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

August 25, 1995

Norman H. Nosenchuck, P.E.
Director
Division of Hazardous Substances Regulation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7250

Dear Mr. Nosenchuck:

This letter is in response to your letter of May 24, 1995 concerning the exemption for burning used oil in space heaters found in the Federal Used Oil Management Standards.

In your letter you request EPA's interpretation of the regulatory exemption for burning used oil in space heaters in three specific used oil collection scenarios. The scenarios all involve a county highway maintenance garage accepting additional used oil to burn in a on-site space heater. The used oil is collected by the County from: other county maintenance facilities, County-run Do-it-yourselfer (DIY) collection centers, and from businesses. Specifically, your letter requests clarification as to whether the County can burn these three sources of used oil in their space heater and still qualify for the space heater exemption in 40 CFR 279.23(a)(1)).

A generator may only burn used oil from DIYs or oil generated by that generator. A generator may not burn used oil generated by another business. EPA never intended to limit the generator to burning only used oil generated at the same facility as the space heater. An owner/operator may burn used oil generated from another of the generator's facility as long as the used oil and space heater meet all the requirements of § 279.23. Certainly, your state may chose to be more stringent than EPA as reflected in the Used Oil Management Standards.

The first two scenarios clearly meet the intent of the exemption which is to allow generators to burn their own used oil

in space heaters and to encourage the collection of DIY used oil. The owner/operator, in this case a county aggregation point, is allowed to burn used oil from other County facilities and the DIY collection program as long as the County follows the requirements for self-transportation of 55 gallons or less used oil (see § 279.24(b)) and the space heater meets the requirements of § 279.23(a)(2) and (3). The County may not burn DIY that is collected by another generator (for example at a state-run collection program). The DIY must come to the County through a County program or else directly from the resident. It is important to remember that the space heater must have a maximum capacity of not more than 0.5 million BTU per hour, that the combustion gases are vented to the ambient air, and that the space heater is operated as legitimate recycling (i.e., operated during cold weather and business hours).

The third scenario, concerning the burning of used oil at the County collection center from businesses, does not meet the language or the intent of the exemption. The owner/operator is limited to burning self-generated used oil and used oil from household sources (DIY). No amount of business waste (other than the used oil generated by the owner/operator of the space heater) may be burned in a space heater. In your letter, you referred to an exemption based on a 55 gallon limit that would allow the used oil to be burned in space heaters. This exemption applies to generators self-transporting their used oil to an aggregation center and exempts the generator from Transportation Standards (Subpart E) only and has no impact on the burning of used oil in space heaters.

I hope this information has been helpful to you. If you have any additional questions, your staff may contact Tracy Bone at (202)260-3509. Thank you for your interest in used oil management.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

Attachment

New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7250

May 24, 1995

Mr. Michael Shapiro
Director
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Mr. Shapiro:

Re: Exemption for Burning Used Oil in Space Heaters

Enclosed is a copy of a February 6, 1995 letter that we received from Ms. Auralie Ashley-Marx, a Research and Compliance Coordinator in Oswego County (one of the Counties in New York State), concerning the referenced exemption.

Mr. William Mirabile, of this Department, brought up this issue with you at the Used Oil Roundtable in March, 1995, at which time you stated that this issue would be evaluated by the United States Environmental Protection Agency (EPA) at some future point in time.

Our interpretation of the applicability of the regulations for burners of used oil is predicated on the assumption that, once a generator or other party who intends to direct their used oil for burning determines that the used oil is on-specification, then such on-specification used oil is no longer regulated as used oil (40 CFR 279.11). In other words, transportation and destination are no longer regulated under the used oil regulations.

Therefore, based on the above assumption, the following is our interpretation for each of the scenarios presented in the Ms. Ashley-Marx letter:

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1. Used oil that is sent from off-site County highway maintenance garages to other off-site highway garages or the off-site airport maintenance facility, all of which are owned and operated by the County:

In this case, we believe that the receiving facilities would be acting as used oil aggregation points. However, since the heading to the space heater exemption in 40 CFR 279.23 says "On-site burning in space heaters," we do not believe that aggregation points could burn the used oil brought in from their own off-site facilities unless the used oil is on-specification. Although New York State's used oil and air regulations are somewhat different from 40 CFR Part 279, and may further preclude aggregation points from burning used oil, we will reevaluate our position if you determine that aggregation points may burn used oil from their own off-site facilities under the terms of the space heater exemption.

2. Used oil that is sent from County-run do-it-yourselfer (DIY) used oil collection centers to other, off-site, County maintenance facilities; all locations are owned and operated by the County:

In this instance, we believe that the used oil could be burned at the DIY used oil collection centers under the terms of the space heater exemption. However, if the used oil were sent off-site to other County facilities for burning, we believe that the used oil would need to be on-specification. Again, if your interpretation is different, we will reevaluate our position on this issue. For this particular scenario, we believe that if the space heater exemption in 40 CFR Part 279 applies, there might be a possibility of granting a variance from State regulations to allow this type of burning. Further, we would particularly like to facilitate recycling of DIY used oil.

3. Used oil that is sent from private businesses to off-site, County maintenance facilities:

EPA's regulations allow for "used oil collection centers," which receive used oil from generators in

quantities of 55 gallons or less to meet the same standards as used oil generators. This Department's used oil regulations do not have a similar provision for used oil collection centers. Therefore, the used oil received at County maintenance facilities from private businesses for burning must be on specification. However, we are interested in finding out whether, under 40 CFR Part 279, used oil collection centers (e.g., those that accept used oil from generators in shipments of no more than 55 gallons) would be allowed to burn such used oil under the space heater exemption.

Is our interpretation of the used oil regulation concerning the above scenarios correct, or does EPA have a different interpretation? We need to know in order to advise the County and other interested parties in this matter.

If you have any questions, or require any further information, please have your staff contact Ms. Michelle Ching, of my staff, at (518) 485-8988. Thank you.

Sincerely,

Norman H. Nosenchuck, P.E.
Director, Division of Hazardous Substances Regulation

cc: w/enc. - A. Ashley-Marx, Oswego County
Eydie Pines, USEPA, Washington, D.C.

Attachment

OSWEGO COUNTY
Department of Public Works
Bristol Hill Solid Waste Facilities

February 6, 1995

Ms. Michelle Ching
Hazardous Waste Compliance Unit
NYSDEC
50 Wolf Road
Albany, NY 12233-17253

RE: Clarification of Used Oil Space Heater Regulations

Dear Ms. Ching:

As discussed by phone last month, I have been asked to research and provide specific documentation in reference to the use of used motor oil in space heaters. Oswego County is considering using used motor oil for fuel in space heaters to heat several highway garage facilities and/or an airport maintenance bay. The used oil could potentially come from the following sources:

Several off-site, county highway maintenance garages.

Five off-site transfer station holding tanks that accept used motor oil from household do-it yourself oil changers. Each person leaving oil signs a certification sheet stating that the used oil is from a household and not a business. It is not possible to have residents deliver their used crank-case oil highway garages, as it is not as convenient, nor is staff available at those sites to monitor such activities.

Used oil form off-site businesses.

What specific regulatory requirement would apply to each of these activities? What steps would the county be required to take to insure that we are in compliance with all applicable state and

federal regulations. Thank you for your attention to this matter. Any information you can provide would be appreciated. If you need further information about my request please contact me during business hours at (315) 593-8924.

Sincerely,

Auralie Ashley-Marx
Research and Compliance Coordinator