit which uses a direct, enclosed flame to burn waste gases from the waste processing units, truck loading terminals, wastewater treatment system, and fixed-roof storage tanks. The thermal oxidizer is designed to burn gases, and the inputs to the thermal oxidizer generally consist only of gaseous products. To ensure that the input does not contain entrained condensed liquids, DuraTherm utilizes a knockout pot to remove trapped liquid particles from all process vapors before being sent to the thermal oxidizer. When the process units are operating, vapors also pass through a natural gas-fired thermal desorption system and process condenser, which are upstream of the thermal oxidizer, to remove and extract trapped liquids. Thus, the facility includes units which are designed to ensure that the process vapors are completely in a gaseous state before they are burned by the thermal oxidizer.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Title 30 TAC 120.3(b), if improperly interpreted, could appear to apply the permitting requirements of Chapter 120 to the thermal oxidizer. Section 120.3(b) applies Subchapter A to certain units subject to air quality permitting requirements under 30 TAC 116, by stating:

> "Hazardous or solid waste management facility units which otherwise would not be subject to TWC permitting requirements, but would be subject to the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification)...shall be regulated by the air quality permitting requirements of this subchapter."

A hazardous waste management unit, according to 30 TAC 101.1 is an "improvement on land used to manage hazardous waste." Because the gaseous waste stream is an uncontainerized gaseous material and is not considered to be a solid or hazardous waste by EPA, the thermal oxidizer cannot be considered a hazardous waste management facility unit. Therefore, subsection (b) does not apply to the thermal oxidizer, does not cause it to be regulated under Subchapter A, and does not contradict the exemption allowed by §120.3(d).

Since the input to the thermal oxidizer is not a hazardous waste, and since facilities in existence prior to 1987 that do not burn hazardous waste are exempt from the permitting requirements of Subchapter A and Subchapter A deals only with facility permit requirements, ESS has determined that DuraTherm's facility is exempt from regulation under 30 TAC 120 Subchapter A. The NOV issued to DuraTherm was incorrectly written, since it cited the company for a violation of part of Subchapter A.

ESS's analysis concerning the applicability of 40 CFR 264 is as follows:

Subsection 264.1030(b), relating to applicability of Subpart AA (of which §264.1033 is a part), states:

> "this subpart applies to process vents...that manage hazardous wastes with organic concentrations of 10-ppmw, if these operations are conducted in: (1) Units that are subject to the permitting requirements of part 270, or (2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270."

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

The thermal oxidizer is not subject to Subpart AA because, as previously discussed, it does not manage hazardous wastes. It is not subject to the permitting requirements of part 270 and is not a hazardous waste recycling unit. Thus, 40 CFR 264.1033(c) does not apply and the company was incorrectly cited for a violation of part 264.

ESS's analysis concerning the applicability of 30 TAC 115 is as follows:

DuraTherm's violation cited 30 TAC 115.121(a)(1) and (a)(2), which requires vent gas streams to be burned in accordance with §115.122(a)(1). Section 122(a)(1), relating to Control Requirements, requires certain vent gas streams to be burned at a temperature greater than 1300°F. Section 115.127 lists exemptions to vent gas regulations (§§115.121 - 115.129), by stating in §115.127(a)(3)(A) that "a vent gas stream having a combined weight of VOC equal to or less than 100 pounds in any continuous 24-hour period" is exempt. DuraTherm has argued that §115.121 does not apply, since the vent gas stream sent to the thermal oxidizer was less than 100 lb/day. In order to demonstrate compliance with this exemption limit, DuraTherm has attempted to show tests or calculations and daily operating parameters which document that emissions at maximum operating conditions don't exceed 50% of the exemption limit, as allowed by §115.126(a)(3).

ESS has requested the required records from DuraTherm to determine if they meet the exemption criteria of §115.127(a)(3)(A). In response, DuraTherm, produced emission calculations which showed that, on a claimed worst case day, VOC vapors vented to the thermal oxidizer during 1995 totaled 36.24 lbs/day, which is less than 50% of the 100 lb/day exemption limit. This analysis was based on estimating methods contained in the EPA document AP-42, *Compilation of Air Pollution Emission Factors*, using maximum filling rates from process tanks. DuraTherm has also produced daily records for an entire year, based on process rate calculations using data from daily operating logs, which showed that the actual filling rates for the tanks were below the worst-case daily maximum filling rates used in the analysis, as required by §115.126(a)(3)(B). In ESS's opinion, DuraTherm has met the 100 lb/day exemption allowed by §115.127(a) and has adequately maintained records to show that actual operating conditions did not exceed those on which the worst case calculations were based. Therefore, DuraTherm was cited incorrectly for violating §115.121(a)(1) and (a)(2).

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

The following is ESS's opinion concerning which regulations may have been violated by improper thermal oxidizer operation:

Although the thermal oxidizer is not regulated by Chapter 120, the RCRA permit, or §115.121 vent gas regulations, it is not an entirely unregulated unit. The thermal oxidizer is authorized by Standard Exemption No. 88, according to a September 15, 1993 TNRCC letter to BEGC from James E. Crocker, Manager, Combustion Section, Office of Air Quality. Standard Exemption 88 specifies that:

> "Each direct flame incinerator shall be automatically controlled to maintain a minimum temperature of 1,400 degrees Fahrenheit in the combustion chamber (secondary chamber if dual chambered) and a gas retention time of 0.5 second or greater."

Therefore, the thermal oxidizer is required to maintain a minimum temperature of 1400°F, according to this standard exemption.

DuraTherm has argued that Standard Exemption 88 no longer applied since the company was issued a RCRA permit which had received an air quality review. The RCRA permit was issued in 1994 under "one-stop" permitting procedures pursuant to the Texas Solid Waste Disposal Act, which provided for an air review of permits issued for hazardous waste facilities. Section 361.073 of this Act specifies that "The Texas Air Control Board shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility." Since the thermal oxidizer is not a hazardous waste management facility, the Solid Waste Disposal Act did not provide for it to be technically reviewed for its air quality impact, and it is not addressed by the RCRA permit.

The permit, under "Facility Units and Functions Authorized" states that "The permittee... is authorized for the following functions, subject to the limitations contained herein" and, thereafter, lists authorized units and functions. Nowhere in this list does the permit mention the thermal oxidizer, nor do the air quality provisions refer to thermal oxidizer operation. ESS, therefore, concludes that the thermal oxidizer is not authorized by this permit, so Standard Exemption 88 still applies.

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

Thus, ESS has determined that the failure of DuraTherm to operate their thermal oxidizer at a minimum temperature of 1400° is a violation of Standard Exemption No. 88, which is also a violation of 30 TAC 116.211. The NOV is correct in noting that a violation had occurred, but cited the wrong regulatory provisions by referring to 40 CFR 264.1033 and 30 TAC 120.21(a)(1).

This is also a violation of §101.7(a), which states:

> "All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered in good working order and operated properly when operated in a manner such that the facility is capable of operating within limitations established by permit and/or Texas Natural Resource Conservation Commission (TNRCC or Commission) regulations. Normal facility operations include any operation other than start-up or shutdown."

Please note that all policy statements are to be issued through TNRCC's Office of Policy and Regulatory Development (OPRD). However, in order to provide as timely a response as possible, ESS is providing the above opinion. If a definitive agency statement is required, this opinion, along with a formal policy request per OPRD's format, should be submitted to OPRD.

If you have any questions about this opinion, please contact me at extension 1513 or by E-mail at LDECUIR.

LND/db

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm). Account No. GB-0101-M

bcc: Board, File
Mr. Jeffrey P. Greif, Manager, Engineering Services Section, Enforcement Division
Ms. Karen Atkinson, Air Program Manager, Houston
Mr. David Duncan, Senior Attorney/Air, Legal Division
Mr. Rich Lee, Supervisor, Enforcement Guidelines Team, Air Section, Enforcement Division
Ms. Susan White, Staff Attorney, Legal Division
Mr. Walt Ehresman, Staff Attorney, Legal Division
Ms. Sheila Smith, Enforcement Guidelines Team, Air Section, Enforcement Division
Ms. Marsha Hill, Waste Program Manager, Houston
Mr. Steve Chung, Waste Programs, Houston
Mr. Troy W. Dalton, P.E., Supervisor, Case Team, Engineering Services Section, Enforcement Division

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February 22, 2012

VIA E-MAIL

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U. S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Re: U.S. Ecology, Inc.
TD*X Associates

Dear Evan:

This letter follows up on certain issues discussed at the February 14, 2012 meeting between U. S. Ecology, TD*X Associates, and EPA concerning the permitting status of the thermal desorption unit ("TDU") under RCRA. You indicated at that meeting that because the process vent gases from the oil reclamation process are routed to the TDU, the TDU is an incinerator which requires a RCRA permit. However, as we pointed out in the meeting, this contention is incorrect because the process vent gases are not "solid wastes" subject to RCRA jurisdiction.

The term "solid waste" is defined in RCRA as any "solid, semi-solid, liquid, or *contained gaseous material.*" 42 U.S.C. § 6903(27) (West 2011) (emphasis added). The process vent gases originating at the TDU are uncontained gases; therefore, these gases are not regulated under RCRA because they are not solid waste subject to RCRA jurisdiction, permitting or otherwise. At our meeting we provided EPA with a copy of a document from the Office of Management and Budget ("OMB") reciting the longstanding EPA precedent that uncontained gas is not a solid waste. Another copy of this document is attached to this letter as Attachment "A." Among the precedent cited in this document is an EPA guidance document entitled "Hazardous Waste TSDF-Technical Guidance Document for RCRA Air Emission Standards for Process Vent and Equipment Leaks." Although relevant excerpts from this EPA guidance document were also provided to you at our meeting, another copy is attached to this letter as Attachment "B." We would draw your specific attention to the Note on pages 2-3, which directly addresses the regulatory status of process vent streams under RCRA, and states that "[n]containerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them." *See* also McCoy's RCRA Unraveled

(2009), § 14.5.3.1 (" . . . vent streams (i.e. gases and vapors) from hazardous waste management units are not classified as solid or hazardous wastes.")

As we discussed in our meeting, the definition of solid waste as including only "contained gaseous material," and not uncontained gases like the TDU's process vent stream, defines the jurisdictional boundaries between RCRA and the federal Clean Air Act. This precise point was made in a training document prepared for The Advanced RCRA Inspector's Institute discussing the "RCRA/Clean Air Act Interface," relevant excerpts of which are attached as Attachment "C." Prepared for the express purpose of training RCRA inspectors to conduct proper RCRA inspections, this document acknowledges that uncontained gases are not solid waste. Specifically, in discussing the regulatory status of organics in activated carbon units, it provides that "[t]rapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste."

The conclusion that uncontained gases are outside the scope of RCRA was articulated by EPA Headquarters as recently as May 13, 2011, in a letter from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery, EPA, to Tim Hunt, Senior Director Air Quality, American Forest and Paper Association. A copy of this letter is attached as Attachment "D." That letter recites:

> The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators (*as well as other combustion units*, including air pollution control devices that may combust gaseous material) does not involve treatment of other management of a solid waste (as defined in RCRA section 1004 (27))(emphasis added).

The letter which you relied on in our meeting (OSWER 9489.1994(01)) for EPA's position that the TDU is a RCRA-regulated incinerator is not on point. That letter concerns a general discussion of the regulatory status of thermal treatment units and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption. The unit referred to in the letter appears to be a hazardous waste treatment unit that is not operating under any RCRA exclusions or exemptions. The chlordane hazardous waste treatment requires a RCRA permit to treat the soil in the desorber unit without regard to how the vent gases from the unit are managed. The letter attempts to distinguish which provision under RCRA the unit should be permitted based on how the desorbed organic compounds are managed. The letter does not address whether the desorbed organics from the process are "uncontained gases," which is the premise of U.S. Ecology's position that uncontained gases are not regulated under RCRA. We do not disagree with the premise that the chlordane treatment unit described in the letter requires a RCRA permit. However, we continue to disagree that that a RCRA permit is required for the sole purpose of ducting uncontained vent gases to the combustion zone of the TDU. (It should also be noted that this letter is inconsistent on other grounds with your position that the TDU is

an incinerator. It states that desorption chambers with indirect heating are miscellaneous units, not incinerators.) A copy of this letter is attached as Attachment "E."

EPA's assertion that process vent gases from the TDU are solid waste because they are "derived from" the treatment of solid waste is equally invalid. Under the express terms of the "derived from" rule, materials must first be wastes before they can be RCRA-regulated because they are derived from the treatment, storage, and disposal of solid waste. *See* 40 CFR § 261.3 (c)(2)(i) ("[A]ny *solid waste* generated from the treatment, storage, or disposal of a hazardous waste . . . is a hazardous waste" (emphasis added)). As the foregoing EPA precedent unmistakably shows, the process vent gases are not solid wastes covered by the "derived from" rule. This point was specifically made in the training document provided in Attachment "C" to this letter in its conclusion that because the gas from activated carbon units was not solid waste, "any condensed organics do not derive from treatment of a hazardous waste."

In summary, the process vent gases produced at the TDU are not solid wastes; therefore, EPA lacks RCRA jurisdiction to assert that the introduction of these gases to the TDU is a waste management activity subject to permitting or enforcement under RCRA.

Sincerely,

Mary Reagan

MBR/rrh
Attachments

ATTACHMENT “A”

EPA's Prior Determinations That Landfill Gas is Not a Solid Waste

- Since 1986, EPA has determined under RCRA that landfill gas would be regulated as an "air pollutant", rather than as "solid waste" In that regard, the regulation of MSW landfill emissions was considered during deliberations under a RCRA subtitle D rulemaking. In 1986 and 1987 the Administrator decided to regulate these emissions under the authority of the Clean Air Act. See, e.g. March 6, 1986 Memorandum from Marcia Williams to H. Lanier Hickman, Jr. (attached), cited in Definition of Solid Waste Compendium, Volume U, (Un)-Contained Gases (December 2010)(attached) (see particularly page 9, which refers to the Hickman memorandum and which characterizes landfill gas as "uncontained" and therefore not "solid waste"). After further consideration, the EPA announced in the Federal Register on August 30, 1988 (53 Fed. Reg. 33,314) (attached) their decision to regulate MSW landfill emissions under section 111 of the CAA. This ultimately occurred through the promulgation of the landfill NSPS, 40 CFR Part 60, Subparts WWW and Cc in 1996.

- In the proposed Landfill NSPS standards published on May 30, 1991 (56 Fed. Reg. 24,468) (attached), EPA again reiterated its decision to treat landfill gas as a Clean Air Act pollutant (rather than as solid waste).

