

PPC 9495.1986(30)

PROPOSED PERMIT-BY-RULE FOR USED OIL RECYCLERS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOV 24 1986

Ms. Kathryn O'Connor Gunkel
Director of Environmental
and Safety Operations
P.O. Box 517
Riverdale, Maryland 20737-9981

Dear Ms. Gunkel:

Thank you for your October 10, 1986, letter regarding the relationship between "permit-by-rule" and the proposed used oil special management standards for burners.

The major point you raised in your letter is the implication of filing the burner notification form 8700-12. Our final standards will apply only to facilities burning off-specification used oil as of the effective date of the final rule (which is usually six months after the final rule is published in the Federal Register). Filing the notification form now would not subject your members to that final standard. Filing also will not subject your members to the corrective action requirements in Section 3004(u). Form 8700-12 is not a Resource Conservation and Recovery Act (RCRA) permit application or the equivalent, and again it does not trigger compliance with Section 3004(u). You specifically asked if used oil recyclers will need permits, and if so how would they apply for such permits. We have not yet resolved this issue.

You also asked why, when we generally avoid permit-by-rule in the RCRA program, did we propose a permit-by-rule for used oil recyclers? The used oil permit was established by Congress for recycled oil identified as a listed or hazardous waste in RCRA Section 3014(d). The permitting is a statutory requirement.

We are also considering what types of regulations should apply to recycled oil burners. For example, we are currently debating whether used oil burners should be regulated like other recyclers or if we should apply special, less stringent, requirements. Our current thinking is that it may be appropriate to have different standards for processors and re-refiners.

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Let me assure you that EPA believes that off-specification used oil can be burned safely. When emissions are properly controlled, burning is an environmentally desirable method of recycling used oil. We will consider the issues you raised when developing our final rule. I would be pleased to meet with you on these and any other concerns you may have.

I have addressed the seven specific questions you asked in the enclosure. If I can be of any further assistance, please let me know.

Sincerely,

Original Document signed
"Jack W. McGraw for"

J. Winston Porter
Assistant Administrator

Enclosure

Answers to Questions 1-7

1. Under the November 29, 1985 proposal, facilities burning off-specification used oil fuel on the effective date of the final rule would be eligible for a permit-by-rule. Submissions of the notification form 8700-12 would not trigger issuance of a permit. Under the proposed used oil management standards, facilities in compliance with all of the applicable requirements would be deemed, without any action on their part, to have a RCRA permit. [See 50 FR 49240] Submitting notification information is only one requirement; compliance with proposed 40 CFR 266.43, 266.44, and 270.60(d)(2) would be necessary to obtain the permit-by-rule. This approach to permitting used-oil recyclers is actually specified in RCRA Section 3014(d); Congress instituted such a system to encourage facility permitting. (See H.R. Rep. No. 98-198, 98th Cong., 1st Session, at 69 (1983).] Under this system, there is no written permit per se. In fact, EPA would not be granting a permit at all. Congress specified in RCRA Section 3014(d) that a used-oil recycler who complies with all applicable requirements receives a permit.

With respect to the relationship in the proposed rule between the permit-by-rule and corrective action, you should note that in the November 29, 1985, Federal Register, we proposed that used oil recyclers who qualified for the permit-by-rule were not subject to the corrective action requirements in Section 3004(u) unless EPA revoked the permit-by-rule based on specified criteria. [See 50 FR 49241]

We have not determined what management standards will apply for used oil burners. We have concluded that the full set of requirements proposed on November 29, 1985, is probably too stringent. We will consider whether a reduced set of standards might be adequate for burners. We also have decided not to list recycled oil as a hazardous waste. This may render the permit-by-rule provisions of the November 29, 1985, proposal moot because facilities managing nonhazardous waste have not in the past been subject to EPA permitting. It should be noted, however, that EPA can require permitting for used-oil recyclers even without a hazardous waste listing. [See H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 69 (1983).] Whether we do require some form of permitting will depend upon the extent of Agency oversight needed to implement the management standards issued for burners. These decisions are still several months away.

2. You are correct in stating that under the proposal, a facility is deemed to have a RCRA permit if it complies with all applicable requirements. It is the responsibility of the owner or operator of the facility to comply with the requirements. EPA can, of course, conduct facility inspections to ensure compliance.

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Submittal of form number 8700-12 has little to do with the facility permitting. Submittal of notification information is one requirement that a facility would have to meet whether or not a permit is required by the final rule. EPA form 8700-12 is not a permit application. This issue was discussed in the November 29, 1985, proposal [See FR 49243]. Under the proposal, those owners or operators who were not in compliance with applicable requirements, or who were not sure whether they were in compliance, would have been required to submit a special notice, separate from the notification, to EPA indicating their desire to obtain interim status. Those owners and operators who were sure of their compliance would not have to submit an application.

Let me clarify one point which may be confusing. In the proposed rule we stated that a notifying facility is afforded the option of indicating that the information submitted on form 8700-12 could be used to fulfill the permit application requirements of RCRA Section 3005(e)(i)(c). A facility might have wished to take this course because eligibility for the proposed permit-by-rule turned on a facility being compliance on the rule's effective date with applicable regulations. A facility not in compliance or unsure whether it was in compliance was thus afforded the opportunity to have legal authorization to operate [See 50 FR 49240]. Facilities electing to take this action were not thereby subject to Section 3004(u) corrective action [See 50 FR 40241].

The "two year" inspection schedule applies to facilities permitted by EPA under RCRA Section 3005. Since, under the proposed rule, most used oil recyclers would be permitted under RCRA Section 3014(d), the schedule would not apply.

3. As discussed in response #1, under the proposal, facilities who were eligible for the permit-by-rule would not have been subject to RCRA Section 3004(u). [See 50 FR 49240.] The only case where such a facility would have been required to take corrective action measures is when EPA revoked the permit-by-rule. [see 50 FR 49241.] See proposed §270.60(d)(3) for the criteria under which a permit-by-rule could be revoked. EPA has not determined whether these, or similar, requirements will ultimately be applied to use oil burners.

4. As explained above, the used oil recycling permit would not actually be issued by EPA. Rather, the permit is a special authorization granted by Congress in RCRA Section 3014(d) for used oil recyclers to be exempt from normal RCRA permitting procedures, provided they comply with all applicable requirements.

5. As explained above, submittal of EPA form number 8700-12 has nothing to do with corrective action requirements. Further, the timing of the notification was set by Congress in RCRA Section 3010(a); notification was required by February 1986.

6. As explained above, the burner notification requirement is just that, nothing more. It simply does not expose burners to the types of consequences suggested in your questions.

7. At present, burners of off-specification used oil, except for the notification and recordkeeping provisions of 40 CFR §266.44, are subject to the same requirements as burners of virgin fuel oil. The time that management standards are issued in final form for used oil burners is appropriate time for each facility owner or operator to make his own decision on whether or not to continue burning used oil fuel. As a general matter, RCRA regulations become effective six months following promulgation, so burners will have time to assess any new requirements.