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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAR 1 1990

Mr. Christopher J. Jaekels
GSX Government Services, Inc.
P.O. Box 140
902 South Main Street
Saukville, WI 53080

Dear Mr. Jaekels:

This letter is in response to your January 22, 1990 request for clarification of regulations applicable to bulking or containerizing compatible hazardous wastes for transportation. Specifically, you requested EPA's concurrence on your interpretation of the regulations: that bulking and containerizing practices do not constitute fuel blending, and thus, do not require permitting.

Determinations of this type are made by authorized states and EPA regional offices. In some cases authorized states have promulgated applicable regulations that differ from Federal regulations; hence, you should contact the authorized state hazardous waste office. If you need information in an unauthorized state, you may contact the appropriate EPA regional office.

However, for your information, this letter discusses in a general fashion the federal regulations which may apply. First, it is important to distinguish between bulking and containerizing different hazardous wastes for the purpose of efficient transportation and disposal from bulking and containerizing different wastes to product a hazardous waste fuel.

The bulking of characteristic hazardous waste shipments to achieve efficient transportation may result in incidental reduction of the hazards associated with that waste mixture. However, this incidental reduction may not meet the definition of treatment (as defined under 40 CFR Section 260.10) because it is not designed to render the waste nonhazardous or less hazardous. Accordingly, such activity may not require a RCRA permit. For a specific situation a determination is made by the appropriate Regional office or authorized State based on the particular circumstances, state regulations, and policies.

There is no definition for "fuel blending" in Federal regulations. However, the March 16, 1983 Federal Register (48 FR 11157) discusses the Agency's current enforcement guidance for blenders of hazardous waste fuel. In the preamble, the Agency explains that "waste-derived fuel blenders are responsible for

ensuring that low-energy value hazardous waste are not blended into fuels" (48 FR 11159). Therefore, bulking and containerizing of hazardous wastes which are intended to be burned for energy recovery (i.e., "fuel blending") are subject to RCRA jurisdiction.

Specifically, a RCRA permitted storage facility consolidating compatible hazardous wastes for the purpose of burning for energy recovery must ensure that the resulting hazardous waste fuel has substantial heat value (i.e., 5,000 to 8,000 Btu) and that each consolidated hazardous waste fuel constituent possesses substantial heat value.

The Agency has clearly stated that the storage requirements of 40 CFR Parts 264 and 265 apply to hazardous waste fuel blending tanks. (See the April 13, 1987 Federal Register 52 FR 11820.) Therefore, unless the fuel blending operations are conducted in units exempt from permitting requirements (e.g., a generator's accumulation tank or container in compliance with standards for less than 90 day storage), these units are subject to RCRA permitting requirements under Federal regulations.

Again, we remind you that the final determination of the regulations that apply at a particular facility is made by the authorized states and EPA regions. Should you have additional questions regarding this letter, please contact Emily Roth of my staff at (202) 475-8551.

Sincerely,

Original Document signed

Sylvia K. Lowrance, Director
Office of Solid Waste

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B. Amended Petitions

PP 9F2187. Uniroyal Chemical. EPA issued a notice published in the *Federal Register* of April 13, 1979 (44 FR 22175) that announced that Uniroyal Chemical Corp., had submitted pesticide petition 9F2187 to the Agency proposing to amend 40 CFR 180.301 by establishing tolerances for the combined residues of the fungicide carboxin in or on the commodities peanuts, peanut seeds, and hulls at 5.0 ppm.

Uniroyal Chemical Corp. has amended the petition by decreasing the tolerance in peanuts from 5.0 to 3.0 ppm. The proposed analytical method for determining residues is by hydrolysis-to-aniline method and color test with *p*-dimethylaminobenzaldehyde (for plant tissue), and by hydrolysis and gas chromatography of the liberated aniline using a nitrogen-specific detector (for seed). (PM-21, Henry Jacoby 703-557-1900).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136); 409(b)(5), 72 Stat. 1706, (21 U.S.C. 348))

Dated: February 25, 1983.

