



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

DEC 20 2018

Brian Lindman
US Ecology
101 South Capitol Boulevard, Suite 1000
Boise, Idaho 83702

Dear Mr. Lindman:

Thank you for your letter dated August 6, 2018, requesting that EPA clarify the regulatory status of residues from the reclamation of oil-bearing secondary materials recycled under the “transfer-based exclusion” provision at 40 CFR 261.4(a)(24).¹

One condition of the transfer-based exclusion is that any residuals that are generated from the reclamation processes must be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or are themselves listed hazardous wastes, they are hazardous wastes (if discarded) and must be managed according to the applicable requirements of 40 CFR parts 260 through 273. See 40 CFR 261.4(a)(24)(vi)(E).

As noted in the 2008 Definition of Solid Waste final rule, the “derived from” rule articulated at 40 CFR 261.3(c)(2) does not apply to residuals from the reclamation of hazardous secondary materials excluded under the transfer-based exclusion.² These residuals are a new point of generation for the purposes of applying the hazardous waste determination requirements of 40 CFR 262.11. If the residuals exhibit a hazardous characteristic, or they themselves are a listed hazardous waste, they would be considered hazardous wastes (unless otherwise exempted) and would have to be managed accordingly. If they do not exhibit a hazardous characteristic, and are not themselves a listed hazardous waste, they need to be managed in accordance with applicable state or federal requirements for non-hazardous wastes.

¹Your letter also discusses the condition that the hazardous secondary material “is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed.” (40 CFR 261.4(a)(24)(iii)) However, this condition only applies to oil-bearing secondary materials when they are recycled at petroleum refineries per 40 CFR 261.4(a)(12).

² See *Final Rule: Revisions to the Definition of Solid Waste*, 73 FR 64692 (Oct. 30, 2008).

Your letter specifically refers to the F037 petroleum refinery sludge listing. According to the listing description found in 40 CFR 261.31, F037 includes “[a]ny sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow.” To the extent that a reclamation facility operating under the transfer-based exclusion processes applicable wastewaters from petroleum refineries, the resulting sludge may meet the F037 listing description and be regulated as hazardous waste when discarded.

Thank you again for your interest in the transfer-based exclusion. Since a state authorized to administer and enforce the RCRA program can be more stringent than the federal program, we recommend also consulting with the authorized state regulatory authority about any case-specific questions regarding the exclusion. If you have any additional questions, please contact Tracy Atagi of my staff at 703-308-8672 or atagi.tracy@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Barnes Johnson". The signature is written in a cursive style with a long horizontal stroke at the end.

Barnes Johnson, Director
Office of Resource Conservation and
Recovery