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

Carl R. Palmer
TD*X Associates
P.O. Box 13216
Research Triangle Park, North Carolina 27709

Dear Mr. Palmer:

Thank you for your letter dated September 10, 2018, requesting that EPA clarify the regulatory status of Thermal Desorption Units ("TDUs") that are used to recycle hazardous secondary materials under the "transfer-based exclusion" provision at 40 CFR 261.4(a)(24). While determinations of the RCRA regulatory status of a specific unit are made on a case-specific basis by EPA or the authorized state, EPA can speak generally to how the transfer-based exclusion applies to legitimate reclamation processes that utilize TDU technology.

The transfer-based exclusion excludes certain hazardous secondary materials from the definition of solid waste if they are generated and then transferred to another facility for the purpose of reclamation. As your letter notes, one application of thermal desorption technology is to legitimately reclaim oil from oil-bearing hazardous secondary materials. In such cases, hazardous secondary materials legitimately reclaimed using TDU technology are potentially eligible for the transfer-based exclusion, provided all the conditions of the exclusion are met.[1]

Conditions that the reclamation facility must meet for the transfer-based exclusion can be found at 40 CFR 261.4(a)(24) and include the following: [2]

- The hazardous secondary material is not speculatively accumulated, as defined in 40 CFR 261.1(c)(8);

[1] Note that this would only be true for TDU technology used for reclamation per 40 CFR 261.2(c) Table 1; TDU technology used to produce a hazardous waste fuel would be considered burning for energy recovery per 40 CFR 261.2(c)(2) and hazardous secondary materials recycled in this manner are not eligible for the transfer-based exclusion. See *Proposed Rule: Revisions to the Definition of Solid Waste*, 72 FR 14172, 14173 (March 26, 2007); *Final Rule: Revisions to the Definition of Solid Waste*, 73 FR 64669 (Oct. 30, 2008).

[2] Additional conditions related to the management of hazardous secondary material at the generator and during transport of the hazardous secondary material also apply as specified under 40 CFR 261.4(a)(24).

- The reclamation of the hazardous secondary material is legitimate, as specified under 40 CFR 260.43;
- Records of all shipments of hazardous secondary material that were received at the facility are maintained for three years;
- Confirmations of receipt are sent to the hazardous secondary material generator for all off-site shipments of hazardous secondary materials;
- The hazardous secondary material is managed in a manner that is at least as protective as that employed for analogous raw material, and is contained as defined in 40 CFR 260.10 (i.e., in a unit that is in good condition with no leaks or other continuing or intermittent unpermitted releases);
- Any residuals that are generated from reclamation processes are managed in a manner that is protective of human health and the environment;
- Financial assurance is obtained as required under subpart H of 40 CFR part 261; and
- Notification is provided as required under 40 CFR 260.42.

In addition, generators that send their hazardous secondary materials to reclamation facilities that do not have a RCRA permit or interim status must perform a "reasonable efforts" audit of the reclamation facility per 40 CFR 261.4(a)(24)(v)(B). Such reclamation facilities can only accept hazardous secondary material that has been excluded from the definition of solid waste and cannot accept hazardous waste.

In your letter, you draw a distinction between TDU reclamation facilities operating under the transfer-based exclusion that have a RCRA part B permit, which you state should be eligible to operate under the transfer-based exclusion, and those that do not have a RCRA permit, which you state should not be eligible. However, the regulations do not draw such a distinction; a hazardous secondary material that is managed in accordance with the conditions of 40 CFR 261.4(a)(24) is not a solid waste and therefore units managing this material are not required to have a RCRA permit. The exclusion requires that the hazardous secondary material meet the "contained" standard as defined in 40 CFR 260.10, which notes that hazardous secondary materials managed in units that meet the applicable permitting requirements of 40 CFR part 264 or 265 are presumptively contained, but materials may still meet the contained standard while being managed in units that do not have RCRA permits.

Thank you again for your interest in the transfer-based exclusion. Since a state authorized to administer and enforce the RCRA program may 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 for EPA staff, please contact Tracy Atagi at 703-308-8672 or atagi.tracy@epa.gov.

Sincerely,

Barnes Johnson

Barnes Johnson, Director
Office of Resource Conservation and Recovery