Division of Environmental Response and Revitalization
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Environmental Protection Agency

The Wastewater Treatment Unit Exemption Under Ohio Hazardous Waste Rules

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Hazardous Waste Program

This guidance document supersedes the March 1995, guidance document titled "Clarification on the Wastewater Treatment Unit Exemption" and provides guidance and clarification of when wastewater treatment units (WWTUs) qualify for exemption from regulation as hazardous waste management units and the hazardous waste permitting requirements. This guidance is intended for Ohio EPA, Division of Environmental Response and Revitalization (DERR) inspectors, as well as facilities interested in learning more about which wastewater treatment units are exempt from complying with the hazardous waste management unit standards and hazardous waste permitting requirements.

This guidance addresses the following issues:

- The regulatory interface between a national pollutant discharge elimination system (***NPDES***) permit of the Clean Water Act (***CWA***) and the exemptions for WWTUs under the hazardous waste rules, particularly when:
    - tanks are not directly connected to a WWTU;
    - the on-site WWTU treats wastewater generated off-site; or
    - zero discharge is involved.
- Units not covered under the WWTU exemption;
- The additional exclusions for domestic sewage; and
- The permitted discharge from a WWTU.

What is the Regulatory Basis for the WWTU Exemption?

When U.S. EPA promulgated the exemption, they stated that the primary reason for it is to avoid imposing duplicative permitting requirements. Without this exemption, facilities could be subject to both an NPDES permit or a wastewater pretreatment permit *and* a hazardous waste permit for the same unit[1]. The underlying assumption U.S. EPA used in justifying the WWTU exemption was that tanks used to handle hazardous wastewaters at these facilities would be provided with oversight under the CWA[2], thereby ensuring no significant decrease in environmental control.

The basis for the wastewater treatment exemption lies in four rules: a rule that defines a WWTU, a rule that exempts owners and operators of WWTUs from permitting requirements and rules that exempt owners and operators of WWTUs from compliance with hazardous waste management standards, both final and interim. Keep in mind that these rules do not limit the exemption from permitting or the exemptions from compliance with the hazardous waste management standards to wastewater treatment tank systems that are only used to treat onsite-generated wastewater or wastewater treatment sludge. The exemption can extend to wastewater that is generated off-site. The first of the

four rules serves as the basis for the WWTU exemption. Ohio Administrative Code (OAC) rule ***3745-50-10*** defines a WWTU. A WWTU is a device that meets the definition of a tank or tank system, as defined in OAC rule ***3745-50-10*** that is part of a wastewater treatment facility subject to regulation under Sections ***402*** or ***307(b)*** of the CWA. This device is used to receive, treat or store influent hazardous wastewater or generate and accumulate hazardous wastewater treatment sludge or to treat or store hazardous wastewater treatment sludge. OAC rule ***3745-50-45(C)(5)*** is the next WWTU rule and provides that owners and operators of WWTUs, as defined in OAC rule ***3745-50-10***, are not required to obtain a hazardous waste permit. OAC rules ***3745-54-01(G)(6)*** and ***3745-65-01(C)(10)*** exempt owners and operators of WWTUs from compliance with hazardous waste management standards, both final and interim. The rules provide that the owner or operator of a WWTU is not required to comply with the OAC Chapters ***3745-54 to 3745-57*** and ***3745-205*** or Chapters ***3745-65 to 3745-69*** and ***3745-256***.

What is the WWTU Exemption[1]?

To qualify for the WWTU exemption found in OAC rules ***3745-54-01(G)(6)*** and ***3745-65-01(C)(10)*** and exclusion from hazardous waste permitting found in OAC rule ***3745-50-45(C)(5)***, a unit must meet the definition of a WWTU. A WWTU is defined as a device which:

1) Is part of a wastewater treatment facility that is subject to regulation under either Section ***402*** or Section ***307(b)*** of the Clean Water Act (CWA);
2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in OAC rule ***3745-51-03***, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined by OAC rule ***3745-51-03*** or treats or stores a wastewater treatment sludge which is a hazardous waste as defined by OAC rule ***3745-51-03***; and
3) Meets the definition of tank or tank system in OAC rule ***3745-50-10***.

