

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

MARCH 10, 1997

Mr. William L. Warren  
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Building 4  
Lawrenceville, New Jersey, 08648

Dear Mr. Warren:

Thank you for your March 5, 1996 letter to Michael Shapiro. In your letter, you requested guidance, directives or policy documents which address the applicability of the domestic sewage exclusion (Code of Federal Regulations, 40 CFR 261.4(a)(1)) in various situations.

As explained in your phone conversation with Kristina Meson, my staff and I have closely examined the matters raised in your letter. We have also reviewed the existing regulations and policies to ascertain whether they address the particular issue(s) which you identified. Provided below are responses your questions.

Question 1

Is the mixed stream of both chemical process waste and untreated sanitary waste which is discharged from a manufacturing plant through a sewer line to a publicly owned treatment works excluded from either the definition of solid or hazardous waste under the Resource Conservation and Recovery Act (RCRA) even if it would otherwise be considered a listed or characteristic hazardous waste?

A mixed stream of process and untreated sanitary waste which is discharged through a sewer line to a publicly owned treatment works (POTW) is not a solid or hazardous waste under RCRA, even if it would otherwise be considered a listed or characteristic hazardous waste. Section 1004(27) of RCRA provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material cannot be considered a hazardous waste for purposes of RCRA. This exclusion is known as the Domestic Sewage Exclusion (DSE). The DSE covers industrial wastes discharged to POTW sewers containing domestic sewage, even if these wastes would be considered hazardous if discharged by other means. "Domestic sewage" means untreated sanitary waste that passes through a sewer system. 40 CFR part 261.4(a)(1)(ii). The DSE, however, does not apply if the industrial waste stream never mixes with sanitary waste in the sewer prior to treatment or storage at the POTW (e.g. dedicated pipe). Mixtures of sanitary waste and other wastes that pass through sewer systems to publicly owned treatment works will, however, be subject to controls under the Clean Water Act, specifically, pretreatment standards at 40 CFR Part 403, including any applicable local limits imposed by the State or POTW, or by nationally applicable categorical pretreatment standards.

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## Question 2

Would a mixed stream of both chemical process waste and untreated sanitary waste which is discharged from a manufacturing plant through a sewer line connected to a publicly owned treatment works which would otherwise be considered a characteristic or listed hazardous waste under RCRA be considered a hazardous waste and/or be required to be managed as a hazardous waste if it leaks from the sewer line before it reaches the publicly owned treatment works?

A mixed stream of chemical process waste (considered a characteristic or listed hazardous waste under RCRA) and sanitary waste which subsequently leaks from the sewer line before it reaches the POTW would not qualify for the Domestic Sewage Exclusion (DSE). To qualify for the DSE, wastes must pass through a sewer system to a publicly owned treatment works (261.4(a)(1)(ii)). Specifically, EPA has clarified in a February 12, 1990 letter (enclosed) that wastes removed from a sewer line before they reach the POTW have not met the conditions of the exemption. "The waste, upon removal, loses its "excluded" status under the domestic sewage exclusion and becomes subject to regulation as a solid waste."

## Question 3

If a manufacturing facility with a RCRA corrective action permit has discharged waste materials of a mixed process and sanitary nature through a sewer line to a publicly owned treatment works, would a leak from the sewer line beyond the physical boundary of the manufacturing facility give rise to a solid waste management unit for which the operator of the manufacturing facility is responsible or would it fall outside the definition of a solid waste management unit?

Under RCRA corrective action authorities, permits for hazardous waste treatment, storage, or disposal facilities must require corrective action for releases of hazardous waste and hazardous constituents from solid waste management units. Corrective action is also required for releases that migrate beyond the facility boundary, as necessary to protect human health and the environment (See, e.g., RCRA Sections 3004(u), 3004(v), 40 CFR 264.101; 50 FR 28702, July 15, 1985; 52 FR 45788, December 1, 1987; and, 55 FR 30798, July 27 1990). The Agency also has the authority to include corrective action requirements in a facility's permit under its RCRA "omnibus" authority. See RCRA section 3005(c)(3). EPA has defined facility, for the purposes of corrective action, to mean "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." (See 40 CFR 260.10.)

