

9441.1993(21)

REGULATORY STATUS OF A DISSOLVED AIR FLOATATION FLOAT STORAGE
TANK USED TO FEED MATERIAL INTO A PETROLEUM COKER

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

November 1, 1993

Mr. Ronald L. Andes
Marathon Oil Company
539 South Main Street
Findlay, Ohio 45840-3295

Dear Mr. Andes:

Thank you for your letter of August 23, 1993, in which you inquired about your plans to insert Dissolved Air Flotation (DAF) float into a petroleum coker. You asked about the regulatory status of the DAF float storage tank used to feed the material into the petroleum coker. I apologize for the delay in responding to your letter.

You stated in your letter that the DAF float is not a solid waste because it is used as a raw material, and therefore is excluded from the definition of solid waste. However, based on the information you provided, the DAF float is a solid (and listed hazardous) waste. Under the current regulations in 40 CFR 261.2(e)(2)(ii), "Materials burned for energy recovery, used to produce a fuel, or contained in fuels..." are solid wastes and therefore not excluded from regulation under RCRA.

You also stated that the DAF float would not be a solid waste based on the American Mining Congress decision (*American Mining Congress v. EPA*, 824 F. 2d 1177 D.C. Cir. 1987). EPA is currently in the process of taking final action on portions of the January 8, 1988, proposed amendments to the Definition of Solid Waste (53 FR 519). The Agency expects to promulgate a final rule to amend the Definition of Solid Waste by January 1994. Until we promulgate a final rule, we cannot answer your question in the context of the AMC I decision.

RO 13634

In addition, you asked whether the wastewater treatment unit exemption at 40 CFR 264.1 would apply to the DAF float feed tank. Tanks which meet the definition of wastewater treatment unit are exempt from RCRA permitting per 40 CFR Sections 264.1(g)(6) and 270.1(c)(2)(v)). The definition of wastewater treatment unit consists of three parts enumerated at 40 CFR Section 260.10. First, the unit must meet the definition of "tank" or "tank system" in Section 260.10. Second, the unit must be receiving and treating or storing an influent wastewater that is a hazardous waste (or otherwise meet the criteria outlined in paragraph (2) of the wastewater treatment unit definition at Section 260.10). Finally, the unit must be part of a wastewater treatment facility that is subject to 307(b) or 402 of the Clean Water Act; this latter requirement was clarified by EPA to include wastewater treatment units at facilities that 1) discharge treated wastewater effluent into surface waters or into a POTW sewer system, or 2) produce no treated wastewater effluent as a direct result of such requirements.

It may be that the unit you described is an exempt wastewater treatment unit, provided it meets the definition in 260.10. However, whether or not a unit feeding wastewater treatment sludge to a petroleum coker meets the wastewater treatment unit definition (particularly with respect to whether or not there is a wastewater discharge subject to 307(b) or 402 of the Clean Water Act), cannot be determined from the information you provided. Therefore, a site-specific determination should be made by the authorized State agency (or, if the State is not authorized, the EPA Regional office) that implements the hazardous waste program in the State in which the facility is located. Thus, if you have site-specific questions, you should contact Mr. William E. Muno, Director, Waste Management Division, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604-3507, or call (312) 886-7579.

If you have further questions about this letter, you may contact Ann Codrington of my staff at (202) 260-8551.

Sincerely,
Bruce R. Weddle
Acting Director,
Office of Solid Waste
cc: William E. Muno