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MEMORANDUM

SUBJECT: Applicability of the Manufacturing Process Unit (MPU) Exemption at 40 C.F.R. § 261.4(c) to Filter Canisters

FROM: Barnes Johnson, Director 
Office of Resource Conservation and Recovery

TO: RCRA Division Directors
EPA Regions I-X

This memo explains the applicability of the RCRA manufacturing process unit (MPU) exemption to hazardous wastes generated in and remaining in filter canisters which may be disconnected from an associated manufacturing process.¹

In summary, the MPU exemption at 40 C.F.R. § 261.4(c) is not applicable to hazardous wastes generated in and remaining in filter canisters when such canisters are disconnected from an associated manufacturing process. Any hazardous waste within the disconnected canisters becomes subject to RCRA regulations, such as the obligation to make a hazardous waste determination and meet other applicable hazardous waste generator, transporter, and treatment, storage and disposal facility requirements, when the canister is disconnected.

THE MPU EXEMPTION

The regulation at 40 C.F.R. § 261.4(c) provides the following exemption from RCRA regulatory requirements otherwise applicable to generators of hazardous waste:

Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under parts 262 through 265, 268, 270, 271 and 124 of this chapter or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface

¹ The "manufacturing process unit exemption" is part of a broader exemption found at 40 C.F.R. § 261.4(c), which also exempts certain storage tanks, transport vehicles and vessels, and pipelines.

impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

EPA's RATIONALE FOR PROMULGATING THE MPU EXEMPTION

The purpose of the exemption at 40 C.F.R. § 261.4(c) is to address the incidental hazardous waste generation during product or raw material storage, transport or manufacturing. Since these materials would be adequately contained during such activities, EPA promulgated a regulatory exemption to address this scenario, as explained by EPA in the preamble to the interim final rule promulgating the exemption (45 FR 72025, October 30, 1980):

Except for surface impoundments, and non-operating units, EPA did not intend to regulate product and raw material storage tanks, transport vehicles and vessels or manufacturing process units in which hazardous wastes are generated. As represented by the above examples, most of these units are tanks or tank-like units (e.g., distillation units) which are designed and operated to hold valuable products or raw materials in storage or transportation or during manufacturing.

Further guidance on the exemption stated that it did not apply to disassembled units sent off-site for cleaning. In a guidance document dated May 1990 (R013374), EPA states:

Although the exemption is available for hazardous waste in transport vehicles and vessels, which may be moved to a central facility for cleaning (see 45 FR 72026, October 30, 1980), EPA does not interpret the exemption as applying to manufacturing process units, associated non-waste treatment units, or product/raw material storage tanks (that are stationary during operation) if those units are disassembled for cleaning off-site.

MPU EXEMPTION APPLICABILITY TO FILTER CANISTERS

Recently, questions have arisen about the applicability of the MPU exemption to filter canisters after the canisters have been disconnected from an associated manufacturing process.² For example, a fuel cell technology used to convert natural gas to electricity may use desulfurization canisters to filter out sulfur compounds and may trap other substances, such as benzene, in a filter material within the canister. As part of the maintenance cycle, these desulfurization canisters are disconnected and replaced periodically. Disconnected canisters are not a part of the manufacturing process.

In other circumstances, the Agency looks to whether a manufacturing process unit is operating to determine if the waste contained within is subject to RCRA regulations. For a manufacturing process unit that is no longer operational, the MPU exemption gives a generator 90 days from the time the MPU ceases to be used for manufacturing before the waste contained within the MPU becomes subject to regulation. The Federal Register preamble makes it clear that the 90 day period covers both temporary

² Memo from Shawn M. Garvin, Regional Administrator, EPA Region 3, to David Small, Secretary, Delaware Department of Natural Resources and Environmental Control, September 8, 2015.

and permanent shutdowns, including units that have been "taken out of operation for maintenance and repair."³

However, this 90 day period in 40 C.F.R. § 261.4(c) does not apply to filter canisters. This is because filter canisters, as stated above, are not, by themselves, manufacturing process units.⁴ If a filter canister is disconnected from the manufacturing process, the MPU exemption does not apply to the disconnected canister or the material within the canister. The disconnected canister is, in effect, a container of solid waste and the material contained inside the canister is a waste subject to RCRA regulations. The act of disconnecting a canister from the manufacturing process immediately subjects any hazardous waste within the canister to regulation under 40 C.F.R. Parts 261 - 265, 268, 270, 271 and 124.

CONCLUSION

Hazardous wastes generated and present in filter canisters do not qualify for RCRA regulatory exclusion under the MPU exemption found at 40 C.F.R. § 261.4(c) once such canisters are disconnected from their associated manufacturing process. At that time, any hazardous wastes within the disconnected canister are subject to RCRA hazardous waste determination and any other applicable hazardous waste generator, transporter and treatment, storage and disposal facility requirements.

³ As noted above, the exemption does not cover the manufacturing process unit when it is disassembled and sent off-site for cleaning.

⁴ EPA notes that the 90-day provision in 40 C.F.R. § 261.4(c) discussed here is separate and distinct from the on-site accumulation time limits applicable to hazardous waste generators. Disconnected canisters containing hazardous waste may be accumulated on-site for a period of time in accordance with applicable hazardous waste generator requirements under 40 CFR part 262.