



3701 Central Avenue
St. Petersburg, Florida 33713

EPA I.D. FLD 152-764-767

EMERGENCY CONTACT: 1-800-435-8467



CERTIFIED MANIFEST

F78C03

INVOICE No. 200003080102

GENERATOR:

TRANSPORTATION NORTH

450 NW 14TH AVE

CAPE CORAL, FL 33909

INVOICE DATE: 03/08/2000

TERMS:

PURCHASE ORDER #: A32214

HM	PROPER SHIPPING NAME/DESCRIPTION	HAZARD CLASS	I.D. Number	Pkg Grp	Unit	Quantity	Unit Price	Total Price
X	Fuel Oil (No. 1, 2, 4, 5, or 6) Combustible Liquid	3	NA1993	III	Gls.			
X	Combustible Liquid n.o.s. (Used Oil)	COMBUSTIBLE LIQUID	NA1993	III				
X	Combustible Liquid, n.o.s. (Used Oil & Water)	COMBUSTIBLE LIQUID	NA1993	III		2500.00	0.65	1625.00
X	Used Antifreeze	N/A	N/A	N/A				
X	Combustible Liquid, n.o.s. (Water Soluble Oil)	COMBUSTIBLE LIQUID	NA1993	III				
X	Combustible Liquid, n.o.s. (Petroleum Contact Water)	COMBUSTIBLE LIQUID	NA1993	III				
X	Used Oil Filters							
X	Contaminated Absorbent							
	TAXES: POLLUTION:	0.00	SALES:	0.00				0.00
	TOTAL							1625.00

TRANSPORTER/RECYCLER/CERTIFICATION

THIS IS TO CERTIFY THE ABOVE DESCRIBED MATERIALS HAVE BEEN PICKED UP AND WILL BE TRANSPORTED, TREATED, REPROCESSED AND/OR DISPOSED OF IN A MANNER PURSUANT TO ALL FEDERAL, STATE AND LOCAL LAWS AND ORDINANCES.

GUIDELINES
05:43

07:07

247

03/08/2000

38

ARRIVAL TIME

DEPART TIME

DRIVER

DATE _____

TRUCK/TRAILER #

PLEASE PAY FROM THIS INVOICE, NO STATEMENT WILL BE ISSUED

BY MY SIGNATURE, I ACKNOWLEDGE THAT I HAVE READ AND AGREE TO THE ABOVE, AND THE TERMS SET FORTH ON THE REVERSE SIDE OF THIS MANIFEST/INVOICE


CUSTOMER SIGNATURE

DATE _____



August 13, 2001

Tim Hagan
Howco Environmental Services
3701 Central Avenue
St. Petersburg, FL 33902-2549

RE: Lee County - HW
Howco Environmental Services
Used Oil Storage Facility
2650-A Edison Avenue
Fort Myers, Florida

Dear Mr. Hagan:

This letter is in reply to your letter received by our office on July 27, 2001 regarding the alleged nineteen 55-gallon drums of hazardous waste stored at the above referenced site. This reply will be somewhat lengthy in that pertinent historical information needs to be included in order to understand the Department's position on this matter.

At the above referenced site there are four 20,000-gallon above ground storage tanks that are utilized by your company. The site is leased from Ryan Petroleum. Each tank allegedly issued for a different purpose. On July 23, 1999, the Department asked Howco to specify what materials are being managed in each tank and to identify them appropriately. In a letter from Howco received on August 19, 1999, each tank was assigned a number and the contents identified. Tank #1 and #2 were to manage used oil. Tank #3 was to manage used oil/water and tank #4 was to manage used oil/antifreeze. In general discussion with Howco regarding tanks 3 and 4, it has always been assumed or generally agreed upon that it was not the intent to manage used oil in tanks 3 and 4 but that there was an expectation that used oil might end up in oily waste water and in antifreeze, at times.

On December 11, 2000, the Department began an inspection of the above referenced site. During the inspection it was noted that the tanks were numbered 1-4 and that on tank #3 the words "used oil water" was observed. Rick George, Glen Hendrix and Dave Thompson were interviewed during the inspection as to how the drivers and the various tanks were being used. It was indicated that each driver was assigned a specific used oil tank into which their loads would be off loaded (tanks 1 & 2) and that petroleum contaminated waters (PCW) and antifreeze would be collectively managed in tanks 3 and 4. In this inspection report it was indicated that the antifreeze would be sent off to an industrial wastewater plant or

Continued.....

recycler in Virginia and likewise PCW would be treated or sent off for disposal. A question was asked as to how rainwater found within the containment area is handled. Mr. Thompson indicated that if there were no sheen on the water, the water would be discharged to the ground to the south of the tank storage area. If the rainwater had a sheen on it the water would be pumped into the PCW tank (tank #3). As a result of this inspection, Howco was cited for failure to have adequate secondary containment for their used oil tanks in accordance with 40 CFR 279.45(e)(2).

Through various letters, meetings and phone calls with Mr. Thompson, of Howco, a resolution of the above violation was agreed upon without enforcement. This resolution required Howco to drain the on-site tanks and coat the interiors with a Department approved coating (62-761). This project was turned over to David Roehm of Howco on or about late March 2001.

The Department and Mr. Roehm worked closely together on the schedule of activities to be performed on site. These included when and which tank would be pumped down, how used oil would be managed in the interim while the tanks were down, what coating was to be used in each tank, how to manage the various residuals that were to be expected to be generated and how the sand blast waste would be handled. On April 23, 2001 the Department received the final schedule for work to be done on site. Work was to commence on April 24, 2001. On April 24, 25, and 26 the Department observed work activities at this site. The used oil sludges from Tank #2 were taken off to Howco's St. Petersburg facility for processing in accordance 40 CFR 279 / FAC 62-710. The sludges from the PCW / used oil & water tank were drummed up for TCLP analysis.

