

2. Enforcement of Air-Emissions Standards on RCRA-Exempt Units

A closed-loop recycling unit is located at a TSDf in Pennsylvania. While 40 CFR §261.4(a)(8) exempts materials which are reclaimed in these units from the definition of solid waste, the State of Pennsylvania does not honor that exemption in its State program. The material in the recycling unit, therefore, becomes hazardous waste under Pennsylvania law.

The June 21, 1990, rule on organic air emissions for equipment leaks (55 FR 25454) provides standards for "equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight" in units which are subject to permitting under Part 270. Under Pennsylvania regulation, the closed loop recycling unit is subject to TSDf permitting. Would this unit be required to comply with the air emissions standards?

While the closed-loop unit does contain "hazardous waste" under Pennsylvania regulation, the material inside is not considered solid waste (and so not a hazardous waste) under the Federal program. This State provision extends control over a unit not regulated under Federal RCRA, increasing the size of the regulated community and thus becoming "broader in scope" than the Federal program. Although the Federal government retains enforcement authority in authorized States over State provisions which are more stringent than Federal standards, it does not have jurisdiction over provisions which are broader in scope (see OSWER Directive 9541.04(84)). Since the closed-loop unit is only brought under State regulation by a provision which is not part of the authorized program, Federal standards, including the air emissions rule, would not apply.

Until such time as the State revises its program to incorporate the June 21 rule, there is no authority for EPA to enforce the RCRA emissions standards for the closed-loop unit. It is still possible, however, for the State to write its own regulations governing air emissions with which the unit would have to comply.

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