



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

OFFICE OF THE  
REGIONAL ADMINISTRATOR

April 9, 1999

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. This letter modifies and supersedes our earlier response dated October 22, 1998. In answering your questions, I will first address 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 in the manner described above. 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.<sup>1</sup> These provisions also have been interpreted by the EPA's national program offices to exempt operators of wastewater treatment facilities from compliance with the RCRA generator storage requirements set out in 40 CFR § ~~262.34~~. However, this exemption applies only to "wastewater treatment units," which include only the "tanks" or "tank systems" associated with such units. Containers and buckets obviously are not "tanks." They also do not fall within the "ancillary equipment" which is part of "tank systems." See 40 CFR § 260.10.

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." But this provision applies only 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/discharge point only through hard-piping. Thus this exemption does not apply when hazardous wastes are stored or transported in containers or buckets 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

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<sup>1</sup> 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).

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.

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 (i.e., at other than a proper satellite location), and other than in a tank which is part of a wastewater treatment system, 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 on its property 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.

~~In sum, hazardous waste requirements do not apply to wastewaters~~ which are hard-piped from a manufacturing operation to a wastewater treatment system/discharge point, 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 outside of wastewater treatment system tanks and tank ancillary equipment (e.g., by transporting or storing in containers) are 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.

Whether such wastewater sludge storage is allowed under the federal regulations is the subject of ongoing discussions. Our national program offices have interpreted the provisions in 40 CFR §§ 264.1(g)(6), 265.1(c)(10) and 270.1(c)(2)(v) as exempting wastewater treatment units from the RCRA generator storage requirements set out in 40 CFR § 262.34 as well as from treatment, storage and disposal facility requirements. In addition, these offices have interpreted this exemption as covering wastewater sludge storage, at least when the sludge is being stored in tanks connected to the rest of the wastewater

treatment unit by hard pipes.<sup>2</sup> However, the Environmental Defense Fund and Natural Resources Defense Council have petitioned the EPA to reconsider the wastewater treatment unit exemption. As part of that reconsideration, this Region is urging that the EPA interpret the wastewater unit exemption to NOT cover sludge being stored for shipment off-site.

Pending any such reinterpretation of the federal regulations, sources should at a minimum follow the wastewater treatment unit requirements set out in the Massachusetts State hazardous waste regulations. These regulations are a federally enforceable part of the RCRA program in Massachusetts. Under the Massachusetts regulations, tank units which are used "solely for the accumulation or storage of a wastewater treatment sludge prior to disposal on-site or prior to transportation to an off-site facility" are NOT exempt from RCRA requirements. See 310 CMR 30.605 and 30.010 definition of "wastewater treatment unit". Thus storage of hazardous sludge in wastewater tanks is subject to RCRA requirements in Massachusetts, to the extent that this is provided for by the State regulations. For an interpretation of these State regulations, please see the DEP's regulatory interpretation letter sent to you on December 31, 1998. Whether a particular company's storage violates RCRA requirements may of course need to be determined on a case by case basis.

This Region would appreciate being informed of any situations in which sources are storing hazardous wastewater sludge without complying with RCRA generator requirements. First, in light of the reconsideration of the national interpretation of the federal exemption that the Region is urging, we would like to know about any environmental problems resulting from long-term storage of hazardous sludge at generator sites. Second, even under the federal minimum requirements as nationally interpreted, not all on-site storage of wastewater sludge is exempted. The exemption does not apply to sludge being stored in containers, to tanks which have a non-wastewater "dual use" (i.e., when a tank is concurrently used to store wastewater sludge and non-wastewater

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<sup>2</sup> In contrast, none of the exemptions from RCRA requirements other than the wastewater treatment unit exemption apply to the storage in tanks of wastewater sludge. 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.

sludge), or to situations involving "alternating" use of a tank (i.e., when a tank is used solely for wastewater sludge storage for part of the year and is used for another non-wastewater purpose for another part of the year). Also, the exemption does not apply when sludge leaks from a tank into the environment. Finally, as discussed above, the Massachusetts state RCRA regulations do regulate storage of wastewater sludge. These regulations are enforceable by both the EPA and State and may be useable to address environmental problems caused by the extended and improper storage of wastewater 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.

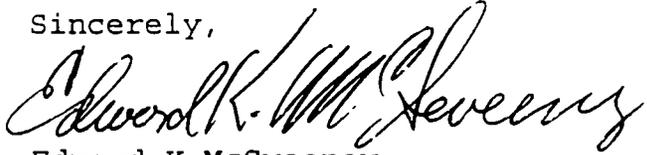
The State, however, has the lead responsibility for the portions of the RCRA program for which it has been authorized, including most regulation of non-"TC" wastes. State regulations must be complied with as a matter of State law, and many of the State regulations are federally authorized and enforceable. Also, the EPA recently proposed to generally approve the DEP to administer the "TC" Rule and hopes to grant final approval shortly.

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 has 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 617-918-1751.

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 617-918-1094. .

Sincerely,

A handwritten signature in cursive script that reads "Edward K. McSweeney". The signature is written in black ink and is positioned above the printed name.

Edward K. McSweeney  
Associate Director for Waste Policy

cc: Steve DeGabriele, MA DEP  
Ken Rota, EPA - OES  
Gary Gosbee, EPA - OEP