

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

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Christopher Harris  
Harris, Tarlow & Stonecipher, P.L.L.C.  
1439 West Babcock  
Bozeman, MT 59715

Dear Mr. Harris:

Thank you for your interest in the exclusion from the definition of solid waste for processed scrap metal being recycled as it applies to used oil filters. This letter is in response to your December 12, 1997 letter and subsequent meetings and information that you and others provided. You asked two questions: 1) can the processed scrap metal exclusion from the definition of solid waste be applied to used oil filters and 2) does the act of draining used oil from used oil filters constitute scrap metal processing. To answer your questions, we think it would be helpful to first review the two exemptions from the hazardous waste regulations and the exclusion from the definition of solid waste that may apply to used oil filters.

*Exemption from Hazardous Waste Regulation for Vehicle Engine Oil Filters*

Non-terne-plated used oil filters which are removed from service from light or heavy duty vehicle engines are regulated as used oil under 40 CFR Part 279.<sup>1</sup> Once these filters are properly drained by one of the methods specified in 40 CFR 261.4(b)(13), they are no longer subject to the used oil regulations as materials containing used oil (see 40 CFR 279.10(c)), and they are also exempted from regulation as hazardous waste. The draining methods listed in this exemption consist of: 1) puncturing the filter anti-drain back valve or the filter dome end and hot draining; 2) hot-draining and crushing; 3) dismantling and hot-draining; or 4) any other equivalent hot-draining method that will remove used oil. Once drained in compliance with this exemption, such filters may be either disposed of or recycled as a non-hazardous solid waste. If recycled, they may also be considered a scrap metal as described below.

*Scrap Metal Exemption from Hazardous Waste Regulation*

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<sup>1</sup> The preamble to the May 20, 1992 used oil filter exemption, 57 FR 21524 at 21531-21532, specifies that this exemption from the hazardous waste regulations applies only to used oil filters from light or heavy duty vehicle engines. Other types of filters such as fuel filters, transmission oil filters, hydraulic oil filters, railroad locomotive oil filters, and other specialty filters are not covered by this exemption (see attached January 12, 1994 letter).

EPA exempts from regulation as hazardous waste scrap metal that is being recycled (see 40 CFR 261.6(a)(ii)) Scrap metal is defined in 40 CFR 261.1(c)(10) as "bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobile, railroad box cars), which when worn or superfluous can be recycled." However, EPA has stated repeatedly that scrap metal cannot contain significant amount of liquid. All types of used oil filters are potentially eligible for the scrap metal exemption from the hazardous waste regulations if they meet this definition. Used oil filters are considered to not contain significant amounts of liquid once the used oil has been removed to the extent possible such that there are no visible signs of free-flowing oil (see 40 CFR 279.10(c)). This may be accomplished by the methods specified in 40 CFR 261.4(b)(13) or by other methods that remove used oil (e.g., shredding with oil recovery). Therefore, used oil filters that have been drained to meet the standard in 40 CFR 279.10(c) may be scrap metal and exempt from regulation as hazardous waste when being recycled.

#### *Exclusion from the Definition of Solid Waste for Processed Scrap Metal*

In May, 1997 EPA promulgated a provision excluding from regulation as a solid waste scrap metal that is both recycled and processed. [See 40 CFR 264.1(a)(13)]. Processed scrap metal is defined at 40 CFR 261.1(c)(10) as scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chapped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and fines, drosses and related materials which have been agglomerated. Note that this exclusion is from the definition of solid waste, which indicates that the material is not just exempt from regulation as hazardous waste, but is not classified as a waste. In the 1997 rulemaking, the Agency determined that processed scrap metal being recycled is distinct from other secondary materials defined as wastes.

#### *Does the Processed Scrap Metal Exclusion Apply to Used Oil Filters and What Constitutes Scrap Metal Processing?*

You asked two questions: (1) whether the processed scrap metal exclusion applies to used oil filters; and (2) whether the act of draining used oil from used oil filters constitutes scrap metal processing. These questions can be answered generally through application of these regulatory provisions described above.

