



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SCRANTON ARMY AMMUNITION PLANT
SCRANTON, PENNSYLVANIA 18505-1138

May 13, 1999

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REVIEW COMMISSION

Engineering Office

Environmental Quality Board
P.O. Box 8477
Harrisburg, Pennsylvania 17105-8477

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Dear Sir/Madam:

I respectfully submit the following comments regarding the proposed rulemaking for management of waste oil, as published in the Pennsylvania Bulletin, Volume 29, Number 15, dated April 10, 1999.

Comment 1: With regard to § 298.12 Prohibitions. (a) *Surface impoundment prohibition* and § 298.22 Waste oil storage (a) *Storage units*. Both paragraphs state that these units are "subject to Chapter 264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities.)"

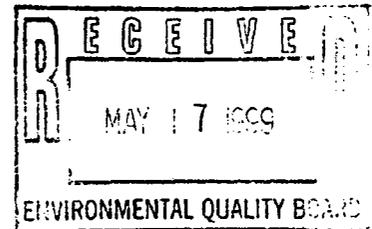
The parenthetical portion of the statement leads me to believe that permits will be required for surface impoundments and storage units that manage waste oil. Is this a reference to the permit by rule requirements described in § 298.20 (b)(3) or is there intent to institute a formal permitting process for these units?

Comment 2: Also, with regard to § 298.12 (a) and § 298.22 (a). Much of chapters 264 and 265 do not pertain to surface impoundments or storage units. Is the intent to apply *only* subparts I and J (pertaining to containers and tank systems) and subparts K and L (pertaining to surface impoundments and waste piles) of these chapters to this paragraph? If so, it would clarify this portion of the rule by specifying only these subparts.

Should you have any questions regarding this matter, please feel free to call me at (570) 340-1163.

Sincerely,

Timothy R. Tuttle
Chief Engineer



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VIA HAND DELIVERY

Ms. Sharon K. Freeman
Pennsylvania Environmental Quality Board
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400 Market Street
Harrisburg, PA 17101-2301

Re: Comments Regarding Pennsylvania's
Proposed Waste Oil Regulations

Dear Ms. Freeman:

I am enclosing for consideration by the Pennsylvania Environmental Quality Board ("EQB") comments that we have prepared on behalf of Safety-Kleen Systems, Inc. ("Safety-Kleen") regarding proposed waste oil regulations that were published in the Pennsylvania Bulletin on April 10, 1999. Safety-Kleen provides waste transportation and recycling services to thousands of businesses across Pennsylvania, many of which generate waste oil. A significant component of the services that Safety-Kleen provides involves the management of waste oil and waste oil/water mixtures. As such, Safety-Kleen has an important and direct interest in the manner in which waste oil and waste oil/water mixtures are regulated in Pennsylvania.

As described in more detail in the enclosed comments, Safety-Kleen strongly supports the efforts by the EQB and the Pennsylvania Department of Environmental Protection (the "Department") to unify and clarify the regulatory requirements that apply to the management of waste oil in Pennsylvania. The proposed waste oil regulations represent a significant step forward in addressing what is currently a very



Ms. Sharon K. Freeman
June 9, 1999
Page 2

cumbersome and confusing regulatory framework. Safety-Kleen also supports a number of key components of the proposed waste oil regulations as described in the enclosed comments.

At the same time, Safety-Kleen has identified a series of concerns associated with the proposed waste oil regulations. Certain of these concerns involve structural aspects of the proposed waste oil regulations and the manner in which the proposed regulations are likely to impact waste oil recycling activities in Pennsylvania. Other concerns stem from the fact that the proposed waste oil regulations do not treat waste oil transporters in an even-handed fashion. For example, the Department has imposed a variety of requirements on Safety-Kleen as part of a general permit recently issued to Safety-Kleen which are not reflected in the proposed waste oil regulations. In addition, the proposed waste oil regulations contain various inconsistencies as well as provisions that could be clarified and improved. Where appropriate, we have included in the enclosed comments suggested revisions to the proposed waste oil regulations.

We very much appreciate the opportunity to submit the enclosed comments to the EQB on behalf of Safety-Kleen. Because of the importance of the issues raised by the proposed waste oil regulations and Safety-Kleen's role in handling waste oil from a large number of businesses in Pennsylvania, we would be happy to meet with you and other interested individuals to discuss the enclosed comments.

On behalf of Safety-Kleen, we look forward to continuing to participate in the development of Pennsylvania's waste oil regulations.

Very truly yours,



Michael M. Meloy
For MANKO, GOLD & KATCHER, LLP

MMM/crd/10082-0036
Enclosure

cc: Marc A. Roda, Esquire (w/enclosure) (via hand delivery)
Mr. William Pounds (w/enclosure) (via hand delivery)

**COMMENTS ON BEHALF OF SAFETY-KLEEN SYSTEMS, INC.
REGARDING PENNSYLVANIA'S PROPOSED WASTE OIL REGULATIONS**

I. Introduction

On April 10, 1999, proposed waste oil regulations were published in the Pennsylvania Bulletin for public comment. See 29 Pa. Bull. 1975 (April 10, 1999). The proposed waste oil regulations were developed by the Pennsylvania Department of Environmental Protection (the "Department") and approved by the Pennsylvania Environmental Quality Board ("EQB") for public comment on February 16, 1999.

Safety-Kleen Systems, Inc. ("Safety-Kleen") provides waste transportation and recycling services to thousands of businesses across Pennsylvania. Many of these businesses generate waste oil. A significant component of the services that Safety-Kleen provides involves the management of waste oil and waste oil/water mixtures. As such, Safety-Kleen has a strong and direct interest in the manner in which waste oil and waste oil/water mixtures are regulated in Pennsylvania.

Safety-Kleen has reviewed the proposed waste oil regulations. On behalf of Safety-Kleen, Manko, Gold & Katcher, LLP ("MG&K") has prepared these comments regarding the proposed waste oil regulations. The comments are designed to improve the clarity of the proposed regulations as well as to address certain substantive issues of importance to Safety-Kleen embodied in the proposed regulations.

II. Discussion

A. General Comments

1. Structural Approach

Safety-Kleen strongly supports the Department's efforts to address the management of waste oil in a single set of regulations. For a number of years, Pennsylvania's regulations implementing the Solid Waste Management Act ("SWMA") have dealt with waste oil in a fashion that is both cumbersome and extremely confusing. Safety-Kleen believes that a unified regulatory approach will be of assistance to both the Department and the regulated community, and will greatly improve the fractured regulatory structure that presently exists in Pennsylvania with respect to waste oil.

2. Integration with Pennsylvania's Hazardous Waste Program

Under the proposed waste oil regulations, waste oil that is recycled is classified as a residual waste. This includes not only waste oil that does not qualify as a hazardous waste but also waste oil that would otherwise be classified as a characteristic hazardous waste, provided that such waste oil has not been mixed with a hazardous waste and is

destined to be recycled or reused. Such a framework is generally consistent with current regulations. Safety-Kleen supports this framework.

By contrast, the proposed waste oil regulations make clear that mixtures of waste oil and hazardous wastes will generally be subject to full regulation as hazardous wastes. Accordingly, such mixtures generally fall outside the scope of the proposed waste oil regulations.

While waste oil subject to the proposed waste oil regulations is classified as a residual waste, a number of specific provisions within the proposed waste oil regulations incorporate or reflect management standards and requirements that are applicable to the handling of hazardous wastes. Safety-Kleen believes that in many instances, such standards and requirements are unnecessarily stringent and will result in additional costs for the regulated community with no significant environmental benefits. Moreover, the proposed waste oil regulations have the effect of subjecting waste oil that would not qualify as a hazardous waste under any circumstances to hazardous waste requirements and standards. Accordingly, if the proposed waste oil regulations are finalized in their current form, waste oil that is being recycled will be subject to regulations that are substantially more restrictive than those currently in place. By contrast, waste oil that is destined for disposal will typically be subject to basic residual waste requirements which are less stringent than those contained in the proposed waste oil regulations. Such a structural flaw in the proposed waste oil regulations, unless corrected, will discourage recycling activities and encourage disposal of waste oil. This result is wholly contrary to the Department's policies and objectives, as well as both federal and state legislative pronouncements.¹

Key provisions of the proposed waste regulations that reflect requirements and standards applicable to hazardous wastes rather than residual wastes (as waste oil that is being recycled is classified) include the following:

- (1) 25 Pa. Code § 298.1² incorporates by reference the definitions contained in Pennsylvania's hazardous waste regulations. By contrast, the definitions contained in Pennsylvania's residual waste regulations are nowhere mentioned.
- (2) 25 Pa. Code § 298.12 prohibits the management of waste oil in surface impoundments or waste piles unless such units are subject to the

¹ The federal used oil regulations, which were promulgated on September 10, 1992, were specifically intended to "encourage the recovery or recycling of used oil." 57 Fed. Reg. 41567 (Sept. 10, 1992). This is consistent with Congressional directives that federal regulations "not discourage the recovery or recycling of used oil." 42 U.S.C. § 6935(a). Similarly, Pennsylvania's Used Oil Recycling Act states in its legislative findings and policy section, 58 P.S. § 471, that "used oil should be collected, recycled and reused to the maximum extent possible."

² Unless otherwise indicated, all references to 25 Pa. Code Chapter 298 are to the proposed version of the waste oil regulations as published in the Pennsylvania Bulletin on April 10, 1999.

requirements applicable to hazardous waste impoundments and waste piles. By contrast, the residual waste regulations contain detailed requirements governing the use of impoundments that are nowhere mentioned.

- (3) 25 Pa. Code § 298.20(b)(3)(ii) authorizes waste oil generators to use oil/water separators as part of wastewater treatment units only if such wastewater treatment units satisfy the permit-by-rule standards for wastewater treatment units formerly found in Pennsylvania's hazardous waste regulations rather than the permit-by-rule standards for wastewater treatment units found in Pennsylvania's residual waste regulations.³
- (4) 25 Pa. Code §§ 298.22(a), 298.45(c), and 298.64(a) provide that waste oil may not be stored in units other than tanks, containers or units "subject to regulation under Chapter 264 or 265" of Pennsylvania's hazardous waste regulations. The relevant provisions of Pennsylvania's residual waste regulations are nowhere mentioned in these sections of the proposed waste oil regulations.
- (5) 25 Pa. Code § 298.45(j) (misdesignated as 25 Pa. Code § 298.45(c)) subjects waste oil transporters to 25 Pa. Code Chapter 264, Subchapters C and D (relating to hazardous waste preparedness and prevention; and hazardous waste preparedness, prevention and contingency plans and emergency procedures) rather than analogous provisions in Pennsylvania's residual waste regulations. 25 Pa. Code §§ 298.22(e) and 298.54(a) contain parallel provisions applicable to waste oil generators, and waste oil processors and refiners, respectively.
- (6) 25 Pa. Code § 298.54(h)(1)(ii) incorporates closure and postclosure care requirements applicable to hazardous waste landfills where not all contaminated soil associated with the closure of aboveground waste oil storage tanks can be practicably removed. These requirements in the proposed waste oil regulations apply even in circumstances where the waste oil that was stored would not qualify as either a listed or characteristic hazardous waste. As such, the requirements expand the scope of hazardous waste closure and postclosure obligations to aboveground storage tanks that are used to hold waste oil.

³ The requirements listed in 25 Pa. Code § 298.20(b)(3)(ii) do not reflect the changes that were made to the permit-by-rule authorization for wastewater treatment units in the recent amendments to Pennsylvania's hazardous waste regulations published in the Pennsylvania Bulletin on May 1, 1999. Compare 25 Pa. Code § 265.433 (rescinded) and 25 Pa. Code § 270a.60(b)(1). At a minimum, the requirements listed in 25 Pa. Code § 298.20(b)(3)(ii) should be revised to be consistent with Pennsylvania's new hazardous waste regulations.

The foregoing provisions apply to waste oil that is being recycled. By contrast, waste oil qualifying as residual waste and destined for disposal would be subject to the less stringent residual waste regulations.⁴ This perverse twist in the proposed waste oil regulations, which presumably was unintended, will wreck havoc with efforts to encourage waste oil recycling.

To the extent that the Department has simply incorporated provisions of the federal used oil regulations developed by the U.S. Environmental Protection Agency (“EPA”), we note that important differences exist between the federal regulatory structure under the Resource Conservation and Recovery Act (“RCRA”) and Pennsylvania’s regulatory structure under the SWMA. Specifically, EPA has not adopted any sort of regulatory program analogous to the residual waste program in Pennsylvania. Accordingly, to the extent that EPA sought to reference existing waste management standards in its used oil regulations, the standards in the federal hazardous waste regulations were the only viable option. Such is not the case in Pennsylvania.

Moreover, it is unclear whether Section 3009 of RCRA, 42 U.S.C. § 6929, actually requires the Department to conform Pennsylvania’s waste oil regulations to the specific language of EPA’s used oil regulations, at least with respect to generators and transporters of waste oil, as the preamble to the proposed waste oil regulations appears to suggest. Section 3014(c)(1) of RCRA specifically provides that “[w]ith respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.” 42 U.S.C. § 6935(c)(1) (emphasis added).

3. Integration with Pennsylvania’s Storage Tank Program

Certain provisions of the proposed waste oil regulations indicate that tanks used to hold waste oil are subject to requirements under the Pennsylvania Storage Tank and Spill Prevention Act (“STSPA”). For example, under the proposed waste oil regulations, generators of waste oil are subject “to the underground storage tank standards in Chapter 245 ... for waste oil stored in underground tanks whether or not the waste oil exhibits any characteristics of hazardous waste.” 25 Pa. Code § 298.45(e). The same requirements are applicable to waste oil transporters, 25 Pa. Code § 298.45(j) (misdesignated as 25 Pa. Code § 298.45(c)), waste oil processing and refining facilities, 25 Pa. Code § 298.54(a), and waste oil burners who burn off-specification waste oil for energy recovery, 25 Pa. Code § 298.64(h). These provisions are confusing in that it is wholly unclear how such requirements interrelate with the standards under the hazardous waste regulations for tanks that are also referenced in the proposed waste oil regulations.

⁴ Waste oil is not a listed hazardous waste. Moreover, based on Safety-Kleen’s experience in handling waste oil from a large number of generators, much of the waste oil that is generated in Pennsylvania does not exhibit any hazardous waste characteristics. As such, even without the proposed waste oil regulations, a significant amount of waste oil generated in Pennsylvania would be classified as a residual waste rather than a hazardous waste.

For example, the proposed waste oil regulations provide that waste oil is not to be stored in units other than tanks, containers or units "subject to regulation under Chapter 264 or 265" of the Pennsylvania hazardous waste regulations. See 25 Pa. Code §§ 298.22(a), 298.45(c), and 298.64(a). At the same time, the proposed waste oil regulations provide that underground storage tanks holding waste oil are subject to the regulations implementing the STSPA. See 25 Pa. Code §§ 298.22(e), 298.45(j) (misdesignated as 25 Pa. Code § 298.45(c)), 298.54(i), and 298.64(h). To the extent that conflicts or inconsistencies exist between the technical requirements under the STSPA and Pennsylvania's hazardous waste regulations relating to storage tanks, the proposed waste oil regulations are silent as to how such conflicts and inconsistencies will be resolved.

4. Mixing of Hazardous Wastes and Waste Oil

As discussed in the preamble to the proposed waste oil regulations, the Department has proposed to subject (with one minor exception) any mixtures of hazardous wastes and waste oil to full regulation under the hazardous waste program. As proposed, this rule applies both to mixtures of characteristic hazardous wastes (except ignitable hazardous wastes) and waste oil, and to mixtures of waste oil and hazardous wastes generated by conditionally exempt small quantity generators ("CESQGs"). In this regard, the proposed waste oil regulations depart significantly from both the federal used oil regulations and the current waste oil regulations under the SWMA.

Safety-Kleen believes that the proposed waste oil regulations should be structured to provide incentives to promote both the recycling of waste oil by means other than burning and the recycling of hazardous wastes. At a minimum, this means that the regulations should provide for a "level playing field" between waste oil that is destined to be recycled by means other than burning and waste oil that is destined to be burned. Because the proposed waste oil regulations as currently drafted do not favor burning of waste oil over other types of recycling options by allowing mixtures of waste oil and hazardous wastes from CESQGs to be burned but not reclaimed under reduced regulatory requirements as the Department has proposed in the past, Safety-Kleen supports the Department's proposed requirements relating to mixtures of waste oil and hazardous wastes.

In addition, the Department's proposed requirements relating to mixtures of waste oil and hazardous wastes are consistent with the Department's goals of fostering the reuse and recycling of waste materials. If generators segregate their hazardous waste streams from waste oil, there will be enhanced opportunities to effectively recycle such hazardous wastes. Waste oil that is generated may also be more amenable to being reused and recycled by means other than burning if hazardous wastes have not been mixed with the waste oil. These factors strongly militate in favor of the Department's proposed requirements.

B. Specific Comments

1. Waste Oil Screening Requirements

As the Department is aware, Safety-Kleen has established rigorous screening procedures that it follows before accepting shipments of waste oil and waste oil/water mixtures. Safety-Kleen believes that these screening procedures help safeguard against the impermissible mixing of waste oil and other materials, and enhance the integrity of the collection, transportation, and recycling processes associated with waste oil. The screening procedures developed by Safety-Kleen have been incorporated into a general permit (General Permit WMGR-029) issued by the Department on January 29, 1999, and establish a benchmark for the waste oil industry.

Safety-Kleen believes that the requirements in the proposed waste oil regulations and the requirements that the Department has imposed on Safety-Kleen through the general permitting process should be consistent with each other. Otherwise, waste oil transporters will not be operating on a "level playing field."

a. Total Halogen Content of Waste Oil

Under 25 Pa. Code § 298.44(a), the proposed waste oil regulations will allow waste oil transporters to apply "knowledge of the halogen content of the waste oil in light of the materials or processes used" to determine the total halogen content of a shipment of waste oil. Safety-Kleen strongly objects to this provision to the extent that it will allow other waste oil transporters to avoid testing requirements that the Department has imposed on Safety-Kleen. There is no reason that Safety-Kleen should be required to screen each shipment of waste oil that it receives for total halogen content if other waste oil transporters can simply rely on knowledge of the halogen content of the waste oil in light of the materials and processes used. While Safety-Kleen believes that the screening procedures set forth in General Permit WMGR-029 are standards that all waste oil transporters should be required to follow and are entirely consistent with the Department's goal of minimizing the mixing of hazardous wastes and waste oil, Safety-Kleen recognizes that knowledge of the halogen content of waste oil in light of the materials and processes used can be an appropriate mechanism for evaluating the halogen content of a shipment of waste oil in certain circumstances. This, however, is not an option that the Department has made available to Safety-Kleen in General Permit WMGR-029.

In light of the foregoing, Safety-Kleen recommends that the proposed waste oil regulations be modified to be consistent with the requirements imposed on Safety-Kleen by the Department in General Permit WMGR-029. This course of action will ensure that waste oil transporters are taking appropriate steps to screen shipments of waste oil for halogen content and will best effectuate the goals of the Department.

In the absence of such modifications to the proposed waste oil regulations, Safety-Kleen requests that a provision be added to the proposed waste oil regulations automatically amending General Permit WMGR-029 (and any other similar general permits) to allow Safety-Kleen to use knowledge of the halogen content of a shipment of waste oil in light of the materials or processes used in lieu of directly testing the waste oil shipment. For example, Safety-Kleen suggests that 25 Pa. Code § 298.44(b) be modified by adding at the beginning of the provision the following phrase – “Notwithstanding any condition of a general permit to the contrary,”. If the Department fails either to make the screening requirements in the proposed waste oil regulations consistent with the provisions of General Permit WMGR-029 or to modify the proposed regulations to automatically supercede inconsistent provisions of the general permit, Safety-Kleen will be adversely impacted by clear and unreasonable disparate treatment at the hands of the Department.

The same issue is raised by the provisions in the proposed waste oil regulations applicable to waste oil processing and refining facilities and waste oil burners who burn off-specification waste oil for energy recovery. See 25 Pa. Code §§ 298.53(b) and 298.63(b), respectively. Safety-Kleen has identical concerns with respect to such facilities as described above with respect to waste oil transporters. In addition, Safety-Kleen notes that the proposed waste oil regulations do not specify how waste oil collection centers are to ensure that they are collecting only waste oil that has not been impermissibly mixed with hazardous wastes.

While Safety-Kleen strongly believes that it should not be subjected to testing requirements that other waste oil transporters and processors do not need to satisfy, Safety-Kleen also believes that redundant testing does not serve any legitimate purpose. Accordingly, if a shipment of waste oil has been tested to determine its halogen content, those transporters and processors that receive the shipment should be able to rely on the test results rather than retesting the shipment. Such procedures are recognized in the requirements for waste oil burners who burn off-specification waste oil for energy recovery, 25 Pa. Code § 298.63(b)(3), but are missing from the sections of the proposed waste oil regulations applicable to waste oil transporters and processors. Safety-Kleen suggests that this omission be corrected in the final version of the waste oil regulations.

b. Flash Point Analysis for Waste Oil

The proposed waste oil regulations are silent with respect to any requirement for waste oil transporters and processors to test shipments of waste oil for flash point.⁵ Safety-Kleen has pointed out in the past that flash point analysis is costly for waste oil generators and time consuming. Moreover, field methods to perform flash point analysis do not currently exist thereby requiring that individual samples be sent to a laboratory for

⁵ Under 25 Pa. Code § 298.11(b), waste oil that qualifies as “on-specification fuel oil” must have a flash point of at least 100° F. The person or entity that first claims that waste oil qualifies as “on-specification fuel oil” is responsible for making such a determination. This is very different than requiring, as the Department has done in General Permit WMGR-029, that shipments of waste oil routinely be evaluated for flash point as a mechanism for assessing whether hazardous wastes may have been mixed into the waste oil.

evaluation. Nevertheless, the Department has included flash point testing requirements in General Permit WMGR-029. Safety-Kleen strongly objects to being subject to more stringent requirements than other waste oil transporters and processors. Accordingly, Safety-Kleen believes that all waste oil transporters should be subject to the testing requirements that the Department has imposed on Safety-Kleen. In the alternative, Safety-Kleen requests that the proposed waste oil regulations be modified to supercede any inconsistent provisions in General Permit WMGR-029. This can be accomplished by including the following language in the waste oil regulations:

Notwithstanding any condition of a general permit to the contrary, a waste oil transporter shall not be required to determine the flash point of waste oil for purposes of evaluating whether hazardous wastes may have been mixed with the waste oil.