Robert V. Brown,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-0303 Filed 3-15-83; 8:45 am]
BILLING CODE 6580-50-M

[OPP-31015A; PH-FRL 2319-4]

M and T Chemicals, Inc.; Approval of Application to Conditionally Register a Pesticide Product Involving A Changed Use Pattern

AGENCY: Environmental Protection Agency (EPAP).

ACTION: Notice.

SUMMARY: EPA has approved the application by M and T Chemicals, Inc. to register the antifoulant BioMet™ 204 AF-14 Red Antifouling Paint. The registration involves a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the *Federal Register* of May 10, 1978 (43 FR 20052) which announced that M and T Chemicals, Inc., PO Box 1104, Rahway, NJ 07065, had submitted an application to register the antifoulant Biomet

Antifouling Paint containing 15.0 percent of the active ingredient triphenyltin fluoride. The application proposed that the use pattern of the product be changed from technical for reformulating into antifouling paints to an active ingredient in antifouling formulation. The application also proposed that the product be classified for general use.

The application was approved on January 10, 1983 for general use as "BioMet™ 204 AF-14 Red Antifouling Paint" with 10.9 percent of the same active ingredient. The product was assigned EPA Registration No. 5204-80.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: February 28, 1983.
Edwin L. Johnson,
Director, Office of Pesticide Programs.

[FR Doc. 83-0300 Filed 3-15-83; 8:45 am]
BILLING CODE 6580-50-M

[OGC-FRC 2322-4]

Enforcement Guidance

AGENCY: Environmental Protection Agency.

ACTION: Enforcement guidance.

SUMMARY: The Environmental Protection Agency is publishing a memorandum providing enforcement guidance regarding whether burning low energy hazardous wastes for ostensible energy recovery purposes can be considered to be legitimate recycling activity within the meaning of 40 CFR 261.6(a)(1). Application of the guidance will vary in individual cases according to specific circumstances.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Esq., Attorney, Office of General Counsel (202-382-7708).

Dated: March 8, 1983.

Robert M. Perry,
Associate Administrator and General Counsel.

(The memorandum containing the enforcement guidance is set out below) January 18, 1983.

Memorandum

Subject: RCRA Enforcement Guidance:
Burning Low Energy Hazardous Wastes
Ostensibly for Energy Recovery Purposes
From: Rita Lavelle, Assistant Administrator
for Solid Waste and Emergency
Response
Robert M. Perry, Associate Administrator
and General Counsel
To: Regional Administrators, Regional
Counselors, Directors, Air and Hazardous
Materials Divisions

I. Introduction

A. Purpose

This memorandum provides guidance to determine when burning hazardous waste or hazardous waste-derived fuels in boilers will be considered legitimate recycling under 40 CFR 261.6(a)(1), the regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA). This memorandum also provides guidance regarding the possible obligation of generators, fuel blenders, distributors and ultimate users of these materials to comply with regulations promulgated under Sections 3002-3005 of RCRA. While this guidance sets out general rules, they may vary in particular cases depending upon individual circumstances.

B. Regulatory Background

On May 19, 1980, as part of the final and Interim final regulations implementing RCRA, EPA promulgated an exemption from regulation for certain hazardous wastes being beneficially used, reused, recycled, or reclaimed (referred to collectively throughout this memorandum as "recycled"). This exemption, contained in 40 CFR 261.6, applies to two categories. First, certain hazardous wastes are totally exempt from regulation if they are to be recycled. These are hazardous wastes that are not sludges, that exhibit a characteristic of hazardous waste, and that are not listed in 40 CFR 261.31 or 261.32. (See § 261.6(a).) Second, listed wastes and hazardous sludges are subject to regulation until they are recycled. (See § 261.6(b).) In either category, hazardous wastes are not subject to regulation during the actual process of recycling.

The preamble to the regulation explained that the exemption "is confined to bona fide 'legitimate' and 'beneficial' uses and recycling of hazardous wastes. Sham uses . . . are not within its scope and, if conducted in violation of Subtitle C requirements, will be subject to enforcement . . ." (45 FR at 33003, May 19, 1980).

