

RCRA Guidance: U.S. Environmental Protection Agency Addresses Whether Fuel/Water Mixture is a Recoverable Commercial Chemical Product

Arkansas Environmental, Energy, and Water Law Blog



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The United States Environmental Protection Agency (“EPA”) addressed in a November 1st letter to Illini Environmental, Inc. (“Illini”) whether the company could:

... receive mixtures of fuel and water as a recoverable commercial chemical product, in cases where the mixture consists of water in excess of 0.5 ppm benzene, but there is no free product.

Illini stated in an August 29, 2016 letter to EPA that it receives:

... drums of gasoline-contaminated water (or water-contaminated gasoline) that have been produced from the maintenance of the sumps, spill buckets and interstitial spaces of the gasoline dispensing secondary containment system. In some cases the gasoline/water mixture contains free product that can clearly be reclaimed as a commercial chemical product, sometimes the mixture is dilute enough that it is RCRA non-hazardous, and in some cases the gasoline/water mixture has no free product and no measurable flash point, but has benzene in concentrations above 0.5 ppm, which would cause the mixture to exhibit the RCRA toxicity characteristic for benzene (D018) under 40 CFR 261.24.

Illini specifically asked whether it may receive water with an excess of 0.5 ppm benzene with no free product as an excluded commercial chemical product, bulk this mixture with contaminated fuel and then deliver the bulked fuel/water mixture to a fuel recovery facility.

EPA responds that commercial chemical products are not considered a solid waste when used to make a fuel if they themselves are fuels. However, the agency states there is not a “bright line” cut-off for determining at what point a mixture of fuel and water would be considered simply a contaminated wastewater rather than commercial chemical product fuel contaminated with water. Instead the “underlying issue” is stated to be whether the recovery of the fuel product from the mixture would be legitimate recycling under the Resource Conservation and Recovery Act regulations.

As to the determination of “legitimate recycling,” EPA notes that the first factor to consider is whether the hazardous secondary material (i.e., the fuel-water mixture) provides a “useful contribution.” The elements constituting a useful contribution in the case of a hazardous secondary material are identified. The agency further notes that in the case of fuel/water mixtures, they would be considered as providing useful contribution if the fuel product is recovered by the recycling process. The point of such a determination is noted to be before the hazardous secondary material is mixed with another material.

EPA therefore concludes that if:

. . .the fuel/water mixture that exhibits the hazardous characteristic for benzene does not have recoverable fuel product prior to being bulked with other mixtures, it would not be making a “useful contribution” as defined in 40 CFR 260.43(a)(1) and would not be considered a commercial product being legitimately recycled.

Therefore, the material would be managed as a RCRA hazardous waste.

[A copy of the letter can be downloaded here.](#)