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## **Guidance on the Regulatory Status of Petroleum-Contaminated Remedial Wastewater**

### **Introduction**

The following provides guidance on the regulatory status of groundwater contaminated with benzene (waste code, D018) from a petroleum underground storage tank (UST) release. The hazardous waste exemption for this material at 310 CMR 30.104(2)(p) reads as follows:

*“Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of 310 CMR 30.125 (Hazardous Waste Codes D018 through D043 only) when managed in compliance with the requirements of 310 CMR 40.000.”*

This guidance addresses a provision in the Massachusetts Contingency Plan, 310 CMR 40.0031(6), which requires generators of remedial wastewater meeting the criteria defining a listed or characteristic hazardous waste to comply with 310 CMR 30.000 when transported from a disposal site.

### **Guidance**

In response to the question of what it means “to comply with 310 CMR 30.000” when the remedial wastewater shipped off-site is already exempted at 310 CMR 30.104(2)(p), the Department has determined that the exemption at 310 CMR 30.104(2)(p) continues to apply even after the remedial wastewater (i.e. petroleum-contaminated groundwater<sup>1</sup>) leaves the cleanup site, provided that the following conditions are met:

1. The generator must be able to demonstrate that the remedial wastewater to be shipped off-site meets the requirements of the exemption (i.e. that it results from cleanup of groundwater from a release from a petroleum UST and that it is hazardous for benzene and/or waste codes D019 through D043 only).

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<sup>1</sup> Petroleum refers to gasoline. For waste oil contaminated media, refer to 310 CMR 30.252(2).

2. The generator must send to the receiving facility with each shipment, documentation, including testing data, that the remedial wastewater meets the requirements of the exemption, along with a Bill of Lading prescribed by 310 CMR 40.0034. [Note: Even though D018 (benzene) is the most probable Toxicity Characteristic (TC) constituent to be present in this wastestream, a generator must also make a determination regarding the other organic TC codes (D019--D043), as well.]; and

3. The receiving facility is authorized to accept the petroleum-contaminated remedial wastewater, and if located in Massachusetts, the receiving facility must be permitted to accept the petroleum-contaminated remedial wastewater (under the Clean Water Act, M.G.L. c. 21 or the Hazardous Waste Management Act, M.G.L. c. 21C, as applicable) and the receiving facility must do confirmatory sampling to verify that each shipment meets the requirements of the exclusion if required by its permit; and

4. Remedial wastewater that is a hazardous waste must be shipped on a hazardous waste manifest if it is not managed in accordance with the conditions described above.

This guidance is limited to petroleum dissolved in water (groundwater). Separate-phase petroleum, when transported off an Massachusetts Contingency Plan regulated disposal site in a container is considered a "Containerized Waste" per 310 CMR 40.0006 and is thus NOT Remediation Waste. Such separate-phase oils MUST be managed as a hazardous waste per 310 CMR 30.000.

## **Background**

A review of the preambles in both the final EPA and MassDEP TC rules shows that the intent of the exemptions is to exclude groundwater contaminated with benzene (waste code, D018) from a petroleum underground storage tank (UST) release from state and federal hazardous waste regulations, even after it leaves the cleanup site.

When the federal TC rule went into effect (see 55 FR 11836, March 29, 1990), EPA said it was deferring applicability of the TC rule over concern that treatment, storage and disposal facilities (TSDFs) would be inundated by this particular wastestream. EPA estimated at that time that there were going to be more than 300,000 UST releases discovered in the "next few years." The preamble to the TC Rule shows that EPA did not want this waste stream going to TSDFs. EPA eventually codified this policy decision at 40 CFR 261.4(b)(10). MassDEP adopted the federal TC exclusion for petroleum-contaminated media and debris (which includes groundwater) at 310 CMR 30.104(2)(p) without any intended modifications. MassDEP's December 1990 preamble simply states that MassDEP is adopting the federal UST groundwater exemption.

In order to minimize any confusion regarding this exclusion, MassDEP will propose to amend the hazardous waste regulations to clarify its longstanding position detailed above.

These revisions will clarify that when 310 CMR 40.000 refers the regulatory authority for shipments of petroleum-contaminated remedial wastewater sent off-site back over to 310 CMR 30.000, this wastestream is not subject to 30.000 provided that the above-stated conditions are met. Thus, complying with the conditions would ensure compliance with both 310 CMR 30.104(2)(p) and 40.0031(6).

In the meantime, this “conditional exemption” applies to the management of petroleum-contaminated remedial wastewater generated from an UST release provided all the requirements listed in the “guidance” above are complied with. If the conditions are not complied with the remedial wastewater is hazardous waste and must be managed accordingly.