In a letter dated May 30, 2001, Mr. Roehm summarized the work accomplished on site as well as providing the analysis for the sludges generated from Tank #3 and for the sand blast waste. Mr. Roehm also indicated in his letter that the sludges from tanks 1,2, and 4 had been taken back to Howco for processing because they contained used oil. The sand blast waste did not fail the TCLP test, however the sludges from Tank #3 failed for benzene at 2.2 mg/l and Tetrachloroethene at 1.1 mg/l. As a result of this information Howco was requested to label the drums appropriately, begin a weekly hazardous waste inspection log of the drums stored on site and informed the facility that it has 90 days to move the drums offsite for proper disposal.

Beginning on June 12, 2001 the Department began making telephone calls to Mr. Thompson to inform him of the activities necessary for his facility to remain in regulatory compliance regarding Florida Administrative Code (F.A.C.) Rule 62-730.160(6) and that he had 90 days in which to ship off the drums. Two additional phone calls addressing this issue were made on July 9 & 10, 2001. On July 17, 2001 several phone calls were exchanged based on the FAX received from Howco regarding Howco's new position that these drums were not hazardous waste. Mr. Thompson was informed that this issue would be sent to Tallahassee for input through the hazardous waste technical committee. That process has now been completed.

Continued....

Howco Environmental Services

August 13, 2001

Page 3

The Department agrees with your opinion that used oil sludge generated from used oil storage tanks is exempt from regulation, if additional oil is recovered from the sludge and or the sludge is burned for energy recovery. However it appears that opinion does not apply to sludges from tanks that aren't specifically managing used oil. Our file review shows that Tank #3 has received oily water pumped from various facility oil water separators where the water collected was not intended to be managed as a used oil. Examples include wastewater from sumps or tanks where floors were cleaned and the resulting wastewater collected and not managed as used oil, wastewater generated from your own containment structure and water generated from the pressure cleaning of this tank. This indicates that this tank was not intended for the management of used oil, and that any used oil found in this tank would be incidental. The wastewater in this tank was removed and managed through your processing facility in St Petersburg.

Two last areas to address are the analytical results that were provided as well as the comments from Environeering, Inc. The analytical results indicate that the sludge from tank #3 failed for benzene and tetrachloroethene. It would be expected that benzene might be present in the wastewaters collected at automotive facilities. Gasoline and benzene are nearly synonymous. However tetrachloroethene is a concern, because this product most likely was used for its solvent purposes and got to the floors or in pans and made its way into the wastewaters collected from these facilities. This opens a new area for the Department to explore, to determine if all used oil haulers are scanning or testing this waste stream to determine if hazardous waste has been discharged into wastewater. Based on these analyticals we cannot agree with Environeering's conclusion that no listed material has contaminated this waste.

To summarize, we believe the nineteen 55-gallon drums at the above referenced site need to be handled as hazardous waste and not as used oil sludge. We have granted you an additional 30 days to move the drums starting from August 9, 2001. If you have any questions please contact me at (941) 332-6975 ext. 150. Your cooperation in this matter is appreciated.

Sincerely,

Charles Emery III
Environmental Manager

CE/vo

cc: Dave Thompson

Mike Redig

Rick Neeves

Detail Registration Facility

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tank Browse
Facility ID: 9300283 Facility Status: OPEN Create Date:19-APR-1993
County: 36 LEE District: SD Name Update:
Name: HOWCO ENVIRONMENTAL SERVICES INC Addr Update:
Address: 2650 EDISON AVE
Address2:
City: FORT MYERS FL 33901- Account Status:
INVOICE DUE
Tk ID Gallons Substance Installed Dt Status/Eff Date PD Replcs
FM1 A20000 L Waste Oil 01-MAY-1993 U Y
FM2 A20000 L Waste Oil 01-MAY-1993 U Y
FM3 A20000 X Misc Petrol-Based 01-MAY-1993 U Y
FM4 A20000 X Misc Petrol-Based 01-MAY-1993 U Y

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Count: *4

<Replace>

Florida Department of Environmental Protection
Pollutant Storage Tank Application
Facility Inspection Cover Page

Facility Information

Id #: 9300283 District: SD
Name: HOWCO ENVIRONMENTAL SERVICES I County: LEE
2650 EDISON AVE Type: Bulk Product Facil
FORT MYERS, FL 33901 Status: OPEN
Contact: R J KING EXT 225 Latitude: 26:43:27
Phone: 800-435-8467 Longitude: 81:54:25

Account Owner Information

Name: HOWCO ENVIRONMENTAL SERVICES INC
3701 CENTRAL AVE
SAINT PETERSBURG, FL 33713-1922
Phone: 727-327-8467

Tank Owner Information

Name: HOWCO ENVIRONMENTAL SERVICES INC
3701 CENTRAL AVE
SAINT PETERSBURG, FL 33713-1922
Phone: 727-327-8467

Tank #	Size	Content	Installed	Placement	Status	Const	Pipe	Monitor
FM1	20000	L	01-MAY-93	ABOVEGR	U	C K P	B A	M
FM2	20000	L	01-MAY-93	ABOVEGR	U	C K P	B A	M
FM3	20000	X	01-MAY-93	ABOVEGR	U	C K P	B A	M
FM4	20000	X	01-MAY-93	ABOVEGR	U	C K P	B A	M

Bayly, Karen

From: Emery, Charles
Sent: Monday, August 27, 2001 3:02 PM
To: Barbaccia, Phil; Bayly, Karen
Subject: FW: used oil sludge

-----Original Message-----

From: Neves, Richard
Sent: Monday, August 27, 2001 2:15 PM
To: Posner, Augusta
Cc: Clarke, Raoul; Emery, Charles; Patel, Ashwin
Subject: RE: used oil sludge

Augusta:

We don't have any solid guidance on the management of used oil sludge. What is on record is the following:

62-701.300 Prohibitions.

(1) General prohibition.

(11)(a) Except as provided in paragraph (b) of this subsection, no person may mix or commingle used oil with solid waste that is to be disposed of in landfills or directly dispose of used oil in landfills.

(b) Oily wastes, sorbents or other materials used for maintenance or to clean up or contain leaks, spills or accidental releases of used oil, and soils contaminated with used oil as a result of spills or accidental releases are not subject to the prohibition in paragraph (a) of this subsection.

62-701.200 Definitions.