II. General Distinctions Between Burning as Legitimate or Sham Recycling

A. Energy Value of Wastes Being Burned

Burning of hazardous wastes as fuels can be a type of recycling activity exempted from

regulation provided the blending and burning constitute legitimate, and not sham, recycling. A determination of what constitutes sham burning depends ultimately on weighing a number of factors presented by the circumstances of a particular case. The energy value of the hazardous wastes being blended or burned, however, is likely to be of primary significance in most cases.

The significance of a waste's energy value is evident: If the wastes being burned have only *de minimis* energy value, the burning cannot recover sufficient energy to characterize the practice as legitimate recycling. In other words, energy recovery is ancillary, and the wastes, for practical purposes, are being burned to be destroyed. As the Agency said on May 19, 1980, "burning organic wastes that have little or no heat value in industrial boilers under the guise of energy recovery" is not within the exemption for recycling (45 FR at 33093). Consequently, EPA ordinarily views the practice of direct burning of hazardous wastes with little or no heat value as "fuels" as not being legitimate recycling.

Burning mixtures of hazardous wastes as fuels, or burning mixtures of wastes and non-waste fuel, when one or more of the hazardous wastes in the fuel has little or no heat value may likewise not be legitimate recycling. Determinations as to whether the recycling is legitimate will be based on evaluation of particular circumstances. For example, the amount of low energy waste in a fuel and the circumstances of its addition to the fuel could be relevant, as could the nature of the boiler in which the waste is burned, i.e., its type, size, operating conditions, etc. Practices where wastes with little or no heat value are knowingly added to a material intended to be burned as a fuel are likely to be considered sham recycling and not covered by the exemption contained in § 261.6(a), e.g., mixing of low and high energy waste streams by a blender or waste burning facility.³

In determining which hazardous wastes have little or no heating value, EPA

enforcement personnel should use as a benchmark wastes with a heating value less than low energy commercial fuels such as wood or low grade-subbituminous coal.⁴ Examples of hazardous waste having little or no heating value are discarded carbon tetrachloride, chloroform, methylene chloride, trichloroethylene, 1,1,1- and 1,1,2-Trichloroethane, certain polychlorinated biphenyls, and such pesticides as toxaphene, chlordane and heptachlor. Attached as Appendix A is a partial list of the hazardous constituents in appendix VIII to Part 261 that have heating values well below those of commercial fuels.⁵ Wastes with these characteristics are usually not being recycled legitimately because their energy value is so low when burned. This remains true whether or not these wastes are first blended with other materials before burning.

B. Other Criteria

Other considerations also are likely to be relevant in determining if particular burning operations are within the scope of the recycling exemption—even if low energy wastes are not involved. Factors such as whether a usable heat is recovered from the burning, whether recovered heat is used only for preheating combustion air, certainly are relevant. The nature of the device in which the wastes are burned also could be significant. For example, if a combustion unit previously used as an incinerator is subsequently converted as a boiler, there is a strong indication that any energy recovery is ancillary to the central purpose of the unit. In addition, the degree to which wastes were consumed during the burning, the net cost or savings resulting from a burn allegedly for energy recovery purposes, and evidence, such as correspondence, or other records, which tends to show that a company's purpose in conducting a burn was to dispose of, rather than recycle, hazardous wastes, may also affect EPA's enforcement response to a particular incident.

III. Enforcement Priorities

In implementing this guidance, enforcement personnel should direct their enforcement efforts on hazardous waste-derived fuel blenders who supply non-industrial users. Fuel blenders are a logical focal point

³ Woods used as fuel have a range of heating values based on the type of wood, its physical form and its moisture content. These values range from approximately 5,000 to 8,000 Btu per pound. Subbituminous C coal has a heating value of approximately 8,300 Btu per pound. (In contrast, home heating oil has a heating value of roughly 19,900 Btu per pound, and bituminous coals have heating values ranging from 11,000-14,000 Btu per pound.) U.S. EPA, *APTI Course 427 Combustion Evaluation*, EPA 450/2-80-083 (February, 1980).