Safety-Kleen suggests that this provision be included as 25 Pa. Code § 298.44(e).

2. Mixtures of Waste Oil and Water

The proposed waste oil regulations provide that wastewater contaminated with waste oil is to be managed as waste oil under 25 Pa Code Chapter 298 if either (a) at least 1% of the wastewater is waste oil, or (b) the wastewater contains marketable quantities of waste oil. 25 Pa. Code § 298.10(c)(4). As the Department has acknowledged in the preamble to the proposed waste oil regulations, these requirements depart sharply from the provisions of the federal used oil regulations. The federal used oil regulations generally provide that materials containing or otherwise contaminated with used oil such that visible signs of free-flowing oil remain in or on the materials are regulated as used oil.

Safety-Kleen believes that the Department should conform the proposed waste oil regulations with the requirements of the federal used oil regulations with respect to the classification of mixtures of waste oil and water. From a practical perspective, it is extremely difficult to obtain representative samples of mixtures of waste oil and water to determine whether the 1% standard (or a lower numerical standard as applicable) is being met. This is particularly true where mixtures of waste oil and water are being held in irregularly shaped devices such as sumps and pits. The requirements proposed by the Department will therefore be difficult for the Department to administer and for the regulated community to satisfy. By contrast, a standard that relies on a non-numeric standard such as the presence of visible waste oil in a mixture of waste oil and water is much easier for the Department to administer and the regulated community to use.

The requirements regarding mixtures of waste oil and water in the proposed waste oil regulations will also create difficulties in managing various waste streams. Under the proposed waste oil regulations, wastewaters containing de minimis quantities of waste oil and subject to regulation under either Section 307(b) or Section 402 of the Clean Water Act are specifically excluded from regulation under the proposed waste oil regulations.

The corollary is that wastewaters containing more than de minimis quantities of waste oil should be subject to the waste oil regulations. This is not the case, however, under the terms of the proposed waste oil regulations. Instead, wastewaters must contain either at least 1% waste oil or marketable quantities of waste oil to be so regulated. For oily wastewaters that do not meet this threshold but contain more than de minimis quantities of waste oil, the management options will be severely restricted by the proposed waste oil regulations.

The justification advanced by the Department in the preamble to the waste oil regulations for its proposed requirements relating to mixtures of waste oil and water rests on the fact that waste oil processors may at times have difficulties extracting low concentrations of waste oil from waste oil/water mixtures. This ignores the environmental benefits that result from such waste oil processors recovering as much oil as possible and treating any remaining wastewater in an environmentally sound fashion. By prohibiting mixtures of waste oil and water containing low levels of waste oil from being handled at such facilities, the Department is simply forcing such mixtures to be handled at other wastewater treatment plants and creating incentives for generators to skirt the regulations by illegally handling oily wastewaters. This is a classic example of the environmental shell game of moving waste streams from one pigeon hole to another with no attendant environmental benefits. Safety-Kleen believes that the better approach, embraced in the federal used oil regulations, is to allow mixtures of wastewater and waste oil containing visible amounts of waste oil to be handled within the waste oil system rather than being forced outside that system where adequate management options may not be readily available or exist at all.

3. Imports and Exports of Waste Oil

Under the proposed waste oil regulations, “[a] transporter who imports waste oil into or exports waste oil out of this Commonwealth is subject to this subchapter from the time the waste oil enters until the time it exits this Commonwealth.” 25 Pa. Code § 298.40(b). This provision on its face applies to shipments of waste oil that are merely passing through Pennsylvania to reach destination points outside of the Commonwealth. It is unclear whether such a provision would withstand scrutiny under a challenge based on the Commerce Clause of the United States Constitution. Moreover, it highlights the problems associated with transportation requirements under the proposed waste oil regulations that are more restrictive than federal requirements. For example, under the proposed waste oil regulations, waste oil transporters are subject to permitting requirements that are not included in the federal used oil regulations, must comply with Subchapters C and D of 25 Pa. Code Chapter 264, and must comply with requirements relating to signs on vehicles set forth at 25 Pa. Code § 298.48. Safety-Kleen suggests that the Department revise the proposed waste oil regulations to distinguish between requirements that are applicable to transfer stations being operated within Pennsylvania and transportation activities in which shipments of waste oil are merely passing through Pennsylvania. In the former circumstances, the Department can apply its requirements to fixed facilities within the Commonwealth. In the latter circumstances, the activities at

issue involve purely transportation functions that should be regulated uniformly across state lines.

4. Permitting Requirements for Waste Oil Transfer Stations

As noted above, Safety-Kleen has obtained a general permit from the Department authorizing the operation of transfer stations which are used for the collection, bulking, storage and passive oil/water separation of, among other things, waste oil and waste oil/water mixtures. Safety-Kleen devoted substantial resources to this permitting process.

The proposed waste oil regulations include a permit-by-rule authorization for certain types of waste oil transfer stations. See 25 Pa. Code § 298.45(b)(4). This authorization is only available if the waste oil collected at the transfer station is destined for a waste oil transfer or processing/refining facility located in Pennsylvania which is owned or operated by the same entity owning or operating the transfer station. Where the owner or operator of the transfer station is directing the waste oil to a transfer or processing/refining facility outside of Pennsylvania, the permit-by-rule authorization is not available.

Safety-Kleen has significant concerns that the provisions of the proposed waste oil regulations discussed above will create an uneven playing field. Some transporters will be able to operate under the permit-by-rule authorization while others will be required to obtain either individual or general permits. This evaluation turns, in large part, on whether the transporter operates a processing or refining facility inside of Pennsylvania. Such a distinction conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution. Safety-Kleen suggests that the permit-by-rule authorization be eliminated and that all waste oil transporters be treated equally under the waste oil regulations.

5. Definition of Waste Oil Transfer Stations

Under the proposed waste oil regulations, a waste oil transfer facility is defined as “[a] transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of waste oil are received or held, or both, during the normal course of transportation.” 25 Pa. Code § 298.1. This proposed definition is extremely broad and encompasses a much wider range of facilities than does the corresponding definition of a “used oil transfer facility” under the federal used oil regulations. For example, the federal definition includes the concept that used oil (waste oil) be held at the transfer facility for more than 24 hours.

Safety-Kleen is extremely concerned that the definition of a waste oil transfer facility contained in the proposed waste oil regulations is so broad that it will encompass a wide variety of facilities that the Department never intended to cover. For example, truck stops, restaurants, motels, and fueling facilities are transportation related facilities that include parking areas where shipments of waste oil are held during the normal course of transportation. It would be an absurd result for a transporter hauling a shipment of

waste oil to trigger permitting requirements under the SWMA by stopping for dinner or night of rest. To avoid this problem, Safety-Kleen suggests that the Department substantially narrow the proposed definition of a waste oil transfer facility.⁶

6. Definition of Waste Oil

As described in the preamble to the proposed waste oil regulations, the definition of waste oil contained in the proposed regulations incorporates both the federal and state definitions of "used oil." The resulting definition is confusing and redundant. The Pennsylvania Used Oil Recycling Act defines "used oil" as petroleum or synthetic based oil used to lubricate an internal combustion motor or a motor vehicle's transmission, gears or axles which has become unsuitable for its original purpose due to contamination or loss of properties through handling, storage or use. By contrast, the federal definition of "used oil" is "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." 40 C.F.R. § 279.1. As such, used oil under the Pennsylvania Used Oil Recycling Act is a subset of used oil as that term is defined in EPA's regulations.

The proposed waste oil regulations do not recognize the overlap between the two definitions described above. Instead, they are both listed (in slightly modified form) as independent prongs of the Department's definition of waste oil. Safety-Kleen suggests that the waste oil regulations be revised to define the term "used oil" consistent with the Pennsylvania Used Oil Recycling Act and to eliminate the second prong of the definition of "waste oil." In place of the second prong of the definition, Safety-Kleen further suggests that the following phrase be added – "Waste oil includes used oil."

7. Permissible Halogen Content of On-Specification Fuel Oil

As part of the proposed waste oil regulations, the Department has included a limit of 1,000 ppm for total halogens in order for waste oil to qualify as on-specification fuel oil. Safety-Kleen believes that such a standard rather than the 4,000 ppm total halogen level found in the federal used oil regulations is appropriate because it will help eliminate confusion between the standard for on-specification fuel oil and the standard for total halogens included in the provisions relating to the rebuttable presumption for waste oil. By making these standards consistent with each other, those handling waste oil can use a single benchmark for determining whether waste oil satisfies the rebuttable presumption and whether it potentially qualifies as on-specification fuel oil.

⁶ In the preamble to the proposed waste oil regulations, the Department stated that there is no minimum limit under the SWMA for the amount of time that a waste may be held at an off-site location without turning that location into a transfer facility. The Department apparently takes the view that holding a waste at an off-site location for any amount of time triggers the transfer facility requirements in the SWMA. This is incorrect. For a facility to qualify as a transfer facility, wastes must be "temporarily store[d]" at that facility. 35 P.S. § 6018.103. The Environmental Hearing Board has distinguished between activities that are part of a transportation process and "temporary storage." See S.H. Bell Company v. Commonwealth of Pennsylvania, Department of Environmental Resources, 1991 EHB 587 (1991). In addition, the Department, as a matter of policy, has used a 24 hour time limit as a benchmark for evaluating whether a waste has been temporarily stored.

8. Waste Oil Transportation Destinations

The proposed waste oil regulations specify that waste oil transporters may only deliver waste oil to another waste oil transporter, a waste oil processing/refining facility, an off-specification waste oil burner facility or an on-specification waste oil burner facility. 25 Pa. Code § 298.43(a). Noticeably absent from this list are waste oil transfer facilities. Safety-Kleen recommends that the Department correct this omission by including waste oil transfer facilities within the list of permissible destination points.

9. Condition of Storage Units

The proposed waste oil regulations specify that waste oil is to be held in containers or aboveground storage tanks that “not leak.” See, e.g., 25 Pa. Code §§ 298.22(b)(2), 298.45(d)(2), 298.54(b)(2), and 298.64(b)(2). By contrast, the analogous provisions of the federal used oil regulations provide that containers and aboveground storage tanks used to hold used oil “be ... not leaking (no visible leaks).” See, e.g., 40 C.F.R. §§ 279.22(b)(2), 298.45(c)(2), 298.54(b)(2), and 298.64(b)(2). This difference in phrasing is potentially very important. The federal standards require that tanks and containers not be actively leaking. By contrast, the proposed waste oil regulations require that tanks and containers not leak (ever). This creates an absolute performance standard that may be difficult if not impossible to satisfy. Safety-Kleen suggests that the proposed waste oil regulations be revised to follow the federal provisions regarding the condition of containers and aboveground storage tanks.

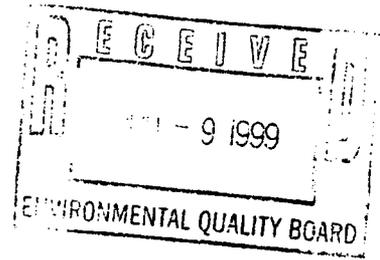
Freeman, Sharon

From: YPTCRW@aol.com
Sent: Wednesday, June 09, 1999 3:23 PM
To: RegComments@dep.state.pa.us
Subject: Proposal - Waste Oil Amendments

June 9, 1999

Ms. Kate Coleman
Environmental Quality Board
P O Box 8477
Harrisburg, PA 17105-8477

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Dear Ms. Coleman:

Please accept these comments on the Proposed Waste Oil Amendments in addition to the comments previously submitted by Robert Krawiecki on behalf of C. R. Warner Inc., PA DEP Facility 301285.

Study of the amendments has led me to conclude that the proposed change to use the term "waste oil" in the place of EPA's "used oil" is a serious problem which leads to predetermined conclusions regarding the end product which results from recycling used oil. The draft states that " this is primarily a difference in terminology and not definition." However, the EPA has never considered recycled used oil a waste. By using the term "waste" the Proposed Amendments give PA DEP, particularly the enforcement division, the opportunity to assume that used oil is a waste which must be properly disposed. The EPA clearly recognizes the environmental and economic benefit of recycling used oil as its only three classifications for used oil are : on-specification used oil fuel, off-specification used oil fuel and hazardous waste oil. On-specification used oil fuel and off-specification used oil fuel are never classified as a waste by the EPA Regulations.

In addition, as Yankee Point Terminal is a permitted processing and transfer used oil facility, our permit requires our customers (generators) to certify whether their oil is "Waste Oil" or "Used Oil". The permit also requires the generator to certify that their oil has not been mixed with any other wastes and that it contains no measurable PCB's. Waste oil and Used Oil are two different products, determined by how the oil was generated. However, the Proposed Amendments do not address this conflict at all.

The Proposed Waste Oil Amendments state that the term "used oil" is being eliminated because it is "potentially confusing" and that the change is not a change in "definition". However, the result is an interpretation that recycled used oil is a "waste" and does not have to be considered a valuable commodity fuel product readily consumed by major energy producing utilities in this region.

Respectfully submitted,

Rose Krawiecki
for C. R. Warner Inc.
Yankee Point Terminal
6050 West Passyunk Ave.
Philadelphia, PA 19153
(215) 726-4300



BEFORE THE
ENVIRONMENTAL QUALITY BOARD

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Waste Oil Amendments)

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Docket No: 7-342

COMMENTS OF THE PENNSYLVANIA GAS ASSOCIATION

The Pennsylvania Gas Association ("PGA") files these comments on behalf of its members pursuant to the proposal adopted by the Board in the above docket on February 16, 1999, and published in the April 10, 1999 issue of the *Pennsylvania Bulletin*.¹

1. **Pennsylvania's Waste Oil Regulations Should Mirror the Federal Used Oil Regulations in Their Applicability to Mixtures of Waste Oil and Characteristically Hazardous Waste.**

In determining whether a mixture of used oil and "characteristically hazardous" waste will be subject to the storage and shipment regulations for used oil,² or the significantly more stringent (and costly) storage and shipment regulations for hazardous waste, the federal regulations look to the properties of the mixture. If the mixture does not qualify as characteristically hazardous waste, the mixture is subject to the used oil regulations.³ Conversely, if the mixture qualifies as characteristically hazardous waste, the mixture is subject to the hazardous waste regulations.⁴ In all pertinent respects, the federal mixture rule applies equally to all characteristically hazardous wastes, whether the waste is characteristically hazardous due to ignitability, corrosivity, reactivity, toxicity or a combination of these properties.⁵

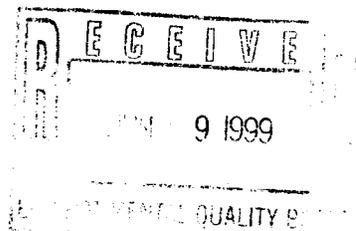
1. 29 Pa.B. 1975 (1999).

2. 40 C.F.R. Part 279.

3. 40 C.F.R. § 279.10(2)(i).

4. 40 C.F.R. § 279.10(2)(ii).

5. See generally, 40 C.F.R. §§ 261.20-23.



In contrast, the proposed waste oil regulations would apply only to mixtures containing wastes that are characteristically hazardous solely due to ignitability.⁶ Mixtures containing wastes that are characteristically hazardous on any other grounds would be excluded from the waste oil rules and would instead need to be stored and shipped as hazardous waste. Because the proposed Pennsylvania rule would exclude mixtures eligible under the federal rule, the rule may go into effect only if justified by a "compelling and articulable Pennsylvania interest" or requirement of state law.⁷ The arguments advanced in support of a more stringent mixture rule⁸ are insufficient to satisfy the demanding standard established in Executive Order 1996-1, and the proposed mixture rule should therefore be abandoned in favor of the governing federal regulations. In addition, the proposed mixture rule is particularly inappropriate and unjustified in its exclusion of wastes that are characteristically hazardous due to toxicity, and, among these, wastes from conditionally exempt small quantity generators (CESQGs).

The Department contends that an expanded mixture rule would undermine its pollution control efforts: "Allowing generators to get rid of their hazardous waste by mixing it with waste oil significantly reduces their incentive to adopt source reduction strategies to minimize the amount of hazardous waste they generate."⁹ This argument does not support the exclusion of wastes that are characteristically hazardous for toxicity. These wastes are characteristically hazardous not because they contain listed contaminants, but because listed contaminants are present at concentrations that exceed specified thresholds.¹⁰ By bringing concentrations down below federal thresholds, blending eliminates the hazardous characteristic. Extending the mixture rule to wastes that are characteristically hazardous for toxicity would not only be consistent with waste minimization; it exceeds the objective by reducing hazardous wastes to a non-hazardous state.

-
6. Proposed Section 298.10(b)(2).
 7. Executive Order 1996-1, 26 Pa.B. 856 (1996), *codified at* 1 Pa. Code § 1.371(5).
 8. 29 Pa. B. at 1977-78.
 9. *Id.* at 1977.
 10. See 40 C.F.R. § 261.23, Table 1.

The Department further argues that a narrow mixture rule advances a policy of eliminating hazardous constituents from the waste stream: “[M]erely diluting the hazardous waste with waste oil [does not protect the public health, safety or welfare because it does not] eliminate or neutralize the hazardous constituents.”¹¹ Put differently, the Department suggests that constituent minimization is a valid policy in itself, to be pursued even after the concentrations fall to non-hazardous levels. The Department offers no evidence or argument demonstrating that constituent minimization rises to the level of a “compelling and articulable Pennsylvania interest,” or is required by Pennsylvania law. Nor is anything offered to demonstrate why this policy is necessary or appropriate for Pennsylvania, when it has not been adopted at the federal level. For these reasons, a policy of constituent minimization for its own sake is a flawed basis for excluding wastes characteristically hazardous for toxicity from the state’s mixture rule.

In determining whether the proposed mixture rule meets the standards specified in executive Order 1996-1, attention should be also be paid to the effect this rule would have in practice. In transporting, storing and distributing natural gas, PGA’s members routinely encounter wastes that are characteristically hazardous both due to ignitability and due to toxicity (mainly for benzene content). If the proposed mixture rule were adopted, blends of these wastes would not be subject to the waste oil regulations. Instead, the blends would be subject to the state’s hazardous waste regulations, even though the blend would not qualify as hazardous waste under federal law. PGA would add that in its members’ considerable experience, there are almost no wastes (other than mineral spirits) that are characteristically hazardous solely due to ignitability. A mixture rule that applies to only a handful of wastes (perhaps only one), while consigning all remaining mixtures to significantly more stringent hazardous waste regulations, should not be adopted without far more justification than appears in the preamble.

The flaws in the proposed mixture rule become particularly evident when one considers that the rule, if adopted, would be applied to CESQGs (including a number of PGA members). Under the federal mixture rule, a CESQG can blend its hazardous waste and used oil together, and, if the blend is no

11. 29 Pa.B. at 1978.

longer hazardous, the CESQG's storage, labeling, record keeping, and shipping activities will be defined by the federal used oil regulations. This avenue offers significantly lower compliance costs, as compared to treating the blend as hazardous waste or keeping the waste streams separate and maintaining two separate compliance systems. The savings in compliance costs provides powerful incentive for a CESQG to keep its volume of hazardous wastes to levels that permit the blending option. In contrast, under the proposed mixture rule, all but a few characteristically hazardous wastes would be categorically ineligible for Pennsylvania's waste oil regulations. As a result, CESQGs would lose what otherwise would have been a significant inducement to waste minimization.

For these reasons, PGA respectfully urges adoption of the federal mixture rule and rejection of the Department's proposed mixture rule, particularly as to the inclusion of wastes that are characteristically hazardous due to toxicity and wastes generated by CESQGs.

2. The Proposed Labeling Regulation Should Be Harmonized with the Corresponding Federal Requirement.

Under Proposed Section 298.22(c), aboveground storage units and pipes would have to be labeled "waste oil."¹² The corresponding federal regulation requires the same facilities to be labeled "used oil."¹³ PGA appreciates the Department's preference for "waste oil" given that "used oil" is a defined term under Pennsylvania's Used Oil Recycling Act.¹⁴ Nevertheless, some recognition should surely be given to the thousands of "waste oil" labels that have already been affixed by generators complying with federal regulations. In these cases, it cannot reasonably be argued that a second, "waste oil" label would be anything more than a duplication of efforts and costs. PGA would respectfully suggest the federal and state labeling requirements be harmonized by (1) adopting a grandfathering provision that would deem the "used oil" labels currently in place sufficient for the state regulations; and (2) developing a federal-state memorandum of understanding or other cooperative document to establish a

12. See, 29 Pa.B. at 1996.

13. 40 C.F.R. § 279.22(c).

14. See generally, 29 Pa.B. at 1975-76.

single labeling standard going forward.

3. **The Minimum Btu Standard for Waste Oil Burned for Energy Recovery Should Be Clarified to Apply to the Oil As Burned, Not to Individual Oils That Are Blended Together Prior to Burning.**

As specified in Proposed Section 298.11(a), "Waste oil, and any fuel produced from waste oil by waste oil processing, blending or other treatment, to be burned for energy recovery . . . shall have at least 8,000 Btus per pound."¹⁵ The reference to "processing, blending or other treatment" would suggest that a blended oil burned for energy recovery could contain oils that have less than 8,000 Btus per pound, provided the blended oil, as burned, had at least 8,000 Btus per pound. Unfortunately, the preamble clouds the matter, perhaps inadvertently, by admonishing that "if the waste oil contains less than 8,000 Btus per pound, the waste oil is being incinerated as a hazardous or residual waste, rather than being burned for energy recovery."¹⁶

PGA members have encountered waste oils with fewer than 8,000 Btus per pound, which are blended with other oils to reduce the Btu content to desired levels. It appears that this process should be acceptable, and the resulting blend should be eligible for burning for energy recovery within the proposed regulations. A clarification confirming this understanding would be helpful.

4. **The Federal Regulations Governing Spill Prevention, Control and Countermeasures Are the Most Appropriate Requirements for Waste Oil Storage, and They Should Be Expressly Incorporated into Pennsylvania's Regulations.**

In nearly significant respect, Proposed Section 298.22 tracks the Federal regulation governing used oil storage.¹⁷ There is, however, one significant difference. The very first sentence of the federal regulation provides that waste oil generators are subject to all applicable provisions of the federal

15. 29 Pa.B. 1994.

16. *Id.* at 1979.

17. Compare 29 Pa.B. at 1996 (text of Proposed Section 298.22) with 40 C.F.R. § 279.22.

regulations governing spill prevention, control and countermeasures ("SPCC").¹⁸ The proposed Pennsylvania regulations would subject waste oil generators to the Department's regulations at Chapter 265, Subchapters C and D.¹⁹ Subchapters C and D apply to owners and operators of hazardous storage facilities, requiring them to develop and implement preparedness, prevention and contingency ("PPD") plans, with associated public notice and other requirements.