(85) "Oily wastes" means those materials which are mixed with used oil and have become separated from that used oil. Oily wastes also means materials, including wastewaters, centrifuge solids, filter residues or sludges, bottom sediments, tank bottoms, and sorbents which have come into contact with, and have been contaminated by, used oil.

In some cases, depending on the materials and processes involved, "Oily wastes" might be regulated under the following:

40 CFR Part 279.10 Applicability. (edited for brevity)

(c) Materials containing or otherwise contaminated with used oil.

and

(e) Materials derived from used oil.

Both of these say, in effect, that such materials, if recycled or burned for energy recovery, are managed as used oil. If disposed of or used in a manner constituting disposal, then they are not used oil and are a solid waste, subject to a hazardous waste determination.

A few weeks back, Charles sent out a question to Tallahassee and all Districts regarding tank bottom sludges. We kicked this around internally and decided that: 1) if the sludges came from a Used Oil storage tank, then they could be managed as used oil and; 2) if the sludges came from some other storage, then they were a solid waste, subject to a hazardous waste determination. Finally, Charles also cc'd all involved with his final letter to HOWCO. No one seemed

to have any problem with what the letter said.

Charles is comfortable with what is described in the letter and I'm going to remove myself from the middle of this issue and leave it in his hands. As I said in another note to Ashwin, I was just concerned that we were interpreting this in a manner which contradicted some ruling out of the NED.

Thanks for your help.

Rick

-----Original Message-----

From: Posner, Augusta
Sent: Monday, August 27, 2001 12:15 PM
To: Neves, Richard
Subject: used oil sludge

What guidance do you have about handling used oil sludge? (eg citation in 62-710 or 40 CFR 279)

CONFIDENTIAL ATTORNEY WORK-PRODUCT
EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO §119.07(3)(I), F.S.

Agusta P. Posner
Florida Department of Environmental Protection
Senior Assistant General Counsel
3900 Commonwealth Blvd. MS 35
Tallahassee, FL 32399-3000
ph (850) 921-9651
FAX (850) 921-3000
augusta.posner@dep.state.fl.us

Bayly, Karen

From: Emery, Charles
Sent: Monday, August 27, 2001 3:04 PM
To: Barbaccia, Phil; Bayly, Karen
Subject: FW: HOWCO Storage Tank Sludges

-----Original Message-----

From: Neves, Richard
Sent: Monday, August 27, 2001 2:07 PM
To: Patel, Ashwin
Cc: Clarke, Raoul; Posner, Augusta; Emery, Charles
Subject: RE: HOWCO Storage Tank Sludges

Thanks Ashwin.

The results are, as I understand, are of TCLP analysis. HOWCO at first characterized the sludges as Hazardous and the District was working with them to handle them as such, even allowing a 30 day extension to the 90 day clock. As the clock began to run out, HOWCO came back and said that the person doing the TCLP was unaware of the used oil management standards under which this material could have been managed and that they, in effect, had changed their minds regarding the determination and now considered this sludge to be from Used Oil Storage and, therefore, could be managed as Used Oil (oily wastes; 62-701.200(85)) as opposed to hazardous waste.

Tim Rudolph, a consultant for HOWCO, brought up the PF&P Terminal/Stone Oil case. He said that the generator was allowed to change their mind regarding the characterization. He also said that, so long as there is recoverable/recyclable used oil in the sludge, that the sludge can be managed as used oil and the TCLP is irrelevant.

As it stands today, it seems that FDEP is holding to the position that, if it's a used oil storage tank, the bottoms can be "oily wastes" and managed as used oil. If something besides used oil is stored in the tank, then the bottoms are a solid waste, subject to a hazardous waste determination.

My only concern was whether this interpretation might contradict some ruling which set some precedent of which we were unaware or failed to consider.

Based on conversations with Charles Emery, I'm going to employ the Pontious Pilot strategy, wash my hands of this affair and leave the pursuit of this issue in Charles' capable hands. Charles says he's comfortable going on to a hearing if that's what HOWCO wants.

If there is some precedent on this issue in your District, please enlighten me. Otherwise... let it go.

Thanks for your time,

Rick

Bayly, Karen

From: Emery, Charles
Sent: Monday, August 27, 2001 12:15 PM
To: Bayly, Karen; Barbaccia, Phil; Redig, Michael
Subject: FW: HOWCO Storage Tank Sludges

FYI

-----Original Message-----

From: Posner, Augusta
Sent: Monday, August 27, 2001 11:55 AM
To: Neves, Richard
Cc: Emery, Charles; Sykes, Richard
Subject: RE: HOWCO Storage Tank Sludges

- (1) I was not a witness. I was a spectator in the gallery.
- (2) Justice Department was not involved. It was a private lawsuit between PFT & a tenant.
- (3) I don't think there was a ruling. I think the case settled.
- (4) FDEP's position was that a 1 million gallon tank of "used oil and oily wastewater" was a used oil tank not properly permitted under PFT's used oil processor permit. In that scenario, Tim Rudolph argued that the tank held only "industrial wastewater," NOT "used oil." (In the HOWCO case, positions seem to be reversed: FDEP says, "Not used oil tank," respondent says "Used oil tank.")
- (5) Upon closure of the tank in dispute, the sludges were tested and determined to be non-haz.

CONFIDENTIAL ATTORNEY WORK-PRODUCT
EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO §119.07(3)(I), F.S.

Augusta P. Posner
Florida Department of Environmental Protection
Senior Assistant General Counsel
3900 Commonwealth Blvd. MS 35
Tallahassee, FL 32399-3000
ph (850) 921-9651
FAX (850) 921-3000
augusta.posner@dep.state.fl.us

-----Original Message-----

From: Neves, Richard
Sent: Friday, August 24, 2001 4:25 PM
To: Emery, Charles
Cc: Posner, Augusta; Clarke, Raoul
Subject: HOWCO Storage Tank Sludges

Raoul: FYI

Augusta: Can you shed any light on this, especially in regards to item #3: the NED (Stone Oil, et al.) situation?

