

RECEIVED

OCT 29 1998

INTEROFFICE MEMORANDUM

Date: 11-Aug-1998 02:51pm
From: Tom Conrardy TAL
CONRARDY_T
Dept: Waste Management
Tel No: 850/488-0190

**BUREAU OF
AIR REGULATION**

To: See Below
Subject: Rinker Alternate Procedure Request

The following is an update of the Rinker alternate procedure request status.

Since I distributed the Rinker response to our comments to you in July, I discussed the site with Bill Neimes and he brought some aspects of their proposal that I had overlooked to my attention. Primarily, it appeared that they would only submit the Generator Certification "process knowledge" form for instances in which the normal pretreatment screening called for in Chapter 62-775 for petroleum contaminated soil shows some irregularity that raises suspicion. This is not consistent with what I had requested to Rinker in my previous letter. Bill and I called Geof Smith and discussed this problem with him. I informed him that since on contaminated soil from outside of a petroleum storage tank was deferred from RCRA regulation by EPA, they would need to do the form in every case that they wanted to accept and thermally treat soil-like materials from the sources described in their initial proposal, including tank bottom sludge, oil water separator sludge, car wash grit, etc. He said he would take this message back to Rinker. Geof Smith called me back today to tell me he is going to south Florida to discuss the issue with Rinker in a few days and he wants to know if that is the extent of our comments. Please respond to this message on whether any of you have any additional comments or whether you need more time for consideration of the issue. Also, FYI, Geof Smith included a statement in his letter that said something to the effect that the DEP should require that a similar form be used whenever landfills accept similar materials. I told him that if he was going to wait for us to agree to that before we issued the alternate procedure order, he would be waiting for quite awhile. He said that it was included more as a suggested policy statement and not as a proposed condition on the Department's side of approval of the alternate procedure order.

Thanks

Distribution:

To: Satish Kastury TAL	(KASTURY_S)
To: Bill Neimes TAL	(NEIMES_B)
To: Richard Tedder TAL	(TEDDER_R)
To: Michael Redig TAL	(REDIG_M)
To: Chris McGuire TAL	(MCGUIRE_C)
To: John M. Jones WPB	(JONES_JM @ A1 @ WPB1)
To: Paul Wierzbicki WPB	(WIERZBICKI_P @ A1 @ WPB1)

DEP ROUTING AND TRANSMITTAL SLIP	
TO: (NAME, OFFICE, LOCATION) 1. <u>Joe Kahn</u> <u>MS# 5505</u> 2. _____	3. _____ 4. _____ 5. _____
PLEASE PREPARE REPLY FOR: <input type="checkbox"/> SECRETARY'S SIGNATURE <input type="checkbox"/> DIV/DIST DIR SIGNATURE <input type="checkbox"/> MY SIGNATURE <input type="checkbox"/> YOUR SIGNATURE <input type="checkbox"/> DUE DATE _____ ACTION/DISPOSITION <input type="checkbox"/> DISCUSS WITH ME <input type="checkbox"/> COMMENTS/ADVISE <input type="checkbox"/> REVIEW AND RETURN <input type="checkbox"/> SET UP MEETING <input type="checkbox"/> FOR YOUR INFORMATION <input type="checkbox"/> HANDLE APPROPRIATELY <input type="checkbox"/> INITIAL AND FORWARD <input type="checkbox"/> SHARE WITH STAFF <input checked="" type="checkbox"/> FOR YOUR FILES	COMMENTS: <i>Information on Rinker AP</i>
FROM: <u>R. Teller</u>	DATE: <u>10/28/98</u> PHONE: <u>1-8115</u>

INTEROFFICE MEMORANDUM

Date: 16-Sep-1998 03:48pm
From: Tom Conrardy TAL
CONRARDY_T
Dept: Waste Management
Tel No: 850/488-0190

To: See Below
Subject: Rinker Materials alternate procedure

There have been only a couple email or other feedback from staff of our 3 bureaus in the Division of Waste Management and district offices that have been involved with the Rinker Altenate Procedure in response to my last memo dated 7/13/98 and followup email messages. I have to assume that everyone involved is satisfied with Rinker's proposal as amended by my email followup concerning "process knowledge". Therefore I have prepared a draft of an Alternative Procedure Approval Order for John Ruddell's signature. A copy of the draft order is attached. Please be advised that the following paragraph is included in the order which will be signed by John Ruddell to implicate the three bureau's in our division that have participated in this evaluation:

4. Because this request overlaps the regulatory authority of several different program areas, Department staff from the Bureau of Petroleum Storage Systems, the Bureau of Waste Cleanup, the Solid Waste Regulation Section, and the Hazardous Waste Regulation Section were consulted on this proposal, provided comments and recommendations during the Department's review, and agree with the findings and recommendations of this Alternative Procedure Order.

