



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

September 9, 2022

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

Mr. Ethan R. Ware
Williams Mullen
1230 Main Street
Suite 330
Columbia, South Carolina 29201

Dear Mr. Ware:

Thank you for your letter of June 21, 2022, to the U.S. Environmental Protection Agency (EPA), requesting a Resource Conservation and Recovery Act (RCRA) interpretation of the wastewater treatment unit (WWTU) exemption's applicability to a unit storing hazardous wastewater prior to shipment off-site to a publicly owned treatment works (POTW).

You describe a facility that treats wastewater in an on-site wastewater treatment system, and then discharges that treated wastewater to a POTW. In addition, because of a unique facility configuration, a portion of the treated wastewater is temporarily stored in a tank (Tank One) prior to being trucked off-site to the POTW, pursuant to what you describe as a pump and haul permit issued under the Clean Water Act (CWA). You specifically ask whether Tank One is eligible for the WWTU exemption.

Under 40 CFR §§264.1(g)(7), 265.1(c)(10), and 270.1(c)(2), WWTUs are exempt from certain RCRA tank and permitting requirements when they meet the criteria in the definition of a WWTU at 40 CFR 260.10. According to that definition, a WWTU is a device that:

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

An additional consideration in determining eligibility for the exemption is discussed in the preamble to the September 2, 1988, Federal Register notice. EPA states, at 53 FR 34080:

"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.

EPA intends that this exemption apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. However, if a tank system, in addition to being used in conjunction with an on-site wastewater treatment facility, is used on

a routine or occasional basis to store or treat a hazardous wastewater prior to shipment off-site for treatment, storage, or disposal, it is not covered by this exemption. Unless the tank system otherwise qualifies for some other exemption, it would be subject to the revised standards for hazardous waste tank systems.”

Because wastewater is trucked off-site from Tank One, we find the tank is not eligible for the WWTU exemption. The underpinnings of the exemption, stemming from 1980, rely on discharges being subject to sections 402 or 307b of the Clean Water Act. Section 402 relates to direct discharges to bodies of water, and 307b relates to pre-treated discharges to POTWs via pipeline. The Agency provides discussion of this requirement in 53 FR 34080 (September 2, 1988) which states that:

“. . . the wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces 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) produces no treated wastewater effluent as a direct result of such requirements.”
(Emphasis added.)

Similar language appears in 45 FR 76078 (November 17, 1980).

Your letter also presents a discussion of EPA policies regarding the WWTU exemption, addressing conveyance of wastewater on-site, shipment of waste off-site, and examples where adjacent facilities share access to POTWs.

Your discussion of conveyance cites RO 13112 where we state that “. . . no distinction will be made whether wastewater is piped, trucked or otherwise conveyed . . .” However, the context of that language is “. . . within the on-site boundaries of the facility generating the wastewater,” and does not refer to conveyance of wastewater between facilities. That same context is presented in rule preamble at 53 FR 34080.

Regarding off-site shipments, you state that “EPA has recognized prohibiting all off-site shipment of hazardous wastewater from WWTUs in all cases makes the Off-site Limitation unworkable,” citing RO 13226. However, that document discusses the removal and off-site shipment of sludges and tank bottoms from a tank as a common practice in wastewater treatment operations. That document then concludes by stating that “The intent of the September 2, 1988 notice was to clarify that the exemption does not apply to those tanks that are used to store or treat a hazardous waste/wastewater prior to shipment (either on a part-time or full-time basis) to off-site facilities rather than manage it in an on-site wastewater treatment facility.”

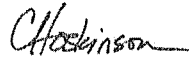
Regarding facilities sharing access to a POTW, you noted that EPA applied the WWTU exemption to a facility that discharged to another facility prior to discharge to a POTW (RO 11519). The wastewater conveyance in the scenarios presented appear to be via pipeline, not transport vehicle, and thus not applicable to the scenario you describe in your letter.

While we find Tank One is not eligible for the WWTU exemption, the unit may be exempt from permitting as a generator accumulation unit, subject to the requirements of §262.17.

Please note that this letter discusses the federal RCRA hazardous waste regulations as they pertain to the WWTU exemption. Since a state authorized to administer and enforce the RCRA program may be more stringent than the federal program, we recommend also consulting with the authorized state regulatory

authority about their provisions regarding the WWTU exemption. If you have specific questions for South Carolina, I recommend you reach out to Shawn Clarke, (803) 898-4157 or clarkesm@dhec.sc.gov. If you have questions for EPA, please contact Jeff Gaines of my staff at (202) 566-0332 or gaines.jeff@epa.gov.

Sincerely,



Digitally signed by
CAROLYN HOSKINSON
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Carolyn Hoskinson, Director
Office of Resource Conservation and Recovery

cc: Meredith Anderson, EPA Region 4
Shawn M. Clarke, P.E., SCDHEC
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WILLIAMS MULLEN

Ethan R. Ware
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June 21, 2022

VIA U.S. Mail

Carolyn Hoskinson, Director
Office of Resource Conservation and Recovery
Office of Land and Emergency Management
United States Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Mail Code 5301P
Washington, D.C. 20460

Re: Request for Interpretive Guidance on Applicability of Wastewater
Treatment Unit Exemption

Dear Ms. Hoskinson:

We represent manufacturers subject to the Resource Conservation and Recovery Act (RCRA), 42 USC 6901 to 6992k. Because of confusion presented by Office of Solid Waste Emergency Response (OSWER) Permit Compendium directives, we are writing to request clarification of the wastewater treatment unit exemption ("WWTU Exemption") for wastewater treatment units (WWTUs) storing wastewater prior to transportation off-site pursuant to a Clean Water Act permit.

