



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

February 24, 2021

Jon Steverson, Attorney at Law
Foley & Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732
jsteverson@foley.com

Re: December 22, 2020 Return to Compliance Letter – Cummins Inc. EPA ID #
FLR000233452 Palm Beach County Facility

Dear Mr. Steverson:

Thank you for your letter providing additional background and supporting documentation on Cummins' service operations in Florida and specifically addressing the two regulatory discussion points made in our February 1, 2021 call.

Discussion point 1 - *40 CFR, Part 279 and 62-710.510, F.A.C. do not require placarding for Cummins' Vans.* The Department has reviewed the supporting documentation provided in your letter and concurs that Cummins' service vans are not subject to the applicable DOT placarding and registration requirements due to the nature and low volume of used oil transported. Please be advised that, transporters should ensure that all containers are labeled with the words "Used Oil" in accordance with Chapter 62-710, F.A.C., and 40 CFR 279.

Discussion point 2 - *Cummins' relies on process knowledge to meet the rebuttable presumption under 40 CFR, 279.44.* The Department has reviewed and concurs with the documentation provided to support the claim that used oil generated from gensets by Cummins' service technicians meets the rebuttable presumption under 279.44. Please be advised that as a registered Used Oil Transporter, all Cummins facilities are required to keep the applicable records as described in Chapter 62-710, F.A.C., and 40 CFR 279.

The Department appreciates the offer for continued constructive discussion and is always available to work on compliance questions you may have at this facility or other facilities in Florida.

Jon Steverson
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If you have any further questions or clarifications, please contact me at Tim.Bahr@floridadep.gov or 850-245-8790.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Bahr". The signature is stylized with a large "T" and "B".

Tim Bahr, Director
Division of Waste Management

cc: John Truitt, Deputy Secretary, Regulatory
Jason Andreotta, Director, Southeast District Office
Ernie Smith, Cummins
Natalie Stucky, Esq., Cummins



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jsteverson@foley.com

CLIENT/MATTER NUMBER
089934-0436

February 18, 2021

Via Certified and Electronic Mail

Tim Bahr, Division Director
Division of Waste Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399
Tim.Bahr@dep.state.fl.us

**Re: December 22, 2020 Return to Compliance Letter – Cummins Inc.
EPA ID # FLR000233452
Palm Beach County Facility**

Dear Mr. Bahr:

Thank you for the time that you, Jason Andreotta, and Glen Perrigan took to speak to representatives of Cummins Inc. (“Cummins”) on February 1st. Following up on that meeting, this letter provides additional background on Cummins’ service operations in Florida to document compliance with U.S. EPA and the State of Florida’s used oil regulations.

Background on Cummins’ Service Operations

Cummins is a global power leader that designs, manufactures, distributes and services diesel, natural gas, electric and hybrid powertrains and powertrain-related components including filtration, aftertreatment, turbochargers, fuel systems, controls systems, air handling systems, automated transmissions, electric power generation systems, batteries, electrified power systems, hydrogen generation and fuel cell products. Cummins is committed to sustainability and environmental compliance. Under the Cummins’ Planet 2050 strategy, the company will create a circular lifecycle plan for every part; reduce waste by 25%; reuse and recycle plastics; and reduce water usage.

Cummins operates out of several locations in the State of Florida, including a facility in Palm Beach County, Florida. From that location, Cummins’ technicians provide customer and operational support, including servicing to electric power generation systems located in the region, such as large

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stationary emergency generators and other gensets. Consistent with service contracts between customers and Cummins, Cummins' technicians change the oil in customer gensets, manage that oil consistent with the used oil regulations, and arrange for disposal or recycling by licensed third-party used oil vendors that separately test the used oil for halogen content before accepting delivery. Under these contracts, Cummins technicians are the only individuals authorized to add and drain oil from those gensets. Cummins' technicians only service Cummins' equipment: they do not collect other waste oil generated by customers or from other third parties. Finally, they visually monitor oil for signs of contamination, which could cause engine wear in the serviced equipment.