After I give you all another week or so to let me know if you have any comments or suggestions on the Order language, I will send a "DRAFT" copy to Rinker to verify that it is consistent with their proposal that has been amended a couple times. I also will tell Rinker they need to modify the "process knowledge" documentation form to indicate that in each case (source) they will obtain a copy of the form for their permanent files (unless of course they do hazardous waste characterization analysis of the material instead) and the site owner that provides "process knowledge" must certify that both it is contaminated with petroleum substances only, and that it is not characteristic hazardous waste.

Once this is approved I will be contacting Magnum Soil Thermal Treatment facility, which had originally submitted an almost identical request as Rinker, but did not attempt to follow through with the negotiation with the DEP that Rinker did. I will let them know what we are approving for Rinker and if they are willing to do the same thing we can approve an alternative procedure for them also. Also, Clark Environmental that recently received their 62-775 general permit also wants to thermally treat the same materials as Rinker but apparently they are willing to do haz waste characterization of each batch rather than rely on process knowledge. That one ought to be easier, but I think we should get Rinker out of the way first.

Let me know if you have any questions or concerns.

Thanks, Tom

Distribution:

To: Bill Neimes TAL (NEIMES_B)
To: Tom Douglas TAL (DOUGLAS_T)
To: Satish Kastury TAL (KASTURY_S)
To: Michael Redig TAL (REDIG_M)
To: Douglas Outlaw TAL (OUTLAW_D)
To: Paul Wierzbicki WPB (WIERZBICKI_P @ A1 @ WPB1)
To: Chris McGuire TAL (MCGUIRE_C)
To: Richard Tedder TAL (TEDDER_R)
To: John M. Jones WPB (JONES_JM @ A1 @ WPB1)
CC: Mary Jean Yon TAL (YON_MJ)
CC: John Ruddell TAL (RUDDELL_J)
CC: Doug Jones TAL (JONES_D)
CC: Michael Sole TAL (SOLE_M)
CC: Beth Knauss TPA (KNAUSS_B @ A1 @ TPA1)
CC: Bill Hinkley TAL (HINKLEY_B)
CC: Guillermo Wibmer TAL (WIBMER_G)

STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

File No. AP-STTF0036

Rinker Materials Corporation)
Request Pursuant to Florida)
Administrative Code Rule 62-775.500)

DRAFT

APPROVAL OF ALTERNATIVE PROCEDURES

This cause comes before me upon receipt of a July 25, 1997 request by the original applicant, Koogler and Associates, on behalf of Rinker Materials Corporation, along with supplemental information prepared by Koogler and Associates and Blank, Rigsby and Meenan on behalf of Rinker Materials Corporation for the approval of an alternative procedure, pursuant to Rule 62-775.500 of the Florida Administrative Code ('F.A.C.'). The official request includes correspondence from Blank, Rigsby and Meenan representing Rinker Materials Corporation, including supplemental information dated July 2, 1998 in response to the Department of Environmental Protection ('Department') review comments. This alternative procedure request is to allow for the routine thermal treatment of materials other than the petroleum contaminated soil that has been excavated from the outside of a petroleum storage system; in particular, seven different categories of soil-like materials contaminated with petroleum products.

FINDINGS OF FACT

1. The applicant requests that exemptions be granted from Rule 62-775.100(4), F.A.C., and Rule 62-775.200(9), F.A.C. Rule 62-775.100(4), F.A.C., states that Chapter 62-775, F.A.C., applies only to the treatment of "petroleum contaminated soil" by thermal treatment facilities, and Rule 62-775.200(9), F.A.C., defines "petroleum contaminated soil."

2. Rinker Materials Corporation has identified six categories of petroleum contaminated materials that are soil-like in physical characteristics or may be readily blended with other

petroleum contaminated soil to produce a soil-like material suitable for thermal treatment. These materials are :

- a.) sludges, and/or tank bottoms from petroleum product storage tanks,
- b.) mineral-type sorbent materials that have been used for the cleanup of petroleum spills and/or leaks (e.g., kitty litter),
- c.) oil/water separator residues,
- d.) soakage pit residues,
- e.) car wash reclaim water tank residues,
- f.) storm water catch basin residues, and
- g.) french drain residues.