The WWTU exemption allows the owner or operator of a WWTU to treat or store hazardous wastewater and sludge in a tank or tank system that is part of a WWTU without a hazardous waste permit and without complying with the hazardous waste management standards, specifically the hazardous waste tank standards.

However, the exemption is only for the wastewater management unit and not the hazardous waste (e.g., wastewater or sludge) that is treated or managed within the unit or removed from the unit. In fact, in order to comply with waste evaluation and land disposal restriction requirements, the generator must evaluate its wastewater prior to it being treated in the WWTU. If the waste is listed, any treatment sludges generated from the wastewater treatment unit would be listed hazardous wastes.

In addition, OAC rule ***3745-270-03(B)*** states that treatment of characteristic hazardous waste can be conducted in WWTUs unless the hazardous waste has a treatment standard other than DEACT or is reactive (D003) due to the presence of cyanide. This means that ignitable, high TOC non-wastewater cannot be treated in a WWTU because the treatment method is specified as combustion, recovery of organics or polymerization.

When hazardous waste that subsequently becomes exempt from regulation (I. e., point source discharge or becomes mixed with domestic sewage) is managed in a wastewater treatment unit, the generator must place a one-time notice in its files describing how the waste was generated, its subsequent exemption from regulation and its final disposition, per OAC ***3745-270-07***(A)(7). Additionally, any hazardous waste releases or treatment residuals generated from the WWTU process must be managed in compliance with the hazardous waste management regulations when it leaves the exempted unit. This includes when an owner or operator routinely releases hazardous wastewater to the land, ground, and surface water or into the air without attempting to clean it up or to prevent future releases.

[1] Although treatment in a WWTU is exempt from permitting, it is not exempt from treatment fees if the facility is a commercial wastewater treatment facility receiving hazardous waste from off-site sources (OAC rule ***3745-50-35***).

The Wastewater Treatment Unit Exemption

A commonly generated waste from wastewater treatment operations is sludge. A sludge is not exempt from hazardous waste management regulations. A sludge includes any solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, exclusive of the treatment effluent from a wastewater treatment plant. A sludge generated from treatment of listed hazardous wastewaters are a listed hazardous waste in accordance with the derived-from requirements in OAC rule 3745-51-03(C)(2)(a). Some sludge generated from treatment of wastewaters from specific industrial processes are listed wastes regardless of whether the wastewater is hazardous or not (i.e., F006, F019, F037, F038, K048, K050 and K051).

What is Wastewater Under the WWTU Exemption?

The term "wastewater," in the context of the WWTU exemption, is not defined in Ohio's rules or statute. Wastewater discharges from an exempt unit are regulated under the CWA. Any waste that is authorized to be treated in a WWTU[3] under a CWA wastewater permit can be managed in the exempt unit.

What Type of Units are Eligible for the WWTU Exemption?

U.S. EPA has determined which units are subject to the CWA, and therefore eligible for the WWTU exemption. In Volume 53 of the ***Federal Register***, U.S. EPA states that "the WWTU exemption is intended to cover only tank systems that are part of a wastewater treatment facility that:

- produces a treated wastewater effluent which is discharged into surface waters or into a Publicly Owned Treatment Works (POTW)** sewer system and therefore is subject to the National Pollutant Discharge Elimination System (***NPDES***)*** or pretreatment requirements of the CWA, or
- produces no treated wastewater effluent as a direct result of such requirements. This exemption is not intended to apply to WWTUs that are not required to obtain an ***NPDES*** permit because they do not discharge treated effluent[2]." It is not necessary that a CWA permit actually be issued in order for the unit to be eligible for the WWTU exemption under the hazardous waste rules; it is sufficient that the unit be subject to the requirements of the ***CWA***.

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Tanks and tank systems are covered under the exemption. What are they?

To be eligible for the WWTU exemption, treatment must be conducted in a device that meets the definition of a tank or tank system[4].

A "tank" is defined in OAC rule ***3745-50-10*** as a stationary device designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support. A "tank system" is a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system, as defined in OAC rule ***3745-50-10***.

