

9441.1990(13a)

RCRA/Superfund/OUST Hotline Monthly Report Question

May 1990

5. 40 CFR Section 261.4(c) Hazardous Wastes Which Are Exempted From Certain Regulations

A petroleum refining facility, which generates more than 1000 kilograms of hazardous waste per month, operates a heat exchanger as part of the refining process. A sludge forms inside the heat exchanger. Periodically this sludge is cleaned out of the heat exchanger and managed as listed hazardous waste K050. According to 40 CFR Section 261.4(c) a hazardous waste generated in a manufacturing process unit is exempt from regulation until the waste exits the unit, or the waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing purposes. If the refining facility disconnects the heat exchanger and ships it off-site for cleaning within 90 days, would the exemption in Section 261.4(c) apply?

No, the 40 CFR 261.4(c) exemption is not available in this situation. Although the exemption is available for hazardous waste in transport vehicles or vessels, which may be moved to a central facility for cleaning (see 45 FR 72026, October 30, 1980), EPA does not interpret the exemption as applying to manufacturing process units, associated non-waste treatment units, or product/raw material storage tanks (that are stationary during operation) if those units are disassembled for cleaning off-site. As stated in the October 30, 1980, Federal Register (45 FR 72025), the incentive to maintain the unit's integrity to prevent leaks or unintended releases of products is substantially reduced when the unit is taken out of operation. Likewise, there would be loss of the unit's structural integrity if it were to be disassembled for off-site shipment, with a potential for hazardous waste releases. Thus the 40 CFR 261.4(c) exclusion is not available to manufacturing units, associated non-waste treatment units, and product/raw material storage tanks that are to be shipped off-site for cleaning.

RO 13374