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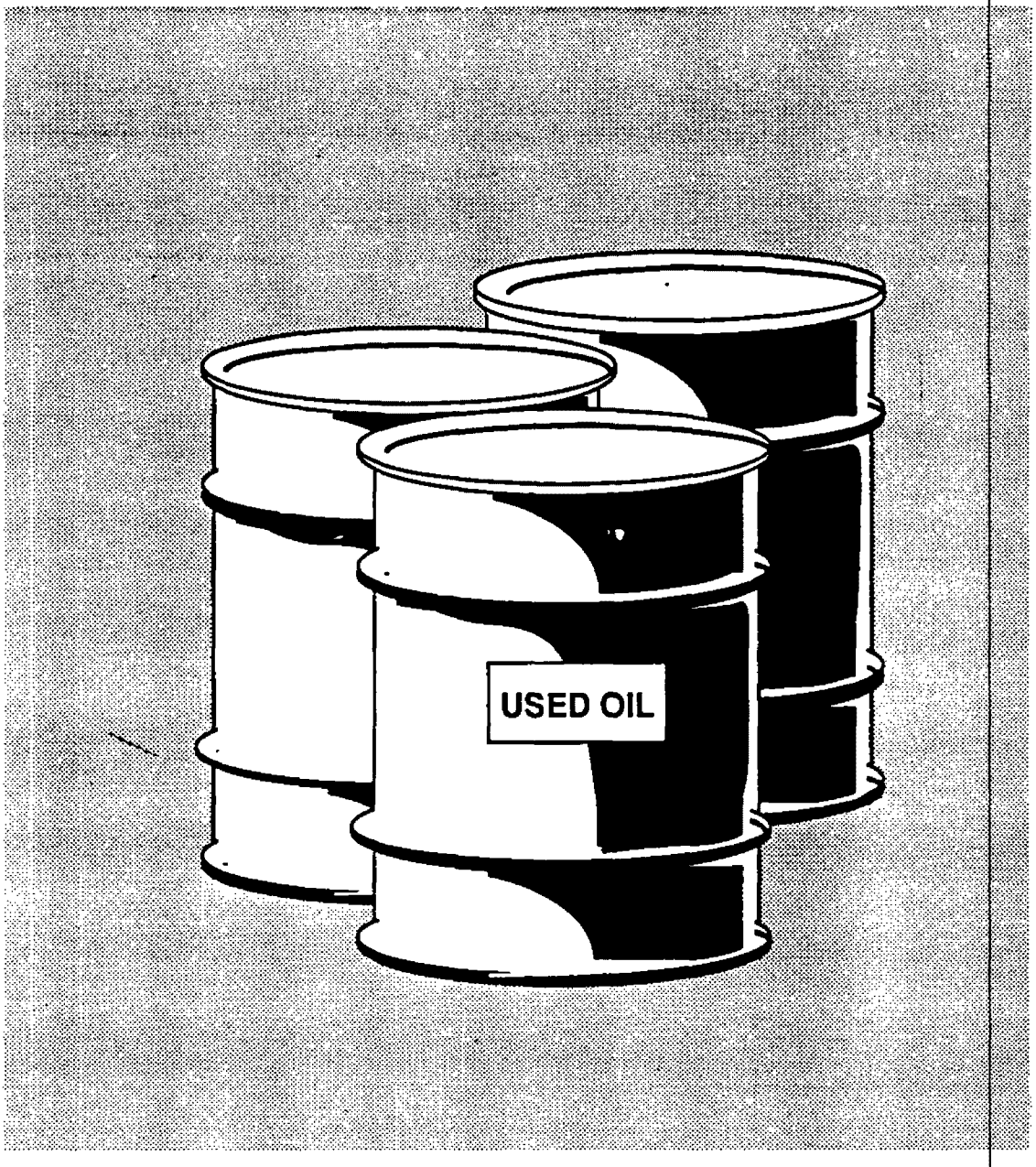
Used Oil Questions and Answers

A Collection of Questions Compiled by the Hotline



RCRA, UST, Superfund, and EPCRA Hotline

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INTRODUCTION

The Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), Superfund, and Emergency Planning and Community Right-to-Know Act (EPCRA) Hotline was established to respond to inquiries from the regulated community, the public, and others concerning waste management and disposal regulations.

One of the regulatory areas addressed by RCRA is used oil management and recycling. On September 10, 1992, EPA published new recycled used oil management standards in the *Federal Register*. This document is a compilation of questions received on the Hotline, and their answers, during the period of September 1992 through June 1993 dealing with these standards. The questions are organized within the document by general topic headings and indexed by key words.

While these questions and answers cover a wide variety of used oil issues, it is important that the reader be aware of the purpose and limitations of this document. It does not replace the regulations; instead, it augments them. For a complete understanding of the new federal used oil management standards under RCRA, the reader is directed to 40 *CFR* Part 279, the *Federal Register* preamble associated with it (57 *FR* 41566, 58 *FR* 26420, and 58 *FR* 34977), and any related guidance. In addition, to obtain a regulatory determination regarding any specific scenario, the reader should contact his or her enforcement agency. A list of used oil state contacts (updated through February 1994) is included in Appendix I of this document.

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GENERAL

1. What are the major provisions of the new recycled used oil management standards?

The major provisions are management standards for used oil handlers which include used oil generators, used oil transporters, used oil processors and re-refiners, used oil marketers, and burners of off-specification used oil.

2. What section of the hazardous waste regulations refers to the requirements for used oil in Part 279?

Under requirements for recyclable materials, §261.6(a)(4) exempts used oil that exhibits a hazardous characteristic from regulation as hazardous waste and subjects it to Part 279 when recycled. The Part 279 standards, though, apply to all used oil, characteristic or not.

EFFECTIVE DATE/STATE AUTHORIZATION

3. What is the effective date of the new recycled used oil management standards?

As stated in the September 10, 1992, *Federal Register* (57 *FR* 41604), §3014(a) is a RCRA provision that predates the 1984 amendments. This provision, which directs EPA to regulate recycled used oil, represents statutory authority for the Part 279 standards. As such, the new standards became effective March 8, 1993, in unauthorized states (Alaska, Hawaii, Iowa, Wyoming, American Samoa, Northern Mariana Islands, Puerto Rico, and the Virgin Islands). In states that have already received final authorization for the RCRA program, the rules will be applicable only after the state program is revised to adopt equivalent standards (57 *FR* 41605). The only exception to this regards the standards for marketers and burners which were essentially transferred from the existing regulations in Part 266, Subpart E. These provisions continue to be effective in all states; they are federally enforceable in states that have not adopted them and state and federally enforceable in those states that have received authorization for those sections. The following table illustrates this concept.

Status of State	Before 3/8/93	As of 3/8/93
Non-authorized RCRA Base Program	40 *CFR* Part 266, Subpart E is Federally enforceable	40 *CFR* Part 279 is Federally enforceable
Authorized RCRA Base Program Non-authorized Part 266, Subpart E	40 *CFR* Part 266, Subpart E is Federally enforceable	40 *CFR* Part 279, Subparts A-F and I are not Federally enforceable until state is granted authorization 40 *CFR* Part 279 Subparts G and H are Federally enforceable
Authorized RCRA Base Program Authorized Part 266, Subpart E	40 *CFR* Part 266, Subpart E is state and Federally enforceable	40 *CFR* Part 279, Subparts A-F and I are not Federally enforceable until state is granted authorization 40 *CFR* Part 279 Subparts G and H are state and Federally enforceable*

* 40 *CFR* Part 279, Subparts G and H contain certain provisions which were not in Part 266, Subpart E. The state will continue to enforce only those provisions for which it obtained authorization.

4. Will a state that is authorized for the provisions in Part 266, Subpart E, lose its authorization for this when it is removed and replaced with the Part 279 requirements?

States that are authorized for Part 266, Subpart E are automatically authorized for the equivalent provisions in Part 279, Subparts G and H. As of March 8, 1993, Part 266, Subpart E has been removed. The table below shows a comparison of these sections.

