Notes
NEWMOA Hazardous Waste Conference Call
March 12, 2019

Topic: Use Oil Management

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Participants: CT DEEP (4 people); ME DEP (2 people); Mass DEP (2 people); NH DES (14 people); NJ DEP (1 person); NYS DEC (20 people); RI DEM (1 person); VT DEC (4 people); EPA Region 1 (2 people); EPA HQs (1 person); NEWMOA (1 person)

Call leader: Tyler Croteau, NH DES
Notes prepared by Jamie Hoover, ME DEP

Background

NH's used oil regulations have not been updated since 1991. In 2009 and 2013, NEWMOA held used oil calls were held. Notes are available for these calls on the NEWMOA website.

Questions

1. Is used oil a listed hazardous waste in your state? If listed, what were the factors that led to this decision?

NH: Used oil is a listed hazardous waste in NH and carries the waste code NH01. If the used oil meets specification or off-specification standards and is going to be recycled, it may be managed under less stringent requirements found in the New Hampshire Hazardous Waste Rules section Env-Hw 807.

NH listed used oil as a hazardous waste in 1991. Used oil often meets technical criteria to be classified as a hazardous waste (i.e., flash, metals, etc.). Inspector experience showed a history of

facilities mixing hazardous waste with used oil. The universal presence of used oil in commercial and industrial settings poses a significant risk of environmental and human exposure when managed improperly. Around this time, NH performed an inspection of a facility that was highly contaminated with used oil. This site is currently a Superfund site. Based on this information, NH DES determined that the best way to regulate used oil would be to list used oil as a hazardous waste, and then provide considerable regulatory relief from the full set of hazardous waste regulations when being recycled.

CT: No. CT DEEP never considered listing used oil as a hazardous waste. However, they did have numerous concerns about used oil, as reflected in the number of more-stringent and broader-in-scope provisions that DEEP added when they adopted the Federal Part 279 used oil standards.

ME: No, it is a separate state rule. Waste oil above the allowable levels for off-specification waste oil is managed as hazardous waste except for a halogen exemption. The exclusion reads: Used cutting oil from metal working operations that is otherwise identified in the Waste Oil Management Rules 06-096 C.M.R. ch. 860, §4 as a "waste oil which must be managed as a hazardous waste", provided that it:

- Exceeds the allowable level for total halogens established in 06-096 C.M.R. ch. 860(4)(C) (4000 ppm) due solely to the presence of chlorinated paraffins as a constituent of the cutting oil itself, and not due to the mixing of a halogenated hazardous waste with the oil
- Is not mixed or contaminated with any other hazardous waste and does not exhibit hazardous waste characteristics except as provided in 06-096 C.M.R ch. 860(4)(C), as demonstrated through sampling and analysis, and/or knowledge of process
- Does not exceed the allowable levels established in 06-096 C.M.R. ch. 860(4)(C) for arsenic, cadmium, chromium, lead, PCBs, and flash point
- Is, or will be, processed through a tolling arrangement to reclaim the oil as described in 40 C.F.R. 279.24(c), or recycled through an arrangement at a facility authorized and equipped to recycle the waste, which is documented by a written contract, agreement, bill of sale or receipt from the recycling facility
- Is stored, prior to shipment to the recycling or processing facility, at the site of generation, on a firm, impervious surface constructed to prevent spillage from leaving the area, and in closed, non-leaking containers or tanks labeled with the words "Used Oil Containing Chlorinated Paraffins"
- Is transported from the site of generation to a facility authorized to handle the waste by a Maine-licensed waste oil transporter, and each shipment is documented by a bill of lading, a copy of which is retained by the generator for at least three years from the date of shipment

MA: Yes, MA01 is the listing for oil. (There are also MA98 for off-specification use oil fuel and MA97 for specification used oil fuel). The listings have been around for many years, at least since 2000.

NJ: No, regulated under recycling regulations.

NY: No

RI: No

VT: No, petroleum containing materials over 5 percent exemption exists.

