

**BEFORE THE
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**COMMENTS OF THE
INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION**

ON

**THE PROPOSED RULE - "IDENTIFICATION OF NON-HAZARDOUS SECONDARY
MATERIALS THAT ARE SOLID WASTE"**

Docket ID No. EPA-HQ-RCRA-2008-0329

August 3, 2010

I. INTRODUCTION

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the U.S. Environmental Protection Agency’s (“EPA”) proposed rule under the Resource Conservation and Recovery Act (“RCRA”) that would govern the identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units. 75 Fed. Reg. 31844, 31892-93 (June 4, 2010). Units combusting solid wastes identified under the proposed rule would be subject to Clean Air Act (“CAA”) section 129. Units combusting materials *not* identified as solid wastes under the proposed rule would, on the other hand, be subject to any applicable emission limitations for hazardous air pollutants (“HAP”) under section 112 of the CAA.

ILMA’s comments are limited to the portions of the proposed rule concerning used oil. ILMA associates with and supports the comments submitted on the instant rulemaking by the American Petroleum Institute (“API”) and NORA, An Association of Responsible Recyclers (formerly the National Oil Recyclers Association)(“NORA”).

According to the preamble to the proposed rule, EPA considers used oil fuel that meets the used oil specification in 40 C.F.R. Part 279 to be a traditional fuel, and not a solid waste. *See* 75 Fed. Reg. 31861, 31864, 31877. ILMA agrees with this conclusion; however, EPA has not provided any corresponding proposed regulatory language in the proposed rule. As discussed below, EPA should include in the final rule specific regulatory language stating that traditional fuel are not solid wastes and identifying on-specification used oil as a traditional fuel.

Further, ILMA believes there should be no distinction for off-specification used oil fuel. At a minimum, off-specification used oil fuel should not be considered discarded and a solid waste if it meets the legitimacy criteria in the final rule.

II. ILMA'S INTEREST IN THIS RULEMAKING

The Independent Lubricant Manufacturers Association ("ILMA"), established in 1948, is a national trade association of 135 manufacturing member companies. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States' lubricant needs and over 75 percent of the metalworking fluids utilized in the country. Many member companies export finished lubricants from the United States or have business arrangements for the use of their proprietary formulae overseas.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

ILMA and its members were actively involved in the development of EPA's used oil management standards (40 C.F.R. Part 279), which were promulgated in 1992. Many ILMA members provide used oil recycling services to their customers under tolling agreements.

ILMA's longstanding approach to used oil management has been to allow for as many viable recycling options as possible to reduce improper disposal.

III. USED OIL MANAGEMENT REGIME

It is important for EPA to not lose sight of success of its used oil management standards in increasing the volume of proper recycling of used oil, including burning as fuel. As an initial matter, Congress directed EPA on at least three occasions in the 1980s to develop used oil regulations that protect human health and the environment while encouraging legitimate used oil recycling. At that time, the debate was over whether legitimate recycling would be encouraged by listing used oil as a RCRA hazardous waste.

In promulgating 40 C.F.R. 29 in 1992, EPA recognized that, if over-regulation kills a recycling market, the adverse environmental consequences may be severe. Accordingly, EPA issued a balanced set of regulatory controls. Used oil managed in accordance with 40 C.F.R. Part 279 is handled as a non-hazardous waste.

As a result of EPA's used oil management standards, ILMA members and other recyclers (primarily NORA members) have collected and have managed vast quantities of used oil as a valuable product in full compliance with EPA's regulations. ILMA doubts such success would have been achieved over the past 18 years if, instead of a balanced regulatory approach, used oil had been declared a RCRA hazardous waste. At a minimum, the regulatory costs would have been substantially higher without any increase in environmental benefit and protection.

EPA should be aware that the State of California is in the initial stages of a life cycle cost study and assessment for new and used oils. This statutorily-mandated study is supposed to be submitted to the California legislature by January 1, 2014. ILMA, API and other stakeholders has requested a robust study be robust, in large part, because ILMA anticipates that the results will show the benefits from EPA's used oil management standards, including burning both on-specification and off-specification used oil fuel as traditional fuels.

EPA should not lose sight of these past 18 years in used oil regulation in the United States and the positive environmental benefits that have been provided.

