



Leaders in Recycling

May 12, 2016

Ms. Audrey O'Brien
Environmental Partnerships Section Manager
Northwest Region
Department of Environmental Quality
700 NE Multnomah Street
Suite 600
Portland, Oregon 97232

Response to DEQ letter dated April 29, 2016

Dear Ms. O'Brien:

Thank you for your letter dated April 29, 2016. We have given your letter very serious consideration and believe that some additional information is warranted on various topics.

First, with respect to onsite burning devices, please be advised that ORRCO in response to your request has ceased to burn any materials in the kiln. Also, the kiln was never used to burn hazardous waste. All the burning devices at ORRCO's facility are designed and used for energy recovery – not incineration.

Although we disagree with your conclusion that ORRCO's onsite boiler does not meet the definition of boiler set forth in 40 CFR 260.10, we will provide an engineer's report demonstrating that all of the requisite criteria and efficiency standards for ORRCO's burners have been satisfied. In the meantime, ORRCO will not burn any off-specification used oil fuel. The fuel ORRCO burns in its boiler and other burners consists of on-specification used oil and other traditional, legitimate fuel products.

Second, regarding the Btu content of used oil burned for energy recovery, Oregon's used oil regulations in OAR 340-111-0010(3) provide that:

(b) A person may only burn a mixture of used oil and non-hazardous solid waste as a fuel for energy recovery if the mixture has a minimum energy value of 5,000 Btus per pound.

(c) A person may burn a mixture of used oil and non-hazardous waste with energy values of less than 5,000 Btus per pound for treatment or incineration if the mixture is not a hazardous waste under OAR 340-102-0011 and if the person satisfies Oregon solid waste and air quality regulations.

All of the Btu tests that ORRCO has ever conducted on used oil establish that Btu content greatly exceed 5000 Btus per pound. Used oil is normally in the range of 16,000 to 17,500 Btus per pound. Moreover, nothing in the regulation indicates that the Btu content must be measured at the point of generation. The provision you cited contains no reference to the phrase "as generated." In fact it addresses mixtures of



Leaders in Recycling

used oil and non-hazardous solid waste. Such a mixture could be accomplished by the processor as well as the generator. As a practical matter, however, there would be no incentive to blend a solid waste with little or no fuel value with a used oil and lower the Btu value of the mixture to the 5000 Btu level. ORRSCO's boiler functions most efficiently with high Btu fuels. It should also be observed that OAR 340-111-0010(b)(2) prohibits mixing of used oil and materials that would reduce the recyclability of used oil.

Although ORRSCO is aware that Oregon's definition of used oil excludes used oil contaminated media and debris, it appears that these types of material can be managed as used oil pursuant to 340-111-0010(2)(c). This provision states that wastes containing oils that do not meet the definition of used oil may be subject to 40 CFR Part 279 "provided the waste would not be hazardous if disposed and contains sufficient oil to allow it to be managed similar to used oil" (provided other applicable environmental requirements are met). Absorbent materials used in spill clean-ups would meet these criteria and do not reduce the recyclability of the oil contained in the absorbents. Significantly, such materials would be prohibited from landfill disposal pursuant to OAR 340-093-0040(3)(a). We look forward to having these considerations addressed as we proceed with the completion of ORRSCO's solid waste permit application.

Third, please be aware that ORRSCO's waste/material profiles always include a hazardous waste determination. These are located in ORRSCO's files on each of our generator/customers. Over the years DEQ's staff has reviewed numerous waste/material profiles in our files and DEQ is always welcome to conduct additional reviews at any time.

Fourth, with respect to oil filters (which ORRSCO collects from its automotive service customers), we believe that the oil filter exemption, the scrap metal exemption and processed scrap metal exclusion are fully applicable to ORRSCO's management of oil filters. See 40 CFR 279.10(c); 40 CFR 261.6(a)(ii); 40 CFR 264.1(a)(13). These oil filters are managed and processed in accordance with all applicable regulatory standards. See Attachment A. Following processing, the metal recovered from the oil filters is sold to scrap dealers.

Fifth, ORRSCO agrees with DEQ that spent solvents would not constitute commercial chemical products and that incoming wastewaters must be verified as non-hazardous. The petroleum that ORRSCO recovers from the wastewaters constitutes legitimate fuel products that are burned for energy recovery.

Sixth, ORRSCO agrees with DEQ that our Centralized Wastewater Treatment ("CWT") permit covers wastewaters once they are placed in the wastewater treatment system. As you are aware, RCRA's jurisdiction does not extend to wastewater treatment governed by a CWT permit. See 40 CFR 264.1(g)(6).



Leaders in Recycling

That would include wastewater evaporation occurring at ORRCO's CWT facility. Pursuant to ORRCO's CWT permit, ORRCO is permitted to treat hazardous and non-hazardous wastewater that meet the criteria for sources defined in 30 CFR Part 237, Subpart B, Oils Treatment and Recovery. Any hazardous wastewater transported to our CWT facility must be managed in compliance with all applicable RCRA requirements including hazardous waste manifests.

