

Final Notes
NEWMOA Hazardous Waste Virtual Meeting
November 10, 2020

Topic: Used Oil Management Roundtable

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Participants: CT DEEP (11 people); ME DEP (3 people); Mass DEP (14 people); NH DES (15 people); NJ DEP (12 people); NYSDEC (33 people); RI DEM (3 people); VT DEC (1 person); EPA Region HQ (6 people); EPA Region 1 (9 people); EPA Region 2 (10 people); NEWMOA (2 people)

Call leader: CT DEEP

Notes prepared by Alison Egbon, NYSDEC.

The meeting focused on each state answering the following three questions:

- 1) How does your state regulate what the feds refer to as "used oil," what does your state call it (overall regulatory scheme), and where did your state program come from (genesis/derivation/evolution)?
- 2) How do state used oil programs regulate "marginal" oily waste streams, such as oil/water mixtures, oily absorbents, oily rags/wipers, etc.?
- 3) Based on your state's understanding of the Federal Program Used Oil Program (Part 279), how does your state program differ, and where would your state program like to go with your program?

Connecticut DEEP – response provided by Ross Bunnell

Question 1:

- Genesis/evolution:

- Since the early days of the RCRA program, DEEP has had more stringent requirements for used oil, such as transporter permitting requirements, permitting requirements for commercial used oil storage and recycling facilities, and requirements for them to have waste analysis plans (WAPs).
- When DEEP decided in the 1990s to adopt the federal Part 279 used oil rules, they did a lot of thinking about what they liked and what they didn't like about the federal rules.
- Where they are now:
 - DEEP's regulations use the federal term "used oil." However, in the definition of used oil, DEEP added virgin oils that are being discarded (i.e., lubricating and other similar oils, but not fuel oils).
 - DEEP's regulations incorporate Part 279 by reference, although they make numerous more-stringent or broader-in-scope provisions (see response to question 3).
- For more information about CT's used oil requirements, visit:
 - CT DEEP's Used Oil web page: <https://portal.ct.gov/DEEP/Waste-Management-and-Disposal/Management-of-Used-Oil>
 - DEEP Fact Sheet listing the provisions in their regulations that are more-stringent or broader-in-scope: https://portal.ct.gov/-/media/DEEP/waste_management_and_disposal/used_oil/ChangesUseOilRegspdf.pdf
 - CT DEEP's used oil regulations: <https://eregulations.ct.gov/eRegsPortal/Browse/getDocument?guid={3B8DD983-E882-4855-9DAD-0167870A7281}>

Question 2:

- For the most part, DEEP's regulations are consistent with the Part 279 requirements for "materials containing or otherwise contaminated with used oil," as specified in 40 CFR 279.10(c).
- With respect to oily absorbents and oily rags/wipers, DEEP regulates them as used oil unless they do not have visible signs of draining oil or unless they are burned for energy recovery.
- With respect to oil/water mixtures, DEEP regulates them as used oil if there are "recoverable" amounts of used oil in them. They interpret "recoverable" to mean that the facility that the used oil is sent to has the equipment and the capability to actually recover used oil from the oil/water mixture. Different facilities have different capabilities in this area, so this determination can vary from facility to facility depending on their processes and equipment. Most notably, some facilities can "crack" emulsions (such as "water soluble oil" coolants) and recover the oil, even if they do not have a separate oil layer in them.

Question 3:

The following bullets provide a summary of the most significant changes DEEP made in their incorporation of the federal Part 279 used oil regulations. For further details, see the fact sheet referenced above.

- DEEP does not allow the use of used oil as a dust suppressant.
- CESQGs that mix hazardous waste with their used oil must manage it in the same way as other generator types (i.e., such mixtures are not automatically eligible for management as used oil, as is the case in the federal CESQG-VSQG rules).
- Mixing HW with used oil (e.g., gasoline) is not allowed, unless it is for legitimate recycling purposes (e.g., recycling as a fuel).

