

Jeff Fowley/R1/USEPA/US
04/25/2006 01:32 PM

To Sharon Leitch/R1/USEPA/US@EPA
cc
bcc
Subject Fw: Treatment of hazardous waste without a permit ??

reg. interp. file should have this as incoming and our response (to be sent in my next email)
— Forwarded by Jeff Fowley/R1/USEPA/US on 04/25/2006 01:32 PM —



"Sirull, William (DEP)"
<William.Sirull@state.ma.us>

04/05/2006 09:08 AM

To Ken Rota/R1/USEPA/US@EPA, Jeff Fowley/R1/USEPA/US@EPA, Erna Waterman/P2/R8/USEPA/US@EPA
cc "Miller, James (DEP)" <James.Miller@state.ma.us>, Deborah Brown/R1/USEPA/US@EPA, Lisa Papetti/R1/USEPA/US@EPA, Andrea Simpson/R1/USEPA/US@EPA
Subject Treatment of hazardous waste without a permit ??

Hi. MassDEP requests EPA Region I's view on whether in the following scenario a company would need a RCRA permit to treat hazardous wastewater or whether some exemption from the permit requirement is available to the company under federal regs. MassDEP needs EPA's view on this before being able to consider whether it could issue a case-by-case waiver from the State permit requirement pursuant to the State regs at 310 CMR 30.1102 as a remedy option in an enforcement case. I have initially discussed this with Ken Rota who sent me some documents dealing with evaporator issues including an EPA 1993 memo. We have read the subsequent EPA email traffic on the subject. Jim and I thought we would begin the consultation process with this email and then proceed to a conference call as necessary or desirable. The scenario is:

One of the MassDEP regions inspected a manufacturer of fiber optic materials registered as a LQG of RCRA waste and observed that the company generates a wastewater from its process that consists of a mixture of aqueous liquid and solids. The company initially accumulates the mixture in drums. Subsequently, the company brings the drums to a plate and frame press to squeeze out the water from the solids. The solids are manifested off-site as TC-lead hazardous waste. The liquids are sent to an evaporator which is hard-piped to the press. The liquid sent to the evaporator is also TC-lead so the evaporator is evaporating a hazardous waste. There is no emission of VOCs from the evaporator. There is no sewer connection at this location so the company never discharged to a POTW and cannot now.

MassDEP sees the following regulatory options for allowing the company perhaps to continue this operation without the need for a RCRA permit.

1) The liquid/solids mixture is being treated in a tank system (the press plus evaporator), which could possibly operate without a RCRA permit under the EPA provisions for treatment of hazardous wastes in tanks subject to Subpart J and the RCRA air emission rules, AA-BB-CC provisions as applicable. Provided the company complies with those EPA provisions, MassDEP might be able to issue a waiver from the State permit requirement pursuant to 310 CMR 30.1102 since the permit requirement would be more stringent than the federal requirements. One issue is: the EPA exemption for treatment in containers and tanks, we believe, applies only to accumulation containers and tanks, not to process tanks as in this case.

2) As in 1) above, the company operates the press/evaporator tank system in compliance with Subpart J and AA-BB-CC as applicable. MassDEP then requires, for compliance with State regulation, that the press/evaporator be hard-piped to the manufacturing process so that thereby the treatment of a hazardous waste would be treatment integral to the manufacturing process under State regs and therefore

exempt from the State permit requirement. A condition for the exemption would be that the company would have to demonstrate that no hazardous materials are emitted from the evaporator, only water vapor.

3) EPA possibly decides that the press/evaporator system is a wastewater treatment unit exempt from a RCRA permit. Since MassDEP allows the same exemption, there's nothing further for the company to do, assuming the only emission from the evaporator is water vapor.

Maybe there are more options. We would appreciate EPA's feedback within two weeks as decisions need to be made by MassDEP regarding proceeding with enforcement action against the company. If you believe a conference call would be helpful to discuss and flesh out the issues, please let us know.

Thanks for your input as always.