IV. USED OIL THAT CAN MEET THE EITHER THE USED OIL FUEL SPECIFICATION OR THE LEGITIMACY CRITERIA SHOULD NOT BE CONSIDERED DISCARDED

As noted above, EPA states in the preamble to the proposed rule that it considers used oil fuel that meets the used oil specification in 40 C.F.R. Part 279 to be a traditional fuel, and not a solid waste. *See* 75 Fed. Reg. 31861, 31864, 31877. While ILMA fully agrees with this conclusion by the Agency, the Association could not find any corresponding proposed regulatory language in the *Federal Register* notice. ILMA agrees with API and other commenters that the final rule should contain regulatory language stating that traditional fuels are not solid wastes. Further, the final rule should specifically identify on-specification used oil as a traditional fuel. This suggested language will eliminate any doubt about the applicability of the definition of solid waste to on-specification used oil. Without such a clarification in the final rule, ILMA remains concerned that questions may be raised about whether on-specification used oil meets the definition of a secondary material and whether such used oil *necessarily* would meet whatever legitimacy criteria EPA ultimately finalizes in its final rule.

ILMA member' anecdotal information suggests that contaminant levels in on-specification used oil have fallen since the promulgation of 40 C.F.R. Part 279 in 1992. ILMA is not aware if EPA has conducted further analyses comparing used oil and virgin fuel oil products since its studies in the mid-1980s and 2003. ILMA understands that NORA will submit for the rulemaking record recent data for the levels of metals and other constituents in used oil. EPA can and should use the NORA database to support its characterization of on-specification used oil as a traditional fuel and not as a discarded or abandoned solid waste.

V. **EPA SHOULD NOT MAKE A DISTINCTION FOR OFF-SPECIFICATION USED OIL**

EPA states in the preamble to the proposed rule that *off*-specification used oil likely is discarded and is a solid waste. 75 Fed. Reg. 31877. For the same reasons as on-specification used oil set forth above, ILMA believes that there should be no regulatory distinction for off-specification used oil fuel. Both on-specification and off-specification used oil fuel are viewed in the marketplace as traditional fuels. Further, in many cases, ILMA believes that off-specification used oil may be able to meet the legitimacy criteria in the proposed rule. Accordingly, off-specification used oil should not be considered discarded just simply because it fails the 40 C.F. R. Part 279 specification. Instead, only if an off-specification used oil also fails to meet the legitimacy criteria should it be considered discarded and a solid waste. EPA should clearly acknowledge in the preamble to the final rule that off-specification used oil that meets the legitimacy criteria is not discarded and is not a solid waste.

ILMA agrees with EPA's statement in the preamble that off-specification used oil can be processed into a non-waste product, and "[o]nce used oil is determined to be on-spec, we do not view it to be a solid waste" 75 Fed. Reg. 31877. ILMA requests that this principle be incorporated into the regulatory language. This could be accomplished by defining "traditional fuels" to include on-specification used oil and off-specification used oil that has been processed to meet the used oil-specification.

ILMA reminds EPA that the distinction between on-specification and off-specification used oil fuel is an arbitrary, regulatory one and has nothing to do with heating quality. Both categories of used oil fuel will generally have the same Btu content (approximately 140,000 British Thermal Units per gallon) as equivalent virgin petroleum oil (assuming the water content

is the same). The regulatory distinction between on-specification and off-specification used oil fuel was created by EPA in the mid-1980s. Under the Agency's regime, if any parameter of four metals exceeds a specified concentration, the used oil is classified as off-specification. If total halogens are greater than 4000 parts per million, the used oil is off-specification. Also, if the flashpoint of the used oil is lower than 100 degrees F., the used oil is classified as off-specification.

Many ILMA members recycle metalworking fluids and industrial oils for customers under tolling agreements, as provided by 40 C.F.R. 279. In some instances, the closed-loop recycling is intended to remove metals generated from lubricating operations that remove metal from parts being machined. The existing used oil regulations in 40 C.F.R. Part 279 include a definition of "processing." 40 C.F.R. § 279.1. Accordingly to avoid any conflict with 40 C.F.R. Part 279, EPA should add to the proposed definition of processing in the proposed rule that in the case of used oil, "processing" includes "processing" set forth in 40 C.F.R. § 279.1."

VI. CONCLUSION

ILMA agrees with EPA that on-specification used oil fuel is a traditional fuel and should not be considered discarded and a solid waste. However, the Association suggests that EPA specifically set forth this principle in the final rule.

ILMA believes that there should be no distinction for off-specification used oil fuel. However, at a minimum, off-specification used oil fuel should not be considered discarded and a solid waste, if the product meets EPA legitimacy criteria. Moreover, EPA's definition of "processing" in the final rule should include "processing" as defined in 40 C.F.R. 279.1.

ILMA appreciates this opportunity to comment on the proposed rule.