

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. J. Dale Givens
State of Louisiana
Department of Environmental Quality
P.O. Box 82263
Baton Rouge, LA 70884-0746

Dear Mr. Givens:

Thank you for your letter of December 23, 1997 requesting further clarification of the term "designated facility" as it relates to wastewater treatment units (WWTUs). Re-Claim Environmental, L.L.C. (Re-Claim), a wastewater treatment facility, has met with the Louisiana Department of Environmental Quality, the Environmental Protection Agency (EPA) Region VI office, and most recently with EPA Headquarters staff to discuss its status as a designated facility. This letter clarifies EPA's position on this issue under the federal Resource Conservation and Recovery Act (RCRA) program.

Re-Claim has argued, both in correspondence with you and in a meeting with our office, that its WWTUs fit within the scope of "designated facility," as defined in 40 CFR §260.10. A WWTU as defined in §260.10 is exempt from, among other requirements, RCRA permitting requirements (see §270.1(c)(2)(v); see also §§264.1(g)(6) and 265.1(c)(10)). 260.10 defines "designated facility" as follows:

a hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter, or (3) is regulated under §261.6(c)(2) or subpart F of part 266 of this chapter, and (4) that has been designated on the manifest by the generator pursuant to §260.20. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

EPA's manifest system regulations (40 CFR §§262.20(b) and 263.21) require that a generator send hazardous waste only to a "designated facility."

In the past, EPA's position on this issue has not been consistent. In today's letter, EPA is clarifying that a WWTU (as defined in §260.10) operating lawfully under federal and state law qualifies as a "designated facility" (under federal regulations), and therefore can receive hazardous wastewater from off-site. Confusion over the Agency's guidance on this issue may have led to confusion at the state level, causing states to take different approaches.

The confusion over the issue derives from a February 24, 1987 letter from Marcia Williams, Director, office of Solid Waste, to Phillip Sparta, Environmental Technology Southeast. In the letter, the Agency stated that WWTUs do not meet the definition of designated facility. The letter also noted this position was a reversal of a previous position. Then, in the September 2, 1988 Hazardous Waste Storage rulemaking, EPA stated that "the applicability of the [WWTU] exemption does not depend on whether the on-site wastewater treatment facility also treats wastewater generated off-site." (See 53 FR 34080.) This sentence makes it clear that a WWTU could receive wastewater generated off-site and, thus, suggests that it would qualify as a designated facility.

In today's letter, EPA clarifies this confusion by retracting its February 24, 1987 letter from Marcia Williams to Phillip Sparta, and determining that a WWTU (as defined in §260.10) qualifies as a designated facility under federal regulations. EPA found that it was not consistent to state, on the one hand, that a WWTU receiving off-site hazardous wastewater still qualified for the WWTU exemption, while noting that a WWTU was not eligible to receive off-site hazardous wastewater. EPA has since concluded that it is not reasonable or consistent with other interpretations to exclude a WWTU (as defined in §260.10) from the definition of a designated facility and, thus, from receiving off-site hazardous wastewater. EPA's conclusion is based on the following reasons.

First, EPA believes that considering a WWTU to be a designated facility would be an environmentally sound approach that is consistent with current levels of environmental protection. The same environmental regulations would apply when sending the hazardous wastewater to an off-site WWTU as they would when sending hazardous wastewater to a facility with a permit (or interim status). In both cases, the generator and transporter must comply with all relevant RCRA regulations. In addition, as has always been the case with the WWTU exemption, the effluent from the wastewater treatment facility is regulated under the Clean Water Act, and any hazardous wastewater sludge removed from the WWTUs and any releases of hazardous waste from the WWTUs are subject to all relevant RCRA regulations. In performing its intended functions, a WWTU does not distinguish between hazardous wastewater which was generated originally on-site versus that which was generated off-site. Moreover, an additional level of protection is provided by Clean Air Act maximum achievable control technology (MACT) requirements for certain WWTUs receiving hazardous wastewaters from off-site. (See 40 Part CFR 63, Subpart DD.)

Second, EPA has in the past demonstrated a desire to be flexible about the definition of designated facility in other contexts. In the January 23, 1990 Mining Waste Exclusion rulemaking, EPA amended the definition to clarify that wastes may be shipped from a state where the waste is subject to the hazardous waste regulations as a result of a listing determination to a facility in a state where the waste is not yet

regulated as hazardous. In this situation, EPA explained, the designated facility would not need to be permitted or under interim status, provided that the receiving facility is allowed by the receiving state to accept such waste. (See 55 FR 2342, 2343.) Similarly, EPA clarified, in a letter (from Sylvia Lowrance, Director, Office of Solid Waste, to Robert Scarberry, Chemical Waste Management, dated September 27, 1991, RCRA Policy Compendium Document # 9432.1991(01)), the definition of designated facility with respect to the treatability study exclusion. In cases where a treatability sample is transported from a state which regulates the treatability sample as a hazardous waste (because it does not have the exclusion), to a state that has adopted the exclusion, and therefore does not regulate the same as a hazardous waste, EPA stated that the receiving facility could be considered a designated facility for the same reasons set forth in the Mining Waste Exclusion rulemaking discussed above. Both of these examples illustrate EPA's practice of interpreting the definition of designated facility in a flexible manner so as to not preclude lawfully operating facilities from receiving off-site waste on the grounds that they are not subject to the permit requirements.

