

9592.1994(05)

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

June 10, 1994

Ms. Elizabeth E. Lewis  
Baker & McKenzie  
One Prudential Plaza  
130 East Randolph Drive  
Chicago, Illinois 60601

Dear Ms. Lewis,

This letter responds to your request for an interpretation regarding the applicability of the Part 279 used oil management standards to the operations of a vehicle fleet servicing operation.

Specifically you request an interpretation by EPA on whether each company service vehicle is a "generator" of shipments of less than 55 gallons of used oil; whether the company must act in compliance with the applicable requirements of the generator standards; and whether the company is exempt from the requirements for used oil transporters/ transfer facilities. In answering the letter, we are assuming no other used oil generation activities occur at each site other than those you describe.

Based on the information provided in your letter, the Agency agrees with your interpretation of the applicability of the used oil management standards to the company's used oil activities. Since the company is handling only shipments of used oil totalling 55 gallons or less from the generation site to a "used oil collection center" or a "used oil aggregation point," the activity would not be regulated under Subpart E (standards for used oil transporter and transfer facilities). Rather the activity would be regulated under Subpart C (standards for used oil generators) of Part 279 used oil management standards.

The fact that the company's employee services the customer's fleets at night, and subsequently stores less than 55 gallons of used oil in the company's service vehicle until the next business day, does not preclude the company from being regulated as a "used oil

generator." Under the provisions of 40 CFR §279.22(c), however, the 55 gallon drum must be labeled or marked clearly with the words "used oil." In addition, the company must respond to releases of used oil in accordance with §279.22(d).

Although activities described in your letter comply with Federal regulations for used oil generators, individual States may have more stringent regulations for used oil. Therefore, you should contact local and state governments where the company's used oil activities are occurring.

If you have any further questions regarding this matter, please contact Bryan Groce of my staff at (202) 260-9550.

Sincerely,

Mike Petruska, Chief  
Regulatory Development Branch

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Attachment  
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BAKER & MCKENZIE  
One Prudential Plaza  
130 East Randolph Drive  
Chicago, Illinois 60601  
Telephone: (312) 861-8000

Mr. Michael Petruska  
Chief, Regulatory Developments Branch  
United States Environmental Protection Agency  
Mail Code OS-332, 401 M Street, S.W.  
Washington, D.C. 20460

Re: Request for Determination of the Applicability of the  
Federal Used Oil Regulation (40 C.F.R.) Part 279.  
Subparts A, B, C, and E) to Fleet Servicing Operations

Dear Mr. Petruska:

On September 1, 1993 and January 10, 1994, I spoke with Mr. Groce regarding the applicability of the Federal Used Oil Regulation, 40 C.F.R. Part 279 - Standards for the Management of Used Oil, to a vehicle fleet servicing operation (the "Company"). Based upon this discussion and analysis he concluded that for purposes of this Regulation, the Company's activities classify it as a "generator" who transports shipments of used oil totalling 55 gallons or less from the generation site to a "used oil collection center" or to "a used oil aggregation point." Further, he concluded that under 40 C.F.R. Part 279.24(a) and (b) the Company would not be deemed a "transporter" subject to Subpart E - Standards for Used Oil Transporter and Transfer Facilities.

Based on our discussion and analysis, and the importance of a definitive determination of the applicability of this Regulation to the Company's operations, Mr. Groce recommended that I submit this request for the Environmental Protection Agency's determination as to the applicability of the Federal Used Oil Regulation, 40 C.F.R. Part 279, Subparts A, B, C, and E to the Company's operations.

Discussion of the Company's Operations

The Company operates a small fleet of approximately 10 or 11

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service vehicles. These service vehicles operate nationwide, however, each individual service vehicle operates in only one state. Each individual service vehicle is equipped each day with a 55-gallon drum of virgin (never used) motor oil and an empty 55-gallon drum.

The Company's employee drives the service vehicle to a customer's site. Using equipment in the service vehicle, the Company's employee services the customer's fleet of vehicles at the customer's site. Part of this service involves changing the oil in the customer's vehicles. The fleet's used oil is collected in the empty 55-gallon drum. The virgin oil from the other 55-gallon drum is placed into the customer's vehicles. Each day approximately 30 gallons of used oil are collected by each service vehicle; never more than 45 gallons of used oil would be collected in one day.

The Company's employee leaves the customer's site with 30 to 45 gallons of used oil in the used oil 55-gallon drum in the service vehicle. The Company's employee delivers the used oil drum to either the customer's own used oil aggregation point or a third-party's government-registered (or licensed, permitted, or recognized) used oil collection center, approved by the customer prior to transport off of the generation site. Because some customers' fleets are serviced at night, the used oil drum containing less than 55 gallons of used oil may be stored in the Company's service vehicle until the next business day.

#### Analysis of Applicability

As noted in both the definition of "used oil generator" found in Subpart A - Definitions, §279.1, as well as the general provision in Subpart C - Applicability, §279.20, "a used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation." The Company's employees' act of removing used oil from the customer's fleet of vehicles appears to be an act that first causes used oil to become subject to regulation. Therefore, while the customer is clearly the primary "generator" of the used oil as the owner of the vehicles being serviced, the Company also then would be a "generator" of the used oil for purposes of this Regulation's definitions.

As a generator, the Company is subject to: 1) the hazardous waste mixing requirements of §279.21, 2) the used oil storage

requirements of §279.22, and 3) the on-site burning in space heater requirements of §279.23, should any of these three activities occur. At the present time, the Company does not engage in or otherwise exceed the threshold gallon amount for any of these three activities, and therefore does not appear to trigger their applicability.

Further, the Company does not appear to be a regulated transporter of used oil subject to the requirements of Subpart E. Because the Company collects used oil at the customer's site and immediately transports it in the Company's vehicles in shipments of less than 55-gallons only to a "used oil aggregation point" or a "used oil collection center, the Company is exempt from the off-site shipment requirements. §279.24(a), (b). As a result, the Company need not obtain a RCRA identification number or comply with any of the other obligations of Subpart E.

Therefore, while the Company must comply with the applicable provisions of Subpart C, as a "generator" of used oil for the limited purposes of this Regulation, the Company is excluded from the requirements of Subpart E, applicable to used oil "transporters".

#### Request for Determination of Applicability

Because of the significance of this determination to the Company's ability to operate in compliance with the Regulation, we respectfully request the Environmental Protection Agency's determination of the applicability of the Federal Used Oil Regulation, 40 C.F.R. Part 279, Subparts A, B, C, and E, to the Company's operations as previously described in this letter. We seek to confirm Mr. Groce's initial analysis that:

- 1) Each Company service vehicle is a "generator" of shipments of less than 55 gallons of used oil.
- 2) The Company must act in compliance with the applicable requirements of Subpart
- 3) The Company is exempt from the requirements of Subpart E.

We respectfully request a determination at your earliest

convenience. If you have any questions, please contact me directly at (312) 861-2868.

Best regards,

Elizabeth E. Lewis  
EEL:llh cc: Mr. Bryan Groce