

# Manufacturing Process Unit Exemption/RCRA: U.S. EPA Administrative Law Judge Addresses Applicability Question



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A United States Environmental Protection Agency (“EPA”) Administrative Law Judge Christine Donelian Coughlin (“ALJ”) interpreted the Resource Conservation and Recovery Act (“RCRA”) term “manufacturing process unit” (“MPU”) in an August 15th decision titled:

*Order Granting Respondent’s Motion for Accelerated Decision/Order Denying Complainant’s Motion for Accelerated Decision/Initial Decision (“Decision”)*

See *In the Matter of ISP Freetown Fine Chemicals, Inc.*, Docket No. RCRA-01-2018-0062.

The importance of the term MPU is that it, under appropriate circumstances, can constitute an exemption from certain provisions of the RCRA regulations.

EPA initiated an administrative enforcement action in 2018 against ISP Freetown Fine Chemicals, Inc. (“ISP”) alleging nine violations of Subtitle C of RCRA. The federal agency had inspected ISP’s Assonet, Massachusetts, facility (“Facility”) in 2017.

The *Decision* indicates that an EPA inspector observed reactor vessels at the ISP Facility used for batch chemical reactions. Further, ISP personnel are stated to have informed the inspector that:

... each reactor is connected by pipes to a condenser, and each condenser is connected by pipes to a receiver tank. As part of the production process, the reactors are heated in order to separate solvent from the product being produced. When a reactor is heated, solvent vapor is created that is piped to a condenser. The solvent vapor is condensed into liquid in the condenser, and then sent to a receiver tank for collection and storage.

ISP personnel informed the inspector that they were not aware of the RCRA air emission standards for hazardous waste tanks. Further, they indicated the Facility did not have a compliance program in place for the receiver tanks.

The inspector is also stated to have determined that:

... while some equipment at the facility was being monitored in accordance with 40 C.F.R. Part 265, Subpart BB (“Subpart BB”), no hoses, valves, connectors or common lines connected to the [r]eceiver [t]anks were identified by ISP as being subject to Subpart BB.

EPA's administrative enforcement action originally alleged nine violations of the RCRA regulations. Most of those alleged violations were apparently resolved in some manner through negotiation.

The parties subsequently agreed that the:

. . . central remaining issue in dispute is whether the tanks and equipment cited in the unresolved claims are subject to regulation under Subtitle C of [RCRA] . . .

ISP filed a Motion for Accelerated Decision ("MAD") and argued that the only issue is whether the receiver tanks were exempt from the RCRA regulations under the MPU exemption.

EPA filed its own MAD arguing that the MPU exemption:

. . . fails on the plain language of the exemption and the undisputed facts of the case.

The MPU exemption is codified at 40 C.F.R. § 261.4(c) and states:

. . . 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 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.

ISP arguments in support of its distillate receiver tanks being encompassed by the MPU exemption included:

- Receiver tanks are components of the distillation units which are explicitly identified as an example of the type of unit covered by the exemption
- Distillation units include distillate receiver tanks as a matter of engineering and basic logic
- Prior EPA ALJ decisions established that the exemption applies where the integral parts of a production system are used to create a product (but the exemption does not apply downstream of production where wastes have become a waste disposal problem)
- The distillate receiver tanks are part of a MPU as the term is reflected elsewhere in law
- Applies because the distillate receiver tanks perform a variety of critical manufacturing functions in the production process
- Two of the four receiver tanks at issue are sometimes used for charging the reactors, underscoring how they are integral parts of the manufacturing process

EPA argued in support of the inapplicability of the MPU exemption:

- ISP failed to meet its burden of showing that the MPU exemption applied to distillate receiver tanks
- Distillate units in general are not encompassed by the MPU exemption
- EPA substituted the word "distillation unit" for the word "distillation column" in the preamble to the regulation and ISP's reliance on the term "unit" in the preamble to Subparts AA and BB is erroneous because the term "distillation term" is not defined in the text of Subpart AA
- The regulatory and subject matter and purposes of Subpart AA are very different from those of Section 261.4(c) and the MPU exemption
- EPA ALJ decisions cited by ISP are inapplicable to its Facility
- ISP incorrectly asserted that a MPU is generally considered to be a collection of equipment or system
- Rejects the argument that receiver tanks are the only way to manage the material exiting the condenser

The ALJ in her *Decision* granted ISP's MAD and denied EPA's for the following reasons:

- The MPU exemption exempts ISP's distillation units from RCRA regulations
- ISP's distillate receiver tanks are part of its distillation units

- Because ISP's distillate receive tanks are part of its manufacturing process, its distillate receiver tanks are exempt under the MPU exemption
- The policy and purpose of RCRA and the MPU exemption support applying the exemption to ISP's distillate receiver tanks

A copy of the *Decision* can be downloaded [here](#).