UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

2 MAY 2016

Mr. J.D. Head
Fritz, Byrne, Head & Fitzpatrick, PLLC
221 West 6th Street
Suite 960
Austin, Texas 78701

Dear Mr. Head:

Thank you for your October 30, 2015 letter requesting clarification of the hazardous waste regulatory standards for thermal desorption units (TDU) at petroleum refineries. I apologize for the delay in responding to your request. You describe a TDU as a device that heats solid material to vaporize, remove, and separate organic constituent materials from solids. In the scenario you describe at a petroleum refinery, the separated organic constituents are typically condensed and recovered as a liquid oil. The TDU process also generates a vent gas after the condensing stream.

The inquiries in your letter relate to a TDU located at a petroleum refinery that would be legitimately recycling oil bearing hazardous secondary materials (OBHSM) under the exclusion from the definition of solid waste set forth in 40 C.F.R. § 261.4(a)(12). Your letter and your January 14, 2016 e-mail ask about the regulatory applicability of the combustion of the vent gas when the vent gas is: (1) burned in the TDU combustion chamber; (2) burned in a flare; or (3) burned in a thermal oxidizer. Assuming the operator of the TDU can prove compliance with all aspects of the OBHSM exemption, the vent gas from a TDU reclaiming OBHSM at a petroleum refinery would not be regulated under the RCRA.

Responses to your specific questions and or confirmation of your statements are set forth below:

Item 1

We agree that because the OBHSM is excluded from RCRA, the OBHSM is neither a solid nor a hazardous waste when generated, accumulated, stored, or processed in the TDU, as long as speculative accumulation is not performed and the OBHSM is not placed on the land. However the "desorber solids" discharged from the TDU remain listed hazardous waste, specifically waste code F037.

Item 2

We agree that because the OBHSM is excluded from RCRA, combustion of the TDU vent gas is not considered RCRA regulated thermal treatment. This would not be the case if the TDU were performing a similar recycling operation at a TSDF.

Items 3 – 6

Under the Clean Air Act (CAA), *applicability determinations* are facility-specific determinations issued after detailed consideration of the technical and regulatory definitions and applicability provisions for a specific Part and Subpart of the rule, in light of the facility's unique process unit configuration and operation. Items 3 - 6 in your letter deal only generally with the possible applicability of multiple CAA rules and may or may not be appropriate for the process options that you have outlined. Companies are typically able to ascertain the applicability of specific subparts under the CAA, but may request a formal applicability determination if they need us to answer a question surrounding their own evaluation. In submitting such a request we would expect the facility to present in detail the specifics of the request along with process operations schematics, and specific questions or aspects of a specific rule, which may be unclear from their perspective. Therefore, we cannot respond to these items at this time.

However, given your specific question concerning applicability of 40 C.F.R. Part 63, Subpart EEE (HWC MACT), we can provide some general guidance. Assuming that you are seeking clarification for applicability of the HWC MACT for the specific scenario of *routing the vent gas back through the TDU*, we have clarified above, that the TDU located at a refinery that is reclaiming OBHSM is not regulated under RCRA. Since the processing of OBHSM at a refinery is not a solid waste, and therefore, not considered hazardous waste subject to RCRA regulations, a TDU combusting the vent gas from the indirect heating of the OBHSM would not be considered a hazardous waste combustor under RCRA. Subsequently, since the HWC MACT applicability (see 40 C.F.R. §§ 63.1200 and 63.1201) is based entirely upon certain hazardous waste combustors identified under RCRA (see 40 C.F.R. § 260.10), this particular MACT would not apply to the TDU in the circumstances you have outlined. Again, this is not a formal applicability determination under the CAA, since this response is based upon an example scenario when the TDU is located at a refinery and meets all aspects of the OBHSM exemption.

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If you have any questions, please feel free to contact Guy Tidmore of my staff at (214) 665-3142 or via e-mail at tidmore.guy@epa.gov.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Penny Wilson, ADEQ
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