Former Provisions of 40 CFR Part 266, Subpart E	Recodified Provisions in 40 CFR Part 279
§266.40(a)	§279.60(a)
§266.40(b)	§279.1[1]
§266.40(c)	§§279.63(a), (b), and (c)[2]
§§266.40(d)(1) and (2)	§§279.10(b)(2) and (3)
§266.40(e)	§§279.11 and 279.60(c)
§§266.41(a)(1) and (2)	§279.71
§§266.41(b)(1) and (2)	§§279.23(a) and 279.61(a)
§266.42(a)	§279.60(a)
§266.42(b)	§279.70(a)
§266.42(c)	§279.60(a)
§266.43(a)(1)	§§279.70(a) and (b)(1)
§266.43(a)(2)	§279.70(b)(2)
§266.43(b)(1)	§279.72(a)
§266.43(b)(2)	§279.71
§266.43(b)(3)	§279.73(a)
§§266.43(b)(4)(i)-(v)	§279.74(a)
§266.43(b)(4)(vi)	not included
§§266.43(b)(5)(i) and (ii)	§279.75(a)
§266.43(b)(6)(i)	§§279.74(b) and (c) §279.72(b)
§266.43(b)(6)(ii)	§§279.74(a) and 279.75(b)
§266.44(a)	§§279.23(a) and 279.61(a)
§266.44(b)	§279.62(a)

1 Contains additional new definitions that were not included in the 1985 rule.

2 Paragraphs (c)(1) and (2) of §279.63 contain new exemptions from the rebuttable presumption that were not part of the 1985 rule.

5. Which states are not authorized for the base RCRA program and which states are authorized for the base program and Part 266, Subpart E?

As of February 1, 1994, the following states and territories are not RCRA-authorized: Alaska, Hawaii, Iowa, Wyoming, American Samoa, Northern Mariana Islands, Puerto Rico, and Virgin Islands. In those states, the Part 279 standards became effective on March 8, 1993. As of November 30, 1993, the following states are authorized for the RCRA program including Part 266, Subpart E: Arkansas, Arizona, California, Connecticut, Georgia, Idaho, Illinois, Minnesota, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, South Dakota, Texas, Utah, Vermont, and Guam. In these states, the marketer and burner standards remain state and federally enforceable and the remainder of the Part 279 requirements will not be in effect until the state adopts them. The remaining 28 states are authorized for the base program but are not authorized for Part 266, Subpart E. In these states, the burner and marketer standards remain federally enforceable, while the rest of Part 279 does not go into effect until the state adopts the requirements. (See Appendix I for a list of state used oil contacts).

APPLICABILITY

6. Is used oil a hazardous waste?

According to rulemakings on May 20, 1992 (57 *FR* 21524), and September 10, 1992 (57 *FR* 41566), used oil is not a listed hazardous waste. It is only a hazardous waste if it displays a characteristic of hazardous waste or if it has been mixed with a hazardous waste. This is only relevant, however, if the used oil is being disposed of, because EPA has developed special management standards for used oil that is recycled. State regulations concerning used oil may differ from the federal program. To obtain specific information about state used oil regulations, refer to the state used oil contacts listed in Appendix I of this document.

DEFINITION

7. Has the new rule changed the definition of used oil?

Yes, used oil is defined in §279.1 as "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." Synthetic oil has been added to the definition. For a material to meet the definition of used oil, it must first be derived from crude or synthetic oil. Second, it must be used as a lubricant, heat transfer fluid, hydraulic fluid, or for similar uses. Lubricants include, but are not limited to, used motor oil, greases, metalworking lubricants, and emulsions. Heat transfer fluids include, but are not limited to, coolants, heating media, refrigeration oils, and electrical insulation oils. Hydraulic fluids include but are not limited to, transmission fluids and brake fluids. Third, it must be contaminated from use with chemical and physical impurities.

8. Are all petroleum derived products (e.g., antifreeze, kerosene) included in the definition of used oil?

While the definition of used oil does not include all petroleum derived products, it does cover the majority of oils that are used as lubricants, heat transfer fluids, hydraulic fluids, emulsions, or for similar uses and that are likely to be contaminated through use (57 *FR* 41574) (see also Question 7).

9. Does the definition of used oil include animal and vegetable oils which are used as lubricants in hydraulic pumps?

No, animal and vegetable oils used as lubricants do not meet the definition of used oil because they are not synthetic or derived from crude (§279.1).

10. Are residues from storage, processing, and re-refining used oil considered used oil?

Residues burned for energy recovery are regulated as used oil under Part 279. Residues that are beneficially reused (e.g., as a lubricant) are considered products and are not regulated under RCRA. Materials derived from used oil that are disposed of or used in a manner constituting disposal, with the exception of re-refining distillation bottoms that are used as feedstock to manufacture asphalt products, are solid wastes and are subject to a hazardous waste determination. The preamble to the September 10, 1992, *Federal Register* (57 *FR* 41574), incorrectly states that residues or sludges from the processing of used oil are not regulated under Part 279. This issue is clarified in the May 3, 1993, *Federal Register* (58 *FR* 26420), which is a technical correction to that rule. In the *Federal Register* of September 23, 1991 (56 *FR* 48000), the Agency proposed four listings for wastes from the processing and re-refining of used oil (K152, K153, K154, and K155). The final listing decision regarding these has been deferred.

11. Are used oil and waste oil the same thing?

No, though commonly confused, the terms "used oil" and "waste oil" are different. Used oil has a specific regulatory definition, which defines the scope of Part 279. Waste oil or oily wastes do not have specific regulatory definitions but are generally understood to include wastes, such as bottom clean-out waste from virgin fuel oil storage tanks, or virgin fuel oil spill clean-up, which are not used oil because they have never been used (50 *FR* 49174; November 29, 1985).

12. Would a petroleum distillate used as a solvent be considered used oil?

No, used oil includes those oils that have been used as lubricants, coolants, emulsions, or for similar uses. It does not include materials derived from crude or synthetic oils and used as cleaning agents or solely for their solvent properties (57 *FR* 41574). This material would have to be classified as hazardous or nonhazardous under §262.11. In other words, the generator would have to make a determination as to whether the material is listed as a hazardous waste or exhibits any characteristics of hazardous waste.

13. Is used grease considered used oil?

As long as it has been refined from crude or synthetic oil, contaminated from use, and used as a lubricant, grease meets the definition of used oil in §279.1.

MIXTURES

14. How are mixtures of used oil and wipes, rags, and absorbent materials regulated? Does the "free flowing" concept for removing used oil apply to wipes, rags, and absorbent materials? What regulations apply to the material (e.g., absorbent materials or wipers) after the used oil is removed?

Generally under §279.10(c) (58 *FR* 26420; May 3, 1993), materials containing or otherwise contaminated with used oil are regulated as used oil until the used oil is removed from the material. Materials containing or otherwise contaminated with used oil, from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material are not considered used oil under Part 279. There is one exception to this provision: materials from which used oil has been removed continue to be regulated as used oil if they are to be burned for energy recovery, regardless of the degree of removal. Otherwise, once the used oil has been removed, these materials are no longer subject to the used oil regulations, but may be regulated as hazardous waste if they are listed or exhibit a characteristic of hazardous waste. Used oil that has been removed from such material continues to be regulated as used oil and must be managed according to the Part 279 standards. EPA does not consider the removal of used oil from materials containing or otherwise contaminated with used oil to be processing.

15. Can soil contaminated with used oil be burned in a boiler or industrial furnace?

Under §279.10(c) (58 *FR* 26240; May 3, 1993), materials containing or otherwise contaminated with used oil are regulated as used oil until the used oil is removed from the material. If the material is going to be burned for energy recovery, however, it is still regulated as used oil regardless of the amount of used oil that may remain in the material when it is burned. If soil does not have a significant heating value (i.e., over 5,000 Btu/lb.), it is not considered to be burned for energy recovery; and if the contaminated soil is a hazardous waste, it can only be burned in accordance with hazardous waste regulations.