- Used oil fuels must have a BTU value of at least 5,000 BTUs (this does not apply to used oils as generated, unless they are burned for energy recovery without processing).
- CT has a separate state statute (CGS Section 22a-454) that requires permits for commercial used oil storage and recycling facilities.
- DEEP also requires permits for used oil collection centers.
- DEEP requires actual testing for the fuel specification (i.e., can't use knowledge of process for determining compliance with the fuel specification).
- Using knowledge of process is allowed in lieu of analytical testing for determining total halogen content but must be documented.
- DEEP specifies timeframes for the closure of used oil storage areas at used oil processing facilities.
- DEEP changed the federal 35-day storage timeframe for used oil transfer facilities to 10 days.
- Transporters that transfer used oil from one vehicle to another must have secondary containment for such transfers.
- Used oil transporter permits contain language specific to used oil, such as: (1) language requiring transporters to determine the total halogen content of used oil that they pick up; (2) language allowing transporters to pick up on-specification used oil at generator sites and deliver it directly to a burner, but only if the generator has notified as a used oil marketer, complies with the applicable marketer requirements, and can provide a fuel specification analysis showing that the used oil is on-specification; and (3) language prohibiting transporters from sampling used oil for the fuel specification at a site other than the generator's site, unless they have a used oil processor facility permit.
- DEEP specifies the used oil testing methods that must be used for total halogen determinations and fuel specification testing.
- DEEP's regulations incorporate EPA's 100 ppm guidance for halogenated hazardous constituents as it relates to the rebuttable presumption. In other words, if a used oil is determined to have total halogens over 1,000 ppm, it can be tested and managed as a used oil if it does not contain any of the F001/F002 constituents above 100 ppm.
- DEEP requires generators that store used oil in tanks or containers over 55 gallons in size to store it on an impervious surface, and if outdoors, in secondary containment.
- Burning of used oil in residential boilers of any kind is prohibited in CT.

With respect to where DEEP sees their used oil program going in the future, they have some changes they are intending to add to their incorporation of the federal Part 279 used oil regulations as part of a regulation update, they are currently working on:

- Add a requirement to cover containers of used oil when used oil is not being added or removed from them.
- Add a provision indicating that hazardous wastes that contain used oil (e.g., spent solvents) are not subject to management as used oil.
- Add a provision requiring used oil notifiers to use EPA form 8700-12.
- Add language clarifying that used oil processors must close a storage area when they cease using it, not at the time of closure of the entire facility.

Maine DEP – response provided by Stacy Ladner

Questions 1 and 2:

- Have had waste oil regulations for over 25 years
- Like MA, any oil no longer wanted/recycled is a waste oil
- Need license for waste oil treatment
- Does not have many regulations for used oil generators
- Used oil specification for burning is like virgin oil
- Off-spec oil can only go to certain boilers like paper mills
- If the oil is over the maximum for off spec oil requirements, it is a hazardous waste (there is an exception for high halogen cutting oils)
- Can use knowledge for waste oil going for recycling; the oil can move freely between facility and generator
- The type of fuel is based on PCBs too
- State tracks waste oil by requiring manifest and details on what is inside the oil
- Want to use a better system for better tracking
- Standards for incoming waste include requiring a waste analysis; the analysis results are compared to off-spec and on-spec requirements to see which one it fits
- Has two facilities that treat and market used oil and used oil comes in for burning

Question 3:

- Looking to include generator part of federal program, storage standards, storage prior to burning, consolidation requirements.
- Looking to lower PCB numbers to make no less stringent than EPA

Massachusetts DEP – response provided by Giles Steele-Perkins

Question 1:

- Have Part 279 requirements, such as container condition, but more stringent because is a hazardous waste in MA so must meet registration, manifesting and management standards. Waste code is MA01.
- If recycling used oil and sending offsite, generator has to meet rules for recyclable materials
- May need to send notification for onsite recycling of used oil in a space heater.
- Class A approval permit needed to send used oil offsite
- Receiving used oil also requires a Class A permit
- No distinction between used oil/waste oil. Used oil fuel is either spec (MA97) or off-spec (MA98).