2. Has your state adopted 40 CFR 279 and have you been authorized? Are there specific provisions in your rules that differ from 279? (Looking for more general requirements, not necessarily a detailed list of every single difference).

NH: Has not adopted 279. The used oil rules were last updated in 1991 and were meant to be at least as stringent as 40 CFR 266 requirements. Currently, NH rules are both more stringent and less stringent than 279, including:

- Require generators to perform initial used oil determination with exemption for generators of strictly used automotive oil; must test for all parameters listed in 279.11 (Flashpoint, Arsenic (As), Cadmium (Cd), Chromium (Cr), Lead (Pb), Halogens, and PCBs if necessary)
- Regulation of specification used oil; requirements for generators, burners
- Standards for specification and off-specification used oil; if contaminants exceed off-specification standards, the used oil must be managed as hazardous waste
- Burners of specification and off-specification used oil required to notify NHDES of their activity and follow requirements in Env-HW 807.10
- Used oil with successful rebuttal may only be managed as off-specification used oil even if total halogens are less than 4,000 ppm
- No mixing exemption for VSQGs
- Mixing used oil and hazardous waste not allowed under rules; policy allows ignitable-only waste to be mixed and managed as used oil if the flashpoint of the mixture is greater than 140° F
- Bill of Lading required for all used oil transport in NH; hazardous waste manifest may be used if going out of state
- Annual report of used oil transport activity required
- Testing requirements for used oil marketers
- NH rules do not address used oil processors and re-refiners
- Currently allow self-transport of 110 gallons
- Transporters not required to test for total halogens as generators have already tested as part of their initial used oil determination

CT: As noted above, DEEP had concerns about used oil when adopting the Part 279 standards. These concerns arose from the problems they had experienced with the several used oil processors in Connecticut, and from observations on the mismanagement of used oil by generators. As a result, DEEP added a number of more-stringent or broader-in-scope provisions when they adopted the Part 279 standards. The following bullets itemize the more important ones. For more information, see DEEP's used oil regulations, and a DEEP fact sheet regarding how CT's used oil standards differ from the Part 279 requirements.

- CT's definition of "used oil" includes discarded oils that have not been used (i.e., the virgin counterparts to the used engine and lubricating oils covered by Part 279).

- CT requires generators to determine the total halogen content of their used oil. DEEP thought this was implicit pursuant to the requirements of 40 CFR 279.10(b), but decided to make it an explicit requirement for generators. In so doing, they used the same language format as used in Part 279 for transporters, processors/re-refiners, and burners.
- CT prohibits the mixing of used oil and hazardous waste unless it is for legitimate recycling purposes (e.g., fuel blending).
- CT prohibits the use of used oil for dust suppression.
- CT prohibits the burning of used oil in residential boilers.
- Used oil transporters, collection centers and processers/re-refiners are required to have state permits.
- CT specifies the test methods to be used for total halogen and used oil fuel specification testing.
- Any use of "knowledge of process" in total halogen determinations must be documented.
- Actual analytical testing (not "knowledge of process") is required for fuel specification testing.
- Codified the EPA "100 ppm" policy for the rebuttable presumption (EPA approved this in their authorization).
- Used oil fuels must have a minimum heating value of 5,000 BTU/lb.
- Used oil generators and facilities must provide storage areas > 55 gallons with an impervious surface, and (if outdoors) secondary containment. DEEP also defined what "impervious" means.
- Vehicle-to-vehicle transfers of used oil by transporters and transfer facilities must be done within secondary containment.
- Transfer facilities are limited to 10-day storage of used oil (not 35, as in the federal regulations).
- Used oil processors/re-refiners are subject to closure timeframes.
- Unlike the federal CESQG requirements, mixtures of used oil and CESQG waste may not be managed as used oil. DEEP did this because many generators of used oil are also CESQGs, and they felt that this provision it would allow too much contamination of the used oil stream.

