BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AQUA PENNSYLVANIA WASTEWATER, INC.

DOCKET NO. A-2019-3015173

AQUA STATEMENT NO. 10-R

REBUTTAL TESTIMONY OF JASON B. MILLER

With Regard To
SPMT Permitting Issues

October 20, 2020

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AQUA PENNSYLVANIA WASTEWATER, INC.
REBUTTAL TESTIMONY OF JASON B. MILLER

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Jason B. Miller. My business address is 4350 N. Fairfax Dr. Suite 300, Arlington, VA 22203.

Q. By whom are you employed and in what capacity?

A. I am employed by Ramboll U.S. Consulting, Inc. as a Senior Group Director and Head of Innovation.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of Aqua Pennsylvania Wastewater, Inc. ("Aqua" or the "Company") to provide expert testimony to rebut issues raised by Sunoco Partners Marketing & Terminals, L.P. ("SPMT").

Q. Have you previously provided testimony before the Pennsylvania Public Utility Commission ("PUC" or the "Commission")?

A. No.

Q. Please briefly describe your education and work experience.

A. I have a B.S. degree in Chemistry from Denison University (1992) and a M.S. in Radiation Protection Engineering from the University of Tennessee (1994). I have worked with Ramboll since 2000. Before joining Ramboll, I worked as a consultant to the Department of Energy at the Oak Ridge Reservation. In this role, I served as Technical

Project Manager for the Reservation's Mixed (radioactive and RCRA hazardous) Waste Characterization Project, the group responsible for sampling and properly characterizing the "legacy" wastes accumulated on the reservation. Since joining Ramboll, I have provided environmental compliance support, chemical fate and transport analysis, human exposure reconstruction, and radiation protection services on hundreds of different projects.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to address the permitting issues described in the HIGHLY CONFIDENTIAL Direct Testimony of SPMT Witness Kevin W. Smith.

Q. Are you sponsoring any Exhibits with your rebuttal testimony?

A. Yes. Included with my rebuttal are:

– Schedule A – RCRA Online 14068 and 11490

– Schedule B – RCRA Online 14206

– Schedule C – RCRA Online 11519

– Schedule D – RCRA Online 13526

Q. Please briefly describe the Resource Conservation and Recovery Act ("RCRA").

A. RCRA is the law that governs the identification, management, and treatment/disposal of both hazardous and non-hazardous wastes. RCRA became law in 1976 and has been amended a number of times, including in 1984, 1992, and 1996. Subtitle C of RCRA instructed the Environmental Protection Agency ("EPA") to establish a system for the

identification and management of hazardous wastes from their generation until their ultimate treatment or disposal. EPA has established a number of regulations to implement Subtitle C, which are included in 40 C.F.R. parts 260 – 273. States may also be authorized by EPA to implement hazardous waste programs that are at least as stringent as the federal program. Hazardous waste regulations require that facilities that store, treat, or dispose of hazardous wastes (as defined within the regulations) obtain a RCRA permit and dispose of hazardous wastes at designated facilities. There are a number of exclusions and exemptions to the definitions of solid and hazardous waste and to various aspects of RCRA that change how the regulations apply to particular facilities. For example, RCRA includes exclusions so that wastes that are handled under other regulatory schemes, such as the Clean Water Act, are not doubly regulated under RCRA.

Q. Please describe your experience concerning RCRA.

A. I have worked with RCRA for more than 25 years, beginning with my time as a consultant to the Department of Energy, where I was responsible for properly characterizing wastes under RCRA and identifying appropriate disposal options. A focus of my practice at Ramboll is assessing facility compliance with the RCRA regulations and assisting clients in complying with RCRA, particularly the portions of RCRA associated with the definitions of solid and hazardous waste and exclusions from those definitions, recycling and reclamation, waste identification, and the characterization of complex media. For example, I provided RCRA compliance support to a facility in the metals industry that recycles a listed hazardous waste. My support included development of documentation for import of the waste; development of compliance plans, programs,

and reports; support for manifesting and transportation issues; review of potential beneficial reuse of wastewaters during the recycling process; and review of definition of solid waste issues related to various products. I also supported the client during a regional EPA audit that evaluated the site's compliance with the definition of solid waste, with EPA concluding that the site was in substantial compliance with issues related to the definition of solid waste, including terms of the site's partial reclamation variance. On a separate project, I provided RCRA and Clean Water Act ("CWA") compliance support to a large brass foundry operating under a State Consent Order. My responsibilities included evaluation of the facility's overall compliance with RCRA and the CWA, identification and characterization of hazardous and non-hazardous waste streams, preparation of biennial reports, review and modification of the facility's contingency and emergency response plans, preparation of soil and surface water sampling and analysis plans, and managing the remediation of on-site areas and off-site properties affected by historical lead releases from the facility.

