PPC 9495.1986(13)

USED OIL FUELS BURNED IN INCINERATORS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

JUN 27 1986

MEMORANDUM

SUBJECT: Regulation of Hazardous Waste and Used Oil Fuels (November 29, 1985)

FROM: Karen Walker, Environmental Scientist
Waste Management and Economics Division

TO: Michael Sanderson, Chief
RCRA Branch, Region VII

This is in response to your memo of May 2, 1986, requesting clarification of whether the November 29, 1985, rules for burning of hazardous waste and used oil fuels apply to used oil that is burned in incinerators. I also discuss two other issues your staff has raised: whether the November 29 rules apply to the open burning of used oil and whether the hazardous waste fuel storage standards apply to burner facilities that pump hazardous waste fuel directly from tank trucks into a boiler.

Incineration of Used Oil

As I indicated in telephone conversation with Jack Coakley and Chet McLaughlin of your staff, the regulations specifically apply to the burning for energy recovery of hazardous waste and used oil fuel in boilers and industrial furnaces. therefore, burning of used oil in incinerators is currently unregulated and the used oil fuel specification does not apply to such oil. If used oil exhibits a characteristic of hazardous waste and is burned in an incinerator, it is presently regulated under Subpart O. This position is not an extrapolation of the marine and diesel engine discussion in the preamble (which was included primarily due to public comment and inquiries prior to promulgation of the rules), nor does it stem from an "interpretation" of the rule. The rule simply and clearly applies to only that used oil that is burned in boilers or industrial furnaces (see §266.40(a)).

We agree that it is somewhat inconsistent to regulate the burning of used oil in boilers and industrial furnaces but not the burning of used oil as auxilliary fuel in incinerators. We did not extend coverage of the November 29 rule to incinerators because burning of any waste in an incinerator has been considered for regulatory purposes to be burning for the purpose of destruction and not for energy recovery. We have taken this position irrespective of the heating value of the waste and whether the

waste is actually used as auxilliary fuel because, to do otherwise, would potentially open up the energy recovery exemption to any waste with significant heating value when burned in an incinerator. Thus, without the policy that any waste burned in an incinerator is burned for destruction, owners and operators of hazardous waste incinerators could argue that their high heating value wastes were burned for energy recovery and therefore exempt for Subpart O. If high heating value hazardous wastes were coincinerated with non-hazardous waste, the owner or operator could argue that the incinerator is exempt from Subpart O because the hazardous waste is burned for its energy value. This is an outcome we wanted to avoid.

You should note that, if used oil is listed as hazardous waste, incineration of used oil would be subject to Subpart O unless the rule said otherwise. This outcome will be considered as we determine whether to list used oil as hazardous waste. (Whether or not used oil is listed, standards for "incinerating" used oil are more likely to resemble the controls being developed for boilers and industrial furnaces burning off-specification used oil fuel than the Subpart O standards.)

The May 2, 1986 letter from Chet McLaughlin to Dr. Paul Hipps of the Washington University School of Medicine incorrectly indicates that the November 29 rule applies to used oil burned in a pathological incinerator. As I stated above, if used oil is burned in an incinerator, the November 29 rule does not apply and a permit is not required at the present time.

Open Burning of Used Oil

Your staff also forwarded to us an April 17, 1986 letter from Chet McLaughlin to fire marshals in Missouri. This letter indicated that fire departments would not be allowed to burn off-specification used oil in training exercises. I discussed this with Jack Coakley, who stated that the used oil is burned in open pits. For the same reasons outlined above, such burning of used oil is not covered by the November 29, 1985, rules. We have received similar inquiries from fire departments and have advised them that burning used oil in pits, drums, or containers constitutes disposal and is currently unregulated unless the used oil exhibits a characteristic of hazardous waste, in which case such burning would be other thermal treatment of hazardous waste. If the used