⁴ It must be remembered that the heating value of each hazardous waste that is burned or is used to produce a fuel is relevant, not the heating value of a particular contaminant in each waste stream (unless the contaminant itself is a hazardous waste). Thus, if trichloroethylene still bottoms are burned for energy recovery or used as an ingredient in a fuel, the heating value of the still bottoms is the important figure, not the heating value of pure trichloroethylene.

because they most frequently control the content and destination of waste-derived fuels. In addition, many of these blenders are subject to regulation as RCRA storage facilities because they are recycling listed hazardous wastes (see 40 CFR 261.6(b)), and are therefore readily identifiable.

Most of EPA's enforcement efforts will be directed toward fuels destined for use in non-industrial (i.e. residential, commercial and institutional) boilers. These boilers typically are of relatively small size, achieve relatively low fuel efficiency, temperature, and residence times, lack emission controls, and receive limited maintenance. Operators of these boilers rarely test their fuels for hazardous waste contaminants since they are often not informed they are receiving hazardous waste-derived fuels. These factors all contribute to a reduced likelihood that these boilers can derive useful heat from hard to burn hazardous wastes contained in a fuel. (They also increase the likelihood that these boilers will be damaged by corrosion from hydrochloric acid emissions resulting from chlorinated contaminants.)

Thus, the waste contaminants in the fuels going to these boilers are likely to be vented to the atmosphere as unburned or partially burned combustion products. In addition, these boilers are often located in densely populated areas where exposures to unburned contaminants are probable. The risk to human health and the environment could be considerable because many wastes added to fuels are acutely and chronically toxic. Burning chlorinated contaminants also can form other hazardous materials such as hydrochloric acid, phosgene, or chlorinated dioxins unless burning occurs at high temperatures and for long residence times, increasing the potential for harm.

It seems clear that fuels contaminated with low energy hazardous wastes do not present the same level of danger when burned in higher efficiency industrial boilers. These boilers typically are designed to maximize energy recovery, through high temperature combustion and long feed residence time. Operators generally are more sophisticated and technically knowledgeable than nonindustrial boiler operators.

Accordingly, EPA is directing its enforcement efforts to deal with what appears to be the greater environmental threat. This is not to say that particular industrial boilers burning hazardous waste-derived fuels necessarily are engaged in legitimate recycling. Rather, EPA is simply directing the primary focus of its enforcement activity at the more clear-cut violation.

IV. Implementation of This Guidance

A. How EPA Will Determine That Blended Fuels Contain Low Fuel Value Hazardous Wastes

EPA's authority under RCRA Subtitle C is limited to hazardous wastes. Thus, in determining if a waste-derived fuel is being recycled legitimately or illegitimately it is first necessary to show that the fuel contains a hazardous waste.

Hazardous wastes burned without prior blending can be analyzed directly for energy value (and where appropriate, for the

¹ Under the regulations, all sludges, and most spent materials and by-products burned for energy recovery are "solid wastes", and so can be hazardous wastes. This is because sludges, and "other waste materials," are defined as solid wastes (40 CFR 261.2(a)). "Other waste materials," in turn, are defined as spent materials and byproducts that are "sometimes . . . discarded" (§ 261.2(b) (2) and (3)), that is, sometimes thrown away and not recycled (§ 261.2(c)). The "sometimes discarded" test applies to all persons handling a spent material or byproduct, so that if one of those materials is discarded by particular generators, it is a solid waste even when recycled by other generators (see 45 FR 33093-094).

