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RCRA/SUPERFUND HOTLINE SUMMARY

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3. Definition of a Used Oil Marketer

A used oil generator used oil to a corporation which blends it at one site and then ships off-site to another of its divisions, where it is burned for energy recovery pursuant to 40 CFR Part 266, Subpart E. Who is the used oil marketer in this instance: the generator or the corporate division which blended the oil and sent it off-site to be burned?

40 CFR Section 266.43(a) defines the term "marketer" to include both "generators who market used oil fuel directly to a burner" and "persons who receive used oil from generators and produce, process, or blend used oil fuel from these used oils (including persons sending blended or processed used oil to brokers or other intermediaries)." In this instance, the generator is not marketing the used oil directly to the burner, even though the burning and blending are performed by the same company. As noted in the February 1985 Hotline Monthly Report Question, one doesn't have to sell the oil to a distinct corporate entity in order to qualify as a "marketer": (a)lthough the term marketer implies commercial activity, the regulations governing used oil fuel marketers were meant, in part, to regulate transportation of used oil fuel off-site." By sending the used oil off-site, the blender in this instance qualifies as a marketer, despite the fact that the burner and blender are different parts of the same corporation. All the requirements of a marketer specified in Section 266.43, therefore, must be fulfilled in this instance by the blender rather than the used oil generator.

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