II. RESPONSE TO SPMT WITNESS KEVIN SMITH

Q. Please summarize the portions of Mr. Smith's testimony that you will address.

A. In his direct testimony, Mr. Smith states that **[BEGIN HIGHLY CONFIDENTIAL]**

[redacted]

[redacted]

[redacted]

[1] JBM-10R Schedule A.
[2] JBM-10R Schedule B.

[redacted]

[redacted]

[3] JBM-10R Schedule C.
[4] JBM-10R Schedule D.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[END HIGHLY CONFIDENTIAL]

III. CONCLUSION

Q. Does this conclude your rebuttal testimony?

A. Yes, it does. However, I reserve the right to supplement my testimony as additional issues and facts arise during the course of this proceeding.

[5] JBM-10R Schedule C.
[6] JBM-10R Schedule D.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MARCH 10, 1997

Mr. William L. Warren
Drinker Biddle and Reath
1009 Lenox Drive
Building 4
Lawrenceville, New Jersey, 08648

Dear Mr. Warren:

Thank you for your March 5, 1996 letter to Michael Shapiro. In your letter, you requested guidance, directives or policy documents which address the applicability of the domestic sewage exclusion (Code of Federal Regulations, 40 CFR 261.4(a)(1)) in various situations.

As explained in your phone conversation with Kristina Meson, my staff and I have closely examined the matters raised in your letter. We have also reviewed the existing regulations and policies to ascertain whether they address the particular issue(s) which you identified. Provided below are responses your questions.

Question 1

Is the mixed stream of both chemical process waste and untreated sanitary waste which is discharged from a manufacturing plant through a sewer line to a publicly owned treatment works excluded from either the definition of solid or hazardous waste under the Resource Conservation and Recovery Act (RCRA) even if it would otherwise be considered a listed or characteristic hazardous waste?

A mixed stream of process and untreated sanitary waste which is discharged through a sewer line to a publicly owned treatment works (POTW) is not a solid or hazardous waste under RCRA, even if it would otherwise be considered a listed or characteristic hazardous waste. Section 1004(27) of RCRA provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material cannot be considered a hazardous waste for purposes of RCRA. This exclusion is known as the Domestic Sewage Exclusion (DSE). The DSE covers industrial wastes discharged to POTW sewers containing domestic sewage, even if these wastes would be considered hazardous if discharged by other means. "Domestic sewage" means untreated sanitary waste that passes through a sewer system. 40 CFR part 261.4(a)(1)(ii). The DSE, however, does not apply if the industrial waste stream never mixes with sanitary waste in the sewer prior to treatment or storage at the POTW (e.g. dedicated pipe). Mixtures of sanitary waste and other wastes that pass through sewer systems to publicly owned treatment works will, however, be subject to controls under the Clean Water Act, specifically, pretreatment standards at 40 CFR Part 403, including any applicable local limits imposed by the State or POTW, or by nationally applicable categorical pretreatment standards.

Question 2

Would a mixed stream of both chemical process waste and untreated sanitary waste which is discharged from a manufacturing plant through a sewer line connected to a publicly owned treatment works which would otherwise be considered a characteristic or listed hazardous waste under RCRA be considered a hazardous waste and/or be required to be managed as a hazardous waste if it leaks from the sewer line before it reaches the publicly owned treatment works?

A mixed stream of chemical process waste (considered a characteristic or listed hazardous waste under RCRA) and sanitary waste which subsequently leaks from the sewer line before it reaches the POTW would not qualify for the Domestic Sewage Exclusion (DSE). To qualify for the DSE, wastes must pass through a sewer system to a publicly owned treatment works (261.4(a)(1)(ii)). Specifically, EPA has clarified in a February 12, 1990 letter (enclosed) that wastes removed from a sewer line before they reach the POTW have not met the conditions of the exemption. "The waste, upon removal, loses its "excluded" status under the domestic sewage exclusion and becomes subject to regulation as a solid waste."

Question 3

If a manufacturing facility with a RCRA corrective action permit has discharged waste materials of a mixed process and sanitary nature through a sewer line to a publicly owned treatment works, would a leak from the sewer line beyond the physical boundary of the manufacturing facility give rise to a solid waste management unit for which the operator of the manufacturing facility is responsible or would it fall outside the definition of a solid waste management unit?

Under RCRA corrective action authorities, permits for hazardous waste treatment, storage, or disposal facilities must require corrective action for releases of hazardous waste and hazardous constituents from solid waste management units. Corrective action is also required for releases that migrate beyond the facility boundary, as necessary to protect human health and the environment (See, e.g., RCRA Sections 3004(u), 3004(v), 40 CFR 264.101; 50 FR 28702, July 15, 1985; 52 FR 45788, December 1, 1987; and, 55 FR 30798, July 27 1990). The Agency also has the authority to include corrective action requirements in a facility's permit under its RCRA "omnibus" authority. See RCRA section 3005(c)(3). EPA has defined facility, for the purposes of corrective action, to mean "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." (See 40 CFR 260.10.)

