

PPC 9522.1992(01)

EXEMPTION FROM PERMITTING REQUIREMENTS FOR WASTE WATER
TREATMENT UNITS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

January 16, 1992

Mr. Thomas W. Cervino, P.E.
Colonial Pipeline Company
Lenox Towers
3390 Peachtree Road, N.E.
Atlanta, Georgia 30326

Dear Mr. Cervino:

This letter is in response to your August 9, 1991 correspondence requesting a clarification of the conditions under which waste water treatment units qualify for an exemption from RCRA permitting requirements. In your letter you explained that Colonial Pipeline Company has several locations that generate waste waters that are hazardous under the toxicity characteristic, and you asked whether a RCRA permit would be required for a new treatment unit that you are considering.

The primary reason for the waste water treatment exemption is to avoid imposing duplicative requirements pursuant to both a NPDES permit and a RCRA permit for the same unit. As you are aware, in order for a unit to qualify for this exemption contained in 40 CFR §264.1(g)(6), it must:

- (1) Be part of a waste water treatment facility that is subject to regulation under either Section 402 or 307(b) of the Clean Water Act;
- (2) Receive, treat, or store influent waste water; or generate, accumulate, treat, or store a waste water treatment sludge; and,
- (3) Meet the definition of tank or tank system in 40 CFR §260.10.

The main question that you raised concerns the first criteria: i.e., which units are considered subject to the Clean Water Act. As you are aware, the Agency provided some discussion of this requirement in 53 FR 34080 (September 2, 1988) which states that:

"the wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and therefore is subject to the NPDES or pretreatment requirements of the Clean Water Act, or (2) produces no treated wastewater effluent as a direct result of such requirements."

It is important to note that it is not necessary that the Clean Water Act permits actually be issued for the units to be eligible for the RCRA exemption; it is sufficient that the facility be subject to the requirements of the Clean Water Act.

Based on a review of the information provided, EPA has determined that any of the treatment systems (including the proposed treatment unit) at the Colonial Pipeline facilities which are currently permitted, were ever permitted, or should have been permitted under NPDES, all meet the first test of the Section 264.1(g)(6) exemption. The key issue is whether the treatment system ever had a discharge to surface water, and thus was ever permitted (or should have been permitted) under NPDES. If there was never a discharge to surface waters, then the exemption criteria is not satisfied. You also mentioned that some of your facilities employ wastewater treatment systems which are regulated in accordance with other applicable state laws, rules, and regulations. Without more specific information regarding these state requirements and permits, EPA cannot address whether these facilities would qualify for the exemption. However, as discussed above, the exemption in the federal regulations would only be available if the state requirements stem from the identified sections of the Clean Water Act.

With regard to the question of a "zero discharge" facility, EPA would like to clarify the difference between a facility that produces no treated wastewater as a direct result of Clean Water Act requirements and units that are not required to obtain an NPDES permit because they do not discharge treated effluent. In the first

case, the facility would have had a surface water discharge at one time, but has since eliminated the discharge as a result of, or by exceeding, NPDES or pretreatment requirements. Such facility would qualify for the waste water treatment unit exemption under RCRA. In the second case, the facility never had a surface water discharge, and therefore was never subject to NPDES permitting or Clean Water Act requirements (53 FR 34080). The RCRA exemption is not available in these cases. (We should point out that the language you referred to on page 2 of the May 22, 1984 memo on zero discharge has been further refined and clarified by recent program policies and interpretations.)

There is another management option that my staff has discussed with you on the phone. That approach would be to treat your waste water in tank units pursuant to the generator accumulation exemption of 40 CFR §262.34. This provision allows generators of hazardous wastes to treat or store such wastes in tanks or containers for short periods of time (i.e., 90 days) without obtaining a RCRA permit, provided that all the conditions of §262.34 are met, including compliance with specified tank or container standards in 40 CFR Part 265. In many cases air strippers may be considered tank units under RCRA and might be eligible for this exemption. Of course, as long as the treated waste water meets a hazardous waste listing description or exhibits a hazardous waste characteristic it must continue to be managed as a hazardous waste.

If you have facility-specific questions, please contact individual in the appropriate EPA Regional Offices. For Region III (Philadelphia), contact Ms. Susan Sciarratia at (215) 597-7259 and for Region IV (Atlanta), contact Ms. Beth Antley at (404) 347-3433. Should you have further questions about this letter, please contact Glenn Strahs of my staff at (202) 260-4782.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Kathy Nam, OGC; EPA RCRA Branch Chiefs, Regions I-X; Barbara Simcoe, ASTSWMO