



AMERICAN TRUCKING ASSOCIATIONS

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EPA Docket Center
6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket No. EPA-HQ-RCRA-2008-0329

Pursuant to the U.S. Environmental Protection Agency (EPA) Proposed Rule, *Identification of Non-Hazardous Secondary Materials That Are Solid Waste* (75 Fed. Reg. 31844, *et seq.* (June 4, 2010)), the American Trucking Associations, Inc. (ATA)¹, is pleased to submit comments.

With more than 600,000 interstate motor carriers in the U.S., the trucking industry is the driving force behind the nation's economy. Trucks haul nearly every consumer good at some point in the supply chain. Few Americans realize that trucks deliver nearly 70 percent of all freight tonnage or that 80 percent of the nation's communities receive their goods exclusively by truck. Even fewer are aware of the significant employment, personal income, and tax revenue generated by the motor carrier industry. Nearly seven million people employed in the trucking industry move approximately 8.8 billion tons of freight annually across the nation. Trucking annually generates \$544 billion in revenues and represents roughly 5 percent of our nation's Gross Domestic Product. One out of every 15 people working in the private sector in the U.S. is employed in a trucking-related job whether in the manufacturing, retail, public utility, construction, service, transportation, mining, or agricultural sectors. Of those employed in private-sector trucking-related jobs, 3.2 million are truck drivers.

The trucking industry is composed of both large national enterprises as well as a host of small businesses, all of whom operate in extremely competitive business

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

environments with narrow profit margins. Roughly 96 percent of motor carriers have fewer than 20 trucks and are considered small businesses.

ATA's comments under the proposed rule focus exclusively on two major concerns for the trucking industry -- how to characterize used tires and used oil. ATA does not want to turn back the hands of time and undo the progress our industry has made in recycling these items, nor do we wish to see the rates we pay for legal disposal of tires and oil skyrocket. As the saying goes, if it is not broke, why fix it?

Treatment of Used Tires

Most motor carriers and truck dealers treat scrap tires as a useful commodity, keeping them properly stored and subsequently contracting with third parties to deliver them to beneficial end use markets. ATA is concerned that EPA's proposed rule could eliminate an important market for used tires if EPA decides that whole scrap tires are solid wastes when incinerated rather than burned as fuel in cement kilns. Under the proposal, EPA would require cement kilns that burn whole tires to comply with Clean Air Act 129 requirements unless the tires were "processed" to produce tire-derived fuel (TDF), or a non-waste determination was issued by EPA regarding the burning of whole tires. ATA does not see EPA's logic behind further "processing" of whole tires destined for cement kilns and encourages the agency to retain provisions to permit whole tire burning at such units. Additional processing requirements regarding whole tires would increase TDF costs and could potentially dampen the market for used tire disposal.

The agency acknowledges that the heating value of scrap tires is second only to used oil and higher than typical coal values (*i.e.*, 12,000 – 16,000 Btu (British thermal unit)/lb. versus 17,800 Btu/lb. respectively). TDF contaminants for mercury, barium, cadmium, chromium, lead, manganese are either comparable or below detectable levels when compared to traditional fuels of concern for TDF. Only zinc is present in higher concentrations in TDF than coal according to the proposed rule. The question to be asked is whether the levels of zinc rise to the level of requiring shredding/chipping and the removal of metal belts and wire to reduce metal contaminants in the emissions and ash? If so, then to what extent should such metal be removed to be either comparable or below detectable levels? Would the answer vary depending upon the composite of the overall fuel feedstock? Finally, would the additional associated costs impact the traditional disposal practices for recycling of scrap tires?

The trucking industry relies on a large supply of tires to move the nation's freight. Since long-haul trucks are typically driven 125,000 miles per year, tire replacement is an ordinary business expense for trucking companies. Retreading of worn tires is common in our industry. Retreading saves a company money, conserves petroleum necessary to manufacture new tires, and reduce emissions associated with new tire production.

However, the life of retreads and other tires do eventually come to an end. Reuse efforts should not stop there. Avenues for scrap tires to be sold or given to recyclers for beneficial end use markets must be broadened rather than constricted. Tires are a “useful commodity” and EPA should encourage the continued use of scrap tires delivered into beneficial end use markets such as grinding for use in asphalt or road repairs and as TDF’s.

Treatment of Used Oil

In September 1992, when EPA promulgated a final rule adopting the second phase of the used oil management standards (*i.e.*, September 10, 1992), the agency stated it had determined that used oils that are recycled do not pose a substantial threat to human health and the environment when they are managed in accordance with EPA’s regulatory standards promulgated today from the time they are generated until they are recycled in addition to the existing requirements under other statutes or regulatory programs. ATA believes this prior determination by EPA remains accurate today. Moreover, nothing in the proposed rule indicates that environmental protection would be enhanced by applying the proposed restrictions on used oil.

