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WASTEWATER TREATMENT AND ELEMENTARY NEUTRALIZATION UNITS  
EXEMPTION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DEC 21 1987

MEMORANDUM

SUBJECT: RCRA Subtitle C Exemption for Wastewater Treatment and  
Elementary Neutralization Units

FROM: Marcia E. Williams  
Director, Office of Solid Waste (WH-562)

TO: William A. Whittington  
Director, Office of Water Regulations and Standards  
(WH-551)

James R. Elder  
Director, Office of Water Enforcement and Permits  
(EN-335)

On November 17, 1980, EPA promulgated amendments to Subtitle C of RCRA that suspended the applicability of the hazardous waste regulations to owners and operators of wastewater treatment and elementary neutralization units (45 FR 76074) (see 40 C.F.R. sections 264.1(g)(6) and 265.1(c)(10)). Since then, EPA has been asked to respond to numerous inquiries regarding the intended scope of these exemptions. Because the overwhelming majority of inquiries are with regard to the exemption for wastewater treatment units, this memo will focus on these units. Several attempts have been made to address the ambiguities of this exemption. On more than one occasion, the EPA responses have offered conflicting guidance.

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The office of Solid Waste is again receiving a flurry of inquiries on the scope of this exemption, apparently prompted by the July 14, 1986, promulgation of more stringent revised standards for hazardous waste storage/treatment tank systems (including sumps). Obviously, numerous individuals are hoping to qualify for the wastewater treatment unit exemption as a

-2-

means of avoiding being covered by the revised tank system standards. Thus, I feel that it is important that we review and clarify the scope of this exemption. The purpose of this memorandum is to obtain your concurrence with our reading of

the current exemption so that we could send a Policy Directive to the Regions regarding this matter and/or prepare a Federal Register notice of clarification.

In order for the exemption to be applicable to a wastewater treatment unit, these conditions, as listed in the definition of wastewater treatment unit under 40 C.F.R. Section 260.10, must be met:

- 1) The unit must be part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and
- 2) The unit receives and treats or stores an influent wastewater which is a hazardous waste as defined in section 261.3, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 261.3; and
- 3) The unit meets the definition of tank in section 260.10.

Most of the inquiries regarding the wastewater treatment unit exemption are directed towards interpretation of condition 1) above. Thus, our clarification of the intended meaning of the term "wastewater treatment facility" is the primary factor regarding the applicability of the exemption to a specific wastewater treatment unit.

It is our position that in order for a wastewater treatment

unit to be covered by the exemption, it must be part of an on-site wastewater treatment facility. In this scenario, any hazardous waste tank system that is used to store or treat the wastewater that will be, or has been, managed at the on-site wastewater treatment facility with an NPDES permit (or one that discharges to a POTW), is exempt from the regulations. Also, the means of conveyance of the waste between storage/treatment units does not affect the applicability of this exemption. Assuming the conditions discussed above are met, no distinction will be drawn whether the wastewater is piped, trucked, or otherwise conveyed to the wastewater treatment facility within the on-site boundaries of the facility generating the wastewater. Likewise, any tank system at a facility with an NPDES permitted wastewater treatment facility (or one that discharges to a POTW) that is used to store/treat wastewater that is brought on-site from another facility, is covered by the exemption.

However, any tank system that is employed in managing wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location is an NPDES permitted wastewater treatment facility (or one that discharges to a POTW), is not covered by this exemption.

Another scenario that needs to be clarified is that situation where a facility with an on-site wastewater treatment facility has no discharge, direct or indirect, to surface water. The wastewater treatment unit exemption is intended to cover only systems that 1) produce a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and, therefore, is subject to the NPDES or pretreatment requirements of the Clean Water Act, or 2) produce no treated wastewater effluent as a direct result of such requirements. This exemption is not intended to apply to wastewater treatment units that are not required to obtain an NPDES permit because they do not discharge a treated effluent (45 FR 76078; November 17, 1980). As a result, we anticipate that some facilities will apply for a zero-discharge NPDES permit in an attempt to qualify for this exemption and thus avoid RCRA regulation.

Please note that the above reading is based on our assumption that all storage/treatment tank systems covered by this exemption will be subject to regulation by NPDES authorities.

If you agree with this general approach, please designate someone to serve as a contact person for the Office of Water's review of our draft policy statement. We have been working with staff from the Office of General Counsel and the Office of Water Enforcement and Permits in developing the rationale to support our preferred reading of the current regulations. We have their tentative concurrence on this approach. I look forward to hearing from you regarding our efforts to clarify the wastewater treatment unit exemption. If you have any questions, please contact me at 382-4627 or have your staff contact Bill Kline or Bob Dellinger of my staff at 382-7917.

cc: Gene Lucero, WH-527  
Ron Brand, WH-562A  
Bruce Weddle, WH-563