Charles:

You were right. Howco IS challenging the decision you made regarding the sludges from their oil-water-petroleum (whatever) storage tank in Ft. Myers. Tim Hagan, President of Howco, has been on the phone with me over the past two days asking for my interpretation. To date, I have supported the District's decision in this matter and, based on the logic of your argument and our long history of correspondence on this topic, I am quite comfortable doing so.

This morning I spoke with Karen Bayly who was very helpful in providing needed details regarding this situation. After speaking with Karen, I called Tim Hagan and told him that I had no reason to question the District's interpretation on this matter.

This afternoon, I spent a good deal of time on the phone with both Tim Hagan and his consultant, Tim Rudolph (Envroneering, Inc.). I explained (again) the Department's position that used oil sludges are generated from used oil

Bayly, Karen

From: Emery, Charles
Sent: Monday, August 27, 2001 8:35 AM
To: Barbaccia, Phil; Bayly, Karen
Subject: FW: HOWCO Storage Tank Sludge's

It looks like we are in for a battle in which we will probably fail.

-----Original Message-----

From: Neves, Richard
Sent: Friday, August 24, 2001 4:25 PM
To: Emery, Charles
Cc: Posner, Augusta; Clarke, Raoul
Subject: HOWCO Storage Tank Sludges

Raoul: FYI

Augusta: Can you shed any light on this, especially in regards to item #3: the NED (Stone Oil, et al.) situation?

Charles:

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This morning I spoke with Karen Bayly who was very helpful in providing needed details regarding this situation. After speaking with Karen, I called Tim Hagan and told him that I had no reason to question the District's interpretation on this matter.

This afternoon, I spent a good deal of time on the phone with both Tim Hagan and his consultant, Tim Rudolph (Envireneering, Inc.). I explained (again) the Department's position that used oil sludges are generated from used oil storage and no other kind of storage. I explained that the District was of the opinion that the tank in question (#3) was used for the storage of material that was primarily water, which may have contained some incidental used oil. I also explained that HOWCO was already on record (since April, I believe) as having determined that these 19 drums of sludge were hazardous waste and would be managed accordingly. I added that it seemed that HOWCO was running out of time and attempting to back and relay their tracks towards a different management scheme and that I was not sure that this was allowed. I mentioned that I didn't think the BTU value had any bearing on whether or not the sludges were used oil.

Mr.'s Hagan/Rudolph countered with the following:

1. The Department is mistaken in its belief that this tank stores primarily water. This tank stores used oil with some water, or at worst, water with significant, recoverable amounts of used oil. This is used oil storage and HOWCO has the records to prove this.
2. Mr. Roehm (who had made the hazardous determination) was unaware that these were used oil storage tanks. He was unaware that he could have handled the sludges as used oil from the start.
3. Mr. Rudolph mentioned that this situation is the same as one ruled on by EPA Region IV and the United States Department of Justice in regards to the PF&P Terminal / Stone Oil clean up. Mr. Rudolph said that Augusta Posner was a witness in this hearing and that the Justice Department ruled that if the sludges were sent for recycling (as opposed to disposal) then they may be managed as used oil.

I am not familiar with the details of this case. I told Mr.'s Hagan/Rudolph that I would check on any history and get back to them first thing next week (August 27).

So... I guess I'm asking if Mr.'s Hagan/Rudolph's arguments have any merit? If this situation IS similar to that of the NED case, then I would think we could (should) use that as a guide.

I would appreciate any assistance any of you might provide me.

Thanks for your help.

Rick

Emery, Charles

From: Bayly, Karen
Sent: Friday, August 24, 2001 2:56 PM
To: Emery, Charles

Charles

Rick Neves has been contacted by Tim Hagan of Howco concerning their argument to handle the drums as used oil sludge. [Rick said the first time he saw the letter you sent to Howco was when he was copied on it.] He told Howco that they had good argument but that he needed to speak with the District. I reviewed everything with Rick. He said that since they provided results indicating the drums were hazardous, that's how they should be handled. Concerning BTUs, Rick said that ethylene glycol has a BTU value of 8,000, so their result means nothing.

He plans to call Howco back and let Tim know that he supports the District's decision, and that this is a District issue. He will suggest they request an administrative hearing if necessary.

Karen Bayly
Environmental Specialist III
FDEP
P.O. Box 2549
Fort Myers, FL 33902-2549
(941) 332-6975 ext. 151
SC 748-6975
FAX 332-6969

Bayly, Karen

From: Emery, Charles
Sent: Tuesday, August 21, 2001 9:29 PM
To: Bayly, Karen; Barbaccia, Phil
Subject: RE:

*Rick
never got
attachment (Hr)
first saw it in
cc'd*

Karen/Phil

The letter stands. It has recieved approval from the HW section in Tallahassee and a tack approval by virtue of a non-negative response from Rick Neeves who heads the used oil section. Tell Dave his time clock is ticking. If he wants to take it up with Tallahassee let him. Maybe Phil B should talk with him. Its time to bite the bullet.

Charles

-----Original Message-----

From: Bayly, Karen
Sent: Mon 8/20/2001 4:57 PM
To: Emery, Charles
Cc:
Subject:

Charles

Dave Thompson of Howco came by the office today to discuss some points regarding your letter. His points are to support their position that the used oil sludge is from used oil and therefore should be allowed as used oil sludge, taken to their St. Pete recovery facility, processed, and a waste determination conducted on what is left.

1. Tetrachloroethylene is not soluble in water (therefore used oil was present in the tank)
2. Tank 3 is registered as - miscellaneous petroleum products
3. Tank 3 is labeled used oil
water as they were previously told by DEP to do. (Originally the tank was labeled water)
4. There is a high BTU value in the sludge sample - as the analytical indicated
5. Sludge is primarily from the used oil in the tank

He further indicated that wastewater collected from facilities is primarily from pumping out containment areas, mop water, and condensation from the bottom of tanks. Vac trucks would be used to pump out oil water separators which would be transported directly to St. Pete. For larger type jobs, he said it would be possible that a vac truck would pump off the water at the Edison Ave facility and go back to the job site to complete the work.

