

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCTOBER 16, 1995

MEMORANDUM

SUBJECT: Administrative Stay of Used Oil Regulatory Provisions

FROM: Michael Shapiro, Director  
Office of Solid Waste

TO: Waste Management Division Directors, Regions I-X

This memorandum is to notify you of pending Agency action to administratively stay provisions of the 40 CFR Part 279 Recycled Used Oil Management Standards pertaining to mixtures of used oil and characteristic hazardous waste. Please pass this information on to the States in your Regions as soon as possible as a number of States are in the process of adopting the Federal used oil regulations.

**Background**

On September 10, 1992, EPA issued a final regulation establishing standards for the management of used oil destined for recycling under RCRA Section 3014. 57 FR 41566 (Sept. 10, 1992). The used oil standards cover used oil generators, transporters, processors, re-refiners, burners and marketers. These standards provide that: 1) mixtures of used oil and hazardous waste that exhibits a characteristic or that was listed solely because it exhibits a characteristic may be managed as used oil if the characteristic(s) is removed (§279.10(b)(2)(ii)); and 2) mixtures of used oil and ignitable-only wastes may be managed as used oil if the resultant mixture does not exhibit the ignitability characteristic (279.10(b) (2) (iii)).

Prior to the promulgation of the used oil rule, mixtures of used oil and characteristic hazardous waste from which the characteristic had been removed were subject to §261.3 of the RCRA hazardous waste regulations. Specifically, §§261.3(a) (2) (iii) and 261.3(d) (1) required that mixtures of used oil and hazardous waste that exhibits a characteristic at the point of generation or is listed solely because it exhibits a characteristic were subject to the land disposal restriction (LDR) requirements of Part 268, even if the mixtures no longer exhibited a hazardous characteristic at the point of disposal. 57 FR 37201 (August 18, 1992); 55 FR 3864 (January 31, 1991). With the promulgation of the used oil management standards, specifically §279.10(b) (2), decharacterized mixtures of used oil and characteristic hazardous waste became subject solely to regulation under Part 279. As a result, the §261.3 provisions and, consequently, the Part 268 LDR standards no longer applied to these mixture.

Safety Kleen Corporation challenged the §279.10(b) (2) mixture provisions alleging that they are inconsistent with statutory land ban requirements (RCRA §3004(m)) and with the land disposal restriction standards promulgated pursuant to RCRA §3004 (m). EPA agrees that the current used oil regulations do not ensure proper treatment of mixtures of used oil and characteristic hazardous waste. The Agency thus decided that the most appropriate and timely response to Safety Kleen's petition was to stay the mixture provisions pending issuance of proposed and final rulemaking to permanently amend the standards. The administrative stay is scheduled to be published in the Federal Register in October.

### **The Stay Applies only to §279.10(b) of the Used Oil Rules.**

It is important to note that the stay applies only to 40 CFR 279.10(b) (2). All other parts of the used oil regulations will remain in effect, and the stay will in no way change the manner in which the remaining used oil regulations apply. The primary effect of the stay is that, upon its effective date, the part 268 LDR requirements will apply to all mixtures of used oil and characteristic hazardous waste regardless of whether such mixtures exhibit a hazardous characteristic. A more detailed explanation of how the used oil regulations will apply as a result of the stay is provided below.

Practically, we expect that the stay will discourage mixing of used oil and characteristic hazardous waste and, as a result, provide an incentive for generators to segregate their waste streams. The Agency favors this outcome because EPA believes that, as separate streams, the used oil and characteristic hazardous waste (e.g., solvent) streams are likely to be recycled for reuse. Mixing these streams together, on the other hand, virtually ensures that the mixture will be burned, a less environmentally desirable form of waste management under the Agency's Waste Minimization National Plan.

### **We Expect Impacts to States and Regulated Community will be Limited.**

EPA believes that neither the States nor the regulated community will be significantly burdened as a result of this administrative stay. The stayed provisions are currently in effect in only those four States that lack authorization to administer and enforce the RCRA programs for hazardous waste and used oil. Since these States do not have authorized programs, the States themselves will not be impacted by the stay.

States that have modified their programs to incorporate the provisions of 40 C.F.R. § 279.10(b)(2) do not have to modify their programs by the effective date of the stay, but rather are required to adopt regulations no less stringent than the federal requirements within the time frames in 40 CFR §271.21(e)(2), subject to any extensions provided under §271.21(e) (3). The time frame also may be affected by the used oil rulemaking to be initiated in the future. The majority of States have not modified their programs to incorporate the mixture provisions. These states can simply maintain the status quo until the stay is lifted.

