



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

NOV 22 2011

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

Robert F. Wilkinson  
Husch Blackwell, LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

Dear Mr. Wilkinson:

Thank you for your letter of March 21, 2011 requesting clarification on the applicability of the used oil regulations, at 40 CFR part 279, to used oil inserted as feedstock to a petroleum refining facility. Specifically, you seek clarification whether on-specification used oil, produced by a used oil processor or re-refiner and sold for use as a feedstock or as a component in feedstock, to be inserted before crude distillation or catalytic cracking at a petroleum refining facility, is subject to regulation under 40 CFR part 279. You also indicate that the used oil in question either contains less than 1000 ppm total halogens, or there is appropriate documentation to rebut the presumption by demonstrating that the used oil does not contain hazardous waste.

As noted in your letter, the part 279 standards provide various exemptions from the used oil management program. The exemptions at §279.10(g)(1)-(5), which were promulgated in the March 4, 1994 Final Used Oil Rule (see 59 FR 10550), apply specifically to petroleum refineries.<sup>1</sup> The relevant regulations for consideration here are:

- (g)(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.
- (g)(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of §279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

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<sup>1</sup> Petroleum refineries in this situation should have the SIC code 2911, or equivalent refinery NAICS codes.

We agree with your assessment that off-specification and on-specification used oil are treated differently under the exemptions for petroleum refineries. Although the regulations do not use the terms on-specification and off-specification in all instances, the preamble discussion in the 1994 final rule provides further insight. In particular, the preamble discussion of paragraph (g)(4) entitled, *Used Oil Inserted Into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking*, distinguishes between off-specification and on-specification used oil when it is inserted into the petroleum refining process **after** the crude distillation or catalytic cracking has already occurred. Specifically, EPA expresses concern with possible environmental effects of placing large amounts of off-specification used oil into the petroleum refining process that have not passed through crude distillation or catalytic cracking units. Therefore, off-specification used oil at this point in the process does not qualify for the (g)(4) exemption and, thus, would be subject to regulation under Part 279. On the other hand, EPA has a different view with respect to on-specification used oil at this point in the process. EPA states in the preamble that “. . . on-specification used oil may be burned in the same manner as virgin petroleum fuel in other situations, therefore it makes little sense to restrict its use as a feedstock to the petroleum coker . . .” Paragraph (g)(4), therefore, places no limitations on the amount of on-specification used oil that may be inserted after crude distillation or catalytic cracking. (59 FR 10554.)

With respect to the insertion of used oil in a petroleum refining process **before** crude distillation or catalytic cracking, the regulations in paragraph (g)(3) and the preamble in the 1994 rule simply refer to “used oil” and do not seem to distinguish between on-specification or off-specification used oil in the way that paragraph (g)(4) does. Paragraph (g)(3) does not specifically address the insertion of on-specification used oil into the refinery process at this stage of the process. Nevertheless, EPA believes it is reasonable to conclude that because we specifically stated that it does not make any sense to limit the amount of on-specification used oil inserted after the crude distillation or catalytic cracking unit, which provides additional contaminant reduction, we did not intend to limit the amount that can be inserted before.

The question that remains is whether on-specification used oil that is inserted before the crude distillation or catalytic cracking unit is subject to the part 279 standards when this activity does not constitute burning for energy recovery. There are numerous preamble statements and interpretive memoranda that address situations where on-specification used oil will be burned for energy recovery. In these situations, the answer clearly is no, the part 279 standards do not apply.<sup>2</sup> However, there is one instance, as you cited in your letter, where EPA determined that on-specification used oil can be used as a substitute for an ingredient in the manufacturing of blasting agents.<sup>3</sup> Specifically, in this letter, EPA states that on-specification used oil can be substituted for fuel oil in the production of ammonium nitrate fuel oil (ANFO) blasting agents. (A 1991 EPA memorandum similarly addresses substituting used oil for fuel oil in the manufacture of ANFO, and factors to consider when evaluating used oil as a legitimate substitute.<sup>4</sup>)

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<sup>2</sup> “The Agency has always intended that used oil that is to be burned for energy recovery only be regulated under the Used Oil Management Standards until it has been determined to meet the used oil fuel specification. Once it has been determined to meet the fuel specification and the marketer complies with 40 CFR 279.72, 279.73, and 279.74(b), the used oil is no longer regulated by the Used Oil Management Standards” (68 FR 44662, July 30, 2003).