Used oil constitutes a valuable commodity that is collected in small quantities from hundreds of thousands of generators distributed across the country. The incentive for collecting the billions of gallons of used oil generated in the U.S. is profit, yet the collection of this commodity can only function effectively if the used oil retains its inherent value in the marketplace. Weakening the market for used oil will not decrease its generation and will result in less recycling and disposal options.

Used oil constitutes a threat to public health and the environment when disposed of improperly. It is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment, and which conserves energy and materials. Deviating from this objective will result in a backwards step from the progress we as a society witnessed in material recycling and reuse.

Classifying off-specification oil as a solid waste and allowing its combustion only in the relatively few facilities that have obtained section 129 permits would undercut used oil recycling opportunities for off-specification used oil and invite midnight dumping and other alternative disposal practices that harm the environment. Used oil, including off-specification used oil fuel, has value, is not discarded, and should not be classified as a solid waste. Secondary materials may often be used to produce a safe fuel product that is a valuable commodity and is sold in the marketplace no differently than traditional fuels. Used oil is a valuable resource because it has lubrication value and heat value meaning it can be burned as a fuel, in-lieu-of a first generation petroleum product, such as home heating fuel.

Trucking companies require a significant amount of oil to keep their engines running. As a matter of illustration, smaller mid-size trucks, which number approximately 1.9 million, require 14 quarts of oil per oil change. Larger mid-size trucks and heavier trucks, which number roughly 2.0 million, require 24-32 quarts of oil. Over-the-road large trucks, which number around 2.3 million, require 44 quarts of oil per change. These large trucks typically require to five oil changes per year.

Most trucking companies, trucking dealers, and other maintenance facilities enter into long-term contracts with fuel processors for the sale of their used oil. Fuel processors and re-refiners compete for used oil from generators. In colder climates many generators have space heaters and use their own on- and off-specification oil as heating fuel. The used oil fuel industry has run seamlessly and been economically viable for many decades. ATA does not support EPA's attempt to reinvent a process with a proven track record of success.

Off-specification oil being used as a traditional fuel dates back to the days of the first automobiles. It was only in 1985 that a distinction was made between on- and off-specification used oil. Yet, both used oils satisfy EPA's "legitimacy criteria" in that they are valuable fuel commodities having high BTU content (17,800 Btu/lb.) and are processed to meet specific requirements of customers. Processors guard against spills or other releases with the same vigilance as a refiner or distributor of virgin petroleum products. Spill reporting is required by several environmental rules (including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act's Spill Prevention, Control, and Countermeasure Rule (SPCC) regulations), and these regulations apply to the petroleum refining industry as well as the oil recycling industry.

Because of their high heating value, both on- and off-specification used oil is widely used as an alternative to virgin fuels. Many types of facilities burn used oil fuels. Customers have demonstrated a steady and increasing demand for used oil fuel products. If there was diminished demand for either on- or off-specification used oil fuel, the multibillion dollar used oil energy market would suffer greatly and generators would seek other avenues for used oil disposal – some legitimate, others not.

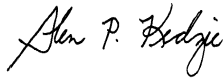
ATA respectfully requests that EPA reconsider the ramifications of putting impediments in place to discourage the use of off-specification oil used in oil-fired space heaters. Ninety-six percent of motor carriers have fewer than 20 trucks and are considered small businesses. These smaller trucking companies rely on space heaters to heat their maintenance facilities and offices. Small trucking companies are economically harmed with even small increases in overhead costs because they operate on extremely thin profit margins. ATA also requests that off-specification oil not be characterized as discarded so long as it is destined for legitimate recycling purposes to produce traditional

American Trucking Associations
Docket No. EPA-HQ-RCRA-2008-0329
August 3, 2010
Page 5

fuels and lubricants or used as a fuel. Finally, ATA urges EPA to exercise its authority under RCRA Section 3014 to define secondary material to exclude any material that is in compliance with Part 279 regulations. RCRA Section 3014, is the statutory basis for Part 279 and does not define used oil (whether on- or off-specification) as a solid waste. By creating this separate regulatory authority for used oil under RCRA, that is independent of solid waste status, Congress has given EPA the discretion to create a special rule for used oil.

Without Trucks America Stops. Trucking is, and will remain, the predominant means of moving the nation's freight. ATA respectfully requests EPA to not create hurdles for our industry to legally and legitimately use and/or recycle its used tires and oil. Trucking needs to deliver our nation's goods in the most cost-effective manner possible. Needless regulation increases the nation's freight bill, and will likely invite non-traditional disposal practices causing a setback in the tremendous progress we have experienced in recycling and reuse of materials in this country. If you have any questions concerning these comments, please contact me at 703-838-1879 or gkedzie@trucking.org.

Respectfully submitted,



Glen P. Kedzie
Vice President & Environmental Counsel