The same trucks/tanks are used to collect used oil or water. The used oil in Tank 3 is from purging the lines in the trucks. The sludge is from the used oil from the lines/trucks.

Concerning your letter, he wants to know what specific rule states that the storage tank has to be specifically used for used oil for the sludge to be exempt.

We discussed the samples and the analyticals. Concerning the BTU sample, he presented a copy of the letter he sent you with the results. He indicated that "sample received 4-16-01" indicates the date it was sampled and that it was a composite sample of 10 or 11 drums which are at the yard now. We discussed that the work hadn't even began at that time, and that either the date was incorrect or the sample was pulled from something else. He indicated that since he pulled the sample, he remembers noting it in his weekly inspection log of the drums. Concerning the sample pulled for the other analyticals, he stated it was also a composite from the same drums. (I thought David pulled that sample). He stated that there were two different samples collected however from the same drums. There was no chain of custody for either sample as it was an internal thing. He doesn't know why the BTU results say date received 4/16/01.

He is very concerned about his 30 day time clock. He would like a response from you concerning his points, and, a change in your decision. He will be calling me on Thursday.

Emery, Charles

From: Redig, Michael
Sent: Monday, August 13, 2001 10:30 AM
To: Emery, Charles
Subject: RE: Howco Letter regarding sludge

Charles,
The letter looked fine to me. Sorry about the late response.

Mike

-----Original Message-----

From: Emery, Charles
Sent: Monday, August 13, 2001 10:23 AM
To: Emery, Charles; Redig, Michael; Neves, Richard
Cc: Kastury, Satish; Clarke, Raoul
Subject: RE: Howco Letter regarding sludge

Hearing no adverse comments to the letter we will be sending it out in the mail today. We have made several grammatical changes but we are still going to ask them to handle the drums as HW. You will be copied on the letter.

Thanks again Charles

-----Original Message-----

From: Emery, Charles
Sent: Tuesday, August 07, 2001 4:38 PM
To: Redig, Michael; Neves, Richard
Subject: Howco Letter regarding sludge

<< File: Hagan-ce.doc >>

I have drafted a response to be sent to Howco regarding the question I previously posed to the tech committee and you all. This is a rough copy. Based on what I gathered from our e-mail exchange was that if the tank is managed as a used oil tank the sludge generated from that tank is exempt from regulation. If the tank isn't managed strictly as a used oil tank the sludge needs to have a waste determination done on it and that determination found the waste to be hazardous. I'm some what comfortable with my decision however I do not wish to create a precedent nor violate a previous established precedent. That is why I have asked both of you to give this a look over. I have provided a lot of background information in this letter because of the potential that I may be challenged on this decision. If I'm off base on my deductive reasoning or on thin ice let me know. Looking forward to hearing from you all. I would like to get this letter out this week.

Thanks

Charles

Emery, Charles

From: Emery, Charles
Sent: Monday, August 13, 2001 10:23 AM
To: Emery, Charles; Redig, Michael; Neves, Richard
Cc: Kastury, Satish; Clarke, Raoul
Subject: RE: Howco Letter regarding sludge

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Thanks again Charles

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From: Emery, Charles
Sent: Tuesday, August 07, 2001 4:38 PM
To: Redig, Michael; Neves, Richard
Subject: Howco Letter regarding sludge

<< File: Hagan-ce.doc >>

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Thanks

Charles

Emery, Charles

From: Emery, Charles
Sent: Tuesday, August 07, 2001 4:38 PM
To: Redig, Michael; Neves, Richard
Subject: Howco Letter regarding sludge



Hagan-ce.doc

I have drafted a response to be sent to Howco regarding the question I previously posed to the tech committee and you all. This is a rough copy. Based on what I gathered from our e-mail exchange was that if the tank is managed as a used oil tank the sludge generated from that tank is exempt from regulation. **If the tank isn't managed strictly as a used oil tank the sludge needs to have a waste determination done on it and that determination found the waste to be hazardous.** I'm somewhat comfortable with my decision however I do not wish to create a precedent nor violate a previous established precedent. That is why I have asked both of you to give this a look over. I have provided a lot of background information in this letter because of the potential that I may be challenged on this decision. If I'm off base on my deductive reasoning or on thin ice let me know. Looking forward to hearing from you all. I would like to get this letter out this week.

Thanks

Charles

Emery, Charles

From: McGuire, Chris
Sent: Tuesday, July 17, 2001 4:53 PM
To: White, John; Emery, Charles; Neves, Richard; Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; Clarke, Raoul
Subject: RE: Used Oil Sludge

For whatever it's worth, Augusta and I talked this over and we agree with Rick's analysis. In fact, it looks suspiciously like an thorough legal analysis, thus threatening our livelihoods. Careful, Rick.

Chris

Emery, Charles

From: White, John
Sent: Tuesday, July 17, 2001 3:55 PM
To: Emery, Charles; Neves, Richard; Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

Charles

We have typically regulated solids removed from used oil tanks as a solid waste subject to a waste determination. If it fails the determination then it is a haz waste. We do not entertain the "we can still remove more used oil from the solids by putting a 5 million pound weight on it and pressing it until it is the size of a quarter" argument.

Good Luck

John

-----Original Message-----

From: Emery, Charles
Sent: July 17, 2001 2:59 PM
To: Neves, Richard; Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; White, John; Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

Rick

Once again thank you for being so quick with a response. Are there any more thoughts out there? I actually like your second response in that if they had intended to manage the material as oily waste water versus used oil then the sludge's would be solid wastes. I believe they will argue that used oil is still recoverable from this waste and we will be back to the years ago discussion on PCW, in that how much must you recover to really be exempted. Ill regardless of all of the potential exemptions that exist this issue falls close to what we had discussed the other day as to how certain contaminants are getting into used oil. In this case floor washing activities that go to an oil water separator are receiving hazardous waste probably via the "Gunk type spray cans".

Charles

-----Original Message-----

From: Neves, Richard
Sent: Tuesday, July 17, 2001 2:11 PM
To: Emery, Charles; Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; White, John; Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

Charles:

Okay, now I think everyone is in the loop up to the point of your recent clarification.

