9441.1994(21)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

August 5, 1994

Mr. Brian J. Donovan
The Law Offices of Jones & Donovan
19782 MacArthur Boulevard
Irvine, CA 92715

Dear Mr. Donovan:

Thank you for your letter of November 8, 1993, to Ann Hardison. Ms. Hardison referred the letter to my office for response.

Your letter posed several questions regarding the Department of Transportation's Maritime Administration's sale of obsolete vessels from the National Defense Reserve Fleet, the scrapping of these vessels, and the applicability of Resource Conservation and Recovery Act (RCRA) regulations to these vessels. Specificality, you called into question the Maritime Administration's interpretation that at the time of sale, neither the vessels nor the on-board operating materials would be considered wastes. You also inquired about the Maritime Administration's position that although the sale is conditioned upon scrapping of the vessel, RCRA hazardous waste export regulations would not apply to the Maritime Administration if the vessels were to leave the country.

Although we believe it is more appropriate to determine the applicability of RCRA regulations to the National Defense Reserve Fleet vessels and the operating supplies on board the vessels on a case-by-case basis in the context of specific facts, as opposed to as a class, there are some general statements that can be made about these situations.

First, we will address your question concerning the Maritime Administration's interpretation that at the time of sale, neither the vessels themselves nor the on-board operating materials would be considered wastes. In most cases, the vessel itself, the materials which are necessary for the operation of the vessel, and

the materials which are part of the vessel's structure, continue to serve a useful purpose while the vessel remains intact (i.e., they allow the vessel to continue to function as a ship). Therefore, these materials are not "discarded" at the time of sale, and are not solid wastes. It is also our understanding (see enclosed letter from Linda C. Somerville of the Maritime Administration to Daniel P. Cotter of Southwest Recycling, Inc.) that:

> MARAD regularly conducts environmental audits of its reserve fleets to ensure that the sites, and the vessels moored at those sites, are in full compliance with environmental law. As a result of these audits, over the last several years MARAD has spent considerable amounts of time and money to clear the vessels of any hazardous wastes and excess materials from the vessels, leaving on board only those items which are necessary for the operation of the vessel or which are part of the vessel's structure (emphasis added).

(In fact, pursuant to section 106(a) of the Federal Facilities Compliance Act, hazardous waste generated on a public vessel may not be stored on the vessel for longer than 90 days after the vessel is placed in reserve or is otherwise no longer in service, without a RCRA storage permit.) No materials considered solid wastes and hazardous wastes under RCRA should be on board the vessel at the time of sale. After the sale, because it is possible for additional solid and hazardous wastes to be generated aboard the ship (e.g., wastes from degreasing, paint stripping, disassembly or dismantling, etc.), the purchaser would be responsible for determining the applicability of RCRA regulations to these materials, including waste identification.

Second, we address your question about the applicability of RCRA hazardous waste export regulations to the vessels. The export occurs after the Maritime Administration has sold the vessel to the purchaser. Therefore, prior to or at the time of sale, it would be premature for the Maritime Administration to classify all the vessels as wastes and to comply with RCRA export regulations. We understand that under the rules of the ship sales program, these vessels can be scrapped either domestically or in approved foreign countries. It is our understanding that individual purchasers make the arrangements for transportation and scrapping of individual vessels, and the Maritime Administration is involved in the selection of a foreign scrapyard only to ensure that the scrapyard

is in an approved foreign country. Again, purchasers will need to determine on an individual basis if, and at which point, RCRA regulations, including hazardous waste export regulations, as well as other environmental regulations, are applicable.

Third, your letter described a possible scenario in which SRI purchases a vessel and "reduces the vessel to scrap," and subsequently exports "hazardous or regulated substances." Although the circumstances in which the dismantling of any particular vessel will be situation specific, in general, the removal of materials intended for discard from, for example, the vessel's structure would be the point at which the material is "generated" as a waste. Therefore, the removal and subsequent management of these materials would be subject to RCRA, including export requirements, if these materials "as generated" meet the definition of hazardous waste.

Much of the material removed from the ship is likely to be scrap metal. As you are probably aware, scrap metal being recycled is exempt from RCRA regulations (40 CFR 261.6(a)(3)(iii)). Scrap metal, as defined at 261.1(c)(6), "is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled." As stated in preambular language to this regulation: "Materials not covered by this term include residues generated from smelting and refining operations (i.e., drosses, slags, and sludges), liquid wastes containing metals (i.e., spent acids, spent caustics, or other liquid wastes with metal in solution, liquid metal wastes (i.e., liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries (50 FR 624, January 4, 1985)."

Although your letter did not ask specifically about regulations concerning PCBs, I have enclosed for your information previous correspondence from EPA regarding the applicability of Toxic Substances Control Act PCB regulations to Maritime Administration ships. As stated in the April 2, 1993, letter, the export for disposal of PCBs at 50 ppm or greater is prohibited under TSCA.

Please note that under section 3006 of RCRA, individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. In addition, section 3009 of RCRA allows states to promulgate

regulatory requirements that are more stringent than the federal program. Therefore, you should contact the appropriate state environmental agency for applicable laws and regulations that may exist.

In addition, foreign countries receiving the vessels or materials from on board the vessels may have in place laws or regulations which may ban or otherwise restrict the import into their country of the vessels or materials from on board the vessels, in order to implement the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. We understand that at least one country holds the view that vessels imported into their country for scrapping are hazardous wastes subject to the Basel Convention.

If you have any further questions, please call me or Angela Cracchiolo of my staff at (202) 260-4779. Thank you for your interest in the safe management of hazardous waste.

Sincerely,

Michael Shapiro,
Office of Solid Waste

Enclosures