EPA Response to DoD CWASSC Comments on Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Transportation Equipment Cleaning Point Source Category; Final Rule

(Ref: Proposed Rule 63 FR 34686, 25 June 1998
Data Availability Notice 64 FR 3883, 20 July 1999
Final Rule 65 FR 49666, 14 August 2000)

Summary

The Transportation Equipment Cleaning (TEC) Rule establishes standards for the discharge of pollutants into the waters of the United States and into publicly owned treatment works (POTWs). Facilities that generate wastewater from cleaning the interior of tank trucks, closed-top hopper trucks, rail tank cars, closed-top hopper rail cars, intermodal tank containers, tank barges, closed-top hopper barges, and ocean/sea tankers used to transport materials or cargos that came into direct contact with the tank or container interior are defined as TEC facilities and are subject to the TEC rule. In addition, wastewater generated from washing vehicle exteriors, equipment and floor washings, and TEC-contaminated stormwater at a TEC facility are also covered under the TEC rule.

If discharging into a POTW, existing TEC facilities must comply with the new standards no later than August 14, 2003, and new facilities must be in compliance when discharging starts. If discharging into the U.S. waters, TEC facilities must comply with the deadlines outlined in their NPDES permits.

Finally, TEC facilities that discharge less than 100,000 gallons per year of TEC process wastewater may be subject to limitations and standards established on a case-by-case basis using Best Professional Judgement by the permitting authority.

To determine if the TEC rule applies to your facility, refer to Figure 1.

Below are the DoD comments and recommendations that were submitted to EPA and EPA's response to these comments as presented in 1) the 20 July 1999 Data Availability Notice and 2) the TEC Final Rule.

Comment 1. <u>The terms "on-site" and "same corporate structure" are not defined with respect to how they apply to installations owned and operated by the U.S. Department of Defense.</u>

Proposed section 442.2 [Applicability] provides an exemption from the TEC effluent standard when a "facility cleans only tanks containing cargos or commodities generated or used *on-site* or by a facility under the *same corporate structure*" (emphasis added). The terms "on-site" and "same corporate structure" are not defined in the preamble to the proposed rule or in the proposed regulations.

Recommendation: Define in the text of the final regulation or state in the preamble to the final rule that facilities owned by a single federal agency (e.g., Department of Defense) meet the definition of being within the "same corporate structure." Also, define in the text of the final regulation or state in the preamble to the final rule that the term "on-site" means all contiguous and non-contiguous areas within the established boundary (i.e., the fence line) of a federal facility.

EPA's Response from 20 July 1999 Data Availability Notice: *"On-site means the contiguous and non-contiguous property within the established boundary of a facility." (64 FR 38870). In a conversation on 27 July 99, John Tinger (EPA) indicated that it is EPA's opinion that the "same corporate structure" definition needs no further clarification because it will be very difficult to include all of the facilities that are covered under the TEC rule in a more specific definition. EPA also feels that the "on-site" definition should be*

enough for determining the TEC rule's applicability.

EPA's Response, Final Rule: *40 CFR 442.2. On-site means within the contiguous and non-contiguous established boundaries of a facility.*

Comment 2. <u>The potential overlap between effluent regulations established under the TEC and Metal Products and Machinery (MP&M) rulemakings is not adequately addressed.</u>

Although EPA acknowledges that MP&M and TEC operations may overlap for purposes of effluent regulation, the Agency does not provide a mechanism to prevent regulatory overlap for facilities engaged in both activities. The preamble states that with respect to MP&M and TEC activities, the activity that the facility "predominantly engage[s]" in should determine which effluent standards apply. However the term "predominantly engage" is not defined.

A similar potential regulatory overlap exists with the proposed TEC effluent standards and the Centralized Waste Treatment (CWT) effluent standards proposed by the EPA on 27 January 1995. The Agency addressed this potential overlap in the preamble to the TEC proposed rule, stating that the ". . . standards . . . to be established for the Centralized Waste Treatment Category . . . would specifically cover tank washings at CWT facilities."

Recommendation: Establish categorical standards and limitations under the MP&M rulemaking for wastewaters discharged from interior tank cleaning at facilities regulated under the MP&M category in the same manner that EPA is proposing for the TEC and CWT categories.

