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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

November 10, 1994

Mr. Larry Northup
Executive Director
Convenient Automotive Services Industry
P.O. Box 34595
Bethesda, Maryland 20827
(301) 897-3191

Dear Mr. Northup:

Thank you for your letter dated August 22, 1994, requesting clarification of how provisions in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) apply to "Service Station Dealers" (SSD's) that handle used oil. I apologize for the delay in responding to your previous requests on this issue.

The following provides a response to each of the specific questions raised in your letter.

1. May quick oil change and lubrication service providers be considered SSDs?

Yes. In order to be considered an SSD as defined by 101(37) of CERCLA, the establishment must receive a significant percentage of its gross revenue from the fueling, repairing, or servicing of motor vehicles and must also accept "do it yourself" (DIY) generated used oil for collection, accumulation, and delivery to an oil recycling facility. Fast lubes that accept DIY used oil would generally fall within this definition if they receive a significant portion of their income from servicing motor vehicles. Fast lubes would therefore be eligible for limited exemption from CERCLA liability for recycled oil as provided under CERCLA 114.

2. Does the SSD exemption pertain to all used oil collected at the Dealer's facility?

The SSD exemption applies to both DIY used oil accepted by the SSD and to used oil collected from customer's vehicles, the two sources of used oil specifically mentioned in your letter.

3. For purposes of determining protection against CERCLA liability under the SSD exemption, at what point in time does EPA deem that used oil destined for recycling falls into the category of recycled oil, as defined by Section 1004(37) of the Solid Waste Disposal Act?

EPA has interpreted the term "recycled oil," as defined by 1004(37) of the Solid Waste Disposal Act, as not limited to used oil that has already been processed or re-refined. EPA applies its management standards for "recycled oil" to used oil that is destined for recycling. EPA presumes that used oil destined for recycling includes all used oil which is not being disposed of or being transported or stored prior to disposal. Used oil that is destined for recycling (i.e., all oil managed under Part 279) falls within the scope of the 1004(37) definition of "recycled oil" for purposes of determining applicability of the SSD exemption.

4. Does the mixing of spent mineral spirit solvents with used oil invalidate the SSD exemption?

The plain language of 114(c) and 101(37) prohibits mixing of used oil with any other hazardous substance as a condition of eligibility for the SSD exemption. (57 FR 41583) Therefore, if the mineral spirits contain either listed hazardous waste or exhibit a hazardous waste characteristic (e.g., ignitability) the SSD would not be eligible for the SSD exemption.

5. Is the SSD exemption retroactive to the date when a facility first began accepting used oil from the public?

No. As clearly specified by 114(c)(4) of CERCLA, SSDs become eligible to assert the exemption on the effective

date of used oil regulations promulgated pursuant to 3014 of RCRA that require corrective action in compliance with RCRA subtitle C and subtitle I. EPA interprets this provision liberally to mean the date on which the Federal used oil regulations become effective in non-authorized States. The Federal regulations became effective on March 8, 1993. Accordingly, the SSD exemption became effective in all states as of March 8, 1993. (57 FR 41583)

6. Is a SSD exempted from Superfund liability, provided it complies with all other terms of CERCLA 114 and stores, treats, transports or otherwise manages the used oil in compliance with regulations or standards promulgated pursuant to 3014 of the Solid Waste Disposal Act and other applicable statutes; or must all subsequent handlers, processors or consumers of the material also comply with the same standards for the dealer to be entitled to such protection?

The legislative history of 114(c) makes it clear that the SSDs who manage the used oil in accordance with the 3014 standards are not liable for releases that occur after the SSD relinquishes control of the oil. The exemption applies to the SSD even if the subsequent handlers fail to comply with 3014. It should be emphasized, however, that general compliance with the Part 279 standards, which implement the 3014 statutory requirements, is also a condition of eligibility for the SSD liability exemption (e.g., to retain eligibility, the SSD must comply with Part 279 Subpart C standards for used oil generators and the Subpart E standards for used oil transporters, as applicable).

7. Is the protection under the SSD exemption assessed on a facility-by-facility or company-by-company basis.

The SSD exemption applies on a case-by-case basis to individual dealers (i.e., individual establishments) for releases of used oil that were managed in accordance with the 3014 management standards while in control of the SSD. The exemption does not necessarily apply to all dealers within a given company, nor even to all releases

of used oil managed by the same establishment unless the used oil that is later released was properly managed by that establishment. In other words, some establishments within a company may be eligible for the exemption, others may not, depending on whether the conditions have been met by the individual establishment.

I hope this letter adequately addresses your concerns. If you have additional questions regarding the used oil management standards, please contact Eydie Pines at (202) 260-3509.

Sincerely,

Elizabeth Cotsworth
Acting Deputy Director
Office of Solid Waste

Attachment

CASI
Post Office Box 34595
Bethesda, Maryland 20827

Ms. Elizabeth A. Cotsworth, Deputy Director (Acting)
Office of Solid Waste
United States Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

August 22, 1994

Dear Ms. Cotsworth:

On behalf of the quick oil change industry, I am writing to request your assistance in obtaining clarification of an EPA regulation relating to used oil generators. Specifically, our organization would like an official interpretation of several provisions of the so-called Service Station Dealer Exemption from CERCLA liability.