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[2] A POTW is defined in OAC rule ***3745-50-10*** as any device or system used in the treatment (including, but not limited to, recycling and reclamation of hazardous wastes) of municipal sewage or industrial wastes of a liquid nature which is owned by the state or a municipality (as defined by Section ***402*** of the CWA). This definition includes sewers and pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

[3] An ***NPDES*** permit is defined in OAC rule ***3745-33-01*** as a permit issued by the state of Ohio for a discharge which is either in compliance with authorized effluent discharge levels or which includes a schedule which will bring the point source into compliance with authorized discharge levels, including zero discharge (see discussion on zero discharge).

The Wastewater Treatment Unit Exemption

Are tanks not directly connected to the WWTU exempt?

They can be. For a tank to be covered by the exemption, it must be part of an on-site WWTU. On-site is defined in OAC rule 3745-50-10, in short, to mean the same or geographically contiguous property which may be divided by public or private right-of-way. Components of the on-site WWTU are not required to be mechanically or physically connected and means of conveyance of the waste between storage and treatment does not affect the applicability of this exemption. Wastewater may be piped, trucked or otherwise conveyed from one wastewater unit tank to another as long as the tank is used solely for treatment of wastewater on-site at the facility [5,6].

Accordingly, any on-site hazardous waste tank or tank system that is used to store or treat the wastewater that is ultimately managed at the on-site WWTU is considered part of the WWTU and is included under the exemption.

However, if a tank, in addition to being used in conjunction with an on-site WWTU, is used on a routine or occasional basis to store or treat any hazardous waste prior to shipment off-site for treatment, storage or disposal, it is not included under this exemption. Unless the tank system otherwise qualifies for some other exemption, it is subject to the applicable hazardous waste rule(s), including hazardous waste permitting requirements.

Is a zero discharge system an exempt system?

It can be. A zero discharge system is a type of wastewater treatment system that does not have a discharge to a POTW or to waters of the state. This is one instance where a system (unit) is only subject to the requirements of the CWA. There are two types of facilities with discharge systems that do not discharge wastewater. There are facilities that are not required to obtain an ***NPDES*** permit because they do not discharge treated effluent and there are facilities that produces no treated wastewater as a direct result of CWA requirements[7]. In the first case, the facility never had a surface water discharge, and therefore was never subject to NPDES permitting or CWA requirements. The hazardous waste exemption is not available in this case. In the second case, the facility had a surface water discharge at one time but has since eliminated the discharge as a result of, or by exceeding, NPDES or pretreatment requirements.

Such a facility would qualify for the WWTU exemption under the hazardous waste rules unless the facility has been ordered to stop discharging because it is not meeting their discharge standards. If the facility has been ordered to stop discharging, then their own willfulness not to comply with the standards – and not the standards themselves – have caused them to cease discharging. In this situation, the facility would not qualify for the WWTU exemption; their tanks would be regulated as hazardous waste tanks if the waste contained in them is hazardous.

To qualify for the WWTU exemption, the unit must be part of a wastewater treatment facility subject to regulation under either section ***402*** or ***307(b)*** of the CWA. The facility must either be subject to NPDES permitting requirements under section 402 be subject to an effluent guideline issued under sections 307(b) and 402 of the CWA or be subject to the pretreatment requirements of 307(b) of the CWA. According to U.S. EPA, these requirements ensure that no significant decrease in environmental control occurs at a wastewater unit treating or generating hazardous waste[8].

A zero-discharge wastewater system must be subject to NPDES permitting requirements, applicable effluent guideline or pretreatment standard specifying zero discharge to qualify as a WWTU.

Pursuant to a DSW or POTW enforcement action, a facility is ordered to stop discharging wastewater because it violated the CWA by causing the discharge of partially treated metal finishing wastes into the City's municipal sewer system. Is the facility operating an exempt WWTU unit?
No. The facility was ordered to eliminate the discharge under CWA authorities because it illegally discharged constituents above the permit limit. It would not be operating a zero-discharge system. There is a distinction between companies that are ordered to cease discharging because of violation of the CWA and NPDES standards and/or pretreatment effluent standards - and those who either have a standard of zero set by the CWA or standards so low that the technology does not exist to meet the standard.

The Wastewater Treatment Unit Exemption

Is a sludge dryer an exempt unit?

Yes, when it meets the definition of a tank or tank system that is part of a WWTU. In the November 17, 1980 ***Federal Register***, U.S. EPA states that the definition of "wastewater treatment unit" is "meant to include sludge digesters, thickeners, dryers and other sludge processing tanks of POTWs in which hazardous wastewater treatment sludge is treated; and any POTW tanks used for storage of such sludge.