16. Does mixing used oil and characteristic hazardous waste constitute hazardous waste treatment?

Yes, mixing a characteristic hazardous waste with used oil to render the waste nonhazardous constitutes treatment of hazardous waste, if the purpose of the mixing is to make the waste more amenable for recovery (e.g., energy recovery) and/or to make the waste less hazardous (50 *FR* 49180; November 29, 1985, and §260.10). EPA does not require a permit, however, if this treatment is performed in accumulation tanks or containers, provided that the generator stores the waste according to the used oil (§279.22) and the hazardous waste regulations in §262.34 and meets the waste analysis plan requirements in §§262.34 and 268.7(a)(4) (51 *FR* 10168; March 24, 1986).

17. How are mixtures of used oil and characteristic hazardous waste regulated? How are mixtures of used oil and ignitable-only hazardous wastes regulated?

Mixtures of used oil and characteristic hazardous waste (other than ignitable-only waste) are regulated as hazardous waste if they display any characteristic of hazardous waste. On the other hand, mixtures of used oil and characteristic waste are regulated as used oil if they are free of all characteristics.

Mixtures of used oil and ignitable-only hazardous waste (e.g., mineral spirits*) are regulated as hazardous waste if they retain the ignitability characteristic and as used oil if they are not ignitable (§279.10(b)(2)(i)-(iii)). The rationale for this distinction is as follows: if the solvents are hazardous only because of ignitability, then mixing the solvents with used oil should not affect the chemical constituents or other properties of the used oil. The solvents in question (e.g., mineral spirits) are petroleum fractions, are typically used by the same businesses that generate used oil, and are also usually managed in a manner similar to used oil (e.g., burning for energy recovery or distillation to recover the solvent). As such, efficient and sound management can include mixing with used oil and management by used oil recyclers. If the mixture exhibits the characteristic of ignitability, however, this can mean that the mixing has changed the nature of hazards involved in managing the used oil, and this mixture should remain subject to hazardous waste controls (56 *FR* 48060; September 23, 1991).

*Mineral spirits are generally ignitable-only before use; however, after being used, mineral spirits may contain some constituents that would cause them to fail the TCLP.

18. What land disposal restriction (LDR) notification would apply to used oil that exhibits a characteristic?

According to §261.6(a)(4), used oil that exhibits a characteristic and is going to be recycled is exempt from the requirements of Parts 260 through 268 (including LDR notification) and is instead regulated in Part 279 (57 *FR* 41612). Used oil that is disposed of on-site or being sent off-site for disposal is subject to a hazardous waste determination, and if hazardous, any applicable LDR requirements.

19. How are mixtures of used oil and a hazardous waste listed in Subpart D of Part 261 solely because it exhibits the characteristic of ignitability (e.g., F003) regulated?

According to §279.10(b)(2) (58 *FR* 26420; May 3, 1993), hazardous wastes listed in Subpart D of Part 261 solely because they exhibit a characteristic of hazardous waste are handled as though they were characteristic wastes for purposes of compliance with Part 279. Thus, the mixture of F003 and used oil would be regulated in the same manner as mixtures of used oil and ignitable-only characteristic hazardous waste.

20. A used oil generator decides to mix some of her used oil with gasoline product fuel sold at her facility. How is a mixture of used oil and product fuel regulated?

According to §279.10(d), a mixture of used oil and product fuel is regulated as used oil. The exception to this is that mixtures of used oil and diesel fuel are excluded from regulation under Part 279, according to §279.10(d)(2) (see also Question 23).

21. How is a container of solvent being used as a parts washer at an automotive repair shop regulated?

While the solvent is part of a process and still in use, it would not be considered material containing or otherwise contaminated with used oil. Once the solvent is spent and removed from the process, it would become subject to regulation as hazardous waste if it is listed or exhibits any characteristics of hazardous waste. If it is not a hazardous waste, the solvent would be regulated as a material containing or otherwise contaminated with used oil (§279.10(c)) (58 *FR* 26420; May 3, 1993) (see also Question 14).

DIESEL FUEL

22. Does used oil fuel being burned in a diesel or marine engine have to meet the used oil fuel specification? Is a person who sends the used oil fuel to be burned in a diesel or marine engine considered a marketer?

Since it is not clear that diesel and marine engines meet the definition of boiler, they are not subject to the regulations for used oil burned for energy recovery in boilers or industrial furnaces (50 *FR* 49193; November 29, 1985). Therefore, the used oil fuel specification does not apply and the marketers and burners of this fuel are not regulated. A person that processes used oil to create a product diesel fuel, however, is considered a processor and subject to the requirements of Part 279, Subpart F, except as provided by §279.10(d)(2) (see also Question 23).

23. How is a mixture of used oil and diesel fuel regulated under the new standards?

If the used oil and diesel fuel is blended by a generator for use in his or her own vehicles as a fuel, then the mixture is not regulated under the Part 279 standards (§279.10(d)(2)). Prior to mixing, however, the generator is subject to the generator standards of Part 279, Subpart C. If the used oil and diesel fuel is blended by anyone other than the generator or for any other reason than for use in the generator's vehicles (i.e., selling as a fuel), then the mixing would be considered processing and subject to all applicable provisions of Part 279, specifically Subpart F.

RECYCLING PRESUMPTION

24. What is the recycling presumption?

The recycling presumption states that EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends it for disposal (§279.10(a)). Therefore, all used oil handlers are subject to the Part 279 standards, until the used oil is disposed of or sent for disposal.

25. Can nonhazardous used oil be disposed of in a Subtitle D landfill?

Used oil that does not exhibit any characteristics of hazardous waste and that has not been mixed with hazardous waste can be disposed of as a solid waste. Although no federal regulations specifically restrict used oil disposal in a Subtitle D landfill, any applicable state or local requirements must be met (for contacts regarding state regulation of used oil, see Appendix I). In addition, 40 *CFR* §258.28 restricts the placement of liquid wastes in municipal solid waste landfills.

26. What regulations apply to used oil that is destined for disposal? At what point does used oil become subject to Part 279, Subpart I?

Before it is disposed of or sent for disposal, all used oil is subject to the Part 279 standards, even if it is "intended" for disposal. When used oil is disposed of or sent for disposal, it becomes a solid waste and is subject to hazardous waste determination. If the used oil exhibits a characteristic of hazardous waste, it must be handled in accordance with all applicable provisions of Subtitle C, including the land disposal restrictions (§279.10(a)). If used oil does not exhibit any characteristics of hazardous waste, it is not subject to RCRA Subtitle C regulation, including standards for used oil transporters in Part 279, Subpart E. Nonhazardous used oil may be disposed of in a Subtitle D facility and is subject to any applicable state regulations for the management of solid waste

RECYCLING

27. Is burning used oil for energy recovery considered a legitimate form of recycling?

Yes, generally burning a material with significant heating value (e.g., over 5,000 Btu/lb) is a legitimate type of recycling (OSWER Directive 9441.30(84), October 22, 1984).

28. Used oil is heated and poured down an oil production well to remove contaminants (paraffin) from the inside of the well. The used oil is eventually pumped into the raw refining stream. How is this activity regulated?

Because this activity would qualify as use constituting disposal, the used oil becomes subject to regulation as a solid waste. If the used oil does not exhibit a characteristic of hazardous waste, neither the Part 279 nor the Part 266, Subpart C regulations place any restrictions on this type of activity. Used oil employed in this manner that does exhibit a characteristic is a hazardous waste.

If the used oil is considered more product-like than waste-like, however, the use of the used oil product would not be regulated under RCRA. A memo from the Office of Solid Waste states that a substance is more product-like than waste-like when it 1) is as effective as any alternative product used in the same manner, 2) contains no more hazardous constituents than any analogous product, and 3) is managed in a manner that is commensurate with the management of a valuable commodity. Decisions on this issue are made by the Region or authorized state (Denit to Muno; September 9, 1993).

REBUTTABLE PRESUMPTION

29. What is the rebuttable presumption?

The rebuttable presumption is an objective test used by the Agency to determine if used oil has been mixed with a hazardous waste. If used oil exceeds 1,000 ppm total halogens, it is presumed to have been mixed with a listed hazardous waste. The presumption may be rebutted by showing that the used oil has not been mixed or that it does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 (§279.10(b)(1)(ii)) (see also Question 32).