The federal SPCC regulations are specifically tailored to waste oil storage, and they already apply throughout Pennsylvania to any party storing waste oil in a container larger than 660 gallons or in a series of containers holding more than 1320 gallons. Given the scope and applicability of the federal requirement, PPD plans are unnecessary. In effect, requiring PPD plans would subject Pennsylvania's waste oil generators to the same contingency planning and procedures as hazardous waste generators. No justification is offered for imposing standards beyond the SPCC standards, and the regulations should therefore be amended to incorporate the SPCC regulations by reference.

CONCLUSION

PGA appreciates the opportunity to express these comments and asks the Board to take them into consideration as it continues its deliberations in this proceeding.

Respectfully submitted,
PENNSYLVANIA GAS ASSOCIATION

By: 
DAN REGAN
General Counsel

Dated: June 9, 1999

18. 40 C.F.R. § 279.22.

19. See 29 Pa.B. at 1996 (Proposed Section 298.22, first sentence).

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Environmental Quality Board
Rachel Carson State Office Building
15th Floor, 400 Market Street
Harrisburg, PA 17101-2301

June 8, 1999

Gentlemen:

The following comments are provided on behalf of the Specialty Steel Industry of Pennsylvania (SSIPPA), pursuant to the proposed regulations on waste oil published in the Pennsylvania Bulletin, April 10, 1999. Our comments are focused on areas that are more stringent than federal regulations or that are different from the federal regulations such that the proposed regulations would cause confusion for the regulated community and regulators.

1. Chapter 298.1 Definitions

Waste Oil – While the definition of waste oil may be similar to that contained in federal regulations, the proposed regulations do not recognize that used oil destined for recycling is exempt from the definition of a waste. Indeed, the proposed regulations track the residual waste regulations and therefore the requirements are significantly more burdensome than the federal requirements. Furthermore, no evidence of which S.S.I.P.A. is aware demonstrates that used oil destined for recycle causes a threat to human health or the environment. Therefore the additional burden caused by this regulatory package is not justified, particularly in light of the Regulatory Basics Initiative.

2. 298.10(b)(2)(ii) Mixtures of Used Oil and Characteristic Wastes

This section exempts only ignitable wastes from the characteristically hazardous waste definition. This section should include other D listed wastes by adopting the federal provision verbatim.

3. 298.20(b)(3)(ii) A,B,C Oil Water Separator

These permit-by-rule requirements for oil-water separators go well beyond the federal solid waste requirements, which do not regulate oil-water separators. Oil-water separators are typically covered by NPDES Permits and as such require no further regulation.

4. 298.20(c) Recordkeeping

This section is overly burdensome and much of the information required seems to serve no purpose. A three year recordkeeping requirement of the volume of oil shipped to processors is sufficient to manage this area.

5. 298.22 Waste Oil Storage

This section requires a generator to meet the hazardous waste regulations for storage tanks. This requirement is excessive. The Pennsylvania Aboveground Storage Tank requirements are more than sufficient to protect human health and the environment. The requirements of the Aboveground Storage Tank Program should be referenced in place of these requirements.

Additionally, this section requires the tank to be labeled "Waste Oil", while the federal regulations require "Used Oil". This clearly would cause unnecessary confusion.

6. 298.L5 Source Reduction Strategy

This section is overly burdensome and an exercise in futility. Oil is sent to recyclers when it is contaminated to the point that it no longer serves its original purpose, by definition. Therefore, the volume generated cannot be reduced. This section should be eliminated or limited to oil that is not destined for recycling.

7. General

The regulation provides no permit-by-rule for intra-company transport and treatment of used oil. Many companies have centralized used oil treatment and recovery facilities and provisions for these facilities must be included in the regulation.

In general, the Department should not place regulatory burdens on generators that make it difficult to reuse a valuable resource.

As always, we are available to discuss our comments with you at your convenience.

Sincerely,

Richard B. Hoyt





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June 8, 1999

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**RE: PROPOSED REGULATIONS FOR WASTE OIL – 25 PA. CODE CHS. 261,
266, 287, AND 298**

Dear Environmental Quality Board Members:

The Pennsylvania Chamber of Business and Industry appreciates the opportunity to comment on the proposed regulations for Waste Oil. The Chamber is the largest, broad-based business association in Pennsylvania. Our over 6,000 members employ about 50% of Pennsylvania's private workforce and 80% of our members have less than 100 employees. The Chamber is dedicated to advocating reasonable regulations that encourage economic growth while protecting the environment. In addition, we fully support Governor Ridge's commitment to have regulations that are no more stringent than the federal standards unless there is a unique, state specific reason to do otherwise.

In general, the Chamber is concerned that these proposed regulations are a departure from the corresponding federal regulations. We are submitting both general and specific comments in the attached document for your careful consideration.

Again, thank you for the opportunity to comment on this package. If you have any questions, please do not hesitate to call Sharon Roth of my staff.

Sincerely,

Fred A. Sembach
Vice President, Government Affairs

Attachment

COMMENTS TO THE PROPOSED WASTE OIL REGULATIONS

GENERAL COMMENTS

The DEP is to be commended for their goal of adopting federal used oil standards. This important package has many implications for our members. However, there are a number of significant areas where the DEP has deviated from the federal standards. In the spirit of Governor Ridge's Executive Order 1996-1 and the Administration's Regulatory Basics Initiative, we would encourage the Department to incorporate by reference the corresponding federal rules rather than "reinvent the wheel." We see no compelling state interest that would necessitate state rules that are more stringent than the already protective federal standards.

The DEP has attempted to mirror EPA's Used Oil Regulations; however a significant exception is the DEP's use of the term "waste oil" rather than "used oil." The term "waste oil" does not accurately represent "used oil." This misnomer ("waste oil") denotes that the oil no longer has value as a commodity and this is not the case. The term "used oil" is a nationally accepted term for properly identifying and referring to this material without the negative connotation of the word "waste." Used oil is a valuable product that competes with virgin fuel and lubrication products. The DEP should change all reference and utilize the term "used oil" to be consistent with the federal regulations.

Another area of concern is DEP's proposal to modify the RCRA mixture rule. This common sense rule recognizes the reality of waste management activities and is not an open invitation to dilute characteristic hazardous wastes. On the contrary, the mixture rule is intended to allow sensible mixture activities such as neutralizing acidic or corrosive waste water. DEP's proposal prohibits this logical activity and deviates from the federal requirements.

Additionally, there are other requirements in the DEP proposed regulation that are more stringent than the corresponding federal regulation. Details of some of these are discussed below. The DEP has stated publicly and strongly that they are embracing conformance to Federal Regulations via their Regulatory Basics Initiative (RBI). This set of proposed rules does not reflect this commitment.

REFERENCES TO PENNSYLVANIA'S HAZARDOUS WASTE REGULATIONS

The proposed waste oil regulations contain numerous cross-references to Pennsylvania's hazardous waste regulations. In addition, the proposed waste oil regulations include substantive provisions that apparently were intended to mirror the substantive requirements of Pennsylvania's hazardous waste regulations. Because Pennsylvania's hazardous waste regulations were overhauled after the proposed waste oil regulations were published for public comment, the cross-references and parallel provisions do not reflect the current version of the hazardous waste regulations. DEP needs to carefully

review the proposed waste oil regulations and correct these inconsistencies so that there are not unintended discrepancies in the regulations. This problem is clearly illustrate by 25 Pa. Code § 298.20(b)(3)(ii) which tracks regulatory provisions governing the permit-by-rule authorization for hazardous waste wastewater treatment units that have since been substantially revised.

More fundamentally, it is unclear why DEP has relied on elements of the hazardous waste program when waste oil is not a hazardous waste but a residual waste. Certainly the residual waste regulations provide appropriate controls for the management of residual wastes. It makes little sense to include in the waste oil regulations standards that are designed for the management of hazardous wastes when waste oil is not hazardous waste. The effect of such a tack is to subject waste oil that is being recycled and therefore governed by the waste oil regulations to significantly heavier regulatory burdens than waste oil that is being disposed of, at least to the extent such waste oil is a residual waste. This quirk in the regulations will discourage recycling activities in direct contravention of the goals set forth in the Pennsylvania Used Oil Recycling Act and DEP's policies.

298.1 DEFINITIONS

The proposed regulation contains important definitions and specific criteria for exempting from the waste regulation, oils that can be substituted directly for on-specification fuel. This is a welcomed improvement over the present regulations. Highly refined process oils, which may be inadequate to perform properly as intended, can be measured against known criteria to be used as on-spec fuel and thus exempted from the waste regulations. The references, §287.2. Scope, §298.11.(a), §298.11.(b) and Table 1 in §298.11.(b), give clear guidance for defining what is and what is not a waste oil.

This provision for exclusion from regulation addresses the RBI criteria. It minimizes redundancy and allows performance-based measurements. Generators will be encouraged to minimize contamination through pollution prevention and or the use of green technologies. This provision also clarifies many of the areas open to interpretation in the past.

281.1 – DEFINITION OF WASTE OIL TRANSFER FACILITY

The proposed definition of "waste oil transfer facility" is broader and more stringent than the corresponding federal definition in 40 CFR 279.1.

Under the federal rule, a transfer facility is a "transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held *for more than 24 hours...during the normal course of transportation...*" 40 CFR 279.1 (emphasis added). The proposed Pennsylvania rule drops the 24-hour time frame, and renders any loading dock, parking area, or other area where shipments of waste oil are "received and held" for any time to be a "transfer facility."

Read in one way, this definition could be interpreted to mean that whenever a truck which picks up material at several substation stops or parks at the loading dock at each successive site to pick up additional loads, that site becomes a "transfer facility." The Department may have intended to allay this problem by adding the word "received" to the concept of "held," but this point could certainly be clarified –either in the language of the rule or in the preamble.

EPA explains the concept of "transfer facility" in their preamble language. The federal explanation of the concept of a "transfer facility" is a "site for the temporary storage of used oil that is picked up from one or more original generators and is on its way" to a processing facility, to be reintroduced into the refining process or to be burned as a fuel oil. This language makes it clear that the area where used oil is stored at the site of generation while awaiting shipment is not a transfer facility.

Similarly, in areas where shipments are simply moved from one of the generator's trucks to another truck in order to facilitate transportation to the processor or recycling center should not be regulated as transfer units. The facility never "receives" or stores the material.

RECEIPT OF OIL FROM OFF-SITE, COMPANY OWNED FACILITIES

The current residual waste regulations, for which there is no EPA equivalent, allows a generator to receive waste from an off-site facility owned by the same generator under the Permit-By-Rule, Captive Facility clause. The Waste Oil Rules, as proposed, prohibit that action. This would require small quantity generators to pay higher costs for handling and off-site processing. Ideally, on-site recycling would be encouraged, however, this cannot always be cost justified. The DEP should define PBR in the definition section or in a section similar to 287.102 which includes captive facilities.

Alternatively, a generator definition can be established that includes all company owned facilities, not just on-site ones.

298.10(b)(2)(ii) MIXTURES OF USED OIL AND CHARACTERISTIC HAZARDOUS WASTE

This section is stricter than comparable federal regulations. It imposes an unnecessary additional burden on companies that may have metal shavings inadvertently mixed with cutting fluids or tramp oils. For example, if the shavings are characteristic hazardous waste for chromium then a mixture of this material would be hazardous according to the proposed regulations (even though the volume of shavings may be insignificant in comparison with amount of used oil in the mixture. PA DEP should simply adopt the federal wording for this item.

298.10(e) – MATERIALS DERIVED FROM WASTE OIL

The federal rules (40 C.F.R. §279.10(e)) declare that materials reclaimed from used oil that are used beneficially and not burned for energy recovery or used in a manner constituting disposal are not used oil and are not solid wastes. The proposed Pennsylvania rule starts to track this language, but then adds a critical extra burden, by stating:

The determination that a material derived from waste oil is not a waste shall be made as a special condition to the permit for the waste oil processing/re-refining that results in the derived material.

On its face, this means that in order for filtered mineral oil or re-refined motor oil to not be considered a “waste,” one must apply for and obtain an individual permit from DEP containing a “special condition” determining that the material is not a waste. Adding such a bureaucratic burden to the program goes far beyond the federal rule, and defeats the intent and purpose of many other provisions. For example, proposed §298.41(c) declares that “transporters” who remove oil from electrical transformers and turbines, and filter that oil at a facility under §298.45, prior to returning the oil to its original use are not subject to the waste oil processor/re-refiner requirements. However, as written, §279.10(e) would indicate that such filtered oil would stay a “waste,” because no permit has been issued for the processing or re-refining, and hence no special condition has been issued to declare the material not a waste. Taking the Department’s logic to the next step, one supposes that the transformers into which this oil is placed would then become waste oil storage units.¹

Similarly, §298.20(b)(3) provides a “permit-by-rule” for generator-conducted waste oil processing of oils, including for example, filtering of waste oil before the oil is reused by the generator, and recovery of oil from oil/water separators. That permit-by-rule contains no “special conditions.” If the filtered or recovered oil derived from such a permit-by-rule activity was put back to the uses from which it came, §279.10(e) would nevertheless consider it to remain a “waste,” rendering the units where the material is placed to be waste units.

In summary, the final sentence of §298.10(e)(1) goes beyond applicable federal requirements, is not necessary, and leads to absurd results. The Environmental Quality Board should remove the requirement that DEP issue a special permit condition before materials derived from used oil be considered no longer a “waste.”

WASTE OIL ACCUMULATION AND PROCESSING BY GENERATORS

Waste oil subject to the proposed waste oil regulations is classified as a residual waste. Under the residual waste regulations, generators of residual wastes may conduct captive

¹ Similarly, §298.50 provides for a “general permit” for mobile waste oil processors who operate at the site of waste oil generation. This “general permit” contains no “special condition,” and thus, ostensibly, all reprocessed oil exiting the mobile unit would continue to be a waste.

processing operations under a permit-by-rule pursuant to 25 Pa. Code § 287.102(b). This permit-by-rule allows generators to bring wastes from other facilities which they own or operate to the captive processing facility as long as "some or all of the waste" is being generated at that facility. The proposed waste oil regulations significantly limit such options.

For example, while the proposed waste oil regulations contain a permit-by-rule for waste oil aggregation points, any shipments of waste oil must be less than 55 gallons at a time. The permit-by-rule authorizations for generators set forth in 25 Pa. Code § 298.20(b)(3) are also much more restrictive than the current permit-by-rule for captive processing activities in the residual waste regulations. In a number of instances, the permit-by-rule authorizations appear to limit generators to processing only waste oils that are generated on-site. This will needlessly restrict the ability of the regulated community to utilize captive processing facilities to facilitate the recycling of waste oil generated at other locations that are under common ownership or operation. To correct this problem, the DEP should reevaluate the permit-by-rule authorizations contained in the waste oil regulations and expand those authorizations to allow for centralized captive processing operations. The new hazardous waste regulations include such provisions as do the current residual waste regulations. The waste oil regulations should be no more restrictive.

298.20(b)(3)(ii)(a)-(c) OIL – WATER SEPARATOR PERMIT-BY-RULE

As discussed on pg. 1980 of the preamble in the PA Bulletin, this section goes beyond the equivalent federal regulations and imposes a number of burdensome requirements such as inspections, a hazardous waste operating report, quarterly reports, and compliance with Subchapter Q. These additional requirements provide incentives against oil-water separation, which is a simple process using well understood technology. Wastewater and waste oil generated by oil-water separation is regulated by residual waste regulations. These regulations already require paperwork such as Forms 25R and 26R, and biennial reporting. The residual waste regulations are sufficient to cover this process and wastestream. Generating additional paperwork and requiring daily and weekly inspections as Subchapter Q only dilutes the limited resources of the Department and generators, without tangible environmental benefit.

298.20(c) RECORDKEEPING

This section, in general, is onerous and unnecessary and should be eliminated. It is not part of EPA's Used Oil rules. At a minimum, the time period for records retention should be 3 years, not 5. It is extremely difficult to manage all the different records retention requirements. If all records under the different regulations are 3 years, then one could simply know that all records need to be kept for three years instead of having to manage a spreadsheet of all the types of files and the different records retention requirements.

For small operators, record keeping will become a service that they rely upon their oil recycling vendor to provide. The Department needs to evaluate how this new

requirement will increase the cost of used oil disposal. Again, this is an unnecessary additional burden that is stricter than what competing states are requiring and making doing business in PA more expensive in this regard.

298.22(a), 298.45(c), 298.64(a) - WASTE OIL STORAGE UNITS

Although the wording of §§298.22, 298.45 and 298.64 is borrowed from the corresponding federal rules, the Department should recognize some ambiguity in the language and clarify the concepts in the preamble.

Sections 298.22(a), 298.45(c), and 298.64(a) indicate that waste oil must be stored in "tanks, container or units *subject to regulation* under Chapter 264 or 265" (i.e., the State's hazardous waste regulations). Read quite literally, this would mean that all waste oils (even if they meet no hazardous waste characteristics and contain no listed hazardous waste) would only be placed in units at facilities which hold hazardous waste storage permits or interim status. Ostensibly, this would render every gasoline station to be a hazardous waste TSD facility.

To our knowledge, that has never been the interpretation of the federal rule, and the Department should take steps to avoid such a misreading here. Rather, it is our understanding that these provisions, like their federal counterparts, mean that used oil is to be stored in tanks, containers or other units which *meet the design standards and specifications contained in* the relevant sections of what are now Chapters 264a and 265a.

298.22(c) and 298.45(h) - LABELS

Sections 298.22(c) and 298.45(h) require that all containers and aboveground tanks used to store such oils be labeled "waste oil," while the corresponding federal rules mandate that such containers and tanks bear the words "used oil." Similarly, the state rules would required fill lines to be labeled "waste oil," while the federal rules mandate use of the words "used oil." If §298.22(c) and 298.45(h) are adopted, generators and transfer facility operators will need to double label every container to meet both the federal and state rules. The purpose served by such duplicative labeling is dubious, at best. We would recommend that §298.22(c) and §298.45(h) be amended to require labels which read "used oil" to remain consistent with the federal nomenclature and to again avoid the negative connotation that the word "waste" carries as stated earlier. In the event the Department is unwilling to use the term "used oil," we strongly recommend the Department amend those sections to require labels which read either "waste oil" or "used oil."

298.22(e) – SPILL PREVENTION PLANNING

The federal rules require that used oil generators comply with the applicable Spill Prevention, Control and Countermeasure (SPCC) provisions of 40 C.F.R. Part 112. As the Department is aware, the Part 112 rules do *not* apply to every used oil generator. Part 112 requires preparation of SPCC plans for facilities that have discharged oil in harmful

quantities to waters of the United States, or that, due to their location, could reasonably be expected to discharge oil in harmful quantities to waters of the United States or adjoining shorelines.²

Proposed §298.22(e) vastly expands this requirement. Under §298.22(e) every waste oil generator would be made subject to the spill prevention, control, and countermeasure provisions of 25 Pa. Code Ch. 265, Subch. C and D. (Note: the referenced subchapters were recently repealed and replaced by Ch. 265a, incorporating the federal hazardous waste regulations). Via this change in references, ostensibly every waste oil generator would be required to develop a written contingency plan, designate emergency coordinators, and file emergency plans with all local police, fire departments, hospitals, state and local emergency response teams.³

On its face, this would mean that every service station, auto maintenance shop, or small business that generates even one 55-gallon drum of used oil will need to hire a consultant to develop a contingency plan. At the same time, local and state agencies face the prospect of being inundated with thousands of plans.

Contingency plans should not be required for situations where only limited quantities of materials are temporarily stored. The Department should simply follow the federal rule, and require compliance with the Part 112 SPCC planning requirements where applicable.

298.25 SOURCE REDUCTION STRATEGY

This entire section should be written to conform to the Residual Waste (RW) Regulations to allow the use of the Form 25R and associated programs to be implemented similarly, without confusion. It would be very cumbersome to manage residual waste using the SRS requirements under the Residual Waste Regulations and then manage oil under a different set of rules. At a minimum, 298.25(b)(1) and 298.26(b)(6) should be changed to 5 years to be consistent with the RW Regulations.

One member raises this concern: as a manufacturing facility with a large quarry, they will always generate large quantities (>1200 kgs) of waste oil from truck maintenance. How do they write an SRS for this type of operation? This requirement creates unnecessary paperwork and should be eliminated from the regulations.

298.26(a) BIENNIAL REPORT

Subsection (a) requires the Report to be submitted by March 3. Other regulations require March 1. These regulations should reflect the same date. Also, the Report for Waste Oil should be required the same year as the RW Biennial Report.

² 40 C.F.R. §112.3(a). The term "harmful quantities" is defined in 40 C.F.R. Part 110.

³ See 40 C.F.R. §§265.51-265.53, 265.55, incorporated by referenced in 25 Pa. Code Ch. 265a.

Moreover, we are not clear why this report is even necessary – particularly if the used oil is being recycled. The regulation is not clear on who must submit the report. If a business generates more than 1200 kgs of used oil but recycles it, would they complete a 330-GM? Again, this proposal requires too much paperwork.

APPLICABILITY OF REQUIREMENTS TO PREPARE SOURCE REDUCTION STRATEGIES AND BIENNIAL REPORTS

Under the current version of the residual waste regulations, persons or municipalities that “generate residual waste as a result of collecting the waste, including the collection of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil” are not required to prepare source reduction strategies and complete biennial reports. 25 Pa. Code § 287.51(c)(1). It is very unclear whether this exemption will continue to apply under the waste oil regulations. The considerations that led DEP to include this exemption in the residual waste regulations continue to have bearing and militate in favor of including the exemption in the waste oil regulations. (If DEP so intends, the waste oil regulations need to be clarified to expressly reflect this intent.)

In addition, it is extremely unclear how 25 Pa. Code §§ 298.25(d) and 298.26(d) are intended to operate. Under the first prong of these provisions, it would appear that generators who generate oil that has been used in internal combustion engines or as a vehicle lubricant are not subject to source reduction strategy and biennial reporting requirements. Under the second prong of these provisions, generators of less than 12,000 kilograms of residual waste and waste oil are exempt. However, the oil described in the first prong of these provisions also qualifies as a waste oil.

The preamble to the proposed waste oil regulations is likewise confusing. It is unclear whether the 12,000 kilogram threshold includes the combined weight of residual wastes and waste oil that a generator produces or applies only to residual wastes that are not waste oil.