It also covers similar devices in industrial wastewater treatment systems which (1) produce a treated wastewater effluent that is discharged to surface water or into POTW sewer system and therefore is subject to ***NPDES*** or pretreatment requirements of the CWA, or (2) produces no treated wastewater effluent as a direct result of such requirements.[9]"

As stated above, when sludge dryers meet the definition of a tank or tank system that is part of a WWTU, they are exempt from hazardous waste regulation. To further clarify this, U.S. EPA promulgated a definition of "sludge dryer" and specifically excluded them in the definition of incinerator. Ohio EPA adopted the sludge dryer definition in the Fall 2004. A sludge dryer is defined in OAC rule ***3745-50-10*** as any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of two thousand five hundred
British thermal units (Btu) per pound of sludge treated on a wet-weight basis. Sludge dewatering (dehydration/drying) is often a component of wastewater treatment activities. Many sludge dryers have been determined to meet the definition of a tank[10].

Sludge dryers are not incinerators and were not intended to be regulated as incinerators. Even though direct-fired dryers may appear to meet the current definition of incinerator, sludge dryers were specifically excluded from the definition[11]. Therefore, all sludge dryers meeting the criteria in OAC rule ***3745-50-45(C)(5)*** are eligible for the WWTU exclusion provided the equipment meets the definition of a component of a WWTU in OAC rule ***3745-50-10***.

> ***If my facility has a Permit to Install, is my WWTU exempt?***
> Not always. In Ohio, facilities that want a new disposal system are required to obtain a Permit to Install (PTI) from the director of Ohio EPA through OAC Chapter ***3745-42***. This permit doesn't automatically subject the facility to the CWA. In a situation where a unit does not discharge treated effluent, and the unit was not required to eliminate the discharge because of the CWA, the unit is not subject to the CWA, and therefore the WWTU exemption does not apply.

However, sludge dryers [processing hazardous waste] not eligible for the WWTU exclusion, including direct and indirect-fired units, must comply with either the hazardous waste interim status standards of OAC rules ***3745-68-70 to 3745-68-83***, the permit standards of OAC Chapter ***3745-50*** and OAC rule ***3745-57-90 to 3745-57-93*** or the treatment unit standards of OAC rules ***3745-69-01 to 69-06***[12].

What Units or Wastes are not Covered Under the WWTU Exemption?

As stated earlier in this guidance, U.S. EPA has determined which units are subject to the CWA, and therefore eligible for the WWTU exemption. In Volume 53 of the Federal Register U.S. EPA identifies which units the exemption is intended to cover. The exemption is NOT intended to cover incinerators, sludge dryers not meeting the criteria in OAC rule ***3745-50-45(C)(5)***, surface impoundments or non-wastewater treatment unit tanks. Additionally, the WWTU exemption is not intended to cover any hazardous waste that is treated or managed within the unit or removed from the WWTU.

The Wastewater Treatment Unit Exemption

Is an incinerator an exempt unit?

No. The hazardous waste permit exclusion provided by OAC rule ***3745-50-45(C)(5)*** does not apply to incinerators. Incinerators processing hazardous waste are subject to OAC rules ***3745-57-40 to 3745-57-51*** or ***3745-68-40 to 3745-68-52*** even when part of a wastewater treatment system[12].

Is a sludge dryer that doesn't meet the criteria in OAC rule 3745-50-45 an exempt unit?

No. Sludge dryers [processing hazardous waste] that don't meet the criteria in OAC rule ***3745- 50-45***, including direct- and indirect-fired units, are not eligible for the WWTU exclusion. These types of sludge dryers must comply with either the hazardous waste interim status standards of OAC rules ***3745-68-70 to 3745-68-83***, the permit standards of OAC Chapter ***3745-50*** and OAC rule ***3745-57-90 to 3745-57-93*** or the treatment unit ***standards*** of OAC rules ***3745-69-01 to 69-06***[12].

Is a surface impoundment an exempt unit?

