UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

...DUM

...: January 8, 1999

SUBJ: DEP Regulatory Interpretation Letter Issued to MWRA

FROM: Jeffry Fowley, Office of Regional Counsel

TO: Kevin McSweeney, Gary Gosbee and Ken Rota

CONFIDENTIAL: ATTORNEY-CLIENT; ATTORNEY WORK PRODUCT

Attached is a copy of the DEP Regulatory Interpretation Letter recently issued to the MWRA. For your background, also attached are copies of the EPA Regulatory Interpretation Letter earlier sent to the MWRA, and the MWRA's request for interpretations by EPA and DEP.

The DEP interpretations appear consistent with federal interpretations and requirements with the possible exception of one issue. In answer 5, the DEP states that it does not regulate sludge in a wastewater treatment unit as a hazardous waste "until such sludge is placed in a unit used solely for the purpose of accumulation or storage." (emphasis added).

As part of the Massachusetts base program, EPA approved a regulation which exempts wastewater treatment units from RCRA TSDF requirements, but the regulation as approved by the EPA does not exempt them from RCRA generator requirements. If the DEP is now interpreting this regulation as exempting such units from even generator requirements, the "solely" language could be problematic.

I think we would agree with DEP that sludge being dewatered by a filter press is not yet covered by RCRA. But once sludge is being stored, the federal regulations subject it to RCRA generator requirements. If DEP is saying that such sludge is exempt unless it is solely being stored, the State interpretation could be less stringent than federally required. At a minimum, it opens a potential loophole that companies like Magnum Metal Finishing can try to take advantage of.

Based on the recent inspection by Ken's office, I understand that Magnum Metal Finishing has been storing hazardous sludge for years, but arguing that it is not subject to RCRA generator requirements because it occasionally drains supernatent from the sludge back into its wastewater treatment system. In our Regulatory Interpretation Letter, we made clear that we consider such sludge to be subject to RCRA. If the DEP disagrees, we have a problem.

I propose that we proceed as follows: (1) we should raise this issue in connection with the IBR project. As part of the update of the DEP's regulations, DEP should clarify that sludge being stored is hazardous waste even if supernatant is drained from the sludge (the term "solely" should be eliminated from the DEP's definition as part of this clarification process); (2) Ken - I recommend that your office continue to take the position that the sludge storage at Magnum Metal Finishing is a RCRA program violation, whether or not supernatant has been drained periodically from the sludge. But before issuing a complaint, it may be wise to consult with the State. Since the State's interpretation goes beyond what its federally approved regulations actually say, I do not think we need to defer to the State's interpretation. But it would be good to try to forge a united front.

Perhaps all the State means by its letter is that sludge still being actively dewatered is not hazardous waste. If so, we do not have a problem. But if the DEP is applying the "solely" language to exempt companies like Magnum Metal Finishing from all hazardous waste requirements, then we have a problem and need to seek to correct it as part of the Massachusetts RCRA program update.

COMMONWEALTH OF MASSACHUSETTS
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DAVID B. STRUHS
Commissioner

December 31, 1998

Kevin McManus
Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129

Dear Mr. McManus:

The following is in response to your August 31, 1998 letter in which you requested from the Massachusetts Department of Environmental Protection (DEP) clarification of regulatory requirements that apply to certain practices MWRA has observed at various metal plating facilities in its district.

1. Delivery of hazardous wastewater (usually spent plating baths) to treatment systems by means other than direct piping.

You stated that the most common methods observed are hand-carrying wastewater in buckets or collecting wastewater in containers and transferring it on wheeled dollies to an on-site wastewater treatment unit (WWTU). You noted that in most cases these metal-bearing wastes and acids are likely to be either listed (F006 or F007) or characteristic hazardous wastes. You requested clarification as to which requirements apply to such wastes.

Assuming that the wastewaters described in your letter are hazardous wastes, the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000, apply from the time the wastewaters are generated until they are added to the on-site wastewater treatment unit. As such, a generator of hazardous wastewaters must comply with all the applicable generator requirements of 310 CMR 30.300 prior to introducing the wastewaters to the WWTU. These include determining whether the waste is a hazardous waste, counting such wastes in deciding whether the generator is a large, small or very small quantity generator, obtaining an EPA Identification number (VSQGs need only obtain a DEP-issued generator identification number), as well as complying with all applicable hazardous waste accumulation, labeling and container management standards (see 310 CMR 30.340-30.353).