ME: No. Maine has a road oiling prohibition, prohibition against blending to meet specifications (with exemption of halogen exclusion), and a prohibition against missing waste oil with hazardous waste. Waste oil imported to the State must be recorded on a hazardous waste manifest (manifest or state UBOL) and must be accompanied by the test results to document that it meets either specification or off specification waste oil standards.

MA: No

NJ: No, but NJ recycling rules mimic 40 CFR 279. Halogen amount is 1,000 ppm.

NY: Last authorized in 2013. Differences include:

- Processors and Re-refiners, and some Transfer facilities must be permitted under NY solid waste program.

- Halogen testing for inbound oil at permitted facilities.
- Testing in lab certified by NY Department of Health and other testing specifics
- Used oil collection centers (40 CFR 279.31) must be registered under NY solid waste program.
- Used oil tanks are subject to NY Petroleum Bulk Storage (PBS) program – including tank registration and inspection requirements.
- Facilities are required to submit annual reports
- Transporters hauling over 2,000 lbs. of used oil must have a NY waste hauler permit (6 NYCRR 364).
- Retailers must take oil from the public at no charge

RI: No

VT: Yes. No mixing hazardous waste. No used oil used for dust control. Burning provisions. Used oil definition differs. Stringent UST and AST requirements. Provisions for small fuel burning equipment.

3. For those states that have adopted 279, are there any issues you have come across that, in hindsight, would have addressed differently during initial adoption?

NH: NH has not adopted 279.

CT: CT DEEP is in the process of updating their entire hazardous waste regulation package. As a part of that effort, they intend to make some changes to their Part-279-based used oil rules as a result of experience with them over the last 17+ years. In particular:

- DEEP plans to clarify the rebuttable presumption language to indicate that the EPA "100 ppm" standard for rebutting the presumption of mixing does not apply to contamination by wastes other than F001/F002, and that concentrations below 100 ppm might not be acceptable for some of these wastes (e.g., chlorinate pesticides).
- Also plan to add a requirement for containers of used oil to be kept closed, except when necessary to add or remove waste. They have seen many cases where oil was stored outdoors in open containers or containers with an open funnel on top that overflowed due to rainwater accumulation.
- They plan to expand existing, broader-in-scope definition of used oil to include used oil that is "otherwise unwanted or discarded."
- They plan to clarify that used oil that is mixed with listed hazardous waste is subject to regulation as a listed hazardous waste, regardless of concentration (i.e., if known mixing has occurred, the EPA "100 ppm" approach would not apply).
- They have had good experience with specifying the test methods that may be used for total halogen and used oil fuel specification testing, but one problem they had is that the EPA or ASTM Methods that they reference change from time to time, resulting in a situation where the regs are out of date. DEEP is considering a way to reference the methods to allow for updates (e.g., "or as may be updated").
- They had considered adding an inspection requirement for used oil storage areas, but thus far are not planning to include such a requirement.

ME: ME has not adopted 279.

MA: MA has not adopted 279.

NJ: NJ has not adopted 279.

NY: NY would have preferred to have done the following differently:

- Tank storage – matched used oil tank registration requirements to the tank registration requirements for other petroleum materials under NY PBS program rather than requiring registration for all used oil tanks;
- Defined waste water and used oil better in the regulations to provide a clear line between waste streams that are waste water and waste streams that are used oil;
- Made more of a differentiation between used oil processors and transporters in the regulations;
- Limited VSQG mixtures of hazardous waste and used oil to hazardous wastes that were a hazardous petroleum waste or fuel (characteristic for ignitability only).

RI: RI has not adopted 279.

VT: VT has adopted 279.

4. Does your state have a minimum amount (%) of oil required in an oil/water mixture to allow the oil to be managed as used oil for recycle?

NH: NH does not have a minimum amount of oil that is required in an oil/water mixture to allow it to be managed as used oil for recycle. They do have an exemption in Env-Hw 401.03(b)(17) that states that waters separated from used oil are exempt from regulation under the hazardous waste rules if the water contains less than 5 percent oil and does not exhibit a characteristic.