I think the only difference between used oil vs. oily waste water (without getting into the hair splitting required to determine what is the threshold between used oil with some water contamination and oily waste water) is that if the material is NOT used oil to start with, then the sludges cannot be managed as used oil under 279. I think that, no matter what the original stuff was, if the sludges are destined for disposal, then they are a solid waste, subject to a hazardous waste determination.

Rick

Charles:

The material you describe is an Oily Waste under our Rules and can be managed as Used Oil in accordance with

the provisions described in Chapter 40, Part 279.10(e) Materials derived from used oil.

Paragraph (1) of this section says that if the sludge is "used beneficially and not burned for energy recovery or used in a manner constituting disposal", then they are neither used oil nor solid waste.

Paragraph (2), of this sections says that: "Materials produced from used oil that are burned for energy recovery (e.g. used oil fuels) are subject to regulation as used oil under this part."

However, if such materials are destined for disposal, then they would be subject to 40 CFR, Part 279.10 (e)(3) which says that such materials which are neither burned for energy recovery nor used beneficially and are disposed of are NOT used oil and ARE solid wastes.

So, the material you've described in this memo sounds like solid waste. They are also then oily wastes, as defined in Rule 62-701.200, Definitions:

(85) "Oily wastes" means those materials which are mixed with used oil and have become separated from that used oil. Oily wastes also means materials, including wastewaters, centrifuge solids, filter residues or sludges, bottom sediments, tank bottoms, and sorbents which have come into contact with, and have been contaminated by, used oil.

Rule 62-701.300 Prohibitions then goes on to state, in part:

62-701.300 Prohibitions.

(8) Special wastes for landfills. No person who knows or who should know of the nature of such solid waste shall dispose of the following wastes in any landfill:

- (a) Lead-acid batteries;
- (b) Used oil, except as provided in Chapter 62-710, F.A.C.;

...

(11)(a) Except as provided in paragraph (b) of this subsection, no person may mix or commingle used oil with solid waste that is to be disposed of in landfills or directly dispose of used oil in landfills.

(b) Oily wastes, sorbents or other materials used for maintenance or to clean up or contain leaks, spills or accidental releases of used oil, and soils contaminated with used oil as a result of spills or accidental releases are not subject to the prohibition in paragraph (a) of this subsection.

So, what does this all mean? It means that these bottoms can be managed as Used Oil if they are destined to be burned for energy recovery or used in a beneficial manner. If they are destined for disposal, they are exempt from the prohibition on the landfill disposal of used oil (as they are oily wastes) but are NOT exempt from testing. They are a solid waste (an special waste, exempted from the landfill prohibition), subject to a hazardous waste determination.

I hope this answers your question. I THINK I have all these citations correct....

Rick

-----Original Message-----

From: Emery, Charles
Sent: Tuesday, July 17, 2001 2:02 PM
To: Emery, Charles; Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; White, John; Neves, Richard
Subject: RE: Used Oil Sludge

Just an up date to my original note. The sludge's we are referencing came from a 20000 gallon AST storing allegedly oily waste water not used oil.

-----Original Message-----

From: Emery, Charles
Sent: Tuesday, July 17, 2001 12:15 PM
To: Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill

Cc: Posner, Augusta; White, John; Neves, Richard
Subject: Used Oil Sludge

I have a used oil storage facility that had to empty their above ground storage tanks for some maintenance. They pumped the used oil out and shipped it. They got into the tanks, cleaned them and generated 19 fifty-five gallon drums of waste. We asked that they perform a waste determination on the material. They did. Based on their submitted results the material failed TCLP for benzene (2.2 mg/l) and tetrachloroethylene (1.1 mg/l). Time went on with us reminding them that they were now storing hazardous waste and that they needed to do the weekly checks etc. They have been managing the 19 drums as hazardous waste for some 60 days. Since their 90 clock was running out, and being the good people that we are, we have been reminding of them that they needed to ship the waste soon. Today, we received a letter from this company in which they are now suggesting that they could have handled this used oil sludge as used oil exempt form RCRA and that the previous person handling this issue had made a mistake.

Not being the experts as you all are on used oil, is there a loop hole out there that they could have claimed such an exemption on for this stuff? If there is, I may cut they some slack for being ignorant. If the loop hole is vague or nonexistent I'm going to nail them. The company is one of our larger one's we deal with.

Charles

Emery, Charles

From: Neves, Richard
Sent: Tuesday, July 17, 2001 1:40 PM
To: Emery, Charles
Cc: Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

Charles:

The material you describe is an Oily Waste under our Rules and can be managed as Used Oil in accordance with the provisions described in Chapter 40, Part 279.10(e) Materials derived from used oil.

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(11)(a) Except as provided in paragraph (b) of this subsection, no person may mix or commingle used oil with solid waste that is to be disposed of in landfills or directly dispose of used oil in landfills.

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I hope this answers your question. I THINK I have all these citations correct....

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Sent: Tuesday, July 17, 2001 12:15 PM
To: Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; White, John; Neves, Richard

Subject: Used Oil Sludge

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Not being the experts as you all are on used oil, is there a loop hole out there that they could have claimed such an exemption on for this stuff? If there is, I may cut them some slack for being ignorant. If the loop hole is vague or nonexistent I'm going to nail them. The company is one of our larger ones we deal with.

Charles

Emery, Charles

From: Emery, Charles
Sent: Tuesday, July 17, 2001 1:59 PM
To: Neves, Richard
Cc: Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

As I have turned the heat up on this issue additional facts have come forward. Does the fact that these sludge's were generated from a 20000 gallon AST that contained allegedly only oily waste water picked up at car dealerships or other facilities that had oil water separators? This tank did not contain the used oil taken out of the separators, but only the oily waste water. By the way in looking over our notes, we did allow the sludge's generated from the used oil tanks to be handled as used oil.

Thanks for the reply.

-----Original Message-----

From: Neves, Richard
Sent: Tuesday, July 17, 2001 1:40 PM
To: Emery, Charles
Cc: Clarke, Raoul; McGuire, Chris
Subject: RE: Used Oil Sludge

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the prohibition in paragraph (a) of this subsection.