Hazardous wastewaters may be added to an on-site WWTU within the MWRA district by means other than direct piping provided that the above-referenced treatment takes place in a WWTU in accordance with the following conditions:

a) the treatment takes place in a tank which meets the definition of a WWTU in 310 CMR 30.010, and which is permitted pursuant to M.G.L. c. 21 s. 43 (MWRA permitted facilities are considered permitted pursuant to M.G.L. c. 21 s. 43 (see 314 CMR 7.16)); and

b) the hazardous waste introduced into the WWTU has been described in an MWRA Industrial Wastewater Discharge Permit application; and

c) the WWTUs ability to treat the hazardous wastes is adequately regulated by an MWRA approval resulting from the above permit application; and

d) the WWTU system's effluent is properly permitted or otherwise authorized by MWRA.

Such a WWTU, however, must also be managed in compliance with the Special Requirements for Wastewater Treatment Units at 310 CMR 30.605. Provided that the WWTU is managed in compliance with 30.605, it is not subject to the management and permitting requirements for hazardous waste facilities found at 30.500 through 30.999, for the treatment, storage and disposal of hazardous waste. However, when a hazardous waste sludge is removed from the WWTU, it is subject to regulation as a hazardous waste under 30.000, and not the special requirements of 30.605.

Therefore, MWRA is correct in its understanding that 310 CMR 30.605 does apply to wastewater treatment units that receive hazardous waste and recycled wastes (as described in 30.206(3)), for which the unit has a valid permit to treat, and that this includes units that discharge subject to MWRA permits.

2. What is the scope and import of the exclusion at 310 CMR 30.605(1)(b) which states that 310 CMR 30.605 does not apply to a WWTU that conducts treatment which is an integral part of the manufacturing process; specifically, what is the consequence of excluding these systems from 310 CMR 30.605?

WWTUs that conduct treatment which meets the definition of treatment which is an integral part of the manufacturing process are not subject to the requirements of 310 CMR 30.000. As you noted, the definition of treatment which is an integral part of the manufacturing process, as defined in 310 CMR 30.010, specifies that the treatment method must be directly connected via pipes or the equivalent from the production process

The term "connected via pipes or the equivalent" is interpreted by DEP to mean either a hard-piped connection or some other fixed pipe connection that cannot be readily disconnected. Treatment which is an integral part of the manufacturing process does not refer to, for example, a freestanding, mobile treatment unit that can be wheeled up and easily connected using a pipe that screws into the processing unit. To this end, the DEP does not consider hand-carrying or open troughs to be the equivalent of pipes, and are thus not excluded from 310 CMR 30.605.

Finally, please note that the practice of hand-carrying open buckets of hazardous waste to a WWTU is not allowable under the Massachusetts Hazardous Regulations, since 310 CMR 30.685 requires that containers being used to accumulate hazardous waste must be kept closed at all times except for when waste is either being added or removed.

3. Clarification of the term "Off-Site".

In your letter, you note that 310 CMR 30.605(1) specifies that the section does not apply to WWTUs that receive hazardous waste generated off the site where the unit is located. You specifically ask what is meant by off the site?

Please refer to the definition of Site at 310 CMR 30.010. The scenario described in your letter whereby hazardous wastewaters are moved from one building to another (without being transported along a public road) would not be considered off the site since the facility appears to meet the above-referenced definition of a single Site.

4. Clarification as to what is required to comply with 310 CMR 30.605(2)(b), 30.605(4) and 30.513.

310 CMR 30.605(2)(b) states that the owner or operator of each WWTU shall comply with 310 CMR 30.513, which requires an owner/operator of a WWTU to obtain a detailed physical and chemical analysis of a representative sample of the waste. 30.605(4) no longer requires that a waste analysis plan be submitted to the DEP and the POTW since that reporting requirement effectively expired in 1984. Therefore, no waste analysis plan needs to be submitted to the MWRA.

5. When does sludge accumulation in a tank become long-term storage of a hazardous waste (assuming the sludge is F006 listed)?