No. A surface impoundment that is part of a WWTU is *not* exempt from the hazardous waste management standards or from hazardous waste permitting. A surface impoundment is defined in OAC rule ***3745-50-10*** to be either a facility or part of a facility which is a natural topographic depression, manmade excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

Examples of surface impoundments are holding, storage, settling and aeration pits, ponds and lagoons. Historically, there have been some difficulties in differentiating between the definitions of a surface impoundment and a tank. Some have argued that a surface impoundment could be considered ancillary equipment to a tank.

One of the primary differences between surface impoundments, tanks and ancillary equipment to a tank for the purpose of interpreting whether the hazardous waste rules apply to a particular waste management unit (surface impoundment) is the unit's structural integrity[13].

Tanks must be constructed of man-made materials such as metal or Fiberglas and can be constructed of concrete; a tank cannot be constructed of earth. The man-made material provides structural support for the tank. A unit constructed of earthen material would be a land-based unit, such as a surface impoundment. Sumps, which are essentially man-made reservoirs built into the ground and designed to capture wastewater from floors, troughs or trenches, can qualify as tanks if they are concrete lined and structurally sound.

Sumps that are not lined, or are lined with material that would allow releases of the wastewater (i.e., bricks without mortar), would not meet the definition of a tank.

Is hazardous waste that is removed from a WWTU covered by the exemption?

No. Although exempted from permitting requirements while in WWTUs, any hazardous waste that is removed from the tanks is subject to all applicable hazardous waste rules. For example, if sludge is removed from a sludge dryer that is a component of wastewater treatment unit, once the sludge is placed into a hopper, it is subject to the full hazardous waste regulations including but not limited to; container and generator management requirements because the hopper is a container and therefore no longer a part of the wastewater treatment unit.

The Wastewater Treatment Unit Exemption

Does the Exemption Apply to WWTUs Accepting Wastewater Generated from Off-Site Sources?

Yes, the WWTU exemption is applicable to WWTUs accepting wastewater generated from off-site sources. The applicability of the WWTU exemption does not depend on whether the WWTU treats wastewater generated on-site or received from off-site.

Nothing in the rules that set forth the exemption requires the WWTU to be on-site.

This was discussed by U.S. EPA in several of their memoranda and letters. Under hazardous waste manifest regulations, a generator is required to send hazardous waste to a "designated facility." A WWTU operating lawfully under federal and state law qualifies as a "designated facility," and therefore can receive hazardous wastewater from off-site[14]. This concept was reiterated in the September 2, 1988, ***Federal Register***[15]. Therefore, a facility operating a WWTU under the WWTU exemption, is allowed to accept wastewaters which are generated off-site and that are listed hazardous wastes or display a characteristic of a hazardous waste. However, a commercial wastewater treatment facility receiving hazardous waste from off-site sources is not exempt from treatment fees (***OAC rule 3745-50-35***). Additionally, all wastes generated from the treatment process, including any wastewater treatment sludge, must be evaluated to determine if any characteristics apply or whether it is a listed waste[16].

If the influent wastewater is a listed hazardous waste, wastes generated from the treatment process would carry the listing pursuant to the derived-from rule. All hazardous wastes generated from the treatment process must be managed in accordance with Ohio's hazardous waste rules.

If a facility stores wastewater that are hazardous wastes on-site in containers or in non-WWTU tanks, the facility is required to obtain an Ohio hazardous waste storage permit for those containers or tanks[17]. However, if these hazardous wastewaters are only managed in an on-site wastewater treatment system (off-site wastewater cannot be stored in generator accumulation tanks that are not part of the WWTU), no storage permit is required as they are considered to be part of the WWTU. There is no requirement that all components of the wastewater unit in a facility be mechanically connected to be considered part of the wastewater treatment facility, as long as the component is used solely for storage or treatment of wastewater in an on-site WWTU at the facility.

Does the Exemption Apply to Facilities Shipping Their Waste Off-Site to Wastewater Treatment Facilities?

No. The exemption does not apply to the facility sending wastewater off-site; it only applies to the wastewater treatment facility. The facility sending wastewater off-site must manage that wastewater according to the hazardous waste rules, including manifesting its wastewater to the wastewater treatment facility.

What are the Exclusions from the Hazardous Waste Regulations that are Closely Related to the WWTU Exemption?

