

RCRA Manufacturing Process Unit (MPU) Exclusion

Chemical Regulation



Issue Summary

The Manufacturing Process Unit (MPU) Exclusion is a provision in the Resource Conservation and Recovery Act (RCRA) that excludes specific equipment in the manufacturing and processing of chemicals from being prematurely regulated as hazardous waste. Specifically, these exemptions are for hazardous wastes that are either recycled post manufacture or created in the process of production. For industry members, the recycling/use of these hazardous chemicals can be integral in the manufacturing process. EPA began inconsistently enforcing the MPU exclusion in 2016 which has led to significant fines and forced potential material changes to facility and manufacturing processes.



SOCMA's Goal

SOCMA is advocating for a public guidance document from EPA which states that, for purposes of the MPU Exclusion, the HON Clean Air Act section 112 definition of Chemical Manufacturing Process Unit should be adopted. This clarification resolves the challenge that RCRA does not include an explicit definition of “manufacturing process unit.”

Current Status

- Increased Enforcement Activity. While there were no known enforcement actions from 2019-2021 after SOCMA’s educational efforts with EPA, there has been enforcement action in 2022.
- Progress Stalled by Lack of EPA Leadership. Currently, SOCMA is waiting for formal one verifiable formal citation from EPA (often this occurs about two years after the inspection). Additionally, the assistant administrator position at EPA’s Office of Land and Emergency Management, the appropriate position to engage, is currently vacant with no political appointee.
- EPA ALJ Judge denies EPA’s interpretation of MPU exemption under RCRA. In September of 2022, an administrative law judge ruled in favor of a company on an inappropriate EPA enforcement action related to the MPU Exclusion.

Business Impact on the Chemical Industry

The fine from EPA is in the \$250,000 range with exponential increases depending on the number of reactors at the facility. A more significant problem is that the company will be forced to make facility changes including potentially altering manufacturing process, equipment, product handling and labeling. Finally, the company will be forced to treat materials as hazardous which were not previously considered hazardous which requires compliance with additional Resource Conservation and Recovery Act (RCRA) regulations.



SOCMA Activity

- Summer 2018 - 2020: Created the SOCMA member MPU Task Force. Held regular strategy and update meetings.
- June 2018: Member fly-in to advocate for the correct interpretation of the Manufacturing Process Unit (MPU) exclusion.
- July 2018: Met with EPA's Office of Policy to educate them on the impact on members of the policy change in enforcement of MPU exclusion.
- April 2019: SOCMA holds informational webinar for members on MPU exclusion, outlining the impacts of change in enforcement.
- March 2019 – October 2020: SOCMA advocated for members in a series of educational meetings with EPA's Office of Land and Emergency Management regarding MPU exemptions and implications of the rule's enforcement.
- August 2019: SOCMA membership met with both EPA's Office of Enforcement and Compliance Assurance and their Office of Land and Emergency Management advocating for the correct interpretation of the MPU exclusion rule.
- September 2019: Member fly-in with a key focus to advocate for correct enforcement of Manufacturing Process Unit exclusions.
- September 2019: The Office of Land and Emergency Management attended SOCMA Policy Summit; spoke on the MPU exemption rule and provided members the opportunity to directly advocate.
- April 2020: Held a briefing with the House of Representatives' Committee on Energy and Commerce, including information on MPU exclusions.
- 2019 & 2020: SOCMA leadership briefed the Chemical Industry Council of California (CICC) & Chemical Industry Council of Illinois (CICI) membership on MPU exclusion enforcement.
- January 2021: SOCMA received a letter from White House, detailing support of uniformity and clarity of enforcement of the RCRA MPU exclusion rule.
- April 2022: Briefed EPA's OLEM during the SOCMA Legislative and Regulatory Town Hall series on MPU exclusions.