As discussed in our response to question 2, materials leaked from sewer lines before they reach a POTW are no longer shielded by the DSE and are considered solid waste. Depending on whether or not the pipes from which the materials leaked are considered part of a "facility," they would or would not be subject to corrective action. Generally, releases from pipes or collection systems controlled by the owner/operator of a facility subject to corrective action would be considered part of the "facility" and would, therefore, also be subject to corrective action, as follows.[i]

If it is determined, based on site-specific considerations, that a sewer line is part of a "facility" for purposes of corrective action, leaks from the line could likely be addressed as either solid waste

management units (SWMU) or areas of concern (AOC). EPA typically distinguishes between releases that constitute SWMUs and releases that constitute AOC by considering factors such as the rate of leakage and whether the release was routine or systematic. (55 FR 30808, July 27, 1990; 61 FR 19442, May 1, 1996.) At permitted facilities, releases from solid waste management units that occur at facilities are typically addressed using the authority of RCRA Sections 3004(u), while releases from facilities (i.e., beyond the facility boundary) are addressed using RCRA Section 3004(v). Non-SWMU related releases (i.e., AOC), either within or beyond the facility boundary, are typically addressed using the omnibus permitting authority of RCRA section 3005(c)(3) where necessary to protect human health and the environment. In addition to the corrective action authorities associated with RCRA permitting, where applicable, the interim status corrective action order authority of section 3008(h) may also be used to address similar types of releases at interim status facilities. Since both SWMUs and AOCs are subject to corrective action requirements, EPA has discouraged extended debate over distinctions between SWMU and AOC; discussions, and resources, should more properly focus on whether there has been a release that requires remediation (60 ER 19442, May 1, 1996).

Note that, application of corrective action requirements typically depends on a number of site- and waste-specific considerations that EPA typically uses when developing site-specific corrective action requirements. I encourage you to consult with the appropriate EPA region or authorized state to ensure that site-specific circumstances are appropriately considered. In addition, whether or not corrective action requirements apply, cleanup of releases of solid waste may be required under a number of federal or state authorities, including, at the federal level, RCRA section 7003 or CERCLA section 106.

Question 4

If a manufacturing facility with a RCRA corrective action permit discharges mixed process and sanitary waste materials to a publicly owned treatment works through a sewer line, does a basis exist for including in that corrective action permit areas of contamination beyond the physical boundaries of the manufacturing facility owned and operated by the permittee caused by a leak from the sewer line at a point beyond the physical boundary of the manufacturing facility owned and operated by the permittee?

See response to question 3.

Thank you for your interest in the hazardous waste regulations. If you need more information on the domestic sewage exclusion, please contact Kristina Meson, of my staff, at (703) 308-8488. Questions on RCRA corrective action should be addressed to Elizabeth McManus in the Corrective Action Programs Branch at (703) 308-8657. Also, in authorized states, the state implements its own regulations in lieu of the Federal RCRA program. An authorized state's requirements and policies may be different than those of the Federal program, therefore, it is important to contact your state environmental agency about this and other RCRA issues.

Sincerely,

David Bussard, Director
Hazardous Waste Identification Division

Faxback# 14068

Thomas A. Corbett
Environmental Chemist I
New York State DEC
600 Delaware Avenue
Buffalo, New York
14202

Dear Mr. Corbett:

This letter is in response to your letter of October 31, 1989, in which you requested clarification of the domestic sewage exclusion of 40 CFR 261.4 (a) (1) (i) and (ii) as it may relate to excavated sludge from a sewer line. We understand that you have spoken with Region II personnel who referred you to the Office of Solid Waste (OSW). We have enclosed a copy of the memorandum you mentioned in your letter from Marcia Williams to David Stringham dated December 12, 1986. You have related to Emily Roth of OSW your request for a written response from EPA on this issue.

The situation as described in your letter involves waste removed from the low points of storm sewer lines by excavation. Apparently, the sewer occasionally becomes blocked as a result of the settling of solids from the sewage. The plan is to place the waste material in waste hauling vehicles and transport it to the publicly-owned treatment works (POTW), where it will be discharged into the system for processing. The waste is EP toxic for lead. Your letter asks if the waste: (1) retains its non-hazardous status under the domestic sewage exclusion after excavation from the sewer line or (2) is subject to regulation as a hazardous waste.