DEP does not regulate sludge in a WWTU as a hazardous waste accumulation until such sludge is placed in a unit used solely for the purpose of accumulation or storage. Therefore, as long as the sludge is in a WWTU that is conducting treatment (and not just accumulation), the DEP considers such sludge to be subject to the requirements of 310 CMR 30.605, regardless of whether the sludge will be reintroduced back into the wastewater treatment unit. In addition, if hazardous wastewater treatment sludge is removed from one unit in a series of units within a wastewater treatment system and placed in another unit for accumulation and additional permitted treatment (e.g. dewatering), the DEP still does not consider that to be hazardous waste accumulation or storage.

6. How Would DEP Like to Be Informed of Apparent Violations?

In general MWRA may refer apparent violations of DEP hazardous waste regulations to the appropriate DEP Regional Office to the attention of the Bureau of Waste Prevention, Compliance and Enforcement Section Chief. Since the majority of the MWRA service area falls within DEP's Northeast Region, violation referrals may be directed to Edward Pawlowski, Compliance and Enforcement Chief at (978) 661-7600.

As you know, DEP is in the process of reviewing all of the Massachusetts regulations and programs which affect facilities discharging or proposing to discharge industrial wastewater in preparation for implementation of the Environmental Results Program (ERP) Industrial Wastewater Certification. Prior to ERP implementation, DEP expects to propose and promulgate amendments to the current industrial wastewater regulations. Because DEP is considering revisions to portions of the 310 CMR 30.605 regulations and others that may impact such issues as inspection, enforcement and applicable requirements, the agency is deferring resolution of these issues until the regulatory issues have been resolved.

If you have any additional questions, please contact me at (617) 556-1120 or James Paterson of my staff at (617) 556-1096.

Sincerely.

Steven A. DeGabriele
Director, Bureau of Waste Prevention
Business Compliance Division

cc: Ralph Child
William Sirull
John Reinhardt
Edward Pawloski, NERO
Robert Bois, CERO
Dikran Kaligian
Helen Waldorf
James Doucett
James Miller
Kevin McSweeney
Jeffry Fowley
Sarah Baron

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
JOHN F. KENNEDY FEDERAL BUILDING
BOSTON, MASSACHUSETTS 02203-0001

October 22, 1998

Kevin McManus, Director
Toxic Reduction and Control Department
Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129

Re: Hazardous Waste at Metal Plating Facilities

Dear Mr. McManus:

This is in response to your request for a regulatory interpretation dated August 31, 1998. In answering your questions, I will first explain how we interpret our federal RCRA regulations. I will then address how federal and state requirements interact.

Regulation of Wastewaters Stored or Transported On-Site

You first note that the MWRA has found several metal plating facilities that deliver waste from industrial processes to their wastewater treatment systems by means other than direct piping. The most common methods are hand-carrying waste in buckets, or collecting it in containers and transferring it on wheeled dollies. You state that the MWRA believes that these metal-bearing wastes and acids are likely to be either listed (e.g., F007-F009) or characteristic hazardous wastes. You ask what hazardous waste requirements apply to this situation.

RCRA generator requirements apply when wastewaters are stored, accumulated or transported on-site (other than by hard-piping) prior to discharge. As explained below, none of the EPA exemptions from hazardous waste generator requirements apply to this situation:

1. 40 CFR §§ 264.1(g)(6), 265.1(c)(10) and 270.1(c)(2)(v) exempt owners and operators of wastewater treatment units from the hazardous waste treatment, storage and disposal facility requirements set out in 40 CFR parts 264, 265 and 270

respectively.[1] However, these provisions do not exempt owners and operators of wastewater treatment facilities from compliance with RCRA generator requirements.

2. 40 CFR § 261.4(a)(2) exempts industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act from hazardous waste requirements. However, as stated in the EPA "Comment" following this regulation, "this exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge...."

3. 40 CFR § 261.4(a)(1)(ii) similarly exempts mixtures of industrial wastes and domestic sewage from hazardous waste requirements. However, this exemption applies only when the industrial wastes mix with domestic sewage upon or after being discharged, and does not exempt industrial wastewaters from hazardous waste requirements prior to discharge.

4. 40 CFR § 261.5(c)(2) provides that wastewaters need not be counted by generators as hazardous wastes when they are "managed immediately upon generation only in ... wastewater treatment units." This provision exempts wastewaters from all hazardous waste requirements (including generator requirements) when it applies. But it only applies when wastewaters are managed immediately upon generation and only in wastewater treatment units. The EPA interprets this as meaning that the exclusion applies only when the wastewaters are transported from the point of generation (e.g., industrial process tank) to the wastewater treatment system and discharge point only through hard-piping. Thus this exemption does not apply when hazardous wastes are stored or transported in containers or other such devices.

