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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

OCT 30 1990

MEMORANDUM

SUBJECT: Regulatory Determination on Used Oil Filters

FROM: Sylvia Lowrance, Director
Office of Solid Waste

TO: Robert L. Duprey, Director (8HWM-RI)
Hazardous Waste Management Division
EPA Region VIII

Thank you for your memorandum of August 30, 1990, requesting a regulatory interpretation of the status of used oil filters under the new Toxicity Characteristic (TC). In your memorandum, you inquired about used oil filters that are crushed in vehicle maintenance shops, where a certain portion of the residual used oil in the filter is separated from the filter. The answers to the specific questions you asked are listed below.

1. The Toxicity Characteristic Leaching Procedure (TCLP) is performed on used oil filters by crushing, cutting or grinding the waste (filter plus contents) until the pieces are smaller than 1 centimeter in their narrowest dimension (and thus are capable of passing through a 9.5 mm standard sieve). See Step No. 7.3 of the TCLP. The surface area criterion referred to in Step 7.3 does not apply to used oil filters. (Note: If the generator recycles both the used oil and metal, you do not need to test because recycling of both types of materials is exempted from hazardous waste regulation as discussed below.)

2. and 3. Assuming a used oil filter exhibits the TC, you had inquired whether the act of crushing filters is regulated treatment or exempt recycling. Generally, the types of used oil filter crushers you described would not be regulated if the used oil was being recycled (see 40 CFR 261.6(a)(2)(iii) and (a)(3)(iii)). That is, since the purpose of the crushing is to remove the used oil for recycling, we view the crushing to fall within the used oil recycling

exemption. The crushing may be performed on- or off-site, for profit or not. The determining factor is whether the used oil will be recycled. The filter may be shipped off-site for crushing under the used oil exemption, providing the oil is collected for recycling.

4. Generally, automotive oil filters are not considered to be containers because they are designed to filter particulates from oil that circulates through them, not devices for the storage of oil. As a result, a filter could not be an "empty container" under 40 CFR 261.7. However, as described next, a drained or crushed filter is considered scrap metal, and scrap metal is exempt from regulation when recycled.

Under the definition of "solid waste," EPA has determined that "recycled hazardous scrap metal is a solid waste when disposed of or recycled" (see 50 FR 624, January 4, 1985). However, pursuant to section 261.6(a)(3)(iv), hazardous scrap metal is exempted from Subtitle C regulation when recycled. The scrap metal recycling exemption in 40 CFR 261.6(a)(3)(iv) is applicable to used oil filters (scrap metal) that are going to be recycled. However, an undrained or uncrushed oil filter would contain too much oil to qualify for the scrap metal exemption. The January 4, 1985 preamble provided examples of items qualifying for the exemption, such as bars, turnings, rods, sheets, wire (i.e., scrap metal that is going to be recycled to recover their metal content) and examples that do not qualify, including metal-containing waste with a significant liquid component, such as spent batteries.

To increase the probability that the used oil filter (hazardous scrap metal) will qualify for the scrap metal recycling exemption, the generator or recycling facility should drain (gravity) the filter for an amount of time sufficient to ensure that all free-flowing oil is removed. The amount of drain time will vary based on a number of variables, including the size of the filter and temperature (both ambient and that of the filter). Alternately, the generator or recycling facility could crush the oil filter using the most appropriate crushing method that will force excess residual oil from the filter. We will be examining this issue further, but we currently have no information indicating that substantial amounts of oil will remain in the filter after either sufficient draining or adequate crushing. As a best operating practice, the Agency recommends that the generator or recycling facility both drain and crush used oil filters to be certain that the used oil filters would

qualify for the hazardous scrap metal recycling exemption.

If the crushed or drained filter will be recycled, it is unnecessary to determine whether it exhibits the TC because the scrap metal exemption is applicable. It would also be unnecessary to manifest these used oil filters if they will be recycled. However, if the filter will be disposed of, the generator must determine if it is hazardous under the TC. If the filter is hazardous waste, the Part 262 and 268 regulations apply to the generator, and Parts 264 and 265 apply to the treatment, storage and disposal facilities. Non-hazardous waste filters may be disposed in a Subtitle D facility.

Finally, in the sales brochures you sent, there was mention of an open container used to accumulate the used oil after the filter was crushed. (Currently, used oil accumulation by generators is not regulated if the used oil is recycled, but EPA did propose that such containers be kept closed. See 50 FR 49252, November 29, 1985.) Storage or accumulation of characteristically hazardous used oil is regulated if the used oil is to be disposed of; in that case, the containers must be closed except when adding or removing the used oil (per §265.173(a)).

Please contact Daryl Moore at (202) 475-8551 if you have any additional questions on the applicability of the Federal hazardous waste regulations with respect to used oil filters.

cc: Waste Management Division Directors, Regions I - VII and IX - X
Jeff Denit
RCRA/Superfund Hotline
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