30. If a used oil contains more than 1,000 ppm total halogens as-generated, is it allowable to mix the used oil with another used oil that is lower in total halogens, and in effect, dilute to rebut the presumption of mixing?

No, blending is not an acceptable form of rebuttal. The used oil must be evaluated for total halogens at the point of generation. Because the used oil is presumed to be mixed with a listed hazardous waste, it would itself be considered a listed hazardous waste. Any activity to decrease the total halogen content would be considered treatment of a hazardous waste and may require a RCRA hazardous waste permit (OSWER Directive 9495.1986(08); April 8, 1986).

31. Which used oil handlers are responsible for determining used oil halogen content in conjunction with the rebuttable presumption?

The rebuttable presumption applies to generators, transporters, processors, re-refiners, and burners. In addition, EPA has expanded the rebuttable presumption to cover all used oil (with two exceptions) (§279.10(b)(1)(ii)). Despite the fact that the wording in §279.21 is different from §§279.10(b)(1)(ii), 279.44, 279.53, and 279.63, the Agency's intent is that generators must comply with all provisions of the rebuttable presumption. Handlers need not test the oil; they may rely on their knowledge of whether mixing has occurred. Should EPA find that the oil exceeds 1,000 ppm total halogens, however, the burden of proof lies with the handler to document that mixing has not occurred.

32. According to §279.10(b)(1)(ii), persons may rebut the presumption that their used oil has been mixed with a hazardous waste by showing that the used oil does not contain significant concentrations of halogenated constituents. How is "significant concentrations" defined?

There is no formal regulatory definition of significant concentrations. According to OSWER Directive 9495.1986(04) (February 28, 1986), the "significant concentration" that would indicate mixing has taken place would depend on the type of halogenated compound found in the used oil. For hazardous halogenated solvent constituents, for example, EPA has stated that a handler whose oil has concentrations below 100 ppm can generally rebut the presumption (50 *FR* 49176; November 29, 1985).

33. Is there a halogen level over which it is impossible to rebut the mixing presumption? Can a handler still rebut if the used oil exceeds the specification level of 4,000 ppm total halogens?

There is no level over which it is impossible to rebut the presumption of mixing. Essentially, if the used oil is burned for energy recovery, three situations are possible. Used oil that is below 1,000 ppm total halogens and has not been mixed with hazardous waste is considered used oil and may meet specification if all other parameters are met. Used oil that is above 1,000 ppm but below 4,000 ppm total halogens may be regulated as used oil if the presumption is successfully rebutted and may meet specification if all other parameters are met. Finally, used oil that exceeds 4,000 ppm total halogens may be regulated as used oil if the presumption is successfully rebutted, but will be considered off-specification used oil.

34. Can the presumption of mixing be rebutted by documenting the level of inorganic halogens?

No, according to the *Federal Register* of November 29, 1985 (50 *FR* 49178), the Agency uses a measurement of total halogens for the following reason. "We know of no quick, simple method for determining organically-bound halogen levels in used oil. The sample must be 'washed' to remove inorganic halogens before determining organic halogen levels. Moreover, we have only just recently investigated techniques for washing to remove inorganic halogens from used oil and are not ready to recommend a procedure. Even if an acceptable technique were available, washing would add to the time required to determined halogen levels...

"In addition, organic halogens would be a more accurate measure of presence of hazardous halogenated solvents than total halogens only if used oil often contains more than 1,000 ppm of inorganic halogens. [D]ata indicate, [however,] that inorganic halogen levels are generally lower than 1,000 ppm."

***35. Used oil exceeds 1,000 ppm total halogen content and the source of the halogens is known to be DIY-generated used oil. Can the presumption of mixing with hazardous waste be rebutted by documenting that the used oil was only mixed with DIY-generated used oil?**

If it can be demonstrated that the used oil has not been mixed with a regulated hazardous waste, the presumption may be successfully rebutted.

* See Amendment April 5, 1994 - Burnard to Tollett

36. How is used oil contaminated with CFCs from a refrigeration unit regulated?

Under §279.10(b), CFC-contaminated used oil is exempt from the rebuttable presumption as long as the CFCs are to be reclaimed from the used oil and the used oil has not been mixed with used oil from sources other than refrigeration units. If the CFCs will be reclaimed from the used oil to the fullest extent possible and the used oil has not been mixed with used oil from other sources, then the used oil contaminated with CFCs from a refrigeration unit is subject to the same standards as other used oil. If the CFC-contaminated used oil does not meet these conditions, however, the rebuttable presumption may still be applied.

37. A generator mixes her CFC-contaminated used oil with used oil from automobile servicing. The resulting mixture exceeds 1,000 ppm total halogens. Would the mixture of the used oils be subject to the rebuttable presumption or would it be excluded under 40 *CFR* §279.10(b)(1)(ii)(B)?

The mixture would be fully subject to the rebuttable presumption. The exemption in §279.10(b)(1)(ii)(B) for CFC-contaminated used oil does not carry through if the used oil is mixed with used oil from other sources (see also Question 36).

38. For purposes of the exemption from the rebuttable presumption for metalworking oils containing chlorinated paraffins in §279.53(c)(1), how is the term "tolling arrangement" defined?

A tolling arrangement is a contractual agreement pursuant to which reclaimed oil is returned by the processor or re-refiner to the generator. It must indicate the type of used oil and the frequency of shipments, that the vehicle used to transport the oil is owned by the processor, and that the reclaimed oil will be returned to the generator (§279.24(c)).

SPECIFICATION

39. Is used oil that meets specification subject to any Part 279 standards?

The used oil specification criteria outlined in §279.11 apply only to used oil that is to be burned for energy recovery. Used oil that is intended for re-refining or processing is subject to the full Part 279 requirements regardless of whether or not it meets specification.

40. What are the criteria for used oil specification? Have the criteria changed from the Part 266 standards?

The criteria in §279.11 are the same as in Part 266 and include: 100 degree minimum flashpoint, 5 ppm maximum arsenic, 2 ppm maximum cadmium, 10 ppm maximum chromium, 100 ppm maximum lead, and 4,000 ppm maximum total halogens. In addition, standards for the burning of used oil containing PCBs imposed by 40 *CFR* §761.20(e) are referenced in §279.11 (see also Questions 46 and 50).

41. If used oil that has been documented to meet specification is processed or re-refined into a fuel, and the resultant fuel is off-specification, would the mixture be subject to the burning requirements of Part 279, Subpart G?

All processing and re-refining should be completed before determining if the used oil meets the specification criteria. If the used oil, a resultant mixture of the used oil and a fuel, or any processed derivative of the used oil does not meet the specification criteria, as in the scenario above, then the buning requirements of Part 279, Subpart G would apply.

DIY OIL

42. Does this rule affect the way DIY used oil is regulated?

This rule affects DIY used oil to a limited extent. Used oil that is generated by individuals in their home or through servicing their personal vehicles is still not subject to regulation. Once collected, however, the DIY used oil is subject to all applicable Part 279 standards and used oil collection centers an aggregation points that accept DIY used oil are subject to the requirements for used oil generators in Part 279, Subpart C (57 *FR* 41587).

WASTEWATERS

43. How is *de minimis* defined for purposes of §279.12(f) regarding mixtures of used oil and wastewater?

De minimis means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. Wastewaters contaminated with *de minimis* quantities of used oil are exempt from Part 279 as long as they are discharged pursuant to either §402 or §307(b) of the Clean Water Act. This exception will not apply if used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

44. Is oil/water separation of a *de minimis* used oil/wastewater mixture considered used oil processing?

This activity is not considered used oil processing because the *de minimis* mixture is not considered used oil. Any used oil recovered from such a mixture, however, would be fully subject to Part 279 standards.

PIPELINES

45. Under §279.10(g), used oil is exempt when it is placed directly into a crude oil or natural gas pipeline. Is used oil exempt if it is placed into a crude oil stock tank attached to the pipeline?