Discussion Points from the November 5, 2020 Inspection

As discussed on our February 1st call, Cummins' Palm Beach County location was inspected by Department personnel on November 5th. The inspection report from that visit identifies certain compliance items raised during the visit. The majority of these items were closed out on the date of the inspection or shortly thereafter, and on December 22nd, the Department issued a Return to Compliance letter to the facility. In support of that Return to Compliance letter, we provide additional information related to two specific items noted in the November 5, 2020 inspection report: specifically (1) why Cummins' vans do not require registration with U.S. DOT for transporting used oil; and (2) the process knowledge basis for Cummins' determination that used oil does not contain halogens.

40 C.F.R. Part 279 and 62-710.510, F.A.C. do not Require Placarding for Cummins' Vans

The November 5, 2020 inspection report includes the following statement related to U.S. DOT placarding:

No Department of Transportation (DOT) number was observed posted on the vehicles. Per 40 C.F.R. § 279.43(b) vehicles used for used oil transportation shall comply with the DOT requirements by demonstrating placards and carrying documentation, such as, UOT notification, liability insurance and contingency plan in the vehicle. The facility was requested to provide corrective action pictures of the vehicles with DOT numbers posted and with the compliant documentation.

Because of the type of used oil and volume being transported, this requirement does not apply. 40 C.F.R. § 279.43(b), incorporated by reference at 62-710.510, F.A.C., states that transporters of used oil are required to comply with the applicable requirements of the HMR. But the HMR does not require placarding or DOT registration for all vehicles transporting used oil. 49 C.F.R. § 173.150(f)(2) provides that placarding and labeling requirements do not apply to non-hazardous combustible liquids with a flash point above 140° Fahrenheit when transported in non-bulk packaging. The service vans at Cummins' Palm Beach County location do not have the

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capacity to carry bulk volumes of used oil, and consistent with § 173.150(f)(2), U.S. DOT registration is not required for those vans. We have attached a U.S. DOT interpretive letter clarifying this point.

Cummins Relies on Process Knowledge to Meet the Rebuttable Presumption Under 40 C.F.R. § 279.44

The November 5, 2020 inspection report also includes the following regarding the need for halogen screening to meet the rebuttable presumption:

Rebuttable Presumption Records – No records from the total halogen screening tests conducted were available for review at the time of inspection. Per 40 CFR 279.44(d), halogen testing records shall be kept onsite for at least three years. The facility was requested to provide documentation of the procedure and tests.

We agree that under 40 C.F.R. § 279.44(a), transporters must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm. However, halogen testing is one of two options authorized by the regulation to make this demonstration. 40 C.F.R. § 279.44(b)(2) also authorizes a transporter to apply “knowledge of the halogen content of the used oil in light of the materials or processes used” to make this determination. As noted in *U.S. EPA’s Guidance and Summary of Information Regarding the RCRA Used Oil Rebuttable Presumption* (Mar. 2005), evidence sufficient to address the rebuttable presumption may include “a sufficiently detailed description of the process generating the used oil in order to eliminate listed hazardous wastes by knowledge”. *Id.* at 6.

As explained above, Cummins’ service technicians manage motor oil addition and removal for customer gensets under service contracts. The technicians’ track the amount of oil added to the units, as well as the amount drained from them, and so are able to determine if a third party added some volume of oil to a given unit between service visits. In addition, the technicians also troubleshoot operational issues with those units, and have the operational knowledge required to identify the potential for damage that would result from using motor oil contaminated with halogens. Cummins’ technicians only take waste oil directly from gensets: they do not separately collect used oil generated from other non-Cummins units at customer facilities. Finally, Cummins does not directly recycle or otherwise dispose of the collected used oil. Instead, all used oil is disposed of by a third-party contractor that performs its own halogen sampling before accepting the material.

Given that the used oil service is performed by technicians under service contracts and that separate halogen testing is conducted for all oil at the time it is transferred by Cummins to third-party used oil recyclers, Cummins complies with the requirements for the rebuttable presumption through reliance upon process knowledge, consistent with 40 C.F.R. § 279.44 and applicable federal guidance.