² We consider wastes that are not being burned legitimately to be burned for the primary purpose of destruction, within the meaning of 40 CFR 260.10(a) (definition of "incinerator"). The reference to "primary purpose" in that provision thus applies with regard to each individual feed input to a thermal combustion unit. If the particular input has little or no fuel value, it is being burned for the purpose of destruction. Consequently, the device in which these "fuels" are burned is an incinerator, and the burning is subject to regulation under Subpart D of Parts 264 and 265 of the RCRA regulations.

circumstances of burning) to determine if the recycling is legitimate. Blended fuels, however, present a less clear-cut situation. In determining if these fuels contain low energy wastes, we intend to concentrate on the fuel's organic contaminant content. If fuels contain significant concentrations of low energy organic contaminants not ordinarily present in virgin or unadulterated secondary fuels, this should be sufficient to determine that these toxicants were added as wastes. Inspectors should also examine records and sample incoming waste shipments at blending facilities to ascertain the identity of the wastes included in the fuels.

Investigative activities should focus particularly on the chlorinated solvents listed in 40 CFR 261.31 and 261.33 (other than chlorofluorocarbons, which are ozone depleters and not otherwise toxic).⁶ For these materials, the contaminant itself is the same waste that is listed. Chlorinated solvents also are not ordinarily present in virgin fuels;⁷ nor are they typically present in waste oils, or other wastes normally used in waste-derived fuels, at significant concentrations unless they have been added to the waste oil as a separate waste stream.⁸

In addition, chlorinated solvents typically have very low heating value. Such widely-used solvents as carbon tetrachloride, chloroform, methylene chloride, trichloroethylene and 1,1,1- and 1,1,2-trichloroethane have heating values much lower than wood. Of the chlorinated solvents that are hazardous wastes when discarded (see 40 CFR 261.33), or are hazardous wastes when spent (EPA Hazardous Wastes F001 and F002, listed in 40 CFR 261.31), all except chlorobenzene have heating values less than that of subbituminous coal.

Although fuel blenders (or other persons) may maintain, in defending a civil action, that the low energy fuel contaminants are not present as a result of adulterating the fuel with a hazardous waste, it is their burden to substantiate such a claim. The source of wastes in the fuel are particularly within the fuel blender's knowledge, and so it is appropriate that they have this burden.

B. Obligations of Generators, Fuel Blenders and Users to Determine if Their Waste-Derived Fuels Can Be Recycled Legitimately

Generators of listed wastes and sludges are presently subject to the requirements of Part 262 of the regulations when they send these wastes to fuel blenders or users (see § 261.6(b)). These requirements apply

⁶ Burning a material listed in 40 CFR 261.33 in a manner that does not constitute legitimate recycling is a means of discarding them (see 40 CFR 261.2(c)(2) (definition of "discarded")). These materials consequently can be hazardous wastes when burned.

⁷ The National Bureau of Standards has sampled No. 8 residual fuel oil—the lowest grade commercial fuel oil—and found the samples to contain only 31 ppm total chlorine. National Bureau of Standards, *Trace Elements in Fuel Oil* (February, 1982).

⁸ Automotive oils do not typically come into contact with solvents when used. Industrial oils may, but usual practice is simply to collect used oils and spent solvents, mix them, and to ship the mixed oils to waste management facilities. The solvents thus are present in this type of mixture as a separate hazardous waste stream.

whether or not the wastes can be recycled legitimately.⁹

Generators who claim that their non-sludge, unlisted wastes are exempt from regulation because the wastes will be burned for energy recovery ordinarily must be able to substantiate that the wastes have value as fuels in order to protect themselves from liability. Consequently, generators need to know the heating value of these wastes. Btu values can be determined by a relatively simple laboratory test. In many cases, generators also will know from experience that their wastes have legitimate fuel value. Spent benzene and spent acetone, for example, have high fuel value, as do most other ignitable wastes.

Waste-derived fuel blenders are responsible for ensuring that low energy value hazardous wastes are not blended into fuels. In addition, blenders receiving listed hazardous wastes and sludges are presently subject to regulation as storage facilities. Consequently, they must comply with the administrative and technical standards for storage facilities contained in Parts 264 and 265. (These requirements apply, of course, even if the wastes are being recycled legitimately.)⁹

We note that this requirement does not impose significant burdens on fuel blenders. In most cases, they are RCRA facilities handling listed hazardous wastes (most often listed solvents). They must consequently receive these wastes in shipments accompanied by a manifest (see § 261.6(b) (4) and (5)), and are therefore on notice that they are blending these wastes into fuels. They likewise are subject to waste analysis requirements (see §§ 264.13 and 265.13). They also can analyze their incoming wastes and blended fuels for total halogen content—a simple procedure that can be performed on-site—to ensure that waste-derived fuels do not contain high levels of low energy chlorinated wastes.