The domestic sewage exclusion of Section 261.4(a) (1) (i) states that neither domestic sewage nor any mixture of domestic sewage and other wastes that "passes through a sewer system to a publicly-owned treatment works for treatment" are solid waste. In the situation you describe, the sludge is removed from the sewer line and, therefore, does not pass through the sewer system to the POTW. The waste, upon removal, loses its "excluded" status under the domestic sewage exclusion and becomes subject to regulation as a solid waste. If the waste exhibits any of the characteristics of hazardous waste as described in 40 CFR Part 261, Subpart C, it must be regulated as a hazardous waste. In order for a POTW to receive hazardous waste, the POTW must be in compliance with the requirements of 40 CFR Section 270.60(c).

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[i] Please note that the determination of what constitutes the "facility" for purposes of corrective action will be influenced by a number of site-specific factors. In the case of a sewer line, for example, a number of factors might influence whether or not the line was part of a "facility" including, for example, whether the facility owner/operator (e.g., versus the POTW) also owns or operates the line or portions of the line, whether the facility owner/operator (e.g., versus the POTW) is responsible for maintenance of the line or portions of the line, and/or the extent to which the line is dedicated to facility operations (e.g., versus carries wastes from many unrelated facilities). Owner/operators should consult with the appropriate EPA Regional Office or authorized state to determine the extent of their "facility" for purposes of corrective action.

9441.1990(02)

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

FEB 12 1988

Thomas A. Corbett
Environmental Chemist I
New York State DEC
600 Delaware Avenue
Buffalo, New York
14202

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The waste, upon removal, loses its "excluded" status under the domestic sewage excluysion and becomes subject to regulation as a solid waste. If the waste exhibits any of the characteristics of hazardous waste as described in 40 CFR Part 261, Subpart C, it must be regulated as a hazardous waste. In order for a POTW to receive hazardous waste, the POTW must be in compliance with the requirements of 40 CFR Section 270.60(c).

If you have any questions or comments regarding this letter, you may contact Emily Roth of my staff at (202) 382-4777.

Sincerely,

Original Document signed

Sylvia K. Lowrance
Director
Office of Solid Waste

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. J. Dale Givens
State of Louisiana
Department of Environmental Quality
P.O. Box 82263
Baton Rouge, LA 70884-0746

Dear Mr. Givens:

Thank you for your letter of December 23, 1997 requesting further clarification of the term "designated facility" as it relates to wastewater treatment units (WWTUs). Re-Claim Environmental, L.L.C. (Re-Claim), a wastewater treatment facility, has met with the Louisiana Department of Environmental Quality, the Environmental Protection Agency (EPA) Region VI office, and most recently with EPA Headquarters staff to discuss its status as a designated facility. This letter clarifies EPA's position on this issue under the federal Resource Conservation and Recovery Act (RCRA) program.

Re-Claim has argued, both in correspondence with you and in a meeting with our office, that its WWTUs fit within the scope of "designated facility," as defined in 40 CFR §260.10. A WWTU as defined in §260.10 is exempt from, among other requirements, RCRA permitting requirements (see §270.1(c)(2)(v); see also §§264.1(g)(6) and 265.1(c)(10)). 260.10 defines "designated facility" as follows:

> *a hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter, or (3) is regulated under §261.6(c)(2) or subpart F of part 266 of this chapter, and (4) that has been designated on the manifest by the generator pursuant to §260.20. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.*

EPA's manifest system regulations (40 CFR §§262.20(b) and 263.21) require that a generator send hazardous waste only to a "designated facility."

In the past, EPA's position on this issue has not been consistent. In today's letter, EPA is clarifying that a WWTU (as defined in §260.10) operating lawfully under federal and state law qualifies as a "designated facility" (under federal regulations), and therefore can receive hazardous wastewater from off-site. Confusion over the Agency's guidance on this issue may have led to confusion at the state level, causing states to take different approaches.

The confusion over the issue derives from a February 24, 1987 letter from Marcia Williams, Director, office of Solid Waste, to Phillip Sparta, Environmental Technology Southeast. In the letter, the Agency stated that WWTUs do not meet the definition of designated facility. The letter also noted this position was a reversal of a previous position. Then, in the September 2, 1988 Hazardous Waste Storage rulemaking, EPA stated that "the applicability of the [WWTU] exemption does not depend on whether the on-site wastewater treatment facility also treats wastewater generated off-site." (See 53 FR 34080.) This sentence makes it clear that a WWTU could receive wastewater generated off-site and, thus, suggests that it would qualify as a designated facility.

In today's letter, EPA clarifies this confusion by retracting its February 24, 1987 letter from Marcia Williams to Phillip Sparta, and determining that a WWTU (as defined in §260.10) qualifies as a designated facility under federal regulations. EPA found that it was not consistent to state, on the one hand, that a WWTU receiving off-site hazardous wastewater still qualified for the WWTU exemption, while noting that a WWTU was not eligible to receive off-site hazardous wastewater. EPA has since concluded that it is not reasonable or consistent with other interpretations to exclude a WWTU (as defined in §260.10) from the definition of a designated facility and, thus, from receiving off-site hazardous wastewater. EPA's conclusion is based on the following reasons.

