Tennessee Department of Environment and Conservation
Division of Solid Waste Management
Domestic Sewage Exclusion
Regulatory Clarification

Wastes which are legally discharged to a publicly owned treatment works (POTW) sewer system and mix with domestic sewage that flow to a POTW are not a solid or hazardous waste under Tennessee Rule Chapter 0400-12-01. This applies even if the waste would otherwise be considered a listed or characteristic hazardous waste. Rule 0400-01-12-.02(1)(d)1(i) provides that solid or dissolved material in domestic sewage that passes through the sewer system to the POTW are not solid wastes as defined in Tennessee's Hazardous Waste Regulations. This exclusion is known as the Domestic Sewage Exclusion (DSE). The DSE covers industrial wastes discharged to POTW sewer systems containing domestic sewage, even if these wastes would be considered hazardous if discharged by other means. The remainder of this document addresses the regulatory status of waste (domestic sewage and any mixture of domestic sewage and other wastes) that entered a publicly-owned treatment works (POTW) sewer system (that is connected to a POTW plant), but exit (intentionally removed or accidental overflows/leaks) from the sewer system prior to reaching the actual plant. The Division of Water Resources (DWR) is the primary regulatory authority that regulates the necessary mitigation/cleanup of accidental overflows/leaks and maintenance/construction activities for POTW sewer systems and plants.

Applicable regulatory citations:

Rule 0400-01-12-.01(2)(a) defines Publicly owned treatment works as:

> *"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the "State" or a "municipality" (as defined by Section 502(4) of CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.*

Rule 0400-01-12-.02(1)(d)1(i) states:

The following materials are not solid wastes for the purpose of this rule:

(i) (I) Domestic sewage; and

(II) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works (POTW) for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(Comment: This exclusion does not exclude waste/wastewaters while they are being generated, collected, stored, or treated before entering the sewer system. This exclusion applies when the material enters the sewer system where it will mix with sanitary wastes at any point before reaching the POTW whereupon this material is regulated under water pollution statutes and regulations. This material is subject to all applicable reporting, monitoring, and permitting requirements of the T. C. A. §§ 68-221-101, 69-3-101, et seq. and the associated regulations. Management of this material must be in compliance with all applicable authorization (permits, etc.) associated with disposal into a POTW for subsequent treatment.)

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EPA provided regulatory clarification in a February 12, 1990 letter that was enclosed with the agency's March 10, 1997 letter (RCRA Online Document 14068). In the February 12, 1990 letter EPA stated:

> *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).*

EPA provided additional clarification in a June 9, 1991 letter (RCRA Online Document 14322) by stating:

> *EPA's regulations reflect a statutory exclusion from the definition of "solid waste" for domestic sewage. Based upon Section 1004(27) of RCRA, our current regulations specify that mixtures of domestic sewage and other wastes that pass through a sewer to a POTW are not solid wastes. (As EPA explained in the preamble to its original 1980 RCRA regulations, hazardous wastes discharged to POTWs are subject to CWA pretreatment requirements. Congress exempted domestic sewage mixtures to avoid duplicate regulation under the CWA and RCRA.) Upon exiting a POTW, sludges are a solid waste and, like all other non-listed solid wastes, are hazardous if they exhibit a characteristic of a hazardous waste.*

The DSWM concurs with EPA's February 12, 1990 and June 9, 1991 letters that solids/sludges that exit a POTW sewer system prior to reaching the actual plant are a solid waste requiring a characteristic hazardous waste determination under Rule 0400-12-01-.02(3). If the solid waste (solids/sludges) exhibits any of the characteristics of hazardous waste as described in Rule 0400-12-01-.02(3), it must be managed as a hazardous waste.

On page 30398 of the Federal Register / Vol. 75, No. 104 / Tuesday, June 1, 2010, EPA states (SSOs are Sanitary Sewer Overflows):

> *SSOs that reach waters of the United States are point source discharges and, like other point source discharges, are generally prohibited unless authorized by an NPDES permit.*
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> *Sanitary sewers are part of the treatment works under the Clean Water Act and discharges from sanitary sewers have historically been viewed as required to achieve secondary treatment in order to be eligible to receive an NPDES permit. Moreover, SSOs, including those that do not reach waters of the United States, may be indicative of improper operation*

and maintenance of the sewer system, and thus may violate other NPDES permit conditions. The NPDES regulations establish standard permit conditions which must be included in all NPDES permits, as well as additional standard permit conditions to be included in all NPDES permits for publicly owned treatment works (POTWs) (see 40 CFR 122.41 and 122.42). Standard permit conditions in a permit for a POTW apply to all portions of the collection system for which the permittee has ownership or has operational control. Standard permit conditions that have particular application to SSOs and municipal sanitary sewer collection systems include provisions that address a duty to mitigate (§ 122.41(d)); proper operation and maintenance (§ 122.41(e)); noncompliance reporting (§ 122.41(l)(6) and (7)); recordkeeping (§ 122.41(j)(2)).

As stated previously, Division of Water Resources (DWR) is the primary authority that regulates the necessary mitigation/cleanup of accidental overflows and discarded material from maintenance/construction activities for POTW sewer systems and plants. The DWR determines what cleanup activities are necessary. (Note: There are pre-treatment standards for industrial discharges to POTWs that limit the concentrations of constituents as necessary to ensure the proper operation of the plant and compliance with the NPDES discharge permit.) In order to eliminate dual regulation under DWR authority and DSWM authority as Congress intended by exempting domestic sewage mixtures in the statute, the DSWM will not assert its authority over, and will defer to the DWR regarding, all accidental overflows and pumpable wastes removed for maintenance/construction related activities that are placed back into the POTW sewer system at or near the location of the accidental overflows or maintenance/construction activities. (Note: The location must be the closest feasible point to place the waste back into POTW sewer system such that the reintroduced waste will mix with domestic sewage prior to reaching the treatment plant.) This applies as well to any clean-up at the location after such materials are returned to the POTW sewer system.

The DSWM will assert its authority over, and will be the lead agency regarding, all materials from the cleanup of the accidental overflows and discarded material from maintenance/construction activities, which are not placed back into the POTW sewer system at or near the location of the accidental overflows or maintenance/construction activity and are to be transported for offsite management. These materials are clearly solid wastes subject to a hazardous waste determination under Rule 0400-12-01-.03(1)(b). A hazardous waste determination must be performed on these solid wastes and they must be managed in accordance with the results of that determination. Please note that if adequate information is available, process knowledge may be used to make hazardous waste determinations on these wastes.

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Division of Solid Waste Management

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Date