CT: No. DEEP's position since they adopted the Part 279 standards has been that, as long as the oil/water mixture is being sent to a processor that has the technical capability to recover used oil from it, the material may be managed as a used oil. They have lots of experience with the remaining two used oil recycling facilities in Connecticut that process oil/water mixtures and feel comfortable with this stance, even for mixtures such as water-soluble coolants and emulsified oils.

In addition, CT DEEP has written guidance specifies what it considers to be "sham recycling" of used oil. See the CT DEEP Used Oil Guidance Document, "Management of Used Oils in Connecticut" – specifically Section 7.

Another factor for their taking this position is that they realized that the issue of oil/water mixtures "cuts both ways." That is, while there is a potential down-side of allowing some wastes that might otherwise be regulated as hazardous wastes (e.g., water soluble coolants with elevated concentrations of TCLP metals) to be managed under less-stringent used oil requirements, they are also capturing some used oil/water mixtures that would not otherwise be regulated under RCRA (e.g., non-characteristically hazardous used oil/water mixtures). They saw this "upside"

as at least equaling the "downside" mentioned above. In addition, DEEP also recognized that, through the requirement at 40 CFR 261.6(a)(4), EPA already allows oils that would otherwise be regulated as characteristically hazardous waste to be managed as used oil. They also took into account the fact that they have the ability to require permits for used oil processors in Connecticut, which gives DEEP the ability to require them to have rigorous waste characterization and screening procedures to prevent inappropriate materials from being accepted and processed at the facility.

ME: ME does not have a minimum amount of oil that is required in an oil/water mixture to allow it to be managed as used oil for recycle. Maine does have the ability to reduce the waste oil fee for waste oil with high water content.

MA: MA does not have a minimum amount of oil that is required in an oil/water mixture to allow it to be managed as used oil for recycle. They do have a facility letter from 2001 that defines a layer of oil will be considered waste oil. But no further guidance on layer of oil. MA will send the letter to Terri for distribution.

NJ: No

NY: No

RI: No, they apply the de minims amount, but no written guidance on this.

VT: No, recoverable amount is defined in a fact sheet.

5. How does your state handle used oil that exhibits the characteristic of toxicity? For example, a cutting oil mixture that fails TCLP for Barium or Selenium?

NH: In NH's current rules, Env-Hw 807.02 and Env-Hw 807.03 that list the standards for specification and off-specification used oil, they have the following language: "Meets all standards in the table below and does not otherwise exhibit any hazardous waste characteristic specified in Env-Hw 403 (Characteristic Hazardous Waste)." Based on this language, if a used oil sample were to be analyzed for TCLP and were to fail for Barium or Selenium, technically this used oil could not be managed as used oil for recycle under Env-Hw 807 and would need to be managed as hazardous waste. They have only required an initial used oil determination to be performed in accordance with Env-Hw 807.06(b)(5), which requires testing for the parameters in 40 CFR 279.11. They have not required companies to perform TCLP on used oil to determine if the oil exhibits characteristics, but occasionally companies do this, and they receive the results. Technically, if the used oil fails for any characteristic, they must manage it as hazardous waste and not used oil for recycle.

CT: See the response to the previous question, since it touches on some of this question.

DEEP regulations regarding used oils and used oil fuels track the federal requirements. In particular, they adopt the provision at 40 CFR 261.6(a)(4), which states that used oils that exhibit a characteristic of hazardous waste may be managed under Part 279 instead of Parts 260 – 268

and 270. At the same time they also adopt the "used oil mixture rule" of 40 CFR 279.10(b) – in particular the provisions for mixtures of used oil and listed hazardous waste (section (b)(1)) and the provisions for mixtures of used oil and characteristically hazardous waste (section (b)(2)). The only change they made to these sections is to specify that used oil may not be mixed with characteristically hazardous waste under section (b)(2) unless such mixing is for legitimate recycling purposes.