First, EPA believes that considering a WWTU to be a designated facility would be an environmentally sound approach that is consistent with current levels of environmental protection. The same environmental regulations would apply when sending the hazardous wastewater to an off-site WWTU as they. would when sending hazardous wastewater to a facility with a permit (or interim status). In both cases, the generator and transporter must comply with all relevant RCRA regulations. In addition, as has always been the case with the WWTU exemption, the effluent from the wastewater treatment facility is regulated under the Clean Water Act, and any hazardous wastewater sludge removed from the WWTUs and any releases of hazardous waste from the WWTUs are subject to all relevant RCRA regulations. In performing its intended functions, a WWTU does not distinguish between hazardous wastewater which was generated originally on-site versus that which was generated off-site. Moreover, an additional level of protection is provided by Clean Air Act maximum achievable control technology (MACT) requirements for certain WWTUs receiving hazardous wastewaters from off-site. (See 40 Part CFR 63, Subpart DD.)

Second, EPA has in the past demonstrated a desire to be flexible about the definition of designated facility in other contexts. In the January 23, 1990 Mining Waste Exclusion rulemaking, EPA amended the definition to clarify that wastes may be shipped from a state where the waste is subject to the hazardous waste regulations as a result of a listing determination to a facility in a state where the waste is not yet

regulated as hazardous. In this situation, EPA explained, the designated facility would not need to be permitted or under interim status, provided that the receiving facility is allowed by the receiving state to accept such waste. (See 55 FR 2342, 2343.) Similarly, EPA clarified, in a letter (from Sylvia Lowrance, Director, Office of Solid Waste, to Robert Scarberry, Chemical Waste Management, dated September 27, 1991, RCRA Policy Compendium Document # 9432.1991(01)), the definition of designated facility with respect to the treatability study exclusion. In cases where a treatability sample is transported from a state which regulates the treatability sample as a hazardous waste (because it does not have the exclusion), to a state that has adopted the exclusion, and therefore does not regulate the same as a hazardous waste, EPA stated that the receiving facility could be considered a designated facility for the same reasons set forth in the Mining Waste Exclusion rulemaking discussed above. Both of these examples illustrate EPA's practice of interpreting the definition of designated facility in a flexible manner so as to not preclude lawfully operating facilities from receiving off-site waste on the grounds that they are not subject to the permit requirements.

For these reasons, EPA believes that WWTUs are appropriate facilities to receive off-site hazardous wastewater without a RCRA permit. For purposes of determining what constitutes a designated facility, EPA believes it would not make sense to treat differently, or distinguish between, WWTUs and permitted facilities. EPA believes that such a distinction would be artificial, because WWTUs operate in a manner fully approved by EPA and, for the reasons discussed above, are environmentally appropriate facilities to receive off-site hazardous wastewater. Accordingly, EPA interprets "facility which has received a permit (or interim status)," as set forth in the designated facility definition, as referring to permit-exempt WWTUs, as well as to facilities that literally possess a RCRA permit. This interpretation is confirmed by the fact that the designated facility definition specifically refers to the permitting requirements of Part 270. Section 270.1(c)(2)(v) specifically exempts WWTUs from RCRA permitting requirements. This exemption constitutes EPA's approval for these units to operate under RCRA, as long as the conditions for the WWTU exemption are met.

Based upon our clarification and the information provided by Re-Claim, Re-Claim's WWTUs would be considered a designated facility for the purpose of receiving hazardous wastewater from off-site, under the federal program, Re-Claim could operate in this manner so long as its units continue to meet the definition of a WWTU at §260.10. In addition, Re-Claim will have to obtain an EPA ID # for its WWTUs to enable generators to lawfully send their hazardous wastewater to Re-Claim's WWTUs under §262.12(c). (Moreover, the manifest instructions require a generator to indicate the name and EPA ID # of the facility to which it is sending hazardous waste. Also, per the manifest instructions, Re-Claim would need to complete the discrepancy indication space, if applicable, and the certification of receipt of hazardous waste covered by a particular manifest.)

This letter provides the Agency's clarification of the definition of designated facility with respect solely to the WWTU exemption, and solely under the federal program. However, because RCRA authorized states may have more stringent requirements than the federal program, the State of Louisiana may impose additional requirements to ensure adequate control of hazardous wastewaters.

We appreciate the opportunity to respond and clarify our position. regarding "designated facility." If you have any questions, you may contact Jeff Gaines of my staff at (703) 308-8655.