- The issue was re-raised during public comment for the proposed NSPS. In response, EPA specifically stated in response: "the RCRA subtitle D establishes a framework for controlling the management of nonhazardous solid waste. Because the intent of this rule is to regulate emissions of landfill gas, and not solid waste, this regulation has been developed under the CAA instead of under RCRA. Some requirements in the RCRA subtitle D regulation are referenced within the NSPS and EG and are necessary to achieve compliance with these regulations." See Air Emissions From Municipal Solid Waste Landfills – Background Information for Final Standards and Guidelines, EPA-453/R-94-021 (December 1995), at pages 1-4, 2-31 to 2-34 (attached). Thus, the concept of utilizing RCRA authority and regulating landfill gas as solid waste was specifically rejected by EPA at that time. "Although one commenter suggested that LFG emissions should be regulated under RCRA authority, the EPA continues to consider Section 111 NSPS and EG to be the appropriate statutory approach for regulating these emissions because the adverse health and welfare effects of concern result from air emissions. Therefore, the final notice added MSW landfills as a source category for regulation under Section111(b)(1)(A) of the CAA to the priority list in 40 CFR 60.16." See id.

- On January 16, 2003, EPA issued National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 Fed. Reg. 2,227), which ensured that landfill gas collection and treatment and/or control systems (including combustion units and landfill gas used on or offsite in beneficial use projects) achieved MACT level controls.

- EPA again noted on March 22, 2004, in revisions to its Criteria for Municipal Solid Waste Landfills, Final Rule for Research, Development and Demonstration Permits for Municipal Solid Waste Landfills:

"With the exception of explosive gas control requirements, landfill gas controls are not regulated pursuant to Subtitle D of RCRA: rather landfill gas emissions are regulated under the Clean Air Act (CAA). The air criteria in 40 CFR 258.24 refer to CAA requirements by requiring compliance with the applicable State Implementation Plan provisions under section 110 of the CAA. Specific requirements pertaining to landfill gas emissions from MSWLF units are addressed in 40 CFR Part 60,Subparts Cc and WWW. Recently, EPA promulgated National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (68 FR 2227, Jan. 16, 2003). This rule includes requirements for initiating landfill gas collection and control in bioreactor landfills. See 40 CFR Part 63, Subpart AAAA.... [C]onsistent with section 1006(b) of RCRA, EPA sees no need for additional requirements under RCRA to address air emissions in today's rule."

See Final Rule, Research, Development and Demonstration Permits for Municipal Solid Waste Landfills, 69 Fed. Reg. 13,242 (2004) (attached).

- Thus, by 2004, all landfills regulated under WWW were regulated under the Section 112 Landfill MACT standards promulgated at 40 CFR Part 63, Subpart AAAA. In all instances, the notion was that landfill gas would be combusted either in open flares, enclosed combustors (enclosed flares, turbines, engines or boilers), or the gas would be treated (compressed, filtered to 10 microns or less, and cooled or chilled) and routed for use as fuel as either onsite or offsite. When combusted in turbines, engines or boilers, the landfill gas is either controlled to NSPS-specified treatment limits, or it is "treated" as per the NSPS for end use.

- Having exercised its asserted authority under RCRA Section 4004 to regulate air emissions from landfills as a "designated air pollutant" under the Clean Air Act rather than as solid waste under RCRA, the combustion of this designated air pollutant in a flare, turbine, boiler or engine should not be deemed to be the combustion of a solid waste. Stated differently, something cannot be a designated air pollutant and a solid waste at the same time.

- For purposes of Section 129, the term "solid waste' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act. The meaning established for many years by the Administrator pursuant to the Solid Waste Disposal Act (RCRA) was that landfill gas would not be treated as solid waste, and its combustion would not be treated as solid waste combustion, but rather, as an uncontained gaseous emission regulated as a designated air pollutant by the Clean Air Act. There is nothing in the Non-Hazardous Secondary Materials Rule (NHSM) that establishes that landfill gas is a solid waste, and the regulatory impact analysis for the CISWI rule gave no consideration of landfill gas as a source type for establishment of MACT. Indeed, the NHSM establishes that solid waste follows the meaning of solid waste for purposes of Subtitle D, 40 CFR 258.2. That definition excludes uncontained gas from the definition of solid waste, and has via rulemaking always excluded landfill gas.

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Longstanding EPA Precedent that Uncontained Gas is not a Solid Waste

- The statutory definition of "solid waste" includes "contained gaseous material." 42 USC § 6903(27).

- EPA interpretation of the term "contained gaseous material" demonstrates that RCRA only applies to "contained" gases, to the exclusion of "uncontained" gases.

- EPA's interpretation of "contained" has been limited to gas present inside "containers."

    - In a 1989 preamble to a final rule dealing with the listing of certain hazardous substances under RCRA, EPA stated that EPA "believes our authority to identify or list a waste as hazardous under RCRA is limited to *containerized* or condensed gases (i.e., section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes). *See* Hazardous Waste Management System: Identification and Listing of Hazardous Waste, 54 Fed. Reg. 50968, 50973 (Dec. 11, 1989).

    - The CISWI Rule promulgated in 2000 defined contained gaseous material as limited to "gases that are in a container when that container is combusted." (EPA provided no explanation for deletion of this definition, which was not mandated or even discussed in the D.C. Circuit's *NRDC* decision.)

    - Similarly, 40 CFR Part 60, Subpart EEEE, governing Other Solid Waste Incineration Units, includes the same definition of "contained gaseous material."

- EPA has a longstanding policy providing that fume incinerators are subject to regulation only under the CAA, and not also RCRA.

    - For example, in the preamble to a 1982 dealing with regulation of incinerators that burn hazardous waste, EPA stated that "fume incinerators are subject only to regulation under the Clean Air Act . . . . Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste." See The Hazardous Waste Management System, Interim Final Amendments to Interim Final and Final Rules, 47 Fed. Reg. 27,520, 27,530 (June 24, 1982). See also, RCRA Superfund Hotline Monthly Summary, 9488.1986(03) available at RCRA Online.

    - EPA has reaffirmed this position on subsequent occasions. For example, in the 1989 preamble discussed above, EPA stated that "fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste." 54

Fed. Reg. 50,973 n.5. See also, Memorandum from Matthew Straus, Chief, Waste Characterization Branch, to Clifford Ng, Engineer, EPA Region II, dated June 17, 1987, available at RCRA Online ("Methanol-laden air from the drying and granulation step of the process does not meet the definition of solid waste under RCRA because it is in vapor form and not confined in a container.")

- On a few occasions, some in EPA attempted to take a broader view of contained gas (e.g. piping was enough) but that view was rejected by the courts or the administrative tribunal. See, e.g. In re BP Chemicals America, Inc., RCRA Appeal No. 89-4, 1991 EPA App. LEXIS 27; 3 E.A.D. 667 (EPA Admin., Aug. 20, 1991) (The Administrator specifically rejected Region V's argument that gaseous emissions were "contained" by the process units they passed through, associated piping or the facility itself, holding that the Agency's definition of the term "contained" has consistently been confined "in the narrower sense of being in an individual container such that the gas is amenable to shipment"). See also In re: Chemical Waste Management of Indiana, Inc., RCRA Appeal No. 95-4, *1995 EPA App. LEXIS 31*(EPA Environmental Appeals Board, Aug. 23, 1995) (emissions from microencapsulation of hazardous debris) (The EAB concludes the air emissions are excludable from Subtitle C regulation "because the air emissions that the Region seeks to regulate are not containerized.")

- In the landfill gas context, that view was similarly rejected by stakeholder groups assigned to review combustion issues. See, e.g., Recommendation from the Incinerator Workgroup on Section 112 Subcategories April 28, 1998 ("Section 129 Requirements. Section 129 applies to "solid waste combustion." Because solid waste is defined to exclude gases (except gases which are in containers), Section 129 does not apply to landfill gas flares.") (available at http://www.epa.gov/ttn/atw/iccr/incin/rec-112.pdf).

- The final Boiler MACT rule expressly recognizes that landfill gas constitutes a "gaseous *fuel*." (76 Fed. Reg. 15,684)

- See also:

  - Burning of Hazardous Waste in Boilers and Industrial Furnaces, Final Rule, 56 Fed. Reg. 7134, 7200 (Feb. 21, 1991) (activated carbon units used as air emission control devises are not subject to RCRA because "the gas originally treated is not a solid waste (it is an uncontained gas)." See also RCRA Online Determinations 12783 (November 20, 1986) (Volatile organics released to the air are not hazardous waste because they are not solid wastes. (They do not fit the definition established in §1004(27) of RCRA as "contained gaseous materials.")"

  - Hazardous Waste TSDF - Technical Guidance RCRA Air Emission Standards for Process Vents and Equipment Leaks, EPA-450/3-89-021 (July 1990) at pages 2-3: "Air standards have been promulgated for the control of air emissions from permitted hazardous waste incinerators. 40 CFR Part 264, Subpart O. These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those

primary organic hazardous constituents listed in the facility permit However, the process vent stream (i.e. gases and vapors) from a hazardous waste management unit would not be classified as a hazardous wastes. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement."

- Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF): Background Information for Promulgated Organic Air Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA/453/R-94/076b (November 1994) (since organic vapors emitted from hazardous waste are not solid or hazardous waste, control devices installed to comply with Subpart CC organic vapor control requirements are not hazardous waste management units and do not require RCRA permits).

ATTACHMENT "B"

United States Environmental Protection Agency

Office of Air Quality Planning and Standards Research Triangle Park NC 27711

EPA-450/3-89-021
July 1990

Air

EPA

Hazardous Waste TSDF - Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks

RCRA

The standards for process vents contain requirements that specific control-device operating parameters be monitored continuously (Sections 264.1034 and 265.1034) and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. Operating parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. While minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95 percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. A recovery device must be designed for a particular application and monitored to ensure that it is being operated within design specifications. (Note: This is an important point for permit writers/reviewers to keep in mind when evaluating control device efficiencies.) Proper design shall be determined through and documented by engineering calculations, vendor certification, and/or emission testing, although the use of emission testing to determine compliance with efficiency requirements is expected to occur only rarely. For facilities with final RCRA permits, periods when monitoring data indicate that control device operating parameters exceed established tolerances for design specifications for more than 24 hours must be reported on a semiannual basis. The records and reports must include dates, duration, cause, and corrective measures taken. (Note: Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR 264, Subpart O). These standards require that incinerators burning hazardous waste be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. However, the process vent stream (i.e., gases and vapors) from a hazardous waste management unit would not be classified as a hazardous waste. Noncontainerized gases emitted from hazardous wastes are not themselves hazardous wastes because the RCRA statute implicitly excludes them. Therefore, combustion of process vent streams in an incinerator is not subject to the 99.99 DRE requirement.)

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The Advanced RCRA Inspector's Institute

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Tuesday 12/14	8:30 - 9:45	Waste Minimization/Pollution Prevention Part 1
	10:00- 11:30	WMIN/PP Part 2
	12:30 - 1:30	Concurrent Sessions: BIF/Combustion Inspections
		Air Emissions (AA/BB)
	1:45 - 3:00	(Cont'd)
	3:15 - 4:30	(Cont'd)
Wednesday 12/15	8:30 - 9:30	Enforcement Initiatives Part 1
	9:45 - 10:15	Initiatives Part 2
	10:30 - 12:00	Import Export Inspections
	1:00 - 2:15	RCRA Interface with Other Laws
	2:30 - 3:45	Multimedia Inspections Part 1
	4:00 - 4:45	MM Part 2
Thursday 12/16	8:30 - 9:30	New Waste Issues
	9:45 - 10:45	Gray Areas In the Definition of Solid Waste Part 1
	11:00 - 12:00	Gray Areas Part 2
	1:00 - 2:00	Enforcement Case Development Part 1
	2:15 - 3:15	Enf. Case Development Part 2
	3:30 - 4:30	RCRA Civil Penalty Policy
Friday 12/17	8:30 - 10:00	Federal Facilities Enforcement
	(10:00 - 10:30)	(Extended break for check-out)
	10:30 - 11:30	Inspection Paradigms Revisited
	11:30 - 12:00	Complete evaluations and collect certificates

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United States Environmental Protection Agency | Office of Solid Waste and Emergency Response | November 1992

EPA

RCRA/Clean Air Act Interface

A Quick Reference Fact Sheet

Background

RCRA and the Clean Air Act (CAA) both have regulatory programs to address emissions onto the environment. The CAA comprises a series of interlocking programs designed to protect health and the public welfare from emissions polluting the ambient (outdoor) air.

The 1990 amendments to CAA contain several innovative approaches to air regulation. The Act is subdivided into a number of titles including provisions for attainment and maintenance of National Ambient Air Quality Standards (NAAQS), mobile sources, air toxics, acid rain control, permits, ozone protection, enforcement and other miscellaneous provisions.

Potential Issues

The following examples highlight RCRA regulations that interface with CAA.

Chlorofluorocarbon (CFC) Reclamation Exclusion — The CAA requires that all ozone depleting emissions from all kinds of refrigeration be reduced to the lowest level possible through recycling, recovery, and other controls. Specifically, Title VI of CAA prohibits venting during servicing and disposal of refrigerants after July 1, 1992. To be consistent with Title VI, and because CFC refrigerants would display the toxicity characteristic under RCRA, used CFC refrigerants from totally enclosed heat transfer equipment, provided the refrigerant is reclaimed for further use — is not subject to regulation as a hazardous waste (§261.4 (b)(12)). Additionally, to qualify for the exclusion, the persons performing the reclamation activities and the equipment they use must be certified under CAA.

This exclusion is only applicable to the actual CFC refrigerant, any oils or other waste removed from the equipment is subject to hazardous waste determination.

Air Emission Control Devices — Air emission control devices located at RCRA hazardous waste facilities but regulated under CAA, can generate residues that may be defined as a hazardous waste. For example, activated carbon units used as air emission control devices of gaseous industrial process emissions will not necessarily be regulated under RCRA. Trapped organics in such columns are not hazardous waste because the gas being treated is not a solid waste (it is an uncontained gas), and therefore any condensed organics do not derive from treatment of a hazardous waste. However, the non gas residues from these devices could be hazardous wastes if they are listed or if they display a characteristic.

Stationary Sources — The CAA of 1990 includes a list of 189 toxic air pollutants of which emissions must be reduced. EPA must publish a list of source categories that emit certain levels of these pollutants. The list of source categories must include:

- "Major sources" - emitting 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics
- "Area Sources" - smaller sources emitting less than 10 tons per year of a single air toxic, or 25 tons per year of any combination of these toxics.

