

9592.1994(08)

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

September 12, 1994

Mr. T.L. Nebrich, Jr., CHMM  
Technical Director  
Waste Technology Services, Inc.  
640 Park Place  
Niagara Falls, New York 14301

Dear Mr. Nebrich:

Thank you for your letter dated August 17, 1994 requesting clarification of the rebuttable presumption provisions contained in the Recycled Used Oil Management Standards. (40 CFR 279.44)

As you correctly note, § 279.44(c) of the used oil rules provides that the presumption that used oil that contains greater than 1000 ppm total halogens has been mixed with hazardous waste can be successfully rebutted by documenting the source of the halogens, i.e., by showing that the halogens are not attributable to intentional mixing of used oil and hazardous waste. Your specific question is whether information documenting that excess halogens are attributable to unintentional mixing of residuals from "RCRA empty" drums is sufficient to rebut the presumption of mixing. In this situation, if the containers do in fact meet the definition of "RCRA empty," information attributing the source of the halogens to residual heels from these containers would be sufficient to rebut the presumption because the drums do not, by definition, contain RCRA regulated hazardous waste.

It is important to note, however, that determinations regarding the regulatory status of specific products and/or processes must be made on a case-by-case basis by the appropriate State or Regional authority. Therefore in order to receive a definitive determination regarding the regulatory status of the halogen containing used oil, you should contact the appropriate State agency or Regional office. You should also note that some authorized States have adopted programs that are more stringent than the Federal hazardous waste program.

If you have additional questions, please call Michelle Ching of the New York Department of Environmental Conservation at (518) 485-8988 or Eydie Pines of my staff at (202) 260-3509.

Sincerely,

Michael J. Petruska, Chief  
Regulatory Development Branch

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Attachment  
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WTS  
WASTE TECHNOLOGY SERVICES INC.  
640 Park Place  
Niagara Falls, New York 14301

August 17, 1994

Mr. Michael Shapiro  
Director,  
Office of Solid Waste and Emergency Response  
United States Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Shapiro:

I am requesting a clarification on what information can be used under the "Rebuttable Presumption" regulation for used oil (40CFR279.44).

The scenario in question involves a drum reconditioner which accepts empty drums for processing. From time to time the drums come in with residual heels. The contents of each drum is segregated between used oil and others. In each case the drums meet the definition of "RCRA Empty." Either before cleaning or after, the contents of a drum which contained chlorinated solvents was mistakenly emptied into the used oil receptacle. Prior to disposal of the used oil, it was determined that the oil contained greater than 1000 ppm total halogens.

Since the halogens would have come from a "RCRA Empty" drum and therefore non-hazardous, could this fact (RCRA Empty) be used in a rebuttable presumption determination. If not, please cite references.

If you should have any questions, please do not hesitate to call.

Very truly yours,

Waste Technology Services, Inc.

RO 11870

T.L. Nebrich, Jr., CHMM  
Technical Director