

PPC 9592.1996(01)

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

February 8, 1996

Mr. Gary S. Johnstone  
CASIE/PROTANK  
P.O. Box 93  
Franklinville, NJ 08322

Dear Mr. Johnstone:

Thank you for your letter of November 3, 1995 regarding the definition of significant concentrations of halogenated hazardous constituents as contained in used oil, and which agency has regulatory jurisdiction over this waste.

Your letter concerns the rebuttable presumption for halogenated constituents present in used oil. This provision is located in several places throughout 40 CFR part 279, depending on the specific activity related to used oil. Generally, under this provision, if used oil contains greater than or equal to 1000 ppm total halogens, it is presumed to be a hazardous waste due to mixture with listed halogenated hazardous waste. This presumption may be rebutted by a demonstration that the used oil does not contain hazardous waste.

In your letter, you cite the rebuttable presumption provision in 40 CFR 279.10(b)(1)(ii). However, under the Federal regulations, the provision that would be applicable to your situation is actually in 40 CFR 279.53, which applies to used oil processors and re-refiners. This provision was promulgated as part of the September 10, 1992 used oil rule. Pursuant to the statutory authority for this rule, it cannot take effect in states that are authorized for the base RCRA program (those rules promulgated as of January 26, 1983), until those states adopt equivalent requirements. Further, EPA cannot enforce the requirements until the state adopts them and is authorized by EPA. Note that "RCRA authorization" is an administrative process where EPA evaluates a state's regulations to ensure that they are

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equivalent and consistent with EPA's regulations, and authorizes them as part of the RCRA program. EPA then has enforcement authority based on a state's authorized RCRA program.

Therefore, because New Jersey is authorized for the base RCRA program but not the 1992 used oil rule, this provision will not be applicable to your facility under the Federal regulations until New Jersey becomes authorized for the rule. New Jersey does have jurisdiction regarding used oil regulation under its authorized RCRA program and other state laws. While EPA can provide assistance to New Jersey, the state should be the primary source of information regarding its regulatory program and your RCRA permit.

If you have further questions regarding the Federal used oil rules in 40 CFR part 279, please contact Tracy Bone of my staff at (202) 260-3509. For information regarding state authorization issues, please contact Wayne Roepe of my staff at (703) 308-8630.

Sincerely yours,

Michael Shapiro, Director  
Office of Solid Waste

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Attachment  
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CASIE/PROTANK  
P.O.BOX 92  
FRANKLINVILLE, N.J.08322  
(609) 696-4401  
TELEFAX NO. (609) 696-7065

November 3, 1995

Mr. Michael Shapiro  
Director, Office of Solid Waste MC-5301  
United States Environmental Protection Agency  
401 M Street SW  
Washington, D.C. 20460

RE: Rebuttable Presumption

Dear Mr. Shapiro:

I am writing to you to receive clarification or an opinion from the Environmental Protection Agency regarding the definition of "significant concentrations of halogenated hazardous constituents" as stated in 40 CFR 279.10(b)(1)(ii).

Casie/Protank, through our attorney, submitted two requests to the New Jersey Department of Environmental Protection (NJDEP) seeking their guidance concerning this issue. Mr. Edward H. Post, Chief of the Southern Bureau of Water and Hazardous Waste Enforcement, responded to our request with a letter dated January 19, 1995 (copy enclosed). He stated in his letter that the only existing guidance regarding significant concentrations of individual hazardous halogenated constituents exists in the November 29, 1985 Preamble to the EPA used oil regulations noting "More than 100 ppm of any particular solvent".

Casie/Protank's hazardous waste facility permit and the above referenced regulation state that the total organic halogens in excess of 1000 ppm may be rebutted by analytical to demonstrate that the used oil does not contain hazardous waste.

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I spoke with Ms. Tracy Bone of your department approximately two weeks ago regarding this issue. She stated that ultimately the EPA would defer back to the State of New Jersey for a decision concerning this matter.

Mr. Post stated in his letter that the NJDEP would not enforce any specific concentrations less than 1000 ppm for individual hazardous halogenated constituents until further written guidance is received from the appropriate Federal Hazardous waste groups.

Casie/Protank believes that the NJDEP would not have responded to our request without contacting the EPA and conducting extensive research before submitting this letter. However, our NJDEP inspector believes that the NJDEP has no jurisdiction over this issue and that only the EPA can make a ruling concerning these levels. He also supports the statement that significant levels of hazardous halogenated concentrations is 100 ppm, as stated in the November 29, 1985 Preamble.

I spoke with a representative at the EPA Region II office in New York. He stated that their office would only enforce EPA regulations and not the Federal Register.

I hope that your response can clarify the different interpretations of this issue. Thank you in advance for your cooperation. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me at your earliest convenience.

Sincerely,

CASIE/PROTANK  
Gary S. Johnstone  
Administrator

GSJ\ta  
Enclosure