For these reasons, EPA believes that WWTUs are appropriate facilities to receive off-site hazardous wastewater without a RCRA permit. For purposes of determining what constitutes a designated facility, EPA believes it would not make sense to treat differently, or distinguish between, WWTUs and permitted facilities. EPA believes that such a distinction would be artificial, because WWTUs operate in a manner fully approved by EPA and, for the reasons discussed above, are environmentally appropriate facilities to receive off-site hazardous wastewater. Accordingly, EPA interprets "facility which has received a permit (or interim status)," as set forth in the designated facility definition, as referring to permit-exempt WWTUs, as well as to facilities that literally possess a RCRA permit. This interpretation is confirmed by the fact that the designated facility definition specifically refers to the permitting requirements of Part 270. Section 270.1(c)(2)(v) specifically exempts WWTUs from RCRA permitting requirements. This exemption constitutes EPA's approval for these units to operate under RCRA, as long as the conditions for the WWTU exemption are met.

Based upon our clarification and the information provided by Re-Claim, Re-Claim's WWTUs would be considered a designated facility for the purpose of receiving hazardous wastewater from off-site, under the federal program, Re-Claim could operate in this manner so long as its units continue to meet the definition of a WWTU at §260.10. In addition, Re-Claim will have to obtain an EPA ID # for its WWTUs to enable generators to lawfully send their hazardous wastewater to Re-Claim's WWTUs under §262.12(c). (Moreover, the manifest instructions require a generator to indicate the name and EPA ID # of the facility to which it is sending hazardous waste. Also, per the manifest instructions, Re-Claim would need to complete the discrepancy indication space, if applicable, and the certification of receipt of hazardous waste covered by a particular manifest.)

This letter provides the Agency's clarification of the definition of designated facility with respect solely to the WWTU exemption, and solely under the federal program. However, because RCRA authorized states may have more stringent requirements than the federal program, the State of Louisiana may impose additional requirements to ensure adequate control of hazardous wastewaters.

We appreciate the opportunity to respond and clarify our position. regarding "designated facility." If you have any questions, you may contact Jeff Gaines of my staff at (703) 308-8655.

Sincerely,

Elizabeth A. Cotsworth, Acting
Director
Office of Solid Waste

cc: Matt Hale, OSW
Steve Heare, PSPD
Dave Bussard, HWID
Brian Grant, OGC
Laurie King, Region VI
Bill Gallagher, Region VI
RCRA Senior Policy Advisors
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State of Louisiana
Department of Environmental Quality

M.J. "MIKE" FOSTER, JR
GOVERNOR

J. DALE GIVENS
SECRETARY

December 23, 1997

Ms. Elizabeth A. Cotsworth
Acting Director
United States Environmental Protection Agency
Office of Solid Waste
401 M Street, SW.
Washington, D.C. 20460

Mr. Robert E. Hanneschlager, P.E.
Acting Director
Multimedia Planning & Permitting Division (6PD)
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Ms. Cotsworth and Mr. Hanneschlager:

For the past year the Hazardous Waste Division of the Louisiana DEQ has been working with Re-Claim Environmental, an industrial waste water treatment facility that would like to be able to accept and treat hazardous waste from off site.

In August, 1997, we requested an updated interpretation from your office of the definition of "designated facility". We forwarded a copy of the response we received to Re-Claim. We were unaware of any misunderstandings or misinterpretations that could be read into this letter. (Attached find a copy of our request and the response.)

Recently Re-Claim met with EPA Region 6. Re-Claim expressed concerns of the differences they feel exist between Louisiana and Texas interpretations of the definition of "designated facility". They came away from that meeting with the impression that status as a "designated facility" is purely a classification made by the authorized states, for which federal regulations allow diverse interpretation.

We have never considered ourselves to have quite this much latitude. We believe that our interpretations to date have been consistent with the letter and intent of the federal rules, on which our own regulations are based.

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We recently received another letter and a discussion paper (also attached) from Re-Claim basically asking us the same question that was asked and answered by EPA previously.

We would like EPA Headquarters and Region 6 to discuss and resolve this interpretation. Following resolution of this matter, we request a meeting with Region 6, LDEQ, and Re-Claim to settle this issue.

If you have any questions, please contact Ms. Robin L. Kanefsky or Mr. Michael Beck of the Hazardous Waste Division at (504) 765-0272.

Sincerely,

J. Dale Givens
Secretary

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Attachments