

Off-Specification Used Oil: July 27th U.S. Environmental Protection Agency Interpretive Letter



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The United States Environmental Protection Agency (“EPA”) addressed in a July 27th letter various requests regarding off-specification (“Off-Spec”) used oil.

EPA was responding to 2013 and 2016 correspondence from NORA – an Association of Responsible Recyclers (“NORA”).

NORA requested that the agency:

. . . 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)].

The organization also asked that EPA:

- Place off-spec used oil 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
- Confirm that off-spec used oil that is a hazardous waste solely because it exhibits a characteristic, is not an NHSM

NORA’s interpretation is stated to be 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 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.

EPA confirms NORA’s understanding stating 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.

Applying the same logic the EPA also states that 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 characteristically hazardous for ignitability (i.e., flashpoint is below 140F) under 40 C.F.R. § 261.21. As a result, the agency states that such 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.

EPA summarizes its base conclusion by stating that off-spec used oil with a low flashpoint is outside the scope of the NHSM rule.

[A copy of the letter can be downloaded here.](#)