To prevent further confusion within the regulated community, DEP should clarify precisely who is required to submit biennial reports and source reduction strategies. DEP should also include the current exemption for those that collect waste oil from the replacement of such oil.

298.26(c) BIENNIAL REPORT SIGNATURE

Signature of the Biennial Report by an officer for corporations is inconsistent with other regulations. This level of signing should not be required for a facility that has an Environmental Policy officially endorsed by top management and follows ISO 14000 programs.

There is no reason why officers of corporations need to certify biennial waste reports. Certification should be by plant managers or environmental personnel. For international corporations trying to do business in PA, corporate officers may be overseas and thus not available to view whatever needs certified. Again, this is stricter than federal and other state requirements. It only serves to make it harder to do business in PA.

298.31(b) WASTE OIL AGGREGATION POINTS

Subsection 2 refer to a sheltered storage of waste oil tanks. The definition of shelter is not clear, although one can conclude that it means a cover, roof, etc. The DEP should not write regulations to this level of detail. The remainder of the section is adequate to express the requirement to protect human, health and the environment. A well coated, sealed impermeable barrier serving as secondary containment with an oil/water separator for precipitation would also be adequate, but is not "sheltered".

Subchapter E WASTE OIL TRANSPORTERS AND TRANSFER FACILITIES

There needs to be language in this section which makes it clear that this section does not apply to persons who are generators only. The explanation in the preamble is unclear. We would suggest some sort of wording for 298.40 (a) (1) "This subchapter does not apply to onsite transportation, or to generators who do not engage in the off-site transportation of waste oil, other than those activities described below in (2), (3), and (4).

298.42(a) NOTIFICATION

This section states that a Waste oil transporter must have an identification number. It is unclear as to what type of number. Does the DEP mean an EPA identification number? If so, please state as such for clarification.

MISC. TYPOGRAPHICAL ERRORS

The proposed regulation needs to change 298.23 to 298.22. In addition, Section 298.64(e) should have the word "existing" changed to "new" in the title.



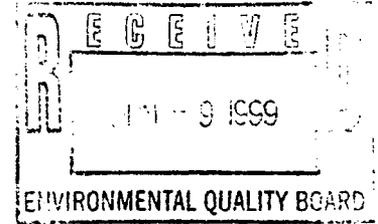
National Oil Recyclers Association

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Christopher Harris, General Counsel
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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June 8, 1999

Environmental Quality Board
Commonwealth of Pennsylvania
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Comments from the National Oil Recyclers Association Concerning Used Oil Management Regulations (25 Part I Subpart D Article IX Chapter 298) Proposed by the Pennsylvania Department of Environmental Protection

Dear Members of the Board:

The National Oil Recyclers Association ("NORA") appreciates this opportunity to submit comments to the Pennsylvania Department of Environmental Protection ("PDEP") on proposed used oil management regulations.

Founded in 1984, The National Oil Recyclers Association is a national, non-profit trade association representing companies that collect and recycle used oil, antifreeze, oil filters, wastewater and parts cleaning solvents. NORA worked closely with the U.S. Environmental Protection Agency ("EPA") to develop the 1985 and 1992 used oil management standards which provide a comprehensive set of regulatory requirements that ensure the proper handling and recycling of used oil. As directed by Congress, EPA's regulations protect human health by promoting legitimate recycling of used oil.

After carefully studying the question of proper management of used oil, both EPA and Congress concluded that environmental protection required harnessing market forces and ensuring that recycled used oil was regarded as a valuable commodity - not a waste material. An important component of that

policy is to allow recycled petroleum products to compete with virgin products. NORA believes that the current used oil management standards, set forth in 40 CFR Part 279, employ appropriate regulatory controls without undermining the ability of recyclers to compete with virgin petroleum products. Consequently, NORA commends Pennsylvania DEP for adopting the federal used oil management standards, albeit with a few exceptions.

NORA also appreciates DEP's effort to consult with industry groups to help develop the Pennsylvania Used Oil Management Standards and to simplify the regulation under one chapter.

There are, however, some aspects of DEP's proposal that NORA disagrees with, particularly the proposal to modify the RCRA mixture rule. This is a common sense rule that recognizes the reality of waste management activities. NORA does not believe this rule is an open invitation to diluting characteristic hazardous waste. On the contrary, it is a rule intended to avoid the absurdity of prohibiting or even criminalizing sensible mixture activities (such a neutralizing acidic, i.e., corrosive, waste water). Moreover, since most mixtures involve de minimis quantities of waste materials, the effect of the proposed change would be to criminalize the activities of thousands of small businesses throughout the Commonwealth. In the absence of specific examples of how and when the 1980 RCRA mixture rule has been abused by generators or other compelling reasons, there would be no overall benefit to the environment of removing this rule from existing regulations.

EPA spent many years developing, implementing and enforcing the RCRA mixture rule. It has stood the test of time and experience. While NORA commends DEP for adopting the used oil mixture rule for ignitable-only wastes, we regard the proposed repeal of the RCRA mixture rule as unwarranted and unsupported by any evidence of abuse. We urge DEP to reconsider this proposal and, at the very least evaluate what alleged problems DEP is attempting to correct.

One part of the regulation, Section 298.10(b)(2)(ii), needs adjustment to be consistent with the federal used oil mixture rule. NORA also believes that Section 298.20(c), recordkeeping for used oil generators, would constitute overly burdensome and redundant recordkeeping. The recordkeeping requirements may discourage used oil recycling by increasing costs for time, tests and materials. Used oil collectors already test the used oil for halogenated materials to determine if the used oil exceeds the 1000 ppm rebuttable presumption threshold;

NORA supports the Pennsylvania DEP's choice to allow for two limits for total halogens. The higher limit of 4000 ppm for on-specification energy recovered in non-home heating systems will encourage the proper recycling of used oil between 1000 ppm and 4000 ppm total halogens.

NORA also supports Pennsylvania DEP's permit-by-rule for transfer facilities that are owned by the same person(s) who own permitted processing facilities. This is a practical rule that supports companies operating in the state and eliminates unnecessary permitting.

Finally, the term "waste oil" does not accurately represent "used oil". After much consideration, US EPA adopted the term "used oil" instead of "waste oil" because of the inherent value of used oil as a commodity as well as the negative connotations of the term "waste oil." NORA believes the term used oil is the nationally accepted term for properly identifying and referring to this material. We consider used oil to be a valuable product that competes with virgin fuel and lubrication products.

To stigmatize or overregulate used oil only serves to create a significant competitive disadvantage. This in turn undermines the used oil recycling system, thereby expanding the incentives and opportunities for improper disposal of used oil. In other words, expanding the market for used oil products actually serves to protect the environment. We urge DEP to observe this basic truth as it proceeds with its regulatory responsibilities.

In closing, NORA supports much of the PDEP proposed used oil management regulations, but believes the Agency should diligently evaluate its reasons for removing the 1980 RCRA mixture rule and imposing burdensome record keeping requirements on used oil generators.

If we can assist in any way, please contact the NORA office at 216-791-7316 or my office at 406-586-9714.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Harris".

Christopher Harris





Duquesne Light

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Harrisburg, PA 17101-2301

99 JUN 11 PM 3:25
Environmental Quality Board

**Proposed Changes to Waste Oil Regulations
29 PA Bulletin 1975 (April 10, 1999)**

Dear Sir/Madam:

I am pleased to submit the attached comments in behalf of Duquesne Light Company ("Duquesne Light") with respect to the Pennsylvania Environmental Quality Board's ("EQB") proposal to amend the Pennsylvania Waste Oil regulations. The proposed changes were published in the Pennsylvania Bulletin on April 10, 1999 (27 PA Bulletin 1975). Duquesne Light is the principal electrical power generator and provider in the Pittsburgh area. Duquesne Light serves approximately 580,000 customers in Allegheny and Beaver Counties in Western Pennsylvania.

As both an electric generator and distribution utility, Duquesne Light Company is involved in a variety of activities that would be impacted by the proposed waste oil regulation changes. Our comments, suggestions and objections regarding the proposed amendments are attached, as well as a one page summary for the Board members.

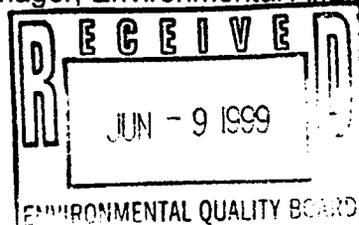
Duquesne Light appreciates the opportunity to review the proposed amendments to the regulations, and requests that the EQB give full consideration to the comments developed. If there are any questions, please call me at 412/393-6097.

Very truly yours,

J. K. Cool
Manager, Environmental Affairs Unit

Attachment

c: F. Fields - w/attachment



Duquesne Light Company's Comments on Proposed Waste Oil Management Regulations

Duquesne Light Company is involved in a variety of activities that will be impacted by the proposed changes to the Pennsylvania waste oil regulations – ranging from the regular filtration and recycling of insulating oil during maintenance of electrical equipment, to fleet maintenance and encouragement of employee recycling through company-operated aggregation centers.

In keeping with Executive Order 1996-1 and the Regulatory Basics Initiative, we urge a close examination of the proposed waste oils rules, and question why the Commonwealth should not simply adopt by cross-reference the federal rules, following the approach recently taken with the Pennsylvania hazardous waste rules. Unless strongly justified by a compelling state interest (which we do not perceive), the state rules on this subject should not exceed the federal standards.

Our specific concerns include the following:

- §298.1 – The definition of “transfer facility” is broader than the corresponding federal counterpart, and may extend to both generation sites and locations (such as electrical substations) where small quantities of material are temporarily held for short periods awaiting shipment onward for recycling.
- §298.10(e) – The mandate that any determination that a material derived from waste oil is not a waste be made only as a special condition in a permit is inconsistent with federal provisions. This requirement leads to absurd results negating the usefulness of both permits-by-rule and general permits.
- §298.20(b)(3) – The permit-by-rule for generator waste oil processing needs clarification, particularly with respect to allowing the processing of oils drawn from several related facilities operated by the same generator (e.g., oil collected from several maintenance garages).
- §298.20(c) – The proposed state recordkeeping requirements go substantially beyond the federal rules, and would be overly cumbersome in terms of detail.
- §298.22(c) & 298.45(h) – In light of the federal labeling rules, the state should allow containers to be labeled either “used oil” or “waste oil” to avoid a double labeling requirement.
- §298.22(e) – The federal rules refer to compliance with applicable Spill Prevention, Control and Countermeasure (SPCC) provisions, which only apply to certain used oil sites. The state rule would appear to impose written contingency plan requirements on every waste oil storage site, no matter how small.
- §298.31 – The aggregation point rules need to be clarified to allow collection of other materials, so long as those activities are in compliance with applicable requirements.
- §298.41(c) & 298.45 – Where the counterpart federal rule grants what is, in effect, a permit-by-rule for filtration and recycling of electrical transformer and turbine oils, the state rule drops key words. In the process, the state version of the permit-by-rule is virtually useless, since §298.45(b) disallows coverage for facilities engaging in filtration activities.

**COMMENTS OF DUQUESNE LIGHT COMPANY
ON PROPOSED RULEMAKING FOR
MANAGEMENT OF WASTE OIL
[25 PA. CODE CH. 298]**

June 8, 1998

Duquesne Light Company welcomes the opportunity to present the following comments to the Environmental Quality Board and the Department of Environmental Protection regarding the proposed rules for management of waste oil, as published in the April 10, 1999 *Pennsylvania Bulletin*.¹

The Duquesne Light Company is an integrated electric energy utility, serving 580,000 customers in southwestern Pennsylvania. Within our 800 square mile service area, a population of nearly 1.5 million relies on our energy services. In many respects, Duquesne Light is a "core area" utility, serving the urban core of the Pittsburgh/western Pennsylvania metropolitan area. The heart of Duquesne Light's service territory comprises the industrialized centers of that metropolitan area, stretched along the Allegheny, Monongahela, and Ohio river valleys.

As both an electric generation and distribution utility, Duquesne Light Company is involved in a variety of activities that will be impacted by the proposed changes to the waste oil regulations. In particular:

- (1) Duquesne regularly drains mineral insulating oil from the electric equipment installed throughout its service territory. Depending on its condition, the mineral insulating oil may be: treated (i.e. filtered/centrifuged) and immediately reused in the field; reconditioned (filtered, water removed, and a corrosion inhibitor added) for future field reuse at a central storage facility; or shipped/stored for off-site recycling/disposal.
- (2) Duquesne also periodically drains lubricating oils from equipment (such as turbines, generators, etc.) at its generating facilities. This lubricating oil is either

¹ 29 Pa. Bulletin 1975 (April 10, 1999).

treated (i.e. centrifuged and filtered) on-site before reuse, or stored for eventual off-site recycling/disposal.

- (3) Duquesne operates a sizeable fleet of vehicles (trucks, cars, earth-movers), which generates a variety of lubricating oils, transmission fluids, etc. collected and stored for eventual off-site recycling.
- (4) Finally, in an effort to encourage environmentally-beneficial recycling, the Company has established a program allowing employees to bring "used-oils" generated from their "do-it-yourself" vehicle maintenance. The materials are collected at a separate aggregation location at a plant, and the Company arranges for off-site recycling/disposal of the material collected using a third-party vendor.

Overall Perspective

First, in keeping with Governor Ridge's Executive Order 1996-1 and the Administration's Regulatory Basics Initiative, we seriously question the need for the Department to promulgate an entire set of complex regulations, duplicating (but in more than a few cases departing from) what are already applicable national standards for used oil management set forth in 40 C.F.R. Part 279. The proposal to adopt a cumbersome set of State "waste oil" rules stands in sharp contrast to the commendable action recently taken by the Environmental Quality Board in reforming Pennsylvania's hazardous waste regulations. It is notable that the Pennsylvania hazardous waste rules published on May 1, 1999,² for the most part incorporate by reference the corresponding federal rules. In contrast, the proposed waste oil rules reflect the old practice of repeating and rephrasing (and in the process adding to and expanding) established national rules.

We would urge that the Environmental Quality Board sharply examine the proposed waste oil rules, and question why the Commonwealth should not follow the same model as used for the recently-promulgated hazardous waste rules. It would seem far less cumbersome, and much less confusing, to adopt a waste oil regulation which cleanly and clearly cross-references the corresponding provisions of 40 C.F.R. Part 279. Unless strongly justified by a compelling state interest, the state rules on this subject should not exceed the federal standards. If we are

² 29 Pa. Bulletin 2367 (May 1, 1999).

going to encourage responsible recycling of “waste oils” (which EPA calls by the less pejorative term “used oils”), then we need to recognize that these materials are recycled in a national market. Establishing different state terms, concepts, and approaches will only tend to add confusion and place hurdles on the road to proper management and recycling.

As we discuss in detail below, there are a number of significant departures from the federal rules to be found in the proposal, some of which (perhaps unintentionally) would have unpredictable and burdensome impacts.

§298.1 – Definition of Waste Oil Transfer Facility

As noted in the preamble to the proposed Pennsylvania rule, the definition of “waste oil transfer facility” in §298.1 is broader and more stringent than the corresponding definition of “used oil transfer facility” in 40 C.F.R. §279.1.

Under the federal rule, a transfer facility is a “transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held *for more than 24 hours ... during the normal course of transportation ...*” 40 C.F.R. §279.1 (emphasis added). The proposed Pennsylvania rule drops the 24-hour time frame, and renders any loading dock, parking area, or other areas where shipments of waste oil are “received and held” for any time to be a “transfer facility.”

Read in one way, this definition could be interpreted to mean that whenever a truck which picks up used mineral oils at several substations stops or parks at the loading dock at each successive site to pick up additional loads, that site becomes a “transfer facility.” Similarly, if a maintenance truck which has collected oil from a transformer on a transmission line during a 3:00 am emergency stops at the maintenance garage for a time, before delivering the material to the recycling unit during regular business hours, does the maintenance garage become a “transfer facility.” The Department may have intended to allay this problem by adding the word “*received*” to the concept of “held,” but this point could certainly be clarified – either in the language of the rule or in the preamble.

As EPA explained in the preamble to the federal rules, the concept of a “transfer facility” is a “site for the temporary storage of used oil that is picked up from one or more original generators and is on its way” to a processing facility, to be reintroduced into the refining process or to be burned as used fuel oil. 57 Fed. Reg. 41,490, 41,590 (Sept. 10, 1992). This preamble language at the federal level makes clear that the area where waste oil is stored at the site of generation while awaiting shipment is not a transfer facility. Storage before the “course of transportation” or “shipment” starts is outside the concept of a transfer facility.

Similarly, in the examples given above, if a generator’s truck leaves a transformer or substation site with a shipment of a few drums, and during the course of the shipment, that truck stops for a few minutes or a few hours at the generator’s garage to refuel before moving on with the shipment, the garage should not be deemed a “transfer” facility under the state rule, any more than under the federal rule. In the rubric proposed by the Department, the garage never “receives” the material.

In a like vein, areas where shipments are simply moved from one of the generator’s trucks to another truck in order to facilitate transportation to the processor or recycling center should not be regulated as transfer units. Again, technically, the facility never “receives” or stores the material.

§298.10(e) – Materials Derived from Waste Oil

The federal rules (40 C.F.R. §279.10(e)) declare that materials reclaimed from used oil that are used beneficially and not burned for energy recovery or used in a manner constituting disposal are not used oil and are not solid wastes. The proposed Pennsylvania rule starts to track this language, but then adds a critical extra burden, by stating:

The determination that a material derived from waste oil is not a waste shall be made as a special condition to the permit for the waste oil processing/rerefining that results in the derived material.

On its face, this means that in order for filtered mineral oil or re-refined motor oil to not be considered a “waste,” one must apply for and obtain an individual permit from DEP

containing a “special condition” determining that the material is not a waste. Adding such a bureaucratic burden to the program goes far beyond the federal rule, and defeats the intent and purpose of many other provisions. For example, proposed §298.41(c) declares that “transporters” who remove oil from electrical transformers and turbines, and filter that oil at a facility under §298.45, prior to returning the oil to its original use are not subject to the waste oil processor/rerefiner requirements. However, as written, §279.10(e) would indicate that such filtered oil would stay a “waste,” because no permit has been issued for the processing or rerefining, and hence no special condition has been issued to declare the material not a waste. Taking the Department’s logic to the next step, one supposes that the transformers into which this oil is placed would then become waste oil storage units.³

Similarly, §298.20(b)(3) provides a “permit-by-rule” for generator-conducted waste oil processing of oils, including for example, filtering of waste oil before the oil is reused by the generator, and recovery of oil from oil/water separators. That permit-by-rule contains no “special conditions.” If the filtered or recovered oil derived from such a permit-by-rule activity was put back to the uses from which it came, §279.10(e) would nevertheless consider it to remain a “waste,” rendering the units where the material is placed to be waste units.

In summary, the final sentence of §298.10(e)(1) goes beyond applicable federal requirements, is not necessary, and leads to absurd results. The Environmental Quality Board should remove the requirement that DEP issue a special permit condition before materials derived from used oil be considered no longer a “waste.”

§298.11(b) – Waste Oil Specifications

Proposed §298.11(b) sets forth the specifications for waste oil burned for energy recovery and fuel produced from waste oil by processing, blending or other treatment. Specifically, such materials exceeding the specifications set forth in Table 1 are subject to the requirements of Ch. 298, but materials not exceeding the Table 1 values are excluded from Ch. 298.

³ Similarly, §298.50 provides for a “general permit” for mobile waste oil processors who operate at the site of waste oil generation. This “general permit” contains no “special condition,” and thus, ostensibly, all reprocessed oil exiting the mobile unit would continue to be a waste.

The Pennsylvania rule proposes a total halogen limit of 1000 ppm. The corresponding federal rule (40 C.F.R. §279.11) sets a total halogen limit of 4,000 ppm maximum.⁴ The Department-drafted preamble suggests that the lower limit is proposed because of a concern that higher halogen content oils might be burned in home heating systems that might be affected by corrosion from hydrochloric acid generated via the release of chlorine from the oil. As the Department's preamble indicates, however, only one group of furnaces that might use such oil are of concern, that is, home oil heating systems that are not converted coal burners. The Department asserts that modern home heating systems fired by oil are not designed to withstand the corrosive effects of burning chlorine-containing fuels. However, that statement is not backed with citation to any studies of heating system designs or materials. We would observe that if anything, modern heating systems are being better built, with more durable designs and materials. The Environmental Quality Board and DEP should seek specific input from the home heating system manufacturers regarding these issues before assuming that such systems are vulnerable to corrosion based on the suggested levels of halogens in the fuel.

In any event, many other types of furnaces and burners, including utility boilers, could readily use such oils. If the Department's concern is only one type of burner, and if that concern is backed up with real science (not just a speculative concern), then the appropriate solution would be to set a lower limit for total halogens only for oil being marketed for home heating fuel, with a higher limit of 4,000 ppm of halogens for all other methods of energy recovery.

§298.20(b)(3) – Permit-by-Rule for Generator Waste Oil Processing

We endorse the general concepts set forth in proposed §298.20(b)(3), establishing a permit-by-rule for generator-conducted oil reconditioning and processing activities. Some clarification or refinement of these provisions, however, may be warranted to avoid confusion.

⁴ The federal rules include a footnote that indicates that used oil containing more than 1000ppm of total halogens is presumed to be a hazardous waste subject to the hazardous waste rules of 40 C.F.R. Part 266, Subch. H, which Pennsylvania has adopted by cross-reference (*see* 25 Pa. Code §266a.100, 29 *Pa. Bulletin* at 2416).

The beginning of ¶(3) starts by referring to processing of waste oil that is “generated onsite” and “is not being sent offsite to a burner of on-specification or off-specification waste oil.” In discussing filtration, cleaning, or other reconditioning activities, subparagraph (3)(i)(C) refers to processing “at the same manufacturing or processing facility where some or all of the waste oil is generated.” Regarding oil/water separation activities, subparagraph (3)(ii)(A) refers to use of captive facilities and treatment of waste oil “generated onsite or on an interconnected adjacent site which was previously part of an integrated facility.” Read together, these provisions raise the question of precisely what is “onsite.” More specifically, we note the question of whether materials generated by the same generator at several related locations (such as a series of electrical substations tied together on a transmission system, or several collection points along a natural gas pipeline) are or are not covered by this permit-by-rule.

We would suggest and support a permit-by-rule which allowed a generator to operate a captive facility (i.e., a facility which handles only that generator’s oil generated at one or more related facilities), where the generator meets specified conditions and follows stipulated practices. The equivalent of such a permit-by-rule is contained in the federal rules for the kinds of transformer oil filtration and reconditioning activities which Duquesne routinely conducts. *See* 40 C.F.R. §279.41(c).

