



OFFICE OF RESOURCE CONSERVATION AND RECOVERY

WASHINGTON, D.C. 20460

September 23, 2026

Jeffrey T. Miller
President & Executive Director
Treated Wood Council
1101 K Street, NW, Suite 700
Washington, DC 20005

Dear Mr. Miller:

This letter is in response to your August 28, 2026, correspondence to EPA regarding the applicability of the RCRA wastewater treatment unit (WWTU) exemption at a wood treatment facility in the State of Oregon and implications for the industry as a whole. With respect to the facility discussed in your letter, we understand your concern to be whether material managed there, including wastewater-like material conveyed to sumps and the associated tank system, remains wastewater for purposes of the WWTU exemption.

EPA reviewed the matter and discussed it with the state and EPA regional office. Based on the facts observed during a recent inspection, EPA agrees with Oregon Department of Environmental Quality. The material managed in the facility's sumps and associated tank system does not appear to constitute wastewater for purposes of the WWTU exemption. DEQ made a facility-specific determination after examining the characteristics of the material actually being managed at the facility. Based on the inspection observations, EPA 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. The material appears to contain more than only a few percent organic constituents and to include concentrated preservative or other non-aqueous material. (See RCRA Online documents No. 11020 (July 31, 1981) and No. 14472 (August 4, 2000).) EPA understands the state has discussed potential operational changes with the facility that could provide a path to return to compliance with the WWTU exemption. For example, the facility may be able to improve segregation of preservative from the wastewater stream to restore the aqueous character necessary to support the exemption.

EPA encourages the facility to continue engaging with the state on those steps. Based on EPA's 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.

Please contact Jeff Gaines of my staff at gaines.jeff@epa.gov with any questions or concerns.

Sincerely,

**ANDREW
BACA**

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BACA
Date: 2026.09.23 08:10:31
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Andrew Baca, Director
Office of Resource Conservation and Recovery



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(delivery via cook.steven@epa.gov)

August 28, 2026

US Environmental Protection Agency
Mr. Steven Cook, Principal Deputy Assistant Administrator
Office of Land & Emergency Management
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: State of Oregon Department of Environmental Quality
Interpretation of the RCRA Wastewater Treatment Unit
Exemption as Applicable to the Wood Preserving Industry

Dear Mr. Cook:

The Treated Wood Council (TWC) is submitting this correspondence on behalf of our membership to request the U.S. Environmental Protection Agency's (EPA) review regarding the applicability of the RCRA's wastewater treatment unit (WWTU) exemption at wood treatment facilities. This request arises from a recent interaction between one of our members and the Oregon Department of Environmental Quality (Oregon DEQ). However, the question presented has broader national significance for our members, and perhaps others that have also relied on EPA's longstanding interpretation of the scope of the WWTU exemption. Oregon's new – and novel – position on this issue is contrary to the well-established understanding of EPA's views on this issue and will have profound implications if not corrected.

TWC respectfully requests that EPA review this letter and accompanying materials. If, upon review, EPA determines that the Oregon DEQ's statements regarding EPA's position are inconsistent with the regulatory history, intent and longstanding compliance practices that have governed this issue as it applies to the wood treatment and other industries since promulgation of the RCRA rules in 1980, TWC requests that EPA provide written clarification. Such clarification is critical to ensuring that industry can continue to rely on established and well-understood regulatory requirements.

The Treated Wood Council

TWC is an international trade organization, composed of 600 member organizations, which represents the treated wood industry in all areas of government affairs. Our members

produce wood products treated with pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These products have been vital components of critical infrastructure in the U.S. for more than one hundred years. This infrastructure, in the form of railroads, electrical and communication systems, highways and bridges, and buildings used for public and private purposes, is essential to the economy and the high standards of living enjoyed in the U.S.

Since the treated wood industry, also known as the wood preserving industry or wood treatment industry, uses FIFRA-labeled pesticides to produce its products, it has always been a highly regulated industry. In addition to FIFRA, the industry is regulated under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and many other regulatory programs.

The Issue and Its Significance

TWC members are facing a critical issue concerning the applicability of RCRA's WWTU exemption set forth in 40 CFR § 264.1(g)(6) and § 265.1(c)(10) at wood treatment facilities. The Oregon DEQ has recently taken the novel position that the WWTU exemption does not apply to wood treatment facilities' wastewater treatment systems because these systems are not, in Oregon DEQ's new view, managing wastewater. Therefore, Oregon DEQ concluded that the RCRA Subpart W drip pad sumps and collection devices, and process wastewater treatment systems, including ancillary equipment, at these facilities must comply with the RCRA Subpart J tank standards found in 40 CFR § 265.190(c). This position is in direct opposition to the position taken by both the Oregon DEQ and EPA for more than 40 years, as explained in detail in the materials accompanying this letter.

TWC recognizes that authorized states may adopt requirements that are more stringent than the federal RCRA program; however, Oregon DEQ has expressly disclaimed reliance on such authority in this matter. Rather, the agency asserts that its position reflects the proper application of existing EPA guidance concerning the definition of "wastewater" under the WWTU exemption. Therefore, the question presented is fundamentally one of EPA's interpretation of federal law and guidance. Accordingly, TWC is seeking EPA's assistance in reaching a resolution of this issue because the state's position, while allegedly based upon EPA guidance, is in conflict with EPA's historic interpretation of this guidance as it applies to the wood preserving industry.

This issue is critical for wood treatment facilities across the nation, because every plant that treats with chromated copper arsenate, ammoniacal copper zinc arsenate, coal tar creosote, or facilities presently treating with, or that previously treated with, pentachlorophenol, relies upon the WWTU exemption.

At many plants, the Subpart W drip pad sump is large and extends the full length of the wood treatment cylinder and serves as additional secondary containment for the process tanks and treatment system. The material collected in drip pad sumps, pits, and trenches is sent to wastewater tanks for treatment. It would be impossible to retrofit this system to meet the Subpart J tank standards. To comply with Oregon DEQ's mandate, facilities would be required

to construct a completely new wood treatment plant, which would not be financially feasible. For this reason, the applicability of the RCRA WWTU exemption to drip pad sumps, collection systems and other wastewater treatment system components is of vital importance to our industry.

Background

The typical wood treating process operates generally in the following fashion. Prior to treatment with a liquid wood preservative, wood must be dried. Drying can be accomplished with ambient or elevated temperature air prior to the wood being placed in the treating cylinder or, for oil-borne systems, it may be accomplished in the treating cylinder itself, through either the Boulton Drying or Steam Conditioning processes, both of which generate an oily wastewater stream. After drying, liquid preservative is forced into the wood in the treatment cylinder under pressure until the required penetration and retention is obtained. The remaining preservative is returned to the work tank, and the treated wood is pulled from a treating cylinder and onto a drip pad. A mixture of spent wood preserving solution and wastewater is captured in the treating cylinder door pit, trough, trenches, and/or sumps associated with the drip pad system. In addition, the drip pad itself conveys any preservative drippage and wastewater to this collection system. The wastewater and the included spent preservative can be hazardous waste (typically F032, F034, or F035), if they were to be disposed of.

These liquids enter the RCRA-exempt wastewater treatment unit (WWTU). Preservatives recovered from the WWTU are reused in the process. At water-borne plants, the wastewater is used as makeup water to mix new preservative, and at oil-borne plants, the wastewater leaving the oil/water separator may receive additional treatment prior to discharge to a local sewage treatment plant, or to an evaporation system, or it may be used in the treating process cooling water system.

Regulatory Overview

A) The WWTU Exemption

Under RCRA Subtitle C and its implementing hazardous waste regulations, systems that constitute WWTUs are exempt from hazardous waste management requirements. *See* 40 CFR § 264.1(g)(6) and § 265.1(c)(10). In addition, qualifying wastewaters that are managed “immediately upon generation,” and wastewaters that meet the exclusion in 40 CFR § 261.4(a)(9), that are managed in on-site WWTUs need not be counted in a generator’s monthly waste calculations *See* 40 CFR § 262.13(c)(2) and § 261.4(a)(9). Such wastes are likewise not subject to RCRA subtitle C’s hazardous waste management program requirements for so long as they are stored in an exempt WWTU.

A WWTU is a system that:

(1) is “part of a wastewater treatment facility subject to regulation under either CWA section 402 [governing NPDES permitting] or section 307(b) [governing discharges to a publicly owned treatment work];”

(2) “receives and treats or stores an influent wastewater that is a hazardous waste . . . or that generates and accumulates a wastewater treatment sludge that is hazardous waste . . . or treats or stores a wastewater treatment sludge”; and

(3) meets the definition of a “tank” or a “tank system” in 40 CFR 260.10.

Thus, the system and its contents are exempt as a WWTU if the material being “receive[d] and treat[ed]” is “wastewater.” The sections of the RCRA regulations establishing the WWTU exemption, Parts 264 and 265, do not define “wastewater” for purposes of the exemption. As explained below and in the materials attached, however, the regulatory history demonstrates that EPA has determined that certain wood processing wastes constitute “wastewater” under the WWTU exemption.

B) History of the WWTU Exemption and its Applicability to the Treated Wood Industry and EPA’s Decision that Certain Wood Processing Wastes Constitute “Wastewater” under the WWTU Exemption

Given the long history of the treated wood industry and the fact that RCRA has been in place for many decades, there is a significant regulatory history concerning the applicability and compliance requirements of the program and how it affects the industry. In the early stages of RCRA, applicability and compliance issues were raised by the treated wood industry, and these issues were resolved between the industry and the EPA through written guidance, rulemaking, rule preamble language, and memoranda and letters, so that the regulatory and regulated community developed a common understanding of how to address the potential applicability and compliance issues.