5. 40 CFR § 261.5(c)(2) also provides that wastes need not be counted by generators as hazardous wastes when they are managed immediately upon generation only in totally enclosed treatment facilities. But for the same reasons discussed in item 4 above, this exemption does not apply when hazardous wastes are stored or transported other than through hard-pipes.

Since none of the exemptions apply, any regulated entity storing, accumulating or transporting wastewaters on-site other than through hard piping must comply with all applicable RCRA generator requirements. These include, first, that the regulated entity must make determinations regarding whether the wastewaters are hazardous wastes in accordance with 40 CFR § 262.11.

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[1] This exemption is subject to the caveats regarding dilution of certain ignitable and reactive wastes set out in 40 CFR §§ 264.1(g)(6) and 265.1(c)(10).

Second, any wastewaters which are hazardous must be counted in determining whether the entity is a large quantity generator, small quantity generator or conditionally exempt small quantity generator under federal law. Depending upon its overall status, the entity must then comply either with the large quantity generator requirements set out and referenced in 40 CFR § 262.34(a) and elsewhere in 40 CFR part 262, or the small quantity generator requirements set out and referenced in 40 CFR § 262.34(d) and elsewhere in 40 CFR part 262, or the conditionally exempt small quantity generator requirements set out and referenced in 40 CFR § 261.5.

For large and small quantity generators, these requirements include obtaining an EPA identification number in accordance with 40 CFR § 262.12. Also, any containers in which wastewaters are stored, accumulated or transported must be properly handled. That is, when hazardous wastewater is added to a container from a process tank, the regulated entity must either store the wastewater in compliance with the satellite storage requirements set out in 40 CFR § 262.34(c) or must promptly transport the wastewater to the point of discharge. In either case, labeling requirements (e.g., labeling the container as "hazardous waste") must be followed. If there is storage at other than the point of initial generation (e.g., at the point of discharge), the full applicable requirements for non-satellite storage (including the 90 or 180 day time limits) must be followed. Note that the accumulation, storage or transportation on-site of hazardous wastewaters may also trigger requirements for such things as RCRA training and the development of a Contingency Plan.

We also specifically note that the practice of transporting hazardous wastewaters in open buckets is not allowed by the federal regulations. Pursuant to 40 CFR § 265.173(a), any container holding hazardous waste "must always be closed during storage, except when it is necessary to add or remove waste." This provision is applicable to both large and small quantity generator storage, including satellite storage.

Finally, additional requirements including the use of the Manifest apply when hazardous waste is transported off-site. Off-site means any situation which is not within the definition of "On-site" in 40 CFR § 260.10. Provided that an entity stays within this definition, it may transport hazardous waste between buildings without needing to use a Manifest. But it must of course comply with proper handling requirements, including labeling and the use of a closed container, for the transportation of hazardous waste on-site.

Metal finishers that wish to avoid hazardous waste requirements may be able to do so by taking pollution prevention measures which render their wastes non-hazardous. Also, hazardous waste requirements do not apply to wastewaters which are hard-piped

(so long as the wastes do not leak prior to discharge or otherwise come in contact with the environment). But entities which are handling hazardous wastewaters on-site (e.g., by transporting or storing in containers) are properly subject to the same requirements as would apply to any other hazardous wastes being handled on-site.

Regulation of Sludge From Wastewater Treatment

You also state in your letter that the MWRA has found facilities accumulating sludge in tanks connected to wastewater treatment systems that is not destined for reintroduction to the treatment systems. In some cases, the accumulation apparently has been considered by the regulated entities to be exempt from RCRA requirements as part of the wastewater treatment system rather than storage subject to hazardous waste requirements. As a result, in at least one case, a facility kept no records and continued accumulating for years.

Under the EPA regulations, when sludge is generated by a wastewater treatment unit, it is subject to the same hazardous waste generator requirements as any other generated waste. Sludge at the bottom of a tank which is being used for the treatment of wastewater (i.e., within which sludge is being precipitated) is not yet considered to have been generated for RCRA purposes. However, once the sludge is transferred to a separate accumulation tank, it is subject to the federal RCRA generator requirements.