Seventh, ORRCO does not accept hazardous wastes including hazardous waste produced by conditionally exempt small quantity generators. All of ORRCO's used oil generator customers must certify that their used oil has not been mixed with any hazardous waste and does not contain PCBs. This certification is in addition to the Clor-D-Tect tests that measure the chlorine content of used oil in compliance with the rebuttable presumption provisions of 40 CFR Part 279. It should also be mentioned that although ORRCO makes every effort to discourage mixing used oil with hazardous waste, if household hazardous waste were mixed by the generator into his or her used oil it would not be illegal for ORRCO to manage such mixture as used oil in compliance with 40 CFR Part 279. See 40 CFR 261.4(b)(1).

Eighth, as you are aware, ORRCO rejects hazardous wastes or any other materials that are not suitable for processing at our facility. While we maintain "reject logs" (which record the fact that ORRCO has not accepted the generator's materials), we do not possess information concerning the disposition of the rejected materials. That information is in the possession of the generator, not ORRCO.

Ninth, with respect to 40 CFR 279.60(a)(2), we strongly disagree that ORRCO's burning of used oil fuel is not incidental to used oil processing. Heating the work areas where our employees are engaged in used oil processing is definitely a component of used oil processing. In addition, water treatment involves the recovery of used oil which is added to the used oil fuel products that we produce. I do not comprehend how you can conclude that "ORRCO has not documented energy recovery" because that is precisely the exclusive purpose of all our fuel burning devices (including, for example, heating the work areas).

Finally, we very much appreciate your offer to assist ORRCO in our on-going effort to be in full compliance with all applicable environmental laws and regulations. We will not hesitate to contact your staff with pertinent questions concerning compliance issues. Also, your staff is always welcome to visit our facility at any time and meet with me to discuss any issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Briggs", written over a white background.

Scott Briggs
Oil Re-Refining Co. Inc.

Page 3 of 3

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Christopher Harris
Harris, Tarlow & Stonecipher, P.L.L.C.
1439 West Babcock
Bozeman, MT 59715

Dear Mr. Harris:

Thank you for your interest in the exclusion from the definition of solid waste for processed scrap metal being recycled as it applies to used oil filters. This letter is in response to your December 12, 1997 letter and subsequent meetings and information that you and others provided. You asked two questions: 1) can the processed scrap metal exclusion from the definition of solid waste be applied to used oil filters and 2) does the act of draining used oil from used oil filters constitute scrap metal processing. To answer your questions, we think it would be helpful to first review the two exemptions from the hazardous waste regulations and the exclusion from the definition of solid waste that may apply to used oil filters.

Exemption from Hazardous Waste Regulation for Vehicle Engine Oil Filters

Non-terne-plated used oil filters which are removed from service from light or heavy duty vehicle engines are regulated as used oil under 40 CFR Part 279.¹ Once these filters are properly drained by one of the methods specified in 40 CFR 261.4(b)(13), they are no longer subject to the used oil regulations as materials containing used oil (see 40 CFR 279.10(c)), and they are also exempted from regulation as hazardous waste. The draining methods listed in this exemption consist of: 1) puncturing the filter anti-drain back valve or the filter dome end and hot draining; 2) hot-draining and crushing; 3) dismantling and hot-draining; or 4) any other equivalent hot-draining method that will remove used oil. Once drained in compliance with this exemption, such filters may be either disposed of or recycled as a non-hazardous solid waste. If recycled, they may also be considered a scrap metal as described below.

Scrap Metal Exemption from Hazardous Waste Regulation

¹ The preamble to the May 20, 1992 used oil filter exemption, 57 FR 21524 at 21531-21532, specifies that this exemption from the hazardous waste regulations applies only to used oil filters from light or heavy duty vehicle engines. Other types of filters such as fuel filters, transmission oil filters, hydraulic oil filters, railroad locomotive oil filters, and other specialty filters are not covered by this exemption (see attached January 12, 1994 letter).

EPA exempts from regulation as hazardous waste scrap metal that is being recycled (see 40 CFR 261.6(a)(ii)) Scrap metal is defined in 40 CFR 261.1(c)(10) as "bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobile, railroad box cars), which when worn or superfluous can be recycled." However, EPA has stated repeatedly that scrap metal cannot contain significant amount of liquid. All types of used oil filters are potentially eligible for the scrap metal exemption from the hazardous waste regulations if they meet this definition. Used oil filters are considered to not contain significant amounts of liquid once the used oil has been removed to the extent possible such that there are no visible signs of free-flowing oil (see 40 CFR 279.10(c)). This may be accomplished by the methods specified in 40 CFR 261.4(b)(13) or by other methods that remove used oil (e.g., shredding with oil recovery). Therefore, used oil filters that have been drained to meet the standard in 40 CFR 279.10(c) may be scrap metal and exempt from regulation as hazardous waste when being recycled.