When the F032, F034, and F035 waste listings and the RCRA Subpart W drip pad rules were proposed in 1988 and promulgated in 1990, the treated wood industry was aware of the vital importance of the WWTU exemption to drip pad sumps, collection systems and wastewater components.

Developing a clear understanding of these issues was one issue in settlement discussions with the Agency subsequent to legal action filed by the industry. The resolution of the issue - that drip pad sumps could be part of a RCRA-exempt WWTU - was reflected in preamble language to the final rule, published in the Federal Register on December 6, 1990 (55 Fed. Reg. 50,450). The preamble explains that “because some of the wastes listed [in the rule] are wastewaters, they may be managed in tanks that are part of wastewater treatment systems” and may be covered under the WWTU exemption. EPA then explained that to qualify under the exemption, the system must meet the WWTU criteria and must “treat or store an influent wastewater that is a hazardous waste.” In the preamble, EPA did not provide further detail on exactly what type of “influent wastewater” would qualify, but confirmed that WWTU systems that treat or store certain F032, F034, and F035 wastes “are exempt.” 55 Fed. Reg. at 50,480.

The applicability of the RCRA WWTU exemption was reiterated in a RCRA compliance guide for the wood treating industry published by EPA in 1996, as well as wood treating

industry-specific memoranda and letters published by the Agency, such as those found in Attachments 3 and 4 of Exhibit C in Appendix D and Attachment 1 of Exhibit F in Appendix D (attached). Of particular import to the definition of wastewater issue is the explanation found in Exhibit B of Appendix D (attached).

In sum, EPA has confirmed, repeatedly, that WWTU systems that treat or store certain F032, F034, and F035 wastes qualify for the WWTU exemption. TWC is not aware of any other instance in which a state has asserted EPA guidance compels the conclusion that the WWTU exemption does not apply because a facility is not managing wastewater.

The documents included with this letter are those associated with a current compliance case involving a facility in Oregon, Permapost Products, Inc. (Permapost), in Hillsboro, Oregon, which the Oregon DEQ says is not operating a RCRA-exempt WWTU because it is not managing wastewater. This is a new position, because the Oregon DEQ approved the construction of the WWTU in 1997 and gave written concurrence that it was a RCRA-exempt WWTU (see Exhibit E of Appendix D, attached). Permapost has continued to operate in the same manner since 1997 and has been inspected by the Oregon DEQ on a frequent basis since 1997 and there have never been any prior notices of violation issued that Permapost was not operating a RCRA-exempt WWTU. This same issue has been raised with other members of the industry in Oregon. The materials that constitute the key facts in this case are necessarily voluminous and include the notices of violation and correspondence from the Oregon DEQ as well as the responses provided by Permapost, which include the regulatory analyses presented by Permapost in support of its position. An explanation of all the appended material is found starting on the first page of the Attachment. To aid in accessing these materials, the list of materials contains links that can be clicked to go directly to the item. Simply click the page number to be taken to the document.

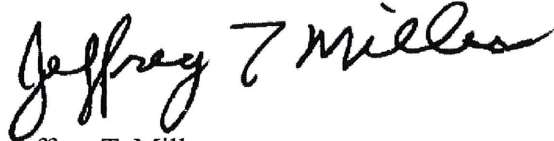
A discussion of this compliance issue with Permapost is included in Appendix A (attached). The specific case study information for Permapost that gave rise to this correspondence, is included in Appendices B, C, and D (attached).

Conclusion

Resolving this issue is important to our membership around the country due to the incorrect interpretation by the Oregon DEQ of this long-standing, regulatory compliance approach that the industry has taken for well over four decades, pursuant to EPA regulations and guidance documents. TWC requests that EPA review the materials provided with this letter and the regulatory history of the nature of wood treatment industry wastewater and the applicability of the RCRA WWTU exemption to the management of these wastewaters in the wood treatment industry. If that review indicates that the Oregon DEQ's statements regarding EPA's position are contrary to the regulatory history, regulatory intent, and historic regulatory compliance practices that have been applied to this and other industries since the RCRA rules were promulgated in 1980, TWC requests that EPA provide written clarification so that the industry has some confidence that the well understood and established regulatory requirements have not changed.

If the Agency believes that a meeting to discuss this issue would be helpful, TWC and our industry representatives are available at your convenience. If questions arise during the review of this request, or if additional information is needed, please let me know. TWC appreciates the opportunity to provide these comments, and looks forward to hearing from you after your review.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeffrey T. Miller". The signature is written in a cursive, flowing style.

Jeffrey T. Miller
President and Executive Director
Treated Wood Council

Attachment: Appendices A, B, C, and D (all in one document)

cc: Andrew Baca, Director, Office of Resource Conservation & Recovery
(baca.andrew@epa.gov)
Jake Tipton, Agriculture Advisor to Administrator (tipton.jake@epa.gov)