Question 2:

- Oil-water mixture still waste oil
- Oil water mixture – need measurable layer of oil to be considered waste oil, so a sheen would not necessarily make it waste oil
- Have a “OneDrop” rule, which is similar to the federal regulations. If one uses a material to clean up a spill, the material would not be a hazardous waste as long as there is no free-flowing liquids or hazardous waste mixed in
- Water soluble used oil mixture is non-hazardous waste even though may be able to extract the oil

Question 3:

- Used oil considered waste oil and considered hazardous waste unless burned or recycled
- Much more stringent
- Transporters of waste oil need DEP-issued transporter's license
- Require manifesting and EPA ID# for used oil leaving MA and going into MA
- If used oil is going to recycling, generator can use bill of lading in lieu of manifest
- No changes to the waste oil regulations expected

New Hampshire DES – response provided by Zack Lorch in writing

Question 1:

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 does not work under the presumption that used oil is going to be recycled like the federal rules do.

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. Additionally, there was concern that the only way New Hampshire had the statutory authority to regulate used oil was to make it a listed hazardous waste.

Question 2:

Most of the time, oily absorbents and rags used to clean up used oil are exempt from the hazardous waste rules under specific exemptions that DES has in their rules, unless they exhibit a characteristic or the used oil had been mixed with a listed hazardous waste.

Marginal oily waste streams, like oily water or water-soluble oils used for machining, are much trickier when it comes to determining regulatory status and are really handled on a case-by-case basis. New Hampshire exempts water separated from used oil that contains less than five percent oil from the hazardous waste rules, so DES has used this as a guideline for determining whether or not the NH01 code would apply to oily water waste streams. DES generally looks at the percent oil in the waste stream, and they look at the SDS to determine if the product oil is petroleum-based or is considered a synthetic oil, and then they look at how the oil was used to see if it meets the “use based” definition for used oil, meaning, that it has been used as a lubricant, coolant, emulsion, or other similar use.

One problem DES often finds, especially with water soluble machining oils, is that they are being managed as non-hazardous waste, but they meet the definition of used oil in NH and therefore need to be managed as NH01 hazardous waste or under NH's used oil for recycle rules.

Question 3:

- Require generators to perform an initial used oil determination with exemption for generators of strictly used automotive oil; must test for all parameters listed in Part 279.11 (Flashpoint, As, Cd, Cr, 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 NH DES 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

Moving forward, don't foresee major changes to the regulatory structure for used oil management. Used oil will continue to be a listed hazardous waste. There is hope that NH can incorporate aspects of Part 279 that help clarify their rules and make used oil management simpler and more understandable for generators. One key piece of incorporating Part 279 will be the inclusion of rules for processors and re-refiners, as NH has a used oil re-refinery and several facilities that process used oil.

New Jersey DEP – response provided by Martin Sanchez

Question 1:

- Prior to 1996 was a state listed waste
- October 1996 adopted federal hazardous waste rules by reference
- It is noted as a recyclable material under sub-chapter 6
- Transporters that store used oil less than 35 days are not required to get class D approval because the used oil is still in transportation
- Facilities that accept used oil must have Class D approval from DEP
- Unused oil that has not been contaminated is used oil

Question 2:

- Similar to the wipes rule, it is not used oil if drained and has no free-flowing liquids
- De minimis amounts of used oil generated during normal operations is not used oil except little amounts in wastewaters
- Waste analysis plan can be done using generator knowledge but may change to requiring an analysis done by certified lab

Question 3:

- Not many differences with Part 279
- On specification cannot be burned for energy recovery in residential boilers

- Used oil considered solid waste under recycling rules

NYSDEC – response provided by Samantha Vandeusen in writing

Question 1:

NY's used oil regulations are pretty similar to EPA. NY uses the same definition for "used oil" as EPA and has a set of used oil management regulations in 6 NYCRR 374-2 that mirrors EPA's 40 CFR 279.

