

April 15, 1998

Ted N. Rauh, Deputy Director
Hazardous Waste Management Program
Cal/EPA Department of Toxic Substances Control
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Dear Mr. Rauh:

Thank you for your letter of January 21, 1998 regarding the scope of the wastewater treatment unit definition set forth in 40 CFR '260.10. Your letter describes petroleum refinery tanks that store wastewater treatment sludges destined for processing in an on-site refinery coker. You specifically ask whether these sludge storage tanks are exempt wastewater treatment units (WWTUs), in light of certain preamble language appearing in the proposed Petroleum Refining Process Wastes rule (60 Fed. Reg. 57747 (November 20, 1995)).

From your description, the Astand alone@ tanks receive and store sludges generated by wastewater treatment at the facility, prior to conveyance to an on-site coker for processing. You mentioned that previous informal discussions with U.S. Environmental Protection Agency (EPA) staff indicated that these tanks meet the definition of a WWTU, but that certain preamble language, at 60 Fed. Reg. 57754, seemed to suggest otherwise. Specifically, you stated that the preamble appeared to differentiate between exempt WWTUs, and those storage tanks where the refinery wastewater sludges are stored prior to the coking process.

In the preamble discussion you cited from the November 20, 1995 proposed rule (60 Fed. Reg. at 57754), EPA was simply trying to describe the typical management of hazardous oil-bearing refinery sludges from the point of generation in refinery wastewater treatment systems to insertion into an on-site petroleum coker. Since under

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the proposed rule these sludges would be excluded from the Resource Conservation and Recovery Act (RCRA) altogether, EPA thought it was important to discuss the effect this exclusion might have on the storage of these materials, particularly in situations where RCRA requirements for tanks or containers would no longer apply. Based upon numerous and longstanding discussions with petroleum industry representatives regarding the management and recycling of these oil-bearing sludges at petroleum refineries, EPA felt that there were, in fact, instances where RCRA-regulated tanks or containers would be affected by this exclusion. To the extent that a tank or container would no longer be subject to RCRA requirements as a result of the proposed exclusion, EPA was simply stating its belief that other factors (e.g., American National Standard Institute (ANSI) standards) would help ensure environmentally protective storage of these materials. Therefore, in this preamble language, EPA was not concluding that in all cases the units between the wastewater treatment system and the petroleum coker are, in the absence of this exclusion in the proposed rule, regulated under RCRA (although our information at the time of proposal suggested that this was the case). Nor was EPA, in this preamble language, making any inferences about the applicability of the wastewater treatment unit exemption that reflect a change in current policy on how this exemption might apply to stand-alone tanks.

In order to evaluate the applicability of the wastewater treatment unit exemption to tanks that receive and store wastewater treatment sludges, the remainder of this letter discusses the relevant considerations. The WWTU exemption, under RCRA, applies to those units meeting the definition of a WWTU in 40 CFR '260.10, which consists of three criteria briefly summarized as follows: (1) the unit must be part of a wastewater treatment facility subject to '402 or '307(b) of the Clean Water Act (CWA); (2) the unit must receive, treat, or store influent hazardous wastewaters, or treat or store a hazardous wastewater treatment sludge; and (3) the unit must meet the definition of a tank. (For the precise definition, refer to '260.10.)

Based on the information you provide in your letter, the unit stores hazardous wastewater treatment sludges, and meets the definition of a tank. However, whether or not the unit is also a part of a wastewater treatment facility subject to regulation under either '402 or '307(b) of the Clean Water Act@ ('260.10) depends upon site-specific judgments not easily made based upon your description. While the storage of sludges may in many instances be part of ongoing wastewater treatment, the Agency also wishes to emphasize that sludges may be generated and stored as part of activities not related to wastewater treatment under the CWA. In cases where the sludges are to be recycled (such as in a petroleum coker), sludges might be removed from treatment tanks and placed into tank-like units that mix or slurry and inject the sludges as part of the recycling process, in which case a judgement could be made that the mixing tank is part of the exempt recycling process ('261.6(c)), and is, therefore, not a WWTU. (This example assumes the sludges are regulated as solid and hazardous waste; the Agency

notes that at this time there has not been a final determination regarding the exclusions proposed in the November 20, 1995 Federal Register.) Also, in instances where the sole purpose of the tank is to accumulate a sufficient volume of waste to facilitate the off-site transport of these sludges for further treatment and/or disposal, the exemption would not apply because that activity is separate and distinct from any wastewater treatment activities covered under the Clean Water Act. In this instance, a generator may choose (or be so directed by the implementing agency) to manage the tanks in accordance with the generator accumulation provisions in '262.34, rather than as an exempt WWTU.

Whether the type of tank you describe satisfies the three criteria in the WWTU definition depends on the specific facts. Whether or not the purpose and function of the tank is more closely related to the storage of sludges as part of ongoing wastewater treatment, is part of an exempt recycling process, or is solely for the purpose of waste accumulation to facilitate off-site disposal, is largely site-specific. Finally, because California is a RCRA-authorized state, your program may impose additional requirements that are more stringent than the federal program.

I hope this letter has addressed your concerns. Please feel free to call Jeff Gaines of my staff at (703) 308-8655 with any additional questions or concerns you may have.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

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