EPA's Response from 20 July 1999 Data Availability Notice: *EPA clarified when a facility is to be subject to the TEC guidelines or the MP&M guidelines as follows:*

a. *Facilities that clean tank interiors solely for the purposes of repair and maintenance would be solely regulated under the MP&M guideline.*
b. *Facilities that clean tank interiors solely for the purposes of shipping products would be solely regulated under the TEC guideline.*
c. *Facilities that clean tank interiors for the purposes listed in a) and b) may be subject to both TEC and MP&M regulations. (64 FR 38871)*

EPA's Response, Final Rule: *Section III.E. It is possible that some facilities, or wastewater generated from some unit operations at these facilities, will be subject to the Metal Products & Machinery (MP&M) effluent guideline currently being developed by EPA. Facilities that clean tank interiors solely for the purposes of repair and maintenance would not be regulated under the TEC guideline.*

Wastewater generated from cleaning tank interiors for purposes of shipping products (i.e., cleaned for purposes other than maintenance and repair) is considered TEC process wastewater and is subject to the TEC guideline. It is possible that a facility may be subject to both the TEC regulations and the MP&M regulations. If a facility generates wastewater from MP&M activities which is subject to the MP&M guideline and also discharges wastewater from cleaning tanks for purposes other than repair and maintenance of those tanks, then that facility may be subject to both guidelines.

Comment 3. <u>The proposed regulations properly allow a facility in a specific subcategory to accept a variety of cargos without necessarily being subject to reclassification to another subcategory.</u>

EPA proposes to establish effluent limitation guidelines and pretreatment standards for toxic parameters in the Barge/Chemical & Petroleum subcategory. The proposed subcategorization approach allows a facility not subject to regulation under the chemical & petroleum subcategory the flexibility to accept tanks for cleaning that held chemicals and petroleum without necessarily being subject to reclassification into that

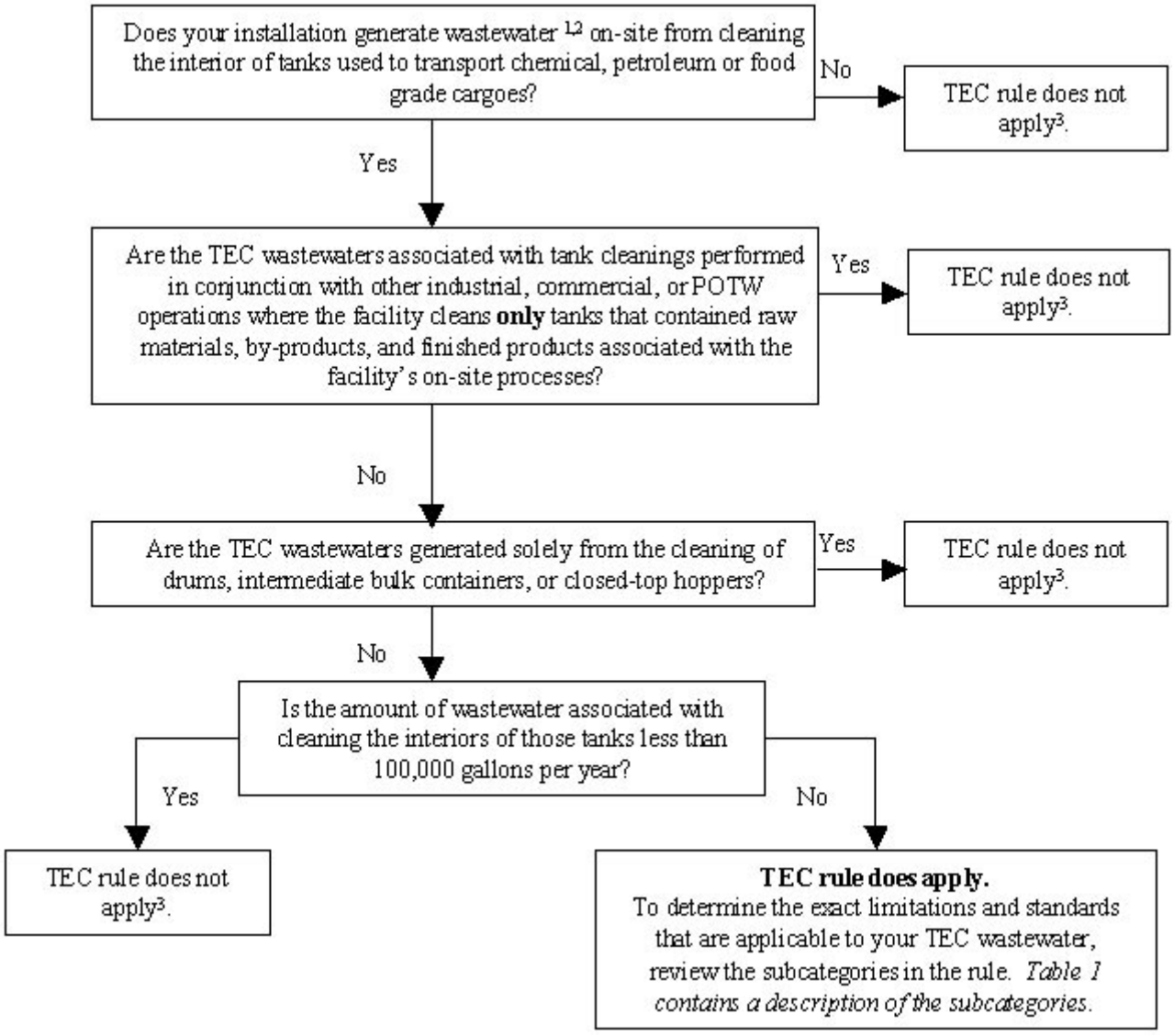
subcategory. Specifically, proposed section 442.30 provides that the provisions of the Barge/Chemical & Petroleum subcategory apply to "TEC wastewater discharged from facilities that clean tank barges or ocean/sea tankers where 10 percent or more of the total tanks cleaned at that facility in an average year contained chemical and/or petroleum cargos."