Thus, for such sludge, the regulated entity must first determine if the sludge is hazardous. If the sludge is hazardous, the regulated entity must then comply with all applicable hazardous waste generator requirements (e.g., labelling the tank and removing the sludge within the required 90 or 180 day period).

No federal provision exempts sludge from hazardous waste generator requirements. The provisions in 40 CFR §§ 264.1 (g)(6), 265.1(c)(10) and 270.1(c)(2)(v) only exempt wastewater treatment units including sludge handling units, from treatment, storage and disposal facility requirements. In addition, as noted in the "Comment" following 40 CFR § 261.4(a)(2), the exclusion from RCRA regulation of industrial wastewater discharges does not cover "sludges that are generated by industrial wastewater treatment." Similarly, the exclusion in 40 CFR § 261.4(a)(1) from RCRA regulation of industrial wastewaters mixed with domestic sewage does not cover sludges. Finally, 40 CFR § 261.5(c)(2) excludes from RCRA regulation those wastes managed immediately upon generation only in wastewater treatment units. This exclusion, however, refers to the wastewaters being managed, not to sludges which are accumulated as a result of the management of the wastewaters.

Thus hazardous sludges generated by a wastewater treatment unit and not destined for reintroduction to the treatment unit, must be handled as hazardous wastes. We further emphasize that any exemption from hazardous waste requirements based on reintroduction of sludge into wastewater treatment systems is narrow. Indeed, the federal regulations do not contain an exemption for sludges destined to be reintroduced to wastewater treatment systems, as such. If sludge truly is reintroduced and used as part of an ongoing process of treating wastewater, the sludge could be exempt from federal hazardous waste regulation under 40 CFR § 261.5(c)(2). But we are aware of no situation where this would occur within the metal finishing industry. No federal exemption from generator requirements applies simply because sludge is in a tank which is part of the wastewater treatment system. Also, sources storing sludge and reintroducing only supernatant to their wastewater treatment system do not qualify for any federal exemption for the sludge.

Need for Compliance With Federal and State Requirements

Currently in Massachusetts, metal finishers and other sources must comply with both federal RCRA regulations and State requirements. This is because while Massachusetts has been authorized to carry out the federal base RCRA program, it has not yet been federally authorized to carry out various updated federal requirements. In particular, the State has not yet been authorized to administer the "TC Rule" covering many of the hazardous wastes. Thus the federal regulations described above apply directly in Massachusetts to all "TC" wastes. The federal regulations also set the minimum standards below which State regulations may not fall.

The State, however, has the lead responsibility for the portions of the RCRA program for which it has been authorized, including most regulation of non-"TC" wastes. State regulations must be complied with as a matter of State law, and many of the State regulations are federally authorized and enforceable.

Thus metal finishers should treat the federal requirements described above as the starting minimum point for compliance. In addition, metal finishers must comply with any more stringent State requirements. As you have requested, the interpretation of the State regulations will come separately from the DEP.

If the MWRA discovers violations of RCRA requirements, notification to EPA should be made to Ken Rota, Chief of the RCRA Technical Section in our Office of Environmental Stewardship. His telephone number is 617-565-3321.

Thank you for your inquiries and for your offer of assistance in bringing about compliance. Please feel free to write again should you have any further questions, or contact our RCRA attorney Jeffry Fowley directly at 617-565-3449.

Sincerely,

Edward K. McSweeney
Associate Director for Waste Policy

cc: Steve DeGabriele, MA DEP
Ken Rota

MASSACHUSETTS WATER RESOURCES AUTHORITY
Charlestown Navy Yard
100 First Avenue
Boston, Massachusetts 02129

Gary Costley (CHW)
I assume Jeff
is working on this
Kevin

August 31, 1998

Mr. Kevin McSweeney
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OFFICE OF ECOSYSTEM PROTECTION
IMMEDIATE OFFICE

Ralph Child, General Counsel
Massachusetts Department of Environmental Protection
1 Winter St.
Boston, MA 02108

Re: Hazardous waste at metal plating facilities

Dear Messrs. McSweeney and Child:

I am writing as a follow-up to discussions between MWRA and Mark Mahoney of EPA concerning hazardous waste management at metal plating facilities. We have corresponded and met with Mr. Mahoney concerning EPA's Common Sense Initiative for Metal Platers, and in the course of those discussions have raised MWRA's concerns with the handling of concentrated plating baths, wastewater treatment sludge, and other hazardous wastes at metal plating facilities. As I wrote to Mr. Mahoney on June 19, 1998, MWRA is concerned that if hazardous waste is improperly handled, it may be released to the sewer at some facilities. MWRA therefore requests clarification from EPA and DEP of their requirements concerning certain practices that we have observed at various metal plating facilities in MWRA's District, as discussed below, and your assistance in communicating these requirements to the metal platers and assuring compliance.