DRAFT

3. Rinker Materials Corporation has asserted that thermal treatment is an effective means of treating any of the above materials to remove petroleum contamination from the materials and render the materials innocuous to public health and the environment and safe for disposal in an unregulated manner. For some of the materials which are by nature of a wetter consistency or would be expected to have a high concentration of petroleum product, Rinker Materials Corporation proposes that the material would be first blended with other petroleum contaminated soil in a ratio which would result in a blended material with physical characteristics suitable for effective and safe thermal treatment.

4. Because this request overlaps the regulatory authority of several different program areas, Department staff from the Bureau of Petroleum Storage Systems, the Bureau of Waste Cleanup, the Solid Waste Regulation Section, and the Hazardous Waste Regulation Section were consulted on this proposal, provided comments and recommendations during the Department's review, and agree with the findings and recommendations of this Alternative Procedure Order.

5. The Department's primary concern with this proposal was that these materials could be regulated hazardous wastes under the Resource Conservation and Recovery Act (RCRA) Program. "Petroleum contaminated soil" from outside of a petroleum storage system is specifically exempt from regulation under RCRA by deferral provisions contained in the RCRA regulations. This deferral and the definition of "petroleum contaminated soil" was the basis for establishing the authority for the Department to regulate the activities of thermal treatment facilities independently of RCRA program regulations. The materials listed in the alternative procedure request by Rinker Materials Corporation are not eligible for the deferment from RCRA applicability that was intended to apply to contaminated soil

DRAFT

associated with petroleum storage systems. The materials are potentially RCRA regulated hazardous wastes either by the nature of the activities that had been conducted at the source of the materials or by the characteristics of the materials (Toxicity Characteristic Leaching Procedure - TCLP). These materials could also potentially contain chemicals of concern other than those chemicals found in petroleum products, which might cause the materials to be outside the applicability of Chapter 62-775, F.A.C., and as such not suitable for thermal treatment under a Chapter 62-775, F.A.C., general permit. The Department had requested that assurance be provided to verify that the material from each source is not a RCRA regulated hazardous waste and that the materials are contaminated only with petroleum products.

6. In response to these concerns, Rinker Materials Corporation has proposed that a combination of recordkeeping of "process knowledge" and supplemental analysis of the soil prior to treatment be used to verify that the soil is only petroleum contaminated and also that it is not a hazardous waste. "Process knowledge" is information known by the generator of the material that the nature of the chemicals contained in the material are only derived from petroleum products and that the concentrations are well below the threshold to qualify as a hazardous waste by a TCLP analysis. In instances where process knowledge is not considered adequate, Rinker Materials Corporation will perform additional analytical characterization of the material to identify whether it is a hazardous waste and to determine whether it contains non-petroleum chemicals of concern.

7. The Department specifically requires the following be implemented for this proposal to be acceptable:

- a.) Rinker Materials Corporation will use a consistent format for recording the process knowledge that is the basis to determine that the material is only petroleum contaminated and that it is not RCRA regulated due to concentration of chemicals of concern (TCLP for benzene).
- b.) Rinker Materials Corporation will establish a supplemental filing system to maintain records of each source of non-soil material indicating a basis for acceptance of either process knowledge or supplemental characterization by soil analysis in addition to the analyses required by Chapter 62-775, F.A.C., for petroleum contaminated soil prior to thermal treatment. These supplemental records will be available upon request to Department staff during facility inspections.

- c.) All sludges from inside of gasoline storage tanks and absorbent materials used to clean up a gasoline spill will be analyzed for TCLP for benzene rather than relying on process knowledge alone.
- d.) Car wash reclaim water residues will only be from auto, light truck, and other passenger vehicle washes. Rinker Materials Corporation will not accept wash water residues from industrial or agricultural vehicle wash facilities.
- e.) Rinker Materials Corporation will clarify with all generators of material that request thermal treatment that the purpose of the process knowledge certification is to provide assurance that only activities related to handling or storage of petroleum products have been conducted at the facility and only petroleum related chemicals of concern are likely contained in the material proposed for thermal treatment.
- f.) Only mineral type sorbent materials will be thermally treated. Materials such as absorbent booms, paper, plastic materials or acrylic polymers used for absorbing petroleum products during spill cleanup will not be thermally treated.
- g.) High-strength materials, such as petroleum tank bottom sludge, will always be blended with other petroleum contaminated soil to allow for proper and effective treatment in a safe manner. Blending will not be used for meeting the definition of non-hazardous materials.