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Rick

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From: Emery, Charles
Sent: Tuesday, July 17, 2001 12:15 PM
To: Redig, Michael; Knauss, Beth; Smith, Jeff; Burson, Lu; Valade, Vicky; Kellenberger, Bill
Cc: Posner, Augusta; White, John; Neves, Richard
Subject: Used Oil Sludge

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Charles



Jeb Bush
Governor

Department of Environmental Protection

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549
October 25, 2001

David B. Struhs
Secretary

CERTIFIED MAIL NO. 7001 0360 0000 8682 6102
RETURN RECEIPT REQUESTED

Arthur T. Hagan
Howco Environmental Services
3701 Central Avenue
St. Petersburg, FL 33713

RE: Lee County- HW
Howco Used Oil Transfer Facility
2650-A Edison Avenue, Fort Myers, Florida
EPA ID No. FL0001000611
Caloosahatchee to Lee Coast - EMA

Dear Mr. Hagan:

A hazardous waste compliance inspection was conducted at your facility on October 11, 2001. A copy of the inspection report is enclosed for your perusal. This inspection was conducted under the authority of Section 403.091, Florida Statutes and Chapter 403, Part IV, Florida Statutes, and is designed to ascertain the compliance status of your facility with 40 CFR 260-273 and 279, adopted in Florida Administrative Code (F.A.C.) Chapters 62-730 and 62-710.

During the inspection, possible violations of Department rules were noted as follows:

- a. 40 CFR 265.31 - Maintenance and Operation of Facility. The facility must maintain itself in a manner to operate so as to minimize the possibility of a fire, explosion, or an unplanned sudden or non-sudden release of hazardous waste or hazardous-waste constituents to air, soil, or surface water which could threaten human health or the environment. On April 26, 2001, nineteen 55-gallon drums were generated as a result of emptying tank No. 3 at this site. On May 30, 2001, Howco declared the drums hazardous waste and marked them as such. On September 26, 2001, DEP found two of the nineteen 55-gallons drums leaking. On September 28, 2001, the two drums were over-packed by Howco and re-identified as hazardous waste. On October 11, 2001, two additional drums of hazardous waste were found leaking. While preparing the drums for shipment off site, it was observed that all drums which were not over packed, leaked when moved. It was determined by opening the drums that the rubber gaskets normally placed in the side of ring top lids had not been done; hence, all the drums were prone to leaking.
- b. 40 CFR 262.20 [62-730.160(4)] - Manifest. The facility upon shipping its hazardous waste from this site used an incorrect EPA ID number on the manifest and had incorrectly identified the number of drums shipped. The EPA ID number used was FLD152764767. The number that should have been used is FL0001000611. The facility indicated on its manifest that it shipped 19 drums when in fact they shipped 20 drums.

Continued...

"More Protection, Less Process"

Printed on recycled paper.

Mr. Aruthur T. Hagan
Howco Used Oil
EPA ID No. FL0001000611
October 25, 2001
Page 2

Potential Additional Violations:


- a. 40 CFR 262.34(c)(1)(i) – Hazardous Waste Container Management. The facility failed to maintain hazardous waste containers in a good condition to prevent leakage.
- b. 40 CFR 262.34(a)(1)(i) – Weekly Inspections. Failure to perform weekly inspections of hazardous waste containers in storage looking for leaks and deterioration caused by corrosion. Evidence of at least four 55-gallon drums of hazardous waste leaked to the ground. Other stains in the storage area suggest that additional leakage may have occurred.
- c. 62-730.160(7) – Adequate Aisle Space. Facilities managing hazardous waste in containers must manage the containers in a manner so as to allow for the inspection of the containers.

You are requested to meet with the Department at 2295 Victoria Avenue, Suite 364 W, Fort Myers, on November 7, 2001 at 10:00 a.m. to discuss this matter. Potential penalties will be discussed at that time, which may include monetary settlements. Cleanup issues will also be discussed at that time. The Department is interested in reviewing any additional facts you may have. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Any activities at your facility that may be contributing to violations of the above-described statutes or rules should cease immediately. Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(4), F.S. We look forward to your cooperation in completing the investigation and resolution of this matter.

If you have any questions, please feel free to call Charles Emery III or Karen Bayly at (941) 332-6975 or write to the letterhead address. Your cooperation in this matter is appreciated.

Sincerely,


Richard W. Cantrell
Director of
District Management

Enclosures
RWC/CE/se

cc: Satish Kastury, DEP (w/enclosures)
Tony Ettore, OGC DEP (w/enclosures)
Candace and Bruce Ryan (w/enclosures)



Department of Environmental Protection

Jeb Bush
Governor

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Struhs
Secretary

HAZARDOUS WASTE INSPECTION REPORT

1. INSPECTION REPORT _____ Complaint ☒ Routine _____ Follow-up _____ Permitting _____

FACILITY NAME: Howco Environmental Services EPA ID FL0 001 000 611

ADDRESS 2650-A Edison Avenue, Fort Myers, Florida 33715

COUNTY Lee PHONE 941 327-8467 DATE 10-11-01 TIME -9:30AM

TYPE OF FACILITY (727) 638-2132

GENERATOR

_____ Cond. Exempt S.Q.G.
_____ Small Quantity
☒ Generator
_____ Non-Handler
_____ Closed/Moved

STORAGE

_____ Container
_____ Tank
_____ Waste Pile
_____ Surface Impoundment
_____ Lamps & Devices

TREATMENT

_____ Tank
_____ Land Treatment
_____ Thermal
_____ Chem/Phys/Bio.
_____ Incinerator
_____ Surface Impoundment

TRANSPORTER

_____ Transporter
_____ Transfer Station

DISPOSAL

_____ Landfill
_____ Surface Impoundment
_____ Waste Pile

USED OIL

☒ Used Oil Transporter
☒ Used Oil Transfer
☒ Filter Transporter/Transfer

2. Applicable Regulation:

<input checked="" type="checkbox"/> 40 CFR 261	<input checked="" type="checkbox"/> 40 CFR 262	<input type="checkbox"/> 40 CFR 263	<input checked="" type="checkbox"/> 40 CFR 264
<input checked="" type="checkbox"/> 40 CFR 265	<input checked="" type="checkbox"/> 40 CFR 268	<input checked="" type="checkbox"/> 40 CFR 279	<input type="checkbox"/> 62-737 F.A.C.
		<input checked="" type="checkbox"/> 62-710 F.A.C.	<input checked="" type="checkbox"/> 62-730 F.A.C.