Yes, used oil is exempt if it is mixed with crude oil in a stock tank attached to the crude oil pipeline. EPA understands that it is common practice to first mix small amounts of used oil (typically less than one percent) with crude oil or natural gas liquids in stock tanks, production separators, or other tank units that are connected via pipeline to the petroleum refining facility. According to a memo from the Office of Solid Waste, EPA is expecting to issue a rule by January 30, 1994 to address issues raised in the proposed rule (56 *FR* 48000, 48026, 48042; September 23, 1991) and to clarify and expand the scope of the pipeline exclusion (Denit to Waste Management Division Directors; September 3, 1993)

PCBs

46. What regulations apply to used oil contaminated with PCBs?

Marketers and burners of used oil fuel containing any quantifiable level of PCBs (2 ppm) are subject to the applicable standards on marketing and burning used oil containing PCBs found at 40 *CFR* §761.20(e), which require used oil with 2 to 50 ppm of PCBs to be handled according to the prohibitions for off-specification used oil. Used oil that contains greater than 50 ppm PCBs is fully subject to TSCA regulations in 40 *CFR* Part 761. Blending for the purposes of reducing the concentration of PCBs to below 50 ppm or the level of detection is prohibited (§§279.10(i) and 761.20(e)).

TESTING

47. Is testing used oil for characteristics required prior to sending it for recycling?

Used oil that is destined for recycling is subject to the management standards of Part 279 whether it exhibits a characteristic or not as long as it is not mixed with a hazardous waste; therfore, no characteristic determination is required (57 *FR* 41581) (§261.6(a)(4)).

48. Which EPA test methods should be used to determine whether a used oil meets specification? Are the used oil specification levels based on totals analysis or TCLP?

Although the September 10, 1992, final rule does not specify any test methods, SW-846 and the *CFR* list a variety of methods that may be employed to test for the specification constituents and for flashpoint. According to SW-846, method 8010 can be used to test for total halogens and method 0200 can be used to test for all the metal constituents. According to 40 *CFR* §261.21, ASTM method D-93-79 can be used to test for flashpoint. All constituent methods are totals analyses, not leaching procedures.

49. Why does EPA require total halogen testing or application of knowledge in light of the materials or process used to determine whether the used oil is hazardous waste when a variety of other contaminants could cause used oil to be considered hazardous?

The Agency found, through sampling and analysis performed making a used oil listing decision for used oil and through enforcement experience, that used oil containing more than 1,000 ppm total halogens has most likely been mixed with a hazardous waste. (50 *FR* 49176; November 29, 1985).

50. Are there any EPA-approved test methods for determining total halogen content in used oil?

Although no test method is specifically required, SW-846 method 8010 is suggested.

NOTIFICATION

51. How is the notification required under Part 279 accomplished?

The notification requirement in Part 279 serves as the mechanism for obtaining an EPA ID Number and can be accomplished by submitting to the Regional Administrator either EPA Form 8700-12 in accordance with §3010 of RCRA or a letter stating the location of the facility and the types of used oil management activities that take place there (57 *FR* 41594).

52. After March 8, 1993, does a transporter that picks up used oil in an authorized state have to notify EPA if the oil is delivered to an unauthorized state? What about a transporter who picks up used oil in an unauthorized state and delivers it in an authorized state?

In both cases the transporter must obtain an EPA ID number. According to the new standards generators must ensure that their used oil is transported only by transporters that have ID numbers (§279.24). Likewise, processors, re-refiners, marketers, and burners must keep track of the ID number of any transporters who deliver to them a shipment of used oil (§279.56(a)(3), §279.65(a)(3), and §279.74(a)(3)).

53. Would a local or county government that collects DIY-used oil be required to obtain an EPA ID number?

No, a municipal government that collects DIY-used oil would not have to notify according to the regulation for collection centers and aggregation points found in Part 279, Subpart D. They would, however, have to comply with the standards for used oil generators in Part 279, Subpart C.

54. Are facilities that have already obtained an EPA ID number for management of hazardous waste required to notify EPA again when they are transporting or processing used oil or as marketers or burners of used oil?

According to §§279.42(a)(1), 279.51(a)(1), 279.62(a)(1), and 279.73(a) (as revised at 58 *FR* 26420; May 3, 1993 and 58 *FR* 33342; June 17, 1993), only used oil transporters, processors, re-refiners, burners, and marketers that have not previously notified EPA of hazardous waste and other used oil management activities and not previously obtained a EPA ID number must notify to identify their used oil management activities. This requirement increases the types of used oil handlers that must obtain an EPA ID number.

STORAGE

55. Is there an accumulation time limit for storing used oil on-site prior to sending it off-site for recycling?

Transfer facilities have a 35-day limit on the storage of used oil on-site and if the limit is exceeded, the transfer facility is subject to the processor and re-refiner requirements in Subpart F. If storage takes place for less that 24 hours, the transporter would not have to comply with the transfer facility requirements (§279.45(a)). Generators, processors, re-refiners, and burners, however, have no time limits for storing used oil on-site, according to requirements in Part 279, Subpart C for generators, Subpart F for processors and re-refiners, and Subpart G for burners.

56. Are containers holding used oil required to be closed?

Although there is no explicit requirement to keep containers holding used oil closed, it is EPA's policy that facilities employing containers should keep them closed as a matter of good operating procedures (45 *FR* 33199; May 19, 1980). The hazardous waste regulations specify that containers holding hazardous waste must be closed (§§264/265.173(a)). If used oil needs to be managed in accordance with the hazardous waste regulations, then the used oil must be kept in a closed container.

57. Is a generator who stores used oil in an underground tank subject to regulation under 40 *CFR* Part 280 underground storage tank standards?

Yes, any used oil handlers that store used oil in an underground storage tank are subject to Part 280 requirements.

58. What are the standards applicable to the storage of used oil at a processing facility?

The standards applicable to storage of used oil at processing facilities are found in §279.54. Used oil can be stored in tanks and containers that are in good condition, with no visible leaks. Secondary containment is required for these units, as are labels with the words "Used Oil." In addition, processors must comply with requirements for response to releases. Unlike other handlers of used oil, processing facilities must also comply with closure requirements to remove all contaminated soils and structures before closing the facility.

59. How is a tank regulated if it holds used oil that exhibits a characteristic of hazardous waste?

Section 261.6(a)(4) exempts used oil destined for recycling that is hazardous solely because it displays a characteristic from the hazardous waste regulations and subjects it to Part 279. Pursuant to the recycling presumption, a tank that contains used oil exhibiting a characteristic is regulated by the used oil management standards in Part 279, not by hazardous waste regulations, if the characteristic comes solely from the use of the oil. Requirements for tanks storing used oil can be found in §279.22 for generators, §279.45 for transporters and transfer facilities, §279.54 for processors and re-refiners, and §279.64 for burners. For generators, these standards include making certain the tanks are in good condition, not leaking, and labeled "Used Oil." Along with these requirements, the other types of handlers must have secondary containment for their tanks storing used oil.

60. How big does the used oil label on a storage tank have to be?

Although no label size is mandated in the Part 279 standards, the regulations in §§279.45, 279.54, and 279.64 require that the labels be clearly marked with the words "Used Oil."

61. Do storage tanks holding processed or re-refined oil have to be labeled used oil?

The storage of used oil, after being re-refined or meeting specification (when being burned for energy recovery), is not regulated in the new Part 279 standards (§279.10(e)). Oil which has not been processed into specification used oil fuel must be stored in containers or tanks which are labeled with the words "Used Oil."

62. What standards apply to releases of used oil?

Requirements for responses to releases under Part 279 standards are detailed under the specific requirements for individual handlers (e.g., generators and transporters). Basically, they entail stopping and containing the release, cleaning up and properly managing the released oil, and, if necessary to prevent future releases, repairing or replacing any leaking used oil storage containers and tanks prior to returning them to service (§279.22(d)).

63. How are sumps that hold used oil regulated? Do they meet the definition of a tank and therefore require secondary containment?

A tank is defined in §260.10 as "a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support." Sumps may meet this definition as discussed in the July 14, 1986 *Federal Register*, (51 *FR* 25440). If a sump meets this definition, then it would be regulated as a used oil storage tank. This tank would need secondary containment unless the sump is already part of a system that is serving as secondary containment.