Waste-derived fuels that cannot be legitimately recycled remain subject to regulation as hazardous wastes through the

⁹ It should be noted that small quantity generators who send wastes that cannot be recycled legitimately to a recycler (such as a fuel blender) are not in compliance with the terms of the small quantity generator exemption unless the recycler is already a Subtitle C facility, or is authorized by a State to manage municipal or industrial solid waste. If a small quantity generator waste is sent to a non-conforming facility (i.e., a facility that does not satisfy the requirements of § 261.5(g)), the waste remains subject to regulation.

⁹ See § 261.6(b). It should be noted that not all of these facilities may be eligible for interim status, either because they were not in existence on November 19, 1980, or because they failed to notify the Agency of their activities or failed to submit a Part A permit application. Although the Agency cannot confer interim status on statutorily ineligible facilities, we have indicated that "we are prepared to exercise our enforcement discretion to allow such facilities to continue operating . . . where their continued operation would be in the public interest." (45 FR 78333 (November 25, 1980)), interpreting statutory interim status requirements.) Means of exercising this discretion include our issuing an interim status compliance letter to the facility, or allowing the facility to operate pursuant to a Section 3008 compliance order (i.d.) pursuant to 40 CFR Part 122.22(a)(3).

time they are burned. As a result, they must travel with a manifest (see 40 CFR 262.10(f), 264.71(c), and 265.71(c)), be transported by a Part 263 transporter, and be sent to a Subtitle C facility. The persons who ultimately burn the material are hazardous waste incinerator facilities because their fuels cannot be recycled legitimately in their boilers.

As stated above, EPA is directing its enforcement efforts to concentrate on low energy waste-derived fuels used in non-industrial boilers. EPA does not intend to require that these users immediately obtain incinerator permits. Rather, we will seek through negotiation that they end the practice. If the user continues burning these waste-derived fuels after initial warning EPA will then initiate appropriate enforcement action.

C. Examples of How This Guidance Could Operate

1. Company B generates a distillation bottom that is listed as a hazardous waste. B burns this waste in its on-site boiler. The waste has a heating value of 2000 Btu per pound.

B is subject to regulation as a generator, as a storage facility (if it stores the waste for more than 90 days prior to burning it), and as an incineration facility. The waste is not being burned for energy recovery, but to be incinerated, because its heating value is well below that of low-grade commercial fuel. It does not matter whether B burns other material in the boiler for legitimate energy recovery. B still is not engaged in legitimate recycling activity when it burns a material with little or no fuel value. (Incidentally, this result is the same if the hypothetical distillation bottom exhibited a characteristic of hazardous waste instead of being listed.)

2. A fuel oil dealer, Company C, obtains waste oil from a number of different generators. C obtains hazardous waste spent solvents carbon tetrachloride, methylene chloride, and trichloroethylene from other generators and mixes these wastes with the waste oil. These wastes contain very high concentrations of chlorinated solvents, and these solvents also are present in the blended fuels. C then sells the waste-derived fuel to apartment buildings and hospitals. These users burn the fuel in their boilers.

Generators of the spent solvents are subject to regulation under Part 262, and the solvents must be transported to C's facility by a Part 263 transporter. C is a storage facility, assuming it stores the solvents before blending them with the waste oil. The blending operation constitutes hazardous waste treatment.