<sup>3</sup> Letter to William Patterson from Michael Shapiro, Director, Office of Solid Waste; January 10, 1994; RCRA Online (RO) No. 11807.

<sup>4</sup> Memorandum to Robert L. Duprey from Sylvia K. Lowrance, Director, Office of Solid Waste; June 5, 1991; RO No. 11613.

The basis for this determination is that on-specification used oil is equivalent to virgin fuel oil for regulatory purposes. The allowable use of on-specification used oil in this manner is, in our view, analogous to the use of on-specification used oil as a feedstock to a petroleum refinery. EPA believes that this is a proper application of the specification requirements (i.e., use of on-specification used oil for purposes other than burning for energy recovery) because clearly the exemption for petroleum refineries at §279.10(g)(4) exists, which allows for just that, a use other than burning for energy recovery. Accordingly, it is our interpretation that on-specification used oil that is inserted as a feedstock into the petroleum refining process after, as well as before, crude distillation or catalytic cracking is exempt from the part 279 standards.

Finally, it is also important to note, that EPA regions and states authorized to implement the RCRA program make determinations regarding the requirements that apply in specific situations. States often have programs that are more stringent than the federal hazardous waste and used oil programs.

If you have any further questions regarding the federal used oil regulations, please contact Jeff Gaines of my staff at (703) 308-8655.

Sincerely,

A handwritten signature in cursive script, reading "Suzanne Rudzinski".

Suzanne Rudzinski, Director  
Office of Resource Conservation and Recovery



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March 21, 2011

## VIA ELECTRONIC MAIL

Ms. Suzanne Rudzinski  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

Dear Ms. Rudzinski:

I am writing to request clarification of whether on-specification used oil, produced by a used oil processor or re-refiner and sold for use as a feedstock or as a component in feedstock, to be inserted before crude distillation or catalytic cracking at a petroleum refining facility, is subject to regulation under 40 C.F.R. Part 279.

### Background

This request is limited to the following pertinent facts. A processor or re-refiner markets used oil that it has determined is on-specification pursuant to the requirements in 40 C.F.R. § 279.11. Additionally, either the used oil in question contains less than 1000 ppm total halogens or there is appropriate documentation to rebut the presumption by demonstrating that the used oil does not contain hazardous waste.

Due to the properties of the used oil, it is commercially appropriate for use as either a refinery feedstock or a component in a refinery feedstock to be inserted before the crude distillation unit or catalytic cracking unit. Is the use of this material in this manner subject to regulation under Part 279?

### Analysis

Our analysis of the Part 279 regulations, together with various documents explaining EPA's development and interpretation of the regulatory program, suggests that the referenced material is not subject to regulation under Part 279. The Part 279 regulations provide various exemptions from the used oil program. As explained by the Agency in

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various rulemaking preambles and guidance documents, on-specification used oil “poses no greater risk than virgin fuel oil and, once it enters the commercial fuel oil market, should not be regulated differently than virgin fuel oil.” 50 Fed. Reg. 49154 at 49189, November 29, 1985. Except for certain recordkeeping obligations on the person first claiming that used oil being burned for energy recovery meets the specifications, pursuant to 40 C.F.R. § 279.11, used oil being burned for energy recovery, and any fuel produced from used oil, that does not exceed any of the allowable levels of constituents and properties in 40 C.F.R. Part 279, Table 1 is not subject to Part 279.