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Jeff Fowley/R1/USEPA/US
04/25/2006 01:33 PM

To Sharon Leitch/R1/USEPA/US@EPA
cc
bcc
Subject Fw: Treatment of Hazardous Waste Without a Permit

----- Forwarded by Jeff Fowley/R1/USEPA/US on 04/25/2006 01:33 PM -----

Jeff Fowley/R1/USEPA/US
04/13/2006 12:43 PM

To william.sirull@state.ma.us
cc Marv Rosenstein/R1/USEPA/US@EPA, Ernest
Waterman/R1/USEPA/US@EPA, Ken
Rota/R1/USEPA/US@EPA, Andrea
Simpson/R1/USEPA/US@EPA, Deborah
Brown/R1/USEPA/US@EPA, Lisa
Papetti/R1/USEPA/US@EPA, Robin
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Subject Treatment of Hazardous Waste Without a Permit

In response to your 4/5/06 email, Ernie Waterman has asked that I send you the following response. This Region I opinion has been coordinated between Ernie's program office, the legal office and our enforcement office. Ernie and I would be happy to talk to you further about this. Please contact Ernie or me should you have any questions or concerns:

Thank you for your inquiry regarding a potential waiver of the RCRA permit requirement to a company operating an evaporator unit. In your email of April 5, 2006, you list three potential options for granting such a waiver. Our view is that the MADEP potentially could grant a waiver from the State RCRA permit requirement under option one, without being less stringent than the federal RCRA requirements. However, granting a waiver under options two and three would appear to result in being less stringent than the federal RCRA requirements.

Option 1 - The MADEP would grant a waiver from the State RCRA permit requirement for the evaporator unit on condition that the company comply with RCRA generator requirements regarding the liquid hazardous waste being concentrated in the evaporator. This seems potentially acceptable since the MADEP would be allowing activity without a permit similar to what the EPA also could allow without a permit under its generator treatment in containers and tanks exemption. Also, the company would need to meet RCRA generator requirements, just as it would need to under the federal generator treatment in containers and tanks exemption.

In a May 1, 1987 letter to Anthony Sasson, RCRA On Line No. 9432.1987 (03), EPA-OSW determined that an evaporator unit was a tank and thus within the generator treatment in containers and tanks exemption. The fact that the evaporator unit was used to treat/process rather than simply store the waste did not bar covering it under the exemption. In the situation being addressed by MADEP, it may similarly be possible for the MADEP to determine that the evaporator unit is a tank. Since the plate and frame press is connected to the evaporator unit by hard piping, the entire frame press-to-evaporator treatment system then could be classified as a tank system.

While the generator treatment in containers and tanks exemption generally may not be used for thermal treatment, we believe that there are special circumstances that might justify allowing the evaporator unit that you describe under this exemption. Evaporator units at many companies that once discharged to the sewers have been exempted by EPA and other States from all RCRA requirements, under the wastewater treatment unit exemption. If the generator treatment in containers and tanks exemption is utilized for the evaporator you describe, there will actually be greater environmental protections (since RCRA generator requirements still will apply), for an operation which seems to involve similar relatively low risk.

However, before granting any waiver, we believe that the MADEP should make sure that it has a detailed knowledge of the nature of the wastes and potential air emissions. Since covering a thermal treatment unit under the exemption is discretionary, before granting any waiver the MADEP should be convinced that there is no need for RCRA regulation of the air emissions beyond the AA, BB and CC rules (e.g., omnibus authority regulation). For example, the MADEP should confirm that the lead will be concentrated rather than emitted, that there will be indeed be little or no VOC emissions and that there will be no other emissions from the hazardous waste of concern. Also, since covering a thermal treatment unit under the exemption is discretionary, nothing in this email precludes EPA or the State from taking enforcement action against a company evaporating waste in the absence of a waiver.

