

9441.1990(08)

RCRA/SUPERFUND HOTLINE SUMMARY

MARCH 1990

4. Used Oil Used for Dust Suppression or Road Treatment

A used oil exhibits the characteristic of EP Toxicity. Is the use of the used oil for dust suppression or road treatment prohibited?

Yes. Used oil intended to be placed on the land is defined as a material being used in a manner constituting disposal (Section 261.2(c)(1)(A)). Use of a material in a manner constituting disposal is a recycling activity (Section 261.2(c)(1)). All substances recycled in this manner are considered solid wastes (see 40 CFR Section 261.2 Table 1). Because the used oil exhibits the characteristic of EP Toxicity, it is considered a hazardous waste. A hazardous waste which is to be recycled is subject to the requirements of 40 CFR Section 261.6. Specifically, Section 261.6(a)(2)(i) requires recyclable materials which are used in a manner constituting disposal to be regulated under Subpart C of Part 266. Thus, the used oil is subject to the requirements of Section 266.23(b) which states "the use of waste or used oil or other material, which is contaminated with dioxins or any other hazardous waste (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited." This standard was incorporated directly from Section 3004(e) of the Hazardous and Solid Waste Amendments of 1984. The Agency interpreted this statement in a June 6, 1985 memorandum which states "...the prohibition to apply to hazardous waste (whether or not it is part of a mixture). Under this interpretation used oil exhibiting EP Toxicity, for example, must not be used as a dust suppressant." Therefore, a used oil exhibiting the characteristic of EP Toxicity is prohibited from use for dust suppression or road treatment.

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