SECONDARY CONTAINMENT

64. Are there any suggested materials or criteria to use as guidelines in constructing secondary containment areas?

The regulations in §§279.45, 279.54, and 279.64 outline requirements for the construction of secondary containment areas. The requirements include dikes, berms, or retaining walls and a floor that are impervious to used oil in order to prevent migration of the oil into soil, groundwater, and surface water, or an equivalent secondary containment system. Examples of secondary containment descibed in the *Cost and Economic Impact of the 1992 Used Oil Management Standards* include a 3.5-inch bituminous sealed asphalt ring around an existing tank or concrete block walls covered with two coats of bituminous asphalt sealant.

65. Is there a requirement that secondary containment systems be able to contain a specific percentage of the contents of the primary containment system?

No, there is no specific percentage requirement for secondary containment in the new Part 279 standards. According to the regulations pertaining to the storage of hazardous waste in containers (§264.175(b)(3)), secondary containment should hold 10 percent of the total volume of all the containers or 100 percent of the volume of the largest container, whichever is greater.

SURFACE IMPOUNDMENTS

66. Hydraulic oil is comprised of a mixture of 5% oil and 95% water. Spills and leaks of the used hydraulic oil go through a pipe to the sewer where it is loaded into a truck which disposes of the used hydraulic oil generated from spills and leaks in an unlined surface impoundment. If the used oil does not exhibit any characteristics of hazardous waste, can it be disposed of in this manner?

Section 279.12(a) prohibits the storage of used oil in surface impoundments unless the unit is in full compliance with the standards in 40 *CFR* Part 264 of 265, Subpart K (57 *FR* 41586). Once used oil is disposed of or sent for disposal, however, it is no longer subject to used oil regulation; instead, it is considered a solid waste and must be evaluated for characteristics. If it does not exhibit any characteristics of hazardous waste, it is not regulated under Subtitle C of RCRA. Individual state regulations, though, may restrict this type of disposal.

67. According to §279.12(a), used oil cannot be managed in surface impoundments or waste piles unless the units are subject to regulation under 40 *CFR* Part 264 or 265. Does this mean that a surface impoundment managing only used oil is actually subject to regulation as a hazardous waste surface impoundment, or can used oil be managed only in surface impoundments that also handle hazardous waste?

Used oil can only be managed in a surface impoundment that is subject to Part 264 or 265. In other words, a surface impoundment that is permitted or operating under interim status.

GENERATORS

68. When equipment is being drained of used oil by a service contractor, who is considered the generator for purposes of complying with Part 279 -- the owner of the equipment or the contractor?

Based on §279.20(a) and the general principles of the hazardous waste program (45 *FR* 72026; October 30, 1980), both the owner and contractor would meet the definition of used oil generator and would be considered co-generators of the used oil. Together, they are both responsible for its proper management.

69. A ship generator sends bilge water through an oil/water separator once the ship arrives in port. Is this considered processing? Who is the generator of the used oil?

Separation of oil and water that takes place on the ship would not be regulated as processing under Part 279. According to §279.20(a)(2), used oil on a vessel at port or at sea is not regulated until it is removed from the ship. If separation occurs off the ship or vessel, then the activity is regulated under Part 279. The owner and operator of the ship and the person removing the used oil from the ship both meet the definition of used oil generator and, therefore, could be considered co-generators of the oil (57 *FR* 41585) (see also Question 68).

COLLECTION CENTERS AND AGGREGATION POINTS

70. What standards apply to collection centers accepting DIY-generated used oil?

Collection centers accepting DIY-generated used oil must comply with the generator standards outlined in §279.30(b).

71. The definition of "used oil aggregation point" in §279.1 includes "...any facility that accepts, aggregates, and/or stores used oil collected only from other generation sites owned or operated by the owner or operator of the aggregation point. ..." If the owner of an aggregation point owns property which he leases to the operator of a service station, may the owner of the aggregation point accept used oil from the operator of the service station?

According to the aggregation point requirements in §279.32(a), the owner of the aggregation point can accept the used oil from the service station who leases the land.

72. Do the used oil transporter requirements apply to shipments of used oil from curbside collection programs to used oil collection centers?

No, the transporter regulations in Part 279, Subpart E do not apply to transportation of used oil collected from household do-it-yourselfers to regulated used oil generators, collection centers, aggregation points, processors and re-refiners, or burners (§279.40(a)(4)). The used oil transporter requirements do apply, however, to transporters of collected DIY used oil from regulated used oil generators, collection centers, aggregation points, or others facilities where DIY used oil is collected.

73. The new used oil management standards allow a generator to transport up to 55 gallons of used oil in the generator's own vehicle to an aggregation point or collection facility without an EPA ID number. A person wishes to start a business changing automotive oil at customers' residences. After removing the used oil, the operator will place the oil in a mobile 55 gallon tank in the business truck. What transportation regulations will apply to the tank in the truck? Who is the generator of the used oil?

Removing the used oil from personal vehicles constitutes generation so that the business owner or operator will be considered the generator of the used oil. As long as he transports the oil in shipments of no more than 55 gallons and he delivers the oil to a collection center or aggregation point, this activity would fit under the provisions for self-transportation and the generator would not have to comply with the transporter standards (§§279.24(a) and (b)). If the shipments exceed 55 gallons, the generator would also be classified as a used oil transporter and the oil could only be delivered to another used oil transporter, a used oil processing or re-refining facility, an off-specification used oil burner, or an on-specification used oil burner (§279.43).

74. Can a used oil transporter (with an EPA ID number) transport shipments of used oil totaling 55 gallons or less from a generator to a used oil aggregation point owned by the generator?

No, the transporter may only deliver the used oil to another transporter with an EPA ID number, a processor or re-refiner with an EPA ID number, an off-specification used oil burner with an EPA ID number, or an on-specification used oil burner (§279.43(a)). EPA feels, however, that any quantity of used oil less than 55 gallons cannot be collected and transported by a used oil transporter in an economically feasible manner. Generators, therefore, are allowed to self-transport small quantities (up to 55 gallons) so as not to discourage the generator from recycling used oil.

75. Is there a time limit for storage of used oil at a collection center or aggregation point?

No, according to the standards for generators, collection centers, and aggregation points in Part 279, Subpart C and D, no time limits exist for the storage of used oil.

TRANSPORTATION

76. Are transfer facilities required to obtain EPA identification numbers?

Yes, owners or operators of transfer facilities are considered transporters, as defined in §279.1, and would need to have an EPA ID number in accordance with §279.42(a) (58 *FR* 34977; June 17, 1993).

77. Does the transportation of used oil require the use of a manifest?

No, although records of acceptance and delivery must be kept by the transporter, processor, re-refiner, and off-specification used oil burner (§§279.46, 279.56, and 279.65), there is no requirement for manifesting used oil desined for recycling. Only if the used oil is being sent for disposal and it meets the definition of hazardous waste would a manifest be required. In addition, if used oil is being sent for disposal and it does not exhibit any characteristics of hazardous waste, it does not require a manifest nor is the transportation covered by Part 279. In any case, used oil handlers must comply with any applicable Department of Transportation (DOT) requirements.

78. At a transfer facility, does the 35-day transporter holding time begin for drums containing used oil when the first drum or the last drum (of a shipment of drums containing used oil) is moved from the transportation vehicle into the transfer facility?

The 35-day period begins when the first barrel is placed in storage at the facility. If the used oil remains on the vehicle, the 35 days begin when the truck enters the facility.

79. What are the recordkeeping or tracking requirements for importing on-specification used oil?

The first person in the United States to claim the used oil meets specification is considered the used oil marketer and would have to comply with the standards for on-specification used oil in Part 279, Subpart H.

80. Used oil shipments totaling more than 55 gallons are picked up from various fossil fuel plants and trucked off-site to a central location. Is the tanker truck considered a transfer facility required to have secondary containment while it is parked waiting for a sample to be analyzed for specification, constituents, or properties?

The central location would be considered a transfer facility if the truck sits at the central location for more than 24 hours. Assuming that is the case, the transfer facility would also be required to have a secondary containment system consisting of berms, dikes or retaining walls, and a floor or an equivalent system.