§298.20(c) – Recordkeeping

The state rule goes substantially beyond the federal rule in requiring five years of detailed recordkeeping by all waste oil generators. The Department offers the rationale that it is very difficult to determine whether a particular load of waste oil has been improperly mixed with hazardous waste unless the generator has maintained on record basic information. While understanding to some degree this logic, requiring five years of record retention, including detailed records of every type of oil used and the process that generates that oil, is going too far.

At a typical generating station, for example, many different kinds and grades of lubricants are used (different weights and additives) for particular pieces of equipment. During major overhauls, each of these oils are not separately measured, catalogued, and tested. Like-kind

lubricants are collected together, and sent to appropriate reprocessing or disposal. Section 298.20(c) would purport to require oil-by-oil testing and recordkeeping.

§§298.22(a), 298.45(c), 298.64(a) – Waste Oil Storage Units

Although the wording of §§298.22, 298.45 and 298.64 is borrowed from the corresponding federal rules, the Department should recognize some ambiguity in the language and clarify the concepts in the preamble.

Sections 298.22(a), 298.45(c), and 298.64(a) indicate that waste oil must be stored in “tanks, container or units *subject to regulation* under Chapter 264 or 265” (i.e., the State’s hazardous waste regulations). Read quite literally, this would mean that all waste oils (even if they meet no hazardous waste characteristics and contain no listed hazardous waste) would only be placed in units at facilities which hold hazardous waste storage permits or interim status. Ostensibly, this would render every gasoline station to be a hazardous waste TSD facility.

To our knowledge, that has never been the interpretation of the federal rule, and the Department should take steps to avoid such a misreading here. Rather, it is our understanding that these provisions, like their federal counterparts, mean that used oil is to be stored in tanks, containers or other units which *meet the design standards and specifications contained in the relevant sections of what are now Chapters 264a and 265a.*

§§298.22(c) and 298.45(h) – Labeling

Sections 298.22(c) and 298.45(h) require that all containers and aboveground tanks used to store such oils be labeled “waste oil,” while the corresponding federal rules mandate that such containers and tanks bear the words “used oil.” Similarly, the state rules would required fill lines to be labeled “waste oil,” while the federal rules mandate use of the words “used oil.” If §298.22(c) and 298.45(h) are adopted, generators and transfer facility operators will need to double label every container to meet both the federal and state rules. The purpose served by such duplicative labeling is dubious, at best. We would recommend that §298.22(c) and §298.45(h) be amended to require labels which read either “waste oil” or “used oil.”

§§298.22(e) – Spill Prevention Planning

The federal rules require that used oil generators comply with the applicable Spill Prevention, Control and Countermeasure (SPCC) provisions of 40 C.F.R. Part 112. As the Department is aware, the Part 112 rules do *not* apply to every used oil generator. Part 112 requires preparation of SPCC plans for facilities that have discharged oil in harmful quantities to waters of the United States, or that, due to their location, could reasonably be expected to discharge oil in harmful quantities to waters of the United States or adjoining shorelines.⁵

Proposed §298.22(e) vastly expands this requirement. Under §298.22(e) every waste oil generator would be made subject to the spill prevention, control, and countermeasure provisions of 25 Pa. Code Ch. 265, Subch. C and D. (Note: the referenced subchapters were recently repealed and replaced by Ch. 265a, incorporating the federal hazardous waste regulations). Via this change in references, ostensibly every waste oil generator would be required to develop a written contingency plan, designate emergency coordinators, and file emergency plans with all local police, fire departments, hospitals, state and local emergency response teams.⁶

On its face, this would mean that every service station, auto maintenance shop, or small business that generates even one 55-gallon drum of used oil will need to hire a consultant to develop a contingency plan. At the same time, local and state agencies face the prospect of being inundated with thousands of plans.

While Duquesne Light supports emergency and contingency planning for most industrial facilities which handle significant quantities of materials of environmental concern, §298.22(e) would impose an overly broad and burdensome rule. Contingency plans should not be required for situations where only limited quantities of materials are temporarily stored. The Department should simply follow the federal rule, and require compliance with the Part 112 SPCC planning requirements where applicable.

⁵ 40 C.F.R. §112.3(a). The term “harmful quantities” is defined in 40 C.F.R. Part 110.

⁶ See 40 C.F.R. §§265.51-265.53, 265.55, incorporated by referenced in 25 Pa. Code Ch. 265a.

§298.24 – Offsite Shipments

Section 298.24(1)(iv) adds a certification requirement not found in the corresponding federal rule (*see* 40 C.F.R. §279.24(a)). Under the proposed state rule, each generator will be required to provide a written certification that “except as provided for in §298.10(b)(2)(ii), the generator has not mixed its waste oil with hazardous waste.”

While we endorse the concept that the generator should be responsible for not mixing used oils with hazardous wastes, and for informing the recipient of any known mixing, the fact is that many small generators may not have the sophisticated knowledge of DEP’s hazardous waste rules. Will the do-it-yourselfer or small quantity gas station operator know, for sure, whether any other ignitable materials were placed in the used motor oil barrel, and will he/she test the resultant mixture for the characteristic of ignitability before delivering it to the collection center?

In reality, if a certification requirement is deemed necessary, it may need to be framed as a certification to the “best of the generator’s knowledge, information, and belief.”

§§298.25-298.26 – Source Reduction Strategies and Biennial Reports

Adding provisions not found in the corresponding federal rules, proposed §§298.25 and 298.26 perpetuate and expand the paperwork burdens imposed on Pennsylvania facilities by mandating the used oil generators develop written source reduction strategies, and submit biennial reports to the Department.

Although Duquesne Light supports and practices source reduction efforts, in our view, imposing paperwork requirements is not be the most effective path to this laudable objective. Technology transfer, education and outreach programs are far more likely to stimulate interest in positive changes as to equipment designs, longer-lasting lubricant materials, and maintenance work practices. Because of the cost of the oils involved in many industrial processes, there is already an economic incentive to pursue conservation/source reduction efforts – and this is a far better incentive than a state mandate to write some plan. We would respectively suggest that the

Commonwealth's resources would be better invested by reprogramming the dollars presently expended on staff who shuffle such reports into such outreach and technology transfer programs.

§298.31 – Aggregation Points

We support the basic provisions of §298.31, which allows the operation by generators of used oil aggregation points, including the acceptance at such aggregation sites of oil from household do-it-yourselfers. For many years, Duquesne Light has led in efforts to encourage employee participation in such recycling efforts by allowing our employees to bring their DIY used oils to our aggregation points, where that material can be properly handled along with Duquesne-generated waste oils.

We have a concern, however, regarding one of the conditions in the aggregation point permit-by-rule. Section 298.31(b)(4) states that a waste oil aggregation point may not “accept water, antifreeze, other residual or hazardous wastes or other contaminants.” The fact is that some companies who operate waste oil aggregation points may also accept other materials (such as batteries) for similar recycling at the same location. If those materials are being properly handled in accordance with the rules applicable to their management, why should the used oil aggregation site lose coverage under the permit-by-rule for the oil aspect of its operations.

We would suggest that §298.31(b)(4) be rewritten to read as follows:

(4) Not accept or manage wastewater, antifreeze, or other residual or hazardous wastes except in accordance with the applicable provisions of Chapters 287-299 (relating to residual waste management) or Chapters 260a-270a (relating to hazardous waste management); and to the extent required by such provisions, the owner/operator shall obtain a permit, general permit, or permit-by-rule for acceptance and management of such additional waste materials.

§§298.41(c) and 298.45 – Filtration and Recycling of Electrical Transformer and Turbine Oils

The federal rules, in 40 C.F.R. §279.41(c), establish a specific provision governing used oil from electrical transformers and turbines, filtered, and returned to its original use. In the process of transposing these provisions to §298.41(c) of the proposed state rules, key words were dropped and a circular cross-reference was added, making the provision virtually useless.

The federal regulation reads as follows:

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered *by the transporter or* at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements of Subpart F of this part.

40 C.F.R. §279.41(c) (emphasis added). Under the federal rules, if the used oil is filtered within 24-hours of being drained, it would be considered as being filtered “during transportation,” and would not trigger transfer facility requirements.⁷ At the same time, the federal rules defined transfer facilities as facilities where storage occurs for more than 24 hours and less than 35 days; and although the federal rules establish operating requirements for such transfer facilities, a separate individual permit is not mandated.

The proposed Pennsylvania §298.41(c) indicates that the processor/re-refiner requirements do not apply only if oil removed from transformers and turbines are filtered “at a transfer facility authorized under §298.45” Section 298.45, in turn, requires a permit for all transfer facilities, with limited exceptions for certain “general permit” facilities and “permit-by-rule” facilities described in §298.45(b)(4). Section 298.45(b) narrows considerably the potential for issuing general permits for transfer facilities, by declaring that general permits will be available only for certain operations. At the same time, the transfer facility permit-by-rule disallows coverage for any facility engaged in activities “described in §298.41(b) or (c)”

Thus, where the federal rules allow utilities to collect and filter electrical transformer and turbine oils, and return that oil to its original use, without the need for an individual permit, the Department’s version requires an individual permit in every case.

The Department’s rationale for rejecting the federal rule’s approach is notably thin. DEP argues that the federal approach of providing a permit-by-rule for all transfer facilities is troublesome because allegedly “transfer facilities are too varied to be effectively regulated by a one permit fits all approach.” EPA’s judgment clearly is that the standards found in Part 279 are

⁷ 59 Fed. Reg. 10,550, 10,556 (March 34, 1994).

adequate to regulate transfer facilities, and DEP fails to indicate any unique situation in Pennsylvania compelling a case-by-case, individual permit approach.

Even if there are several categories of transfer facilities, DEP fails to explain why it has selected the bureaucratic approach of requiring hundreds of individual permits, instead of trying to frame several permits-by-rule tailored to the several possible classes of transfer facilities. The fundamental goal is environmentally-sound regulation, not employment for permit-reviewers.

One category where a permit-by-rule can readily be framed is the removal, filtering and return to original use of electrical transformer and turbine oils. As recognized in EPA's 1994 rulemaking, this type of filtering activity does not raise significant environmental concerns. The nature of the mineral oils involved are well-known, the filtration process is not complex, proper storage and handling practices can readily be described, and the oils remain at all times in the hands of the responsible generators. There is simply no need to encumber the process by requiring a plethora of individual permits.

In this regard, we believe that the Department's formulation of "siting" restrictions in §298.45(b)(4)(vi), coupled with the seeming expansive definition of "transfer facility," is destined to create unintended, but serious, problems. Many substations and maintenance facilities where trucks may come bearing one or a few drums of transformer oil on the way to a recycling facility are located in urban areas, within 50 feet of a property line or 300 feet of a dwelling. Barring such a facility from ever storing a single drum for a few hours, or requiring individual permits for any such activity, is regulatory overkill. Notably, the federal permit-by-rule for transfer facilities avoids such cumbersome and restrictive siting criteria.

§298.45(j) - Transfer Facility Additional Requirements

As part of the transfer facility provisions, §298.45(j) – which is current mislabeled §298.45(c)⁸ – establishes a series of additional requirements which are applied to "transporters." Transporters (but not apparently transfer facility operators) are required to comply with the

⁸ 29 Pa. Bulletin at 2001, col. 2.

contingency plan requirements of now repealed Chapter 264, Subchapters C and D. Transporters are also required to comply with the underground storage tank standards of Ch. 245.

These provisions seem out of place and mis-aimed. If a person is transporting waste oil, it is unlikely they are doing so in an underground tank. At the same time, the contingency planning provisions of repealed Chapter 264 related to stationary facilities, and a number of the provisions (such as requirements for filing plans with police departments, fire companies, and emergency responders) would not be practicable for transporters who traverse multiple communities during the course of shipment.

§298.46 – Tracking

Clarification of this provision is needed with respect to the applicability of these tracking provisions to generators who are self-transporting materials to aggregation points or, for example, to generator-operated filtration facilities described in §298.41(c). The corresponding federal rule upon which §298.46 was based is focused on situations where a generator consigns a shipment to a transporter, who takes the shipment to the processor. This level of paperwork should not be required where a utility is draining its own transformers and turbines, and taking that material to its own filtration facility, in order to recondition the oil for replacement back into the transformers and turbines.

Other Comments

We would also note the following item:

- In §298.20(b)(1), the reference to the “self-transport provisions of §298.24(a)” should refer to “§298.24(1).”



Pennsylvania Coal Association

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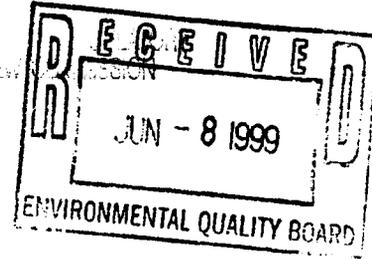
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MICHAEL G. YOUNG
Director of Regulatory Affairs

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June 7, 1999



Environmental Quality Board
P.O. Box 8477
Rachel Carson State Office Building
Harrisburg, PA 17105-8477

Re: Notice of Proposed Rulemaking: Waste Oil Regulations, 25 Pa. Code Chapter 298 , *Pennsylvania Bulletin*, April 10, 1999

Members of the Board:

Thank you for giving the Pennsylvania Coal Association (PCA) an opportunity to submit written comments on above-referenced Notice of Proposed Rulemaking (the "Draft Rules"). PCA represents 33 bituminous coal producers and more than 90 associate members, including power generators, engineers, consultants and other entities which may be subject to the Department of Environmental Protection's waste oil regulations. PCA submits the following written comments in response to the above-referenced Notice of Proposed Rulemaking.

General Comments

Except where our specific comments vary, PCA endorses the comments of the Pennsylvania Chamber of Business and Industry (PA Chamber).

PCA is discouraged by the statement of the Department's general "experience" as justification for deviating from federal law and regulations. This does not conform to the intent of the Regulatory Basics Initiative (RBI), which generally requires a compelling or unique state interest in order to impose such requirements.

Specific Comments

Subchapter A: Definitions

Use of the term "waste oil" is somewhat of a misnomer. PCA understands the problem with the statutory language in the Used Oil Recycling Act and the federal program; however, use of alternate terms -- such as "recyclable used oil" for oil which both EPA and DEP presume will be recycled and "waste used oil" for oil that cannot be recycled would allow DEP to define substances in a manner consistent with state and federal law, without attaching the stigmatic term "waste" to the product.

PCA therefore recommends that the Chapter title be changed to "Recyclable and Non-Recyclable Used Oil," and that definitions for each term be developed which include substances defined under both Pennsylvania and federal law. For example:

Recyclable used oil: "Used oil," as defined by the Pennsylvania Used Oil Recycling Act or the federal Resource Conservation Recovery Act and regulations, which is not restricted from recycling under any law or regulation and is not disposed of or sent for disposal by a handler of used oil.

Alternatively, the statutory and regulatory definitions could be included in the definition, as they are in the proposed definition of "waste oil," adding a clause delineating between "recyclable" and "non-recyclable" substances.

Waste oil generator:* The exemptions to "generator" should be included in the regulatory definition, as they are in the federal regulations. See 42 USC §279.20(a). As noted in our comments to Section 298.20 below, PCA believes "generator" should continue to exclude "businesses which generate waste lubricating oils from internal combustion engines or vehicles."

Waste oil transfer facility: There are several problems with this definition. First, DEP assumes that every transfer facility handles residual waste. However, waste oil that is not disposed of is not "residual waste." Applying the Residual Waste Act eliminates the exemption for facilities which store waste oil for less than 35 days. This is inconsistent with the federal regulations and the intent of the law and seems very onerous to small businesses -- particularly those who are now deemed "generators" because of their use of oil as an engine lubricant.

Again, separate definitions for recyclable and non-recyclable oil would resolve this by allowing recyclable oil to be stored for recycling without having the storage location be designated a "transfer facility," since recyclable oil is not residual waste if it is in fact recycled. This would encourage recycling of oil and would eliminate an unnecessary bureaucratic burden on small businesses. We also agree with the PA Chamber that generators should be excluded from this definition.

Subchapter B -- Applicability (general)

§298.10: Applicability

The Draft Rules should emphasize the presumption that used oil will be recycled by promulgating distinct definitions of recyclable and non-recyclable substances, as explained in more detail elsewhere in these comments.

* For clarity's sake, PCA uses the term "waste oil" in our comments, even though we believe this term should be replaced.

Subchapter C --Standards for Waste Oil Generators

§298.20: Applicability

DEP needs to re-think the relationship between the Pa. Used Oil Recycling Act and the corresponding federal statutes and regulations. The Draft Rules note that RCRA pre-empts certain provisions of the Used Oil Recycling Act, simply assuming that the state law and regulations and the exemption for is less stringent than, and therefore preempted by, RCRA.

PCA believes there is considerably greater flexibility under RCRA in this area. *See* 42 U.S.C. §6943(b)(4). This provision of RCRA allows DEP to submit a program for assuring that used oil is collected, transported, treated, stored, reused and disposed of in a manner which does not present a hazard to public health or the environment.

We believe that such a program could effectively be developed through the Used Oil Recycling Act. This Act, as implemented by DEP, includes the exemption for engine lubricants generated by businesses. The Used Oil Recycling Act meets the requirements of RCRA because it requires DEP to preserve and enhance the quality of the environment and protect the public health and welfare.

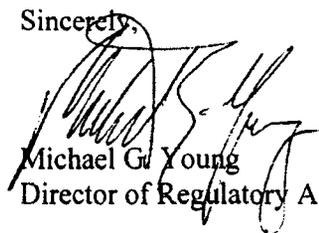
The Draft Rules would seem to present an ideal vehicle for formally proposing a program which is consistent with both the Used Oil Recycling Act and RCRA. PCA therefore requests DEP to consider such a submission, and to explain in response to these comments how it has evaluated the Used Oil Recycling Act in the context of this provision of the federal law if this recommendation is not adopted. PCA believes that the Department's experience should be used to support the effective state program. After all, this "experience" is cited repeatedly in the Draft Rules as the basis for retaining or including provisions more stringent than their federal counterparts -- contrary to the RBI mandate that a *compelling* or unique state interest be identified.

PCA also believes that a generator should be allowed to process waste oil from other sites it owns and operates at a single site, operating under the permit-by-rule (PBR) provisions. This would encourage efficient re-processing of smaller quantities at a single site operated by the generator. The Draft Rules do not allow any processing of off-site wastes under a PBR

Subchapter E -- Standards for waste oil transporters and transport facilities

We agree with the PA Chamber that generators should be exempt from these requirements. Applying this requirement to every field operation that holds a barrel of oil on a loading dock until it is picked up by a recycling transporter is extremely and unnecessarily burdensome.

Sincerely,



Michael G. Young
Director of Regulatory Affairs

One-Page Summary of Comments by Pennsylvania Coal Association
To Proposed Rulemaking, 25 Pa. Code Chapter 298

- Numerous provisions are more stringent than federal requirements without any stated compelling interest beyond DEP's general "experience."
- Term "waste oil" should be discarded in favor of "recyclable" and "nonrecyclable used oil."
- Consistent with our proposed definitions, the presumption that used oil will be recycled and the exclusion of recyclable oil from the definition of residual waste, DEP should allow facilities which store used oil for less than 35 days to be exempt from designation as "transfer facilities," as they are under federal law.
- DEP needs to try to preserve the state law exemption for businesses which use motor vehicle or engine lubricants from the definition of "generator." PCA believes this may be done consistent with the federal Resource Conservation and Recovery Act.

Freeman, Sharon

From: Mummert, Brian
Sent: Tuesday, June 08, 1999 8:36 AM
To: Freeman, Sharon
Subject: RE: Proposed Rulemaking - Waste Oil

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From: Freeman, Sharon
Sent: Tuesday, June 08, 1999 8:21 AM
To: Mummert, Brian
Subject: RE: Proposed Rulemaking - Waste Oil

Brian -

Would you please forward your mailing address? Thanks!

Sharon Freeman

-----Original Message-----

From: Mummert, Brian
Sent: Friday, June 04, 1999 2:05 PM
To: RegComments
Cc: Gilson, Ric; Walters, Scott
Subject: Proposed Rulemaking - Waste Oil

The following are my comments in reference to the proposed rulemaking for **waste oil** published on April 10, 1999 in the PA Bulletin.

1. Section 298.1 (Definitions) - A few of the definitions proposed in this section were previously defined in Section 287.1 of the regulations. Specifically, **container, tank, and waste oil**. The proposed rulemaking under 287.1 does not amend these definitions. It is suggested that the proposed definitions under section 298.1 be put under the existing definitions of section 287.1 of the residual waste regulations. The definition for **used oil** should also be removed from section 287.1 to avoid confusion with the proposed waste oil regulations.

Also, as I read the proposed definition for a **waste oil transfer station**, it is possible to construe that a person who picks up waste oil in a truck and brings back the partially filled truck to his place of business (without off-loading) and then goes out the next day and fills up the truck and takes it to a place for processing, would be a transfer station and be subject to section 298.45. If this is not the intent, then the definition should be made clearer to exclude this type of interim storage and transportation.

2. Under Section 298.10(c)(4), an oily wastewater (at least 1% oil) is managed under this chapter. A processing facility that takes oily wastewater would be subject to 298.50(c), which requires a permit "issued" under Chapter 287. Would facilities operating under the permit-by-rule provisions of section 287.102(c) be now required to obtain a formal processing permit? If not, and they continue to operate under PBR, are they to follow the other provisions of subchapter F as well? Section 287.102(a)(1) specifically excludes following the operating requirements of Chapters 288-297. If the determination is that they should just operate under the PBR requirements, then Chapter 298 needs to be added. The bottom line is that section

298.50(c)(1) should be made clear if residual waste permit-by-rule facilities need a formal processing permit to process oily wastewater.

3. The citations for section 298.24 should be changed to be consistent with the other sections. Replace (1), (2), and (3) with (a), (b), and (c). etc. This would also correspond with section 298.30(a) which references section 298.24(a).

4. In order to avoid any confusion, language should be added to section 298.10(c)(1) & (2) to clearly state that waste oil filters are included under "**materials containing or otherwise contaminated with waste oil**".

5. A fact sheet should also be developed that provides what requirements (in plain language) individuals and companies need to meet if they generate, store, transport, and/or burn for energy recovery waste oil.



