

UOILRSP.WPD - Used Oil Comments and Responses for the Used Oil Management Standards ICR  
**FINAL** - February 17, 1999

## **Response to Comments Document**

### **Used Oil Management Standards Information Collection Request (ICR)**

U.S. Environmental Protection Agency  
Office of Solid Waste and Emergency Response  
401 M Street, SW  
Washington, D.C. 20460

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## **USED OIL ICR RENEWAL**

### **I. ICR Burden Estimates for Electric Utilities**

Comment # - USEDOIL1.1 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

1. Electric Utilities Should Be Included Within the Universe of Used Oil ICR Respondents.

The supporting document for the used oil Information Collection Request ("ICR") identifies five industries by SIC Code as the universe of respondents. The SIC codes for electric utilities, 491 and 493, are not included, leading USWAG to believe that utilities were omitted from the ICR burden estimates. Therefore, the accuracy of the ICR burden assessment is questionable and may underestimate the burden of the used oil record keeping and information collection requirements on the regulated community. EPA should determine whether it overlooked electric utilities in calculating the burdens of the used oil paperwork requirements and if so, recalculate its burden estimates to include this important segment of the regulated community.

Comment # - USEDOIL2.1 (002)

DCN UOIP00002 -- TEXAS UTILITIES SERVICES

I. Electric Utilities Should be Included in the List of Used Oil ICR Respondents.

The SIC codes for electric utilities (491 and 493) are not included in the list of used oil ICR respondents. Since it appears electric utilities were omitted from the ICR burden estimates, Texas Utilities believes the Agency may have underestimated the burden of the used oil record keeping and information collection requirements on the regulated community. EPA should determine whether electric utilities were overlooked in calculating the burdens of the used oil paperwork requirements, and if so, recalculate its burden estimates to include this important segment of the regulated community.

RESPONSE to Comment # - USEDOIL1.1 (001) & USEDOIL2.1 (002)

*The SIC Codes listed in the supporting document for the Used Oil ICR represent the major respondents affected by the used oil regulations. The listing is not intended to be all inclusive since virtually all entities handle used oil to some extent. To avoid any further confusion as to whether electric utilities are included in the burden estimates, we will amend the Used Oil ICR supporting document to include the SIC codes for electric utilities, 491 and*

4930.

*Notwithstanding the absence of the SIC codes for electric utilities, electric utilities were not omitted from ICR burden estimates. Based on our discussions with USWAG during the development of the supporting document for the Used Oil ICR renewal, the Agency included data provided by USWAG for electric utilities that burn off-specification fuel for energy recovery. Other used oil handling activities (i.e., transporting, marketing, and processing) conducted at electric utilities were included in the ICR burden estimates as well. For example, marketing activities conducted at electric utilities are generally included under SIC Code 5093 (Oil Waste, Wholesale). We are confident the electric utilities were included in the burden estimates and accordingly we will continue to use our estimates.*

## **II. Overall Used Oil ICR Burden Estimates**

Comment # - USEDOIL1.2 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

### 2. Information From the Used Oil Records Should Be Used to Estimate the Burden.

In calculating the ICR burden to regulated entities, EPA should refer to the substantial records the Agency collects under 40 C.F.R. Part 279. From what we can determine, EPA's methods for estimating the used oil ICR burden do not substantially rely on any of the information EPA collects from used oil handlers. For example, EPA "estimates" that there are between 211 and 286 used oil processors. EPA then takes the mean of those numbers (249) for predicting its ICR costs for the processor burden. However, we question the need for such "ball-park" estimates when EPA requires used oil handlers to compile and report ample information on a regular basis. For example, many electric utilities notify EPA of their used oil transporter, marketer, processor and off-spec burner activities. The question of whether and how many electric utilities are affected by the used oil ICRs should be answered with a simple examination of the notification records and not the mean of an unrelated wide-ranging "estimate." We urge EPA to make burden assessments based on the actual data that EPA collects from used oil entities under the rules.