QUESTION PRESENTED

Does the WWTU Exemption apply to a tank system storing wastewater from an onsite wastewater treatment system, which discharges wastewater offsite to a publicly owned treatment works (POTW) by overland transport pursuant to a pump and haul permit issued under the Clean Water Act?

FACTS ASSUMED

A facility pipes wastewater to an onsite wastewater treatment system operated pursuant to a State wastewater treatment permit. The wastewater treatment system discharges treated wastewater to a local publicly owned treatment works (POTW) pursuant to a pretreatment permit. Because of its current design, a portion of the treated wastewater is temporarily stored in an onsite tank identified as "Tank One" and periodically shipped off-site to the POTW by truck pursuant to a "pump and haul" permit issued under the Clean Water Act to keep the entire wastewater treatment system operating. The contents of Tank One may exhibit the characteristic of hazardous waste

due to toxicity, and Tank One meets the definition of a "Tank" under applicable regulations.

DISCUSSION OF LAW

Pursuant to RCRA regulations, WWTUs are excluded from RCRA hazardous waste generator and permitting requirements. 40 CFR 264.1(g)(6); 40 CFR 265(c)(10). For the purposes of the WWTU Exemption, a WWTU is defined as requiring the following criteria:

- (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 must receive and treat or store an influent wastewater which is a hazardous waste as defined in section 261.3, or generate and accumulate a wastewater treatment sludge which is a hazardous waste as defined in section 261.3, or treat or store a wastewater treatment sludge which is a hazardous waste as defined in section 261.3; and
- (3) The unit must meet the definition of tank.

40 CFR 260.10; EPA Memorandum: "RCRA Subtitle C Exemption for Wastewater Treatment and Elementary Neutralization Units", OSWER Permit Compendium No. 9471.1987(02), RCRA Online No. 13112 (December 21, 1987) ("WWTU Memorandum").

EPA has generally declined to extend the WWTU Exemption to tanks storing hazardous wastewater prior to shipment off-site for disposal like Tank One. "EPA intends [the WWTU Exemption] apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. However, if a tank system, in addition to being used in conjunction with an on-site wastewater treatment facility, is used on a routine or occasional basis to store or treat a hazardous wastewater prior to shipment off-site for treatment, storage, or disposal, it is not covered by this [WWTU Exemption]." 53 Fed. Reg. 34079, 34050 (September 2, 1988).¹

EPA has recognized prohibiting all offsite shipment of hazardous wastewater from WWTUs in all cases makes the Off-site Limitation unworkable. In 1988, EPA concluded removal of wastewater treatment sludges and tank bottoms for off-site disposal "should not disqualify these tanks from the [WWTU] exemption, provided that this occurs as part of the normal wastewater treatment activities," RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY, "Definition of Wastewater Treatment Unit", OSWER Permit Compendium No. 9432.1988(05), RCRA Online No. 13226 (October 1988). A few years later, EPA applied the WWTU Exemption to a WWTU tank at one facility, which discharged wastewater to another facility and thereafter sent the wastewater for off-site treatment, as long as the discharge from the on-site WWTU tank complied with categorical standards applicable to both facilities. EPA Letter: Bussard to Mulligan, Faxback No. 11519, Example Nos. 3 and 5 (June 1, 1990).

¹ For ease of reference, this general limitation to the WWTU Exemption is called the "Off-site Limitation" in this letter.

June 21, 2022

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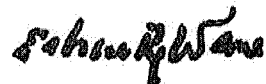
Use of trucks to transport wastewater from an onsite WWTU like Tank One is not significant to the WWTU Exemption. The mechanism for how wastewater is conveyed between tank systems and ancillary equipment has never been dependent on use of a pipeline. See, 53 Fed. Reg. at 34050; WWTU Memorandum, p. 3. Because there is no requirement that components of the wastewater units in a facility be connected, there is no reason why wastewater could not be piped, trucked, or otherwise conveyed from one wastewater unit to another. *Id.*

The WWTU Exemption "revolves around whether or not a facility is subject to sections 307(b) or 402 of the Clean Water Act". EPA Letter: Bussard to Mulligan, Faxback No. 11519 at 1. EPA has made it clear the "primary reason for the [WWTU] exemption is to avoid imposing duplicative requirements pursuant to both a NPDES permit and a RCRA permit for the same unit." EPA Letter: Lowrance to Cervino, OSWER Permit Compendium No. 9522.1992(01), RCRA Online 13526 (January 16, 1992).

REQUESTED ACTION

We request an interpretation of the WWTU Exemption as it applies to Tank One in the Facts Assumed. It is acknowledged Tank One may otherwise be considered a hazardous waste accumulation tank if the WWTU Exemption does not apply. However, Tank One is a tank storing wastewater; the tank and its effluent are subject to Clean Water Act permits, even though overland transport is used; and the tank only periodically is emptied for maintenance of the WWTU system.

Sincerely,



Williams Mullen
Ethan R. Ware