

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

NOV 8 1988

OFFICE OF  
WATER

MEMORANDUM

SUBJECT: Sewage Disposal from Trains

FROM: James R. Elder, Director  
Office of Water Enforcement and Permits (EN-335)

TO: Regional Water Management Division Directors

EPA has received letters from Members of Congress concerning sewage disposal from trains. In addition, I have received a September 9, 1988 memorandum from Bob Burd requesting guidance on this issue.

As discussed below, while it may be possible to claim Clean Water Act (CWA) authority to regulate sewage disposal from trains in some situations, since this issue is addressed under the Rail Passenger Service Act and the Public Health Service Act, we believe it is more appropriate for this question to be dealt with by the Food and Drug Administration (FDA) under those statutes.

Most intercity passenger trains currently dispose of sewage outside of the stations along the railroad right-of-way with almost no treatment. In the case of older equipment, the discharge is directly to the tracks. In newer equipment, the sewage is retained and discharged when the train reaches speeds greater than 25 miles per hour. Amtrak trains in the Northeastern corridor do not follow these practices and hold wastes for treatment and disposal at the stations.

In 1971, the FDA promulgated regulations concerning interstate conveyance sanitation under its authority contained in the Public Health Service Act. Specifically included were provisions which regulated the discharge of wastes from railroads (21 C.F.R. §1250.51). The effect of the FDA regulations was to greatly restrict the discharge of the sewage onto the tracks. However, in 1976, section 306(i) of the Rail Passenger Service Act was added and amended to exempt "intercity rail passenger service" from the requirements of the regulations dealing with the discharge of waste from railroads. These amendments also required submission of a report to Congress on the public health and environmental risks of these actions and the financial and operating hardships that would result from a prohibition of such disposal. This report, submitted to Congress in 1979, recommended

allowance of discharge of the waste when the trains reached speeds greater than 25 miles per hour and recommended removal of the statutory exclusion.

One possible EPA statutory authority to regulate this matter may be available under section 402 the CWA which prohibits the discharge of pollutants from a point source to the waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA or an approved State agency under the CWA. The Amtrak passenger trains are discharging "pollutants" since sewage is specifically included in the definition of pollutant. In addition, the discharge is from a "point source" since rolling stock is specifically included in the definition of point source. The only question that would remain is if the discharge is to "waters of the United States." This authority could apply in those limited circumstances where a train is discharging over wetlands or surface waters. However, since this issue is addressed under the Rail Passenger Service Act and the Public Health Service Act, we believe it is more appropriate for this question to be dealt with under those statutes.

If you have any questions, or wish to discuss this matter, please contact Cynthia C. Dougherty, Director, Permits Division (FTS 475-9545) or have your staff contact Gary Hudiburgh of her staff (FTS 475-9531).

cc: Malcolm Reddoch (FDA)