

## Mixing Conditionally Exempt Small Quantity Generator Hazardous Waste with Used Oil

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Federal regulations [40 CFR, Part 279.10(b) (3)] state: “Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under paragraph 261.5 of this chapter are subject to regulation as used oil under this part.” “This part” refers to PART 279 – STANDARDS FOR THE MANAGEMENT OF USED OIL.

This exemption was intended to allow very small quantities of CESQG hazardous waste to be mixed into used oil and such small inputs were thought to have no effect on the end uses. It was not intended to be a blanket exemption allowing CESQGs to mix any and all waste into used oil or dilute their hazardous waste with used oil. This is evidenced by the excerpt below from the EPA publication (Number 905-R03-005, March 2005) Guidance and Summary of Information Regarding the RCRA Used Oil Rebuttable Presumption, which states the following (on page 8, point #3):

“Mixtures of used oil and hazardous waste from conditionally exempt small quantity generators (CESQG) (generators of less than 100 kilograms of hazardous waste per month) are *regulated as used oil under 40 CFR Part 279* (emphasis added) rather than as hazardous waste, consistent with 40 CFR §261.5(j). This rule was revised on July 30, 2003 so that this exclusion applies to all mixtures of used oil and hazardous waste from CESQGs, whether the used oil is burned for energy recovery or recycled in a different way.”

Used oil management standards in Part 279 include the following:

- According to 40 CFR Part 279.10(b)(1), used oil mixed with hazardous waste that is listed in 40 CFR Part 261 Subpart D is subject to regulation as hazardous waste rather than used oil (40 CFR Part 279.10 (b)(1)(i).
- According to 40 CFR Part 279.10(b)(1)(ii), used oil containing more than 1,000ppm total halogen is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261).
- According to 40 CFR Part 279.10(b)(3), mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR Part 261.5 are subject to regulation as used oil under 40 CFR Part 279.
- According to 40 CFR Part 279.44(a), in order to insure the used oil is not a hazardous waste under the rebuttable presumption of Part 279.10(b)(1)(ii), the used oil transporter

must determine whether the total halogen content of used oil being transported is above or below 1000ppm. The transporter must make this determination by testing the used oil or applying knowledge of the halogen content in light of the materials used or processed.

State laws and regulations do not allow mixing of used oil with hazardous substances if the resulting solution is unsuitable for recycling, as follows:

- Chapter 403.751(1) (e), F.S., states: “No person may mix or commingle used oil with hazardous substances that make it unsuitable for recycling or beneficial use.”
- Chapter Rule 62-710.401(4), F.A.C., states: “Notwithstanding the provisions found in 40 CFR 279.10(b)(3), no person may mix or commingle used oil with hazardous substances that make it unsuitable for recycling or beneficial use.”

Therefore, based on current federal regulations, state laws and regulations, and Department experience, CESQG mixtures of hazardous waste and used oil must be screened for halogen and if the total halogen content is above 1000ppm, the rebuttable presumption applies.