8. The stationary soil thermal treatment facility for which this exception is sought is Rinker Materials Corporation, 1200 Northwest 137th Avenue, Miami, Florida, 33182. The Rinker Materials Corporation soil thermal treatment facility has been permitted by the Department to accept and treat petroleum contaminated soil and also soil with low concentrations (less than 10 ppm) of PCBs.

9. The applicant contends that this request satisfies the criteria for approval of an alternative procedure and requirement as set forth in Rule 62-775.500, F.A.C., and has provided sufficient information for the Department to determine that the alternative procedure will be at least as effective as the established procedure in that portion of the Florida Administrative Code specifically exempted by this Order.

The Department concludes that the process for screening and identifying waste materials to be thermally treated which has been proposed by Rinker Materials Corporation, and supplemented by conditions 7.a.) through 7.g.) above will provide for an

effective means of providing reasonable assurance to the Department that the facility will not treat materials which could be a hazardous waste under RCRA definitions and will only treat petroleum contaminated material under a Chapter 62-775, F.A.C., general permit.

CONCLUSIONS OF LAW

DRAFT

Florida Administrative Code Rule 62-775.500 authorizes the approval by the Secretary or the Secretary's designee of alternative procedures and requirements concerning the regulation of soil thermal treatment facilities.

The Department concludes that the applicant has adequately demonstrated that the proposed alternative procedure provides a substantially equivalent degree of protection for the lands, surface waters, and groundwaters of the State as the established requirements and that the alternative procedure is at least as effective as the established requirements.

Upon consideration of the foregoing it is therefore ORDERED that the request of Koogler and Associates and Blank, Rigsby and Meenan for an alternative procedure and requirement for the Rinker Materials Corporation thermal treatment facility located at 1200 Northwest 137th Avenue in Miami, Florida is GRANTED.

Persons affected by this Order have the following options:

If you choose to accept the above decision by the Department you do not have to do anything. This Order is final and effective as of the date on the top of the first page of this Order.

If you disagree with the decision, you may do one of the following:

1. File a petition for administrative hearing with the Department's Office of the General Counsel within 21 days after receipt of this Order;
- OR
2. File a request for an extension of time to file a petition for hearing with the Department's Office of the General Counsel within 21 days after receipt of this Order. Such a request should be made if you wish to meet with the Department in an attempt to informally resolve any disputes without first filing a petition for hearing.

Please be advised that mediation of this decision pursuant to Section 120.573, Florida Statutes (F.S.), is not available.
How to Request an Extension of Time to File a Petition for Hearing

A request for an extension of time to file a petition for hearing must be filed (received) in the Department's Office of

the General Counsel at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, within 21 days after receipt of this Order. Pursuant to Rule 28-106.111(3), F.A.C., a request for extension of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the Department and any other parties agree to said extension. Petitioner, if different from Rinker Materials Corporation or Blank, Rigsby and Meenan shall mail a copy of the request to Rinker Materials Corporation and Blank, Rigsby and Meenan at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be filed until the request is acted upon.

How to File a Petition for Administrative Hearing

DRAFT

A person whose substantial interests are affected by this Order may petition for administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Department's Office of the General Counsel at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, within 21 days after receipt of this Order. Petitioner, if different from Rinker Materials Corporation and Blank, Rigsby and Meenan, shall mail a copy of the petition to Rinker Materials Corporation and Blank, Rigsby and Meenan at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under Sections 120.569 and 120.57, F.S.

Pursuant to Chapter 98-200, Laws of Florida, and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

- a) The name, address, and telephone number of each petitioner, the name, address, and telephone number of the petitioner's representative, if any, the site owner's name and address, if different from the petitioner, the FDEP facility number, and the name and address of the facility;
- b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
- d) A statement of the material facts disputed by the petitioner, or a statement that there are no disputed facts;
- e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends

- warrant reversal or modification of the Department's action or proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

DRAFT

This Order is final and effective as of the date on the top of the first page of this Order. Timely filing a petition for administrative hearing postpones the date this Order takes effect until the Department issues either a final order pursuant to an administrative hearing or an Order Responding to Supplemental Information provided pursuant to meetings with the Department.

Judicial Review

Any party to this Order has the right to seek judicial review of this Order pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Department clerk in the Office of the General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Simultaneously with filing a Notice of Appeal with the Department, petitioner must file a copy of the Notice of Appeal with the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be received by the Department clerk within 30 days from the date this Order was signed by the Department clerk (see below).

DONE AND ORDERED this _____ day of _____, 1998 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

John M. Ruddell, Director
Division of Waste Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400