Recommendation: DoD supports the inclusion of a production cutoff in the subcategory definitions, as it does with proposed section 442.30. However, the term "average year" is not defined and may be subject to wide and inconsistent interpretation if incorporated into the final rule. DoD recommends that the Agency replace this term in the final regulation with the term "year," defined as either a calendar year or fiscal year as appropriate for the particular facility.

EPA's Response from 20 July 1999 Data Availability Notice: *EPA did not address this issue in the Data Availability notice. But based on a conversation with Mr. Tinger, EPA could include a definition of "year" in the preamble of the final rule if DoD deems it necessary. However, he feels that the permitting authority may provide a more appropriate definition for "year" when issuing a TEC discharge permit or when considering the flow exclusion provision applicability for facilities discharging less than 100,000 gallons per year of TEC process wastewater.*

EPA's Response, Final Rule: *40 CFR 442.30. EPA did not address this issue in the Final Rule. However, the Applicability section of the final rule states, "This subpart applies to discharges resulting from the cleaning of tank barges or ocean/sea tankers which have been used to transport chemical or petroleum cargos."*

Figure 1. Transportation Equipment Cleaning (TEC) Regulation Applicability Flow Diagram



[1] Only washwaters that **come into direct contact** with the tank or container interior including pre-rinse cleaning solutions, chemical cleaning solutions, and final rinse solution are covered under the TEC rule.

[2] Wastewater generated from washing vehicle exteriors, equipment and floorwashings, and TEC contaminated wastewater are covered under the TEC rule ONLY at those facilities that are subject to the TEC guidelines and standards.

[3] TEC wastewater may be subject to limitations and standards established on a case-by-case basis using Best Professional Judgement by the permitting authority.

Note: EPA defined TEC process wastewater as "wastewater generated from cleaning tank interiors for purposes of **shipping products** (i.e., cleaned for purposes **other than** maintenance and repair)" to clarify any potential overlap with other guidelines.

Subcategory	Description
Truck/Chemical & Petroleum	Wastewater from tank trucks and intermodal tank containers that contained chemical and/or petroleum cargos.
Rail/Chemical & Petroleum	Wastewater from rail tank cars that contained chemical and/or petroleum cargos.
Barge/Chemical & Petroleum	Wastewater from tank barges or ocean/sea tankers that contained chemical and/or petroleum cargos.
Food	Wastewater from clean tank trucks, intermodal tank containers, rail tank cars, tank barge, or ocean/sea tankers that contained food grade cargos.
Truck/Hopper	Wastewater from closed-top hopper trucks.
Rail/Hopper	Wastewater from closed-top hopper rail cars.
Barge/Hopper	Wastewater from closed-top hopper barges.