



**ARIZONA  
ROCK  
PRODUCTS  
ASSOCIATION**

July 30, 2010

U.S Environmental Protection Agency Room 3334  
1301 Constitution Avenue, N.W.  
Washington, D.C. 20004

RE: Effects of Categorizing Used Oil as Non-Hazardous Secondary Materials  
**Docket No: EPA-HQ-RCRA-2008-0329: FRL-9148-2**

Members of the Environmental Protection Agency:

The Arizona Rock Products Association (ARPA) urges the Environmental Protection Agency to reconsider categorizing used oil as a non-hazardous secondary material. This rule was designed to define the term "solid waste" and to determine whether a combustion unit is required to meet emissions standards for solid waste incinerators or for commercial, industrial, and institutional boilers.

The used oil regulations developed in 1985 have encouraged used oil recycling by defining specific markets for which "On-Specification" and "Off Specification" Recycled Fuel Oil (RFO) is a valuable commodity. These rules have been strengthened over the years to continue the success of the program while protecting human health and the environment. However, the proposed rule will have unintended consequences that will adversely affect our industry as well as our country's ability to maintain its road and bridge infrastructure. The increased energy cost will have a profound negative effect on the ability of the US, state and local communities to fund maintenance and construction of our roadways and bridges due to the added burden on industry to replace this fuel source. Additionally, in a time when our economy is overwhelmed with unparalleled challenges, this will place an economic burden on the asphalt and cement industries that rely on recycled used oil fuel for production purposes. Our ability to utilize RFO in the production of asphalt and cement could, for all practical purposes, be eliminated by this change.

For over 50 years, the Arizona Rock Products Association (ARPA) has been providing representation for over 50 member companies involved with the production of aggregates, asphaltic concrete, ready mix concrete, asphalt, lime products, and portland cement. Our members include over 60 associate members providing related transportation, contracting, and consulting services. The Association has serious concern regarding the ramifications of the proposed changes and re-categorization of used oil.

ARPA requests the legislative history of used oil regulation not be ignored in the present rule-making effort. In 1980, 1984 and 1986 Congress directed EPA to develop regulations that protect human health and the environment while encouraging legitimate used oil recycling. Congress clearly recognized that over-regulation could eliminate the recycling market and the adverse environmental consequences would be severe.



On-specification used oil does not constitute a solid waste because it is not abandoned or otherwise "discarded". On-specification used oil constitutes a legitimate and "traditional" fuel. ARPA contends that, for precisely the same reasons, off-specification used oil fuel does not constitute a solid waste. The facts demonstrate that off-spec used oil is a legitimate and "traditional" fuel.

RCRA defines the term "solid waste" as: "Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations, and from community activities. (See 42 U.S.C. § 6903.27) Thus, to be a solid waste, a material must be, "discarded."

In *American Mining Congress v. EPA* (AMC) 824 F.2d 1177 (D.C. Cir. 1987), the D.C. Circuit held that in defining the term "solid waste," AMC used the word "discarded" in its ordinary sense. Specifically, the court held that AMC clearly and unambiguously expressed its intent that "solid waste", and therefore EPA's regulatory authority, be limited to materials that are "discarded" by virtue of being disposed of, abandoned, or thrown away. AMC, 824 F.2d at 1193. Thirteen years later, the court reaffirmed its holding in AMC, and rejected EPA's argument that other decisions of the court in the intervening years had limited the import of AMC.

*Association of Battery Recyclers v. EPA* ("ABR"), 208 F.3d 1047, 1054-1056 (D.C. Cir. 2000). In the preamble to the proposed rule, EPA acknowledges that in defining solid waste, "the key concept is that of 'discard.'" 75 Fed. Reg. 31850. Further, EPA correctly states that, "The ordinary plain-English meaning of the term, "discard" controls when determining whether a material is a solid waste. The ordinary plain-English meaning of the term discarded means "disposed of," "thrown away," or "abandoned."

The Arizona Rock Products Association does not believe that it is possible to apply meaning of "discard" to a situation where materials are neither disposed or nor abandoned, but retained and legitimately burned for energy recovery.

Additionally, it should be emphasized that the distinction between on-spec and off-spec used oil fuel has nothing to do with its heating quality. Both categories of used oil fuel will generally have the same Btu content (approximately 140,000 British Thermal Units per gallon) the equivalent of virgin petroleum oil if the water content is the same.

The distinction between the two categories of used oil fuel is a somewhat arbitrary one, created by EPA in 1985. 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 Fahrenheit, the used oil is classified as off-specification. Additionally, the metals rarely exceed the specified concentrations. Rather, used oil fuel is off-spec because of total halogens or flashpoint. However, neither of these factors adversely affects the quality of this type of used oil as a fuel. The market for off-specification used oil under the current regulations is strong.

There are, according to EPA's *Materials Characterization Paper* on used oil for this rule-making, approximately 750 types of industrial furnaces and boilers that burn off-specification used oil fuel. These are primarily cement kilns, boilers for utilities, furnaces at steel mills and other major



industrial burners. All of these burners are already stringently regulated by the Clean Air Act and each utilizes and maintains expensive pollution control equipment. There is absolutely nothing in the preamble to any of the proposed rules that suggests that when burning used oil fuel these industrial furnaces and boilers emit halogens in quantities greater than would be the case if the off-specification used oil fuel were burned in facilities with Section 129 permits. This point needs to be carefully considered by EPA because there would be no justification of this proposed rule (as it would apply to off-specification used oil fuel) if no environmental benefits are to be achieved.

