9592.1994(04)

United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

June 9, 1994

Mr. G. William Frick
Vice President, General Counsel and Secretary
American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005

Dear Mr. Frick:

Thank you for your letter dated April 22, 1994, regarding the Environmental Protection Agency's (EPA) final used oil rule published on March 4, 1994. Specifically, you requested that EPA publish a technical correction to the March 4, l994, rule to clarify that the used oil regulations allow transportation of used oil to locations where used oil can be mixed with crude oil (e.g., from exploration and production sites to the pipeline or a petroleum refinery, etc.).

As explained below, EPA believes that the regulations clearly do not preclude the transportation of used oil to each of the locations mentioned in your letter. Therefore, we do not believe that a technical correction is necessary. We will make this letter available to our Regional and State contacts so there is no misunderstanding regarding how the regulations apply.

EPA interprets the used oil management standards to allow for the transport of used oil to crude oil pipelines, exploration and production facilities, petroleum refineries, and aggregation points. In the preamble to the March 4, 1994, final used oil rule, EPA specifies how the used oil regulations apply in each of these situations. In each of the cases described below, petroleum refining facilities and related sites may in fact fit the category of used oil transporter/transfer facility, processor, or aggregation point because of the manner in which used oil is being handled.

1. Transportation to Crude Oil Pipeline and E&P Sites

Transport of used oil to exploration and production sites and crude oil pipelines is authorized by §279.43(a)(1) of the used oil standards which provides for transportation of used oil to another transporter. Used oil that is generated off-site and transported to a crude oil pipeline or an exploration and production site is subject to the transporter and transfer facility standards, as applicable, until the used oil is mixed with crude oil such that it is exempt under §279.10(g)(2). 59 FR 10532 and 10533.

The transfer facility standards are applicable if the used oil is stored for more than 24 hours and less than 35 days. Therefore, in cases where used oil is stored for this period of time at an exploration and production site, for instance, prior to being transported to the pipeline, a petroleum refinery, or another interim location, the exploration and-production site would be considered a transfer facility. Used oil that is stored at the site for less than 24 hours prior to mixing is subject to all Subpart E transporter standards except for §279.45. Application of the transporter/transfer facility standards to pipelines and/or exploration and production sites that accept used oil for mixing with crude oil is necessary to maintain a continuum of management.

More specifically, the transporter/transfer facility regulations require that exploration and production operators or crude oil pipeline operators that receive used oil comply with the provisions of Part 279 Subpart E, including the notification, rebuttable presumption, and tracking standards (§§279.42, 279.44, and 279.46) (except where the recipient qualifies as an aggregation point, as discussed below). You should note that these requirements must be met even in the situation where used oil is eventually going to be mixed with crude. In addition, if the used oil is further transported by these operators, they must meet §279.43 requirements. And, if residues from storage are generated, they must comply with §279.47. Finally, if the used oil is stored at the facility for more than 24 hours before mixing, the operator must comply with §279.45.

Transportation to Petroleum Refining Facilities

Petroleum refining facilities that receive used oil from off-site for insertion into the petroleum refining process are subject to the used oil processor standards from the point at which the used oil is received on-site until the point at which the used oil is

inserted into the petroleum refining process. 59 FR 10554. These requirements, which include notification, contingency planning, tracking and recordkeeping (§§279.51, 279.52, 279.53, 279.55, 279.56, and 279.57) apply to such refineries even if the used oil is stored for less than 24 hours before mixing or directly inserted into the refining process. If the used oil is stored before mixing, §279.54(a)-(f) and §279.54(h) also apply. As used oil processors, petroleum refining facilities can accept used oil as provided under Subpart F of the used oil management standards, and transportation to such facilities is authorized per §279.43(a)(2).

EPA believes that application of the processor standards to petroleum refining facilities that receive used oil from off-site for insertion into the petroleum refinery is warranted because of the manner in which the used oil is being handled prior to introduction into the process. As explained in the preamble to the March 4, 1994 rule, EPA believes that, since these facilities are accepting used oil for processing, they likely pose the same potential concerns associated with improper management of used oil that are posed by used oil processor/re-refiners.