RESPONSE to Comment # - USEDOIL1.2 (001)

*The commenters suggest that EPA should rely solely on the actual number, not an estimate, of used oil handlers as a basis for making overall burden estimates. There are two reasons why EPA has chosen to rely on estimates to calculate burden. First, many states have not yet been authorized to implement the Part 279 used oil regulations. As a result, used oil processors in those unauthorized states are not compelled by federal regulation to submit, for*

*example, a biennial report highlighting their processing/re-refining activities. Once most of the states have been authorized for the Part 279 management standards, EPA will rely on these modest reporting requirements to supplement future burden estimates. Secondly, many waste handlers (e.g. transporters) are only required to give a one-time notification of their waste management activities. So if they did not identify used oil activities in their initial notification and subsequently decided to start handling used oil, there is no further regulatory burden for re-notification when a change such as this occurs. Conversely, if a waste handler decided later to discontinue their used oil activities, there would also be no further requirement for re-notification. As a result, many used oil handlers are not captured during the initial notification that the commenter suggest eliminates the need for estimates in this instance.*

### **III. Internal Use of Used Oil Information**

Comment # - USED OIL 1.3 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

#### **3. EPA Should Explain the Practical and Internal Agency Use of the Used Oil Information**

In light of EPA's apparent failure to use pre-existing used oil notifications in preparing the ICR, USWAG questions the overall utility to EPA of the information collected under the used oil regulations, given EPA's limited utilization of that information. For example EPA, by its own estimates, spends 2.8 hours at a cost of \$75 a year to maintain records and review accident reports. However, the amount of time that regulated industries spend to collect the information required by the used oil regulations is at least 363,485 hours per year, at an annual cost of \$9,123,907 (based on EPA's estimates). USWAG believes that the private sector costs of collecting this information are grossly outweighed by the nominal benefits that EPA apparently seems to receive from this information.

Ultimately, the need for such information is largely obviated if EPA is simply acting as a records warehouse and does not use the data for any true analytical purpose--such as determining what types and how many facilities are even reporting that information. As observed above, it seems that EPA would have realized that electric utilities are regulated under the used oil paperwork requirements through even a cursory review of the used oil records. We urge EPA to explain and justify the necessity and practical utility to the Agency of the used oil paperwork and record keeping requirements.

Comment # - USED OIL 2.2 (002)

DCN UOIP00002 -- TEXAS UTILITIES SERVICES

## II. Agency Use of the Used Oil Information.

EPA estimates it spends 2.8 hours at a cost of \$75 a year to maintain records and review accident reports. However, the amount of time that regulated industries spend to collect the information required by the used oil regulations is at least 363,485 hours per year, at an annual cost of \$9,123,907 (based on EPA's estimates). Texas Utilities believes the private sector costs of collecting this information are grossly outweighed by the nominal benefits that EPA apparently receives from this information and urges EPA to explain and justify the necessity and practical utility to the Agency of the used oil paperwork and record keeping requirements.

RESPONSE to Comment # - USEDOIL1.3 (001) & USEDOIL2.2 (002)

*The fact that the Agency spends limited time to review certain information does not mean that such information is not important or necessary. The used oil management standards are generally self-implementing and used oil handlers are, for the most part, only required to maintain records of their used oil activities. These records are made available to the Agency or to the state during an inspection to ensure that used oil handlers are properly managing their used oil. There are very few actual reporting requirements under the used oil regulations that require used oil handlers to submit information to the Agency or to a state.*

*With respect to the commenter's concerns regarding notification issues see the Agency's response to Comment # USEDOIL1.2 (001).*