It is also worth pointing out that Exhibit 6 of the EPA's *Material Characterization Paper* shows that "the principal benefits of combustion of used oil are associated with upstream production offsets and include substantial reductions of NOx, CO, and CO2 emissions. In terms of combustion-specific emissions, use of used oil results in notably lower NOx emissions, in particular when compared to residual fuel oil." The term "upstream production offsets" recognizes the benefits of used oil recycling. Meaning, when a quantity of fuel is produced from used oil that is collected and recycled, the adverse environmental impacts that would have been created by producing the same quantity of virgin fuel have been eliminated. Unfortunately, these benefits are threatened by the proposed rule that, perhaps unintentionally, could effectively destroy the market for off-specification used oil fuel.

Currently, there is a steady and reliable market for off-spec used oil fuel. Off-specification used oil is collected and marketed in much the same way as on-spec used oil. The difference is in the number of end users (approximately 750 industrial furnaces and boilers).

What are the consequences of diminishing the market for off-specification used oil fuel? There could be several including the potential mismanagement of this product due to the increased management costs. ARPA strongly recommends that when EPA evaluates the effect of the proposed rule, it should consider the real-world impact of the rule on the environment, infrastructure costs and fuel availability. ARPA maintains that there are numerous environmental benefits to the existing used oil recycling market which includes the recycling of off spec used oil. Consequently, we need to very carefully identify the outlets and impact on the management of off-spec used oil before we eliminate existing management programs that currently collect and recycle used oil very effectively.

After analyzing the rule, we have summarized our key concerns below for your review:

Used oil consists of "on-specification" and "off-specification" products and should be considered a "traditional" fuel because neither are discarded rather they are presumed to be recycled.

*The Federal Standards for the Management of Used Oil* already prescribe the specific types of combustion devices when burning for energy recovery. Please refer to Subpart H of the *Standards for the Management of Used Oil and 40 CFR 279.61*. ARPA maintains that current air permits meet their stated goal of protecting the environment under the existing Clean Air Act.

Some of the elevated contaminants found in "off-specification" oil can be burned without posing a threat to human health<sup>1</sup>. Further, one impediment to attain "on-specification" designation is a low flash point. Low flash point does not affect the fuel quality nor should one presume low flash fuel releases Clean Air Act regulated pollutants. Additionally, an unclear intensive petition

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<sup>1</sup> Used Oil Final Rule, 50 FR 49194 (November 29, 1985)



process must be completed to determine if “off-specification” oil is not a solid waste in spite of Federal rules presuming it will be recycled<sup>2</sup>.

As previously mentioned, adverse and material economic consequences will harm the development and maintenance of roadway infrastructure in the nation, our state and local jurisdictions due to increased energy costs when forced to use higher priced virgin fuels substituted for recycled used oil products.

The proposed regulation will reduce the available recycling markets and destroy the Federal recycling program without justifying any environmental benefits. Under the proposed rule, our member facilities would be required to apply for and obtain an air permit under section 129 of the Clean Air Act. The cost for obtaining this permit is not economically justifiable, thereby requiring them to convert to virgin fuel alternatives. Our member companies would no longer consider RFO an economic viable fuel and would cease utilizing it in their production processes leaving an excess of waste to be disposed of.

Virgin crude products, which may contain similar contaminants, must be produced to replace the used oil fuel products. The production of these additional virgin fuels to meet the increased demand will contribute to additional air emissions from the refining process as well as increase our dependence on imported oil.

Changes in technology and in the energy market over time may result in additional secondary materials being economically viable to be used as “traditional” fuels. It also may not always be clear whether a fuel material is a “traditional” fuel. ARPA requests that this rulemaking be flexible to account for increasing use and changes in commodities, technologies, markets, and fuel prices.

Finally, the impact the proposed rule will have on future improvements in industrial boiler technology which could be more protective of the environment.

The proposed rule’s intent is to address the recycling of solid waste not presumed to be recycled according to prescribed Federal rule. The proposed rule’s alternative to regulating non hazardous solid waste encroaches upon business’ ability to compete in an increasingly difficult business climate.

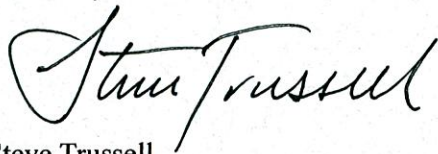
Recycled used oil fuel products are a valuable commodity and the consumption of them has been shown to be equivalent or better than virgin alternative fuels as it relates to their impact on the human health and the environment. The negative consequences that will occur if this proposed rule is enacted are profoundly adverse to used oil recycling, use of alternative fuels across the US, and will have an impact on our cash deficient state and local governments.

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<sup>2</sup> The EPA states that it generally considers secondary materials to be legitimate non-waste fuels if they contain contaminants that are not significantly higher in concentrations than traditional fuel products, but no clear definition of significant quantity is provided. 75 FR 31855 (June 4, 2010)

ARPA strongly asserts that recycled used oil products, including "off-specification", should be considered a "traditional" fuel and not a solid waste. Please feel free to contact me with any questions and thank you for this opportunity to comment on this issue.

Sincerely,

A handwritten signature in black ink, reading "Steve Trussell". The signature is written in a cursive, flowing style with a large initial "S".

Steve Trussell  
Executive Director