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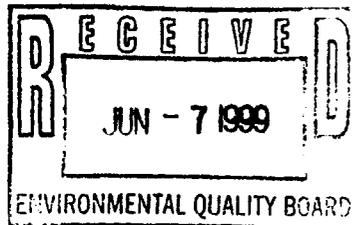
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Environmental Quality Board
P.O. Box 8477
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Re: DEP Proposed Waste Oil Regulations

Dear Sir or Madam:

The following comments are submitted on behalf of the Used Oil Management Association ("UOMA"). UOMA represents manufacturers and associated distributors and equipment suppliers of used-oil-fired heaters.

UOMA generally endorses the Department of Environmental Protection's efforts to conform its regulation of used oil to the United States Environmental Protection Agency's regulations and to simplify and make more user friendly the state's regulations governing used oil. As it relates specifically to UOMA, we applaud DEP's retention of the "space heater exemption," which permits the burning of off-specification used oil in heaters so long as the heater is vented to the ambient air, the heater has a maximum design capacity of .5 million Btus per hour, and the heater burns only used oil generated by the heater's owner/operator or by do-it-yourself oil changers (proposed § 298.23). As you are aware, states which have recently studied this issue, such as Vermont, Texas and New Jersey, have found that the use of used-oil-fired heaters is an environmentally sound, economically beneficial practice that greatly assists small businesses.

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June 4, 1999
Page Two

However, we are concerned about one facet of the proposed regulations. While we appreciate that the proposed regulations use the term "waste oil" because of the Pennsylvania Used Oil Recycling Act's specific definition of "used oil," and that the definition of "waste oil" in the proposed regulations in fact corresponds to the definition of "used oil" contained in EPA's regulations, we fear that the term "waste oil" has negative connotations that will have the effect of discouraging recycling efforts. We therefore suggest utilization of a new term in the proposed regulations, such as "managed used oil" or "recycled used oil." This would alleviate any confusion with the statutory definition of "used oil."

We appreciate the State of Pennsylvania's efforts to promote the recycling of used oil, and we appreciate the opportunity to comment on DEP's proposed regulations. Please do not hesitate to contact us if you have any questions.

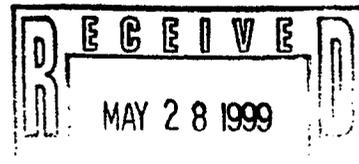
Sincerely,



Mary Beth Bosco
Regulatory Counsel
Used Oil Management Association

cc: UOMA Members

Wednesday, May 26, 1999



Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-2301

ORIGINAL: 2022

HARBISON

COPIES: Tyrrell
Wilmarth
Sandusky
Legal

RE: Proposed Waste Oil Regulations

I respectfully submit the following comments on the proposed regulations.

298.10 (b) (2) Comment: Waste oil that has never been mixed with any hazardous waste, characteristic or listed, can exhibit characteristics of hazardous waste. The regulated community, in particular processors of waste oil are concerned that as this reads the regulators will use this to make all waste oil hazardous waste. Under the past administration this was the goal of the DER. The best example of this is that the specification for on-spec recycled oil fuels allows up to 100 ppm of lead. The D list of hazardous wastes only allows 5 ppm lead. If this is not clarified, field personnel of the PA DEP may not understand the distinction and at best issue NOV's. The best way to remedy this would be to make a distinction that if the waste oil is destined for disposal(land fill) the paragraph is as stands. If the waste oil is destined for any kind of valid recycling the oil could still exhibit characteristics and be regulated as waste oil, not hazardous waste.

298.24 (3) Tolling arrangements: We object to the transporter under this arrangement not having an EPA ID number. This number allows tracking, etc. The transporter in all transportation of waste oil should have an identification number. It is not a burden to obtain and carries little paperwork burden.

298.45 (b) (4) We object to the language in this entire section. The problem being this allows the continued practice of using spotted trucks or rail cars as a permitted facility. All transfer facilities should have an individual or general permit.

Thank you for your consideration.

Kent V. Hart
president





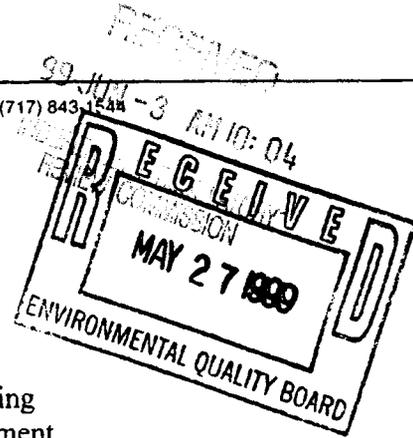
YORK COUNTY
SOLID WASTE AND REFUSE AUTHORITY

2700 Blackbridge Road, York, PA 17402-1101 Phone (717) 845-1066 Fax (717) 843-1544

Commonwealth of Pennsylvania
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

May 24, 1999
ORIGINAL: 2022
HARBISON
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Sandusky
Legal

Re: Proposed Rulemaking
Waste Oil Management



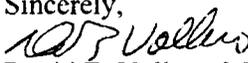
To whom it may concern:

For the sake of clarity, and in keeping with the intent of the proposed rulemaking, please consider the following comment regarding the waste oil regulations proposed in Volume 29, Number 15 of the Pennsylvania Bulletin dated 4/10/99. Page 1978 of the proposed rulemaking states the intent that materials containing or otherwise contaminated with waste oil cease being regulated as waste oil once the oil has been removed from those materials. Unfortunately §298.10(c)(2), as proposed, confuses this issue when such materials are managed via resource recovery. Therefore, the proposed rulemaking should be modified to clearly state that materials from which waste oil has been properly drained or removed, are not subject to regulation under Chapter 298 when incinerated at a resource recovery facility permitted under Chapter 283. Such clarification is consistent with the Department's intent expressed in the preamble since "burned for energy recovery", as that term is used throughout the proposed rulemaking, is clearly different than the energy recovery coincident to waste processing at a resource recovery facility whose primary purpose is one of waste management.

Therefore, I suggest the following version of §298.10(c)(2):

"(2) Materials containing or otherwise contaminated with waste oil that are burned for energy recovery, other than those processed in a resource recovery facility permitted by the Department, are subject to regulation as waste oil under this chapter."

I trust you will find this suggestion consistent with the intent of the proposed rulemaking. If you have any questions concerning this suggestion, I can be reached at (717) 845-1066. Thank you in advance for your consideration.

Sincerely,

David E. Vollero, Manager
Engineering / Operations

cc: W. Ehrman



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Sandusky, Legal

THE C.R. WARNER COMPANIES

EPA and PA DEP Permitted Treatment, Storage and Disposal Oil Recycling Facility - Permit #301285

YANKEE POINT TERMINAL

May 25, 1999

OUTLINE

Brief talking points on used oil regulations

There are several areas of concern we would like to bring to your attention regarding the proposed used oil regulations as well as existing marketplace conditions.

- 1) Poorly educated marketplace about environmental issues including waste yearly profiling of waste streams, Form U's, DEP reports. (Supply copy), mixtures of wastes into used oil (System One parts washers a good example.), few recycle used oil filters because it is not a law.
- 2) Space heaters – waste oil heaters. Waste oil has an ash content of .5 - .8 federal air laws require on specification oils to be .1 ash or less. This particulate matter is a serious matter to air standards.

Unchecked waste oil burning means two tier system of compliance and no compliance. Unchecked space heaters are in essence “mini-incinerators”. Who is going to police this?

We see companies grouping together to burn waste oil in heaters along with parts washer solution and other liquid waste.
(A copy of Caleb/Brett ash testing attached).

- 3) Lack of consistency - within state
 - Permitted place like a Yankee Point Terminal / Test, sample, record keep, recycle, get product re responsible buyers.
 - One – two truck companies hiding out in the woods with tanks.
 - Creates a two tier compliance system.
 - Many customers tell our drivers so and so just picks it up and takes it away.
 - Greenhouses, asphalt companies, even cement companies get oil unchecked by non permitted businesses through out the state.
 - The oil collector that was killed in 1998 in Northeast Philadelphia.
- 4) Oil Filter Recycling in Pennsylvania is not working – very little compliance or understanding of benefits in recycling.



THE C.R. WARNER COMPANIES

EPA and PA DEP Permitted Treatment, Storage and Disposal Oil Recycling Facility - Permit #301285
YANKEE POINT TERMINAL

May 25, 1999

VIA U.S. MAIL

Ms. Kate Coleman
Environmental Quality Board
P.O. Box 8477
Harrisburg, Pennsylvania 17105-8477

RE: Proposed Used Oil Rules

Dear Ms. Coleman,

We thank you for the opportunity to submit these comments concerning the Pennsylvania Department of Environmental Protection's ("DEP") proposed Used Oil rules (PA Chapters 261, 266, 287, 298) (the "Proposed Rules"). C.R. Warner, Yankee Point Terminal, Permit #301285 has been in the business of used oil recycling since 1938, and was Pennsylvania's first permitted used oil recycling facility in 1996. We are uniquely aware of the concerns addressed by the Proposed Rules.

C.R. Warner commends the DEP for addressing the issue of recycling used oil. It is a subject which can bring numerous beneficial impacts to the State. Unfortunately, the Proposed Rules do not adequately address certain practical realities, and will not achieve their intended goals. Therefore, we must object to the adoption of the Proposed Rules in their current form.

The ideal use for waste oil is combustion in large industrial burners with controlled "stackhouses" or bag houses to prevent unacceptable emissions of particulates to the ambient air. Entities which own large industrial burners, such as utilities, have the financial wherewithal to install such proper air pollution control equipment to address inevitable particulate emissions from combustion of used oil, which contains ash and other metals at levels not found, or not found at all, in virgin fuel sources. Entities which own large industrial burners can burn used oil within acceptable limits because they have large volume requirements, enabling them to create a market for the blending of used oil with other fuel sources of lower ash and metal content, especially when many of them are not required to test the used oil to ensure it is on-spec. The Proposed Rules would establish a system of direct shipments to small users without such blending. It is unrealistic to expect that all or even a sizable number of these small users will invest the resources needed to attain proper blending and assure proper ash and metal content.

Similarly, entities which own large industrial burners can themselves create a market for the inspection and weeding out of mixtures of used oil with hazardous waste or other improper materials. The Proposed Rules would establish a system of direct shipments to small users, such as space heaters, without the rigorous testing and reporting requirements that apply to currently permitted used oil recyclers. Again, it is unrealistic to expect that all or even a sizable number of these small users will invest the resources needed to assure no impermissible mixing of used oil with unacceptable materials, especially when many of them are not required to test their used oil, and it is unrealistic to assume the proper handling and disposal of any impermissible mixtures which are found if testing is performed.

Used oil recycling must be carefully and closely regulated given the environmental concerns attendant to the industry. Since the delisting of used oil as a hazardous waste, which we believe was a sensible and positive step, it is all the more important the certain basic regulatory checks remain in place. However, the Proposed Rules would create an unregulatable system of used oil reuse that will encourage the burning of off-spec used oil and used oil/hazardous waste mixtures that will be more detrimental to the environment than allowed by the current system. The Proposed Rules will permit the unchecked proliferation of space heaters, in reality potential "mini-incinerators", for use by virtually anyone in the State, no matter how small or unsophisticated, and reliance on these users to enforce important, expensive technical requirements to protect the State's environment. This is a recipe for disaster.

Space heaters will receive from the uninformed, the unaware and the unlawful off spec used oil and/or used oil mixed with unwanted solvent waste, degreaser waste, paint thinners and other hazardous wastes. With no change in the current number of State personnel to enforce the regulatory system, no testing or reporting requirements for space heater users and others and no financially-viable alternative for dealing with off-spec used oil or used oil mixed with hazardous waste other than illegal burning or dumping, the Proposed Rules will create a huge black market for improper disposal of regulated waste and improper air pollution which will more than offset any benefit of the Proposed Rules. Moreover, the Proposed Rules do not factor in as part of their analysis what a used oil user will do if it detects hazardous waste or off-spec materials in its used oil, such as what the user will do with such materials – legally or illegal, the cost of proper further handling and disposal, and proper enforcement or other means to assure that the generators cease such behavior.

Further, the system contemplated by the Proposed Rules will result in a seasonal demand for those who currently recycle and process used oil. Those who would be allowed to burn used oil received directly from a generator will not be interested in purchasing used oil other than in the colder months. Businesses such as C.R. Warner will be needed during warmer months, but they cannot operate profitably on a seasonal basis, and they will disappear. Instead of creating a better environmental result, the State's residents and businesses will be left with nowhere to send their used waste oil during these months. This will create an environmental disaster, resulting in far more illegal dumping than may

currently exist. Further, the ancillary services provided by C.R. Warner and other similarly situated, such as parts washer solvent services and processing of other used petroleum products, like anti-freeze and oil water, will disappear, as well. It does not appear that these factors were taken into account in any fashion in developing the Proposed Rules.

Instead of the system proposed by the regulations under consideration, Pennsylvania should require: (1) permitting of space heaters and others who would burn used oil, accompanied by a sufficient fee, we suggest \$1,000 annually, to allow proper enforcement of used oil users; (2) annual emissions checks by all those who own or operate space heaters or other used oil combustion equipment to assure compliance with applicable regulations; (3) maintenance of a log book by all who own or operate used oil combustion equipment reflecting the source, volume, date of shipment and type and content of used oil, based on tests of each incoming shipment; and (4) sufficient testing, reporting and recordkeeping requirements, and enforcement funding, to ensure that no hazardous or other improper wastes are mixed with recycled used oil for combustion. Requirements of this type currently pertain to those who process or burn used oil. There is no sound environmental or other reason not to impose similar requirements on everyone else, especially given the cumulative effect of the unchecked use of used oil which is contemplated by the Proposed Rules.

Summary of Proposed Rules

Subsequent to federal delisting of used oil as a hazardous waste, DEP undertook to draft regulations which would permit used oil combustion in a manner consistent with federal used oil management standards, 40 C.P.R. 279; 30 N.J.R. 4004. The Proposed Rules set forth the following key concepts: (1) regulation of used oil ash content and air emissions; (2) registration of on-site space heaters to burn on-specification used oil in lieu of an APC permit; (3) space heater combustion of used oil collected from do-it-yourselfers and of used oil generated on-site; and (4) self-monitoring and inspection of used oil composition, air emissions and space heater operation. In its Summary of the Proposed Rules, DEP states that the rules are intended to "dramatically decrease" the disposal of used oil by allowing its combustion without causing significant harm to the public and/or the environment. According to DEP, requiring registration rather than permitting of used-oil burning space heaters and allowing industrial and commercial boilers (currently authorized to burn Number 6 fuel) to burn used oil without obtaining departmental permits will streamline the approval process and reduce uncertainty and paperwork. *Id.* DEP also states that used oil burning is less costly than burning virgin oil and that space heater combustion provides resource recovery with minimal adverse environmental, economic and social impact.

Discussion

In addition to the general concerns set forth above, we have several specific comments with regards to the Proposed Rule. First, the ash content standard, a necessary provision, will not be attained under the system established by the Proposed Rules, and will be

honored only in the breach. Only a system providing for the used of a mixture of used oil and other low ash-content fuels will satisfy the proper ash content requirement. Next, the Proposed Rules are based on the faulty premise that authorizing unpermitted used oil combustion by businesses using space heaters and boilers will reduce illegal dumping of used oil. Not only is this untrue, but it also improperly would permit one type of pollution in lieu of another, without any evaluation of the actual environmental effects of such an experiment. Further, enforcement of the Proposed Rules will be virtually impossible. Indeed, the relaxed registration requirements of the Proposed Rules will exacerbate negative environmental impacts. Moreover, the Proposed Rules location limitations for used oil combustion units are inadequate to safeguard the health of Pennsylvania's citizens. Finally, DEP's Economic Impact analysis underestimates the economic impact on used oil processors and the cost of used oil combustion and regulatory compliance.

I. Ash Content Standard

Ash is the amount of noncombustible material in oil which may cause violation of national or local air emissions regulations if released in excessive amounts. Consistent with existing law, the Proposed Rules properly permits a .1 percent by weight ash content maximum for on-specification oil. However, in practice, this standard cannot be met by used oil unless it is blended with other fuel sources, as is the current practice (roughly at a one-to-ten ratio). Indeed, the ash limit in the current draft of the ASTM standard for used lubricating oil is .8 percent by weight. Even ASTM #5 virgin fuel oil has an ash limit of greater than .1 percent.¹ The regulations as drafted invite people to send their used oil directly to space heater users and other without any requirements of processing or blending. Many people, both used oil generators and burners, will assume that their used oil by itself will meet the on-spec requirements. They will be wrong. Given the lack of sufficient enforcement personnel or mechanisms, it will be virtually impossible for DEP to prevent combustion of used oil with higher than acceptable ash content. Blending to achieve the proper ash content requires technical engineering and testing which the average person does not possess, and would result in a far different economic impact than that discussed in the Proposed Rules. It also requires a level of sophistication not contemplated by the Proposed Rules. Those who do not wish to burn or blend off-spec used oil will have no recourse other than illegal dumping, or more costly off-site handling. Again, the Proposed Rules do not discuss these problems at all. The Proposed Rules will have created a system in which the ash content standard is honored more in the breach than in the keeping.

Similar problems exist with respect to the metals which are present in used oil, but not in other fuel sources. As with ash in used oil, there are insufficient safeguards to assure no improper air emissions of metals as a result of used oil combustion.

¹ If the ash content of used oil was .1 percent or less, oil companies would recycle it into lubricating oil, which has a much higher economic value.

II. Illegal Dumping Prevention

The Environmental Impact analysis section of the Proposed Rules argues without evidentiary support that the promotion of used oil burning will avoid used oil contamination of Pennsylvania lands and waterways which results from improper management of used oil. The analysis further claims, without any supporting data, that the increased number of used oil users will generate more used oil collection sites, which in turn will encourage people to take their used oil to these outlets when they would have otherwise improperly disposed of the oil. Id.

The Proposed Regulations will not reduce illegal dumping, because dumping will still be more convenient and economical than taking used oil to a depository or investing in used oil space heaters. While DEP does not rely on any study for its conclusions, it is likely that a significant cause of illegal dumping is laziness and insensitivity to environmental requirements, not the marginal cost of proper handling or disposal under current regulations.

There is no basis for the cited assertion that a greater number of collection outlets will cause illegal dumpers to take their used oil to these outlets. Indeed, DEP provides no statistical evidence which demonstrates a correlation between the Proposed Rules and reduced contamination of Pennsylvania's lands and waterways. DEP provides no evidence it has considered the negative impacts to the State's air as a result of adoption of the Proposed Rules. In addition, the Department has not provided evidence which suggests that illegal dumpers are likely to invest capital in space heaters to burn their used oil on-site.

More fundamentally, DEP should not seek to substitute one environmental problem for another. Burning used oil traded on the unregulatable black market which would be created by the Proposed Rules will result in high ash content oil, and who knows what other impurities or hazardous wastes mixed in, which will be released to the air. If it is DEP's goal to prevent releases of used oil to the land or water, it should consider promulgating stricter enforcement regulations directly aimed at used oil disposers. Substituting one form of pollution for another is bad policy, and is not permitted by State statute or the State Constitution. Contrary to DEP's conclusions, encouraging used oil combustion will not avoid illegal dumping.

III. Enforcement

The Proposed Rules do not provide adequate enforcement safeguards to regulate used oil composition, air emissions and other used oil combustion requirements. While the Proposed Rules contemplate registration, testing and recordkeeping requirements, the Department does not afford direct agency regulation and enforcement to ensure regulatory compliance. 30 N.J.R. 4005, 4009, 4010, 4011.

If the Proposed Rules increase the usage of used oil as DEP contemplates, a greater number of people and businesses will be handling used oil. Many of these people and

Robert J. Krawiecki
C.R. Warner, Inc.
Page 6

businesses will be unaware of the specific regulatory requirements or will be uneducated about the ash content of used oil, or the risks of burning off-specification or hazardous waste-contaminated fuel. Many people unaware of these limitations, including do-it-yourselfers, will dispose of used oil that does not meet regulatory requirements. The oil may also contain hazardous waste. Given the expected increase in the number of users, enforcement of these restrictions will be impossible.

Furthermore, if the supply of used oil at sites where the oil will be burned dramatically increases, as contemplated by the Proposed Rules, there is no means to assure that all of the oil will be tested to ensure that it is on-specification. The Proposed Rules contain no reporting requirement, and DEP personnel simply will not have sufficient resources to assure compliance by the numerous new waste oil users. Contrary to the Proposed Rules, people will be burning all qualities of used oil.

Thank you for the opportunity to address a few of the points on short notice. We will provide a more detailed written response before June 9, 1999.

Sincerely,

Robert J. Krawiecki



Intertek Testing Services
Caleb Brett

December 21, 1998

Mr. Robert Krawiecki
Yankee Point Terminal
The C.R. Warner Companies
61st Street and West Passyunk Avenue
Philadelphia, PA 19153

Re: Ash Content Standard in Proposed Used Oil Combustion Rules

Dear Mr. Krawiecki:

I am writing you in response to your request for technical information concerning ash content in used oil for the purpose of sending comments to the New Jersey Department of Environmental protection regarding its proposed Used Oil Combustion Rule. ITS/Caleb Brett is an independent testing laboratory which has served the petroleum industry nationwide for the past 25 years. During this time period, we have tested used oil. We test our customer's petroleum products for quality sales purposes.

I have been the Laboratory Manager at ITS/Caleb Brett's Philadelphia facility for 8 years. My expertise lies in testing and analyzing petroleum products, their constituents and their properties. During my years of testing and analysis, I have never seen used oil with an ash content of less than or equal to .1 percent by weight. Typically, the ash content is directly related to the additive packages used in lube oil, which is the base stock for used oil. Used oil ash content ranges anywhere from .4 to over 1.0 percent by weight. In my professional opinion, it is highly unlikely that any shipment of used oil would contain an ash level less than or equal to .1 percent by weight.

Please do not hesitate to contact me if I can be of further assistance.

Very truly yours,


Geri-Ann Deputy
Laboratory Manager

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF LAND RECYCLING AND WASTE MANAGEMENT

INSTRUCTIONS FOR COMPLETING FORM U

REQUEST TO PROCESS OR DISPOSE OF RESIDUAL WASTE
(Form 2540-PM-LRWM0395)

GENERAL INFORMATION

**SECTION A. APPLICANT IDENTIFIER -
Self Explanatory.**

SECTION B. WASTE DESCRIPTION

Item A. General Properties

- #3 Describe the color, physical state(s), and phase(s) of the waste. (This question is subjective.) Enter the number of solid and/or liquid phases of separation and describe each phase. For example, two phases: one yellow oily liquid and one gray granular solid.