CASI members account for approximately 2,600 individual quick oil change facilities around the nation. These companies are deeply

concerned about liability that may stem from the downstream mishandling of used oil. In addition, many of our members actively collect and transfer to recyclers, used oil generated by do-it-yourself oil changers. As you know, the Service Station Dealer Exemption was intended by Congress to encourage the private-sector collection of DIY motor oil.

Unfortunately, we have had an extremely difficult time receiving an Agency interpretation of this rule. We have requested the information three times over the past year and to-date have met with no success. I initiated our most recent request on May 10 only to find out last week that the individual with whom I was corresponding was too busy to respond.

The regulation and the statute upon which it is based are both confusing and vague. Although our members would like to rely upon them when collecting DIY oil, without some official clarification, such reliance may prove to be detrimental. While we fully understand the burdens Agency personnel must face when it comes to rulemaking and implementation, the lack of guidance on this particular rule could adversely impact many of the quick lube DIY collection programs upon which so many state and local programs depend.

Therefore, we ask that you forward the enclosed letter to someone at the OSW who can and will respond to our request for clarification. Please have that individual contact me at (301) 897-3191. I will be happy to provide any additional details. CASI has a meeting of its membership on September 19 and would very much like to provide them with a report on this important issue at that time.

Thank you for your assistance.

Sincerely,

Larry Northup
Executive Director

cc: CASI Environmental Committee
Barry S. Neuman, CASI Counsel

Attachment

-----CASI

Post Office Box 34595
Bethesda, Maryland 20827
301-897-3191

Ms. Elizabeth A. Cotsworth, Deputy Director (Acting)
Office of Solid Waste
U.S. Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

August 22, 1994

Dear Ms. Cotsworth:

With the U.S. EPA's September 10, 1992 rulemaking on used oil destined for recycling, the long-awaited "Service Station Dealer Exemption" ("Exemption") from CERCLA liability was triggered for certain businesses who engage in the collection of used oil from the public.

As the national trade association for the quick oil change and lubrication industry, CASI is concerned about several issues which relate to the Exemption. Due to the significant impact that the Exemption could have upon CASI's member companies, it is critical that CASI receives some clarification and guidance on the Exemption.

Listed below are several specific items which we would like clarified for the purpose of applying this Exemption to fast lube operations.

1. May fast lubes be considered "Service Station Dealers"?

Under 42 USC 9601, Section 101 - Definitions

"(37)(A) The term "service station dealer" means any person -- (i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing or servicing motor vehicles, where a

significant percentage of the gross revenue of the establishment is derived from fueling, repairing, or servicing of motor vehicles, and (ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented by such owner to such person for collection, accumulation, and delivery to an oil recycling facility."

Quick oil change and lubrication service providers, in our opinion, fit within the scope of the above definition so long as they accept used (recycled) oil from the public. Quick lubes are certainly engaged in the servicing of motor vehicles and derive a significant percentage of their gross revenues from such business. This point is key to any further discussion of the Exemption as it pertains to our industry.

Please advise as to whether you concur with our assessment that quick oil change facilities that accept used oil from the public are in fact Service Station Dealers ("Dealers").

2. Does the "Service Station Dealer Exemption" pertain to all used oil collected at the Dealer's facility?

Under 42 USC 9614 - Section 114

(c) Recycled Oil. --

(1) Service Station Dealers, Etc.-- No person (including the United States or any state) may recover, under the authority of subsection (a)(3) or (1)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107 if such recycled oil--

(A) is not mixed with any other hazardous substance, and
(B) is stored, treated, transported or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Quick oil change companies collect used (recycled) oil from two sources: customers' vehicles and the general public, often referred to as "do-it-yourselfers". Does the Exemption pertain to both these streams of used oil, should a release or threatened release occur off-site?

Please provide us with an official interpretation of this provision.

3. For purposes of determining protection against CERCLA liability under the Service Station Dealer Exemption, at what point in time does EPA deem that used oil destined for recycling falls into the category of recycled oil, as defined by Section 1004 (37) of the Solid Waste Disposal Act?

EPA's response to this question will literally determine the value of the exemption to the quick lube industry or any other party which qualifies for the exemption. As provided under CERCLA Section 114 as stated above, the Exemption extends protection to a Dealer "for any response costs or damages resulting from a release or threatened release of recycled oil..."

If EPA defines the term "recycled oil" narrowly so as to only protect the Dealer from any release or threatened release of the material after it has been processed, the Exemption would be of little value to used oil collection centers. This is because releases prior to processing or recycling into a finished product account for most Dealer liability. On the other hand, if EPA defines "recycled oil" more broadly so as to provide the Dealer protection against releases or threatened releases of the oil from the time that the material is picked up by a qualified used oil recycler, or otherwise introduced into the used oil recycling system, then the Exemption would have significantly more value to the Dealer and it would establish an incentive for the Dealer to accept do-it-yourself oil.

Therefore, CASI hereby requests that EPA provide further guidance regarding the point in time when used oil destined for recycling qualifies as "recycled oil" pursuant to CERCLA Section 114.