Sincerely,

Elizabeth A. Cotsworth, Acting
Director
Office of Solid Waste

cc: Matt Hale, OSW
Steve Heare, PSPD
Dave Bussard, HWID
Brian Grant, OGC
Laurie King, Region VI
Bill Gallagher, Region VI
RCRA Senior Policy Advisors
Regional Counsels, I-X

State of Louisiana
Department of Environmental Quality

M.J. "MIKE" FOSTER, JR
GOVERNOR

J. DALE GIVENS
SECRETARY

December 23, 1997

Ms. Elizabeth A. Cotsworth
Acting Director
United States Environmental Protection Agency
Office of Solid Waste
401 M Street, SW.
Washington, D.C. 20460

Mr. Robert E. Hannesschlager, P.E.
Acting Director
Multimedia Planning & Permitting Division (6PD)
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Ms. Cotsworth and Mr. Hannesschlager:

For the past year the Hazardous Waste Division of the Louisiana DEQ has been working with Re-Claim Environmental, an industrial waste water treatment facility that would like to be able to accept and treat hazardous waste from off site.

In August, 1997, we requested an updated interpretation from your office of the definition of "designated facility". We forwarded a copy of the response we received to Re-Claim. We were unaware of any misunderstandings or misinterpretations that could be read into this letter. (Attached find a copy of our request and the response.)

Recently Re-Claim met with EPA Region 6. Re-Claim expressed concerns of the differences they feel exist between Louisiana and Texas interpretations of the definition of "designated facility". They came away from that meeting with the impression that status as a "designated facility" is purely a classification made by the authorized states, for which federal regulations allow diverse interpretation.

We have never considered ourselves to have quite this much latitude. We believe that our interpretations to date have been consistent with the letter and intent of the federal rules, on which our own regulations are based.

We recently received another letter and a discussion paper (also attached) from Re-Claim basically asking us the same question that was asked and answered by EPA previously.

We would like EPA Headquarters and Region 6 to discuss and resolve this interpretation. Following resolution of this matter, we request a meeting with Region 6, LDEQ, and Re-Claim to settle this issue.

If you have any questions, please contact Ms. Robin L. Kanefsky or Mr. Michael Beck of the Hazardous Waste Division at (504) 765-0272.

Sincerely,

J. Dale Givens
Secretary

rlk

Attachments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 1, 1990

Mr. James C. Mulligan
Manager, Solid Waste Program
Environmental Division
Chemical Manufacturers Association
2501 M Street, NW
Washington, DC 20037

Dear Mr. Mulligan:

The purpose of this letter is to provide you with our interpretation of the applicability of the wastewater treatment unit exemption to example situations existing at several of your member companies' facilities. A request for an EPA interpretation was initially raised in your May 11, 1989 letter, followed up by your letters of October 2, 1989 and December 11, 1989, as well as several subsequent meetings with EPA.

As you are aware, on November 17, 1980, EPA suspended applicability of the hazardous waste management facility standards and RCRA permitting requirements to owners and operators of wastewater treatment units subject to section 307 (b) (pretreatment requirements) or section 402 (National Pollutant Discharge Elimination System (NPDES)) requirements under the Clean Water Act (CWA). This action is referred to as the wastewater treatment unit exemption. On September 2, 1988, a final rule was published to clarify the applicability of this exemption to tank systems at on-site versus off-site wastewater treatment facilities. In effect, EPA, stated that "any tank system that was employed in managing hazardous wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location includes an NPDES permitted wastewater treatment facility or a facility that discharges to a POTW sewer system, is <u>not covered</u> by this exemption."

CMA expressed the view that many units which they believe were eligible for this exemption have been precluded from the exemption by the September 2, 1988 notice. You are focusing on the distinctions to be made regarding an "on-site" versus an "off-site" wastewater treatment facility. CMA submitted diagrams of five examples that describe the type of problems being encountered.

EPA's position revolves around whether or not a facility is subject to sections 307 (b) or 402 of the CWA. The underlying assumption used in justifying the wastewater treatment unit exemption was that tanks used to handle hazardous wastewaters at these facilities would be provided with EPA oversight under the Clean Water Act, thereby ensuring no significant decrease in environmental control

afforded at these facilities. We understand that using the terms "on-site" and "off site" may have represented a confusing way to explain this concept, and wish to further clarify our long-standing intent regarding the scope of the exemption. The following provides a description of each of the examples that you submitted to us and our analysis as to whether the tank systems at these facilities are subject to CWA oversight and thus eligible for the WWTU exemption.

Example No. 1:

Description: The hazardous wastewater from a chemical plant is piped to a NPDES permitted wastewater treatment facility at a refinery located adjacent to the chemical plant. Both the chemical plant and the refinery are owned by the same company. The NPDES permit limits are based on wasteloads from both facilities.