As stated previously, the WWTU exemption is solely intended for the unit and not the hazardous waste that is treated /managed within the unit or removed from the unit. There are other hazardous waste regulations that address the waste that is treated /managed within the unit or removed from the unit. For example, the domestic sewage exclusion and the exclusion for industrial wastewater discharges (permitted discharge from WWTUs) involve similar wastewater treatment issues, but are not part of the WWTU exemption.

What is the domestic sewage exclusion?

Domestic sewage, for the purposes of OAC Chapter ***3745-51,*** is untreated sanitary wastes that pass through a sewer system. The domestic sewage exclusion is located in ***OAC rule 3745-51-04(A)(1)***. This rule excludes from hazardous

waste regulation domestic sewage and any mixture of domestic sewage and other wastewaters that pass through a sewer system to a POTW for treatment[18].

The domestic sewage exclusion covers hazardous industrial wastewaters mixed with domestic sewage prior to discharge to POTW sewers, even if the industrial wastewaters would otherwise be considered hazardous waste.

Under the domestic sewage exclusion, facilities discharging domestic sewage and domestic sewage mixtures to POTWs are not subject to hazardous waste generator requirements. Additionally, POTWs receiving such domestic sewage are not required to comply with hazardous waste permitting requirements with respect to these wastes.

POTWs that manage wastes which have not passed through the sewer system and are mixed with domestic sewage would be subject to all applicable hazardous waste regulations. A listed hazardous waste treated in a POTW that does not travel through a sewer system is not afforded the domestic sewage exclusion. Therefore, a POTW that accepts listed hazardous waste for direct discharge to the treatment system must manage any waste generated from treatment of that listed hazardous waste as a listed hazardous waste due to the derived-from rule[19].

All discharges to POTWs must be in compliance with pretreatment limitations and other requirements set by the POTW. U.S. EPA has interpreted that the exemption extend only to wastes which enter the system at or near the point of generation and actually "mix with sanitary wastes in a sewer system leading to a POTW." Also, U.S. EPA determined that "...a waste falls within the domestic sewage exemption when it first enters a sewer system that will mix it with sanitary wastes prior to storage or treatment by a POTW[20]."

If hazardous wastewater is not directly discharged into POTW sewers, it must be managed according to the applicable hazardous waste regulations until it is discharged (Of course, if the pretreatment system is a wastewater treatment system, then it is exempt from regulation).

Prohibited discharges to POTWs are identified in ***OAC rule 3745-3-04***. According to this rule, "pollutants introduced into POTWs by an industrial user shall not pass through the POTW or interfere with the operation or performance of the POTW.

These general prohibitions and the specific prohibitions in paragraph (B) of this rule apply to all sources of indirect discharge whether or not the source is subject to other national, state or local pretreatment standards or requirements." This rule lists the following described substances as those which shall not be introduced to a POTW:

1) Pollutants which create a fire or explosion hazard in the POTW including, but not limited to, waste streams with a closed cup flashpoint of less than one hundred forty degrees Fahrenheit or sixty degrees Celsius (C) using the test methods specified in ***40 CFR 261.21***;
2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the POTW is specifically designed to accommodate such discharges;
3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in sewers, or other interference with the operation of the POTW;
4) Any pollutant, including oxygen demanding pollutants, released in a discharge at a flow rate and/or pollutant concentration as to cause interference in the POTW;
5) Heat in amounts that will inhibit biological activity in the POTW treatment plant resulting in interference or causing damage, but in no case heat in such quantities that the temperature exceeds forty degrees C (one hundred four degrees F) at the POTW treatment plant unless the director, upon request of the POTW, approves an alternate temperature limit;
6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or

8) Any trucked or hauled pollutants, except at discharge points designated by the POTW

Hazardous wastes delivered to a POTW by truck, rail or dedicated pipe are not covered by the domestic sewage exclusion and are subject to regulation under the hazardous waste rules.

What is the industrial wastewater discharge exclusion?

The exclusion in ***OAC rule 3745-51-04(A)(2)*** covers industrial wastewater discharges that are point-source discharges subject to regulation under Section ***402*** of the CWA and excludes them from regulation as hazardous waste. This exclusion has nothing to do with the unit. The exclusion only applies to the discharge and does not exclude industrial wastewaters while they are being collected, stored or treated before discharge; nor does it exclude sludge's that are generated by industrial wastewater treatment.

