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USED OIL BURNED FOR ENERGY RECOVERY, INTERPRETATION OF
SUBPART E

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAY 15 1989

MEMORANDUM

SUBJECT: Interpretation of Subpart E -- Used Oil
Burned for Energy Recovery (§266.40(c))

FROM: Sylvia K. Lowrance
Director
Office of Solid Waste (OS-300)

TO: Lloyd Guerci, Acting Director
Hazardous Waste Management Division
Region 8

This is in response to Robert Duprey's April 12, 1989, memorandum requesting an interpretation of rules pertaining to used oil that is to be burned for energy recovery and the application of the Agency's enforcement mechanism -- the rebuttable presumption -- to determine when mixing with hazardous waste has occurred. Your memorandum discusses the practice by coal companies in Region 8 of spraying coal with used oil to suppress coal dust and to increase BTU value. The coal is then marketed to a burner by the coal company or through another marketer.

You asked whether any person other than the generator of the used oil is eligible to rebut the presumption that the oil was mixed with hazardous waste when the used oil contains in excess of 1000 ppm total halogens. The rebuttal test is not limited to the generator of the used oil. Any person in possession of used oil containing more than 1000 ppm total halogens must be able to provide documentation to support a rebuttal if the oil is not managed as hazardous waste.

You also asked if the rebuttable presumption was applicable in the situation you described since the used oil was being

applied to the coal and was not itself being marketed directly as a fuel. The used oil fuel and hazardous waste fuel regulations apply to used oil and hazardous waste that is burned in boilers or industrial furnaces. The regulations apply irrespective of whether the used oil or hazardous waste is mixed with other fuels or waste before use as a fuel. If used oil containing more than 1000 ppm total halogens is mixed with coal and the presumption of mixing with hazardous waste cannot be rebutted, then the coal/used oil mixture is hazardous waste fuel and is subject to the hazardous waste fuel regulations under 40 CFR Part 266, Subpart D.

Finally, you mentioned in your memorandum that RCRA Hotline personnel told you that if the used oil is sufficiently diluted after it is sprayed on the coal, such that a representative sample would test under the 1000 ppm halogens level, the "oil-treated coal" could then be burned in any industrial boiler or furnace. This answer is partly correct -- the oil-treated coal may be burned in an industrial (or utility) boiler or an industrial furnace. However, the oil-treated coal would be subject to regulation as hazardous waste fuel even if the mixture contains less than 1000 ppm total halogens. This is because the 1000 ppm halogen test for used oil identifies used oil that is presumed to be mixed with spent halogenated solvents listed as hazardous waste numbers F001 and F002. Thus, used oil containing more than 1000 ppm halogens is subject to regulation under the mixture rule as those listed spent solvents. When this used oil is mixed with coal, the mixture also is subject to regulation as those listed solvents.

The mixtures, like any hazardous waste, may be burned in industrial or utility boilers and industrial furnaces under the regulations in Subpart D of 40 CFR Part 266 (e.g., transportation and storage is fully regulated, and standards for burners are under development). Part of the logic for this position is that the 1000 ppm halogen limit is not a health-based concentration "characteristic." Rather, it is based on data that indicated that used oil was mixed with significant levels of halogenated solvents when halogen levels exceeded 1000 ppm. Thus, used oil with more than 1000 ppm halogens cannot be diluted by mixing with other materials to make the mixture nonhazardous. Used oil with more than 1000 ppm halogens is subject to regulations like any other listed hazardous waste.

If you have any further questions on this issue, you may call Angela Wilkes (382-7934) of my staff.