3. Transportation to Used Oil Aggregation Points

The used oil regulations also allow an exploration and production or petroleum refining facility owner or operator to transport used oil to an aggregation point in cases where the facility meets the quantity and ownership conditions required to be considered a used oil aggregation point. An aggregation point is defined as "any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons." 40 CFR 279.1. Under this definition, and in accordance with §279.40(a)(3) of the used oil management standards, an exploration and production facility or petroleum refining facility may transport used oil generated at sites that are owned by the facility to collection centers (i.e., aggregation points) that are also owned by that same facility.

I hope that this letter addresses your concerns. Please call Eydie Pines at (202) 260-3509 if you have further questions on this or other issues pertaining to the used oil management standards.

Sincerely,

Michael Shapiro, Director
Office of Solid Waste

Attachment

American Petroleum Institute
1220 L Street, Northwest
Washington, D.C. 20005
(202) 682-8240

G. William Frick, Vice President, General Counsel and Secretary

April 22, 1994

Michael Shapiro
Director, Office of Solid Waste (Mail Code OS-300)
U.S. Environmental Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Need For Technical Correction to March 4, 1994 Used Oil Rule

Dear Mr. Shapiro:

On March 4, 1994, the U.S. Environmental Protection Agency issued a final rule clarifying and amending its recycled used oil management standards, which were promulgated on September 10, 1992 at 57 Fed. Reg. 41566. The March 4, 1994 rule was issued in part to clarify and expand the pipeline exemption to include other petroleum refinery applications, and to exempt used oil incidentally recovered in a petroleum refinery's hydrocarbon recovery and wastewater treatment systems and reinserted into the refinery process. (See 59 Fed. Reg. 10550.)

In the September 10, 1992 rule, destinations for transportation of used oil were restricted by section 279.43 as follows:

> (a) Deliveries. A used oil transporter must deliver all used oil received to:
> (1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;
> (2) A used oil processing/re-refining facility who has obtained an EPA identification number;
> (3) An off-specification used oil burner facility who has obtained an EPA identification number; or

(4) An on-specification used oil burner facility. 57 Fed. Reg. at 41617.

One of the issues discussed with EPA staff in settlement negotiations concerning API's Petition for Review of the used oil management standards was that section 279.43 does not allow used oil transporters to deliver shipments of used oil to exploration and production facilities, aggregation points, crude oil pipelines, or petroleum refineries.

In October 1993, EPA distributed for comment a draft of the March 4, 1994 rulemaking to interested parties, including parties to various pending lawsuits filed to challenge portions of the standards and related rulemakings. The draft rule included a proposed addition to 40 C.F.R. §279.43(a), the provision quoted above. The proposed addition would have allowed used oil transporters to transport shipments of used oil to

(a)(5) A location where used oil will be mixed with crude oil or natural gas liquids such that the used oil is exempt from regulation under section 279.10(g).

This provision would have provided explicit authority for transporters to deliver used oil to exploration and production facilities, crude oil pipelines, and petroleum refineries. At each of these locations, after used oil has been delivered and is mixed with crude oil, it becomes exempt from the Part 279 management standards. (Note that section 279.10(g) was amended in the March 4, 1994 rule.) API supported the inclusion of such a provision in its comments on the draft rule.

API's comments on the draft rule also discussed the need for a provision allowing transportation of used oil generated at exploration sites to aggregation points prior to delivery to a location where the used oil can be mixed with crude oil. At many exploration sites, no crude oil is present and any used oil generated at these sites must be transported to an aggregation point prior to further transportation to a location where the used oil can be mixed with crude oil. This comment was not addressed in the preamble to the March 4, 1994 final rule and still needs to be resolved. See page 5 of API's comments submitted to the EPA RCRA Docket on November 2, 1993. EPA staff suggested that this point be included in this letter.

