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RCRA/Superfund/OUST Hotline Monthly Report Question

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## 2. Rebuttable Presumption for Used Oil

According to the recycled used oil management standards in 40 CFR Part 279, any used oil containing more than 1,000 ppm of total halogens is presumed to have been mixed with a listed hazardous waste and therefore is subject to RCRA Subtitle C hazardous waste regulation. This presumption may be rebutted by demonstrating that the used oil does not contain hazardous waste. According to §279.10(b)(1)(ii), one way to make this demonstration is to show that the used oil does not contain significant concentrations of any of the halogenated hazardous constituents listed in Appendix VIII of Part 261. What is meant by the term "significant concentrations"?

There is no regulatory definition of significant concentrations. The Federal Register of November 29, 1985, however, does provide guidance on the term as it relates to hazardous halogenated solvents. Specifically, EPA has stated that a level of 100 ppm of individual solvent compounds is generally considered a significant concentration. Thus, one may try to rebut the presumption by showing that less than 100 ppm of any individual hazardous halogenated constituent listed as a hazardous spent solvent in 40 CFR §261.31 is present (50 FR 49176; November 29, 1985).

This 100 ppm level applies only to concentrations of halogenated solvent constituents and cannot be applied to all hazardous halogenated compounds. For example, if a used oil contains 1,000 ppm total halogens, and some of the halogens are pesticide compounds, the presumption of mixing would not necessarily be overcome by showing that each pesticide is present at levels less than 100 ppm. Showing that individual hazardous halogenated solvents are present at levels less than 100 ppm also will not automatically rebut the presumption, as other site-specific factors must be considered in making such a determination. For example, if documentation shows that used oil has been mixed with a listed hazardous waste, that mixture would be considered a hazardous waste pursuant to the mixture rule in 40 CFR §261.3(c)(2)(iv), regardless of the level of halogenated constituents present.