

FILE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

August 11, 1992

Mr. Paul Josephson
Department of the Army
Headquarters Fort Devens
Fort Devens, MA 01433-5190

COPY

Re: Letter Dated, July 14, 1992, Requesting an Interpretation of the Code of Federal Regulations

Dear Mr. Josephson:

This letter is a response to Fort Devens' request for an interpretation of the Code of Federal Regulations (CFR).

In order to reduce the amount of variables which will effect this response, we will assume that all of the waste in question will be burned for energy recovery. Also, we will assume that the waste diesel fuel and the used oil exhibit one of characteristics in 40 C.F.R. Part 261. The answers to your specific questions are as follows:

Waste # 1 - Waste Diesel Fuel

- a. Waste diesel fuel is not considered to be a used oil under the Federal Regulations. Therefore, 40 C.F.R. § 266.40 would not apply in this case. Waste diesel fuel, which is hazardous due to the ignitability characteristic, would be considered a hazardous waste burned for energy recovery and regulated under 40 C.F.R. Part 266, Subpart D. Nothing in Subpart D exempts this waste from the hazardous waste definitions given in 40 C.F.R. Part 261.
- b. 40 C.F.R. § 266.40 does not apply since the waste is not a used oil.

Waste # 2 - Used Oil Containing Listed Solvents

- a. F-codes should be used when an F-listed solvent is deliberately mixed with the used oil fuel. The 1000 ppm level becomes an issue when it is not known how the solvent got into the oil. In a policy known as the "rebuttal presumption", EPA states that used oil which contains greater than 1000 ppm of total halogens would be presumed to have been mixed with the oil. Such used oil would be a listed hazardous waste subject to the regulations governing the burning of hazardous waste for energy recovery, 40 C.F.R. § 266, Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not



contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 C.F.R. Part 261, Appendix VIII).

- b. Assuming that the oil exhibits one of the characteristics of a hazardous waste, the used oil fuel is a hazardous waste regardless of whether or not the concentration of halogens is greater than 1000 ppm. If the used oil fuel contains greater than 1000 ppm total halogens, then the waste is subject to Subpart D of 40 C.F.R., Part 266. If the used oil contains less than 1000 ppm total halogens, then the waste is subject Subpart E of Part 266.
- c. If the generator has knowledge that an F-listed solvent was used in the process and may have been released to the soil then you would assign an F-code to the soil. If the release was known to be used oil that was contaminated with less than 1000 ppm total halogens then the generator may presume the used oil not to be a listed solvent. Therefore, the soil would not be a listed solvent.
- d. No, the table determines whether or not a used oil fuel is specification or off-specification used oil fuel. Specification used oil fuel is subject only to the analysis and record keeping requirements under 40 C.F.R. § 266.43(b) (1) and (6).
- e. Yes, you would assign the waste code of the characteristic that is exhibited by the waste.

If you have any questions or need clarification, please call me at (617) 573-5747.

Sincerely,



Bryan Olson, Environmental Engineer
MA & RI Waste Regulation Section

cc: Gary Gosbee, EPA
Mary Sanderson, EPA
John Kronopolus, DEP - Central Region



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REGION I

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Dear Automotive Service Station Owner:

This summary is intended to provide an update on the status of some of the current regulatory requirements for automotive service industry (ASI) wastes that may now be hazardous as a result of the Toxicity Characteristic (TC) rule. To date, some of these issues have been resolved. Others are in the process of being determined at the State, EPA Regional and Headquarters levels.

Background Information

Generally speaking, solid wastes (as defined in 40 CFR § 261.2) are hazardous if they are either specifically listed in 40 CFR Part 261, Subpart D, or if they exhibit a characteristic of a hazardous waste (i.e. ignitability, corrosivity, reactivity or toxicity) as defined in 40 CFR Part 261, Subpart C. The focus of this summary will deal with changes that have been enacted to the characteristic of toxicity and what affect they have had on some of the common wastes generated by the ASI.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) to the Resource Conservation and Recovery Act of 1976 (RCRA) mandated that EPA reassess the criteria and test method that determine the characteristic of toxicity. The former test, the Extraction Procedure Toxicity Characteristic (EP Tox), which had been the test used since 1980 to define toxicity, was comprised of eight heavy metals and six pesticides/herbicides (EPA Hazardous Waste Codes D004 through D017).

On March 29, 1990 (as published in Volume 55 of the Federal Register (FR), beginning on page 11798), EPA expanded the list of characteristic toxic wastes and incorporated a new test method to replace the EP Tox method. The original list of fourteen constituents had twenty-five new organic constituents (EPA Hazardous Waste Codes D018 -D043) added to it. These revisions also introduced the Toxicity Characteristic Leaching Procedure, or TCLP as the replacement test method for EP Tox, to determine the toxic characteristic of a waste.