Several types of facilities regulated under RCRA Subtitle C may qualify as "major" or "area" sources of toxic air pollutants subject to CAA. Specific small businesses that may be regulated under both programs include dry cleaners, gasoline stations, printers, auto body repair shops, metal finishers, surface coating and painting operations, and solvent degreasing operations.

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ATTACHMENT "D"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 13 2011

Mr. Tim Hunt
Senior Director, Air Quality
American Forest and Paper Association
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hunt:

I would like to thank you and other representatives of forest products industries for meeting with my staff on April 26, 2011, to discuss your concerns with the Identification of Non-Hazardous Secondary Materials That Are Solid Waste (NHSM) final rule. We are evaluating a number of the concerns you raised, but wanted to get back to you quickly on the "contained gas" issue that you raised in that meeting and in an issue paper that you forwarded to us on April 13, 2011. We understand that our response to the fourth comment in Part 3b.I.3. of the document *Responses to Comments Document for the Identification of Non-Hazardous Materials that are Solid Waste* (February 2011) has created concerns among the regulated community that the Environmental Protection Agency (EPA) has changed a long-standing interpretation of what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA). We have not changed our prior interpretation but would like to clarify the response.

EPA was responding to a comment requesting that we include in the NHSM final rule a definition of "contained gaseous material." The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning.

The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators[1] (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004 (27)).

[1] See, for example, 47 FR 27530, June 24, 1982, where it states "Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA.

We also note that since the Agency did not solicit comment on this issue in the proposal, and did not analyze or address it in the preamble to the final rule or in the Regulatory Impact Analysis (RIA) for the rule, it is clear that the Agency did not intend to issue an interpretation that would change previous EPA statements regarding how "contained gaseous material" is interpreted for purposes of RCRA and for purposes of section 129 of the Clean Air Act.

Thank you for your continued interest in protecting the environment. If you have further questions you may contact George Faison, of my staff, at faison.george@epa.gov or 703-305-7652.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

ATTACHMENT "E"

9489.1994(01)

CLARIFICATION ON THE DISTINCTION BETWEEN THERMAL DESORBERS AND INCINERATORS

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

February 23, 1994

Mr. David D. Emery
President
Bioremediation Service, Inc.
P.O. Box 2010
Lake Oswego, Oregon 97035-0012

Dear Mr. Emery:

This is in response to your December 21, 1993, letter requesting clarification on the distinction between thermal desorbers and incinerators. In particular, you questioned whether temperature was a criterion for distinguishing between desorbers and incinerators and whether chlordane contaminated soil can be effectively and safely treated by thermal desorption.

Under the Environmental Protection Agency's (EPA's) regulations, thermal treatment units that are enclosed devices using controlled flame combustion and that are neither boilers nor industrial furnaces are classified as incinerators subject to regulation under 40 CFR Part 264, Subpart O. Definitions of boilers, industrial furnaces, and incinerators are established in 40 CFR 260.10. Thermal treatment units that do not use controlled flame combustion and that are not industrial furnaces are classified as "miscellaneous units" subject to regulation under 40 CFR Part 264, Subpart X.

The use of "controlled flame combustion" determines whether EPA regulates a device used for thermal desorption as an incinerator or a "miscellaneous unit". Consequently, a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal desorber would be subject to regulation as a "miscellaneous unit". Thus, in response

to your questions, temperature is not a criterion that is used to determine the regulatory status of a thermal desorber.

EPA's regulations for miscellaneous units are not prescriptive given the variety of devices that fall into this category. Rather, the regulations require the permitting official to establish permit conditions that are necessary to protect human health and the environment. For "miscellaneous" thermal treatment units, permit writers will generally require compliance with all of the Subpart O incinerator standards that are appropriate for the technology and then determine if additional controls are needed to ensure that emissions are safe.

Please note that I have described EPA's regulatory classification approach for thermal desorbers. Under the Resource Conservation and Recovery Act, EPA authorizes the States to implement the hazardous waste management regulatory program. State regulations may be more stringent or broader in scope than EPA's. Therefore, you should check with the State in which the facility in question is to be located to identify any applicable standards.

With respect to your question as to whether chlordane contaminated soil can be effectively and safely treated by low temperature desorption, you should contact EPA's technical expert on thermal desorption, Paul de Percin, Office of Research and Development, for assistance. Mr. de Percin can also be consulted about TCDD conjugation but, without full thermodynamic and kinetic data regarding the process involved, it may be difficult to give you any definitive assistance. He can be reached at 513-569-7797.

I hope that this information will be helpful. If you have further questions about the regulatory classification of thermal desorbers, please contact Bob Holloway of my staff at 703-308-8461.

Sincerely,
Michael Shapiro
Director
Office of Solid Waste

cc: Paul de Percin; Bob Holloway

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Jeanne Philquist, Manager
Air Section
Enforcement Division

Date: 7/25/96

Thru: Troy Dalton, P.E., Supervisor
Case Team, Engineering Services Section
Enforcement Division

From: Lou DeCuir, P.E.
Case Team, Engineering Services Section
Enforcement Division

Subject: Clarification/opinion on Title 30, Texas Administrative Code, Chapter 120 (30 TAC 120), Subchapter A, to DuraTherm, Incorporated (DuraTherm).
Account No. GB-0101-M

The Air Section has requested that the Engineering Services Section (ESS) provide an opinion on the following three questions:

1. Does 30 TAC 120 Subchapter A apply to a thermal oxidizer unit at a DuraTherm waste processing facility?

2. Do 40 CFR 264.1033(c) and 30 TAC 115.121(a)(1) and (a)(2) apply to the thermal oxidizer?

3. If these sections do not apply, then under what regulations can DuraTherm be cited for improper thermal oxidizer operation?

DuraTherm (formerly known as Bird Environmental Gulf Coast [BEGC]) was issued a Notice of Violation (NOV) for violations of 30 TAC 120.21(a)(1), Title 40 Code of Federal Regulations (40 CFR) 264.1033(c) [the NOV actually cited 264.1033(2)(c), which doesn't exist; 264.1033(c) was the intended subsection], and 30 TAC 115.121(a)(1) and (a)(2) for allegedly failing to comply with their permit by not operating the thermal oxidizer at the temperature specified in their permit application (1400 degrees Fahrenheit [1400°F]) and in Texas Natural Resource Conservation Commission (TNRCC) regulations (1300°F). In their response, the company claimed that 30 TAC 120 Subchapter A (regarding Facility Permit Requirements) and 30 TAC 115 (concerning Vent Gas Control) were not applicable, but offered no company position concerning 40 CFR 264.

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ESS has reviewed these question and offers the following conclusions:

The thermal oxidizer is not regulated by 30 TAC 120 Subchapter A, 40 CFR 264, or 30 TAC 115, but *is* regulated by Standard Exemption 88, 30 TAC 116, and 30 TAC 101. The NOV correctly noted that a violation had occurred, but cited the wrong regulatory provisions, in ESS's opinion, since specific exemptions are relevant.

ESS's analysis concerning the applicability of Chapter 120 is as follows:

The relevant Chapter 120 exemption is contained in §120.3(d). Section 120.3(d) exempts certain facilities from Subchapter A of Chapter 120 by stating:

> "The air quality permitting requirements of this subchapter do not apply to facilities in existence before September 1, 1987, except for facility units which incinerate or burn hazardous or solid waste."

Section 120.3(a) explains that "in existence before September 1, 1987" refers to:

> "...a hazardous waste management facility...that is used for the storage, processing, or disposal of hazardous waste and is authorized by a hazardous waste permit or is physically present and awaiting final action on an application submitted pursuant to §§335.2(c), 335.43(b), and 335.45(b) of this title..."

Based on a direct reading of the rule language, a facility would be exempt from the permitting requirements of Subchapter A if it meets the following three conditions: it is a hazardous waste management facility, it was in existence before 1987 as defined by §120.3(a), and it doesn't include a facility unit which burns hazardous waste. Since Subchapter A deals only with facility permit requirements, the facility would be completely exempt from Subchapter A if it meets these conditions.

The facility is presently permitted as a hazardous waste management facility under Permit No. HW-50355-001. The company that formerly operated this facility, Petro Processors, Incorporated, filed

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an interim status permit application in accordance with 30 TAC 335.2(c) on May 27, 1986 and had been operating the facility for three years at the time. This makes the facility a hazardous waste management facility that was physically present and awaiting final action on a permit application prior to September 1, 1987, so it meets the first two of the three conditions for exemption. If the thermal oxidizer does not "incinerate or burn hazardous waste," then it would meet the third condition and would be completely exempt from Subchapter A.

According to their current permit, DuraTherm is "authorized to store, and process hazardous waste," but the input to the thermal oxidizer is not considered to be hazardous waste. Hazardous waste, under the rules of the federal Resource Conservation and Recovery Act (RCRA), have meanings as specified in Title 40, Code of Federal Regulations (40 CFR) 261.2 and 261.3. TNRCC regulations follow the RCRA definitions closely. Title 30 TAC 101.1, relating to General Rules, defines hazardous wastes as follows:

> "Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code (USC) 6901 et seq. as amended."

Thus, according to this definition, a waste must be considered a solid waste in order to be classified as a hazardous waste. According to the RCRA definition [42 USC 6903(27)], a solid waste is:

> "any garbage, refuse, sludge...or other discarded material including solid, liquid semisolid, or contained gaseous material..."

RCRA requires the U. S. Environmental Protection Agency (EPA) to list specific hazardous wastes and to establish criteria by which wastes which are not specifically listed may be identified as hazardous. In adopting interim final amendments to RCRA regulations (47 FR 27530), EPA ruled that the input to a fume incinerator or thermal oxidizer is not a hazardous waste, as follows:

> "Fume incinerators which are used to destroy *gaseous* emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general the RCRA standards do not apply to fume incinerators *since the input is not identifiable as a solid waste*, according to the definition set forth in (40 CFR) §261.2." (emphasis added)

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Thus, EPA has taken the position that a gaseous input to a thermal oxidizer or fume incinerator is not a hazardous waste. The EPA has subsequently reaffirmed this position with regard to substances that are gases at standard temperature and pressure. In proposed rule amendments (49 FR 5314), EPA explained that it believed that:

> "the exclusion from RCRA of gaseous materials that are not contained applied only to 'true gases'--namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our [EPA's] concern was that a plant could evade regulation by designing a process to keep process emissions in a gaseous state."

Upon reconsideration, EPA stated in the final adoption (54 FR 50973) that their "authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases [*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes]." So the previously issued guidance--that RCRA standards do not apply to fume incinerators--currently remains in effect because the input is an uncontainerized gas. However, according to an EPA policy memorandum (see April 30, 1996 memo from John P. Lehman, Director, Waste Management and Economic Division), the exclusion from consideration as a hazardous waste only applies if the incinerator is burning gases, not liquids. If the thermal oxidizer is accepting condensed liquids in addition to vapors, the waste stream could be considered a hazardous waste.

The thermal oxidizer at the DuraTherm facility is a unit which uses a direct, enclosed flame to burn waste gases from the waste processing units, truck loading terminals, wastewater treatment system, and fixed-roof storage tanks. The thermal oxidizer is designed to burn gases, and the inputs to the thermal oxidizer generally consist only of gaseous products. To ensure that the input does not contain entrained condensed liquids, DuraTherm utilizes a knockout pot to remove trapped liquid particles from all process vapors before being sent to the thermal oxidizer. When the process units are operating, vapors also pass through a natural gas-fired thermal desorption system and process condenser, which are upstream of the thermal oxidizer, to remove and extract trapped liquids. Thus, the facility includes units which are designed to ensure that the process vapors are completely in a gaseous state before they are burned by the thermal oxidizer.

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Title 30 TAC 120.3(b), if improperly interpreted, could appear to apply the permitting requirements of Chapter 120 to the thermal oxidizer. Section 120.3(b) applies Subchapter A to certain units subject to air quality permitting requirements under 30 TAC 116, by stating:

> "Hazardous or solid waste management facility units which otherwise would not be subject to TWC permitting requirements, but would be subject to the permitting requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification)...shall be regulated by the air quality permitting requirements of this subchapter."

A hazardous waste management unit, according to 30 TAC 101.1 is an "improvement on land used to manage hazardous waste." Because the gaseous waste stream is an uncontainerized gaseous material and is not considered to be a solid or hazardous waste by EPA, the thermal oxidizer cannot be considered a hazardous waste management facility unit. Therefore, subsection (b) does not apply to the thermal oxidizer, does not cause it to be regulated under Subchapter A, and does not contradict the exemption allowed by §120.3(d).

Since the input to the thermal oxidizer is not a hazardous waste, and since facilities in existence prior to 1987 that do not burn hazardous waste are exempt from the permitting requirements of Subchapter A and Subchapter A deals only with facility permit requirements, ESS has determined that DuraTherm's facility is exempt from regulation under 30 TAC 120 Subchapter A. The NOV issued to DuraTherm was incorrectly written, since it cited the company for a violation of part of Subchapter A.

ESS's analysis concerning the applicability of 40 CFR 264 is as follows:

Subsection 264.1030(b), relating to applicability of Subpart AA (of which §264.1033 is a part), states:

> "this subpart applies to process vents...that manage hazardous wastes with organic concentrations of 10-ppmw, if these operations are conducted in: (1) Units that are subject to the permitting requirements of part 270, or (2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270."

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The thermal oxidizer is not subject to Subpart AA because, as previously discussed, it does not manage hazardous wastes. It is not subject to the permitting requirements of part 270 and is not a hazardous waste recycling unit. Thus, 40 CFR 264.1033(c) does not apply and the company was incorrectly cited for a violation of part 264.

ESS's analysis concerning the applicability of 30 TAC 115 is as follows:

DuraTherm's violation cited 30 TAC 115.121(a)(1) and (a)(2), which requires vent gas streams to be burned in accordance with §115.122(a)(1). Section 122(a)(1), relating to Control Requirements, requires certain vent gas streams to be burned at a temperature greater than 1300°F. Section 115.127 lists exemptions to vent gas regulations (§§115.121 - 115.129), by stating in §115.127(a)(3)(A) that "a vent gas stream having a combined weight of VOC equal to or less than 100 pounds in any continuous 24-hour period" is exempt. DuraTherm has argued that §115.121 does not apply, since the vent gas stream sent to the thermal oxidizer was less than 100 lb/day. In order to demonstrate compliance with this exemption limit, DuraTherm has attempted to show tests or calculations and daily operating parameters which document that emissions at maximum operating conditions don't exceed 50% of the exemption limit, as allowed by §115.126(a)(3).