## IV. Inaccurate Burden Estimates

Comment # - USEDOIL1.4 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

### 4. The burden Estimates Contain Mathematical Errors And Unfounded Assumptions.

EPA's burden calculation is extremely difficult to follow; therefore it is difficult to make cogent assessments about the accuracy of EPA's estimates, assuming that electric utilities were even included. First, there are a number of mathematical errors in EPA's estimates, far beyond the "rounding" errors that EPA alludes to in its supporting document. For example, if there are 249 marketers that read the regulations for 14 hours a year (as EPA projects), the number of hours for all facilities should be 3,486 hours. EPA's estimate is 3,362 hours total. We are unclear how 3,486 was "rounded" down to 3,362 per year. More to the point, there are so many similar mathematical inconsistencies that it is difficult to know exactly why or how EPA ultimately arrived at its final burden estimates. Our own quick estimates indicate that EPA may be off by as much as 3 million dollars in

mathematical errors alone.

Further, EPA makes several erroneous assumptions to reach its conclusions about the burden estimates. For example, EPA explains that there are only 48 (out of 383) transporter facilities that should be included in the cost estimates for halogen testing because such testing is a widely conducted industry practice under the regulations. 63 Fed. Reg. at 55116. In doing so, EPA is apparently relying on the "normal course of business" exception to the definition of burden. See 5 C.F.R. § 1320.3(b)(3). However, we believe that EPA's assumption begs the question of the true ICR burden estimates to the industry. The halogen testing practices are themselves required by the used oil regulations (see 40 C.F.R. § 279.44) and it is unfair and inaccurate to exclude any entities subject to this regulatory information collection requirement from the burden analysis. Therefore, all 383 transporters with regard to the halogen testing paperwork requirements should be included in the burden estimate. EPA's somewhat circuitous assumptions underestimate the total costs to the regulated community and relies on a flawed interpretation of the "normal course of business" exception.

Because there are so many of these types of mathematical errors and assumptions, it is difficult to understand--much less comment--on the accuracy of EPA's burden calculations for the used oil estimates on the whole. We urge EPA to articulate all of its cost and labor estimates, assumptions and mathematical calculations as clearly and precisely as possible and in a manner that allows the regulated community a better opportunity for comment.

RESPONSE to Comment # - USED OIL 1.4 (001)

*EPA set forth its assumptions and methodology for calculating the information collection and reporting burden to the regulated community under the Used Oil Management Standards. EPA believes that the assumptions and methodology are straight forward and clear. EPA disagrees that its calculations are wrong. To enhance the readability of the Used Oil ICR, however, EPA decided to "round" to the nearest whole number all numerical entries in the text, while representing the actual numerical values in the tables of the supporting statement. Taking the commenter's example of the 249 marketers who read the regulations for 14 hours a year, the commenter concludes that the number of hours for all facilities should be 3,486. However, using the actual number of hours that the marketers read the regulations, 13.5 (which rounds to 14), the results would then match EPA's estimate of 3,362. We believe that "rounding" errors do in fact account for the mathematical errors the commenter identifies.*

*The commenter also raises concerns about EPA's halogen testing assumptions for transporters of used oil. Specifically, the commenter suggests that EPA unfairly excludes some entities (transporters) subject to the halogen testing requirements from burden estimates. The regulatory provision (40 CFR § 279.44) referenced by the commenter clearly states that a used*

*oil transporter has the option to either apply knowledge of the halogen content of the used oil (in light of the materials or processes used) or perform an actual test of the used oil. As a result, the Agency was compelled to make estimates based on standard industry practices. Based on these practices, we concluded that transporters were already making halogen content determinations as an indirect response to the used oil fuel specification established in 1985. For example, those entities (burners and marketers) regulated under the 1985 rule may have compelled transporters to determine the halogen content of used oil shipments, even though the transporters themselves were not required to make such a determination under this rule.*

*With respect to the commenter's concerns regarding information collection issues see the Agency's response to Comment # USEDOIL1.2 (001).*