Historically speaking, NY's used oil program started in two tracks. The NYS solid waste regulations pre-dated NY's state's hazardous waste program, and those regulations applied to used oil transporters and receiving facilities. NYS started regulating used oil generators, burners, and marketers prior to the establishment of EPA's Part 279, and those regulations were administered by NY's hazardous waste program. NY's petroleum bulk storage and spills programs evolved separately and regulated underground storage of fuel oil, including off-spec used oil. NY's spills/bulk storage program had a Memorandum of Understanding (MOU) with the solid waste program beginning in the mid- to late-1980's that used oil tanks would be regulated by NY's bulk storage program. More recently, used oil became independently subject to NY's petroleum bulk storage regulations through a change in NY's law. NY's not exactly sure when NY's air regs for waste oil fuels came into being, but they go back at least to the mid-1980's. Right now, NY's current regulatory setup for the used oil program is that used oil permits and registrations are issued under NY's state's solid waste authority and the management standards are primarily administered by the hazardous waste program.

Question 2:

Oil/water mixtures: If there is used oil in the oil/water mixture that is recoverable and it's sent for recycling, NY considers it used oil. For oil/water mixtures sent for energy recovery, NY's had a number of issues with people trying to send oil/water mixtures for what some incineration facilities call waste to energy. In a lot of cases, those oil/water mixtures do not really have any fuel value, and it is being evaporated in the incinerator rather than combusted. In those cases, NY considers it to be disposal rather than legitimate burning for energy recovery. If a used oil/water mixture has an energy content of at least 5,000 btus/pound, and it was actually being combusted in an appropriate unit, NY would consider that to be legitimate energy recovery.

Oily absorbents and rags: If there's no free flowing used oil on the absorbent or rag and it's sent for laundering, recycling or landfilling, then it's not used oil and would be regulated as a solid waste or hazardous waste depending on a hazardous waste determination. If rags were hazardous waste and were going to be laundered, they could potentially be managed under NY's solvent-contaminated wipes policy. If there's free flowing used oil or the absorbent or rag is being sent for energy recovery then it's regulated as used oil.

Question 3:

As far as where NY's differs from the federal program:

- NY regulates wastes with PCBs of 50 ppm or more as hazardous waste so NY also has that same limit as part of the criteria for on-spec used oil in addition to the federal limits. NY requires all used oil transfer facilities, processors, and re-refiners to get a solid waste permit unless they meet one of NY's permitting exemptions.

- NY has two used oil permitting exemptions both of which apply to transfer facilities. The first is the used oil vehicle to vehicle exemption. Under this exemption facilities do not need a permit if their only used oil transfer activity is transfer of used oil between vehicles provided that:
 - They continuously observe all used oil transfers
 - Have a contingency plan
 - Have quality control procedures in place
 - Comply with the federal transfer facility standards, including secondary containment
 - Have the used oil on-site for no more than 35 days from the date of receipt
- NY's other permitting exemption is the used oil 10-day exemption. That exemption allows transporters that have a NYS waste transporter permit to store used oil on their vehicles at their facility for up to 10 days, provided that:
 - No transfer, pumping, or consolidation of loads occurs
 - Meet the federal used oil transfer facility standards
- NY also requires all used oil transfer facilities, processors, and re-refiners to test all incoming loads of used oil for halogen content. These facilities need to use a laboratory that is certified under NY's NYS Department of Health's Environmental Laboratory Approval Program (also referred to as ELAP) for all of the testing for incoming loads or, if the facility chooses to do their own testing, they must split sample five percent of all incoming loads and send those split samples to an ELAP-certified lab for confirmation analysis.
- NY requires used oil collection centers to get solid waste registrations.
- NY requires transporters that transport more than 2,000 pounds of used oil in a single shipment to get a NYS waste transporter permit.
- NY requires all tanks storing used oil to be registered with NY's petroleum bulk storage program and meet the applicable design and operating requirements for their tanks under that program.