The waste-derived fuel that C sells remains subject to regulation as a hazardous waste because it contains hazardous waste chlorinated solvents that have little fuel value. (The heating values of these solvents are even lower than wood.) Consequently, these waste-derived fuels must travel with a manifest, be transported by a Part 263 transporter, and be sent to Subtitle C facilities. Distributors handling these wastes are RCRA storage facilities, and are subject to manifesting requirements when they initiate shipments to ultimate users. The

persons who ultimately burn the fuel technically are hazardous waste incinerator facilities.

3. Company D generates waste oil and a variety of low energy spent chlorinated solvents that are listed hazardous wastes. D mixes the spent solvents with the waste oil and sends the mixture of a fuel blending facility, E, which processes the waste oil, and mixes it with virgin fuel oil. E then sells the blended mixture as a fuel.

D is a generator, operates a hazardous waste treatment facility, and also may be a storage facility if it accumulates the spent solvents for over 90 days.

Ordinarily, the mixture of spent solvents and waste oil that D generates remains a hazardous waste, for the same reason as in the previous example. The fact that D is a generator rather than a fuel blender makes no difference. D is still blending hazardous wastes with *de minimis* fuel value into fuels. Any burning of such wastes is not legitimate recycling. The blended fuel consequently remains subject to regulation as a hazardous waste in the fuel blender's (E's) hands and in the hands of the ultimate users (as well as intervening distributors). The ultimate burning of the blended fuel constitutes incineration.

APPENDIX A.—LOW ENERGY HAZARDOUS CONSTITUENTS LISTED IN 40 CFR 261, APPENDIX VIII

Hazardous constituent	Higher heating value (Btus/lb.)
Tribromomethane	234
Tetrachloromethane	432
Hexachlorocyclopentadiene	627
Dibromomethane	699
Pentachloroethane	953
Hexachloropropene	1,259
Chloroform	1,349
Cyanogen bromide	1,467
Trichloromethane	1,475
Hexachlorocyclopentadiene	2,015
Tetrachloroethane (Tetrachloroethylene)	2,141
Cyanogen chloride	2,320
Iodomethane	2,410
Tetrachloroethane, N.O.S.	2,500
1,1,1,2-Tetrachloroethane	2,500
1,1,2,2-Tetrachloroethane	2,500
1,2-Dibromoethane	2,572
1,2-Dibromo-3-chloropropane	2,662
Pentachlorobenzene	2,914
Bromomethane	3,059
Dichloromethane	3,056
Trichloroethane (Trichloroethylene)	3,130
Hexachlorobenzene	3,220
Bis (chloromethyl) ether	3,544
1,1,1-Trichloroethane	3,580
1,1,2-Trichloroethane	3,580
Pentachlorobenzene	3,686
Pentachlorophenol	3,760
Hexachlorocyclopentadiene	3,778
Hexachlorocyclohexane	3,813
Kepone	3,887
2,3,4,5-Tetrachlorophenol	4,011
Dichlorophenylarsine	4,165
Endosulfen	4,191
1,2,4,5-Tetrachlorobenzene	4,605
Bromocyclohexane	4,785
Dichloroethylene, N.O.S.	4,857
1,1-Dichloroethylene	4,857
Vinylidene chloride	4,857
Chlordane	4,875
Heptachlor epoxide	4,875
Phenylmercury acetate	4,875
Acetyl chloride	4,983
Trichloropropane, N.O.S.	5,055
1,2,3-Trichloropropane	5,055
Dichloropropanol, N.O.S.	5,109
Dimethyl sulfate	5,145