Unfortunately, the proposed provision quoted above was not included in the final rule published on March 4, 1994, and no reason for its absence was given in the preamble to the rule. In fact, the preamble discusses at length the permissibility of transporting shipments of used oil to crude oil pipelines and to petroleum refineries, which suggests that the omission may have been an oversight. For example, at 59 Fed. Reg. 10552, the preamble notes that

> Used oil that is transported to the pipeline and immediately mixed with crude oil or stored for less than 24 hours prior to such mixing is subject to all Subpart E transporter standards except for § 279.45 which applies to transfer facilities.

Further, on page 10553, the preamble states

> Used oil that is generated off-site and transported to or stored at an exploration and production site is subject to the transporter and transfer facility standards, as applicable, up until the point at which the used oil is mixed with crude oil such that it is exempt under §279.10(g)(2).

Likewise, on page 10554, the preamble clearly contemplated the transportation of shipments of used oil to petroleum refineries:

> This exemption applies .. to used oil generated off-site that is collected and transported to the petroleum refining facility for insertion into the refining process prior to crude distillation or catalytic cracking.

Telephone contacts with EPA staff, however, indicated that the provision was deleted because it was believed to be unnecessary. The rationales given were that: (1) section 279.43(a) authorizes transportation of used oil to another transporter, which encompass transportation to locations where used oil can be mixed with crude oil; and (2) section 279.43(a) authorizes transportation of used oil to a used oil processor/ re-refiner, and refineries are subject to processor requirements prior to mixing used oil with crude or recovered oil. Neither explanation is convincing. Section 279.43(a) specifies that transporters may deliver used oil shipments only to the destinations listed in subsections (a)(l) through (4). Exploration and production facilities, aggregation points,

pipelines, and petroleum refineries, as discussed below, do not fit within any of the permissible destinations for used oil currently listed in section 279.43(a).

The definition of transporters includes transfer facilities. Transfer facilities are defined at section 279.1 as transportation related facilities that hold shipments of used oil for more than 24 hours, but not longer than 35 days, during the normal course of transportation or prior to being re-refined or processed. Used oil delivered to an exploration and production facility or crude oil pipeline generally is placed directly into a crude oil stock tank, thus becoming exempt from the standards upon delivery, unlike a transfer facility which, by definition, would store the used oil for 24 hours or longer. At aggregation points, used oil frequently is not held as long as 24 hours before being transported to a location where it can be mixed with crude oil; thus, these facilities generally do not fit within the definition of transfer facility, either. Likewise, a crude oil pipeline and its associated stock tanks cannot be considered another transporter or transfer facility, since the used oil generally is mixed with crude oil upon arrival, becoming exempt from the standards at that point. Even in situations where the used oil is held in a separate used oil tank, the pipeline facility would not be considered a transfer facility unless it stored the used oil for 24 hours or longer, an unlikely scenario. Exploration and production facilities, aggregation points, and pipeline facilities clearly are not processors, re-refiners, or used oil burners, the other permissible destinations allowed under section 279.43(a).

Petroleum refineries do not fit in any of the categories currently listed in section 279.43(a), either. Refineries are not transporters or transfer facilities; any used oil received at a refinery is held for less than 24 hours before being commingled with crude oil by insertion into the refinery process or by being mixed with recovered oil. Although the March 4, 1994 rule subjects refineries to the requirements for processors and re-refiners prior to the point at which the used oil is mixed with crude or recovered oil, petroleum refineries are defined separately; they are explicitly distinguished from used oil processors and used oil re-refiners. Petroleum refineries that insert used oil into the crude oil refining process also do not fit into the category of used oil burners or blenders.

For the reasons discussed above, API requests that a technical

correction be made to the March 4, 1994 used oil rule that adds the language omitted from the October 1993 draft rule of section 279.43(a)(5), as quoted above, and that the Agency clarify that used oil may be transported to aggregation points prior to being transported to a location where the used oil can be mixed with crude oil. If you have any further questions concerning this matter, please contact Betty Cox of my staff at (202) 682-8250.

Sincerely,

G. William Frick
Vice President and General Counsel

cc: Randolph Hill, EPA
Office of General Counsel
Michaelle Wilson, EPA
Office of Solid Waste