In particular, MWRA is concerned with manual transfer of process wastes to wastewater treatment systems, and long term storage of sludge removed from wastewater treatment systems. MWRA has endeavored to assure that such practices do not threaten to cause violations of MWRA's discharge regulations, but we would also like to be sure that we can identify potential violations of DEP and EPA requirements.

1. Manual delivery of wastewater (usually concentrated spent plating baths) to treatment systems.

MWRA has found that many facilities deliver waste from industrial processes to their wastewater treatment systems by means other than direct piping. The most common methods are hand-carrying waste in buckets, or collecting it containers and transferring it on wheeled dollies. At least one facility transports waste in this manner between buildings and across a parking lot. In most cases, the wastes involved are spent plating baths or acids. MWRA believes that these metal-bearing wastes and acids are likely to be hazardous wastes, either listed (e.g., F007 - F009) or characteristic. We need clarification as to which requirements do apply to these wastes, so that we can be sure that our permit requirements are consistent, and so that we can identify instances of noncompliance and inform your agencies.

Our understanding is that EPA and DEP do not prohibit manual delivery to wastewater treatment systems, but some RCRA requirements may apply to these wastes. EPA's regulations, at 40 C.F.R. §§ 264.1(g)(5) & (6), and 265.1(c)(9) & (10), exempt "totally enclosed treatment facilities," and "wastewater treatment units" (defined in 40 C.F.R. § 260.10) from Parts 264 and 265 (governing treatment, storage and disposal facilities), but other requirements, particularly the generator requirements in Part 262, may apply to metal platers' manually transported wastes. For example, are wastes destined for wastewater treatment units subject to the accumulation provisions of 40 CFR § 262.34, so that they are to be considered in determining the generator's eligibility for small quantity status under § 262.34? MWRA would like to identify specific applicable EPA provisions that metal platers should be aware of.

DEP, at 310 CMR §§ 30.501(2)(b) & (d) and 30.801(4), also exempts "industrial wastewater treatment units," from the management and permitting standards for hazardous waste facilities, but 310 CMR § 30.605 imposes some requirements on "wastewater treatment units for the treatment of hazardous waste at the site of generation of the waste." 310 CMR § 30.010 defines an "industrial wastewater treatment unit" as a unit which serves a discharge subject to regulation under § 307(b) (pretreatment) or § 402 (NPDES) of the Clean Water Act, is used for treatment or storage prior to treatment, and is a "tank." MWRA would like to confirm its understanding that § 30.605 applies to all wastewater treatment units that receive hazardous waste, as well as recycled waste that would be hazardous if it were not recycled (310 CMR § 30.206(3), including units that discharge subject to MWRA permits.[1] In addition, the terms of § 30.605 present several questions.

First, we are not sure of the scope and import of the exclusion in § 30.605(1) of "treatment which is an integral part of the manufacturing process," as defined in 310 CMR §

[1] Section 30.501(2)(d) states that "Hazardous waste activities at such facilities are regulated at 314 CMR 8.00." Section 8.05 requires that facilities comply with 310 CMR § 30.605, and to the operations manual requirement of 314 CMR § 12.04(1). MWRA cannot determine whether § 8.05 applies to dischargers to the sewer.

30.010. The definition requires a connection "via pipes or the equivalent from an industrial production process (i.e., a process which produces a product . . .)" and requires that the system be "totally enclosed,' as defined therein. The definition of "totally enclosed" is comparable to EPA's definition of a "totally enclosed treatment facility" in 40 CFR § 260.10. DEP's definition requires if the treatment unit discharges effluent to the sewer, it is "deemed totally enclosed" only if the discharges are in compliance with all applicable laws and permits. It is not clear to us what the consequence is of excluding these systems from § 30.605: apparently the result is that no hazardous waste requirements apply to a system that is connected to an industrial process "via pipes or the equivalent." However, MWRA does not know what DEP considers "the equivalent" of pipes. Hand-carrying, open troughs, and other conveyances to treatment systems, could all arguably be "the equivalent" of pipes, and thus excluded from § 30.605. Moreover, a facility that might otherwise be "deemed totally enclosed" apparently should lose that status if it does not comply with its MWRA permit. Some of the facilities that we know to be using hand-carrying have long histories of MWRA violations.