Analysis: The fact that the NPDES permit is based on the waste loads of both the chemical plant and refinery is not necessarily the determining factor in deciding eligibility for the WWTU exemption. The concern that lead to the "on-site", "off-site" distinction in the September 2, 1988 notice was that many wastewater treatment facilities are not actually being subjected to NPDES regulatory requirements. If they are unregulated by the NPDES program, it would be inappropriate to exempt them from RCRA regulation. In order to ensure that the reach of the NPDES permit is sufficient to adequately regulate the wastewater treatment tank at the chemical plant, the chemical plant and/or the tank itself needs to be specifically identified in the permit. This could be accomplished by stating expressly in the permit that it covers the chemical plant, or by making the operator of the chemical plant a co-permittee or a limited co-permittee on the permit with the operator of the refinery. This coverage would ensure adequate day-to-day control over the tank under the CWA to justify an exemption from RCRA requirements.

Example No. 2:

Description: Companies A and B, located within the same RCRA facility boundaries, use a common sewer to send wastewater from each of their respective units to an on-site NPDES permitted wastewater treatment facility owned by Company A. Again, the NPDES permit limits are based on the waste loads from both companies' units.

Analysis: The analysis for this scenario essentially is the same as for No. 1 above. To be eligible for the exemption, Company B must be a co-signatory to the NPDES permit and/or otherwise identified as a limited co-permittee on the permit issued to Company A, or the permit itself must expressly cover Company B (for example, the description of the facility covers the RCRA boundaries, and "upstream" wastewater treatment processes and equipment are identified) so that CWA authorities can prescribe and enforce tank system requirements at Company B as well as at Company A.

Example No. 3:

Description: A marine terminal and a manufacturing facility, owned by the same company, want to discharge their wastewaters to a pretreatment plant that is located at the manufacturing facility. The combined pre-treated wastewater subsequently is discharged to a POTW. Prior to promulgation of section 307 (b) categorical standards, both of these facilities were directly introducing their wastewaters into a POTW and thus claiming eligibility for the WWTU exemption.

Analysis: The marine terminal must comply with pretreatment standards in order for CWA authorities to oversee management of the tank systems at this facility. It is EPA's policy that categorical standards follow the waste. That is, if a facility's wastewater would be subject to a categorical standard (s) if it is introduced directly to a POTW, it is still subject to the categorical standard (s) even when the wastewater is discharged to another facility that subsequently introduces those pollutants to a POTW. If a facility discharging to a user of a POTW is subject to a categorical standards, it may claim the exemption. If it is not, it can claim the exemption only if the facility is expressly covered by the "individual control mechanism" (that would contain specific requirements, i.e., local limits, to protect against pass through and interference) issued by the POTW to the pretreatment facility.

Example No. 4:

Description: Companies A and B, as part of a joint venture operating on Company A's facility, use the same sewer to transfer their wastewaters to a POTW.

Analysis: Both companies must comply with section 307 (b) pretreatment requirements, since both are introducing pollutants directly into a POTW. Therefore, both companies are eligible for the WWTU exemption.

Example No. 5:

Description: Wastewater from a manufacturing facility is usually sent directly to a POTW unless high TOC loadings are encountered, whereby the wastewater is alternatively routed to a pretreatment plant at another manufacturing facility owned by the same company. The combined pre-treated wastewater is sent to the POTW.

Analysis: A facility designed so that its wastewater either may be routed directly to a POTW or to a pretreatment plant at another facility poses considerable difficulty and uncertainty for EPA insofar as knowing in which mode the facility is operating on any particular day. As such, to be eligible for the WWTU exemption, the manufacturing facility not only must comply with pretreatment requirements that have been established regarding its wastewater introduced to the POTW, but also must comply with pretreatment requirements that are established for those occasions when its wastewater must be routed to another facility's pretreatment plant.

Finally, I believe it is important to make sure you are aware of one other point that has been an issue at certain facilities claiming the wastewater treatment unit exemption: there is a requirement in 40 CFR Part 262 that only a "designated facility" may accept off-site hazardous waste. A facility that operates a wastewater treatment unit may receive and treat hazardous wastewater from any off-site source and must meet the current definition of "designated facility" as defined in 40 CFR 260.10. This means that the receiving facility must have a RCRA permit (or interim status) in accordance with the requirements of 40 CFR Parts 270 and 124, or it must be regulated under section 261.6 (c) (2) or Subpart F of Part 266 (see 55 FR 2322, January 23, 1990, for further information), and that has been designated on the manifest by the generator (or sender) pursuant to section 262.20.

I hope this letter answers your concerns regarding this matter. Again, I do apologize for the time it has taken to resolve these questions. If you have any further questions on the wastewater treatment unit exemption, please call Mr. Bill Kline of my staff at (202) 475-9614 or Mr. Randy Hill of the Office of General Counsel at (202) 382-7700.