We expect the impact on small businesses both in unauthorized States and States that have modified their programs will be limited. Significantly, the stay will not change how “do-it-yourself” or “DIY” used oil is regulated nor will it affect the Service Station Dealers CERCLA liability exemption provided under §101(37) of CERCLA. Additionally, some of these businesses do not generate characteristic hazardous waste, and of those businesses that do, a significant number either do not mix the characteristic waste with used oil or are exempt from hazardous waste regulation because they are conditionally exempt small quantity generators pursuant to 40 C.F.R. § 261.5 (i.e., they generate no more than 100 kilograms of hazardous waste per month). These types of small businesses will not be impacted by the stay. Moreover, large and small generators alike can avoid having to comply with the LDR requirements simply by not mixing used oil and characteristic hazardous wastes. In addition, during the period of time the stay is in effect, the Agency intends to focus its enforcement-related activities only on large-quantity generators whose conduct is especially egregious.

Neither will the regulated community be significantly impacted in States that have not modified their programs. Businesses in these States will have a continuing, uninterrupted obligation to comply with the same regulatory requirements it has been subject to in the past, and the factors limiting the impact on the regulated community discussed above will be applicable here as well.

## **How does LDR Apply to Mixtures of Used Oil and Hazardous Waste?**

### Mixtures of Used Oil and Characteristic Hazardous Waste

The stay will not affect the manner in which mixtures of used oil and characteristic hazardous waste that continue to exhibit a characteristic after mixing are regulated. Such mixtures will continue to be regulated as a hazardous waste as provided under §261.3. Mixtures of used oil and characteristic hazardous waste that no longer exhibit a hazardous characteristic will continue to be managed as used oil under the recycled used oil management standards after the stay becomes effective. As a result of the stay, however, these mixtures will become subject to RCRA §261.3 mixture provisions and consequently to all applicable Part 268 LDR regulations at point of disposal. In other words, the LDR requirements, which attach to the characteristic hazardous waste at point of generation, will carry through to mixtures of used oil and characteristic waste.

Among the key LDR provisions that may apply to disposal of decharacterized mixtures of used oil and characteristic hazardous waste, (as well as to any residuals from processing and/or re-refining of these mixtures) are §§268.3, 268.9, and 268.40. §268.3(a) prohibits dilution as a substitute for treatment to achieve compliance with §268.40 (268 subpart D). Therefore, even though a hazardous characteristic may be removed as a result of mixing a characteristic waste with used oil, additional treatment may be required. §268.40 specifies the treatment standards that must be met prior to disposal of an LDR regulated waste. Depending on the waste, the Subpart D standards may require removal of any underlying hazardous constituents, as defined in §268.2(i), or treatment using a specified treatment technology prior to disposal. (It should be noted here that residuals include both ash from burning used oil, and bottoms or other residues

from re-refining or processing.) §268.9 requires that, once a waste is no longer hazardous, a one-time notification and certification must be placed in the generators' or treaters' files and sent to the appropriate EPA region or authorized state and that such notification be updated in the event of a change in the waste generation process or disposal facility changes.

#### Mixtures of Used Oil and Ignitable-Only Wastes

Once the stay becomes effective, mixtures of used oil and ignitable-only wastes (e.g., solvents) that do not exhibit the characteristic of ignitability will again become subject to regulation under §261.3 of the RCRA regulations. In essence, as a result of the stay, the used oil regulations will no longer provide an exemption from the RCRA Subtitle C regulations for mixtures of used oil and ignitable-only wastes that do not exhibit the characteristic of ignitability. In particular, such mixtures will be subject to regulation as hazardous waste if they exhibit any hazardous characteristic. Otherwise such mixtures would be regulated as used oil.

Additionally, as provided under RCRA §§261.3(a) (2) (iii) and 261.3(d)(1), the Part 268 LDR standards will apply to all mixtures of used oil and ignitable only wastes at the point of disposal, regardless of whether they exhibit a hazardous characteristic (ignitable or otherwise).

Again, given the complexity of the LDR regulations, we expect that most generators will choose to segregate rather than mix their waste streams. For further information on this memorandum, please contact Tracy Bone at (202) 260-3509.