The situation you describe does appear to involve an appropriate use of evaporator technology in that the evaporator is being used to concentrate hazardous wastes for proper disposal rather than being used to evaporate/dispose of the hazardous wastes into the air. While some hazardous constituents could nevertheless be discharged into the air, covering this evaporator/tank system under the RCRA permit exemption does not appear to raise a significant environmental concern, if the MADEP makes the determinations described above, so long as the tank system is required to meet the same RCRA tank system requirements that would be applied to storage tanks, e.g., secondary containment, RCRA inspections, AA, BB and CC requirements. It also should be made clear that the evaporator system remains subject to all applicable air program requirements, including any applicable air program permit.

If the MADEP grants an exemption under Option I, it should make clear to the company what RCRA generator requirements will apply. The liquid hazardous waste as well as the solids should be counted in determining generator status. If the company continues to store wastes first in drums, then RCRA container requirements should be applied to the drums. If the company connects its manufacturing process to the treatment units through hard piping, then RCRA tank system requirements should be applied to the new entire hard-piped system. In any event, as noted above, RCRA tank system requirements should be applied to the frame press-to-evaporator tank system.

Although not federally required in order to meet the generator treatment in containers and tanks exemption, the MADEP is free to impose, as a more stringent State condition, that the company must hard pipe its entire system in order to obtain a waiver from the State RCRA permit requirement.

Option 2 - The MADEP would grant a waiver from the State RCRA permit requirement for the evaporator unit, if the company connected the evaporator unit to its manufacturing process by hard piping, by classifying the evaporator unit as treatment integral to the manufacturing process. The State's exemption for treatment integral to the manufacturing process was authorized by the EPA as the analog to the federal exemption for totally enclosed treatment systems.

One problem with this approach is that the EPA has determined that evaporators do not meet the criteria for being exempted as totally enclosed treatment systems. *See* May 1, 1987 letter to Anthony Sasson, RCRA On Line No. 9432.1987 (03). Even if connected to manufacturing units by hard piping, evaporators have air emissions are thus are not totally enclosed. While the MADEP has proposed including a condition that only water vapor may be emitted from the evaporator, an evaporator emitting water vapor from treatment of hazardous waste could release volatile organics or other hazardous constituents and thus should not be classified as totally enclosed.

Also, we understand that when the State employs the treatment integral to a manufacturing process exemption, as when the EPA employs the totally enclosed treatment exemption, the result is to exempt the wastes undergoing treatment not just from RCRA permitting requirements but also from all RCRA generator requirements. We think this would be inappropriate, as it would result in wastes being handled on site in a manner less stringent than federally required. Moreover classifying the company's evaporator system as treatment integral to the manufacturing process while specifying that all applicable RCRA generator requirements must be complied with seems contradictory, since it appears that in fact no RCRA requirements would be applicable.

Option 3 - The MADEP would grant a waiver from the State RCRA permit requirement by classifying the evaporator treatment system as a wastewater treatment unit. Under the federal regulations, wastewater treatment units are exempt from all RCRA requirements.

This also is problematic. As the MADEP has noted, the company never discharged to a POTW and could not now do so since there is no sewer connection at its location. Thus the evaporator system clearly was not installed to meet Clean Water Act requirements. EPA-OSW has determined that the wastewater treatment unit exemption does not apply to sources which never had water discharges. *See* Jan. 16, 1992 Letter to Thomas Cervino, RCRA On-Line No. 9522.1992(01). Indeed, EPA HQ also has noted that the exemption does not apply even to sources which at one time discharged to the sewers if they install evaporators for reasons other than to meet Clean Water Act requirements. 53 Fed. Reg. 34080-34081 (Sept. 2, 1988). This Region has gone further and "opposed the use of the wastewater treatment exclusion to totally exempt evaporators from RCRA generator requirements." EPA Region I RCRA Program's Comments on R.I. Draft Guidance on the Use of Evaporators, dated July 10, 1998. In particular, this Region has pointed out that "exempting evaporators with air emissions from the RCRA [subpart CC] air rules, because evaporators have water permits, does not make environmental sense." *Id.*

Conclusion: Accordingly, we urge the MADEP to consider a waiver only pursuant to Option One. We would be happy to provide further assistance regarding such a waiver if requested.