APPENDIX A.—LOW ENERGY HAZARDOUS CONSTITUENTS LISTED IN 40 CFR 261, APPENDIX VIII—Continued

Hazardous constituent	Higher heating value (Btus/lb.)
2,4,5-T	5,163
2,4,5-Trichlorophenol	5,181
2,4,6-Trichlorophenol	5,181
N-Nitroso-N-methylurea	5,198
1,1-Dichloroethane	5,396
1,2-Dichloroethane	5,396
trans-1,2-Dichloroethane	5,396
Phenyl dichloroarsine	5,612
N-Nitrosodimethylamine	5,738
Axaserine	5,774
2-Fluoroacetamide	5,828
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo, endo-dimethanonaphthalene	6,080
Benzeneboronic acid	6,116
Maleic anhydride	6,116
1,2,4-Trichlorobenzene	6,116
TCDD	6,170
Dichloropropane, N.O.S.	6,188
1,3-Dichloropropane	6,188
Endrin	6,224
Trinitrobenzene	6,224
Chloromethyl methyl ether	6,260
2,4-Dinitrophenol	6,332
Nitrogen mustard N-oxide and hydrochloride salt	6,404
Parathion	6,404
2,4-D	6,512
1,3-Propane sulfone	6,602
Methyl methanesulfonate	6,728
Aldrin	6,746
Nitroglycerine	6,818
2,4-Dichlorophenol	6,854
2,6-Dichlorophenol	6,854
Hexachlorophene	6,871
Trypan blue	6,907
Benzotrifluoride	7,015
Cyanosin	7,105
N-Nitroso-N-ethylurea	7,105
Cyclophosphamide	7,141
Dichloropropane, N.O.S.	7,178
1,2-Dichloropropane	7,171
Methylparathion	7,145
Uretil mustard	7,145
Amitrole	7,213
Dimethoate	7,231
Tetraethyl lead	7,287
4,6-Dinitro-o-cresol and salts	7,303
N-Methyl-N-nitro-N-nitrosoguanidine	7,303
Mustard gas	7,303
Dinitrobenzene, N.O.S.	7,465
N-Nitroso-N-methylurethane	7,519
Nitrogen mustard and hydrochloride salt	7,699
Hydrazine	7,987

[FR Doc. 83-6797 Filed 3-15-83; 8:45 am]

BILLING CODE 0560-50-M

[OPP 100003; PH-FRL 2319-5]

Export Notification; Disclosure of Confidential Business Information to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Subcommittee on Labor Standards of the Committee on Education and Labor of the House of Representatives has requested information from EPA concerning notification of the export of unregistered pesticides under section 17(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). To comply with this request, EPA will provide

copies of purchaser acknowledgment statements submitted under section 17(a) of FIFRA. Some of the information contained in these documents has been claimed as confidential by the exporters.

DATE: These documents will be provided to the subcommittee no sooner than March 28, 1983.

FOR FURTHER INFORMATION CONTACT:

Catleen McInerney, Office of International Activities (A-106), Environmental Protection Agency, Rm. W-811, 401 M St. SW., Washington, D.C. 20460 (202-382-4889), Outside the USA: (Operator-202-382-4889).

SUPPLEMENTARY INFORMATION: In a February 10, 1983 letter to EPA, the Chairman of the Subcommittee on Labor Standards of the House Committee on Education and Labor stated that there is underway an inquiry into the sale abroad of pesticides, devices, active ingredients or chemicals whose sale or use is prohibited within the United States. As part of the inquiry, the Chairman requested a copy of each notice filed with the EPA to comply with section 17(a) of FIFRA. All documents filed from the effective date of the 1978 FIFRA legislation to the present were requested.

Under section 17(a) of FIFRA, exporters of unregistered pesticides are required to obtain a statement by the foreign purchaser acknowledging that the pesticide in question is not registered for use in the United States and cannot be sold in the United States. Under EPA's policy statement implementing the requirements of section 17(a), the exporter is required to submit the acknowledgment statement to EPA together with a certification that shipment did not occur prior to receipt of the acknowledgment statement. EPA then provides a copy of the acknowledgment statement to the government of the importing country.

The documents which EPA will providing the Subcommittee may contain confidential business information. Exporters have been given the opportunity to claim information confidential in the notices submitted to EPA under section 17(a) of FIFRA and have made such claims. Pursuant to 40 CFR 2.209(b), which applies to information submitted under FIFRA by 40 CFR 2.307(h), EPA must provide confidential business information to a Congressional subcommittee in response to a written request by the Chairman. Before providing the information, EPA is required by 40 CFR 2.209(b) to notify the submitters of the information at least 10 days in advance of disclosure.