These revisions, referred to as the Toxicity Characteristic, or TC Rule required affected new generators and treatment, storage and disposal (TSD) facilities to submit notifications, applications and/or modifications at various set dates in order to continue managing these newly toxic wastes. Generally speaking, large quantity generators and treatment, storage and disposal facilities had to begin complying with the TC rule by September 11, 1990, and small quantity generators had until March 11, 1991.

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require generators to comply with hazardous waste regulations regardless of the quantity of hazardous waste generated. Since all of the States in Region I are authorized for, at a minimum, the base RCRA program, this could mean that many CESQGs would need to comply with many of the standards applicable to generators of larger quantities. Consulting your appropriate State environmental agency is essential before determining whether the Federal CESQG status is applicable to your business or not.

Waste Oil

Current Federal regulations pertaining to waste oil, in general, have not been affected by the TC rule. Waste oils that are handled in accordance with 40 CFR Part 266 or 40 CFR § 261.6(a)(3)(iii) are currently not Federally regulated as hazardous wastes. These provisions state, generally, that waste oils that are to be burned for energy recovery or recycled in other manners are not regulated as a hazardous waste. Many States, however, regulate waste oil as a special waste and have established additional requirements regarding handling, transportation, storage and disposal.

Manners of recycling that may be consistent with the above mentioned citations are re-refining waste oil into fuels, filtration of waste oil to regenerate usable oil, reusing waste oil as a lubricant, burning waste oil in on-site space heaters (that meet the requirements of § 266.41(b)(2)(iii)), or sending waste oil to an approved facility that will burn the waste oil in order to recover energy (i.e. produce heat, steam or electricity). This is a generalization of the methods of waste oil management that would be consistent, however there are additional constraints to some of these methods that should be reviewed in more detail. For a more detailed discussion on waste oil management, refer to the November 29, 1985 Federal Register publication (50 FR 49164).

Perceived "recycling" of used oil that would be deemed methods of illegal disposal and therefore potentially subject to hazardous waste regulation are road oiling for dust suppression, disposal in a solid waste landfill, disposal through a sewage, septic or dry well system or incineration with no means of energy recovery.

The EPA has recently promulgated new regulations for facilities that burn hazardous waste in boilers and industrial furnaces (BIFs). These regulations (referred to as the BIF Rule), effective August 21, 1991 will not affect used oil that is burned on-site in waste oil "space heater"-type units that meet the requirements of § 266.41(b)(2)(iii). Simply stated, this regulation requires space heaters to be of less than 500,000 BTU per hour in capacity, to be generated from a single source of waste oil and its industrial waste only; and each unit must be subject to the same conditions as those listed in the BIF Rule. Units that do not meet these conditions will be subject to RCRA permit requirements.

above constituents. Though indicative of widespread contamination through use, the fact that only half of the samples failed the TCLP demonstrates that all automotive antifreeze may not be a hazardous waste once spent. EPA will continue to assess this issue and determine a proper response. At the present time, as always, generators of spent automotive antifreeze (or any other suspected solid wastes) should determine if it is a hazardous waste as required by 40 CFR § 262.11. If a generator determines that his spent antifreeze exhibits a characteristic of a hazardous waste, he should handle it accordingly.

EPA Headquarters' Office of Solid Waste is overseeing this issue. In the absence of additional information, Region I is emphasizing the importance of a generator's responsibility to make a proper characterization of all waste streams.

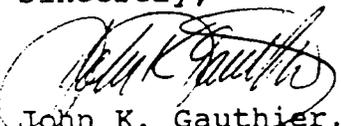
Chlorofluorocarbon (CFC) Refrigerants

Because of the TC rule, spent CFC (Freon[™]) refrigerants would be considered hazardous for detectable levels of carbon tetrachloride and chloroform. Since this waste is in the gaseous state at standard temperature and pressure, the potential for venting rather recycling of spent CFCs could increase if regulation as a hazardous waste is imposed. Since there has been an increased incentive in recent years to recycle CFCs for reclaim and reuse, imposing hazardous waste regulations on the storage of these containerized CFCs could prove to be a disincentive and subsequently encourage venting of CFCs to the atmosphere. CFCs are a known contributor to the reduction of stratospheric ozone. Therefore, EPA suspended the application of the TC to spent CFCs from totally enclosed heat exchange equipment that are reclaimed for further use.

CFC refrigerants that are recaptured and reclaimed for future use are exempt from the TC Rule pursuant to 40 CFR § 261.4(b)(12) as published in 56 FR 5910 on February 13, 1991.

If you have additional questions or concerns on these issues, you may contact me at (617) 573-9629.

Sincerely,


John K. Gauthier,
Chemical Engineer
Waste Management Division

August 1991