3. Responsible Official: (Name and Title)

Arthur T. Hagen, owner
Candace and Bruce Ryan, property owners

4. Survey Participants & Principal Inspector:

Glen Hendrix, Howco driver Larry Hutchinson – Freehold Cartage (863) 533-4599 or (863)287-8359
DEP: Charles Emery, Karen Bayly

5. Facility Latitude 26°38'01"N Longitude: 81°51'33"W SIC _____

6. Type of Ownership ☐ FEDERAL ☐ STATE ☐ COUNTY ☐ MUNICIPAL ☒ **PRIVATE**

7. Permit Number: n/a Date Issued: _____ Expiration Date: _____

"More Protection, Less Process"

8. Pre-arranged Inspection: X Yes No Preinspection letter mailed Yes X No

9. **Process Description or discrepancies from previous report:** see narrative below

An inspection was conducted to observe the disposal of 19 drums of hazardous waste. According to Larry Hutchinson, the drums will be transported to the Freehold Cartage transfer facility in Bartow, and then to the Perma-Fix facility in Gainesville, FL. Upon arriving at the facility, three drums had already been loaded onto the Freehold Cartage truck.

It was observed that two drums situated towards the center of the group of drums appeared to be/were leaking. Several small weep holes were evident on one of the drums (see photos 2,3). A distinct hole was observed on another drum, just above the second-middle rib (see photos 4-9,30). The contents of both drums were transferred into two new drums (see photos 10-22). The contents of the drums primarily consisted of rags, liquid and sludge.

As Mr. Hutchinson would attempt to place a drum on the drum dolly, a small amount of liquid would leak out from the lid (see photo 23,25). Some spillage occurred on the lift platform of the Freehold Cartage truck (see photos 26-27). Upon opening most of the drums, it was discovered that most of the lids did not have gaskets, and that at least two drum lids were deteriorated around the sides (see photos 32,33). Additionally, at least two bungs were not tightly closed (see photo 49). The majority of the lids had to be replaced with new lids from Howco's emergency response trailer. Additionally, on at least one drum, the ring was not properly fitted/sealed tight (see photo 47). Also observed upon opening the drums, was that most of the drums were full (see photo 28,31,34,35). One drum was filled completely to the top (see photos 39-40). It appeared that one drum may have possibly leaked/spilled when originally filled, as evident by rust streaks down the sides (see photo 38). Mr. Hutchinson rejected two drums due to damage/dents on the drums (see photo 43).

The bottoms of the drums were inspected as they were transported on the drum dolly to the truck. The base/bottom of several drums were rusted (see photos 41,42,46,48)

Hazardous waste labels and black/white diamond shaped labels were placed on each drum before loading onto the truck (see photo 1).

Rust stains and patches of discoloration were observed on the plastic tarp and ground beneath where the drums were situated (see photos 50-55).

In total, the contents of four drums (two with holes and two rejected due to dents) were transferred to four new drums. The bottoms of the four empty drums were wiped out with absorbent pads. The dirty absorbent pads, plastic tarp, buckets, gloves, etc. were placed in a drum, labeled hazardous waste (see photo 56-57). The empty drums were all labeled non-hazardous, for disposal only (see photo 58). The hazardous waste manifest reflected 17 55-gallon drums and 2 overpack drums were disposed.

Upon arriving back to the DEP office and reviewing the facility file, it was discovered that Howco's St. Petersburg EPA ID# had been used on the hazardous waste drum labels and manifest; and that 18 55-gallon drums and 2 overpack drums were disposed. This issue was discussed with Dave Thompson who issued a letter accounting for the discrepancies.

10. List and Explain Noncompliance Items

- a. 40 CFR 265.31 - Maintenance and Operation of Facility. The facility must maintain itself in a manner to operate to minimize the possibility of a fire, explosion, or an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. On April 26, 2001, nineteen 55-gallon drums were generated as a result of emptying tank # 3 at this site. On May 30, 2001, Howco declared these drums hazardous waste and marked them as such. On September 26, 2001, DEP found two 55-gallon drums leaking. On September 28, 2001, the two drums were over packed by Howco and identified as hazardous waste. On October 11, 2001, two additional drums of hazardous waste were found leaking. While preparing the nineteen drums for shipment, it was observed that all the drums not over packed, leaked when moved. It was determined by opening these drums that the rubber gaskets normally placed in the side of ring top drums had not been done. Hence the drums were all prone to leaking.
- b. 40 CFR 262.20 [F.A.C. 62-730.160(4)] - Manifests. The facility upon shipping its hazardous waste from this site used an incorrect EPA ID # on the manifest and incorrectly identified the number of drums shipped. The EPA ID # used was FLD152764767. The EPA ID # that should have been used is FL0001000611. The facility indicated on its manifest that it shipped 19 drums when in fact it shipped 20 drums.

Potential Additional Violations

- a. 40 CFR 262.34(c)(1)(i) - Hazardous Waste Container Management. The facility failed to maintain hazardous waste containers in a good condition to prevent leakage.
- b. 40 CFR 262.34(a)(1)(i) - Weekly Inspections. Failure to perform weekly inspections of hazardous waste containers in storage looking for leaks and deterioration caused by corrosion. Evidence of at least four 55-gallon drums of hazardous waste leaked to the ground. Other stains in the storage area suggest that additional leakage may have occurred.
- c. F.A.C. 62-730.160(7) - Adequate Aisle Space. Facilities managing hazardous waste in containers must manage the containers in a manner to allow for the inspection of the containers.

Report prepared by: _____

Karen Bayly
Environmental Specialist III
October 19, 2001

Reviewed by: _____

Charles Emery III
Environmental Manager
October 24, 2001