## **V. Underestimated Calculations**

Comment # - USEDOIL1.5 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

### 5. The ICR Time and Cost Calculations Are Underestimated.

Very briefly, EPA's cost and time calculations that were understandable were generally underestimated. For example, it costs, based on the experience of USWAG members, two to three times more than \$5.36 per test to determine halogen content. With respect to time, EPA repeatedly underestimates the burden for regulated entities which in turn has an ultimate bearing on the ICR costs. For example, reading the regulations takes much longer than the few hours EPA estimates and fails to include time necessary for company-specific procedures development or employee training. We also believe that the estimated time required for SPCC plan development and certification is too low. USWAG members estimate 15 hours per facility versus the 7 hours proposed by EPA. In addition, no costs for legal compliance counseling appear to have been incorporated into the burden calculation. USWAG urges EPA to reestimate the ICR costs and time to reflect a real-world estimate of the burden to the regulated community to comply with the used oil rules.

RESPONSE to Comment # - USEDOIL1.5 (001)

*Based on consultations with the National Oil Recyclers Association (NORA), EPA concluded that \$5.36 was the average cost for a used oil handler to perform a halogen test. EPA concedes the costs will vary depending on geographical location, testing volumes, and other market factors.*



*The Used Oil ICR only accounts for the incremental future renewal information record keeping and collection requirements under the Used Oil Management Standards. It does not account for the initial ICR burden associated with complying with the Used Oil Management Standards such as SPCC plan development and certifications. The burden associated with these activities have already been accounted for in other ICR's. For example, EPA assumes any initial training on the used oil regulations occurred on a one-time basis when the standards were first published and should not have to be entirely relearned on an annual basis. As a result, EPA's estimate in the Used Oil ICR reflects the time necessary for a used oil handlers to re-familiarize themselves with the current standards as well as any changes that may occur on an annual basis. EPA's estimate in the Used Oil ICR would also not include, for instance, additional training time for used oil handlers with a high employee turnover rate.*

## **VI. Duplicative Paperwork Requirements**

Comment # - USEDOIL1.6 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

6. EPA Should Reevaluate the Utility of Duplicative Paperwork Requirements for Intra-Company Entities Engaged in Multiple Used Oil Handling Activities.

The used oil information and reporting requirements appear to be based on a paradigm that transporters, marketers and processors are commercially and legally distinct entities. For many electric utilities, however, there is no such commercial or legal distinction. Nonetheless, the regulations require that the same tests and reporting requirements be conducted during each distinct management phase. Our experience is that repeated halogen determination procedures (for example) of the same used oil streams is unnecessarily duplicative when the oil remains under the same chain-of-custody. Under the rules, however, the transporter, marketer, and processor must all test for halogen, irrespective of whether these entities are part of the same facility. See 40 C.F.R. § 279.44; 55; .63; .72. In calculating the burden and assessing the duplicative nature of the used oil information collection requirements, USWAG recommends that EPA reevaluate the purpose and utility of requiring multiple intracompany entities to comply with redundant used oil testing, collection and tracking requirements intended for distinct used oil entities.

Comment # - USEDOIL2.3 (002)

DCN UOIP00002 -- TEXAS UTILITIES SERVICES

III. Intra-Company Entities Engaged in Multiple Used Oil Handling Activities.

The used oil information and reporting requirements appear to be based on the principle that transporters, marketers and processors of used oil are commercially and legally

distinct entities. For many electric utilities, however, there is no such commercial or legal distinction. Nonetheless, the regulations require that the same tests and reporting requirements be conducted during each distinct management phase. In calculating the burden and assessing the duplicative nature of the used oil information collection requirements, Texas Utilities recommends that EPA reevaluate the purpose of requiring multiple intra-company entities to comply with redundant used oil testing, collection and tracking requirements intended for distinct used oil entities.

