

# RCRA Wastewater Treatment Unit Exemption: U.S. Environmental Protection Agency Interpretive Letter



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United States Environmental Protection Agency (“EPA”) Office of Resource Conservation and Recovery Director Carolyn Hoskinson transmitted a September 9th letter providing an interpretation of the Resource Conservation and Recovery Act (“RCRA”):

... wastewater treatment unit (WWTU) exemption’s applicability to a unit storing hazardous wastewater prior to shipment offsite to a publicly owned treatment works (“POTW”).

Ms. Hoskinson’s letter is in response to a June 21st request for interpretation from Mr. Ethan R. Ware of Williams Mullen in Columbia, South Carolina.

WWTUs are exempt from certain RCRA tank and permitting requirements if they meet criteria found in the definition of this equipment. See 40 CFR 260.10.

A WWTU is a device that:

1. Is part of a wastewater treatment facility subject to regulation under either Section 402 or 307(b) of the Clean Water Act;
2. Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR § 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 40 CFR § 261.3; and
3. Meets the definition of a tank or tank system in 40 CFR § 260.10.

EPA’s primary rationale for promulgating the exemption was to avoid imposing duplicative permitting requirements. In the absence of an exemption, facilities could be subject to both the Clean Water Act National Pollutant Discharge Elimination System permit or a wastewater treatment permit along with a hazardous waste permit for the same unit. It was assumed that tanks used to handle hazardous wastewaters at such facilities would be provided oversight under the Clean Water Act.

Mr. Ware’s request for an EPA interpretation is stated to describe a facility that treats wastewater in an on-site wastewater system. It is stated to then discharge the treated wastewater to a POTW. Further, because of a:

... unique facility configuration, a portion of the treated wastewater is temporarily stored in a tank (Tank One) prior to being trucked off-site to the POTW, pursuant to what you describe as a pump and haul permit issued under the Clean Water Act (CWA).

EPA is asked whether Tank One is eligible for the WWTU exemption.

Ms. Hoskinson's September 9th letter, after noting the previously referenced three elements of the WWTU exemption, states that an additional consideration in determining eligibility is discussed in a 1988 EPA Federal Register Notice. See 53 Fed. Reg. 3480.

The cited language in the preamble states:

However, any tank system that is employed in managing wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location is an NPDES permitted wastewater treatment facility (or one that discharges to a POTW), is not covered by this exemption.

EPA intends that this exemption apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. However, if a tank system, in addition to being used in conjunction with an on-site wastewater treatment facility, is used on a routine or occasional basis to store or treat a hazardous wastewater prior to shipment off-site for treatment; storage, or disposal, it is not covered by this exemption. Unless the tank system otherwise qualifies for some other exemption, it would be subject to the revised standards/or hazardous waste tank systems.

Ms. Hoskinson states that because the wastewater is trucked off-site from Tank One it is not eligible for the WWTU exemption.

A portion of the remainder of the letter addresses language cited by Mr. Ware in support of the applicability of the WWTU exemption to Tank One. While these arguments are rejected, Ms. Hoskinson does note that:

. . . While we find Tank One is not eligible for the WWTU exemption, the unit may be exempt from permitting as a generator accumulation unit, subject to the requirements of §262.17.

A copy of both the September 9th EPA letter and Mr. Ware's June 21st query can be downloaded [here](#).