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RCRA/Superfund/OUST Hotline Monthly Report Question

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5. Applicability of the Section 261.4(a)(2) Exclusions

Hazardous industrial wastewaters that are regulated by the Clean Water Act under a NPDES permit are excluded from regulation under RCRA. Periodically, wastewater is diverted from the outfall to a surface impoundment. The diverted wastewater is used in firefighting training exercises. What is the status of the surface impoundment?

Because the wastewater is not being "discharged" per the definition in the Clean Water Act, the wastewater does not fall within the RCRA exclusion. Section 122.2 defines "discharge of pollutant" as the combination or addition of a pollutant to "waters of the United States." Waters of the United States are defined as, "... all waters which are subject to the ebb and flow of the tide ... all interstate waters ... lakes, rivers, streams..." The definition specifically excludes ponds or lagoons used for treatment and manmade bodies of water. While the diversion to the surface impoundment takes place after the water exits the pipe, the discharge must be mixed with "waters" in order to remain within the NPDES permit and thus excluded from RCRA. Discharge to the surface impoundment would constitute illegal operation of a hazardous waste storage unit.