- #7 Hazardous waste generated by conditionally exempt small quantity generators (CESQG) as defined in 40 CFR 261.5, may be processed in a residual waste processing facility or disposed of in a Class I residual waste facility. CESQG may not dispose of their hazardous waste in municipal, Class II, or Class III facilities.

Item B. Chemical Analysis

At this time, the Department is waiving the chemical analysis required in this section for individual residual waste streams generated at a rate of less than 2200 lbs. per month per generating location and are not destined for disposal at Class III residual waste landfills. At its discretion, the Department may decide this waiver is not appropriate for "specific" waste streams and will notify the generator and/or facility that the chemical analysis of the waste stream is required. This waiver in no way affects the responsibility of the generator under §262.11 to determine whether or not the waste is hazardous waste.

The analytical methodologies used shall be those set forth in the most recent edition of the EPA's Test Methods for Evaluating Solid Waste (SW-846), Methods for Chemical Analysis of Water and Wastes (EPA 600/4-79-020), Standard Methods for the Examination of Water and Wastewater (prepared jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation), or a comparable method subsequently approved by EPA or the Department.

The person taking the samples and the laboratory performing the analysis shall employ the quality assurance/quality control procedures described in the EPA's Test Methods for Evaluating Solid Waste (SW-846) or Handbook for Analytical Quality Control in Water and Wastewater Laboratories (EPA 600/4-79-019).

All analyses submitted must specify the method used and any special preparation, deviation from the method, or pertinent observations. Each analysis sheet must include: *date of sampling, date of analysis, name of laboratory performing test, and laboratory contact person and phone number.* Analytical determinations should be run on the samples as is, unless otherwise specified in the cited method. Report the analyses in mg/kg on a dry weight basis for solids or in mg/L for liquids, or as otherwise specified in cited method.

No single analytical method is applicable for all waste streams and some modifications may be necessary for unusual waste types. Any modifications, however, must be approved by the Department.

If the sample is of unknown origin or characteristics, contact the appropriate Department regional office prior to analysis.

#1 Chemical Analysis of the waste - The analysis must include the following list of parameters as specified by facility type unless generator certifies in writing the absence of the parameter based on his or her knowledge of the manufacturing or pollution control processes:

A. Parameters for All Facilities:

- i. pH
- ii. Ignitability
- iii. Reactive Sulfide
- iv. Reactive Cyanide
- v. Toxicity Characteristic Leaching Procedure (TCLP) - include all parameters found in either 25 Pa. Code 261.24 or 40 CFR 261.24 as well as pH of extract. Report all results in mg/L or as otherwise specified in method.

B. Additional Parameters for Class I Residual Waste and Municipal Waste Disposal Facilities:

- i. Additional TCLP parameters - copper, nickel, zinc.
- ii. Free Liquids
- iii. PCBs
- iv. Water Leaching Procedure (ASTM Method D3987-85) - COD, Total Solids, Oil and Grease or Petroleum Hydrocarbons, and Ammonia-Nitrogen. Report all results in mg/L or as otherwise specified in method.
- v. Total Solids
- vi. Total Volatile Solids
- vii. Total Oil and Grease or Petroleum Hydrocarbons

C. Additional Parameters for Class II and Class III Residual Waste Disposal Facilities:

- i. All additional parameters required for Class I facilities in B.
- ii. Additional TCLP parameters - iron, manganese.
- iii. Phenolics
- iv. Additional Water Leaching Procedure parameters - chloride, cyanide, fluoride, nitrate, nitrite, sulfate, total organic halide.

D. Other Additional Parameters for Disposal Facilities may be necessary due to the nature of the waste or conditions at the disposal facility. Constituents which could exceed the leachate limit for the class of facility, impact the liner, leachate treatment, air quality, compatibility to other wastes disposed at the facility, or induce harm to facility personnel should be identified and quantitated by generator. The facility operator or the Department may also require the determination of additional parameters for these reasons.

E. The use of alternate leaching procedures for determining waste acceptability in monofills may be allowed by the Department.

F. Additional Parameters for Processing Facilities may be necessary due to the nature of the waste processing and to comply with conditions of the facility permit. In addition, constituents which could impact the process, compatibility of process residuals from waste with treatment system, air quality, compatibility to other wastes processed at the facility, or induce harm to facility personnel should be identified and quantitated by generator. The facility operator or the Department may also require the determination of additional parameters for these reasons.

Item C. Process Description and Schematic - Please attach to this form the following:

#1 Describe the manufacturing process which produced the waste and any pollution control methods involved. This must include the raw materials used in the process, any intermediate products formed, final products, and any substances added during treatment. For non-hazardous waste, provide sufficient detail to demonstrate the waste is not a listed hazardous waste. For example:

"Resol Resin Manufacture"

"These resins are formed by reacting phenol, or a substituted phenol with formaldehyde which contains an excess of formaldehyde. An alkali (sodium hydroxide) is used to catalyze the polymerization which takes place at a pH of between 8 and 11 and at a temperature of 60°C.

"When the desired degree of polymerization has occurred, the kettle is cooled to about 35°C to inhibit further reaction. The caustic may be neutralized in the kettle with sulfuric acid at this time. The water from this distillation forms a concentrated waste of unreacted materials and low molecular weight resin.

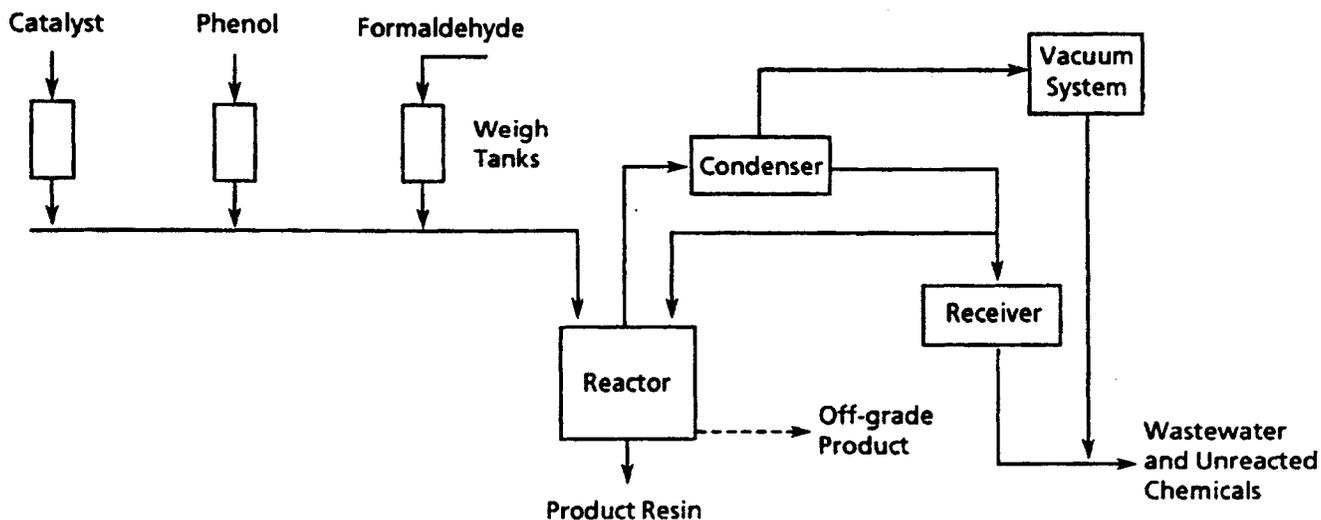
"The batch is dumped, and depending on the specific resin, the batch may be washed several times and a vacuum may be used during the dehydration cycle. It is important that molten resin be handled quickly to avoid its setting up to an insoluble, infusible mass which would become a waste."

#2 Provide, on 8½ x 11" size paper, flow schematics of the manufacturing and/or pollution control processes generating the waste stream starting with the raw materials and ending with the final products. For example:

#3 Confidentiality claim (if any) - Information submitted to the Department in this portion of the form may be claimed as confidential by the applicant. If no claim is made at the time of submission, the Department shall make the information available to the public without further notice.

Claim of confidentiality shall address the following:

- A. The portions of the information claimed to be confidential.
- B. The length of time the information is to remain confidential.
- C. The measures taken to guard undesired disclosure of the information to others.
- D. The extent the information has been disclosed to others and the precautions taken in connection with that disclosure.
- E. A copy of pertinent confidentiality determinations by EPA or any other federal agency.
- F. The nature of the substantial harm to the competitive position by disclosure of the information, the reasons it should be viewed as substantial, and the relationship between the disclosure and the harm.



SECTION C. EVALUATION WITH WASTE ANALYSIS AND CLASSIFICATION PLAN (must be completed by facility operator)

A detailed comparison of the waste characteristics with maximum allowable levels in the facility's waste analysis and classification plan must be presented to demonstrate acceptability of the waste at the facility.

For waste containing constituents not covered by the facility's waste analysis and classification plan or for facilities without such a plan, any facility utilizing a liner must conduct an evaluation of leachate treatability and of liner compatibility with the waste stream before accepting that waste stream for processing or disposal, unless the approval to accept that waste stream is granted in the facility's permit. The evaluation procedure must be approved by the Department prior to its commencement.

The test protocol will vary with the type of liner system and the characteristics of the waste stream. The Department should be contacted for appropriate test protocols. In lieu of actual testing, existing published or documented data on the waste or waste generated from similar processes proving the liner compatibility may be substituted in some instances.

SECTION D. PROPOSED PROCESSING, STORAGE, AND/OR DISPOSAL METHOD

Use additional sheets of paper if necessary.

Item A. Proposed Processing Method - Briefly describe the method proposed to process this waste stream. For example, "Solvent removed from waste by solvent recovery apparatus to less than 1% solvent. Recovered solvent is sold to XYZ, Inc. for reclamation. Solids are polymerized and the remaining solvent is driven off by heat."

Item B. Proposed Storage Method - Briefly describe the method proposed to store this waste stream and the compatibility with its container, the waste pile liner, or the surface impoundment liner. For example, "Paint waste is placed into 55 gal. steel drums and is proposed to be stored at the XYZ Waste Disposal Company's storage building for 60 days prior to processing. The paint waste is compatible with its container and the other wastes stored in the immediate vicinity. The proposed location for the paint waste within the building is indicated on the attached drawing."

Item C. Proposed Disposal Method - Briefly describe the method proposed to dispose of this waste stream. For example, "Polymerized solids are to be placed in a segregated cell of XYZ Waste Disposal Company with compatible wastes as indicated on the attached drawing. The cell is located at coordinates D-7. The cell design has been approved as part of the facility permit."

SECTION E. ALTERNATIVES TO PROPOSED PROCESSING AND/OR DISPOSAL METHOD

Item A. What Other Processing, Disposal, Recycle, Reuse, or Reclaim Method(s) Can be Used? Briefly describe viable alternative to your proposal.

Item B. Why was the Processing and/or Disposal Method in Section III Chosen? Briefly describe why the proposed method was chosen. For example, "The proposed method offers the most cost effective means of disposal over a 10 year period. Capital investment of solvent apparatus and polymerization equipment will be off-set by income from sale of recovered solvent and smaller volumes of waste to be disposed."

SECTION F. CERTIFICATION OF PROCESSING OR DISPOSAL FACILITY

The Application Must be Certified in the Following Manner:

- #1 Corporation - A corporate officer must sign the document and the corporate seal must be affixed.
- #2 Limited partnerships - A general partner must sign the document.
- #3 All other partnerships - A partner must sign the document.
- #4 Sole proprietorships - The proprietor.
- #5 Municipal, state, or federal authority or agency - An executive officer or ranking elected official responsible for compliance of the authority's or agency's waste activities and facilities with all applicable regulations.
- #6 The general manager or chief operator of the facility.

All signatures affixed to the document must be notarized.

SECTION G. CERTIFICATION OF REGISTERED PROFESSIONAL ENGINEER FOR THE PROCESSING AND/OR DISPOSAL FACILITY - Self Explanatory

APPENDIX RESIDUAL WASTE CODE (RWC)

000	Combustion Residues	300	Continued
	001 Coal-Derived Bottom Ash		310 Detergents, Cleaning Agents
	002 Coal-Derived Fly Ash		311 Off-Specifications Products, Intermediates
	003 Flue Gas Desulfurization Residue (FGD)		312 Pharmaceutical, Laboratory, Biological Wastes
	004 Incinerator Bottom Ash		313 Wax, Paraffin
	005 Incinerator Fly Ash		314 Alcohols (non-haz)
	006 Incinerator Mixed Ash		315 Solvents, nonaqueous (non-haz)
	007 Other Ash		316 Solvents, aqueous
			317 Glycols/antifreeze
			318 Photographic Chemicals
100	Metallurgical Process Residues	400	Generic Wastes
	101 Foundry Sand		401 Leather Wastes
	102 Slag		402 Rubber, Elastomer Wastes, Latex
	103 Refractory Material		403 Wood Wastes (Including Particle Board)
	104 Grindings, Shavings		404 Paper, Cardboard Wastes, Laminated Paper
	105 Ferrous Baghouse Dust		405 Textile Wastes Including Yarn, Fabric, Fiber, Elastic
	106 Non-Ferrous Baghouse Dust		406 Glass Wastes Excluding Industrial Refractory Material
	107 Ferrous Scrap, including Auto Recycle		407 Polyethylene, Polystyrene, Polyurethane and Other Non-Halogenated Plastics
	108 Non-Ferrous Scrap		408 Glass Reinforced Plastics
	109 Sandblast Abrasive and Residue		409 Halogenated Plastics (e.g. PVC, Teflon, CPE)
	110 Air Emission Control Dust		410 Electronic Component Wastes (e.g. Off-Spec Semiconductors, Circuit Boards)
	111 Lubricating soaps		411 Agricultural Wastes (e.g. Fertilizers, Pesticides, Feed Supplements)
200	Sludges, Scales		412 Photographic Wastes (e.g. Film, Photographic Paper)
	201 Water Treatment Sludge/Sediment		413 Asphalt (Bituminous)
	203 Industrial Wastewater Treatment Sludge, including Acid Mine Drainage Sludge		414 Ceramic Wastes
	204 Metallurgical Sludge		415 Linoleum Wastes
	205 Food Processing Sludge		416 Thermal Insulation Wastes (cellulose, glass, wool)
	206 Paint, Coating Sludge and Scale		417 Wiring, Conduit, Electrical Insulation
	207 Tank Bottoms		418 Sawdust, including Wood Shavings
	208 Still Bottoms		419 Containers (uncontaminated)
	209 Oily Sludge, Petroleum Derived		420 Wastewater (excluding sanitary sewage)
	210 Emission Control Sludge		421 Contaminated Non-contact Cooling Water
	211 Other Industrial Sludge		430 Food Waste (excluding treatment sludges)
	212 Lime/Cement Kiln Scale, Residue		440 Resins
	213 Lime-Stabilized Spent Pickle Liquor		450 Polymers (other than 407, 409)
	214 Cooling Tower Sediment/sludge		460 Vinyl (sheet, upholstery)
300	Chemical Wastes		470 Spent Filters - air/gas
	301 Acidic Chemicals (pH < 6)		471 Spent Filters - aquatic
	302 Basic Chemicals (pH > 8)		472 Spent Filters - oil/solvent
	303 Combustible Chemicals (non-haz)		
	304 Chemical Salts		
	305 Carbon Residues (e.g., Decoloring, Filtering)		
	306 Surface Coatings (e.g., Solid, Semi-Solid Paints, Polishes, Adhesives, Inks)		
	307 Filter Media / Aids (e.g., Diatomaceous Earth, Resins, etc.)		
	308 Spent Dyes		

**APPENDIX
RESIDUAL WASTE CODE (RWC)**

- 500 Special Handling Residues
 - 501 Asbestos-Containing Waste
(e.g. Insulation, Brake Lining)
 - 502 PCB-Containing Waste
 - 503 Oil-Contaminated Waste (e.g. Spent
Absorbent, Oily Rags)
 - 504 Paints (Liquid)
 - 505 Spent Catalysts
 - 506 Spill Residues, nonpetroleum contaminated
soils
 - 507 Non-virgin Petroleum Fuel-Contaminated
Soil and Debris
 - 508 Virgin Petroleum Fuel-Contaminated Soil
and Debris
 - 509 Waste Oil, including machining & cutting
oils
 - 510 Waste Tires

- 700 Industrial Equipment, Scrap
 - 701 Pumping, Piping, Vessels, Instruments,
Storage Tanks
 - 702 Scrap Materials from Maintenance, Product
Turnaround
 - 703 Batteries - Non Hazardous (all types)
 - 704 Grinding Wheels
 - 710 Plant Trash

- 800 Non-Coal Mining Wastes
 - 801 Drilling Fluids or Residuals

- 900 Miscellaneous
 - 901 Auto Shredder "Fluff"
 - 902 Non-Haz Residue From Treatment of Haz
Waste
 - 999 Other

SECTION B. WASTE DESCRIPTION (Must be completed by generator)

Residual Waste Code _____

Description of Waste:

A. General Properties

1. pH range _____ to _____ (based on analyses or knowledge)

2. Physical state:

- a. liquid waste (EPA Method 9095)
- b. solid (EPA Method 9095)
- c. gas (ambient temperature and pressure)

3. Physical appearance:

Color _____

Number of solid or liquid phases of separation _____

Describe each phase of separation.

4. Maximum volume of waste to be shipped to processing or disposal facility on a monthly basis:

_____ cubic yards, gallons, pounds, or tons (circle one)

5. Processing or disposal frequency: _____ times per year; one time

6. Current volume of waste to be shipped to processing or disposal facility:

_____ cubic yards, gallons, pounds, or tons (circle one)

7. Is the waste a hazardous waste as defined in 25 Pa. Code 261 and/or 40 CFR 261

Yes No

a. If yes, is the hazardous waste generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5?

Yes No

b. If yes, list the appropriate hazardous waste number (s):

c. If yes, describe the hazardous waste

8. Has the waste been delisted as a hazardous waste by DEP? Yes No N/A

9. a. Has the waste been accepted for disposal/processing at another Pennsylvania facility? Yes No

b. If yes, list the facility ID number(s)

10. a. Has an application for disposal/processing of the waste at another Pennsylvania facility been submitted? Yes No

b. If yes, list the facility ID number(s).

SECTION B. WASTE DESCRIPTION (Must be completed by generator) (Continued)

B. Chemical Analysis - Please attach the following:

1. The results of a detailed physical and chemical characterization of the waste and its leachate, as described in the instructions.
2. A description of the waste sampling method, in accordance with the waste sampling plan as required in §271.611(a)(3) or §287.132(a)(3).
3. Provide a detailed explanation supporting use of generator knowledge in lieu of actual chemical analysis, if applicable.

C. Process Description and Schematic - Please attach the following:

1. A detailed description of the manufacturing and/or pollution control processes producing the waste, as specified in the instructions.
2. A schematic of the manufacturing and/or pollution control processes producing the waste, as specified in the instructions.
3. The substantiation for a confidentiality claim, as described in the instructions, if portions of the information you have submitted are confidential.

SECTION C. EVALUATION WITH WASTE ANALYSIS AND CLASSIFICATION PLAN (must be completed by facility operator)

SECTION D. PROPOSED PROCESSING, STORAGE, AND/OR DISPOSAL METHOD (must be completed by facility operator. Use additional sheets if necessary. Check box marked "N/A" if not applicable)

Proposed Processing method - N/A

Proposed Storage Method and Length of Storage - N/A

Proposed Disposal Method - N/A

SECTION E. SOURCE REDUCTION STRATEGY (Form 25R must be completed by generator and attached to this application unless waived in the instructions to that form.)

SECTION F. ALTERNATIVE TO PROPOSED PROCESSING AND/OR DISPOSAL METHODS (must be provided by generator. Use additional sheets, if necessary.)

A. What other processing, disposal, recycling, reuse, or reclamation methods can be used? Briefly describe alternatives to your proposal.

B. Why was the processing and/or disposal method in Section IV chosen?

SECTION G. CERTIFICATION OF DOCUMENTS BY GENERATOR

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Name of Responsible Official _____ Title _____
Signature _____ Date _____

Taken, sworn, and subscribed before me, this

~~_____ day of _____ A.D. 199 _____~~
~~_____~~
~~_____~~
~~_____~~

Notary Seal

NOT REQUIRED

SECTION II. CERTIFICATION OF PROCESSING OR DISPOSAL FACILITY

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Name of Responsible

Official _____

Title _____

Signature _____

Date _____



RecOil
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99 JUN 11 PM 3:26

May 18, 1999

Department of Environmental Protection
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

ORIGINAL: 2022
HARBISON

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Sandusky
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RENEW OF REGON

Re: Comments on Proposed
Waste Oil Regulations.

Dear Members of the Board,

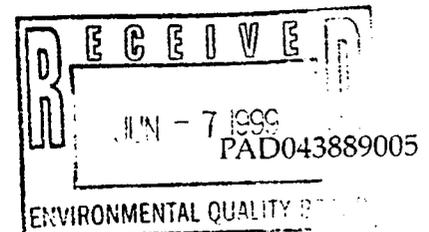
On April 10th, 1999 the state proposed new waste oil regulations which were published in the Pennsylvania Bulletin. The following are concerns and comments on the proposed rule making as it is currently written. I am writing on behalf of RecOil, Inc. York, PA and also with the support of the National Oil Recyclers Association (NORA). I have been involved in the waste oil industry for many years. I bring to the table first hand knowledge and experience in dealing with waste oil situations at both the state and national level. It is anticipated that my comments will be accepted in a positive manner in order to accomplish our mutual goal of having a successful, fair and productive waste oil program in the state for generators, transporters/processors and the department.

Mixtures of waste oil and characteristically hazardous wastes: 298.10.(b)(2)

In May of 1980 EPA adopted the RCRA mixture rule for mixtures of waste oil and ignitable only characteristic hazardous wastes. Since the adoption of the "mixture rule" there have been many special rules, stays and judgements that were promulgated, issued, overrode and decided. Through all this the one rule that has withstood time and become the cornerstone is the EPA version of the mixture rule published on September 10th, 1992. See 57 Fed Reg. 41566, 41581 (September 10, 1992). This rule specifically addresses waste oil and characteristic hazardous wastes. EPA determined that managing the mixture of waste oil and *de minimis* amounts of ignitable wastes (such as mineral spirits, gasoline and kerosene) as waste oil is protective of human health and the environment.

