RCRA/SUPERFUND HOTLINE MONTHLY REPORT

March 1999

2. Rebuttable Presumption Halogen Level vs. Specification Halogen Level

   Used oil containing more than 1,000 parts per million (ppm) total halogens is presumed to be mixed with a listed hazardous waste, unless the used oil generator can successfully rebut this presumption (40 CFR Section 279.10(b)(1)(ii)). In addition, used oil that is burned for energy recovery is determined to be off-specification if it contains more than 4,000 ppm total halogens (Section 279.11). If an automotive service station generates used oil that has a total halogen level of 5,000 ppm (above the specification halogen level), can the generator still rebut the presumption of mixing with a listed hazardous waste?

   Even if used oil has a halogen content of 5,000 ppm the generator may still rebut the presumption that the used oil is a hazardous waste because it has been mixed with a listed halogenated hazardous waste. The provision that allows a used oil handler to rebut the presumption of mixing with a listed hazardous waste operates independently of the used oil specification level for total halogens. There is no halogen level over which it is impossible to rebut the presumption of mixing. If the generator can successfully demonstrate that the used oil was not mixed with a listed hazardous waste, the used oil is regulated as used oil and not hazardous waste (Section 279.10(b)(1)(ii)). Once the used oil is determined not to have been mixed with a listed hazardous waste, a handler that wishes to burn the used oil for energy recovery would then need to determine if the used oil is on- or off-specification in accordance with the criteria in Section 279.11.

   In this case, if the generator can rebut the presumption of mixing, the used oil would be considered off-specification because it exceeds the 4,000 ppm total halogen level. Regardless of the specification of the used oil, however, a handler always has the option of seeking to rebut the presumption of mixing with a listed hazardous waste.