

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Ms. Susan Pendleton
Program Manager
ERM-New England, Inc.
19 Commercial Street
Portland, Maine 04101

Dear Ms. Pendleton:

Thank you for your March 12, 1998 letter in which you request the Environmental Protection Agency's (EPA's) interpretation of certain preamble language relating to the wastewater treatment unit (WWTU) exemption at 40 CFR §264.1(g)(6) and 265.1(c)(10). Specifically, you ask whether, under EPA's interpretation of this language, a tank could qualify for the WWTU exemption if it is used solely for wastewater treatment for part of the year and is then used for another purpose for another part of the year.

The September 2, 1988 Federal Register preamble language, which is the subject of your inquiry, states the following:

EPA intends that this [wastewater treatment unit] 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.

53 Fed. Reg. 34080 (emphasis added).

You ask what EPA meant by the language "dedicated" [for use with an on-site wastewater treatment facility] and offer two possible interpretations. One interpretation, you suggest, is that the WWTU must be dedicated solely for wastewater treatment at all times. A second interpretation, you suggest, is an "alternating use" scenario in which a WWTU may operate as a WWTU for a portion of a year, dedicated for wastewater treatment for that period of time in use, and then operate as an accumulation tank for a different part of the year. The Agency confirms the first interpretation, described above. That is, in order to satisfy the WWTU exemption, a tank

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must be dedicated solely for on-site wastewater treatment at all times and for no other purpose. EPA believes that the preamble language is clear on this point. EPA did not intend the WWTU exemption to apply in situations involving "dual use" of a tank (when a tank is concurrently used for wastewater treatment and for another purpose). Nor did EPA intend for the exemption to apply in situations, such as the one your letter describes, involving "alternating use" of a tank. Since the purpose of this exemption is to avoid dual regulation under the Clean Water Act and the Resource Conservation and Recovery Act (RCRA), EPA believes that a tank must be used only for wastewater treatment purposes at all times in connection with an on-site wastewater treatment facility in order to qualify for the exemption. EPA did not intend for the exemption to apply in either the "dual use" or "alternating use" scenario. Accordingly, a tank that operates on an "alternating use" basis, as you describe above, does not satisfy the WWTU exemption and is subject to all relevant RCRA regulations.

One alternative approach to the WWTU exemption that you may wish to consider is the hazardous waste generator accumulation provision under §262.34. Under this provision, you could manage the tank as an accumulation device in your capacity as a hazardous waste generator (subject to the requirements of §262.34), and not as a tank subject to the WWTU exemption. As a generator, you could still perform wastewater treatment in that tank in addition to other "alternating" functions for those wastewaters generated on-site. Similar to the WWTU exemption, you would not need a RCRA permit or interim status for that tank under the generator accumulation provision, as long as you satisfy the requirements of this provision.

Please note that because RCRA authorized states may have more stringent requirements than the federal program, we suggest that facilities contact their state agency to determine whether any additional requirements apply. Should you have any questions about the contents of this letter, please contact Jeff Gaines of my staff (703) 308-8655.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste

27 March 1998

Ms. Elizabeth Cotsworth
Acting Director, Office of Solid Waste
U.S. Environmental Protection Agency
401 M Street SW
MC 5301W
Washington, DC 20460

RE: Interpretation Request

Dear Ms. Cotsworth:

This letter requests an interpretation of language found in a September 2, 1988 Federal Register preamble (53 FR 34079) concerning tanks used as wastewater treatment units (WTUs) that may also be desired to be used for other purposes. The relevant section states [Para II (2)],

"EPA intends that this exemption [for WTUs] 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."

The issue was also briefly addressed in an August 15, 1990 letter from Sylvia Lowrance, Director, Office of Solid Waste to Ted A. Hopkins, Oregon Department of Environmental Quality. The letter refers to and paraphrases the above citation, while not elaborating.

There are two ways to interpret the meaning of the word "dedicated" in the above. First, it could be that EPA is saying that WTU tanks must be dedicated for wastewater treatment service at all times and never for anything else. The second possibility is that WTU tanks must be dedicated for wastewater treatment service in the sense that if they are ever used for hazardous waste accumulation service, they must meet the stricter design and operational requirements for hazardous waste tanks.

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In practice the second possibility would occur when a tank system is dedicated to WTU service for part of the year, and dedicated to hazardous waste accumulation for a different part of the year. When the tank system operates in WTU mode, it would have to meet all the design and operations requirements of that service (primarily imposed via a wastewater pretreatment approval); when the tank system operates in hazardous waste accumulation mode, it would have to meet all the design and operational requirements imposed for that service.

Naturally, the design elements of the tank system would have to meet the most stringent of either type of service from the start of this alternating use, and the tank system would need to be purged of hazardous waste before being switched to WTU service.

We believe that EPA intends to allow the second possibility. The last sentence of the citation shows that the operative concern of EPA is that tanks used even occasionally for accumulation "would be subject to the revised standards for hazardous waste systems." The sentence seems to be cautionary in nature, to warn that full RCRA requirements apply if the WTUs are occasionally used for accumulation. Therefore, if tanks do meet full RCRA requirements when operated in accumulation mode and meet applicable requirements under the Clean Water Act for WTU tanks, alternating use as described above would be allowable. Also, it is clear that some alternate uses are allowed, specifically a use that "otherwise qualifies for some other exemption." If alternate uses subject to exemption are allowable, it follows that alternate uses in compliance with the standards for that alternate use should be allowed.

It is understandable that the wording of the 1988 preamble assumes in inference that tanks are either accumulation or WTU and is not focused on the alternating use possibility. That is likely because the preamble was written before 40 CFR 265 Subpart J was extended to cover accumulation tanks as well as storage tanks. It is likely that a storage facility would not alternate the USC of a tank system since it would have little need to store before shipment off-site, instead, performing treatment on-site. Therefore, the preamble does not pause to clarify the alternating use possibility. That clarity comes from the intent of the last sentence. Thus, the word "dedicated" precludes dual use of a WTU tank designed only for CWA service, and is not meant to preclude complying alternating use, which would not have been a subject of interest in a preamble discussion directed at TSDFs.

In addition, the foregoing offers a reasonable conclusion. It would be wasteful to require an operator to build two parallel tank systems, each meeting a separate standard. When operating in RCRA mode, the WTU system would lie dormant, when operating in WTU mode, the RCRA system would be dormant. It is reasonable to allow alternating use when a tank system is adequately regulated for either and both applications.

Please determine if our reading of EPA's intent is the correct one. Please call me at (207) 761-3928 if you have any questions. Thank you for your help.

Sincerely,

Susan Pendleton
Program Manager