4. Does the mixing of spent mineral spirit solvents with

used oil invalidate the "Service Station Dealer Exemption"?

As indicated in the citation noted in question #2 above, mixing used oil with any other "hazardous substance" would seem to invalidate the Exemption. However, certain automotive service companies, including some fast lubes, routinely mix spent mineral spirit solvents with their used oil prior to recycling. This is done with the full knowledge and consent of their used oil recyclers. Mineral spirits, sometimes known as Stoddard Solvents, are petroleum products that, when fresh, exhibit no hazardous characteristics with the possible exception of ignitability, depending on the flash point of the particular Stoddard Solvent. When used in a parts washing sink (the typical application), the solvent is contaminated only with used oil.

Please advise whether non-hazardous mineral spirits ,that become contaminated with used oil can be mixed with more used oil in the operator's storage tank without invalidating the Exemption from CERCLA liability? [Note: EPA ruled on Sept. 10, 1992 that mineral spirits may be mixed with used oil so long as the resulting mixture does not exhibit the characteristic of ignitability and is recycled].

5. Is the "Service Station Dealer Exemption" retroactive to the date when a facility first began accepting used oil from the public?

Many fast lube operators have for years been serving as public used oil collection centers. They have long been abiding by the various state and federal regulations pertaining to the storage, handling and transport of used oil. Indeed, many fast lubes have been providing this public service ever since the Exemption was established by Congress.

Our question, therefore, is whether the Exemption is retroactive so that it would, under the scenario described above, include volumes of used oil generated before final promulgation of EPA's used oil management standards in September of 1992? Liability for releases or threatened releases under CERCLA is of course retroactive. It would be logical to assume that protection against such liability, when used oil is properly managed, would be treated similarly. Many quick lube operations have participated in do-it-yourself

collection programs relying to their detriment on the expectation that such conduct would be rewarded via the Exemption.

Please provide us with an official Agency interpretation on retroactivity.

6. Is a Service Station Dealer exempted from Superfund liability, provided it complies with all other terms of CERCLA Section 114 and stores, treats, transports or otherwise manages the used oil in compliance with regulations or standards promulgated pursuant to Section 3014 of the Solid Waste Disposal Act - and other applicable statutes; or must all subsequent handlers, processors or consumers of the material also comply with the same standards in order for the Dealer to be entitled to such protection?

Based on the language of CERCLA Section 114, it is unclear whether the Dealer is provided coverage under the Exemption solely as a result of actions taken by the Dealer while the material is in its possession, or whether the management standards must be followed by every party which possesses or controls the material after it leaves the Dealer's location, possession or control. CASI would argue that an interpretation of this language which applies the Exemption to Dealers only when all subsequent handlers comply with the management standards, would render the Exemption worthless in the eyes of Dealers. It is evident from the legislative history that the intent of the Exemption was to provide an incentive for Dealers to accept used oil from the public. Most all Dealers would argue that a broad interpretation of this language would vitiate the effect because Superfund liability only arises when parties fail to comply with practices such as are defined in the referenced management standards.

Please explain under what downstream mismanagement scenarios, if any, would Dealers lose their Exemption.

7. Is the protection under the Service Station Dealer Exemption assessed on a facility-by-facility or company-by-company basis?

For purposes of this discussion, let's assume EPA agrees that protection under the Exemption should be extended to a Dealer, so

long as said Dealer complies with all management standards promulgated by the EPA while the used oil stream is within the control or possession of the Dealer. Given the many qualifying prerequisites attached to the Exemption, CASI and its membership would strongly recommend that the protection associated with the Exemption be assessed on a facility-by-facility basis. In other words, if a particular facility complies with all applicable management standards in the storage, treatment, transportation, or other management of the used oil stream, that facility could rely upon protection under the Exemption. Our concern is that if EPA extends coverage under the Exemption on a company-by-company basis and all but one facility owned by a company operating a chain of facilities are in strict compliance with the applicable management standards, then it would be unfair for EPA to wipe out protection under the Exemption for all the other locations because of non-compliance at one facility. This issue is particularly important to the vast majority of CASI's members which own and operate multiple locations.

Therefore, CASI requests guidance relative to the practical application of the Exemption.

CASI was encouraged by the adoption of used oil management standards that triggered the Service Station Dealer Exemption. We are hopeful that the Exemption will have a positive effect on the number of new public used oil collection centers. Many of our member companies currently serve as used oil collection facilities across the country with the expectation that by doing so, they are obtaining protection against Superfund liability.

However, without further guidance, it is impossible for our membership to determine the relative value and applicability of the Exemption to their fast lube operations. A clear and concise Agency interpretation of the above issues, consistent with the recommendations herein, would create the incentive for thousands to continue their used oil collection programs. Moreover, fast lubes that do not currently accept do-it-yourselfer oil could be expected to enter the system, should the terms of the Exemption make it advantageous for them to do so.

If you require any additional information prior to responding, please feel free to call or write. Thank you for your assistance in this matter.

Sincerely,
Larry Northup, Executive Director

cc: CASI Environmental Committee, Barry S. Neuman, CASI Counsel