Sincerely,

David Bussard, Acting Director
Waste Management Division

FaxBack # 11519

PPC 9522.1992(01)

EXEMPTION FROM PERMITTING REQUIREMENTS FOR WASTE WATER TREATMENT UNITS

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

January 16, 1992

Mr. Thomas W. Cervino, P.E.
Colonial Pipeline Company
Lenox Towers
3390 Peachtree Road, N.E.
Atlanta, Georgia 30326

Dear Mr. Cervino:

This letter is in response to your August 9, 1991 correspondence requesting a clarification of the conditions under which waste water treatment units qualify for an exemption from RCRA permitting requirements. In your letter you explained that Colonial Pipeline Company has several locations that generate waste waters that are hazardous under the toxicity characteristic, and you asked whether a RCRA permit would be required for a new treatment unit that you are considering.

The primary reason for the waste water treatment exemption is to avoid imposing duplicative requirements pursuant to both a NPDES permit and a RCRA permit for the same unit. As you are aware, in order for a unit to qualify for this exemption contained in 40 CFR §264.1(g)(6), it must:

(1) Be part of a waste water treatment facility that is subject to regulation under either Section 402 or 307(b) of the Clean Water Act;

(2) Receive, treat, or store influent waste water; or generate, accumulate, treat, or store a waste water treatment sludge; and,

(3) Meet the definition of tank or tank system in 40 CFR §260.10.

The main question that you raised concerns the first criteria: i.e., which units are considered subject to the Clean Water Act. As you are aware, the Agency provided some discussion of this requirement in 53 FR 34080 (September 2, 1988) which states that:

> "the wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and therefore is subject to the NPDES or pretreatment requirements of the Clean Water Act, or (2) produces no treated wastewater effluent as a direct result of such requirements."

It is important to note that it is not necessary that the Clean Water Act permits actually be issued for the units to be eligible for the RCRA exemption; it is sufficient that the facility be subject to the requirements of the Clean Water Act.

Based on a review of the information provided, EPA has determined that any of the treatment systems (including the proposed treatment unit) at the Colonial Pipeline facilities which are currently permitted, were ever permitted, or should have been permitted under NPDES, all meet the first test of the Section 264.1(g)(6) exemption. The key issue is whether the treatment system ever had a discharge to surface water, and thus was ever permitted (or should have been permitted) under NPDES. If there was never a discharge to surface waters, then the exemption criteria is not satisfied. You also mentioned that some of your facilities employ wastewater treatment systems which are regulated in accordance with other applicable state laws, rules, and regulations. Without more specific information regarding these state requirements and permits, EPA cannot address whether these facilities would qualify for the exemption. However, as discussed above, the exemption in the federal regulations would only be available if the state requirements stem from the identified sections of the Clean Water Act.

With regard to the question of a "zero discharge" facility, EPA would like to clarify the difference between a facility that produces no treated wastewater as a direct result of Clean Water Act requirements and units that are not required to obtain an NPDES permit because they do not discharge treated effluent. In the first

case, the facility would have had a surface water discharge at one time, but has since eliminated the discharge as a result of, or by exceeding, NPDES or pretreatment requirements. Such facility would qualify for the waste water treatment unit exemption under RCRA. In the second case, the facility never had a surface water discharge, and therefore was never subject to NPDES permitting or Clean Water Act requirements (53 FR 34080). The RCRA exemption is not available in these cases. (We should point out that the language you referred to on page 2 of the May 22, 1984 memo on zero discharge has been further refined and clarified by recent program policies and interpretations.)

There is another management option that my staff has discussed with you on the phone. That approach would be to treat your waste water in tank units pursuant to the generator accumulation exemption of 40 CFR §262.34. This provision allows generators of hazardous wastes to treat or store such wastes in tanks or containers for short periods of time (i.e., 90 days) without obtaining a RCRA permit, provided that all the conditions of §262.34 are met, including compliance with specified tank or container standards in 40 CFR Part 265. In many cases air strippers may be considered tank units under RCRA and might be eligible for this exemption. Of course, as long as the treated waste water meets a hazardous waste listing description or exhibits a hazardous waste characteristic it must continue to be managed as a hazardous waste.

If you have facility-specific questions, please contact individual in the appropriate EPA Regional Offices. For Region III (Philadelphia), contact Ms. Susan Sciarratia at (215) 597-7259 and for Region IV (Atlanta), contact Ms. Beth Antley at (404) 347-3433. Should you have further questions about this letter, please contact Glenn Strahs of my staff at (202) 260-4782.

Sincerely,
Sylvia K. Lowrance, Director
Office of Solid Waste

cc: Kathy Nam, OGC; EPA RCRA Branch Chiefs, Regions I-X; Barbara Simcoe, ASTSWMO