

## Rule Interpretation Summary Form

Code Number	260-10.001
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Rule/Regulation Citation(s):	Federal Rule: <u>X</u> State Regulation: <u>__</u> 40 CFR 260.10, the definition of a wastewater treatment unit means a device which: (1) Is a part of a wastewater treatment facility that is subject to regulation under Section 402 or 307(b) of the Clean Water Act; and (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR 261.3; and (3) Meets the definition of tank or tank system in 40 CFR 260.10.
Description:	Applicability of wastewater treatment unit definition to tank systems transporting wastewater off-site via barge.
Interpretation Request:	
Are tank systems employed in the storage and treatment of hazardous wastewater eligible for the wastewater treatment facility exemption if the wastewater is transported off-site, by barge, to a POTW?	
Determination:	
Tank systems employed in the storage and treatment of hazardous wastewater are not eligible for the wastewater treatment facility exemption if the wastewater is transported off-site, via barge, to a Publicly Owned Treatment Works (POTW).	

**Background Information and Rationale:**

A chemical tolling plant and a reference fuel refinery in Texas previously discharged wastewater, generated through their process operations, under their TPDES Permit. Because the wastewater was being discharged on-site under a TPDES Permit, the regulated entity was able to claim a wastewater treatment facility exemption for tank systems which receive, treat or store wastewater that is hazardous. This exemption is included in 40 CFR 265.1(c)(10) and in 30 TAC 335.41(d)(1). Due to the nature of the chemicals processed at the facility, the wastewater treatment system which discharged under their TPDES permit was unable to effectively treat the wastewater prior to discharge. The regulated entity began shipping the wastewater by barge to a POTW.

The Regional Office believes that once the regulated entity began sending their wastewater off-site by barge to the POTW, they lost the exemption for the tank systems managing hazardous waste. This interpretation is based on the Federal Register Vol. 53, No. 171 dated Friday, September 2, 1988 (Attachment 1) which states:

...the purpose of the exemption, which is to exclude tank systems subject to regulation under the Clean Water Act, it is EPA's position that in order for a wastewater treatment unit to be covered by the exemption, it must be part of an on-site wastewater treatment facility.

...any tank system that was employed in managing 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 not covered by this exemption.

EPA intends for this exemption to apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. EPA provides further clarification regarding the on-site wastewater treatment unit exemption in that it is intended to cover only tank systems that are part of a wastewater treatment facility that produces a treated wastewater effluent which discharges into surface waters or into a POTW sewer system.

Because the regulated entity is not directly discharging to surface waters or to a POTW sewer system the exemption does not apply.

Regulated Entity's comments to Regional staff:

1) Facilities that discharge to a POTW are considered to be subject to the Clean Water Act and the tanks are exempt from RCRA standards.

2) Discharge means the introduction of pollutants into a POTW as defined by 40 CFR 403.3. It does not specify that it must be piped nor does it specify any other means of conveyance.

3) The barge which transports the regulated entity's wastewater is named as the means of conveyance in the POTW's contract with the regulated entity and is therefore covered by a Clean Water Act permit

Region's comments:

1) The intent of the exemption was to offer an exclusion to tanks systems subject to regulation under the Clean Water Act. It is EPA's position that in order for a wastewater treatment unit to be covered by this exemption it must be part of an on-site wastewater treatment facility.

2) The Federal Register referenced above is specific in the requirement that a tank system will not be excluded if off-site transfer is involved. In this case, wastewater is being discharged into a barge not into a POTW.

A copy of a portion of the contract between the regulated entity and the POTW states that responsibility for all wastewater delivered to the Treatment Facility ( shall be that of the Company until it passes through the Point of Delivery. After wastewaters pass the Point of Delivery, responsibility rests with the POTW. Point of Delivery is identified as the POTW's dock and pipeline connection.

The rule interpretation team reviewed the information submitted by the regional office investigator regarding this request. The team also reviewed 40 CFR 260.10, 40 CFR 401, and 40 CFR 403.3. Additionally, Federal Register Volume 53, Number 171 dated Friday, September 2, 1988, specifically the section entitled "Clarification of Wastewater Treatment Unit", was reviewed for additional clarification.

Based on review of the information submitted by the regional office investigator and the above-referenced regulations, the Waste Rule Interpretation Team determined that transport via marine vessel (barge in this case) from the generating facility to the POTW does not meet the requirements of the clarification provided by the USEPA in the September 2, 1988 Federal Register document. Transport by marine vessel is not the same as being "conveyed from the tank system directly to the treatment unit or indirectly by way of intermediate sumps, tanks, or holding ponds", therefore the exemption from the RCRA regulations is not applicable. Additionally, the above-referenced document states that "any tank system that was employed in managing 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 not covered by this exemption" [exemption from RCRA regulations].