

JULY 31, 1981

Richard C. Boynton, Chief
Permits Development Section
U.S. Environmental Protection Agency
John F. Kennedy Building
Boston, Massachusetts 02203

Re: Suspension of Regulations for Wastewater Treatment Units

Dear Mr. Boynton:

This letter responds to your recent request for an interpretation of the regulations of November 17, 1980 (45 FR 76074) which suspended certain requirements of the hazardous waste regulations for owners and operators of wastewater treatment units where such facilities are subject to regulation under Section 402 or 307(b) of the Clean Water Act.

Your letter is correct in stating that there is nothing in the definitions, preamble, or regulations which precludes an off-site hazardous waste management facility from qualifying for a suspension of the hazardous waste requirements in 40 CFR Parts 122, 264 and 265. The Agency considered limiting the suspension and proposed amendments to on-site facilities but was unable to justify that this type of facility was inherently less hazardous than an off-site facility so as to necessitate different standards. Accordingly, EPA does not intend to distinguish between on-site and off-site facilities in this regulation.

Even under the terms of the suspension, hazardous waste shipped to an off-site facility will, of course, be subject to the manifest requirements. In addition, the treatment facility must be subject to regulation under either 402 or 307(b) of the Clean Water Act.

To be completely exempted for now (and ultimately subjected to the permit by rule) all units in a facility must meet the definition of "tank" in §260.10. Lagoons, incinerators, and other types of facilities are not eligible. It is, however, true that the definition of "tank" is rather broad, covering unit operations which are not obviously tanks such as presses, filters, sumps, and many other types of processing equipment.

The Agency also intends that the phrase "subject to regulation under either Section 402 or 307(b) of the Clean Water Act" should be given a broad interpretation. This phrase includes all facilities that are subject to NPDES permits and encompasses facilities subject to either categorical pretreatment standards or general pretreatment standards. It is not necessary that the permits actually be issued or that pretreatment standards actually be in force. It is sufficient that the facility be subject to the requirements of the Clean Water Act.

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It should be noted that eligible facilities must in fact be treating “wastewaters” and not concentrated chemicals or non aqueous wastes. While we have not promulgated a formal definition, we are interpreting the term to refer to wastes which are substantially water with contaminants amounting to a few percent at most. It has been suggested that a formal definition would be helpful. We are considering adding such a definition to the final promulgation.

Public comments on the November 17, 1980 proposal also noted that some wastewater treatment units do not discharge a liquid stream and thus are not subject to the Clean Water Act. EPA is considering changing this “subject to” language to include such zero discharge facilities. We expect to finalize the proposed regulations for wastewater treatment units and elementary neutralization units within the next few months.

If you have any further questions, please do not hesitate to call me or Fred Lindsey, the Deputy Division Director at FTS 755-9185.

Sincerely yours,

John P. Lehman, Director
Hazardous & Industrial Waste Division

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