81. According to §279.40(a)(1), the standards for used oil transporters do not apply to on-site transportation. How is on-site defined?

Section 279.1 specifically states that terms defined in §260.10 have the same meaning when used in Part 279. Section 260.10 defines on-site to mean, "the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property."

82. If a rail car transporting used oil sits at a station for more than 24 hours, it becomes a transfer facility according to §279.45(a). What type of secondary containment is required?

Transfer facilities must have a secondary containment system consisting of berms, dikes or retaining walls, and a floor. They can be equipped with an alternate but equivalent system (§279.45(d)). This system may include the use of a double-walled rail car, overfill protection alarms, or other secondary containment measures.

PROCESSING

83. What is the definition of a used oil processor?

A used oil processor is defined in §279.1 as a facility that processes used oil using chemical or physical operations designed to produce from used oil or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to, blending, filtration, simple distillation, chemical or physical separation, and re-refining.

84. Would a person conducting used oil/water separation be considered a processor?

This activity would not be considered processing when the separation of used oil from wastewater in oil/water separators is solely for the purpose of making wastewater or stormwater acceptable for discharge pursuant to either §402 or §307(b) of the Clean Water Act. This activity is not designed to produce used oil or make it more amenable for the production of used oil-derived products, but rather for the purpose of making wastewater acceptable for discharge. Any used oil recovered from such activities would be fully subject to Part 279 (Denit to Hunter; October 7, 1993) (see also Question 85).

FILTERS

85. Are generators who conduct on-site processing activities with either their own used oil or DIY-generated used oil subject to the used oil processor requirements of Part 279, Subpart F?

The Agency issued a rule in February 1994 to clarify the definition of used oil processor. Used oil generators who only process used oil on-site will not be considered processors. To prevent classification as a processor, however, generators cannot send the used oil directly to a burner or burn the used oil on-site, except in a used oil fired space heater (Denit to Waste Management Division Directors; Septermber 3, 1993).

86. Is the act of removing used oil from a filter considered processing?

According to a regulatory clarification in the May 3, 1993, *Federal Register* (58 *FR* 28421), EPA states that the act of physically separating used oil from a non-terne plated filter does not fall under the processing definition. The separation must be conducted for the purpose of removing the used oil and managing it under the Part 279 standards (see also Questions 105 through 109).

87. If a generator filters used oil prior to burning it in an on-site space heater, is the generator subject to regulation as a processor?

According to November 29, 1985, *Federal Register* (50 *FR* 49194), EPA excluded generators who burn used oil in used oil fired space heaters from regulation. The Agency does not believe that the small amounts of used oil burned in the used oil fired space heaters poses any significant risks. In conjunction with this exemption, EPA also believes that any filtering conducted by the generator prior to burning in a used oil fired space heater is also exempt from regulation.

88. Used oil is generated in an industrial process. As part of this process the used oil is filtered and returned to its original use through a recycling system that is enclosed and directly attached to the manufacturing process. Does this activity meet the definition of processing? What if the process involved removing the oil and introducing it back into the same or similar system?

In the above scenarios, the activities described would not be considered processing since they are an integral part of the production process. Filtering, cleaning, or otherwise reconditioning the used oil before returning it to the same or similar system is designed to prolong the life of the oil. These activities are considered incidental to the production process and are, therefore, not regulated.

BURNING

89. Do the new used oil management standards allow a used oil generator to burn his/her used oil in an oil-fired space heater?

Yes, the regulations allow generators to burn their own and DIY-generated used oil in used oil-fired space heaters on-site in accordance with §279.23 as long as he complies with three conditions. The heater must burn only used oil generated by the owner or operator of the space heater or received from DIY generators; the heater must be designed with a maximum capacity of 0.5 million Btu per hour; and, the combustion gases from the heater must be vented to the ambient air (§279.23). These conditions remain unchanged from the Part 266 standards.

90. Does a generator who burns his/her own used oil on-site in a used oil-fired space heater, in accordance with §279.23, need to test the used oil for specification or meet the burner requirements in Part 279, Subpart G?

No, generators would not have to test for specification, because §279.23 allows them to burn both on- and off-specification used oil in their own used oil-fired space heaters. In addition, the regulations in §279.23 exempt the generator from the burner management standards when conducting this activity.

91. An off-specification used oil burner receives off-specification used oil which is aggregated in a tank with virgin oil. As a result of this aggregation, the used oil meets specification. However, the used oil is being burned as off-specification. Is the burner subject to regulation as a processor and/or marketer?

No, according to §279.61(b), a used oil burner may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, without complying with Subpart F requirements for processors and re-refiners, as long as they are not aggregating for purposes of producing on-specification used oil. In addition, this burner would not be considered a marketer because he or she is not directing a shipment of off-specification used oil to a burner, nor is he or she claiming that the used oil meets specification (§279.70(a)).

92. What regulations apply to the burning of used oil in an incinerator?

Burning used oil in an incinerator is allowed under the restrictions on burning found in §279.12 (58 FR 26425; May 3, 1993) and §279.61. The incinerator, however, must be a hazardous waste incinerator subject to regulation under Parts 264 or 265, Subpart O. Prior to being burned in an incinerator, off-specification used oil is subject to the Part 279, Subpart G standards.

MARKETERS

93. If a generator sends used oil fuel to a facility that both blends and burns the fuel, is that generator considered a marketer?

Yes, according to the definition of used oil marketer in §279.1, the generator who directs a shipment of off-specification used oil for burning is considered a marketer.

94. Can a used oil handler be just a marketer?

No, it would be logically impossible for a handler to only be a used oil fuel marketer. EPA believes that a marketer must have either generated, transported, stored at a transfer facility, or processed the used oil prior to any marketing activity (57 *FR* 41601).

95. How is the sale of used oil tracked between a marketer and an intermediary broker (i.e., a middleman who does not physically handle the used oil and does not meet the definition of marketer)? What records should be kept?

According to the standards for marketers in Part 279, Subpart H, no regulations exist for the tracking of used oil transactions between brokers. Under the Part 279 standards, however, used oil handlers (i.e., only those who physically handle the used oil) must keep records of all used oil shipments. In addition, used oil must be transported in accordance with any applicable DOT requirements.

96. If a generator burns on-specification used oil on-site, is he or she also considered a marketer and/or a burner? What if the used oil is off-specification?

A generator who burns on-specification used oil on-site would be considered a marketer because he or she is the first to claim the oil meets specification. He or she would not be subject to the requirements in Part 279, Subpart G because they apply only to off-specification used oil (§279.60(a)). On the other hand, a generator who burns off-specification used oil on-site would not be considered a marketer because he or she neither directs a shipment to a burner nor is the first to claim the used oil meets specification; however, this generator would be a burner (§279.1). If the generator is burning either type of used oil in a used oil-fired space heater in accordance with §279.23, then her or she is neither a burner nor a marketer.

USE CONSTITUTING DISPOSAL

97. Section 279.82 prohibits the use of used oil as a dust suppressant. How does this section relate to the existing §266.23(b) on use constituting disposal? Will §266.23(b) be removed or amended?

Section 279.82 prohibits the use of all used oil as a dust suppressant, while §266.23(b) only prohibits the use of used oil (or any material) as a dust suppressant if it has been contaminated with dioxins or is either a listed or characteristic hazardous waste. According to Part 279, used oil contaminated with a characteristic waste (except ignitable only waste) that still exhibits the characteristic or used oil contaminated with a listed waste are both considered hazardous waste, not used oil, and are prohibited from land disposal or use as a dust suppressant. Used oil that exhibits a characteristic through use and not by mixing is not considered a hazardous waste, but is still prohibited from land disposal or use as a dust suppressant. Section 279.82 was promulgated under the authority of RCRA and is only enforceable in states that do not have base authorization, while §266.23(b) was issued under HSWA and is enforceable in all states and territories. Although the new Part 279 standards are more stringent, they do not replace §266.23.

98. Under §279.82(b), a state may petition EPA to allow the use of used oil as a dust suppressant in that particular state. For purposes of this section, how is the term "petition" defined and what information must the state include in this petition?