Second, § 30.605(1) provides that the section does not apply to wastewater treatment units that receive hazardous waste generated "off the site where the . . . unit is located." As noted above, at least one metal plater with an MWRA permit transports waste, which we believe to be hazardous waste, between buildings. MWRA is not sure that it knows how DEP and EPA would address this practice. According to the definition in 310 CMR § 30.010, a "site" may include different buildings on contiguous properties, so apparently this facility is not treating "offsite" wastes. However, we would like to be able to clarify the circumstances that would constitute "offsite."

Third, there are many requirements in § 30.605 that are apparently being ignored at many facilities. For example, subsection (2) incorporates management standards from 310 CMR § 30.500, and subsection (4)(a) calls for the operator to submit a waste analysis plan prepared in compliance with 310 CMR §§ 30.513 and 30.605(2)(b) and (4)(b) to DEP and to the POTW. MWRA has not been receiving waste analysis plans prepared in compliance with § 310 CMR § 30.513. MWRA has sought to enforce EPA's requirements in 40 CFR § 403.12(p)(1), which requires that Industrial Users of POTWs notify the POTW and EPA's Waste Management Division Director, in writing of discharges of hazardous wastes, or substances that would be hazardous wastes but for their discharge to the sewer. However, such notification does not appear to be equivalent to the waste analysis plan required by §§ 30.513 and 30.605(2)(b), which are presumably equivalent to the waste analysis requirements of 40 CFR § 264.13. MWRA would like clarification as to what is required to comply with 310 CMR § 30.513, and what MWRA should be receiving.

2. Long term storage

310 CMR § 30.605(1)(a)(2) provides that hazardous waste management standards of 310 CMR §§ 30.500 through 30.999 do not apply to "wastewater treatment units for the accumulation or storage, at the site of generation, of wastewater treatment sludge which is hazardous waste, prior to reintroduction of such sludge back into the wastewater treatment

process." (Emphasis added). MWRA has found facilities accumulating solids in tanks connected to treatment systems that are not destined for reintroduction to the treatment system. In some cases, the accumulation has apparently been considered part of the treatment system rather than storage subject to hazardous waste requirements. As a result, in at least one case, the facility kept no records and continued accumulating for years.

3. Issues to be resolved

MWRA has found that some metal platers are unaware of the potential scope of these requirements affecting manually transported wastes, treatment units, and storage tanks. MWRA would like to work with DEP and EPA to determine whether the practices observed by MWRA are in fact permissible (e.g., manually transporting process waste between buildings), to inform the metal platers of applicable hazardous waste requirements, and to alert DEP and EPA to potential violations.

To summarize, MWRA would like to clarify the following:

i. The hazardous waste management requirements, in 310 CMR § 30.605(2)-(4) and elsewhere, that apply to metal platers that manually deliver process waste to wastewater treatment units; in particular:

(1) What generator requirements in Part 262, and 310 CMR § 30.340-.350, or other DEP requirements, should these facilities be aware of and comply with? and

(2) What is required to comply with 310 CMR § 30.513, and what MWRA should be receiving under § 30.605(4)?

ii. The circumstances that would exempt a facility from such requirements, in particular, what is a "pipe or equivalent," sufficient to render a treatment process "an integral part of the manufacturing process," exempt under § 30.605(1);

iii. When does sludge accumulation in a tank become long-term storage of hazardous waste (assuming the sludge is F006 listed hazardous waste); and

iv. How would DEP and EPA like to be informed of apparent violations? MWRA would be willing to coordinate with DEP in inspecting and informing facilities of applicable requirements.

I look forward to working with you to clarify these issues. Please feel free to contact Charles Bering on my staff, at (617) 241-2309, to discuss this further.

Sincerely yours,

Kevin McManus, Director
Toxic Reduction and Control Dept.

cc: Mark Mahoney, EPA
Jeffrey Fowley, EPA
Joe Canzano, EPA