As discussed in our response to question 2, materials leaked from sewer lines before they reach a POTW are no longer shielded by the DSE and are considered solid waste. Depending on whether or not the pipes from which the materials leaked are considered part of a "facility," they would or would not be subject to corrective action. Generally, releases from pipes or collection systems controlled by the owner/operator of a facility subject to corrective action would be considered part of the "facility" and would, therefore, also be subject to corrective action, as follows.<sup>1</sup>

If it is determined, based on site-specific considerations, that a sewer line is part of a "facility" for purposes of corrective action, leaks from the line could likely be addressed as either solid waste

management units (SWMU) or areas of concern (AOC). EPA typically distinguishes between releases that constitute SWMUs and releases that constitute AOC by considering factors such as the rate of leakage and whether the release was routine or systematic. (55 FR 30808, July 27, 1990; 61 FR 19442, May 1, 1996.) At permitted facilities, releases from solid waste management units that occur at facilities are typically addressed using the authority of RCRA Sections 3004(u), while releases from facilities (i.e., beyond the facility boundary) are addressed using RCRA Section 3004(v). Non-SWMU related releases (i.e., AOC), either within or beyond the facility boundary, are typically addressed using the omnibus permitting authority of RCRA section 3005(c)(3) where necessary to protect human health and the environment. In addition to the corrective action authorities associated with RCRA permitting, where applicable, the interim status corrective action order authority of section 3008(h) may also be used to address similar types of releases at interim status facilities. Since both SWMUs and AOCs are subject to corrective action requirements, EPA has discouraged extended debate over distinctions between SWMU and AOC; discussions, and resources, should more properly focus on whether there has been a release that requires remediation (60 ER 19442, May 1, 1996).

Note that, application of corrective action requirements typically depends on a number of site- and waste-specific considerations that EPA typically uses when developing site-specific corrective action requirements. I encourage you to consult with the appropriate EPA region or authorized state to ensure that site-specific circumstances are appropriately considered. In addition, whether or not corrective action requirements apply, cleanup of releases of solid waste may be required under a number of federal or state authorities, including, at the federal level, RCRA section 7003 or CERCLA section 106.

#### **Question 4**

If a manufacturing facility with a RCRA corrective action permit discharges mixed process and sanitary waste materials to a publicly owned treatment works through a sewer line, does a basis exist for including in that corrective action permit areas of contamination beyond the physical boundaries of the manufacturing facility owned and operated by the permittee caused by a leak from the sewer line at a point beyond the physical boundary of the manufacturing facility owned and operated by the permittee?

See response to question 3.

Thank you for your interest in the hazardous waste regulations. If you need more information on the domestic sewage exclusion, please contact Kristina Meson, of my staff, at (703) 308-8488. Questions on RCRA corrective action should be addressed to Elizabeth McManus in the Corrective Action Programs Branch at (703) 308-8657. Also, in authorized states, the state implements its own regulations in lieu of the Federal RCRA program. An authorized state's requirements and policies may be different than those of the Federal program, therefore, it is important to contact your state environmental agency about this and other RCRA issues.

Sincerely,

David Bussard, Director  
Hazardous Waste Identification Division

Faxback# 14068

Thomas A. Corbett  
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Dear Mr. Corbett:

This letter is in response to your letter of October 31, 1989, in which you requested clarification of the domestic sewage exclusion of 40 CFR 261.4 (a) (1) (i) and (ii) as it may relate to excavated sludge from a sewer line. We understand that you have spoken with Region II personnel who referred you to the Office of Solid Waste (OSW). We have enclosed a copy of the memorandum you mentioned in your letter from Marcia Williams to David Stringham dated December 12, 1986. You have related to Emily Roth of OSW your request for a written response from EPA on this issue.

The situation as described in your letter involves waste removed from the low points of storm sewer lines by excavation. Apparently, the sewer occasionally becomes blocked as a result of the settling of solids from the sewage. The plan is to place the waste material in waste hauling vehicles and transport it to the publicly-owned treatment works (POTW), where it will be discharged into the system for processing. The waste is EP toxic for lead. Your letter asks if the waste: (1) retains its non-hazardous status under the domestic sewage exclusion after excavation from the sewer line or (2) is subject to regulation as a hazardous waste.

The domestic sewage exclusion of Section 261.4(a) (1) (i) states that neither domestic sewage nor any mixture of domestic sewage and other wastes that "passes through a sewer system to a publicly-owned treatment works for treatment" are solid waste. In the situation you describe, the sludge is removed from the sewer line and, therefore, does not pass through the sewer system to the POTW. The waste, upon removal, loses its "excluded" status under the domestic sewage exclusion and becomes subject to regulation as a solid waste. If the waste exhibits any of the characteristics of hazardous waste as described in 40 CFR Part 261, Subpart C, it must be regulated as a hazardous waste. In order for a POTW to receive hazardous waste, the POTW must be in compliance with the requirements of 40 CFR Section 270.60(c).

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<sup>i</sup> Please note that the determination of what constitutes the "facility" for purposes of corrective action will be influenced by a number of site-specific factors. In the case of a sewer line, for example, a number of factors might influence whether or not the line was part of a "facility" including, for example, whether the facility owner/operator (e.g., versus the POTW) also owns or operates the line or portions of the line, whether the facility owner/operator (e.g., versus the POTW) is responsible for maintenance of the line or portions of the line, and/or the extent to which the line is dedicated to facility operations (e.g., versus carries wastes from many unrelated facilities). Owner/operators should consult with the appropriate EPA Regional Office or authorized state to determine the extent of their "facility" for purposes of corrective action.