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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

April 8, 1994

Ms. Brenda L. Tollett
Attorney
Valvoline, Inc.,
P.O. Box 14000
Lexington, Kentucky 40512

Dear Ms. Tollett:

Thank you for your letter of November 5, 1993, requesting clarification of the 40 CFR Part 279 used oil rules as they apply to used oil collected from do-it-yourself (DIY) oil changers. Specifically, you asked whether under the rebuttable presumption requirements of 40 CFR §279.21 (b), DIY used oil must be tested for total halogens.

The rebuttable presumption applies to used oil that is managed by "used oil generators." A used oil generator is defined in §279.1 as "any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations." 57 FR 41613 (Sept. 10, 1992). As clarified in the preamble to the used oil rule, this definition includes all "persons and businesses who collect used oil from households and "do-it-yourself" oil changers." Household DIY used oil generators or private individuals who generate used oil through the maintenance of their personal vehicles are not subject to the used oil standards. (57 FR 41584). However, once collected, DIY used oil is subject to all applicable Part 279 standards and DIY used oil collection centers are subject to the requirements for used oil generators in Part 279, Subpart C, including the rebuttable presumption requirements of §279.21(b). (57 FR 41587). According to your letter, Valvoline's affiliate First Recovery collects DIY used oil as well as used oil from other sources. First Recovery would, therefore, be regulated as a used oil generator and would be subject to the §279.21 (b) rebuttable presumption for the used oil (including DIY used oil) that it collects.

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The used oil management standards allow that a generator may rebut the presumption that used oil that contains more than 1000 ppm total halogens has been mixed with hazardous waste by "demonstrating" that the used oil has not been mixed with a regulated hazardous waste. Such a demonstration can, but does not have to be, based on actual testing of the used oil. The regulations allow that the generator may rebut the presumption by documenting the source of the halogens, i.e., by showing that the halogens are not attributable to intentional mixing.

As you correctly point out, household waste is excluded from the definition of hazardous waste under 40 CFR 261.4(b)(1). Therefore, a used oil generator who collects DIY used oil that contains greater than 1000 ppm total halogens may rebut the presumption of mixing on the basis that household waste is excluded from regulation as a hazardous waste under §261.4(b)(1). Accordingly, if First Recovery can provide convincing documentation to show that the source of the used oil is exclusively household DIY used oil and that the chain of custody has been maintained so as to preclude mixing with regulated hazardous waste after collection, such documentation may be used to rebut the presumption of mixing.

It is important to note, however, that EPA Regional offices and States authorized to implement the RCRA program make determinations regarding the requirements that apply in specific situations. Also, some States have programs that are more stringent than the Federal hazardous waste program. If you have any further questions regarding the used oil regulations, please contact Eydie Pines of my staff at (202) 260-3509.

Sincerely,
Dave Bussard, Director
Characteristic and Assessment
Division

cc: Susan Bromm; Susan O'Keefe