

40 CFR 261.33) lost to a wastewater treatment system from manufacturing operations. Small amounts of § 261.33 materials which are being produced by, or used as raw product in, a manufacturing process are often unavoidably lost in normal material handling operations. For example, small amounts of raw material are lost in various unloading or material transfer operations (e.g., small drippage when transfer hose lines are disconnected, and fugitive dust when certain materials are emptied from bags or transferred from bins). Additionally, small amounts of manufactured products or intermediates are lost in material handling, or storage activities (e.g., losses from packing of pumps used to transfer product, unanticipated spills, relief valve discharges, rinsates from drained or otherwise emptied containers, and purgings associated with pressure relief or sample collection). 46 FR 56582 at 56586 (November 17, 1981).

Thus, the *de minimis* exemption is intended to apply to minor, inadvertent releases of waste to a wastewater treatment system as a result of normal operations at a well-maintained facility. The *de minimis* exemption currently does not apply to the discarding of these materials during abnormal manufacturing operations (e.g., operation malfunctions resulting in substantial spills), or the discarding of these materials where they are not being used as raw materials or are not being manufactured as intermediates or final products. *Id.*

The Agency is proposing to broaden the scope of the *de minimis* exemption in two ways. First, we propose to expand the eligibility for the exemption beyond manufacturing operations. Second, we propose to expand the types of waste that are eligible for the exemption. This revised *de minimis* exemption only applies to those wastes not specifically addressed under some other provision of the headworks rule.

The original headworks exemption applies only to manufacturing operations; such facilities are likely to have wastewater treatment systems with Clean Water Act (CWA) permits that provide a means to assess and limit discharges of the specific chemicals manufactured there. However, the Agency realizes that many raw material storage terminals, hazardous waste facilities, etc. also may have effective wastewater treatment systems that prevent the release of small amounts of spilled wastes from posing a threat to human health or the environment. The Agency also realizes that under the CWA, many of these facilities have

NPDES permits or permits under local CWA pretreatment programs that limit discharges and require monitoring for specific constituents (40 CFR part 122, 40 CFR part 403). Limitations on discharges of specific constituents implement CWA requirements to ensure that direct dischargers achieve effluent limitations based on best available technology and that indirect dischargers to POTWs comply with pretreatment standards. These limitations and standards act as another protective mechanism to prevent releases of toxic constituents from a facility's wastewater discharges and are an important consideration in the decision to propose this expansion of the *de minimis* exemption.

The Agency is therefore proposing that the *de minimis* eligibility be expanded to non-manufacturing sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table "Treatment Standards for Hazardous Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether. By conditioning the expanded exemption on having a CWA permit that addresses the specific chemicals associated with the listed waste, EPA will help ensure that the wastewater treatment systems at non-manufacturing facilities will effectively treat such chemicals. However, this proposed condition would also mean that some raw material storage terminals or other non-manufacturing facilities that do not meet this condition would not be eligible to claim the *de minimis* exemption. This is because, while some non-manufacturing facilities' discharges are covered by general permits (e.g., storm water discharge permits), they do not specifically address hazardous constituents likely to be present in the listed waste. (In contrast, the manufacturing facilities that are eligible for the current exemption are likely to have wastewater treatment systems with CWA permits that provide a means to assess and limit discharges of the specific chemicals.)

The Agency also is proposing to expand the *de minimis* exemption to wastes other than listed commercial chemical products for sites that either (1) have a permit subject to the CWA that contains limits for (a) the constituents for which each waste was listed (in 40 CFR part 261, appendix VII) and (b) the constituents in the table "Treatment Standards for Hazardous

Wastes" in 40 CFR 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents), or (2) have eliminated the discharge of wastewaters altogether.

The original headworks exemption only applies to commercial chemical products; CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of these products, which because of their intrinsic value are not likely to be discharged in large volumes. In its correspondence with the Agency, ACC requested that this portion of the headworks rule be expanded to include *de minimis* amounts of industrial wastes listed in 40 CFR 261.31 and 261.32 (F- and K-listed wastes). *De minimis* releases of these F- and K-listed wastes, similar to those from P- and U-listed wastes, arise from losses during materials handling operations in which these wastes are being generated or being segregated for treatment and disposal. ACC's position is that facility wastewater treatment systems are capable of handling small amounts of F- or K-wastes spilled to the system.

The Agency agrees that very small releases of industrial waste to a facility's wastewater treatment system are not likely to have a significant effect upon that system, the quality of facility effluent discharges, solid wastes generated, occupational safety and health, and human health and the environment. Moreover, the Agency believes that the constituent-specific CWA permitting requirements under section 402 or under section 307(b) local pretreatment program for eligible facilities provides assurance that releases of these wastes to a facility's wastewater treatment system will be kept to a minimum. CWA permitting requirements at manufacturing facilities generally provide a means to assess and limit discharges of commercial chemical products, but may not specifically address constituents in F- and K-listed wastes. Therefore, to ensure that release of *de minimis* levels of these constituents will not put human health and the environment at risk, and to provide facilities an incentive to minimize the loss of F- and K-listed wastes, the Agency is proposing that facilities which discharge wastewaters have CWA permits that limit appendix VII and Land Disposal Restriction constituents associated with the specific wastes.

The Agency further notes that the headworks exemption does not negate the applicability of the Toxicity Characteristic (TC) (40 CFR 261.24) to the wastewater treatment sludge. Therefore, facilities have an additional