Exclusion from the Definition of Solid Waste for Processed Scrap Metal

In May, 1997 EPA promulgated a provision excluding from regulation as a solid waste scrap metal that is both recycled and processed. [See 40 CFR 264.1(a)(13)]. Processed scrap metal is defined at 40 CFR 261.1(c)(10) as scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chapped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and fines, drosses and related materials which have been agglomerated. Note that this exclusion is from the definition of solid waste, which indicates that the material is not just exempt from regulation as hazardous waste, but is not classified as a waste. In the 1997 rulemaking, the Agency determined that processed scrap metal being recycled is distinct from other secondary materials defined as wastes.

Does the Processed Scrap Metal Exclusion Apply to Used Oil Filters and What Constitutes Scrap Metal Processing?

You asked two questions: (1) whether the processed scrap metal exclusion applies to used oil filters; and (2) whether the act of draining used oil from used oil filters constitutes scrap metal processing. These questions can be answered generally through application of these regulatory provisions described above.

This exclusion can apply to used oil filters that meet both the definition of "scrap metal" in 261.1(c)(6) and undergo processing as defined in 40 CFR 261.1(c)(10). *It is important to emphasize that this exclusion only applies to processed scrap metal being recycled.* Although EPA did not specifically discuss used oil filters in the processed scrap metal rulemaking, the Agency intended the exclusion to cover all scrap metal that has been

processed, including used oil filters. EPA does not see any reason to distinguish drained used oil filters, which may be contaminated with small amounts of used oil, from other types of scrap metal, which may be contaminated with small amounts of other liquid hazardous wastes. This 1997 exclusion did not revoke or replace the 1992 used oil filter exemption. 40 CFR 261.1(b)(13) continues to exempt filters that are sent for disposal in lieu of recycling, and to recycled filters that are hot-drained, but not processed

Draining a used oil filter would not, by itself, meet the new definition of processing in 40 CFR 261.1(c)(10). Physical alteration of the filter is required. Two of the methods specified in the 1992 used oil filter exemption in 40 CFR 261.4(b)(13) appear to involve sufficient physical alteration to allow the contained filters to qualify for the processed scrap metal exclusion (hot draining and crushing and dismantling and hot-draining). Other draining methods, such as shredding, that were not mentioned in the used oil filter exemption may also constitute processing. Shredded used oil filters may qualify as scrap metal if sufficient liquid is removed, and also as processed scrap metal, if sufficient physical alteration takes place.

In your April 6, 1998 memorandum, you raised the concern that EPA may have violated the Administrative Procedures Act if properly drained and crushed used oil filters are considered processed scrap metal. EPA proposed and promulgated the processed scrap metal exclusion under standard regulatory procedures. While it is true that the proposed and final regulatory language did not specifically mention used oil filters, it also did not individually identify all other types of scrap metal that it covered. EPA intentionally wrote the rule broadly to cover all types of processed scrap metal that could legitimately be recycled. Thus, EPA believes adequate notice and opportunity to comment on this rule was provided.

Environmental Considerations

Material that is removed from processed scrap metal IS newly generated waste and subject to a waste determination. In the case of drained and processed used oil filters, any residual oil that leaks out of the filters is newly generated used oil subject to the used oil management standards of 40 CFR Part 279. Therefore, processed used oil filters that have a potential to leak residual used oil should be managed so that the residual oil can be collected (e.g., stored in appropriate containers). If used oil filters are inappropriately stored and residual used oil leaks onto the ground, the used oil is considered to be improperly disposed and is subject to a hazardous waste determination.

The Agency believes that this policy will encourage recycling of used oil filters. In the 1997 processed scrap metal exclusion, EPA believed that removing some of the regulatory barriers for processed scrap metal would create more recycling markets for all types of processed scrap metal. This increased flexibility will benefit all used oil filter

recyclers, since the filters that they send for recycling have generally been processed.

State Specific Considerations

Please be aware that some states may regulate used oil filters and processed scrap metal more stringently. Under Section 3006 of RCRA (42 U.S.C. Section 6926) individual states can be authorized to administer and enforce their own hazardous waste programs in lieu of the federal program. Also, under Section 3009 of RCRA (42 U.S.C. Section 6929) authorized states retain authority to promulgate regulatory requirements that are more stringent than Federal regulatory requirements. Therefore, authorized States may choose not to adopt the processed scrap metal exclusion or may choose to have more stringent requirements for all or some materials which would qualify as a processed scrap metal under the Federal program. You should contact your state regulatory agency to see if the information in this letter is applicable.

If you have any further questions regarding the processed scrap metal exclusion as it applies to used oil filters, please contact Tom Rinehart at (703) 308-4309 or Kristina Meson at (703) 308-8488.

Sincerely,

Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste