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

October 29, 1992

Mr. Richard S. Wasserstrom
Miles and Stockbridge
Metropolitan Square
1450 G Street, N.W., Suite 445
Washington, D.C. 20005

Dear Mr. Wasserstrom:

This is in response to your letter of September 10, 1992, in which you wanted a clarification of the "no land disposal" condition as it applies to the recycling of coke by-produce residues (40 CFR 261.4(a)(10)). Specifically, you want to know in what kinds of units recycling operations can be performed (prior to the residuals being reinserted into a coke oven or mixed with coal tar) and still qualify for this no land disposal condition.

The Agency agrees with your concern that some members of the regulated community may not be complying properly with the no land disposal provision in the coke by-products recycling exclusion. Briefly, the Agency intends for facilities in the coke by-products industry to be able to recycle hazardous waste to coke ovens, the tar recovery process, or coal tar. During the development of the final coke rules (57 FR 27880, June 22, 1992, and 57 FR 37284, August 18, 1992), the Agency researched recycling of these residuals and determined that the technology existed to recycle several residuals in this industry without the residuals becoming part of the "waste disposal problem" (57 FR 27880), and thus promulgated the recycling exclusion for coke by-products wastes.

Using the wrong kind of unit for recycling can lead to waste becoming a disposal problem. In particular, open pits or flat or low-walled concrete pads that do not contain the recycled materials effectively are not units that qualify for the recycling exclusion. Where the waste is managed on the ground, or the construction of the unit causes the waste(s) to spill or otherwise be disposed onto the ground, the Agency feels that those units or facilities are

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inadequate to perform the recycling task without the wastes being land disposed. However, tanks, containers, and (as you pointed out) containment buildings, when they are designed properly to keep the recycled materials from being emitted beyond the zone of engineering controls, are units that qualify for the recycling exclusion.

The Agency feels that, for the recycling of wastes in this industry, certain criteria must be met. The units used in the recycling operations must be able to keep the recycled materials contained by being properly sealed (in the case of concrete units) or welded (in the case of metal units). The operators must perform the operations in such a way as to prevent releases of recycled materials. Operators of the recycling units must comply with all other applicable requirements, as well (e.g., air emissions, run-on/run-off, etc.).

You should be aware of some factors that may affect the implementation of the rule in specific areas. Some States might not adopt the recycling provisions of the coke rule as promulgated on August 18, 1992, so regulation of the wastes from this industry may be more strictly controlled. In addition, the determination as to whether a specific tank, container, containment building, or other unit meets State design criteria for "no land disposal" is site-specific, and may vary from place to place. While the Agency clearly intends for the units to contain the wastes adequately, the Agency leaves the creation of such site specific criteria to local authorities. Clearly, the Agency does not want to limit the possibility for future process changes that may lead to the recycling of coke by-products wastes in a more efficient manner by setting inflexible guidelines.

Thank you for your inquiry. If you need any further assistance on this topic, please contact Ron Josephson of my staff at (202) 260-4770 or the EPA Regional Office or State agency responsible for implementing the regulations on recyclables.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

bcc: Steve Silverman, OGC (LE-132S); Ken Gigliello, OWPE (OS-520); Waste Management Division Directors, Regions II-VI, VIII