



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

OFFICE OF  
RESOURCE CONSERVATION  
AND RECOVERY

DEC 04 2015

Mr. Phillip G. Retallick  
Senior Vice President, Compliance and Regulatory Affairs  
Clean Harbors Environmental Services, Inc.  
400 Arbor Lake Drive, Suite B-900  
Columbia, South Carolina 29223

Dear Mr. Retallick:

Thank you for your letter of April 20, 2015, seeking clarification of a June 16, 2014, letter we wrote to Linda Adams, Clean Tech Advocates, regarding whether vegetable or animal oil-based lubricants, once used, are regulated under the 40 CFR part 279 Used Oil Management Standards. Specifically, you express concern that our response to Ms. Adams suggests we may have altered our definition of used oil to include animal and plant-based oils. You also express concern regarding proposed changes California's definition of used oil to include synthetic oil "from any source" (Assembly Bill 628), and that such changes might disrupt recycling programs because of the increased amounts of bio-based oils in used oil feedstocks, which may be problematic for your re-refining operations.

The definition of used oil, according to 40 CFR 279.1, is as follows:

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Our position regarding the definition of used oil and the status of plant or animal derived oils, as expressed in our 1997 policy, remains unchanged. Our used oil definition is based on three criteria: origin, use, and contamination. Our 1997 policy regarding animal and vegetable oils applies the 'origin' criterion of the definition of used oil, and states that "since animal and vegetable oils are not synthetic or derived from crude oil, they are not regulated as used oil under the used oil management standards" (see RCRA Online No. 14018, February 7, 1997 and RCRA Online No. 14090, April 1997). In practical terms, the policy means that plant or animal oils used as lubricants would not meet the definition of used oil under part 279. Thus, these used lubricants would be spent materials subject to regulation as a solid waste.

Our 1997 policy did not envision, and thus did not address, those situations where oils from plant or animal sources would be formulated together with conventional crude or synthetic oils prior to use. As we stated in our 2014 letter to Ms. Adams, we believe that such formulations, once used, would meet the definition of used oil under part 279 and could be managed under RCRA's used oil management standards. This is because these formulations contain oils that are synthetic or derived from crude oil, thus satisfying the origin part of the definition of used oil in 40 CFR 279.1.

Additionally, used oil collection system operators could encounter mixtures of used oils derived solely from plant or animal sources with used conventional oils. These mixtures may also still meet the definition of used oil, just as mixtures of used oils with other materials may still meet the definition of used oil. As we stated in our 2014 letter to Ms. Adams, such mixing must meet the applicable mixing criteria described in 40 CFR 279.10.

Please be aware that under Section 3006 of the Resource Conservation and Recovery Act (RCRA), individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. Under Section 3009 of RCRA, states retain authority to promulgate regulatory requirements that are more stringent or broader in scope than the federal regulatory requirements. You should consult with the appropriate regulatory authority (i.e., the authorized state agency or EPA), if you have questions regarding regulations pertaining to a specific state.

I appreciate your interest in clarifying how the used oil regulations apply to bio-based lubricants. If you have further questions, please contact Jeff Gaines of my staff at (703) 308-8655 or [gaines.jeff@epa.gov](mailto:gaines.jeff@epa.gov).

Sincerely,

A handwritten signature in black ink that reads "Barnes Johnson". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Barnes Johnson, Director  
Office of Resource Conservation and Recovery

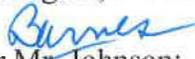


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April 20, 2015

Via E-Mail

Mr. Barnes Johnson, Director  
Office of Resource Conservation and Recovery  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 5301P  
Washington, DC 20460

  
Dear Mr. Johnson:

I am writing to seek clarification of a letter issued by OWSER on June 16, 2014, addressed to Linda S. Adams, Clean Tech Advocates, and signed by Cheryl Coleman, acting for Barnes Johnson, Director of the Office of Resource Conservation and Recovery. The letter was written in response to an inquiry received from Ms. Adams, dated May 28, 2014 (Ms. Adams is a former Secretary of CalEPA). Copies of former Secretary Adams' original inquiry and EPA's response are enclosed for your convenience.

By way of background, Clean Tech's letter to EPA was sent following the failure of a bill in the state legislature last year (Senate Bill 916) that that would have included biosynthetic lubricating oils in the definition of "used oil" and mandated the use of motor oils in California containing a certain percentage of biosynthetic oil. As discussed below, one of the main reasons for the bill's defeat was its inconsistency with the federal used oil recycling program under Section 3014 of RCRA, contrary to the state's delegated authority under RCRA — delegated RCRA states (including California) may not adopt laws or regulations that are less stringent than, or that are inconsistent with or conflict with federal RCRA requirements, including the requirements pertaining to used oil. From a technical perspective, it was shown that introducing bio-oils into used oil re-refining feedstock would significantly disrupt the long-term stability of the California used oil recycling program due to the incompatibility of plant- and animal-based oils with current re-refining technology and infrastructure.