Currently, no guidance is available, nor is there any plan to develop guidance on how states should petition the Agency. A state does not have to be authorized for RCRA base program in order to petition the Agency, but can do so as part of an authorization petition.

99. Asphalt that is manufactured with used oil as an ingredient is used as a dust suppressant. How is this activity regulated and does this activity qualify as road oiling for the purposes of complying with the new Part 279 standards?

According to §279.10(e)(3), materials derived from used oil that are used in a manner constituting disposal are not regulated as used oil but instead are considered solid wastes and must be characterized and handled accordingly. Therefore, if the used oil does not exhibit a characteristic of hazardous waste, it is not subject to regulation. Similarly, the asphalt is not subject to regulation if it does not exhibit any characteristics of hazardous waste (50 *FR* 628; January 4, 1985). If the asphalt does exhibit a hazardous characteristic, it is subject to the requirements of 40 *CFR* Part 266, Subpart C regarding recyclable materials used in a manner constituting disposal. Finally, re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are exempt from regulation under Part 279 and Parts 260 through 266, 268, 270, and 124 (§279.10(e)(4)).

CERCLA INTERFACE

100 What conditions does a service station dealer (SSD) need to meet to be eligible for the CERCLA liability exemption of CERCLA §114(e)?

The service station must be in compliance with the new used oil standards and meet the definition of SSD in CERCLA §101(37). The SSD cannot mix used oil with any hazardous substance and must accept DIY-generated used oil for recycling (57 *FR* 41583).

101 How does the CERCLA petroleum exclusion apply to used oil?

CERCLA excludes petroleum substances, including used oil, from both the reporting and the liability requirements of CERCLA. However, hazardous substances that are added to petroleum or that result from contamination of the petroleum are not part of the petroleum, and thus are not excluded (57 *FR* 41606).

102. Are curbside collectors considered SSDs?

According to the definition of SSD in CERCLA §101(37), curbside collectors are not considered SSDs.

103. Do authorized states have to adopt the CERCLA liability exemption in order for SSDs in that state to be eligible for it?

No, the liability exemption is a CERCLA statutory provision, which becomes effective when the Part 279 standards do. In other words, the liability exemption is effective on March 8, 1993, in unauthorized states and when authorized states adopt the new standards. Prior to state adoption as a matter of EPA policy, an SSD may be eligible for the exemption if it can demonstrate compliance with the new used oil management regulations (57 *FR* 41583).

104. An SSD mixes a characteristic hazardous waste with used oil and the resultant mixture no longer exhibits any characteristics of hazardous waste. Is this practice considered mixing used oil with a hazardous substance?

Yes, all hazardous wastes, characteristic and listed, are also listed in *40 CFR* §302.4 as hazardous substances.

FILTERS

105. What regulatory framework embraces oil filters that are not used in traditional motor vehicles (i.e., specialty filters)? How are filters used in air compressors and other machinery that often have either removable cartridges or no metal casings dealt with in the new regulations?

The regulations for used oil filters can be found in the May 20, 1992, *Federal Register* (57 *FR* 21524). The exemption in §261.4(b)(13) applies to non-terne plated filters that have been properly drained of their used oil. The exemption does not apply to fuel filters, transmission oil filters, or specialty filters such as cloth or railroad filters (57 *FR* 21532). Used oil filters not covered by the exemption must be evaluated for hazardous waste characteristics when going for disposal or can be handled as scrap metal going for recycling (see §261.6(a)(3)(iii)).

106. Do the new Part 279 standards affect the scrap metal provisions for terne-plated and specialty oil filters?

No, the new Part 279 standards do not affect the scrap metal provisions. Specifically, §261.6(a)(3)(iii) sets forth an exemption from the hazardous waste management standards for hazardous scrap metal that is being recycled. A drained or crushed filter can be considered scrap metal if the filters are dismantled (OSWER 9442.1990(05)).

107. How can terne-plated filters be distinguished from non terne-plated filters?

Terne is an alloy of tin and lead. The manufacturer of the filter is the best source for distinguishing terne- from nonterne-plated filters.

108. How are terne-plated used oil filters regulated?

Terne-plated used oil filters do not automatically qualify for the exemption in §261.4(b)(13). becuause they typically have a TCLP lead concentration level of 30 ppm before use (57 *FR* 21531; May 20, 1992). If these types of filters fail the TCLP for any constituents (not just lead), they must be managed as hazardous waste. Terne-plated filters are, however, still eligible for the scrap metal exemption if they will be recycled (§261.6(a)(3)(iii)). The May 20, 1992, *Federal Register* (57 *FR* 21534) established the exemption from hazardous waste regulation for properly drained non terne-plated filters in §261.4(b)(15); however, the May 3, 1993, *Federal Register* (58 *FR* 26424) corrects the citation to §261.4(b)(13).

109. How is used oil at the bottom of a drum of used oil filters regulated?

Used oil that has collected in the bottom of a drum of filters should be regulated in accordance with the new Part 279 standards. In the September 10, 1992, *Federal Register* (57 *FR* 21532), the Agency states that it encourages used oil generators to recycle filters and oils from the filtering process as used oil.

KEY WORD INDEX

APPENDIX I

STATE USED OIL CONTACTS

ALABAMA

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Land Division
Department of Environmental Management
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Montgomery, AL 36130
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ALASKA

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Solid and Hazardous Waste
Department of Environmental Conservation
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Juneau, AK 99801-1795
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ARIZONA

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Waste and Water Quality
Department of Environmental Quality
2005 North Central Avenue
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ARKANSAS

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Hazardous Waste Division
Department of Pollution Control and Ecology
P.O. Box 8913
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CALIFORNIA

Lief Peterson
Alternative Technology
Department of Toxic Substances Control
P.O. Box 806
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(916) 255-3545

CALIFORNIA (cont'd.)

Inquiries on used oil recycling depositories:
Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-2326
(800) 553-2962 - California only

COLORADO

Public Assistance Hotline
Hazardous Materials and Waste Management
Department of Health
4300 Cherry Creek Drive South
Denver, CO 80222
(303) 692-3320

CONNECTICUT

George Dews
Waste Management Bureau
Department of Environmental Protection
165 Capitol Avenue
Hartford, CT 06106
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DELAWARE

Robert Palmer
Hazardous Waste Management Branch
Department of Natural Resources and
Environmental Control
P.O. Box 1401
Dover, DE 19903
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Inquiries from households:
Delaware Solid Waste Authority
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Dover, DE 19901
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DISTRICT OF COLUMBIA

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DC Energy Office
Department of Public Works
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Department of Environmental Protection
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Tallahassee, FL 32399-2400
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GEORGIA

Generator Compliance
Hazardous Waste Management Branch
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HAWAII

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Solid and Hazardous Waste Branch
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Illinois Environmental Protection Agency
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Department of Environmental Quality
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MAINE

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Hazardous Material and Solid Waste Control
Environmental Protection Department
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MARYLAND

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Oil Control Program
Department of the Environment
2500 Broening Highway
Baltimore, MD 21224
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Inquiries on used oil recycling:
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2011 Commerce Park Drive
Annapolis, MD 21401
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(800) 473-2925

MASSACHUSETTS

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Division of Hazardous Waste
Department of Environmental Protection
One Winter Street, 7th Floor
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MICHIGAN

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Waste Management Division
Department of Natural Resources
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(517) 373-2730

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Pollution Control Agency
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MISSISSIPPI

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Chris Bowen (recycling)
Office of Pollution Control
Department of Environmental Quality
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(601) 961-5321 (recycling)

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MONTANA

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Solid and Hazardous Waste Bureau
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NEBRASKA

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Hazardous Waste Section
Department of Environmental Quality
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(402) 471-4210

NEVADA

Hazardous Waste Hotline
University of Nevada at Reno
(702) 784-1717
(800) 882-3233 - Nevada only

Waste Management Bureau
Department of Conservation and
Natural Resources
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Carson City, NV 89710
(702) 687-5872

NEW HAMPSHIRE

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Waste Management Division
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Solid Waste Management
Department of Environmental
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