



Department of Toxic Substances Control

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Protection

February 23, 1999



Mr. David Deupree
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Harbor Oil, Incorporated
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Portland, Oregon 97217

Dear Mr. Deupree:

FEDERAL AND STATE (CALIFORNIA) USED OIL MANAGEMENT

Thank you for your December 24, 1998, letter to the Department of Toxic Substances Control (DTSC) concerning the regulation of used oil. In your letter, you requested written responses to several questions. DTSC's responses to those questions are presented below. We would first, however, like to state some essential points that establish the basis for our response.

California State Hazardous Waste Control Law (HWCL) pertaining to the management of used oil is generally more stringent than federal used oil law. Under federal regulations, used oil is not a listed hazardous waste, but is presumed to be recycled and is required to be managed in accordance with the requirements specified in 40 Code of Federal Regulations (CFR) Part 279 ("Standards for the Management of Used Oil"). Under California HWCL, used oil is required to be managed as a hazardous waste in accordance with the requirements specified in Article 13 [commencing with Health and Safety Code (HSC) Section 25250.1] until it has been shown to meet the recycled oil specifications or is excluded from regulation as a hazardous waste pursuant to HSC Section 25143.2. Regulations concerning the management of used oil are found in Title 22, Division 4.4 of the California Code of Regulations (22 CCR) commencing with Section 66279.

With these points in mind, our responses to your questions follow below:

1. *How can DTSC determine that used oil with a flash point of less than 100 degrees Fahrenheit is a Resource Conservation and Recovery Act (RCRA) hazardous waste? No*

position is taken by California concerning concentrations of metals exceeding the limits in 40 CFR 279.11 when managed for recycling. I am unaware of the California regulation to arbitrarily designate used oil as RCRA ignitable D001 given 40 CFR 271.1(h)(1)(2).

Response: (The three separate questions asked above are responded to below in the order presented.)

- 1-1. It is the generator's responsibility, not DTSC's, to determine whether a waste is a hazardous waste. Under California State law [HSC Section 25250.1(a)(1)(B)(i)], a waste with a flashpoint below 100 degrees Fahrenheit is not used oil. Both federal (40 CFR 261.21) and State hazardous waste law (22 CCR 66261.21) specify that a liquid waste with a flashpoint below 140 degrees Fahrenheit exhibits the characteristic of ignitability (D001) and is an identified hazardous waste.
- 1-2. The metal concentration limits specified in federal regulations (40 CFR 279.11) are for "on-specification" used oil. If all of the prescribed limits for on-specification oil are met, a used oil shipment is not regulated under 40 CFR Part 279 when it is burned for energy recovery. Under California State law, the same metal concentration limits (except that California's limit for lead is more stringent) are promulgated for "recycled oil" [HSC Section 25250.1(a)(3)]. Recycled oil is not regulated "unless otherwise specified" [HSC Section 25250.1(b)(1)]. The primary difference is that federal regulations explicitly require the on-specification oil to be burned for energy recovery while State regulations do not require that recycled oil be burned for energy recovery.

Assuming that a used oil shipment met all of the specifications for recycled oil except one or more of the metal limits, the used oil shipment would not be recycled oil, but would continue to be regulated as used oil.

- 1-3. There is no California (or federal) regulation which arbitrarily designates used oil as a RCRA ignitable D001 waste. As noted above in response 1-1, under California State law, used oil with a flashpoint below 100 degrees Fahrenheit is not used oil [HSC Section 25250.1(a)(1)(B)(i)] and would be D001 hazardous waste (22 CCR 66261.21). Federal regulations differ in that used oil with a flashpoint below 100 degrees Fahrenheit and meeting all the other specifications of 279.11 would not be on-specification oil, but

would still be used oil. Also, under federal regulations, used oil is regulated as used oil regardless of flashpoint, unless the used oil was mixed with an ignitable substance and the resultant mixture has a flashpoint of 140 degrees Fahrenheit or less, in which case the mixture would be regulated as hazardous waste. This is a significant difference between State and federal regulation of used oil.