In addition, it is worth noting that the Part 279 rules operate under two different authorities: RCRA and the Used Oil Recycling Act (UORA). Used oils that are characteristically hazardous are subject to the provision at 40 CFR 261.6(a)(4), which allows them to be managed under Part 279. Used oils that are not characteristically hazardous are brought under Part 279 regulation directly via UORA (i.e., they do not "pass through" 40 CFR 261.6(a)(4)) as is the case with used oils that are characteristically hazardous. This is a significant point in that it underscores the notion that Part 279 is meant to address both used oils that are, and that are not, characteristically hazardous - subject to certain limitations, as spelled out in the used oil mixture rule. Although CT DEEP struggled with this issue at first, they ultimately accepted the federal approach as appropriate and adequately protective (while adding certain more-stringent provisions as described above).

ME: A waste oil that exhibits the characteristic of a hazardous waste for barium or selenium would need to be managed as a hazardous waste.

MA: Hazardous waste oil equals a halogen content of 1,000 ppm or comes from a transformer, unless a generator can rebut these assumptions. MA used oil fuel regs define specification and off-specification used oil.

NJ: NJ relies on definition in 40 CFR 279 since the recycling regulations reflect that.

NY: NY follows 40 CFR 279. So, if the used oil was mixed with hazardous waste by an SQG or LQG, it would be a hazardous waste. Used oil that displayed the toxicity characteristic for these constituents because those constituents were ingredients in the virgin oil would be regulated as used oil. Used oil that acquired the toxicity characteristic for these constituents through use would also be regulated as used oil.

RI: No.

VT: Exemption allows for some characteristics, except for when burned.

6. Does your state have specific definitions for used oil "processing" and used oil "re-refining" apart from what is found in 279.50(a)?

NH: New Hampshire's rules do not currently address used oil processing facilities and used oil re-refining facilities. New Hampshire does have one used oil re-refinery. New Hampshire also has at least one company that takes in used cutting oil and metal shavings, separates them, purifies the used oil and returns the oil to the original generator for reuse.

CT: No

ME: No. Per ME waste oil rules, waste oil dealers process waste and used oil, and they comply with the state requirements.

MA: No. MA has a robust recycling program that reflect 40 CFR 279. Notifications are required from sending and receiving facilities.

NJ: No

NY: Same as 279.50(a)

RI: No

VT: No

7. What are the most common problems you see in your state regarding used oil management?

NH:

- Notification of used oil burning and marketing activities
- Lack of knowledge of used oil management requirements and hazardous waste rules

CT:

- Improper characterization of used oils (e.g., failure to perform total halogen testing, not making the determination at the point of generation, or using non-approved methods for determining total halogens)
- Sloppy management of used oil at generator sites
- Failure to properly apply the rebuttable presumption (e.g., use of technically unsound methods to determine the concentrations of halogenated hazardous waste)
- Improper characterization and management of used oil mixtures (e.g., oil/water mixtures, oil/solvent mixtures, absorbents, etc.)
- PCB contamination of used oil at municipal used oil collection centers
- Marketing of used oil without complying with marketer requirements (e.g., one auto repair facility sending their used oil to be burned at a friend's auto repair facility without notification, fuel spec testing, etc.)
- Used oil transporters and facilities: improper characterization/screening; failure to comply with the conditions of their permits; storage at satellite facilities without the required permit, engaging in truck-to-truck transfers of used oil without meeting specified requirements

ME:

- Incorporating the halogen exemption into current waste oil facility licenses;
- Not testing to ensure waste oil meets waste oils specifications vs. hazardous waste;
- Tracking of waste oil with the new EPA manifest system for waste oil imported to the State.

