



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7004 1160 0003 354 4815

Ms. Madeleine B. Kadas
Beveridge & Diamond, P.C.
98 San Jacinto Boulevard - Suite 1420
Austin, TX 78701-4039

Re: Applicability Determination for Flint Hills Resources, L.P. Regarding the Benzene Waste Operations NESHAP, 40 C.F.R. Part 61, Subpart FF

Dear Ms. Kadas:

We have received your letter of November 2, 2006, written on behalf of your client, Flint Hills Resources, L.P. (FHR), requesting a determination regarding whether sour water streams managed in sour water strippers are regulated upstream of the sour water stripper exit. The authority to issue applicability determinations under 40 C.F.R. Part 61 has been delegated to me pursuant to EPA Region 6 Delegation R6-7-127. Therefore, I will respond on behalf of EPA. This response has also been coordinated with Robert Lucas of the Office of Quality Planning and Standards at Research Triangle Park in North Carolina, and Teresa Dykes of the Office of Enforcement and Compliance Assurance in Washington, DC.

According to your letter, FHR applied for a Title V Operating Permit from the Texas Commission on Environmental Quality (TCEQ) for its East Refinery in Corpus Christi, Texas. As part of its Title V Permit Application, FHR requested a negative applicability determination or so called "permit shield" from the Benzene Waste Operations NESHAP (BWON). The basis for FHR's request was its claim that the BWON does not regulate sour waste water streams until the exit of the sour water stripper. TCEQ denied FHR's request, and stated that the sour water stripper exemption applies only to the total annual benzene (TAB) calculation, and that because the Refinery's TAB exceeds 10 megagrams (Mg) per year, all substantive BWON requirements apply upstream of the sour water stripper.

As previously stated, you have requested EPA to determine whether the BWON regulates sour waste water streams managed upstream of the sour water stripper exit. In support of FHR's interpretation, you have stated the following:

Generally speaking and as outlined in more detail below, the Rule regulates benzene wastes at the point that they are "generated," *i.e.*, the point where the waste stream exits the process unit or storage tank and prior to handling or treatment. *See* 40 C.F.R. § 61.341 (defining point of waste generation). For sour waste water streams managed in sour water strippers, however, EPA has created a conditional exclusion: if a system qualifies as a "sour water stripper" under the

BWON, no BWON requirements apply until the exit of the stripper. 40 C.F.R.

§§ 61.341 (defining sour water stripper), 61.355(b)(1), (c)(1)(i)(A).

However, as shown below, your interpretation is not correct.¹ The BWON does regulate sour water streams upstream of the sour water stripper exit.

The purpose of the BWON is to regulate air emissions from the management of benzene-contaminated wastes at certain industrial facilities, including petroleum refineries. 40 C.F.R. §§ 61.340, 61.342. 40 C.F.R. §§ 61.340(c) - (d) provides three exemptions from regulation under the BWON, none of which are applicable to FHR. The point of generation is the determining factor as to whether a waste stream must be controlled. "Which facilities are subject to the control requirements of subpart FF, and which waste streams must be controlled at those facilities is determined based on the characteristics of waste streams at their point of generation." 58 *Fed. Reg.* 3072, 3076 (January 7, 1993).

Assume that a desalter is located upstream from the sour water stripper, and it produces a waste stream that is treated in the sour water stripper.² The "point of generation" for the desalter would be the location where it exits the desalter. The waste stream would be regulated under the BWON at this point (assuming that the facility's TAB is 10 Mg/year or greater). The application of 40 C.F.R. § 61.355 does not change the point of generation. As shown below, 40 C.F.R. § 61.355(b)(1) only changes the location where owner or operator measures the benzene quantity of sour water streams for the purpose of determining the total annual benzene quantity from the facility:³

For purposes of the calculation required by paragraph (a) of this section, an owner or operator shall determine the annual waste quantity at the point of waste generation, unless otherwise provided in paragraphs (b)(1) . . . The determination of annual waste quantity for sour water streams that that are processed in sour water strippers shall be made at the point that the water exits the sour water stripper.⁴

¹ As stated in this letter, the "conditional exclusion" that you referenced is not an exclusion from regulation. It is an *exception* as to where the owner or operator measures benzene quantity of sour water streams. 40 C.F.R. § 61.355(b)(1).

² This example assumes that the waste stream and stripper meet the definitions of "sour water stream" and "sour water stripper" in 40 C.F.R. § 61.342.

³ 40 C.F.R. § 61.355 is entitled "Test methods, procedures, and compliance provisions". If EPA had changed the definition of "point of generation" for sour water strippers, in all likelihood it would have done so in the definition section.

⁴ "At facilities with a TAB equal to or greater than 10 Mg/yr, all benzene-contaminated wastes are subject to the control requirements of the rule, not just wastes included in the determination of the TAB." 57 *Fed. Reg.* 8017, 8022 (March 5, 1992).

40 C.F.R. § 61.355(b)(1).

There is nothing in this provision that changes the point of waste generation for sour water streams. The language of the regulation is clear. It only changes the location where the owner or operator measures the benzene quantity of sour water streams for the purpose of determining the facility's TAB. The preamble language regarding this provision is equally clear:

The proposed rule amendments clarify that for the purpose of a facility's TAB calculation, all determinations of waste stream annual quantity and benzene concentration are made at the point of generation with three exceptions. The listed exceptions are for . . . sour water strippers"

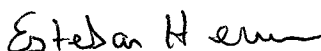
58 *Fed. Reg.* at 3077 (emphasis added).

Furthermore, FHR's reliance on the March 21, 1991 letter from EPA to American Petroleum Institute is misplaced. This letter was written prior to the amendment of the BWON on January 7, 1993.⁵ The language of the March 21, 1991 letter cannot overrule the later rulemaking in 1993.

Therefore, assuming that the total annual benzene quantity from facility waste is 10 Mg/year or greater, as provided by 40 C.F.R. § 61.342(b), the facility must comply with the requirements of 40 C.F.R. § 61.342(c) – (h). Thus, these requirements would apply to sour water streams managed upstream of the sour water stripper exit.

If you have any questions regarding this applicability determination, please feel free to call Elizabeth Cannon of my staff at (214) 665-7545.

Sincerely yours,



David F. Garcia
Associate Director
Air/Toxics and Inspection
Coordination Branch

cc: Robert Lucas (OAQPS)

⁵ Contrary to your assertions, the BWON was not amended on March 5, 1992 (citing 57 *Fed. Reg.* 8017). That Federal Register notice is entitled "Notice of proposed rule."

Richard A. Hyde, P.E. (TCEQ)