2. *What is the California waste code (D001) for used oil with a flash point less than 100 degrees Fahrenheit? Where can I find this California regulation and when was it promulgated?*

Response: The California waste code for used oil is 221. A substance with a flashpoint of less than 100 degrees Fahrenheit cannot be used oil, and would be an identified hazardous waste (22 CCR 66261.21). Under federal regulations, substances with a flashpoint of less than 100 degrees Fahrenheit (and which would otherwise meet the definition of used oil) could be regulated as either D001 hazardous waste or used oil, depending upon what types of substances were mixed with the used oil [40 CFR Part 279.10(b)].

3. *I understand that California considers used oil with gasoline to carry a Federal waste code of D018 in addition to D001, when the flashpoint is less than 100 degrees Fahrenheit. Division 20, Article 13, 25250.1(a)(1)(B) allows for minimal amounts of vehicle fuel in used oil.*

Given a typical benzene concentration in gasoline of 3% (30,000 ppm), a minimal amount of vehicle fuel (gasoline) contaminant concentration would have to be less than 0.0017 percent to remain less than the 0.5 RCRA level. It appears California allows benzene levels greater than 0.5ppm in used oil (minimal amounts of vehicle fuel (gasoline)) without designation as D018. But if the flashpoint drops to less than 100 degrees Fahrenheit the used oil now must carry a D018 code and a D001.

Where can I find the definition of the California waste code (D018) for used oil with a flashpoint less than 100 degrees Fahrenheit and a benzene concentration greater than 0.5 ppm?

Response: HSC Section 25250.1(a)(1)(B)(i) states that used oil does not include "oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel." The phrase "other than minimal amounts of vehicle fuel" was placed in statute in 1986 when California's used oil laws were first enacted. It was included in recognition of the common occurrence of "engine

Mr. David Deupree
February 23, 1999
Page 4

blow-by." Used oils from internal combustion engines frequently contain small amounts of vehicle fuel from ordinary use. A DTSC guidance document prepared shortly after the enactment of Article 13 (Senate Bill 86, Chapter 871, Statutes 1986) states as follows:

"It is intended that the minimal amounts of fuel introduced to the used oil be from fuel seeping by the rings and valve guides of the internal combustion engine and not by intentional mixing. [HSC] Section 25250.7 makes it illegal to commingle other hazardous wastes with used oil. Solvents, antifreeze, carburetor cleaners, gasoline, and other hazardous wastes must be kept separate from used oil."

Thus, the phrase "other than minimal amounts of vehicle fuel" was not added for the purpose of allowing the mixing in of small amounts of vehicle fuel; mixing with vehicle fuel was expressly prohibited.

By definition, a substance with a flashpoint below 100 degrees Fahrenheit is not used oil [HSC Section 25250.1(a)(1)(B)(i)]. The proper waste code for used oil containing minimum amounts of vehicle fuel is 221. There is no California (or federal) requirement that used oil containing minimum amounts of vehicle fuel carry a D018 waste code. Please contact Mr. Jim Bohon, Chief of the Generator Information Services Section, Office of Environmental Information Management, at (916) 324-0591 for further information on waste codes for other hazardous wastes.

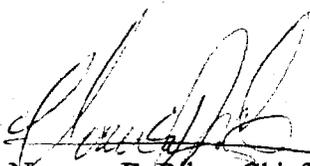
In conclusion, please note that California regulates used oil separately from other HSC Chapter 6.5 hazardous wastes under Article 13 (commencing with HSC Section 25250.1). The identifiable characteristics of hazardous waste are not applicable to used oil. California State Hazardous Waste Control Law requires used oil (as defined in HSC Section 25250.1) to be managed at the outset as hazardous waste pursuant to Article 13 (HSC Section 25250.4).

Mr. David Deupree
February 23, 1999

Page 5

I hope that this letter answers your questions and provides you with useful information. If you wish to discuss these matters further, please contact Ms. Sue Tracy of my staff at (916) 324-1780.

Sincerely,



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