

9433.1988(02)

## RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

NOVEMBER 88

### 2. Used Oil Court Decision

On March 7, 1988, a petition was filed in the United States Court of Appeals for the District of Columbia by the Hazardous Waste Treatment Council, the Association of Petroleum Re-Refiners, and the Natural Resources Defense Council, Inc., versus the U.S. Environmental Protection Agency. The petition called for a review by the Court on a decision of the EPA concerning the regulatory status of recycled used oils under the RCRA. The Court issued a decision on the petition on October 7, 1988. Specifically, on what decision were the petitioners asking the Court to rule? What was the Court's decision?

In its final action of November 19, 1986 (51 FR 41900), the Agency decided not to list used oil that is recycled as a hazardous waste. The Agency based this decision on its finding that such a listing would attach the stigma of the label "hazardous waste" to recycled oil, thereby discouraging recycling. Furthermore, the Agency stated that its authority to regulate used oil under RCRA is not dependent on a hazardous waste listing, under the authority of the Used Oil Recycling Act of 1980, which was redesignated as RCRA Section 3014 by the Hazardous and Solid Waste Amendments of 1984. (See the discussion at 50 FR 1691; January 11, 1985 and 51 FR 41900; November 19, 1986.)

The petitioners in this case were challenging this determination made by EPA. The petitioners argued that the Agency acted contrary to law in basing its determination on the stigmatic effects of listing. That is, the petitioners argued that the RCRA statute does not give EPA the authority to not list a waste based on the stigmatic effects of such a listing. Consequently, the petitioners requested that the court order EPA to list recycled used oils as a hazardous waste.

The Court agreed that EPA erroneously based its decision not to list recycled used oils as hazardous wastes on the stigmatic effects of such as listing, a factor not permitted by statute. Thus, the Court is requiring EPA to determine whether any recycled used oils meet the technical criteria for listing under the law.

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