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Wastewater Treatment Unit Exemption/RCRA: U.S. EPA Interpretive Letter Addressing Applicability to Wood Treatment Facilities

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The United States Environmental Protection Agency ("EPA") Office of Resource Conservation and Recovery addressed in a September 23rd letter the applicability of the Resource Conservation and Recovery Act ("RCRA") wastewater treatment unit ("WWTU") exemption at a wood treatment facility in the State of Oregon and implications for the industry as a whole.

The Office of Resource Conservation and Recovery Director Andrew Baca was responding to an August 28th correspondence from Jeffrey T. Miller of the Treated Wood Council ("TWC").

WWTUs are exempt from certain RCRA tank and permitting requirements if they meet criteria found in the definition for this equipment. See 40 CFR 260.10.

A WWTU is a device that:

1. Is part of a wastewater treatment facility subject to regulation under either Section 402 or 307(b) of the Clean Water Act;
2. Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR § 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 40 CFR § 261.3; and
3. Meets the definition of a tank or tank system in 40 CFR § 260.10.

EPA's primary rationale for promulgating the exemption was to avoid imposing duplicative permitting requirements. In the absence of an exemption, facilities could be subject to both the Clean Water Act National Pollutant Discharge Elimination System permit or a wastewater treatment permit along with a hazardous waste permit for the same unit. It was assumed that tanks used to handle hazardous wastewaters at such facilities would be provided oversight under the Clean Water Act.

TWC indicated that the facility it was discussing was concerned whether the material managed there, including wastewater-like material conveyed to sumps and the associated tank system, remains wastewater for purposes of the WWTU exemption.

EPA states that based on discussions with the Oregon Department of Environmental Quality (“ODEQ”) and an inspection, that the material managed in the facility's sumps and associated tank system does not appear to constitute wastewater for purposes of the WWTU exemption. This is described as an ODEQ facility-specific determination after examining the characteristics of the material actually being managed at the facility. Pursuant to the inspection observations, EPA states it understands the material in the sumps and tank system is no longer principally aqueous and does not fit the wastewater character necessary for the exemption.

EPA further notes that the material:

... appears to contain more than only a few percent organic constituents and to include concentrated preservative or other non-aqueous material (cited is RCRA Online documents No. 11020 [July 31, 1981] and No. 14472 [August 4, 2000]).

ODEQ is stated to have discussed potential operational changes with the facility that could provide a path to return to compliance with the WWTU exemption. Cited as example is the facility perhaps being able to improve segregation of preservative from the wastewater stream to restore the aqueous character necessary to support the exemption.

EPA concludes that based on its review, the state's approach appears consistent with the federal program and does not indicate a broader issue with the state's implementation of the WWTU exemption.

A copy of both the EPA and TWC correspondence can be found [here](#).