**RESPONSE to Comment # - USED OIL 1.6 (001) & USED OIL 2.3 (002)**

*The comment is directed at the appropriateness of the underlying regulatory requirements which are not of issue in the Used Oil ICR. In any case, a transporter, marketer, and processor need not perform a halogen test on three separate occasions for the same shipment of used oil when these used oil handlers are part of the same facility. Under the management standards, a used oil handler has the option to either apply knowledge of the halogen content or perform an actual test of the used oil. This knowledge can be transferred from handler to handler without further testing as long as the used oil is not aggregated with used oil contaminated with hazardous waste.*

*With respect to record keeping and reporting requirements where the transporter, marketer, and processor reside at the same facility, under the management standards, a used oil handler may interchangeably use data collected under different record keeping requirements. However, any additional requirements imposed at the next tier of standards must be met. As discussed in the preamble to the final used oil management standards, EPA believes that these record keeping activities are necessary to monitor the flow of used oil within the used oil management system, thus providing an incentive to discourage adulteration of the used oils by any used oil handler including transporters, marketers, and processors residing at the same facility.*

**VII. Transfers Facilities**

Comment # - USED OIL 1.7 (001)

DCN UOIP00001 -- UTILITY SOLID WASTE ACTIVITIES GROUP

7. EPA Should Reevaluate the Burdens on Greater Than 35-Day Transfer Facilities That Do Not Process Used Oil.

USWAG questions the practical and environmental value of requiring transfer facilities to

register and comply with processing requirements simply because they collect their waste more than 35-days. Many electric utilities collect and store used oil for more than 35-days to facilitate off-site recycling opportunities and must therefore comply with the litany of processor/re-refiner record requirements, including, among others: creating a contingency plan and an analysis plan; testing for halogen; tracking used oil movement; and completing other operating records (including the biennium report). See 40 C.F.R. §§ 279.52; .53; .55; .56; and .57. However, because most of these transfer facilities do not ultimately process or re-refine used oil, compliance with multiple reporting requirements does not appear to be warranted from an environmental or human health and safety standpoint. This is especially the case when the used oil originates from intra-company sources. USWAG urges EPA to reevaluate the burden and utility of imposing the above paperwork requirements on entities that are subject to such requirements based exclusively on greater than 35-day storage activities.

Comment # - USED OIL 2.4 (002)  
DCN UOIP00002 -- TEXAS UTILITIES SERVICES

#### IV. Burdens on Transfer Facilities Who Collect Used Oil Greater Than 35~Days That Do Not Process Used Oil.

Texas Utilities opposes requiring transfer facilities to register and comply with processing requirements simply because they collect their used oil for more than 35-days. Many electric utilities collect and store used oil for more than 35-days to facilitate off-site recycling opportunities and therefore must comply with the litany of processor/re-refiner record requirements. However, because most of these transfer facilities do not ultimately process or re-refine used oil, compliance with multiple reporting requirements does not appear to be warranted from an environmental or human health and safety standpoint. This is especially the case when the used oil originates from intra-company sources. Texas Utilities urges EPA to drop the reporting requirements on entities based exclusively on greater than 35-day storage activities.

RESPONSE to Comment # - USED OIL 1.7 (001) & USED OIL 2.4 (002)

*The comment is directed at the appropriateness of the underlying regulatory requirements which are not of issue in the Used Oil ICR. Nevertheless, EPA believes that used oil handlers who collect and store used oil at a transfer facility for a period in excess of 35 days should be subject to the processor/re-refiner requirements. As discussed in the preamble to the final Used Oil Management Standards, EPA feels that the 35-day limit on the storage of used oil at a transfer facility is an adequate period of time to accumulate and consolidate sufficient amounts of oil for cost effective transport to its final destination. Storage at a transfer facility for a period in excess of 35-days will be subject to the used oil processors/re-refinery. The*

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*additional standards imposed under the processor/re-refinery standards will ensure that the used oil is being managed in a manner which is protective of human health and the environment.*

### **VIII. Miscellaneous**

Comment # - USED OIL 3.1 (003)  
DCN UOIP00003 -- WILLISTON BASIN

*Note: The comment is directed to the May 6, 1998 amendments to the Used Oil Management Standards (62 FR 24963) which are not of issue in the Used Oil ICR.*