ESS has requested the required records from DuraTherm to determine if they meet the exemption criteria of §115.127(a)(3)(A). In response, DuraTherm, produced emission calculations which showed that, on a claimed worst case day, VOC vapors vented to the thermal oxidizer during 1995 totaled 36.24 lbs/day, which is less than 50% of the 100 lb/day exemption limit. This analysis was based on estimating methods contained in the EPA document AP-42, *Compilation of Air Pollution Emission Factors*, using maximum filling rates from process tanks. DuraTherm has also produced daily records for an entire year, based on process rate calculations using data from daily operating logs, which showed that the actual filling rates for the tanks were below the worst-case daily maximum filling rates used in the analysis, as required by §115.126(a)(3)(B). In ESS's opinion, DuraTherm has met the 100 lb/day exemption allowed by §115.127(a) and has adequately maintained records to show that actual operating conditions did not exceed those on which the worst case calculations were based. Therefore, DuraTherm was cited incorrectly for violating §115.121(a)(1) and (a)(2).

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The following is ESS's opinion concerning which regulations may have been violated by improper thermal oxidizer operation:

Although the thermal oxidizer is not regulated by Chapter 120, the RCRA permit, or §115.121 vent gas regulations, it is not an entirely unregulated unit. The thermal oxidizer is authorized by Standard Exemption No. 88, according to a September 15, 1993 TNRCC letter to BEGC from James E. Crocker, Manager, Combustion Section, Office of Air Quality. Standard Exemption 88 specifies that:

> "Each direct flame incinerator shall be automatically controlled to maintain a minimum temperature of 1,400 degrees Fahrenheit in the combustion chamber (secondary chamber if dual chambered) and a gas retention time of 0.5 second or greater."

Therefore, the thermal oxidizer is required to maintain a minimum temperature of 1400°F, according to this standard exemption.

DuraTherm has argued that Standard Exemption 88 no longer applied since the company was issued a RCRA permit which had received an air quality review. The RCRA permit was issued in 1994 under "one-stop" permitting procedures pursuant to the Texas Solid Waste Disposal Act, which provided for an air review of permits issued for hazardous waste facilities. Section 361.073 of this Act specifies that "The Texas Air Control Board shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility." Since the thermal oxidizer is not a hazardous waste management facility, the Solid Waste Disposal Act did not provide for it to be technically reviewed for its air quality impact, and it is not addressed by the RCRA permit.

The permit, under "Facility Units and Functions Authorized" states that "The permittee... is authorized for the following functions, subject to the limitations contained herein" and, thereafter, lists authorized units and functions. Nowhere in this list does the permit mention the thermal oxidizer, nor do the air quality provisions refer to thermal oxidizer operation. ESS, therefore, concludes that the thermal oxidizer is not authorized by this permit, so Standard Exemption 88 still applies.

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Thus, ESS has determined that the failure of DuraTherm to operate their thermal oxidizer at a minimum temperature of 1400° is a violation of Standard Exemption No. 88, which is also a violation of 30 TAC 116.211. The NOV is correct in noting that a violation had occurred, but cited the wrong regulatory provisions by referring to 40 CFR 264.1033 and 30 TAC 120.21(a)(1).

This is also a violation of §101.7(a), which states:

> "All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered in good working order and operated properly when operated in a manner such that the facility is capable of operating within limitations established by permit and/or Texas Natural Resource Conservation Commission (TNRCC or Commission) regulations. Normal facility operations include any operation other than start-up or shutdown."

Please note that all policy statements are to be issued through TNRCC's Office of Policy and Regulatory Development (OPRD). However, in order to provide as timely a response as possible, ESS is providing the above opinion. If a definitive agency statement is required, this opinion, along with a formal policy request per OPRD's format, should be submitted to OPRD.

If you have any questions about this opinion, please contact me at extension 1513 or by E-mail at LDECUIR.

LND/db

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bcc: Board, File
Mr. Jeffrey P. Greif, Manager, Engineering Services Section, Enforcement Division
Ms. Karen Atkinson, Air Program Manager, Houston
Mr. David Duncan, Senior Attorney/Air, Legal Division
Mr. Rich Lee, Supervisor, Enforcement Guidelines Team, Air Section, Enforcement Division
Ms. Susan White, Staff Attorney, Legal Division
Mr. Walt Ehresman, Staff Attorney, Legal Division
Ms. Sheila Smith, Enforcement Guidelines Team, Air Section, Enforcement Division
Ms. Marsha Hill, Waste Program Manager, Houston
Mr. Steve Chung, Waste Programs, Houston
Mr. Troy W. Dalton, P.E., Supervisor, Case Team, Engineering Services Section, Enforcement Division

Message

From: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
Sent: 3/13/2012 3:38:48 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]
Subject: U.S. Ecology and TD*X Associates

I would like to see any discussions you have regarding the definition of solid waste, if that is raised as an issue in the case.

-----Evan Pearson/R6/USEPA/US wrote: -----
To: Alan Carpien/DC/USEPA/US@EPA
From: Evan Pearson/R6/USEPA/US
Date: 03/13/2012 11:09AM
Cc: MaryBeth Sheridan/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Subject: U.S. Ecology and TD*X Associates

We are meeting with U.S. Ecology and TD*X Associates Thursday morning. At this meeting, I plan on telling them that we believe that the burning of the uncondensed gases in the combustion chamber requires a RCRA incinerator permit, and that we plan on filing an administrative enforcement action alleging such a violation. The complaint will also allege that nonpetroleum refining, production and transportation wastes were illegally treated in the TDU. If there is any problem with this, please let me know ASAP. I will keep you informed as to the status of this case as it moves forward, and will likely have some questions along the way.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
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Office of Regional Counsel
U.S. EPA - Region 6
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Alan Carpien---03/05/2012 10:31:27 AM---I know you have had Agency attorneys tell you that our position in briefs are those of the Agency.

From: Alan Carpien/DC/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA
Cc: MaryBeth Sheridan/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA

Date: 03/05/2012 10:31 AM
Subject: Re: Rineco Briefs

I know you have had Agency attorneys tell you that our position in briefs are those of the Agency. But we have to be very careful of that. Besides -- what happens if we lose the case and it is decided against what we say in the briefs? Sometimes Agency attorneys don't check as thoroughly as they should on various positions. This goes along with my views on the fact that, particularly in the definition of solid waste, our own regulations would not stand up in court. Howmet is a good example.

Evan Pearson---03/05/2012 10:31:57 AM---I sent everyone a copy of the Rineco decision because I found language favorable to our position. I

From: Evan Pearson/R6/USEPA/US
To: MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Date: 03/05/2012 10:31 AM
Subject: Re: Rineco Briefs

I sent everyone a copy of the Rineco decision because I found language favorable to our position. I also sent copies of the briefs (which I had not read at the time I sent them) because they may have explained our reasoning and also would allow us to see where our case differed from Rineco. As to your concern as tto our "reliance" on briefs, I have had OGC attorneys argue that because we took a certain position in a brief, that is the Agency's position and we have to follow it.

FYI, this case will be filed adminstratively, not in Federal District Court.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
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MaryBeth Sheridan---03/05/2012 08:01:40 AM---I think what the Region did and argued in a similar case in their Region is important. If we have pe

From: MaryBeth Sheridan/DC/USEPA/US
To: Alan Carpien/DC/USEPA/US@EPA

Cc: Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Evan Pearson/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Date: 03/05/2012 08:01 AM
Subject: Re: Rineco Briefs

I think what the Region did and argued in a similar case in their Region is important. If we have permitted similar facilities, then it shows the Agency's thinking on these types of units (and this case was recent). Just my two cents. Mary Beth
P.S. This case is not at the same stage but if we can convince the facility that they need to permit this unit, maybe it won't get to a district court, right?

-----Alan Carpien/DC/USEPA/US wrote: -----
To: Evan Pearson/R6/USEPA/US@EPA
From: Alan Carpien/DC/USEPA/US
Date: 03/03/2012 10:43PM
Cc: Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Subject: Re: Rineco Briefs

Why do briefs matter? We are dealing with a district court case in any event. This is the old way of dealing with issues -- we argued this in district court briefs, so this must be the Agency position.

Evan Pearson---03/02/2012 03:52:46 PM---Attached for your reading and dining pleasure, are copies of some briefs filed in the Rineco case.

From: Evan Pearson/R6/USEPA/US
To: Alan Carpien/DC/USEPA/US@EPA
Cc: Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 03/02/2012 03:52 PM
Subject: Rineco Briefs

Attached for your reading and dining pleasure, are copies of some briefs filed in the Rineco case. I have not had a chance to review them yet.

[attachment "United States' Reply to Rineco's Response to United States' Cross-Motion for Summary Judgment - 6-19-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "Rinco's Reply in Suppport of Rineco's Motion for Summary Judgment - 6-10-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "Rineco's Response in Opposition to Plaintiff's Motion for Summary Judgment - 6-10-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "United States' Memorandum in Support of Cross-Motion for Summary Judgmeent - 5-27-08.pdf" deleted by Alan Carpien/DC/USEPA/US]

Evan L. Pearson
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Alan Carpien---03/01/2012 09:02:43 AM---I will not be able to get to the details until this evening. I will be traveling today. However, I

From: Alan Carpien/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Date: 03/01/2012 09:02 AM
Subject: Re: some background materials

I will not be able to get to the details until this evening. I will be traveling today. However, I think folks are on the right track in general. I skimmed Ross' analysis and I think the basic idea is correct. The letters presume that we have hazardous waste regulation and are concerned with whether we have an incinerator or a miscellaneous unit. The issue of solid waste is another matter and the contained gas issue may just be a red herring.

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 3/13/2012 3:09:23 PM
To: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
CC: Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]
Subject: U.S. Ecology and TD*X Associates

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To: MaryBeth Sheridan/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
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Subject: Re: Rineco Briefs

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Date: 03/05/2012 08:01 AM
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From: Alan Carpien/DC/USEPA/US
Date: 03/03/2012 10:43PM
Cc: Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
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From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 3/13/2012 6:06:03 PM
To: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
CC: Mooney, Charlotte [Mooney.Charlotte@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Tidmore, Guy [tidmore.guy@epa.gov]; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Elliott, Ross [Elliott.Ross@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]
Subject: Re: U.S. Ecology and TD*X Associates
Attachments: DIB0001; DIB0002; DIB0003

Sure - no problem

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Date: 03/13/2012 12:32 PM
Subject: Re: U.S. Ecology and TD*X Associates

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Date: 03/13/2012 11:40 AM
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also allege that nonpetroleum refining, production and transportation wastes were illegally treated in the TDU. If there is any problem with this, please let me know ASAP. I will keep you informed as to the status of this case as it moves forward, and will likely have some questions along the way.

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MaryBeth Sheridan---03/05/2012 08:01:40 AM---I think what the Region did and argued in a similar case in their Region is important. If we have pe

From: MaryBeth Sheridan/DC/USEPA/US
To: Alan Carpien/DC/USEPA/US@EPA
Cc: Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Evan Pearson/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Date: 03/05/2012 08:01 AM

Subject: Re: Rineco Briefs

I think what the Region did and argued in a similar case in their Region is important. If we have permitted similar facilities, then it shows the Agency's thinking on these types of units (and this case was recent). Just my two cents.
Mary Beth
P.S. This case is not at the same stage but if we can convince the facility that they need to permit this unit, maybe it won't get to a district court, right?

-----Alan Carpien/DC/USEPA/US wrote: -----
To: Evan Pearson/R6/USEPA/US@EPA
From: Alan Carpien/DC/USEPA/US
Date: 03/03/2012 10:43PM
Cc: Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Subject: Re: Rineco Briefs

Why do briefs matter? We are dealing with a district court case in any event. This is the old way of dealing with issues -- we argued this in district court briefs, so this must be the Agency position.

Evan Pearson---03/02/2012 03:52:46 PM---Attached for your reading and dining pleasure, are copies of some briefs filed in the Rineco case.

From: Evan Pearson/R6/USEPA/US
To: Alan Carpien/DC/USEPA/US@EPA
Cc: Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 03/02/2012 03:52 PM
Subject: Rineco Briefs

Attached for your reading and dining pleasure, are copies of some briefs filed in the Rineco case. I have not had a chance to review them yet.

[attachment "United States' Reply to Rineco's Response to United States' Cross-Motion for Summary Judgment - 6-19-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "Rinco's Reply in Suppport of Rineco's Motion for Summary Judgment - 6-10-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "Rineco's Response in Opposition to Plaintiff's Motion for Summary Judgment - 6-10-08.pdf" deleted by Alan Carpien/DC/USEPA/US] [attachment "United States' Memorandum in Support of Cross-Motion for Summary Judgmeent - 5-27-08.pdf" deleted by Alan Carpien/DC/USEPA/US]

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communication in error, please notify the sender immediately by return e-mail, and delete this e-mail from your system.

Alan Carpien---03/01/2012 09:02:43 AM---I will not be able to get to the details until this evening. I will be traveling today. However, I

From: Alan Carpien/DC/USEPA/US
To: Ross Elliott/DC/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA
Date: 03/01/2012 09:02 AM
Subject: Re: some background materials

I will not be able to get to the details until this evening. I will be traveling today. However, I think folks are on the right track in general. I skimmed Ross' analysis and I think the basic idea is correct. The letters presume that we have hazardous waste regulation and are concerned with whether we have an incinerator or a miscellaneous unit. The issue of solid waste is another matter and the contained gas issue may just be a red herring.

Message

From: Alan Carpien [Carpien.AlanLNDU@usepa.onmicrosoft.com]
Sent: 1/24/2012 2:51:23 AM
To: Pearson, Evan [Pearson.Evan@epa.gov]; CN=Marilyn Goode/OU=DC/O=USEPA/C=US@EPA; Sheridan, MaryBeth [Sheridan.MaryBeth@epa.gov]; Atagi, Tracy [Atagi.Tracy@epa.gov]; Faison, George [Faison.George@epa.gov]; Marc Thomas [Thomas.MarcLNDU@usepa.onmicrosoft.com]
CC: Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Celeste, Laurel [celeste.laurel@epa.gov]; Ryan Rosser [Rosser.Ryan@epa.gov]; Vishnu Katari [Katari.VishnuLNDU@usepa.onmicrosoft.com]
Subject: Re: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)
Attachments: Letter from USET to EPA dated 9-24-10.pdf; RO 13657.pdf; 47 FR 27520 (6-24-82).pdf; RO 12272.pdf; 49 FR 5313 (2-10-84).pdf; 54 FR 50968 (12-11-89).pdf

In the Non-Hazardous Solid Material (NHSM) rule, we have been agonizing over the issue of what constitutes a "contained gas." It seems that people in ORCR, whom I have copied, should look at this.

From: Evan Pearson/R6/USEPA/US

To: Vishnu Katari/DC/USEPA/US@EPA, Alan Carpien/DC/USEPA/US@EPA, Laurel Celeste/DC/USEPA/US@EPA
Cc: Ryan Rosser/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 01/23/2012 02:17 PM
Subject: Regulation of Thermal Desorption Unit and 40 C.F.R. § 261.6(a)(3)(iv)

I would like your opinion on whether a certain thermal desorption unit needs a RCRA permit. I got your names from the responsibility lists on the intranet (both OECA and OGC). If you are not the correct person to address this issue, could you please forward it to that person. A description of the process and the legal reasoning is set forth below.

A. Process Description

U.S. Ecology Texas (USET) conducts oil reclamation activities at its Robstown, TX facility. As part of this activity, USET operates an on-site thermal desorption unit to process the oil-bearing materials to reclaim the oil for sale. USET claims that they are recycling hazardous waste pursuant to 40 C.F.R. § 261.6(a)(3)(iv), and therefore are not subject to either 40 C.F.R. Part 264, Subpart O (Incinerators) or Subpart X (Miscellaneous Units).

U.S. Ecology has raised the defense that the vent gas stream that is sent to the combustion chamber is not a solid waste because it is a non-containerized gas [which is exempt from the definition of solid waste in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27)]. A copy of this letter is attached below. The following is a description of their process:

The facility receives waste from refineries and petrochemical facilities. The feed material is fed into a Thermal Desorption Unit (TDU). Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. USET claims that the condensers recover 95% of the VOC HAPs, and 99% of SVOC HAPs with the reclaimed oil product. A process vent is purged from the carrier gas in a closed vent system. According to a USET employee, the vent stream makes up one third of the BTU value need to fire the unit. The vent is to necessary to maintain a

negative pressure within the unit and is balanced with a fresh nitrogen supply. This process vent stream is filtered before it is injected into the combustion chamber. The process vent stream includes nitrogen and non-condensable gases from the dryer. USET claims that these remaining uncondensed gases are in a gaseous state at less than 70° F. The process vent gases have a distinct odor. The odors are controlled by injection of the process vent gas into the combustion chamber. USET claims the routing the uncondensed gases back to the combustion chamber further controls VOCs with an estimated removal efficiency of 99%.

B. Legal Analysis

Assume for the sake of this analysis, that USET is accepting only wastes from petroleum refineries, and otherwise meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv). Does the fact that USET routes the uncondensed gases back into the combustion chamber/fire box subject the TDU to the incinerator requirements.

In RO 13657 (attached), EPA stated that "a thermal desorber would be subject to regulation as an incinerator if it was equipped with a fired afterburner to destroy desorbed organic compounds, or if the desorption chamber was directly fired, irrespective of how the desorbed organics were controlled. On the other hand, if the desorption chamber was indirectly heated, and the desorbed organics were not controlled using controlled flame combustion (e.g., no afterburner), the thermal unit would be subject to regulation as a 'miscellaneous unit'." Therefore, under this standard, the TDU would be considered an incinerator since it routes that uncondensed gases back into the combustion chamber.

USET cites 47 Fed. Reg. 27520, 27530 (June 24, 1982) (attached) which states that "fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incinerators since the input is not identifiable as a solid waste, according to the definition set forth in § 261.2." This position is repeated in a July 31, 1984 Memo (RO 12272), which USET also cited.

In RO 12272 (attached), the question was whether the hazardous determination of a waste is or is not suppose to be made at standard temperature and pressure, or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated. In this case, the facility in question had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a flume incinerator. However, the facility planned to feed uncondensed reactor vent gases directly to the fume incinerator. RO 12272 cited the June 24, 1982 Federal Register Notice in the memo. The memo also stated that it was reconsidering its position.

In 49 Fed. Reg. 5313, 5314 (February 10, 1984) (attached), EPA stated in the preamble to a proposed rule that "the exclusion from RCRA of "gaseous materials" that are not contained . . in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure. . . The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous waste, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state."

In 54 Fed. Reg. 50968, 50970 (December 11, 1989), (attached) EPA stated that "with the respect to the proposed listing of light ends [49 Fed. Reg. 5313 listed above], the Agency also included a discussion of its authority under RCRA to regulate uncondensed and uncontainerized gases, which are liquids at standard temperature and pressure. The notice did not propose that the light ends must be condensed; however under the proposal the light ends would have been subject to the applicable regulations, even when they remain in the gaseous state. Based on further analysis, the Agency now believes that our authority under RCRA is limited to the regulation of only containerized or condensed gases."

On the surface it appears that the process vent stream that is injected back into the combustion chamber would not be solid waste. However, Region 6 believes that this vent stream is a RCRA hazardous waste, and therefore the TDU should meet the incinerator standard of 40 C.F.R. Part 264, Subpart O. In this case, USET receives hazardous waste from other facilities, and then treats the hazardous waste in order to recover oil. The vent stream is produced as a result of the treatment of the hazardous waste. Thus, the derived from rule [40 C.F.R. § 261.3(c)(2)(i)] would result in the vent stream being a hazardous waste.

In addition, the references in the 1984 and 1989 relate to the question of whether certain "light ends" were hazardous

waste, specifically uncondensed and containerized gases which are liquids at standard temperature and pressure. In other words, the question was whether the "light ends" or gaseous material were hazardous wastes at the point of generation. In this case, the vent stream is produced as a result of the treatment of hazardous waste. EPA has also stated that "thermal treatment after a material becomes a hazardous waste is fully regulated under RCRA". 54 Fed. Reg. 50973.

Therefore, Region 6 believes that the TDU should be regulated as an incinerator under 40 C.F.R. Part 264, Subpart O. However, if they stop routing the vent stream to the combustion chamber/fire box, they would be exempt from regulation [assuming that they meet the requirements of 40 C.F.R. § 261.6(a)(3)(iv)].

We would appreciate your thoughts on this issue. Thanks.

Letter from USET to EPA dated 9-2... | RO 13657.pdf | 47 FR 27520 (6-24-82).pdf | RO 12272.pdf | 49 FR 5313 (2-10-84).pdf | 54 FR 50968 (12-11-89).pdf

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US Ecology Texas

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Air/Toxics & Inspection
Coordination Branch
6EN-A

September 24, 2010

Mr. David Robertson
Environmental Protection Specialist
Surveillance Section (6EN-AS)
Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

RE: U.S. Ecology Texas, Inc.
EPA ID No.: TXD 069452340-1
Regulatory Applicability of 40CFR Part 264, Subpart O – Incinerators

Dear Sir:

During EPA's inspection exit interview on June 17, 2010 at U.S. Ecology Texas, Inc. (USET) Robstown facility, you raised a question regarding the re-introduction of process vent gases to the combustion zone of the Thermal Desorption Unit (TDU) and suggested that the activity constituted incineration of a hazardous waste under RCRA. Below is an explanation of USET's interpretation of how the exhaust gases are regulated under RCRA and the CAA. Supporting information that provides the basis for our interpretation is attached.

A memo dated July 31, 1984 (Enclosed) was prepared by John Skinner, Director of the Office of Solid Waste for EPA addressing a similar issue related to the destruction of material in a fume incinerator. The memo references 47 FR 2753, June 24, 1982, where EPA established a position that fume incinerators which are used to destroy gaseous emissions from various industrial processes are not subject to RCRA since the gaseous emissions are not identifiable as a solid waste according to the definition set forth in 261.2. RCRA excludes un-contained gaseous materials from the definition of solid waste (RCRA, Section 1004(27)).

In 49 FR 5314, February 10, 1984 (Enclosed), EPA re-considered this position in the proposal to list light end vent gases from the production of chlorinated aliphatic hydrocarbons. EPA expressed a concern in their discussion that the original determination may encourage generators to design processes to maintain waste in a gaseous state as to avoid regulation under the RCRA. In the 1984 proposal EPA modified their position that if the wastes are a liquid at standard temperature and pressure, and can reasonably be condensed to the liquid phase after generation, the material should be regulated under RCRA. They continue in the discussion to propose that the condensable fraction of the gas stream should be regulated as a hazardous waste while the non-condensable fraction should be regulation under the CAA.

The final rule listing light end vent gases from the production of chlorinated aliphatic hydrocarbons was published in 54 FR 50973, December 11, 1989 (Enclosed). EPA's position was again modified based on further consideration by EPA and after reviewing comments received during the rule comment period. EPA concluded that their authority under RCRA is limited to containerized or condensed gases since RCRA excludes all other gases from the definition of solid waste. EPA stated that they do believe it can

use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of a gas. They dropped the interpretation that split the un-contained gases into condensable and non-condensible fractions. As a result, EPA determined that un-contained gaseous emissions are not regulated under RCRA but would be regulated under the CAA.

Based on the extensive discussion, public comment and consideration on this matter by EPA, we concluded that the exhaust gases generated by the TDU process are not considered "solid waste" and therefore not subject to regulation under RCRA. The exhaust gases from the TDU are directly reintroduced into the combustion chamber and never stored or contained. EPA describes the "fume incinerator" process in its 1984 memorandum as a basis for EPA's regulatory intent. The process description in the memo is a close representation of the exhaust gas re-circulation process used in the TDU. The reintroduction of exhaust gases from the TDU into the combustion chamber should not be considered incineration under the Clean Air Act. USET worked closely with TCEQ on the permitting of this project under the State of Texas' air quality program. We engaged the agency early in the review of the air quality permitting requirements for this project and worked closely with them to evaluate the project.

If there are any questions or concerns on this information, please feel free to contact Tim Parker at (361) 387-3518 x216 or tparker@usecology.com.

Sincerely,

Mark John
General Manager

Enclosures: July 31, 1984 EPA Memo
49 FR 5314, February 10, 1984
54 FR 50973, December 11, 1989

RECEIVE
SEP 2 7 1984
Air/Toxics & Inspection
Coordination Branch
6EN-A

PPC 9441.1984(15)

INCINERATORS THAT RECEIVE GASEOUS EMISSIONS, RCRA EXCLUSION, CAA APPLIES

7-31-84

MEMORANDUM

SUBJECT: Ignitability Characteristic Application to Hot Gaseous Process Emissions

FROM: John H. Skinner, Director
Office of Solid Waste

TO: James H. Scarbrough, Chief
Residuals Management Branch, Region IV

In your June 27, 1984, memorandum you requested our guidance as to whether the hazardous determination of a waste is or is not supposed to be made at standard temperature and pressure or whether this determination is to be made in the form (i.e., gas, solid, liquid) that it is generated.

In particular, you raised concerns about the destruction of materials in fume incinerators and argued that facilities could avoid regulation by simply not condensing vent gas and overhead emissions. You also argued the §261.21(a)(2) states that wastes which are not liquids must be evaluated for the ignitability characteristic at standard temperature and pressure.

At the facility in question, the generator had been condensing the gaseous emissions and feeding them along with other gaseous wastes into an incinerator. These gaseous emissions were previously condensed prior to treatment in a fume incinerator. This same facility now plans to feed uncondensed reactor vent gases directly to the fume incinerator (i.e., will not be condensing the gases and will only be sending gaseous emissions to the incinerator).

As you may be aware, our office previously addressed this issue when we finalized the incinerator regulation in June of 1982. In the preamble to that rule, we said that the

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feed to fume incinerators are subject to regulation only under the Clean Air Act and not under RCRA since these gaseous emissions are not solid wastes (see 47 FR 27530, June 24, 1982). In particular, we stated:

> "EPA agrees with commenters that fume incinerators are subject only to regulation under the Clean Air Act and does not intend that the Parts 264 and 265 regulations apply to these facilities. Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA. In general, the RCRA standards do not apply to fume incineration since the input is not identifiable as a solid waste, according to the definition set forth in §261.2".

However, we recently indicated in the Fecderal Register (49 FR 5314, February 10, 1984) that we are re-considering this position. In particular, in a proposal to list light end vent gases from the production of chlorinated aliphatic hydrocarbons, we stated that gaseous emissions which are condensable to liquids at standard temperature and pressure can be subject to regulation and would not be included in the exclusion of gaseous materials under RCRA (see Section 1004(28)). See preamble to proposal where we stated:

> ".... The light ends component of these overheads is in fact liquids at standard temperature and pressure, but because of elevated temperature and and admixture with gases (e.g., hydrogen, methane) they require some form of physical condensation to be isolated as liquids.....
>
> The Agency considers these light ends to be solid wastes within the meaning of Section 1004(2) of RCRA. Although these wastes are generated as gases, they are liquids at standard temperature and pressure, and can feasibly be condensed to the liquid phase after generation.
>
> The exclusion from RCRA of 'gaseous materials' that are not contained (Section 1004(28)), in the Agency's

> view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure.

Therefore, until we decide whether and how to finalize the proposal, we must defer a final answer to your question. In the interim, however, any incinerator that just receives gaseous emissions would be excluded from control under RCRA, as stated in the preamble to the final incinerator rules. At the same time, you should be aware that the rules may change and that incinerators that receive gaseous emissions, which are liquids at standard temperature and pressure, may be subject to regulation in the future.

If you have any further questions, please call Matt Straus of my staff at 475-8551.

ED_002427B_00006361-00005

The contaminants include chlorinated aliphatic hydrocarbons as well as aromatic compounds and chlorinated aromatic compounds that are currently identified in Appendix VIII of Part 261. The potential of all of these contaminants to cause harm to human health and the environment is described in the accompanying interim final listing notice, the listing Background Document, and the Health and Environmental Effects Profiles.

The wastes covered by these regulations are formed as residuals at several points in an integrated series of reactors and associated purification units utilizing one or more free radical catalyzed chemical conversion steps to produce a range of desired chlorinated aliphatic hydrocarbons. This proposed listing covers wastes from all sources within an integrated process untilizing free radical catalyzed conversions, whether or not the integrated process utilizes free radical catalyzed conversions solely or in conjunction with other types of chemically catalyzed conversions.

The usual plant sources of the light ends derive from the hot, gaseous overhead streams from reactor vessels and/or associated purification and distillation equipment. The light ends component of these overheads is in fact liquids at standard temperature and pressure, but because of elevated temperature and admixture with gases (e.g., hydrogen, methane) they require some form of physical condensation to be isolated as liquids. For example, freon condensors coupled with water condensors are currently used by industry to recover light ends, products, unreacted feedstock, or wastes from the overheads. Incineration, flaring, or release to the atmosphere of light ends, without either partial or complete condensation to ambient temperature, is also practiced.

The Agency considers these light ends to be solid wastes within the meaning of section 1004(28) of RCRA. Although these wastes are generated as gases, they are liquids at standard temperature and pressure, and can feasibly be condensed to the liquid phase after generation.