EPA has clarified that, in certain circumstances, the use of on-specification used oil as an ingredient or feedstock in manufacturing is also not subject to regulation under Part 279. For example, EPA has clarified that the use of on-specification used oil as direct feed to a petroleum coker, asphalt production process (or any other process after crude distillation or catalytic cracking) at a petroleum refining facility is not subject to regulation under Part 279. See 40 C.F.R. § 279.10(g)(4). Similarly, EPA has determined that, because on-specification used oil fuel is equivalent to #2 fuel oil for regulatory purposes, on-specification used oil is also not subject to regulation under Part 279 when it is utilized as a substitute for #2 fuel oil in the production of ANFO blasting agents. See Letter from Michael Shapiro, Director, Office of Solid Waste to William Patterson, January 10, 1994, available at RCRA Online, RO 11807.

The fact that on-specification and off-specification used oil are treated differently under Part 279 is illustrated by 40 C.F.R. § 279.10(g)(4). In the preamble supporting this exemption, EPA explained that insertion of used oil as feedstock to a process after crude distillation or catalytic cracking at a petroleum refining facility is limited to on-specification used oil due to “concern about the possible environmental effects of placing large amounts of off-spec used oil into the petroleum refining process without passing through the crude distillation or catalytic cracking units.” 59 Fed. Reg. 10550 at 10554, March 4, 1994. It elaborated that “[o]n-specification used oil may be burned in the same manner as virgin petroleum fuel in other situations, therefore it makes little sense to restrict its use as a feedstock to the petroleum coker (or in any other process “after” crude distillation or catalytic cracking).” 59 Fed. Reg. at 10554. Therefore, this provision should not be read as a limitation on the type of processes into which on-specification used oil can be inserted. If there is little sense to restrict its use as a feedstock after crude distillation or catalytic cracking, there is no sense restricting its use before these processes which are “expressly designed to remove, alter or otherwise immobilize contaminants in the normal course of the refining process.” 59 Fed. Reg. at 10554.

Accordingly, the use of on-specification used oil, produced by a used oil processor or re-refiner and sold for use as a feedstock or as a component in feedstock, by inserting before crude distillation or catalytic cracking at a petroleum refining facility should not be subject to regulation under Part 279. 40 C.F.R. § 279.10(e)(1) provides that “[m]aterials



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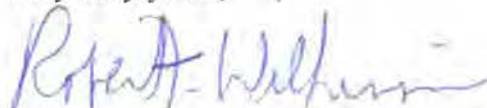
that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are... not used oil and thus are not subject to this part.” The petroleum refining facility feedstock produced from the used oil meets this definition. It is a material that has been reclaimed from used oil that is used beneficially as a feedstock. Its use as a refinery feedstock does not constitute burning for energy recovery or use in a manner constituting disposal. This analysis is not altered by the fact that some portion of this feedstock, as a result of the petroleum refining process, may ultimately end up in products to be burned for energy recovery or used as feedstock for asphalt production. Not only is this the ordinary manner of use for these petroleum fractions, as described above, each of these uses is authorized as a direct use of on-specification used oil. See 40 C.F.R. § 279.11 and 40 C.F.R. § 279.10(g)(4).

Alternatively, this material is exempt under 40 C.F.R. § 279.11. As explained above, used oil being burned for energy recovery and any fuel produced from used oil that does not exceed any of the allowable levels of constituents and properties in Table 1 is not subject to Part 279. This section does not limit shipping only to a used oil burner. The material can also be sold to a processor, re-refiner or distributor. See 68 Fed. Reg. 44659 at 44662, July 30, 2003; see, also, RCRA Online 14755. Once a shipment takes place, sending the on-specification used oil feedstock to a petroleum refining facility, or a third party en route to a petroleum refining facility, that processes the material to make various fuels and other products, the shipment of used oil should no longer be subject to regulation under Part 279 and the on-specification used oil feedstock can be handled like any other virgin fuel oil.

Finally, because the on-specification used oil being used as a feedstock at a petroleum refining facility is not subject to regulation under Part 279, the exemptions in 40 C.F.R. § 279.10(g), and the limitations therein, are not applicable.

Thank you for your prompt attention to this request. If you or your staff have any questions concerning this request, please contact me at your earliest opportunity.

Very truly yours,



Robert F. Wilkinson

cc: Mr. Jeffrey C. Gaines  
U.S. EPA