MA:

- Not meeting lids, liners, and labeling requirements
- Holding used oil for too long
- Accumulating too much used oil

NJ:

- Bill of Lading violations
- Mixed hazardous waste considered used oil, which results in enforcement

NY:

- Improper profiling and facility procedures to meet rebuttable presumption
- Oily water waste to be burned for energy is problematic because it is not viewed as legitimate burning for energy recovery.
- Retailers refusing to accept used oil from the public
- Not testing for total halogens
- Confusion on what used oil is in the regulated community. (Can lead to halogen testing on wastes that are not used oil to characterize the wastes as "non-hazardous," rather than performing hazardous waste determinations as they should be.)
- Generators accepting used oil from other businesses to burn in their on-site space heaters.
- Managing used oil in ways that constitute disposal instead of recycling
- Charging home owners waste oil disposal fees to pump out usable fuel from private ASTs

RI:

- Speedy dry with used oil is a solid waste
- Oil going to used oil burners without specification

VT: Oil water mixtures

8. (This question was submitted from NY on the day of the call) Does your states require transporters to test for total halogens?

NH: No

CT: In Connecticut, 10-day transfer facilities for hazardous waste are required to have a state permit that is similar to a RCRA Part B permit, although somewhat less detailed and prescriptive. If such facilities also wish to accept used oil in addition to hazardous waste, then used oil would have to be specifically included in the 10-day transfer facility's state permit. These permits include restrictions on the types of wastes that can/cannot be accepted and include waste characterization and approval procedures that the 10-day facility must follow. For used oil, these would include requirements to determine total halogen content.

In addition, CT DEEP believes that the obligation to test for total halogens falls on every handler in the chain from the generator to the final processor/re-refiner or burner. CT DEEP believes that this is consistent with the federal approach, since the Part 279 requirements specifically require

total halogen determinations for all types of used oil handlers (except generators, which as explained above, DEEP believes was implicit in EPA's regulations anyway).

At a practical level, DEEP accepts practices such as data sharing and the use of valid knowledge of process in lieu of actual analytical testing for total halogens, when it is appropriate. For example, if a transporter tests a customer's used oil prior to pick-up, and shares the test results with the generator, then the generator could use this information to satisfy their obligation to determine total halogen content. Similarly, if used oil that has been legitimately tested for total halogens is being transferred to another facility in containers for storage or processing, the receiving facility could legitimately use the existing test results to satisfy their obligation to determine total halogen content. However, DEEP feels this all goes out the window when mixing, bulking, and treatment occur. All of these activities raise the possibility of contamination, and DEEP feels that a new total halogen determination is necessary and appropriate.

NJ: In NJ used oil cannot be managed at one of the less than 10-day hazardous waste transfer facilities.

- If a used oil transporter wants to store used oil without opening, transferring, consolidating or processing for less than 24 hours all they need to do is be a registered solid waste transporter. Solid waste cannot be stored for more than 24 hours, with limited exceptions (holiday, vehicle maintenance, accidents, weather events or driver rest period). [N.J.A.C. 7:263.4(c)]
- If a used oil transporter wishes to store for a period of 24 hours, but less than 35 days, they need to notify DEP of the location, and they will inspect them as a less than 35-day used oil transfer facility. This requires the transporter to be registered to transport solid waste, notify of the storage activity and maintain records (shipping papers and logs) so that DEP can track that the oil has only been onsite for up to 35 days. The transporter can offload the used oil into tanks for consolidation, but cannot perform any type of treatment (i.e., heat, chemical or physical). They can decant water off that has naturally separated on its own without any treatment. If after commingling the used oil the transporter gets stuck with a hot load, DEP requires the transporter to take on a generator responsibility due to the commingling. [N.J.A.C. 7:26A-6.6]
- If a transporter wishes to perform treatment of any kind of used oil, they are required to obtain a Class D Recycling Approval from DEP's permitting folks. Class D facilities have lots of approvals and require the submission of application packages. [N.J.A.C. 7:26A-6.7]

MA: Testing is not required but transporters usually do it to determine the halogen level during pickup at the generator.

Reminder:
Please share your notes on hazardous waste recycling from the last conference call with Terri.