The exclusion from RCRA of "gaseous materials" that are not contained (section 1004(28)), in the Agency's view, applies only to true gases, namely those which are not capable of being condensed and which remain gases at standard temperature and pressure (for example, the hydrogen and methane admixed with the light ends). The Agency, of course, is not requiring that these light ends be condensed; however, as a RCRA hazardous wastes, these light ends remain subject to the applicable regulations even if left in the gaseous state. Otherwise, one could evade regulation under RCRA simply by heating every waste to the gaseous state.[1]

The spent filters and filter aids, and spent dessicants are generated as residuals furing product intermediate and feedstock purification. These wastes are currently managed by landfilling, incineration, or regeneration and recycling.

As shown in the Background Document, the hazardous constituents generally are present in these waste in significant concentrations, typically in concentrations many orders or magnitude above the levels related to human health concerns. For example, an analysis of one manufacturer's chlorinated propane distillation light ends (Table 1) shows the hazardous constituents at concentrations typically found in these wastes.[2] Chemical analyses obtained by the Agency and company supplied information in the Section 3007 RCRA Industry Studies data base demonstrate similar high concentrations of toxicants in all these wastes.[3] Although there were many differences between these wastes, both qualitatively and quantitatively, in all cases, there were one or more of the toxicants of concern present at levels which could present a substantial environmental hazard if the wastes are mismanaged.

TABLE 1.—CHLORINATED PROPANE DISTILLATION LIGHT ENDS

Constituent	Percent
dichloromethane and isopropyl alcohol [4]	[5] 0.7
chloroform, acetonitrile and dichloropropene	4.0
ethyl chloride [4] and 2-chloropropanes/propenes	17.0
1,1-dichloroethane	4.0
1,2-dichloroethane	0.2
chloropropane [4]	22.0
chloropropene	16.0
chlorodihydroxypropanes [4]	0.2
dichloropropanes	12.0
dichloropropenes	14.4
dichloropropanols [4]	0.2
epichlorohydrin	0.4

[1] The Agency has previously listed distillation light ends from the production of phthalic anhydride from naphthalene and orthoxylene as hazardous wastes K023 and K093 (40 CFR 261.32), thus establishing a precedent for regulating a waste which originates from a gaseous overhead process stream. No comments were received questioning the Agency's authority to regulate these wastes.

[2] U.S. EPA. Disposal of Organochlorine Wastes by Incineration at Sea. EPA Publication No. 430/9-75-041 (1975).

[3] The results of these analyses have been claimed by the individual companies to be confidential business information, and therefore are not presented here. The Background Document and supporting information for this action provides aggregate toxicant concentration ranges for the C_1 through C_3 process wastes sampled.

TABLE 1.—CHLORINATED PROPANE DISTILLATION LIGHT ENDS—Continued

Constituent	Percent
benzene	0.7

[4] At the present time, the Agency does not have adequate information to classify these constituents as toxicants of concern.

[5] (i.e., 7,000 parts per million).

The Agency has calculated that persons face a 1 per million increase risk of cancer or other adverse health effects as a result of lifetime ingestion of water when the water is contaminated at levels above the Ambient Water Quality Criteria Levels (AWOCL). As an indication of how high toxicant concentrations in these wastes are, the benzene alone in the light ends waste approaches ten million times the AWOCL. The other toxic constituents likewise are frequently present in concentrations orders of magnitude greater than the AWOCL.

In all cases, the solubilities of the toxicants of concern are many orders of magnitude greater than the AWOCL. Thus, only a small fraction of the toxicants present in these wastes need migrate and reach environmental receptors to pose the potential for substantial harm if these wastes are landfilled improperly. Improper incineration is another exposure pathway of concern.

In summary, and as detailed in the listing Background Document, these wastes typically contain toxicants at concentrations that are of concern, these toxicants are capable of migration and persistence in hazardous concentration, and therefore these wastes are capable of causing substantial harm if mismanaged.

IV. Economic, Environmental and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The effect of the present amendment is judged to be minor.

The total combined cost for disposal of the wastes as hazardous, assuming that all of these wastes would be managed for the first time as hazardous, and making conservative assumptions as to costs, is approximately $15 million per year. This figure also overstates costs because information available from the Section 3007 RCRA Industry Studies data base indicates that over one fourth of these wastes are *already* being managed as hazardous waste at RCRA facilities. For these wastes, listing

HeinOnline -- 49 Fed. Reg. 5314 1984

questioned in 1980 was because, at that time, it was assumed that the listing only applied to the light ends in the condensed state. One commenter further argued that the phthalic anhydride light ends listing was not analogous, since the phthalic anhydride light ends contained maleic anhydride and phthalic anhydride, which was emitted from the process as particulates.

In addition, commenters objected to regulation under RCRA of gaseous emissions for other reasons, including that permitting would have a significant economic impact; that there currently are no standards for flares (and subsequently, permitting would be difficult); that regulation of fugitive emissions of gaseous liquids from valves and pipes might follow regulation of gaseous light ends under RCRA; that condensation of light ends to ambient temperature could cause equipment corrosion; and that the Agency had not adequately characterized these gaseous emissions.

In its proposal, the Agency explained that it believed that the exclusion from RCRA of gaseous materials that are not contained applied only to "true gases"—namely, those which are not capable of being condensed and which remain gaseous at standard temperature and pressure. Our concern was that a plant could evade regulation by designing a process to keep the process emissions in a gaseous state. See 49 FR 5314, February 10, 1984. Such a result could create human health and environmental concerns. For example, in the Bhopal incident, a volatile liquid (methyl isocyanate) escaped confinement from a storage tank in a situation analogous to the storage of condensed light ends.

Upon reconsideration of this issue (with the benefit of the comments received on the proposed rulemaking), EPA now believes our authority to identify or list a waste as hazardous under RCRA is limited to containerized or condensed gases (*i.e.*, section 1004(27) of RCRA excludes all other gases from the definition of solid wastes and thus cannot be considered hazardous wastes).[5]

[5] EPA's previously issued guidance concerning fume incinerators (contained in the preamble to the incineration regulations) remains in effect. See 47 FR 27530, June 24, 1982. Fume incinerators are installed as air pollution control devices pursuant to regulations under the Clean Air Act; they are used to destroy gaseous emissions from various industrial processes. EPA concluded that, in general, RCRA standards do not apply to fume incinerators because the input (an uncontainerized gas) is not a solid waste according to the definition set forth in § 261.2.

EPA, therefore, has decided not to regulate these uncondensed light ends. In the case of chlorinated aliphatic hydrocarbon manufacture, the Agency knows that manufacturers typically employ condensation devices in conjunction with distillation equipment, since the condensable fraction of these emissions is either a valuable product or recyclable feedstock material. If the light ends are condensed and reused to make new products or effective substitutes for commercial products, they will not be considered solid or hazardous wastes, as long as they have not been reclaimed and they do not meet the criteria specified in § 261.2(e). See 50 FR 637. If every disposed (prior to any such reuse), however, these condensed light ends would be considered a solid waste and subject to today's listing. Consequently, our decision should not present an environmental concern.

Although we agree with the commenter that heating wastes to the gaseous state is subject to regulation under RCRA as treatment of hazardous waste, the Agency believes that it cannot use its current permitting procedures to mandate the production process design of a manufacturing facility so that it generates a waste as a liquid instead of (for example) installing some internal heating mechanism that generates the same liquid waste in the gaseous state. RCRA jurisdiction does not provide this kind of control over manufacturing processes. Of course, thermal treatment *after* a material becomes a hazardous waste is fully regulated under RCRA.

The Agency also agrees with the commenters that citing the phthalic anhydride light ends listing raises substantial questions with respect to establishing precedents. We have, accordingly, deleted references to it in the listing description and preamble.

D. Evaluation of the Hazardous Properties of the Wastes

Other comments expressed specific concerns with the Agency's evaluation of the hazardous properties of the wastes, either through its toxicological evaluations of individual hazardous constituents, its projection of concentration levels of constituents in the wastes, or its analysis of the ability of the constituents to migrate from the wastes.

1. Two commenters stated that some of the conclusions reached by the Agency do not accurately reflect the present state of knowledge of the oncogenic properties of the constituents in these wastes. They commented that the Agency did not attempt to clarify the level of risk (of carcinogens) or to provide substantiation of its conclusions that the Carcinogen Assessment Group (CAG) assessment documents on which the Agency relied are consistent with "current levels of knowledge and existing data they also stated that the Agency should have used weight of evidence characterizations in its assessment of the potential hazards of these compounds. In particular, the commenters asserted that the Agency should not have judged constituents to be "potential human carcinogens" when the evidence for carcinogenicity for several of these chemicals would fall into "Group 3: chemicals which cannot be classified as to their carcinogenicity to humans."

The agency's judgment on the potential carcinogenic and toxic effects resulting from continued low-level exposure to the constituents of concern are outlined in the Health and Environmental Effects Profiles for each constituent of concern. The major health concerns are summarized in the listing background document. The commenter gave no specific criticism that EPA's facts do not "reflect the present state of knowledge," (other than that noted above) and did not provide any additional data or other information to challenge the basis for EPA's decision to list. We are, therefore, unable to respond to this criticism. (It should be noted that the Agency has reviewed more recent studies addressing these constituents, and finds that this information corroborates the Agency's original decision to list. This information has been summarized and placed in the docket.)

With respect to the "weight-of-evidence" argument, the Agency promulgated guidelines for carcinogenic risk (see 51 FR 32656, September 24, 1986) which incorporates an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)

Group B—Probable human carcinogen

Group B_1—Limited evidence of carcinogenicity in humans

Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans

Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)

Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)

HeinOnline -- 54 Fed. Reg. 50973 1989

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/30/2012 2:17:24 PM
To: Seager, Cheryl [Seager.Cheryl@epa.gov]
CC: Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]
Subject: Fw: Proposed E-Mail to U.S. Ecology/TD*X Associates

Please give me a call.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
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----- Forwarded by Evan Pearson/R6/USEPA/US on 05/30/2012 09:16 AM -----

From: Guy Tidmore/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Cc: "Eva Steele" <steele.eva@epa.gov>, herrera.esteban@epa.gov
Date: 05/30/2012 09:09 AM
Subject: Re: Proposed E-Mail to U.S. Ecology/TD*X Associates

We've been directed by John to meet with USET this week, w/ or w/o counsel. Can we set up a conference call for Friday to transmit this information?
Guy Tidmore, Chief
Compliance Enforcement
214-665-3142, office
214-789-2586, cell

----- Original Message -----
From: Evan Pearson
Sent: 05/30/2012 09:03 AM CDT
To: Guy Tidmore; Eva Steele; Craig Lutz
Cc: Cheryl Seager; Michael Barra; Mark Potts
Subject: Proposed E-Mail to U.S. Ecology/TD*X Associates

Your comments please on my proposed e-mail to USET & TDX

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One caveat on the meeting. As noted in my April 26, 2012 letter, there is very little difference between the requirements of a Subpart O permit and a Subpart X permit. Thus, don't expect any major changes to the CAFO. Furthermore, any CAFO negotiated between the parties will contain, among other things:

1. Interim operating requirements, including specifications for petroleum industry wastes;
2. 40 C.F.R. Part 63, Subpart EEE requirements, including a comprehensive performance test;
3. Risk burn, which will be used for a site-specific risk assessment; and
4. A substantial civil penalty.

Given that you have had a copy of CAFO and our proposed penalty calculations since April 26, 2012, we expect that USET & TD*X will be prepared to negotiate the language of the CAFO at our next meeting. Furthermore, because we have a limited window to negotiate an agreement, we also expect that USET/TD*X will submit a counteroffer on the proposed penalty at our next meeting. We are not going to wait until the language of the CAFO is finalized before we discuss the proposed penalty.

If you have any questions, please feel free to call.

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Message

From: Tidmore, Guy [Tidmore.Guy@epa.gov]
Sent: 5/30/2012 2:09:36 PM
To: Pearson, Evan [Pearson.Evan@epa.gov]
CC: Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Herrera, Esteban [Herrera.Esteban@epa.gov]
Subject: Re: Proposed E-Mail to U.S. Ecology/TD*X Associates

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/30/2012 2:03:14 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Lutz, Craig [lutz.craig@epa.gov]
CC: Seager, Cheryl [Seager.Cheryl@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Potts, Mark [Potts.Mark@epa.gov]
Subject: Proposed E-Mail to U.S. Ecology/TD*X Associates

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/16/2012 5:53:42 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]
CC: Smith, Melissa [Smith.Melissa@epa.gov]
Subject: Re: Please send WAR paragraphs to me no later than 2:00 PM today.

Proposed Changes Highlighted

U.S. Ecology of Texas

On May 14, 2012, representatives of U.S. Ecology of Texas (USET) advised EPA Region 6 that they would willingly, and in good faith, enter into negotiations to resolve violations determined under RCRA ~~and CAA~~ during a June 2010 multi-media inspection which would include a RCRA Subpart X permit for the Thermal Desorption Unit. USET's response was received in conjunction with EPA Region 6's position that if the Region was not in receipt of a good faith offer to negotiate a Consent Agreement and Final Order in a timely manner, a RCRA Administrative Complaint ~~Unilateral Order under RCRA~~ would be issued by the Region identifying violations under RCRA, and injunctive relief requiring the facility to obtain a RCRA permit to operate.

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From: Guy Tidmore/R6/USEPA/US

To: Melissa Smith/R6/USEPA/US@EPA, Evan Pearson/R6/USEPA/US@EPA
Date: 05/16/2012 12:00 PM
Subject: Re: Please send WAR paragraphs to me no later than 2:00 PM today.

Evan,

Please mark these up however you deem appropriate and pass back to Melissa and me.

Thanks!

Enforcement Sensitive

Ethyl, Albemarle, and MEMC

On May 15, 2012, EPA Region 6 met jointly with collocated chemical manufacturing plants Ethyl Corporation, Albemarle Corporation and MEMC Pasadena, Inc. to resolve violations determined at their respective facilities. The three facilities were inspected in November 2007 and May 2008, and an information request sent in March 2009. The inspections and information request identified multiple instances of all three facilities discharging corrosive hazardous waste to their ditch system. The facilities represented that upon receipt of their respective information requests, they all initiated action to prevent any further discharge of corrosive hazardous waste to the ditch system, and began a program to monitor their systems appropriately. All three facilities also represented that they would be willing to sign Consent Agreements and Final Orders resolving the violations, with requirements to conduct additional sampling to identify the presence of any hazardous constituents in the system,, develop and implement a system that prevent the future release of hazardous waste to the ditch system. EPA Region 6 is finalizing the Draft CAFOs provided the three companies, and will submit the final documents for signature by the companies.