This exclusion can apply to used oil filters that meet both the definition of "scrap metal" in 261.1(c)(6) and undergo processing as defined in 40 CFR 261.1(c)(10). *It is important to emphasize that this exclusion only applies to processed scrap metal being recycled.* Although EPA did not specifically discuss used oil filters in the processed scrap metal rulemaking, the Agency intended the exclusion to cover all scrap metal that has been

processed, including used oil filters. EPA does not see any reason to distinguish drained used oil filters, which may be contaminated with small amounts of used oil, from other types of scrap metal, which may be contaminated with small amounts of other liquid hazardous wastes. This 1997 exclusion did not revoke or replace the 1992 used oil filter exemption. 40 CFR 261.1(b)(13) continues to exempt filters that are sent for disposal in lieu of recycling, and to recycled filters that are hot-drained, but not processed

Draining a used oil filter would not, by itself, meet the new definition of processing in 40 CFR 261.1(c)(10). Physical alteration of the filter is required. Two of the methods specified in the 1992 used oil filter exemption in 40 CFR 261.4(b)(13) appear to involve sufficient physical alteration to allow the contained filters to qualify for the processed scrap metal exclusion (hot draining and crushing and dismantling and hot-draining). Other draining methods, such as shredding, that were not mentioned in the used oil filter exemption may also constitute processing. Shredded used oil filters may qualify as scrap metal if sufficient liquid is removed, and also as processed scrap metal, if sufficient physical alteration takes place.

In your April 6, 1998 memorandum, you raised the concern that EPA may have violated the Administrative Procedures Act if properly drained and crushed used oil filters are considered processed scrap metal. EPA proposed and promulgated the processed scrap metal exclusion under standard regulatory procedures. While it is true that the proposed and final regulatory language did not specifically mention used oil filters, it also did not individually identify all other types of scrap metal that it covered. EPA intentionally wrote the rule broadly to cover all types of processed scrap metal that could legitimately be recycled. Thus, EPA believes adequate notice and opportunity to comment on this rule was provided.

### *Environmental Considerations*

Material that is removed from processed scrap metal IS newly generated waste and subject to a waste determination. In the case of drained and processed used oil filters, any residual oil that leaks out of the filters is newly generated used oil subject to the used oil management standards of 40 CFR Part 279. Therefore, processed used oil filters that have a potential to leak residual used oil should be managed so that the residual oil can be collected (e.g., stored in appropriate containers). If used oil filters are inappropriately stored and residual used oil leaks onto the ground, the used oil is considered to be improperly disposed and is subject to a hazardous waste determination.

The Agency believes that this policy will encourage recycling of used oil filters. In the 1997 processed scrap metal exclusion, EPA believed that removing some of the regulatory barriers for processed scrap metal would create more recycling markets for all types of processed scrap metal. This increased flexibility will benefit all used oil filter

recyclers, since the filters that they send for recycling have generally been processed.

*State Specific Considerations*

Please be aware that some states may regulate used oil filters and processed scrap metal more stringently. Under Section 3006 of RCRA (42 U.S.C. Section 6926) individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. Also, under Section 3009 of RCRA (42 U.S.C. Section 6929) authorized states retain authority to promulgate regulatory requirements that are more stringent than Federal regulatory requirements. Therefore, authorized States may choose not to adopt the processed scrap metal exclusion or may choose to have more stringent requirements for all or some materials which would qualify as a processed scrap metal under the Federal program. You should contact your state regulatory agency to see if the information in this letter is applicable.

If you have any further questions regarding the processed scrap metal exclusion as it applies to used oil filters, please contact Tom Rinehart at (703) 308-4309 or Kristina Meson at (703) 308-8488.

Sincerely,

Elizabeth A. Cotsworth  
Acting Director  
Office of Solid Waste