The Resource Conservation and Recovery Act (RCRA) Section 1004 (27) excludes from the definition of solid waste "solid or dissolved materials in domestic sewage…or solid or dissolved materials in industrial discharges which are point sources subject to permits under [section 402 of the Clean Water Act]." For the purposes of the RCRA program, U.S. EPA has consistently interpreted the language "point sources subject to permits under [section ***402*** of the Clean Water Act] " to mean point sources that should have an ***NPDES*** permit in place, whether, in fact, they do or not. Under U.S. EPA's interpretation of the "subject to" language, a facility that should, but does not have the proper NPDES permit, is in violation of the CWA, not RCRA[21].

Contact

For more information, contact the Hazardous Waste Compliance Assurance Section of the ***Division of Environmental Response and Revitalization*** at 614-644-2924.

Endnotes

1. *U.S. EPA RCRA Online* Letter from Sylvia Lowrance, USEPA, to Thomas Cervino, Colonial Pipeline Company, January 16,1992. Faxback *#13526*. PPC 9522.1992(01).

2. Federal Register. *Volume 53. Number 151, September 2, 1988*. Pages 34079-34081.

3. Faxback *#14104*.

4. *53 FR 34080*.

5. *U.S. EPA RCRA Online* Letter from John Skinner, U.S. EPA, to James Scarbrough, EPA Region IV, December 26, 1984. Faxback *#11050*.

6. *53 FR 34080.*

7. Faxback *#13526*.

8. *U.S. EPA RCRA Online* Memo from Sylvia K. Lowrance, U.S. EPA, to Robert H. Elliott, Jr., Zerpol Corporation, March 20, 1989. Faxback *#11408*. PPC 9471.1989(01).

9. *Federal Register*. Volume 45. Number 223, *November 17, 1980*. Page 76078.

10. *U.S. EPA RCRA Online Letter* from Mary Cunningham, U.S. EPA, to Dick Olsen, Fenton Company, March 7, 1988. Faxback *#13147*. PPC 9522.1988(02).

11. Federal Register. Volume 65. Number 218, November 9, 2000. *Pages 67268-67272.*

12. Faxback *#13147*

13. *U.S. EPA RCRA Online* from Frank McAlister, U.S. EPA, to Bill Gallagher, RCRA Permits Branch Region VI, February 1, 1994. Faxback *#13653*.

14. *U.S. EPA RCRA Online* from Elizabeth Cotsworth, U.S. EPA, to Dale J. Givens, State of Louisiana Department of Environmental Quality, March 26, 1998. Faxback *#14206*.

15. *53 FR 34080*.

16. *U.S. EPA RCRA Online* Letter from David Bussard, U.S. EPA, to Philip Kircher, RGF Environmental Systems, Inc., September 23, 1996. Faxback *#14104*. PPC 9451.1996(08).

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18. *U.S. EPA RCRA Online* Letter from David Bussard, U.S. EPA, to William L Warren, Drinker Biddle & Reath, March 10, 1997. Faxback *#14068*.

19. RCRA/Superfund Hotline Monthly Summary, July 1987. Faxback *#12963*. PPC 9461.1987(04).

20. *Federal Register*. Volume 45. Number 98, May 19, 1980. Page 33097.

21. *U.S. EPA RCRA Online* Memo from Mike Shapiro and Lisa K. Friedman, U.S. EPA, to Waste Management Division Directors, Regions I-X, February 17, 1995. Faxback *#11895*.

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***Federal Register*.** Volume 45. Number 223, November 17, 1980. Page 76076.

Ohio Administrative Code. ***Chapters 3745-50 through 3745-65.***

U.S. EPA RCRA Online Letter from J. Winston Porter, U.S. EPA to C.T. Philipp, Water Management, Incorporated, January 2, 1986. Faxback #***12527***. PPC 9503.52-1A.

U.S. EPA RCRA Online Letter from Marcia E. Williams, U.S. EPA, to William A. Whittington, Office of Water Regulations and Standards and James R. Elder, Office of Water Enforcement and Permits, December 21, 1987. Faxback ***#13112*** PPC 9471.1987(02).

U.S. v. Bethlehem Steel Corporation, 38 F.3d 862: 1994 U.S. App. LEXIS 26963; 39 ERC (BNA) 1449. October 26, 1993, Argued. September 26, 1994, Decided