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Guy Tidmore, Chief (6EN-HE)
Compliance Enforcement Section
Hazardous Waste Enforcement Branch
(214)665-3142 direct
(214)789-2586 cell
(214)665-7446 fax

From: Melissa Smith/R6/USEPA/US

To: Chuck Barnes/R6/USEPA/US@EPA, Dale Thrush/R6/USEPA/US@EPA, Frances Verhalen/R6/USEPA/US@EPA, Paul James/R6/USEPA/US@EPA, Sunita Singhvi/R6/USEPA/US@EPA, William Mansfield/R6/USEPA/US@EPA, Adolphus Talton/R6/USEPA/US@EPA, Agatha Benjamin/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Gabriel Salinas/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Jamal Lewis/R6/USEPA/US@EPA, Joel Dougherty/R6/USEPA/US@EPA, Kimeka Price/R6/USEPA/US@EPA, Wilkin Shannon/R6/USEPA/US@EPA, Dave Hensley/R6/USEPA/US@EPA, Elvia Evering/R6/USEPA/US@EPA, Guadalupe Pesina/R6/USEPA/US@EPA, Joyce-R6 Johnson/R6/USEPA/US@EPA, Kathy Laws/R6/USEPA/US@EPA, Larry Permenter/R6/USEPA/US@EPA, Lauretta Scott/R6/USEPA/US@EPA, Lou Roberts/R6/USEPA/US@EPA, Marie Stucky/R6/USEPA/US@EPA, Maris Chambers/R6/USEPA/US@EPA, Mary Tucker/R6/USEPA/US@EPA, Patricia Weatherly/R6/USEPA/US@EPA

Cc: Mark Potts/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Sunita Singhvi/R6/USEPA/US@EPA

Date: 05/16/2012 10:37 AM

Subject: Please send WAR paragraphs to me no later than 2:00 PM today.

Melissa Smith
U.S. Environmental Protection Agency, Region 6
Hazardous Waste Enforcement Branch (6EN-HC)
1445 Ross Ave
Dallas, TX 75202
214-665-7357
214-665-7446 (fax)
smith.melissa@epa.gov

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Message

From: Tidmore, Guy [Tidmore.Guy@epa.gov]
Sent: 5/16/2012 5:00:30 PM
To: Smith, Melissa [Smith.Melissa@epa.gov]; Pearson, Evan [Pearson.Evan@epa.gov]
Subject: Re: Please send WAR paragraphs to me no later than 2:00 PM today.

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Thanks!

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Guy Tidmore, Chief (6EN-HE)
Compliance Enforcement Section
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From: Melissa Smith/R6/USEPA/US

To: Chuck Barnes/R6/USEPA/US@EPA, Dale Thrush/R6/USEPA/US@EPA, Frances Verhalen/R6/USEPA/US@EPA, Paul James/R6/USEPA/US@EPA, Sunita Singhvi/R6/USEPA/US@EPA, William Mansfield/R6/USEPA/US@EPA, Adolphus Talton/R6/USEPA/US@EPA, Agatha

Benjamin/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Gabriel Salinas/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Jamal Lewis/R6/USEPA/US@EPA, Joel Dougherty/R6/USEPA/US@EPA, Kimeka Price/R6/USEPA/US@EPA, Wilkin Shannon/R6/USEPA/US@EPA, Dave Hensley/R6/USEPA/US@EPA, Elvia Evering/R6/USEPA/US@EPA, Guadalupe Pesina/R6/USEPA/US@EPA, Joyce-R6 Johnson/R6/USEPA/US@EPA, Kathy Laws/R6/USEPA/US@EPA, Larry Permenter/R6/USEPA/US@EPA, Lauretta Scott/R6/USEPA/US@EPA, Lou Roberts/R6/USEPA/US@EPA, Marie Stucky/R6/USEPA/US@EPA, Maris Chambers/R6/USEPA/US@EPA, Mary Tucker/R6/USEPA/US@EPA, Patricia Weatherly/R6/USEPA/US@EPA

Cc: Mark Potts/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, Sunita Singhvi/R6/USEPA/US@EPA

Date: 05/16/2012 10:37 AM

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U.S. Environmental Protection Agency, Region 6
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214-665-7446 (fax)
smith.melissa@epa.gov

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/15/2012 6:39:04 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]; Potts, Mark [Potts.Mark@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Seager, Cheryl [Seager.Cheryl@epa.gov]
Subject: Fw: Joint Response (From U.S. Ecology)

Your thoughts on an appropriate response.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
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U.S. EPA - Region 6
1445 Ross Avenue
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------ Forwarded by Evan Pearson/R6/USEPA/US on 05/15/2012 01:37 PM ------

From: "Reagan, Mary" <mreagan@mcginnislaw.com>

To: Evan Pearson/R6/USEPA/US@EPA
Cc: <earl.lott@tceq.texas.gov>, (Lawyers' Manual of Professional Conduct) <LMPC@mcginnislaw.com>, "Head, JD" <JDHead@fbhh.com>, "Renbarger, Bob" <Bob@fbhh.com>, "Andrew Marshall" <amarshall@usecology.com>, "Simon Bell" <SBELL@usecology.com>, "Gregg Meyers" <gmeyers@tdxassociates.com>, "Carl Palmer" <cpalmer@tdxassociates.com>
Date: 05/15/2012 01:36 PM
Subject: RE: Joint Response

CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Evan,

U. S. Ecology and TD*X are in receipt of your e-mail acknowledging our May 14th response containing our proposal for reconfiguration of the TDU. In that e-mail you state that our proposal will have to be reviewed "with appropriate persons in EPA." In our May 14th response, we requested a meeting with all parties, including the TCEQ, at which our proposal can be discussed on the merits in an effort to achieve a mutually acceptable technical resolution. We want to reiterate this request for a meeting and confirm with you that your statement is not intended to foreclose such meeting for this

purpose. Please advise us as soon as possible as to the status of our meeting request.

Regards,
Mary

Mary Reagan
Email: mreagan@mcginnislaw.com
Office: (512) 495-6013
Fax: (512) 505-6313
Address:
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701
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From: Evan Pearson [mailto:Pearson.Evan@epamail.epa.gov]
Sent: Monday, May 14, 2012 4:39 PM
To: Reagan, Mary; jdhead@fbhh.com
Cc: earl.lott@tceq.texas.gov
Subject: Joint Response

Thank you for your response. We will have to review your proposal with the appropriate persons in EPA. However, please note that my reference to the Rineco case or any document referenced in my April 26, 2012 letter was not intended to imply (nor should have been be taken to imply) that rerouting the gases to a thermal oxidizer will result in the TDU being permitted as a Subpart X unit. Any such determination is made on a case-by-case basis.

Also, to ensure to that the appropriate persons are briefed as needed, all future communications from USET and/or TD*X shall be directed to me alone. I will make sure the appropriate persons are notified, as needed.

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Phone - (214) 665-8074
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E-Mail - pearson.evan@epa.gov

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Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 5/8/2012 8:57:28 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
Subject: Fw: enforcement confidential - USET & TD*X

See e-mail below.

Evan L. Pearson
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----- Forwarded by Evan Pearson/R6/USEPA/US on 05/08/2012 03:56 PM -----

From: Michael Barra/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Date: 05/08/2012 03:33 PM
Subject: Fw: enforcement confidential

FYI

Michael C. Barra
Office of Regional Counsel (6RC-ER)
US EPA Region 6
1445 Ross Avenue
Dallas, TX 75202
(214)665-2143
barra.michael@epa.gov
----- Forwarded by Michael Barra/R6/USEPA/US on 05/08/2012 03:32 PM -----

From: Mark Potts/R6/USEPA/US

To: Guy Tidmore/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA
Date: 05/08/2012 03:30 PM

Subject: enforcement confidential

any news here? I need to get back to Jim. Thanks.
----- Forwarded by Mark Potts/R6/USEPA/US on 05/08/2012 03:29 PM -----

From: John Blevins/R6/USEPA/US
To: "Mark Potts" <Potts.Mark@epamail.epa.gov>, "Mr. Mark Hansen" <Hansen.Mark@epamail.epa.gov>
Date: 05/08/2012 09:21 AM
Subject: Fw: Hello (and TDX...)

FYI
John Blevins
CAED
US EPA REGION 6
214-665-2210 (w)
214-437-9810 (c)

----- Original Message -----
From: James Cummings
Sent: 05/07/2012 06:20 PM EDT
To: John Blevins
Subject: Hello (and TDX...)

John,

You are one peripatetic guy. While you've been doing all your moving around since last we spoke, 'all' I have done is move 3 miles closer to town. Actually, to complete my story, the move was to a smaller house, smaller lot and a (much) bigger mortgage (oh yeah, and six more kids to raise)(and 2 dogs)

Anyway reason for this message is that I got a call from Carl Palmer of TDX regarding his 'situation' - i.e., notice from R 6 that they needed to apply for a Subpart 'O' permit.

Reason he called me is that I go way back w/ the XTRAX unit which was the predecessor of the current unit reclaiming oil in your backyard. I was on site when they did their first pilot test in the god-awful outback of CWM's Kettleman Hills landfill. I also consulted in an informal way as Carl Swanstrom, the father of the XTRAX unit designed his unit to be the antithesis of a Subpart 'O' incinerator.

Since then I have spent a fair amount of time supporting the proposition that whatever they - and similar indirect-fired units are - they are not incinerators. In a similar vein, I have held them up as a/the exemplar of what a thermal desorber could/should be. I was also around when the Subpart 'X' reg was written, in part to address these kinds of calls.

After I got the call from Carl Palmer, I did some homework in preparation to sending you this note.

I checked in w/ Dodi Dohara who wrote permits for XTRAX as an 'alternative technology'. He reaffirmed his earlier conclusion that the unit was not an incinerator, even though some of the vent gas reportedly went into the furnace (as appears to be the case with the current TDX unit - which distinguishes it slightly from the original XTRAX unit which only condensed the off-gases and collected them on carbon)

Not knowing for sure how they ended up in the potential Subpart 'O' (penalty) box, but assuming that it might be the vent gas, I also checked in with Sonya Sasseville of ORCR. She did not know whether we have ever specifically addressed the situation where de minimis levels of vent gas might be involved. I am in the process of checking in with other ORCR folks.

Not trying to crash the party, but was wondering if I might get a sense of how you/we got to this point, and to offer

assistance as/if appropriate (on the other hand, w/ my 'six more kids' revelation, my judgement may well be suspect).

Regards/

Jim Cummings
Technology Assessment Branch/OSRTI/OSWER
USEPA (5102G)
1200 Pennsylvania Ave NW
Washington, DC 20460
703-603-7197

Message

From: Pearson, Evan [Pearson.Evan@epa.gov]
Sent: 4/16/2012 5:47:23 PM
To: Tidmore, Guy [tidmore.guy@epa.gov]
Subject: Re: Potential U.S. Ecology/TD*X Resolution

This is an old message. We had the call last Thursday, which you participated in.

Evan L. Pearson
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From: Guy Tidmore/R6/USEPA/US

To: Evan Pearson/R6/USEPA/US@EPA
Date: 04/16/2012 11:29 AM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

Evan,

I can join by phone.

Guy Tidmore, Chief (6EN-HE)
Compliance Enforcement Section
Hazardous Waste Enforcement Branch
(214)665-3142 direct
(214)789-2586 cell
(214)665-7446 fax

From: Evan Pearson/R6/USEPA/US

To: Ross Elliott/DC/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Sonya Sasseville/DC/USEPA/US@EPA
Date: 04/11/2012 04:01 PM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

Whatever works best so I can get an answer. I will try and set up a meeting for tomorrow afternoon. From a brief look at the scheduler, it doesn't appear that everyone will be available (I'm not sure who need to be on the call). We can give it a shot though.

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From: Ross Elliott/DC/USEPA/US
To: Evan Pearson/R6/USEPA/US@EPA
Cc: Alan Carpien/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Sonya Sasseville/DC/USEPA/US@EPA
Date: 04/11/2012 03:05 PM
Subject: Re: Potential U.S. Ecology/TD*X Resolution

In the interest of minimizing lots of ideas flying around via email messages that might or might not be discoverable, I might suggest we let people think about this and set up a call to discuss. Perhaps a core group could then exchange ideas further. Just a thought.

As tempting as it may be, that's all I will say in email!

Thanks for sharing and my suggestion is only that...a suggestion.

From: Evan Pearson/R6/USEPA/US

To: Alan Carpien/DC/USEPA/US@EPA, MaryBeth Sheridan/DC/USEPA/US@EPA, Ross Elliott/DC/USEPA/US@EPA, Charlotte Mooney/DC/USEPA/US@EPA, George Faison/DC/USEPA/US@EPA
Cc: Guy Tidmore/R6/USEPA/US@EPA, Eva Steele/R6/USEPA/US@EPA, Ryan Rosser/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA
Date: 04/11/2012 03:43 PM
Subject: Potential U.S. Ecology/TD*X Resolution

We met with U.S. Ecology and TD*X today. They proposed a potential resolution to the incineration issue, which I would like to run pas you.

To refresh your recollection, the following is a brief description of their process:

Listed hazardous waste is fed into a thermal desorption unit (TDU). Thermal desorption removes chemicals from materials by using heat to change the chemicals into gases. Heat is applied to the feed material in an indirect heated rotary dryer to separate the organic contaminants and to remove them from the feed material. Nitrogen carrier gas is circulated through the indirect heated dryer. Oil and water are removed from the feed material as it heats in the dryer and are transported to the gas system condensers with the carrier gas. The oil is then recovered by condensing it in a gas treatment system. A process vent is purged from the carrier gas in a closed vent system. This process vent stream, which includes nitrogen and non-condensable gases from the dryer, is filtered before it is injected into the combustion chamber of the TDU.

Assume that they taking hazardous waste which meets the requirements of 40 C.F.R. § 261.6(a)(3)(iv)(C) - oil-bearing hazardous waste from petroleum refining, production, and transportation practices.

We have stated under that the current configuration, the unit would be classified as an incinerator. The combustion chamber is part of the TDU. The combustion chamber uses a controlled flame to treat the vent stream. Therefore, the TDU is an incinerator.

However, assume that after the process vent gases come off the gas treatment system and before the gases go into the combustion chamber, a carbon absorber is inserted. Then, any vent gases that pass through the carbon absorber would go into the combustion chamber.

1. Wouldn't the facility be in compliance, because the gases that pass through the carbon absorber be considered an uncontained gas, and thus not a solid waste? Or would it be subject to Subpart X, and not O?