As far as where NY would like the used oil program to go, DEC is exploring the possibility of doing a few different things in the State's next rulemaking:

- Tightening up the used oil container standards to require that containers remain closed unless used oil is being added or removed or it's necessary for the container to be open for safety reasons (so they would be more like the satellite accumulation area container requirements).
- NY does have the "de minimis" standard for oily wastewaters from the EPA regulations, but NY wants to see if they can develop a standard for how much oil an oil/water mixture needs to have to be considered "used oil" possibly based on the percentage of oil in a mixture so that NY has a clear numeric standard.
- Removing the exemption that allows VSQGs to mix hazardous waste with their used oil or limiting VSQGs to mixing used oil with ignitable-only hazardous waste.
- Adding cold crushing of used oil filters as an acceptable filter draining method.
- Changing NY's permitting exemptions for transfer facilities to better align with the hazardous waste 10-day exemption for the transfer of used oil containers.
- Clarifying existing regulations related to secondary containment and rejected loads and add more specific language to make permit writing easier.

Rhode Island DEM – response provided by Sean Carney in writing

Question 1:

- Was state listed waste until 2007 when adopted used oil recycling rule based on Part 279 but their regulations are more stringent in some areas (See Question #3 response for details)
- Need to obtain permit to operate a used oil Processor/Re-Refiner facility; operator also needs insurance, closure plan, and financial assurance, which includes a used oil waste analysis plan. Transporters are also required to obtain a permit and maintain liability insurance.
- Definition of Used Oil includes un-used materials that through storage or handling has become unsuitable for use based on chemical or physical impurities.
- Does not require Used Oil Generators to notify.
- Has generic code for offsite shipment of used oil out of state (RIO000000000) but this can be an issue with E-Manifest system when a Facility wants to track individual shipments. RIDEM will issue temporary IDs upon request to resolve this issue.

Question 2:

- Materials (soil, absorbents, debris) contaminated with used oil, if there is no free-flowing liquid, the generator must determine if material is a hazardous waste and manage it accordingly.
- Similar to NJ, de minimis amounts of used oil in wastewater, such as leaks and drips, are not regulated as used oil when processed via a permitted wastewater treatment system. RIDEM does not have a volume or concentration-based standard for “De Minimus” quantities in its regulations at this time.
- Used oil filters – Also allow cold draining if containers physically crushed using a mechanical, pneumatic or hydraulic device designed for crushing filter and recovered oil is managed in accordance with the requirements of the Used Oil recycling regulation. Filters containing free flowing used oil maybe managed under the Used Oil Recycling rule.

Question 3: RIDEM’s program is more stringent than 40 CFR 279 in the following areas.

- Applicability section
 - Rebuttable presumption – Also allows Generator to demonstrate that the used oil contains <100ppm of the solvents listed in F001/F002 to rebut the presumption that the used oil was mixed with hazardous waste.
 - Used oil containing PCBs at concentrations exceeding 50 ppm are regulated as hazardous waste.
 - Household used oil (from DIY) becomes subject to regulation as used oil upon receipt by a transporter, used oil collection center, generator, burner or processor/re-refiner. Burners must analyze used oil received from DIY prior to burning for energy recovery.
- Prohibited Activities
 - Mixing hazardous waste with used oil, except as provided in Part 1.16.1(A)(3) of the Used Oil Rule relating to the mixing of ignitable only hazardous waste.
 - Using used oil as a dust suppressant or for road oiling.
 - Burning off-spec used oil, except for used oil generated on-site in a unit with a thermal capacity of <500 BTUs.
 - Burning used oil for firefighter training.
 - Management of used oil in anything other than containers or tanks.
 - Disposal of used oil to the land or waters of the state.
 - Disposal of used oil into a subsurface drain or Underground Injection Control unit.

