



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

June 1, 1990

Mr. James C. Mulligan
Manager, Solid Waste Program
Environmental Division
Chemical Manufacturers Association
2501 M Street, NW
Washington, DC 20037

Dear Mr. Mulligan:

The purpose of this letter is to provide you with our interpretation of the applicability of the wastewater treatment unit exemption to example situations existing at several of your member companies' facilities. A request for an EPA interpretation was initially raised in your May 11, 1989 letter, followed up by your letters of October 2, 1989 and December 11, 1989, as well as several subsequent meetings with EPA.

As you are aware, on November 17, 1980, EPA suspended applicability of the hazardous waste management facility standards and RCRA permitting requirements to owners and operators of wastewater treatment units subject to section 307 (b) (pretreatment requirements) or section 402 (National Pollutant Discharge Elimination System (NPDES)) requirements under the Clean Water Act (CWA). This action is referred to as the wastewater treatment unit exemption. On September 2, 1988, a final rule was published to clarify the applicability of this exemption to tank systems at on-site versus off-site wastewater treatment facilities. In effect, EPA, stated that "any tank system that was employed in managing hazardous wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location includes an NPDES permitted wastewater treatment facility or a facility that discharges to a POTW sewer system, is not covered by this exemption."

CMA expressed the view that many units which they believe were eligible for this exemption have been precluded from the exemption by the September 2, 1988 notice. You are focusing on the distinctions to be made regarding an "on-site" versus an "off-site" wastewater treatment facility. CMA submitted diagrams of five examples that describe the type of problems being encountered.

EPA's position revolves around whether or not a facility is subject to sections 307 (b) or 402 of the CWA. The underlying assumption used in justifying the wastewater treatment unit exemption was that tanks used to handle hazardous wastewaters at these facilities would be

33177



provided with EPA oversight under the Clean Water Act, thereby ensuring no significant decrease in environmental control afforded at these facilities. We understand that using the terms “on-site” and “off site” may have represented a confusing way to explain this concept, and wish to further clarify our long-standing intent regarding the scope of the exemption. The following provides a description of each of the examples that you submitted to us and our analysis as to whether the tank systems at these facilities are subject to CWA oversight and thus eligible for the WWTU exemption.

Example No. 1:

Description: The hazardous wastewater from a chemical plant is piped to a NPDES permitted wastewater treatment facility at a refinery located adjacent to the chemical plant. Both the chemical plant and the refinery are owned by the same company. The NPDES permit limits are based on wasteloads from both facilities.

Analysis: The fact that the NPDES permit is based on the waste loads of both the chemical plant and refinery is not necessarily the determining factor in deciding eligibility for the WWTU exemption. The concern that led to the “on-site”, “off-site” distinction in the September 2, 1988 notice was that many wastewater treatment facilities are not actually being subjected to NPDES regulatory requirements. If they are unregulated by the NPDES program, it would be inappropriate to exempt them from RCRA regulation. In order to ensure that the reach of the NPDES permit is sufficient to adequately regulate the wastewater treatment tank at the chemical plant, the chemical plant and/or the tank itself needs to be specifically identified in the permit. This could be accomplished by stating expressly in the permit that it covers the chemical plant, or by making the operator of the chemical plant a co-permittee or a limited co-permittee on the permit with the operator of the refinery. This coverage would ensure adequate day-to-day control over the tank under the CWA to justify an exemption from RCRA requirements.

Example No. 2:

Description: Companies A and B, located within the same RCRA facility boundaries, use a common sewer to send wastewater from each of their respective units to an on-site NPDES permitted wastewater treatment facility owned by Company A. Again, the NPDES permit limits are based on the waste loads from both companies’ units.

Analysis: The analysis for this scenario essentially is the same as for No. 1 above. To be eligible for the exemption, Company B must be a co-signatory to the NPDES permit and/or otherwise identified as a limited co-permittee on the permit issued to Company A, or the permit itself must expressly cover Company B (for example, the description of the facility covers the RCRA boundaries, and “upstream” wastewater treatment processes and equipment are identified) so that CWA authorities can prescribe and enforce tank system requirements at Company B as well as at Company A.

Example No. 3:

Description: A marine terminal and a manufacturing facility, owned by the same company, want to discharge their wastewaters to a pretreatment plant that is located at the manufacturing facility. The combined pre-treated wastewater subsequently is discharged to a POTW. Prior to promulgation of section 307 (b) categorical standards, both of these facilities were directly introducing their wastewaters into a POTW and thus claiming eligibility for the WWTU exemption.

Analysis: The marine terminal must comply with pretreatment standards in order for CWA authorities to oversee management of the tank systems at this facility. It is EPA's policy that categorical standards follow the waste. That is, if a facility's wastewater would be subject to a categorical standard (s) if it is introduced directly to a POTW, it is still subject to the categorical standard (s) even when the wastewater is discharged to another facility that subsequently introduces those pollutants to a POTW. If a facility discharging to a user of a POTW is subject to a categorical standards, it may claim the exemption. If it is not, it can claim the exemption only if the facility is expressly covered by the "individual control mechanism" (that would contain specific requirements, i.e., local limits, to protect against pass through and interference) issued by the POTW to the pretreatment facility.

Example No. 4:

Description: Companies A and B, as part of a joint venture operating on Company A's facility, use the same sewer to transfer their wastewaters to a POTW.

Analysis: Both companies must comply with section 307 (b) pretreatment requirements, since both are introducing pollutants directly into a POTW. Therefore, both companies are eligible for the WWTU exemption.

Example No. 5:

Description: Wastewater from a manufacturing facility is usually sent directly to a POTW unless high TOC loadings are encountered, whereby the wastewater is alternatively routed to a pretreatment plant at another manufacturing facility owned by the same company. The combined pre-treated wastewater is sent to the POTW.

Analysis: A facility designed so that its wastewater either may be routed directly to a POTW or to a pretreatment plant at another facility poses considerable difficulty and uncertainty for EPA insofar as knowing in which mode the facility is operating on any particular day. As such, to be eligible for the WWTU exemption, the manufacturing facility not only must comply with pretreatment requirements that have been established regarding its wastewater introduced to the POTW, but also must comply with pretreatment requirements that are established for those occasions when its wastewater must be routed to another facility's pretreatment plant.

Finally, I believe it is important to make sure you are aware of one other point that has been an issue at certain facilities claiming the wastewater treatment unit exemption: there is a

requirement in 40 CFR Part 262 that only a “designated facility” may accept off-site hazardous waste. A facility that operates a wastewater treatment unit may receive and treat hazardous wastewater from any off-site source and must meet the current definition of “designated facility” as defined in 40 CFR 260.10. This means that the receiving facility must have a RCRA permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124, or it must be regulated under section 261.6 (c) (2) or Subpart F of Part 266 (see 55 FR 2322, January 23, 1990, for further information), and that has been designated on the manifest by the generator (or sender) pursuant to section 262.20.

I hope this letter answers your concerns regarding this matter. Again, I do apologize for the time it has taken to resolve these questions. If you have any further questions on the wastewater treatment unit exemption, please call Mr. Bill Kline of my staff at (202) 475-9614 or Mr. Randy Hill of the Office of General Counsel at (202) 382-7700.

Sincerely,

David Bussard, Acting Director
Waste Management Division

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