



Northeast Waste Management Officials' Association

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Barnes Johnson, Director
Office of Resource Conservation and Recovery
U.S. EPA Headquarters
Ariel Rio Building
1200 Pennsylvania Avenue, NW
MC 5301P
Washington, DC 20460

RE: Management of Evaporation Units

Dear Mr. Johnson:

The Northeast Waste Management Officials' Association (NEWMOA) recently sponsored conference calls for members to discuss the use of evaporators by hazardous waste generators and state perspectives on treatment of hazardous waste by generators in containers and tanks. Following the calls, the Connecticut, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont environmental agencies (the participating NEWMOA members) decided it was necessary to prepare this letter requesting that EPA:

- Revise its position exempting some evaporators (i.e., zero discharge units) under the Resource Conservation and Recovery Act (RCRA) wastewater treatment unit (WWTU) exemption;
- Affirm that generators may use on-site evaporators to treat hazardous wastewaters under the “generator treatment in tanks” (generator treatment) RCRA permitting exemption; and
- Identify what forms of thermal treatment it considers appropriate for the evaporation of wastewater under the generator treatment RCRA permitting exemption.

Moreover, we urge EPA to support states in taking the lead in implementing programs to effectively regulate evaporators until such time as EPA provides unambiguous guidance or promulgates new rules.

Regulation of Evaporators under RCRA & Clean Water Act

In EPA's January 16, 1992, letter to Thomas Cervino (RCRA Online Document # RO 13526), EPA stated that the WWTU exemption applies to facilities that at one time had a discharge to surface waters, and that if a facility never had such a discharge, the exemption criteria are not satisfied. The letter goes on to state that, as an alternative,

wastewaters can be managed under the “generator treatment” exemption provided the requirements of 40 CFR §262.34 are met and that in many cases air strippers might be eligible for this exemption. In a June 2, 1993, letter to William E. Fisher (RCRA Online Document # RO 11749), EPA stated that evaporators used by dry-cleaning facilities to treat perchloroethylene-contaminated “separator water” enjoy the WWTU exemption. EPA also stated in a March 20, 1989 letter to Robert Elliott (RCRA Online Document # RO 11408) that facilities are encouraged to obtain zero discharge water permits as the most appropriate alternative to a RCRA Part B permit.

NEWMOA’s participating members do not agree with EPA’s broad interpretation of the WWTU exemption as it applies to evaporators. In particular, we disagree with exempting facilities from RCRA requirements just because they discharged “at one time” to surface water or to a Publicly-Owned Treatment Works (POTW) and are therefore “subject to” Sections 307(b) or 402 of the Clean Water Act. It is the experience of NEWMOA’s members that some facilities that use evaporators to treat on-site generated wastewater have discharged to surface waters or a POTW at one time and therefore, per the cited EPA guidance, are exempt from regulation under RCRA. Most if not all of these evaporators use some form of thermal treatment and in the case of dry-cleaning facilities may be evaporating perchloroethylene-contaminated separator water.

In our opinion, whether or not a facility ever discharged to surface water is irrelevant to the safe operation of evaporators (and other zero-discharge units) and should not be a factor in determining how (and if) a facility is regulated under RCRA. We also disagree with a policy that encourages facilities to seek zero discharge water permits as a way to avoid RCRA permit requirements. Zero discharge water permits do not control air emissions from evaporators and typically do not regulate hazardous waste management activities, and therefore should not exclude such evaporators from compliance with the more protective controls under RCRA.

While we believe that evaporators can be a beneficial waste management technology for treating wastewater, we also believe that those devices should meet the air emission and tank management standards required of generators under 40 CFR §262.34 when used to treat hazardous wastewaters. For those generator facilities that never had a discharge subject to Sections 307(b) or 402 of the Clean Water Act, we believe that a RCRA Part B permit is excessive and unwarranted. As such, we request that EPA re-evaluate its current policy regarding how evaporators are regulated under the 40 CFR §264.1(g)(6) WWTU exemption and consider other options short of a RCRA Part B permit to allow generators to use evaporators with thermal treatment to evaporate wastewater.

Applicability of Thermal Treatment under the “Generator Treatment” Exemption

In its May 1, 1987, letter to Mr. Anthony Sasson (RCRA Online Document # RO 12923), EPA states:

With regard to the 90-day accumulation exclusion, generators who accumulate hazardous waste on-site for 90 days or less in a tank do not need a permit if they meet the requirements of 40 CFR §262.34. This policy is stated in the preamble to the small quantity generator regulations that were promulgated on May 24, 1986, (51 FR 10168). The “Nordale Fluid Eliminator” meets the definition of a thermal treatment unit in that it is a device that ‘uses elevated temperatures as the

primary means to change the chemical, physical, or biological character of the hazardous waste' (see 40 CFR §260.10). However, our review of the manufacturer's literature leads us to the conclusion that this specific evaporative unit also meets the definition of "tank" as that term is used in 40 CFR §262.34. Therefore, generators could remove water from hazardous wastes using the Nordale units without obtaining a RCRA permit provided they comply with the provisions of 40 CFR §262.34.