The federal used oil program is limited to "oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." 40 CFR § 279.1. This is a three-prong test, based on origin, use and contaminants. According to EPA guidance, "synthetic oil" is "oil that is derived from coal, shale or polymers." See, Definition of Used Oil, EPA: 570-R-97-005d, April 1997 (RCRA Online RO 14090). Although the statutory definition of "used oil" under RCRA does not mention synthetic oil, EPA included this category of oils under Part 279 because they are used in the same manner

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as petroleum-based oils, are managed in the same ways, and become contaminated with the same kinds and amounts of impurities. EPA has stated expressly that vegetable and animal-based oils do not fall within the definition of “used oil” in Part 279 (*id.*). The reference to polymer-derived oils in EPA guidance must be understood in this context, namely that synthetic oils produced from animal and vegetable oils are not “used oil.”

“Used oil” that is recycled is eligible for exemption from the hazardous waste management requirements of Subtitle C, and any expansion of that term by a state to include other kinds of wastes would effectively and impermissibly expand the scope of the federal exemption. Most bio-based oils that are used in motor vehicles or other industrial applications are likely to exhibit the federal characteristic of toxicity (as determined by the TCLP), and would thus run afoul of this basic prohibition under RCRA. To this end, California hazardous waste regulations currently provide that used vegetable or animal oil identified as RCRA hazardous waste is not “used oil.” See 22 Cal. Code Regs., § 66279.1(d). State regulations also define the term “synthetic oil” as “oil derived from coal, oil shale or polymers, and water-soluble petroleum-based oil.” This definition does not include vegetable or animal-based oils.

The scope of the federal used oil program has been defined consistently by statute, regulation, and agency guidance that has been in place for several decades. The used oil recycling program, and associated infrastructure was built on the basis of these definitions and can be credited with the safe and environmentally responsible re-refining and return to use of many hundreds of millions of gallons of used motor and engine oils.

In response to the legal concerns raised by Safety-Kleen and others over the inconsistency between proposed SB 916 and federal law, Clean Tech’s May 28, 2014 letter asked EPA for “clarification” of the definition of used oil under the federal program. Specifically, Clean Tech posited that “any oil (including vegetable or animal oil)” may be managed as used oil under the federal program and that mixing bio-based lubricants with used oil “would simply result in more used oil” per the mixture rules in Part 279.

Safety-Kleen and other representatives of the used oil re-refining industry, including Heritage Crystal-Clean and the National Oil Recyclers Association (NORA), do not believe the federal used oil recycling program allows the mixture of incompatible bio-based oils with “used oil” as that term is defined in Part 279 and pertinent guidance. Extraordinary investments in used oil collection systems and sophisticated, state-of-the art re-refining facilities were made on the basis of the current regulations and guidance, and are not compatible with bio-based lubricants.

EPA’s June 16, 2014 response to Ms. Adams recites current regulations and guidance, and clearly states that “vegetable and animal oils are not regulated under the used oil management standards because they are not synthetic or derived from crude oil. However, the letter is less clear on the issue of comingled streams. EPA indicates that current policy does not address the situation where bio-based additives are used in the manufacture of conventional motor oil formulations, but suggests that these formulations after use could be managed under Part 279. EPA also suggests that, in certain circumstances, bio-based lubricating oils might be able to be mixed with



“used oil” after use and managed as “used oil” under Part 279. We are concerned these statements, in an informal communication with a single member of the public, are being offered as “proof” that EPA has abandoned the “origin” prong of the used oil definition and that EPA agrees animal and plant-based oils qualify as “used oil” under Part 279.

We do not believe EPA intended this result, and are requesting further clarification of this issue. If EPA’s policies are shifting on this issue, we need to have a national dialogue about the potential negative consequences such a change would have on the used oil recycling program. Most importantly, changes to current regulations or policy must be implemented through formal notice and comment rulemaking.

This issue has taken on new and added significance because another bill has been introduced in the California Assembly that would define “used oil” to include “synthetic oil from any source.” A copy of the bill, AB 628 (Bloom), is also enclosed. Sponsors of the bill claim it is merely a “clarification” of existing law and argue this measure is necessary to level the playing field and promote the sale and use of “high performing renewable alternatives” over traditional motor oils and industrial lubricants. As noted above, this provision would directly conflict with federal law and even current state used oil regulations. Safety-Kleen is not opposed to development and use of renewable alternatives, but this cannot be accomplished at the expense of California’s used oil recycling program. If the bill were to pass, used oil feedstock would become contaminated with incompatible bio-based oils, resulting in significant disruption of, and damage to, used oil collection and recycling systems that have functioned efficiently and effectively for decades.

The development of the federal used oil system took more than a decade to design and implement, and was hotly contested with thousands of generators, collectors, recyclers, and environmental groups expressing strong opinions about how this important goal should be accomplished. This debate was only concluded after several rounds of federal litigation and appeals. Any changes that may be contemplated to this program should be informed by this history.

We would appreciate your reply to this letter as soon as possible and would welcome an opportunity to meet with you to discuss our concerns in greater detail.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Phillip G. Retallick". The signature is fluid and cursive, written over a light blue circular stamp or watermark.

Phillip G. Retallick  
Senior Vice President, Compliance and Regulatory Affairs  
Clean Harbors Environmental Services, Incorporated

CC: Jeffrey Gaines, ORCR, USEPA

Attachments