2. Would the discarded carbon filters be considered a hazardous waste?

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Message

From: Kaleri, Cynthia [Kaleri.Cynthia@epa.gov]
Sent: 7/5/2012 4:32:26 PM
To: Eva Steele [Steele.EvaLNDU@usepa.onmicrosoft.com]
CC: Tidmore, Guy [tidmore.guy@epa.gov]; Pearson, Evan [Pearson.Evan@epa.gov]; Toups, Brad [Toups.Brad@epa.gov]; Lutz, Craig [lutz.craig@epa.gov]; Herrera, Esteban [Herrera.Esteban@epa.gov]; Shah, Harry [shah.harry@epa.gov]; Fruitwala, Kishor [Fruitwala.Kishor@epa.gov]; Michael Barra [Barra.MichaelLNDU@usepa.onmicrosoft.com]; Aisling, Kathleen [Aisling.Kathleen@epa.gov]; Thompson, Steve [thompson.steve@epa.gov]
Subject: Re: Comments on USET and TD*X's Draft RCRA Compliance Demonstration Test Plan

Hi Eva,

I have quickly looked over some specific sections of the test plan just to get a feel for level of detail and such. Unfortunately, I definitely have some serious concerns (major deficiencies are apparent) ... do we have a copy of their RCRA Permit Application? They reference that it contains more detail throughout the plan (the plan should really be stand alone document) for both the TDU and the TOU. Also, can I get a copy of the compliance order for reference?

Any PIDs that includes both the TDU and the TOU are really a necessity ... the block flow diagram (Figure 4-1) is seriously insufficient and actually doesn't fit the text write-up ... sound engineering description is seriously lacking for the entire process (terminology is confusing to say the least).

Also, has this unit really treated **PCB contaminated soils** and if so at what levels (referenced in Section 5.3)? I wonder if TSCA applicability is also an issue (six nines DRE would apply)? I also wonder about **Hg** in the feedstream (or where the Hg comes from)...they totally ignore vapor and species of Hg (with chlorinated compounds) when they state that all Hg is removed by the filters...I can't even begin to describe the horror I felt reading their description of mercury on particles being removed.

Just some initial misgivings...thanks so much,

Cynthia J. Kaleri
Enforcement Officer (6EN-AA)
United States Environmental Protection Agency
1445 Ross Avenue - Dallas, TX 75202-2733
Phone: 214-665-6772

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From: Eva Steele/R6/USEPA/US

To: Cynthia Kaleri/R6/USEPA/US@EPA
Cc: Guy Tidmore/R6/USEPA/US@EPA, Evan Pearson/R6/USEPA/US@EPA, Brad Toups/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA, Harry Shah/R6/USEPA/US@EPA, Kishor Fruitwala/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Kathleen Aisling/R6/USEPA/US@EPA, Steve Thompson/R6/USEPA/US@EPA
Date: 07/05/2012 08:44 AM
Subject: Re: Comments on USET and TD*X's Draft RCRA Compliance Demonstration Test Plan

Hi Cynthia, Attached is an electronic version of their test plan

[attachment "TDX RCRA Compliance Demonstration Test Part 2.pdf" deleted by Cynthia Kaleri/R6/USEPA/US]
[attachment "TDX RCRA Compliance Demonstration Test Part 1.pdf" deleted by Cynthia Kaleri/R6/USEPA/US]

Eva K. Steele
RCRA Inspector/ Enforcement Officer/Region 6 States Liaison
Compliance Assurance & Enforcement Division
U.S. EPA Region 6
Phone: (214) 665-7211
Fax: (214) 665-7264
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From: Cynthia Kaleri/R6/USEPA/US

To: Eva Steele/R6/USEPA/US@EPA, Guy Tidmore/R6/USEPA/US@EPA
Cc: Evan Pearson/R6/USEPA/US@EPA, Brad Toups/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA, Harry Shah/R6/USEPA/US@EPA, Kishor Fruitwala/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Kathleen Aisling/R6/USEPA/US@EPA, Steve Thompson/R6/USEPA/US@EPA
Date: 07/05/2012 08:40 AM
Subject: Re: Comments on USET and TD*X's Draft RCRA Compliance Demonstration Test Plan

Hello Eva/Guy,

Evan indicated ya'll had the test plan and so I would like to request a copy for an initial review (electronic or hard copy is fine). Also, if you have any of the following additional information (either electronic or hard copy) I could borrow, that would be extremely helpful:

1. Any Test Plan Appendices or Supplemental Plans, such as their Feedstream Analysis Plan (FAP) or Waste Analysis Plan (WAP) under RCRA, their CMS Plan, Operation and Maintenance Plans (OMPs) or manufacturer's (vendor's) O&M manuals if that is how they set their operation parameters of particular process equipment, and if they have it (and they may not at this stage), a copy of their Startup, Shutdown, and Malfunction Plan (SSMP) or equivalent info under RCRA.

2. PIDs or process flow diagrams of the current process unit operations versus the planned setup (i.e., reroute of vapors), including all process units or air pollution control equipment. and all supporting operating scenario descriptions (if not explained adequately in the test plan, not just what they have presented as "worst case operating scenario"). For example, do they ever bypass certain equipment or operate certain units at max/min set points? Any AWFCOs currently used?

3. Any prior regulatory or pre-test results to share (summary form)?

4. Finally, are any other CAA subparts applicable to unit operations (NSPS/NESHAP)? Just a listing would be great.

All of this stuff may be in the Test Plan or Appendices, but then again, maybe this info was submitted separately. Hope this list helps and as soon as I get the plan itself, I'll get started. Thanks so much!

Hope everyone had a safe and happy 4th,

Cynthia J. Kaleri
Enforcement Officer (6EN-AA)
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1445 Ross Avenue - Dallas, TX 75202-2733
Phone: 214-665-6772

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From:	Evan Pearson/R6/USEPA/US
To:	Eva Steele/R6/USEPA/US@EPA, Craig Lutz/R6/USEPA/US@EPA, Cynthia Kaleri/R6/USEPA/US@EPA
Cc:	Guy Tidmore/R6/USEPA/US@EPA, Esteban Herrera/R6/USEPA/US@EPA, Michael Barra/R6/USEPA/US@EPA, Kishor Fruitwala/R6/USEPA/US@EPA, Harry Shah/R6/USEPA/US@EPA, Brad Toups/R6/USEPA/US@EPA
Date:	07/03/2012 03:41 PM
Subject:	Comments on USET and TD*X's Draft RCRA Compliance Demonstration Test Plan

I have the following comments on the USET and TD*X's Draft RCRA Compliance Demonstration Test Plan that we received from USET and TD*X. These comments are somewhat non-technical in nature based on various discussions I have had with EPA technical personnel. I am sending these comments to everyone on the negotiating team, as well as others to whom I understand may be reviewing this plan. Please note that I am not directing anyone to review the plan. Your supervisors will, of course, make that decision. However, I am sending this to you in the event you will be reviewing the plan. I will also be out of the office from July 4 – 23, 2012, so I wanted to send this out before I left. Copies of the plan will be available from either Eva Steele or Guy Tidmore.

As you may know, we are negotiating a Consent Agreement and Final Order (CAFO) which will require USET/TD*X to receive a RCRA Subpart X permit for the reconfigured thermal desorption unit (TDU). Currently, the TDU operates as follows:

The TDU uses heat from an indirect heated rotary dryer to separate the organic contaminants from the hazardous waste feed material. A nitrogen carrier gas is used to transfer the vapor phase organic constituents to a gas treatment system. The oil is recovered by condensing vapor phase organic constituents in the gas treatment system. The vent stream is filtered, then nitrogen, along with non-condensable gases, is injected into the combustion chamber of the TDU, where it is burned.

After reconfiguration, the vent stream will be sent to a thermal oxidizing unit (TOU) instead of being injected into the combustion chamber of the TDU.

Under Subpart X, we are required to consider appropriate requirements of 40 C.F.R. Part 264, Subparts I – O, AA – CC, Part 270, 40 C.F.R. Part 63, Subpart EEE, and 40 C.F.R. Part 146. Therefore, we don't have to follow, for example, every provision of Subpart EEE, only those that are appropriate.

However, since the TOU is a combustion unit, it seems to me that we should use Subpart EEE wherever it is appropriate.

Potential to Emit

We are requiring this test plan and test burn as part of this CAFO. In addition, as it states on page 27 of the Test Plan, it will be used to determine compliance with the air regulations, and will be used, in part, to determine the facility's potential to emit (PTE). Therefore, I want to make sure that this consideration is part of your review.

Craig Lutz and Brad Toups can assist you in determining the PTE. However, I have provided the following guidance to use in your review.

"Potential to emit" is defined in 30 T.A.C. § 116.12(27) as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 C.F.R. § 51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

Any permit limitation can legally restrict potential to emit if it meets two criteria:

1. Federally enforceable – contained in a permit issued pursuant to a EPA-approved permit program or a permit issued by EPA, or submitted as a SIP revision and approved by EPA; and

2. Practically enforceable.

Type of Limitations that will restrict PTE

1. Emission Limitations – restrictions over a given period of time amount of pollutant emitted
2. Production Limitations – Amount of final product that can be manufactured/produced
3. Operational Limits – Hours of operation, amount of raw materials consumed, fuel combusted, or conditions which specify that the source must install and maintain add-on controls that operate at a specified emission rate or efficiency.

All production and operational limits except for hours of operation are limits on a source's capacity utilization.

Potential emissions are defined as the product of a source's emission rate at maximum operating capacity, capacity utilization, and hours of operation.

Permits must contain a production or operational limitation in addition to the emission limitation in cases where the emission limitation does not reflect the maximum emissions of the source operating at full design capacity without pollution control equipment.

When permits contain production or operational limits, they should also have recordkeeping requirements that allow a permitting agency to verify a source's compliance with its limits. For example, permits with limits on hours of operation or amount of final product should require an operating log to be kept in which the hours of operation and the amount of final product produced are recorded.

When permits require add-on controls operated at a specified efficiency level, permit writers should include, so that the operating efficiency condition is enforceable as a practical matter, those operating parameters and assumption which the permitting agency depended upon to determine that the control equipment would have a given efficiency.

A emission limitation alone would limit potential to emit only when it reflects the absolute maximum that a source could emit without controls or other operational restrictions. When a permit contains no limits on capacity utilization or hours of operation, the potential to emit calculation should assume operation at maximum design or achieveable capacity (whichever if higher) and continuous operation (8760 hours per year).

This calculation, along with the PTE from other sources at the facility, will be used to determine whether USET/TD*X will need to get a Title V permit. Therefore, please review their plan with this in mind, to make sure that we can determine, based on the amount of feed going in, along with the HAPs concentration in the feed, the amount of emissions that come out of the TOU.

Specific Comments on the Test Plan

1. The Test Plan will be approved by EPA, not TCEQ.

2. There are a number of extraneous comments in Section II – Summary and at various other places throughout the document, stating that the TDU is not an incinerator and they have been performing an excluded recycling activity. These statements are not relevant to the test plan (and are not entirely correct) and we need to have a way to

address them, because we don't want any statements in the plan to come back to haunt us. We will need to figure out some type of disclaimer or have them take the references out. Also, on page 2 it states that the plan meets appropriate informational requirements of 40 C.F.R. § 270.62(b)(2), including a Feedstream Analysis Plan and a Continuous Monitoring System (CMS) Plan. However, this statement is not correct, as there is no reference in 40 C.F.R. § 270.62(b)(2) to a feedstream analysis plan and a CMS Plan.

3. On page 2 and at other places throughout the document they reference a DRE of 99.99% based on the mass feed rate of the POHC fed to the TDU, as per 40 C.F.R. Part 264, Subpart O, and the mass emission rate of the same POHC present in the exhaust emissions from the combusted process vent. This formula is based on feeding waste directly into an incinerator to be burned. Here, the feed in put into a TDU, where the waste is heated, and the gases are condensed, and then the uncondensed gases are sent to a TOU to be burned. The equation in Subpart O doesn't, in my non-technical opinion, seem to apply to this situation. Is this the correct way to test the efficiency of the two units. Is there a better way under Subpart EEE?

4. It seems to me that based on conversations with certain technical folks, that we need to determine the efficiency of the condensers. Is this true, and does the test plan do that? In our last meeting with USET/TD*X, we stated that we needed the following condenser operating parameters:

Dryer

1. Gas flow rate;
2. Maximum water and VOC content;
3. Minimum temperature; and
4. Minimum residence time.

Condenser

1. Maximum outlet temperature of the gas;
2. Minimum blowdown rate;
3. Minimum height of sump;
4. Minimum recirculation rate; and
5. Minimum water flow rate.

Additional operating parameters may be needed for the refrigerant condenser.

Of course, some of these may not be relevant based on the TDU's operation. For example, they stated that they don't have any blowdown.

5. We don't believe that the proper standard for the combustion chamber is 40 C.F.R. Part 264, Subpart AA. I think it should be at least 99.99%, based on Subpart EEE.

6. On page 15, there is a diagram of the TDU without showing the non-condensed gases being routed to the TOU. There should be a diagram showing the reconfigured operation, which would include the TOU.

7. Is the test being run under the worst case scenario? To my untrained eye, it doesn't seem to be. It states in Section 5.1.3, page 18, that the "TDU will be operated at optimal processing conditions as established during the shakedown operation". This doesn't seem to be a worst case scenario.

8. On page 18, it also states that the POHC for the DRE determination shall be the sum of all polynuclear aromatic hydrocarbon (PAH) compounds in the listings for K048 – K058, K-169-K172, F037, and F038. They stated that they anticipated that the POHC level of the feed material will be greater than 2,000 ppm. I assume that this number is different than the total VOC HAPs concentration of the feed. Is this correct?

USET/TD*X has represented to us that the maximum hourly VOC concentration in the liquid solid feed is 250,000 ppm, and the annual VOC concentration in liquids is 40,000 ppm, and 5000 ppm in solids.

If the two numbers are different (VOC HAPs and POHC), wouldn't they also have to do a separate run using the VOC numbers above to determine the potential to emit?

9. They stated that the maximum feed rate is 310 tons per day. They have stated that there maximum feed rate for

sludges is 6 tons per hour and 14 tons per hour of catalyst. This needs to be corrected.

10. This Plan is suppose to include a Feedstream Analysis Plan and a CMS Plan. There is a reference to Feedstream Analysis in Section 12.4.1, on page 58. On first glance, it doesn't appear to meet the requirements of 40 C.F.R. § 63.1209(c)(2).

Where is the reference to the CMS Plan? The requirements for a CMS Plan is found in 40 C.F.R. § 63.1209. I also don't see any references to a carbon monoxide or hydrocarbon CEMS, or using an oxygen CEMS to monitor the carbon monoxide or hydrocarbon level to 7% oxygen. It may be in there somewhere, but I did not see it in my quick review.

11. Craig/Brad – Please specifically address the potential to emit question.

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