

9441.1986(22)

MAR 19 1986

Ms. Joan Keenan
91 Harvard Avenue
Rockville, N.Y. 11570

Dear Ms. Keenan:

This is in response to your letter dated February 21, 1986.
In your letter, you requested a declaratory ruling and advisory opinion on a number of questions concerning the regulatory status of a gasoline/waster mixture and a fuel oil/water mixture that is recycled. Our response to these questions are as follows:

First State of Facts

1. Where the separated gasoline is being legitimately recycled for use as a fuel, does EPA consider the gasoline and water mixture a hazardous waste under the Resource Conservation and Recovery Act (RCRA) and its attendant regulations?

No. The gasoline/water mixture is considered a mixture which contains a commercial chemical product (CCP). CCPs that are reclaimed are not considered "solid wastes" i.e., it's not "discarded" because it's normally a fuel and not being abandoned). Since hazardous waste is a subset of solid waste, this mixture is not defined as a hazardous waste (i.e., it must be a solid waste before it can be a hazardous waste).

2. Does the Agency consider the unused (virgin) gasoline a solid waste under RCRA and its attendant regulations?

No. See explanation to previous question.

3. Does the Agency consider the unused gasoline an industrial commercial waste under RCRA and its attendant regulations?

No. Since gasoline is typically burned as a fuel, we would not consider it a waste when recycled in the manner described in your letter.

4. Has the gasoline "resulted from" an industrial or commercial process to justify a determination of the virgin product as a waste?

Additional information is needed before we can respond to this question. Please contact Matthew A. Straus at (202) 475-8551.

5. Does the Agency require that ABC Company obtain any permits or other letters of authorization of any kind from the Agency?

No. Since the gasoline/water mixture is not a solid and hazardous waste, this mixture is not subject to the Federal regulations under RCRA. This mixture may still be subject to State law and to the transportation rules promulgated by the Department of transportation.

6. If the virgin gasoline is incinerated to recovery energy, does the Agency consider it to be a waste?

No. Since gasoline is typically burned as a fuel, it is not considered a waste when burned to recover energy under Federal regulation (see 40 CFR 261.33).

Second State of Facts

1. Where the separated oil is being legitimately recycled for use as a fuel, does the Agency consider the oil and water mixture a hazardous waste under RCRA?

No. The fuel oil/water mixture is considered a mixture which contains a CCP. CCPs that are reclaimed are not considered "solid wastes" (i.e., it's not "discarded" because it's normally a fuel and not being abandoned). Since hazardous waste is a subset of solid waste, the mixture is not defined as a hazardous waste.

2. Does the Agency consider the unused (virgin) oil a solid waste under RCRA?

No. See explanation to previous question.

3. Does the Agency consider the unused oil an industrial-commercial waste under RCRA?

No. Since fuel oil is typically burned as fuel, we would not consider it a waste when recycled in the manner described in your letter.

4. Has the oil "resulted from" an industrial or commercial process as that term is used in §27-03030 of the New York Environmental Conservation Law?

Since you are requesting for an interpretation of State law, you should contact the New York Department of Environmental Conservation for an answer to this question.

5. Does the Agency require that ABC Company obtain any permits or other letters of authorization of any kind from the Department?

No. Since the fuel oil/water mixture is not a solid and hazardous waste, this mixture is not subject to Federal regulation under RCRA. This mixture may still be subject to State law and to the transportation rules promulgated by the Department of Transportation.

6. If the virgin oil is incinerated to energy recovery, does the Department consider it to be a waste?

No. Since virgin fuel oil is typically burned as a fuel, it is not considered a waste when burned to recover energy under Federal regulation (see 40 CFR 261.33).

Please feel free to contact Mr. Matthew A. Straus if you have any further questions.

Sincerely,

Original Document signed

Marcia E. Williams
Director
Office of Solid Waste