- Shipment of used oil to a facility that has not notified the Department of its used oil activity and/or obtained a letter of Authorization or Permit to manage used oil.
- Used Oil Burners
 - Burners using equipment with capacity of >500,000 BTUs to burn used oil generated onsite must: analyze used oil to demonstrate that is spec oil, may aggregation of spec and off-spec oil for burning if the resultant mixture is analyzed and meets spec oil requirements, must register with Office of Air Resources.
 - Burners using equipment with capacity of >500,00 but <1.0M BTUs generated offsite must: analyze used oil to demonstrate that is spec oil, may aggregation of spec and off-spec oil for burning if the resultant mixture is analyzed and meets spec oil requirements, must register with Office of Air Resources.
 - Burners using equipment with capacity of >1.0M BTUs to burn used oil generated offsite must: analyze used oil to demonstrate that is spec oil, may aggregation of spec and off-spec oil for burning if the resultant mixture is analyzed and meets spec oil requirements, must obtain a Letter of Authorization with Office of Air Resources.
 - Total halogens for spec oil are limited to 1,000 ppm.
 - Must comply with used oil generator standards storage requirements (see below).
- Used Oil Generators
 - Containers – Limited to storing 1,320 gallons of used oil in containers (24 x 55 gal) or additional standards apply including the requirement to develop a contingency plan, date containers holding excess used oil and ship offsite within 180 days of accumulation date.
 - Must keep containers closed when not adding/removing used oil
 - ASTs – Required to register ASTs with Department.
 - USTs – Required to comply with RIDEM's UST Regulations.
 - May not self-transport to Used Oil Collection Centers.
- Used Oil Collection Centers
 - Must notify and obtain EPA ID Number
 - Can only receive used oil from DIYs.
- Used Oil Aggregation Points
 - May not receive used oil from DIYs
- Used Oil Transporters
 - Must obtain a permit to transport used oil
 - Maintain liability insurance of \$1,000,000.00.
 - In the event of a spill or release, submit a written report to RIDEM's OER within ten (10) days of the incident
 - Track each shipment of used oil received for transportation including the name and address of generator, transporter or processing facility, the EPA ID Number (if applicable), the date received and the quantity of used oil.
 - Track each delivery to a transporter, burner or processor including the name and address of generator, transporter or processing facility, the EPA ID Number (if applicable), the date received and the quantity of used oil.
- Used Oil Temporary Storage Facilities (Transfer Facilities)
 - Does not apply to used oil storage in the transportation vehicle for less than 72 hours.
 - Required to obtain a Letter of Authorization to operate from RIDEM.

- Required to submit a Closure Plan and cost estimate for closure with application to operate.
- Application fee of \$6,000.00; renewal due every three years with a fee of \$3,000.00.
- Requires secondary containment for tanks and containers equivalent to 100 percent of volume of used oil in storage.
- Exterior storage units must be constructed to prevent accumulation of precipitation or operator must obtain a permit from RIDEM OWR stormwater program prior to construction.
- Maintain an operating log tracking incoming and outgoing shipments with a reconciliation performed every 35 days to demonstrate compliance with storage time limits.
- Processor/re-Refiner
 - Must obtain a permit from Department to operate.
 - Submit a Closure Plan and cost estimate for closure with application.
 - Application fee of \$10,000.00 and a renewal every 5 years with a renewal fee of \$5,000.00.
 - Maintain at least 1,000,000.00 liability insurance policy.
 - Must provide a financial assurance mechanism similar to TSDF.
 - Requires secondary containment for tanks and containers equivalent to 100% of volume of used oil in storage.
 - Exterior storage units must be constructed to prevent accumulation of precipitation or operator must obtain a permit from RIDEM OWR stormwater program prior to construction.
- Used Oil Burners – Burning off-spec used oil is prohibited in Rhode Island.

Vermont DEC – response provided by Anna Bourakovsky

Question 1:

- Rules mirror Part 279
- Accepts used oil from out-of-state for storage

Question 2:

- Oil/water mixture contaminated with five percent used oil or greater must be state listed hazardous waste
- Oily rags to be laundered need a hazardous waste determination
- Oil/water mixtures subject to determination are mostly BT01 waste

Question 3:

- Does not have definition for minimum oil in solution to be considered a used oil so there have been difficulties
- Rule revision to address de minimis amount managed under used oil standards
- Propose hazardous waste determination for aqueous solution of used oil with 50 percent or more liquid; if it is a hazardous waste, generator can choose to handle the solution as hazardous waste or separate the mixture
- Generators of used oil to notify