

1. Applicability of the Domestic Sewage Exclusion to FOTWs

Under 40 CFR §261.4(a), certain materials are excluded from the definition of solid waste, and therefore exempt from RCRA Subtitle C regulation. Section 261.4(a)(1) excludes from the definition of solid waste mixtures of domestic sewage and hazardous waste that pass through a publicly-owned treatment works (POTW). Can this exclusion also apply to waste mixtures that pass through a federally-owned treatment works (FOTW)?

Yes. The domestic sewage exclusion is derived from the statutory definition of solid waste, which states that solid waste “does not include solid or dissolved materials in domestic sewage” that pass through a publicly owned sewer system (RCRA §1004(27)). Unlike the regulatory domestic sewage exclusion for POTWs, EPA has not yet promulgated a regulation explaining implementation of the domestic sewage exclusion for FOTWs; thus the statute controls. Because an FOTW is not a POTW, the Federal Facility Compliance Act of 1992 (FFCA) amended this statutory exclusion to apply to “any solid or dissolved material introduced by a source into a federally owned treatment works” (RCRA §3023(a)).

Thus, solid or dissolved materials in domestic sewage that pass through an FOTW are excluded from the definition of solid waste, provided the FOTW meets the criteria outlined in §106 of FFCA (RCRA §3023). First, the FOTW must be a wastewater treatment facility owned and operated by the federal government in accordance with a discharge permit under §402 of the Clean Water Act (CWA) (RCRA §3023(d)). Second, the solid or dissolved materials must be generated by a household or person that generates less than 100 kg of hazardous waste per month (RCRA §3023(a)(4)). Third, the material mixed with the domestic sewage must be one of the following:

1. Subject to pretreatment standards under §307 of the CWA
2. Not subject to a pretreatment standard, but having a scheduled pretreatment standard applicable no later than seven years after the date of enactment of the FFCA
3. Not prohibited from land disposal.