While NEWMOA's participating members agree with EPA's position stated in the letter to Mr. Sasson, the introductory "description" of the letter provided on the RCRA Online database includes a parenthetical note which states: "(SUPERSEDED, no thermal treatment in generator units: see RPC# 10/17/94-01)." The meaning of this note is confusing because the memorandum referenced by the note (RCRA Online Document # RO 11881) only addresses the unrelated topic of fuel blending, not evaporators. Many generators have invested in evaporators to remove water from hazardous wastewater under the generator treatment RCRA permitting exemption; however, as a result of EPA's reversal of the Sasson letter EPA would require these generators to apply for a RCRA permit. Since we believe that evaporators can be safely managed under the generator treatment in tanks exemption, we request that EPA reinstate the Sasson letter by removing the note attached to it through the RCRA Online database.

EPA Office of Solid Waste (OSW) Director Williams, the author of the letter to Mr. Sasson, wrote a subsequent December 15, 1987, memorandum to Robert F. Greaves of EPA's Waste Management Branch titled "Requested Re-interpretation of On-site Treatment Exemption" (RCRA Online Document # RO 11310). That memorandum both reaffirms that "OSW believes that treatment (by generators) is not only allowable under Section 262.34, but... is consistent with sound waste management", and describes what thermal treatment activities are not considered allowable under the generator treatment exemption by stating:

You raised the concern that generators could conduct thermal treatment such as detonation or open burning under Section 262.34 and thereby avoid permitting for obviously dangerous activities. Certainly, detonation and open burning were never intended to be allowed under Section 262.34."

This discussion seems to suggest that while certain high risk thermal treatment activities, such as detonation and open burning are not allowed, lower risk activities like evaporation and sludge drying are appropriate treatment activities for generators provided the requirements of 40 CFR §262.34 are met. This position is consistent with the EPA letters to Mr. Sasson and Mr. Cervino.

NEWMOA's participating members agree with EPA that, under certain circumstances, treatment of hazardous waste by generators in containers and tanks is "consistent with sound waste management." We further believe that while high risk activities, such as detonation and open burning, should not be allowed, certain lower risk treatment activities, such as evaporation with and without thermal input, should be allowed provided basic environmental protection standards are met.

In conclusion, we do not agree with EPA's interpretation of the WWTU exemption that, based on our anecdotal experience, would exempt some evaporators from regulation under RCRA. We believe that a middle-ground (between full RCRA permitting and full exemption under the WWTU exemption) approach that would require all evaporators to meet basic environmental protection standards is appropriate. In addition, we urge EPA to remove the note attached to the Sasson letter, which requires that generators using thermal treatment to evaporate hazardous wastewaters must be either permitted or excluded under RCRA. If EPA is unwilling to change its policy, it should at least allow States to develop and be authorized for approaches that are, overall, equivalent to the federal approach. According to EPA's "Functional Equivalence" policy, states need not adopt the same approach as EPA to qualify for state authorization; they must only be, overall, at least as stringent as EPA.

NEWMOA is a non-profit, non-partisan interstate association that was established by the governors of the New England states as an official interstate regional organization, in accordance with Section 1005 of the federal Resource Conservation and Recovery Act (RCRA), to coordinate in interstate hazardous and solid waste activities. The organization was formally recognized by the U.S. EPA in 1986. NEWMOA's membership is composed of the state environmental agency directors of the hazardous waste, solid waste, waste site cleanup, emergency response, pollution prevention, and underground storage tank programs in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NEWMOA's mission is to develop, lead, and sustain an effective partnership of states that helps achieve a clean, healthy, and sustainable environment by exploring, developing, promoting, and implementing environmentally sound solutions for:

- Reducing materials use and preventing pollution and waste;
- Properly reusing and recycling discarded materials that have value;
- Safely managing solid and hazardous wastes; and
- Remediating contaminated sites.

For more information on NEWMOA, visit www.newmoa.org.

We appreciate your consideration of the concerns and suggestions outlined in this letter. Terri Goldberg, NEWMOA's Executive Director, will be happy to discuss next steps. She can be reached by email (tgoldberg@newmoa.org) or by telephone (617-367-8558 x302).

Sincerely,



George Desch, VT DEC
NEWMOA 2014 Chair

cc: Curt Spalding, EPA Region 1
Beth Deabay, EPA Region 1
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