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APPLICABILITY OF USED OIL MANAGEMENT STANDARDS TO
ACTIVITIES INVOLVING SEPARATION OF USED OIL FROM SORBENT
MATERIALS

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

September 28, 1994

Mr. Lael J. Pickett
Regulatory Specialist
3M Occupational Health and Environmental Safety Division
3M Center
St. Paul, Minnesota 55144-7700

Dear Mr. Pickett:

Thank you for your letter of September 7, 1994, requesting clarification regarding how the processor requirements (Subpart F) of the Used Oil Management Standards (40 CFR 279) apply to activities involving separation of used oil from sorbent materials. Specifically, you ask whether generators who separate used oil from sorbents and send the used oil off-site to be burned for energy recovery would be regulated as used oil processors.

As you correctly point out, the Environmental Protection Agency (EPA) clarified the scope of the Subpart F processor standards in recently promulgated amendments to Part 279. (59 FR 10550; March 4, 1994). Under amended § 279.20(b) (2) (ii), EPA specified those on-site maintenance, filtering, and separation activities that are not subject to the used oil processing standards. § 279.20(b)(2)(ii)(D) generally provides that generators may remove used oil from sorbent materials without being subject to the used oil processor standards, provided that the used oil is not being sent directly off-site to a used oil processors standards can be avoided.

EPA's primary concern is that, in situations where used oil is being filtered, separated or otherwise reconditioned and then sent directly to off-site burners, the purpose of the activity may be difficult to discern and that consequently, § 279.20(b)(2)(ii) may be used to avoid compliance with the used oil processor standards.

In other words, persons could claim that their activities constitute incidental processing under § 279.20(b)(2)(ii), while the primary purpose of the activity may in fact be to make the used oil more amenable for burning, a distinction which would be difficult for EPA to ascertain.

As stated in the March 4, 1994, preamble, EPA believes that by allowing on-site but not off-site burning from designated on-site incidental processing activities, the Agency can strike a reasonable balance between encouraging beneficial on-site reuse and recycling activities that pose very limited risks, and ensuring that activities undertaken to make used oil more amenable for burning (i.e., used oil processing) are properly controlled.

It is important to note 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,

Mike Petruska, Chief
Regulatory Development Branch

Attachment

3M
3M Occupational Health and Environmental Safety Division
3M Center
St. Paul, Minnesota 55144-1000
612/733 1110

September 7, 1994

Ms. Sylvia K. Lowrance
Director, Office of Solid Waste
United States Environmental Protection Agency
410 M Street S.W.
Washington, D.C. 20460

Subject: Definition of Used Oil Processor Under the
Used Oil Management Standards, 40 CFR Part
279.

Dear Ms. Lowrance:

The Minnesota Mining and Manufacturing Company, Occupational Health and Environmental Safety Division (3M, OH&ESD) wishes to confirm its understanding of the regulatory status of separating used oil from sorbent materials. Specifically, we focus on the definition of "processor" under the Used Oil Management Standards at 40 CFR Part 279 ("UOMS") as it relates to on- or off-specification used oil separated from sorbent materials and sent off-site to be burned for energy recovery.

The UOMS promulgated by EPA on September 10, 1992, articulated a strong preference for all free flowing used oil to be removed from solid wastes (e.g., oil filters, sorptive minerals, sorbent materials, scrap metals, etc.) and recycled rather than disposed with these wastes. At that time, EPA defined "used oil processing" as "chemical or physical operations designed to produce from used oil, or to make used oil more amenable for the production of fuel oils, lubricants or other used oil derived products." According to the preamble, (and regulatory language) "used oil processing" includes "chemical or physical separation of used oil from the solid waste material. At that time, EPA also defined recycling of used oil to include "any used oil which is reused, ... for any

RO 11874

purpose ... includ[ing] oil which is re-refined, reclaimed, burned for energy recovery or reprocessed."

The May 3, 1993, technical corrections to the standards clarified that the physical separation of used oil from non-terne plated oil filters by draining did not constitute processing because the act is in essence "removing used oil from solid waste" so that the used oil can be recovered and the filter properly disposed. (58 Fed. Reg. 26420, 26421.) On March 4, 1994, EPA revisited the issue of what constitutes "processing," stating that the act of removing excess used oil from materials contaminated with used oil is not considered processing unless the recovered used oil is to be burned off-site for energy recovery. (59 Fed. Reg. 10550, 10557.)

3M is a large producer and marketer of polypropylene sorbents. OH&ESD is concerned that EPA's March 4 clarification imposes "processor" regulations on the many used oil generators who separate used oil from sorbent materials and recycle the used oil by sending it off site to be burned for energy recovery. Often, generators using sorbent, and in particular polypropylene sorbents, mechanically wring out the sorbents to remove the free-flowing oil for recycling. Sorbents wrung in this manner may then be reused up to eight times before either being disposed or burned for energy recovery. (The BRU content of polypropylene sorbents is approximately 19,000/LB.)

Imposing processor requirements on generators who separate used oils from sorbents and send the oil off-site to be burned for energy recovery has the effect of making such used oil recycling more onerous. For many of our customers, sending their used oil off-site to be burned for energy recovery is the most environmentally responsible means of managing their used oil. Thus, imposing processor requirements on generators who separated oil from sorbents may prove counterproductive to EPA's stated goal of encouraging recycling by making it simpler to dispose of the used oil/sorbent mixture than to separate the used oil and recover its energy value.

If 3M/OH&ESD is correct in its understanding that the processor requirements apply to generators who physically separate used oil from sorbents and send that oil off-site to be burned for energy recovery, then we urge the Agency to reconsider this requirement in light of the negative impact such a requirement is likely to have on used oil recycling by burning for energy recovery.

We thank you for your consideration of this matter. We would be happy to provide you with more information should you desire it and would also be happy to meet with you or your staff to discuss this matter further. Please call me at (612) 736-1332 to discuss this matter or to arrange a meeting.

Sincerely

Lael J. Pickett
Regulatory Specialist
cc: Eydie Pines