



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

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

JUL 27 2017

Mr. Christopher Harris
General Counsel
NORA
1511 West Babcock
Bozeman, Montana 59715

Dear Mr. Harris:

Thank you for your April 26, 2016 and November 12, 2013, letters regarding off-specification (off-spec) used oil and a non-waste determination for off-spec used oil. In your submittal (on behalf of NORA - An Association of Responsible Recyclers) you requested that EPA modify its description of off-spec used oil fuel to exclude the flashpoint criterion, in the context of 40 C.F.R. Part 241 [non-hazardous secondary material (NHSM)]. You requested that off-spec used oil be placed in the same category as on-spec used oil for purposes of determining whether the used oil is a waste or non-waste when burned for energy recovery under the NHSM rule. You also requested confirmation that off-spec used oil that is a hazardous waste solely because it exhibits a characteristic, is not an NHSM. Your interpretation is based on: 1) section 261.6(a)(4), which states that used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the hazardous waste requirements of parts 260 through 268, but is regulated under part 279; and 2) section 241.2, which states that NHSM is defined as a secondary material that, when discarded, would not be identified as a hazardous waste under Part 261.

We confirm your understanding that off-spec used oil that is characteristically hazardous is considered a hazardous waste and not an NHSM, as defined in section 241.2. Consequently, characteristically hazardous used oil that is recycled would be managed under Part 279 in accordance with section 261.6(a)(4) and not eligible for the NHSM Part 241 standards.¹

Following this same logic, any used oil that is found to be off-spec under 40 C.F.R. § 279.11 because of flashpoint (*i.e.*, the used oil's flashpoint is below 100F) is by definition

¹ We note that mixtures of used oil and characteristically hazardous waste, where the resultant mixture exhibits a characteristic, are not regulated under Part 279 but rather are subject to the hazardous waste requirements in Parts 261-266, 268, and 270; however, the conclusion is the same -- the mixture would not be subject to NHSM Part 241 standards.

characteristically hazardous for ignitability (*i.e.*, flash point is below 140F) under 40 C.F.R. § 261.21. Consequently, this off-spec used oil does not fit within the definition of an NHSM under 40 C.F.R. § 241.2 and not eligible for the NHSM Part 241 standards.

To summarize, off-spec used oil with a low flashpoint is outside the scope of the NHSM rule. If you have further questions pertaining to the used oil management standards and how they relate to the non-hazardous secondary material regulations, please call Jesse Miller at (703) 308-1180.

Sincerely,

A handwritten signature in cursive script that reads "Barnes Johnson". The signature is written in black ink and includes a long horizontal flourish at the end.

Barnes Johnson, Director
Office of Resource Conservation and
Recovery