The key difference between the 1980 rule and the 1992 rule concerns mixtures with ignitable wastes (that is, wastes with a flashpoint of 140 degrees F. or

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lower). If the 1980 rule is applied to a mixture of waste oil and ignitable wastes it holds that the mixture is classified as non-hazardous only if all four characteristics are absent. The 1992 rule is somewhat more lenient: it says that when an ignitable hazardous waste (which is hazardous only because of its ignitability) is mixed with waste oil and the resulting mixture is no longer ignitable, then the mixture is classified as waste oil –not hazardous waste – even if some other characteristic is present.

The way the mixture rule is addressed in the Departments proposed waste oil regulations would exclude waste oil from being mixed with any quantity of certain other materials including petroleum-based solvents, gasoline and kerosene. Which would usually fail a TCLP test for benzene and metals, which would give it the hazardous waste characteristic of toxicity. Actually there is nothing out there except for diesel fuel maybe that could fall into the "ignitable only" category as proposed in the states waste oil regulations. More over, to prohibit the mixing of mineral spirits, kerosene and gasoline with waste oil would be unenforceable due to the fact that waste oil contains gasoline (or other fuel) caused by "combustion blow-by". This inherent fuel contamination cannot be distinguished from fuel contamination caused by generator mixing. Such a prohibition would not be a sound environmental policy since, virtually all recycled waste oil is processed as industrial fuel. The key question is "Whether such fuel is environmentally or mechanically harmful?" Adding petroleum hydrocarbons contained in mineral spirits, kerosene or gasoline to waste oil does not make it a dirty or harmful fuel. In fact the blending of various volatile petroleum fractions is a part of the manufacture of virgin fuels.

So lets get back to what the mixture rule was originally intended to accomplish. It's the gas station owner with the coffee can full of gasoline or the lawnmower shop that inadvertently drained some gas into their waste oil or the person that used a petroleum solvent or kerosene to clean some engine parts. That's really where the problem lies. And that is what we are trying to accomplish, to come up with a way for these people (generators) to safely dispose of small amounts of gasoline, mineral spirits and kerosene in an economical and environmentally sound way. Any enforcement against this will result in illegal dumping and will be counter productive to any waste oil recycling efforts the state may have.

I recommend you adopt the mixture rule for what it was intended to be used for but not limited to the mixing of waste oil and wastes that are hazardous solely due to the characteristics of ignitability. This would be unenforceable and would cause a situation that would be very difficult to monitor between waste generators and transporters/processors. In contrast, if you allow the mixing of *de minimis* amounts of gasoline, mineral spirits, and kerosene with waste oil, as set

forth by EPA in September of 1992. You will see that more generators will be disposing of these materials in an environmentally safe way instead of trying to avoid the costs associated with hazardous waste disposal and discarding these materials directly into the environment. (Over 9,500,000 gallons of DIY's waste oil is illegally dumped in this state every year) (Ref. PA DEP)

Recordkeeping: 298.20 (c)

Determining whether waste oil has been mixed with a halogenated solvent at the generators site has always been a problem. There is only so much waste oil pick up drivers are able to do at the generators site. RecOil drivers use battery operated VOC sniffers, Dexsil kits and they are aware of any unusual odors or liquid separations. Most drivers' pick-up anywhere from ten to twenty different generators a day and some locations may have twenty different drums that need pumped out. So in a practical sense we really cannot monitor or accurately test the oil until we get it back to our facility. By then it is a conglomerate of different generators wastes and if there is a problem there is really no way of determining exactly where it came from.

Requiring generators to provide information on their waste oil and how it is generated is a good idea but in reality this information will not always be accurate and will cause more paperwork, laboratory analysis and recordkeeping for the transporter/processor. This, in turn, will increase the costs to generators for proper waste oil handling. As a case and point, I have enclosed a copy of special condition #30 of our Residual Waste General Permit #WMGR041. As you can see this recordkeeping requirement has placed the burden of proof not on the generator but on the transporter/processor.

In general, I see no purpose in this requirement. Due to the fact that if we would ever find a problem with waste oil on our trucks, we still could not determine the exact source or generator the problem came from because of the oil being mixed together on our trucks. I also disagree that this is a generator requirement as proven by the enclosed permit special condition.

As a compromise, I would like to see this requirement for generators who produce over 12,000 kgs of waste oil annually as outlined in the Source Reduction and BI-Annual Report sections. There are too many small generators in the state that may only generate a drum of waste oil every one or two years to keep track of. If this recordkeeping proposal is adopted as written, it will be a paperwork nightmare and will accomplish nothing.

CESQG generated mixtures of waste oil and hazardous wastes: 261.5

Being in the waste oil reclamation business, we are never in favor of generators of any size, mixing listed hazardous wastes in with their waste oil. One problem is that if we get a hazardous load of oil on one of our trucks we would have a difficult time trying to prove whether it came from a CESQG or not. Also in compliance with our permit conditions if a load of waste oil comes in hazardous we would have to handle it as hazardous no matter where it was generated. We feel it is important to promote waste oil recycling in this state especially with the do it yourselfers (DIY's). But we also see the need to discourage the illegal disposal of listed hazardous wastes with waste oil just to avoid higher hazardous waste disposal costs.

We are in favor of not allowing CESQC's to dispose of listed hazardous wastes in with their waste oil. Where I have a concern is how do we distinguish between CESQC's and household wastes?

If I may, I'd like to layout a scenario to emphasize my concern. Suppose a state or community waste oil drop off site is at an automotive service garage (which most are). The garage services vehicles and puts the waste oil into a tank, which makes them a generator. This garage also allows DIY's to come in and dump their waste oil in the same tank (household waste). RecOil comes and pumps out the tank and finds out the load is hazardous and charges the garage \$2000.00 to get rid of the 200 gallons of what is now hazardous waste oil. How would this affect the states waste oil-recycling efforts? Every waste oil drop off site in the state would be locking their tanks. I speak from experience because this has happened before and we were able to treat the oil under the hazardous waste exemption allowed for CESQC's.

Our suggestion is that you do not allow the mixing of listed hazardous wastes by CESQC's as it is written in the proposed rulemaking, but add an exemption for state and community DIY's drop off sites. This is the only way to protect companies that want to provide a much needed service for the states waste oil recycling effort and the DIY's. This type of exemption should be similar in nature to the exemption adopted for superfund immunity.

Waste Oil Specifications: 298.11

As far as RecOil, Inc. is concerned we have never marketed or sold our reclaimed on specification fuel for use in home heating systems. Of the millions of gallons that we recycle each year every drop goes to industrial boilers,

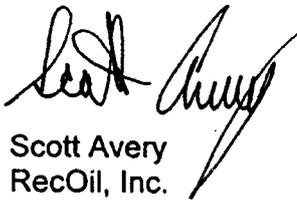
cement/limestone kilns and asphalt plants. We are in favor of allowing two limits for total halogens in the on/off specifications. We feel that the higher limit of 4000 ppm for on specification energy recovery in non-home heating systems will encourage the proper recycling of waste oil between 1000ppm and 4000 ppm total halogens. This will also decrease the amount of improper disposal of waste oil currently happening in the state.

Waste oil storage at transfer facility: 298.45 (4) (iv)

The proposed regulation of allowing permit by rule for transfer facilities that's owned by the same person(s) who own permitted processing facilities in the state is a very sound proposal. This will allow facilities operating in the state to reach rural areas that have always had a more difficult time finding waste oil transporters/processor. It also is fair to companies that have gone through the time and expense of permitting a facility in the Commonwealth unlike out of state companies that haul this reusable resource out of our state and don't have the same bonding, permit and operating costs Pennsylvania recycling companies have.

Thank you for your consideration. I will be speaking at the hearing on May 25, 1999 to outline my comments. Or you may call me at (717) 846-9551 with any questions.

Sincerely,



Scott Avery
RecOil, Inc.

cc: Mr. Christopher Harris, Esq. NORA
Ms. Kathy Clancy, NORA

SA/dds

28. The permittee shall immediately notify the Department's Emergency Hotline by telephone at 800-541-2050 and the appropriate DEP regional office in the event of a discharge or spill of waste oil, waste oil/water mixtures, or waste oil saturated solids to soil in the amount of 5 gallons or more, or any amount that can reach surface water, and shall take appropriate immediate action to protect the health and safety of the public and the environment.
29. The following records shall be retained by the permittee and shall be available to the Department upon request: analytical evaluations conducted on waste brought into the facility for processing pursuant to the residual waste regulations and the conditions of this permit, which shall include, at a minimum, the generator of the waste, the dates of testing, each parameter tested, the results, the laboratory, sampling procedures, analytical methodologies and person analyzing the sample; amounts of all wastes accepted, stored and/or processed, percent of oil recovered from all wastes received at the facility; amount of waste generated by the permittee and the disposition of that waste; records identifying each transporter that delivers waste oil and/or waste oil/water mixtures and/or waste oil saturated solids to the permittee's processing facility; records of each load of incoming waste rejected by the permittee; records of inspections of the facility by facility personnel; amounts of processed and/or stored waste shipped off-site, and names and addresses to whom the material was shipped; and bills of lading or manifests for all incoming shipments of waste oil and waste oil/water mixtures. These records shall be retained by the permittee at the permittee's processing facility for a minimum of 5 years from the date of execution of each record.
30. The permittee shall require each generator of waste to be processed at the facility to provide to the permittee a narrative description of the process or processes from which the waste was generated. Such generator profiles shall be retained by the permittee at the permittee's processing facility and shall be available to the Department upon request. If the generator's profile changes at any time, the permittee shall require the generator to submit an updated profile.
31. The permittee shall comply with the terms and conditions of this general permit and with the environmental protection acts to the same extent as if the activities were covered by an individual permit. The Department may require an individual permit if the permittee is not in compliance with the conditions of this general permit or is conducting an activity that harms or presents a threat of harm to the health, safety, or welfare of the people or the environment.
32. The permittee shall submit to the Department's Bureau of Land Recycling and Waste Management, (see address in Condition 19), an annual report that summarizes the information outlined in Conditions 20 and 29, and identifies for the preceding 12 months the generator(s) of waste oil and waste oil/water mixtures accepted for processing, each rejected load of waste, the weight or volume of waste processed, percent of oil recovered from all wastes received at the facility, and percent of oil recovered from oil/water mixtures that are primarily water, i.e., 90% water or more. The annual report is due on the anniversary date that the permit became applicable to a permittee.
33. All activities conducted under the authorization granted in this permit shall be conducted in accordance with the permittee's application. Except to the extent that the permit states otherwise, the permittee shall operate as described in the approved application.



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May 18, 1999

Department of Environmental Protection
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

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Waste Oil Regulations.

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Being in the waste oil reclamation business, we are never in favor of generators of any size, mixing listed hazardous wastes in with their waste oil. One problem is that if we get a hazardous load of oil on one of our trucks we would have a difficult time trying to prove whether it came from a CESQG or not. Also in compliance with our permit conditions if a load of waste oil comes in hazardous we would have to handle it as hazardous no matter where it was generated. We feel it is important to promote waste oil recycling in this state especially with the do it yourselfers (DIY's). But we also see the need to discourage the illegal disposal of listed hazardous wastes with waste oil just to avoid higher hazardous waste disposal costs.

We are in favor of not allowing CESQC's to dispose of listed hazardous wastes in with their waste oil. Where I have a concern is how do we distinguish between CESQC's and household wastes?

If I may, I'd like to layout a scenario to emphasize my concern. Suppose a state or community waste oil drop off site is at an automotive service garage (which most are). The garage services vehicles and puts the waste oil into a tank, which makes them a generator. This garage also allows DIY's to come in and dump their waste oil in the same tank (household waste). RecOil comes and pumps out the tank and finds out the load is hazardous and charges the garage \$2000.00 to get rid of the 200 gallons of what is now hazardous waste oil. How would this affect the states waste oil-recycling efforts? Every waste oil drop off site in the state would be locking their tanks. I speak from experience because this has happened before and we were able to treat the oil under the hazardous waste exemption allowed for CESQC's.

Our suggestion is that you do not allow the mixing of listed hazardous wastes by CESQC's as it is written in the proposed rulemaking, but add an exemption for state and community DIY's drop off sites. This is the only way to protect companies that want to provide a much needed service for the states waste oil recycling effort and the DIY's. This type of exemption should be similar in nature to the exemption adopted for superfund immunity.

Waste Oil Specifications: 298.11

As far as RecOil, Inc. is concerned we have never marketed or sold our reclaimed on specification fuel for use in home heating systems. Of the millions of gallons that we recycle each year every drop goes to industrial boilers, cement/limestone kilns and asphalt plants. We are in favor of allowing two limits

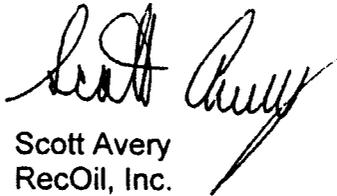
for total halogens in the on/off specifications. We feel that the higher limit of 4000 ppm for on specification energy recovery in non-home heating systems will encourage the proper recycling of waste oil between 1000ppm and 4000 ppm total halogens. This will also decrease the amount of improper disposal of waste oil currently happening in the state.

Waste oil storage at transfer facility: 298.45 (4) (iv)

The proposed regulation of allowing permit by rule for transfer facilities that's owned by the same person(s) who own permitted processing facilities in the state is a very sound proposal. This will allow facilities operating in the state to reach rural areas that have always had a more difficult time finding waste oil transporters/processor. It also is fair to companies that have gone through the time and expense of permitting a facility in the Commonwealth unlike out of state companies that haul this reusable resource out of our state and don't have the same bonding, permit and operating costs Pennsylvania recycling companies have.

Thank you for your consideration. I will be speaking at the hearing on May 25, 1999 to outline my comments. Or you may call me at (717) 846-9551 with any questions.

Sincerely,



Scott Avery
RecOil, Inc.

cc: Mr. Christopher Harris, Esq. NORA
Ms. Kathy Clancy, NORA

SA/dds

SPECIAL CONDITIONS

DRAFT

BENEFICIAL USE PERMIT WMGR041

DRAFT

28. The permittee shall immediately notify the Department's Emergency Hotline by telephone at 800-541-2050 and the appropriate DEP regional office in the event of a discharge or spill of waste oil, waste oil/water mixtures, or waste oil saturated solids to soil in the amount of 5 gallons or more, or any amount that can reach surface water, and shall take appropriate immediate action to protect the health and safety of the public and the environment.
29. The following records shall be retained by the permittee and shall be available to the Department upon request: analytical evaluations conducted on waste brought into the facility for processing pursuant to the residual waste regulations and the conditions of this permit, which shall include, at a minimum, the generator of the waste, the dates of testing, each parameter tested, the results, the laboratory, sampling procedures, analytical methodologies and person analyzing the sample; amounts of all wastes accepted, stored and/or processed, percent of oil recovered from all wastes received at the facility; amount of waste generated by the permittee and the disposition of that waste; records identifying each transporter that delivers waste oil and/or waste oil/water mixtures and/or waste oil saturated solids to the permittee's processing facility; records of each load of incoming waste rejected by the permittee; records of inspections of the facility by facility personnel; amounts of processed and/or stored waste shipped off-site, and names and addresses to whom the material was shipped; and bills of lading or manifests for all incoming shipments of waste oil and waste oil/water mixtures. These records shall be retained by the permittee at the permittee's processing facility for a minimum of 5 years from the date of execution of each record.
30. The permittee shall require each generator of waste to be processed at the facility to provide to the permittee a narrative description of the process or processes from which the waste was generated. Such generator profiles shall be retained by the permittee at the permittee's processing facility and shall be available to the Department upon request. If the generator's profile changes at any time, the permittee shall require the generator to submit an updated profile.
31. The permittee shall comply with the terms and conditions of this general permit and with the environmental protection acts to the same extent as if the activities were covered by an individual permit. The Department may require an individual permit if the permittee is not in compliance with the conditions of this general permit or is conducting an activity that harms or presents a threat of harm to the health, safety, or welfare of the people or the environment.
32. The permittee shall submit to the Department's Bureau of Land Recycling and Waste Management, (see address in Condition 19), an annual report that summarizes the information outlined in Conditions 20 and 29, and identifies for the preceding 12 months the generator(s) of waste oil and waste oil/water mixtures accepted for processing, each rejected load of waste, the weight or volume of waste processed, percent of oil recovered from all wastes received at the facility, and percent of oil recovered from oil/water mixtures that are primarily water, i.e., 90% water or more. The annual report is due on the anniversary date that the permit became applicable to a permittee.
33. All activities conducted under the authorization granted in this permit shall be conducted in accordance with the permittee's application. Except to the extent that the permit states otherwise, the permittee shall operate as described in the approved application.

**Statement of the National Oil Recyclers Association
Concerning Used Oil Management Regulations
Proposed by
the Pennsylvania Department of Environmental Protection**

Founded in 1984, The National Oil Recyclers Association ("NORA") is a national, non-profit trade association representing companies that collect and recycle used oil, antifreeze, oil filters, wastewater and parts cleaning solvents. NORA worked closely with the U.S. Environmental Protection Agency ("EPA") to develop the 1985 and 1992 used oil management standards which provide a comprehensive set of regulatory requirements that ensure the proper handling and recycling of used oil. As directed by Congress, EPA's regulations protect human health by promoting legitimate recycling of used oil.

After carefully studying the question of proper management of used oil, both EPA and Congress concluded that environmental protection required harnessing market forces and ensuring that recycled used oil was regarded as a valuable commodity - not a waste material. An important component of that policy is to allow recycled petroleum products to compete with virgin products. NORA believes that the current used oil management standards, set forth in 40 CFR Part 279, employ appropriate regulatory controls without undermining the ability of recyclers to compete with virgin petroleum products. Consequently, NORA commends Pennsylvania DEP for adopting the federal used oil management standards, albeit with a few exceptions.

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NORA also appreciates DEP's effort to consult with industry groups to help develop the Pennsylvania Used Oil Management Standards and to simplify the regulation under one chapter.

There are, however, some aspects of DEP's proposal that NORA disagrees with, particularly the proposal to modify the RCRA mixture rule. This a common sense rule that recognizes the reality of waste management activities. NORA does not believe this rule is an open invitation to diluting characteristic hazardous waste. On the contrary, it is a rule intended to avoid the absurdity of prohibiting or even criminalizing sensible mixture activities (such a neutralizing acidic, i.e., corrosive, waste water). Moreover, since most mixtures involve de minimis quantities of waste materials, the effect of the proposed change would be to criminalize the activities of thousands of small businesses throughout the Commonwealth. In the absence of specific examples of how and when the 1980 RCRA mixture rule has been abused by generators or other compelling reasons, there would be no overall benefit to the environment of removing this rule from existing regulations.

EPA spent many years developing, implementing and enforcing the RCRA mixture rule. It has stood the test of time and experience. While NORA commends DEP for adopting the used oil mixture rule for ignitable-only wastes, we regard the proposed repeal of the RCRA mixture rule as unwarranted and unsupported by any evidence of abuse. We urge DEP to reconsider this proposal and, at the very least evaluate what alleged problems DEP is attempting to correct.

One part of the regulation, Section 298.10(b)(2)(ii), needs adjustment to be consistent with the federal used oil mixture rule. NORA also believes that Section 298.20(c), recordkeeping for used oil generators, would constitute overly burdensome and redundant recordkeeping. The recordkeeping requirements may discourage used oil recycling by increasing costs for time, tests and materials. Used oil collectors

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already test the used oil for halogenated materials to determine if the used oil exceeds the 1000 ppm rebuttable presumption threshold;

NORA supports the Pennsylvania DEP's choice to allow for two limits for total halogens. The higher limit of 4000 ppm for on-specification energy recovered in non-home heating systems will encourage the proper recycling of used oil between 1000 ppm and 4000 ppm total halogens;

NORA also supports Pennsylvania DEP's permit-by-rule for transfer facilities that are owned by the same person(s) who own permitted processing facilities. This is a practical rule that supports companies operating in the state and eliminates unnecessary permitting.

Finally, the term "waste oil" does not accurately represent "used oil". After much consideration, US EPA adopted the term "used oil" instead of "waste oil" because of the inherent value of used oil as a commodity as well as the negative connotations of the term "waste oil." NORA believes the term used oil is the nationally accepted term for properly identifying and referring to this material. We consider used oil to be a valuable product that competes with virgin fuel and lubrication products.

To stigmatize or over regulate used oil only serves to create a significant competitive disadvantage. This in turn undermines the used oil recycling system, thereby expanding the incentives and opportunities for improper disposal of used oil. In other words, expanding the market for used oil products actually serves to protect the environment. We urge DEP to observe this basic truth as it proceeds with its regulatory responsibilities.

**National Oil Recyclers Association
Pennsylvania Department of Environmental Protection Hearing on
Changes to Used Oil Management Standards**

NORA Talking Points on Pennsylvania Proposed Changes:

- NORA applauds Pennsylvania DEP effort to use industry groups to develop the Pennsylvania Used Oil Management Standards and simplify the regulation under one chapter;
- NORA applauds Pennsylvania DEP for adopting the federal used oil management standards with few exceptions;
- The term "waste oil" does not accurately represent "used oil". After much consideration, US EPA adopted the term "used oil" for "waste oil" because of the inherent value of used oil as a commodity and the negative connotations of the term "waste oil". NORA believes the term used oil is the nationally accepted term for properly identifying and referring to the material;
- Unless there are specific examples of where the 1980 RCRA mixture rule has been abused by generators or other strong supporting reasons, NORA does not see benefit for the environment or used oil handlers by removing the rule from the used oil management standards. US EPA spent more than ten years developing the federal used oil regulations and the 1980 RCRA mixture rule has survived without much challenge for nineteen years;
- NORA applauds Pennsylvania DEP for adopting the used oil mixture rule for ignitable-only wastes. One part of the regulation, Section 298.10.(b)(2)(ii), needs adjustment to be consistent with the federal used oil mixture rule. NORA will provide specific recommendations in our formal statement;
- NORA believes that Section 298.20(c), recordkeeping for used oil generators, is overly burdensome and redundant recordkeeping. The recordkeeping requirements may discourage used oil recycling by increasing costs for time, tests and materials. Used oil collectors already test the used oil for halogenated materials to determine if the used oil exceeds the 1000ppm threshold;
- NORA supports Pennsylvania DEP's choice to allow two limits for total halogens. The higher limit of 4000 ppm for on-specification energy recovery in non-home heating systems will encourage the proper recycling of waste oil between 1000 ppm and 4000 ppm total halogens;
- NORA supports Pennsylvania DEP's permit-by-rule for transfer facilities that are owned by the same person(s) who own permitted processing facilities. This is a practical rule that supports companies operating in the state and eliminates unnecessary permitting.