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Conclusion

We hope that this additional information is helpful in clarifying the robustness of Cummins' compliance programs and our ongoing efforts to handle used oil in compliance with state and federal regulations. We have appreciated the constructive dialog with you and your colleagues and would like to continue that dialog to work on ensuring compliance for all of our operations. Please let me know if we can provide anything further regarding this facility or any others in the State of Florida.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jon Steverson', with a long horizontal line extending to the right.

Jon Steverson

cc: Ernie Smith (w/enc)
Natalie Stucky, Esq. (w/enc)



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

SEP 5 2001

Mr. Edward D. Caracino
On Site Scheduled Maintenance Coordinator
Southworth-Milton, Inc.
100 Quarry Drive
Milford, MA 01757-1729

Reference No.: 01-0196

Dear Mr. Caracino:

This is in response to your July 24, 2001 letter regarding the classification and proper shipping name for "waste oil" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

You state that your company transports a product that is classified as "waste oil" by the Massachusetts Department of Environmental Protection but is not subject to the regulations of the U.S. Environmental Protection Agency. Specifically, you ask what the proper shipping name is for "waste petroleum" that has a flash point between 141 °F and 200 °F, or has a flash point of 201 °F or higher. In a phone conversation with a member of my staff, you stated that the "waste oil" is being transported in a bulk packaging.

Under § 173.120(b)(1), a combustible liquid is defined as a material that has a flash point above 60.5 °C (141 °F) and below 93 °C (200 °F) that does not meet the definition of any other hazard class under the HMR. A combustible liquid that is not a hazardous waste, hazardous substance or a marine pollutant and is in a non-bulk package is not subject to the HMR. A combustible liquid in a bulk packaging is subject to the HMR. A material with a flash point of 93 °C (200 °F) or higher that does not meet the definition of any other hazard class and is not a hazardous waste, hazardous substance or a marine pollutant is not subject to the HMR.

Under the HMR, a waste that is subject to the Uniform Hazardous Waste Manifest (UHWM) requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262 is regulated for purposes of transportation as a "hazardous waste." A waste that does not require completion of a UHWM is not considered a "hazardous waste" for purposes of the HMR and is not subject to the requirements of the HMR unless it meets the definition of a hazardous material under the HMR. Thus, a State regulated waste that does not require completion of a UHWM and is not a hazardous material as defined in the HMR is not subject to the regulations under the HMR. Such a material may be described using a description such as "Waste oil" or "State regulated oil waste." This description on the shipping document may not include a hazard class or identification number specified in the § 172.101 Hazardous Materials Table (see § 172.202(e)).



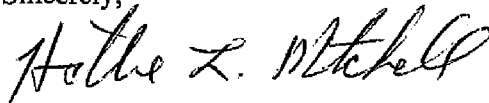
010196

172.101

A combustible liquid in a bulk packaging is subject to the requirements in the HMR (see § 173.150(f)(3)) and may be described on the shipping paper as "Combustible liquid, n.o.s., NA1993, III." The technical name for the hazardous material must be entered in parentheses in association with the basic description. A notation such as "State regulated oil waste" may be shown in item 15 of the waste manifest.

I hope you find this information helpful. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the printed name.

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



**Southworth-
Milton, Inc.**



July 24, 2001

Main Store:
100 Quarry Drive
Milford, MA 01757-1729
(508) 634-3400

U.S. Dept of Transportation DHM-10
400 7th St. Southwest.
Washington, DC 20590

Corbin
§ 172-101
Proper Shipping Name
01-0196

14 Kendrick Road
Rte 28
Wareham, MA 02571-1079
(508) 291-1200

Dear Mr. Mazullo,

We at Southworth-Milton, Inc. provide heavy equipment sales and service in all of Massachusetts. A by-product of some of the services we provide is waste oil. Massachusetts Dept. of Environmental Protection has classified waste oil as a hazardous waste even though the Federal EPA does not.

79 Robertson Boulevard
Brewer, ME 04412-2246
(207) 989-1890

To comply with state regulations we have obtained a hazardous waste transporter's license and complete a state hazardous waste manifest for the waste oil we transport. One section of the manifest asks for a US DOT description of the material being transported. In an effort to comply I have checked with the Massachusetts DEP on the correct description and they differed the question to the DOT. I inquired with other licensed transporters and facilities only to find numerous descriptions.

16 Pleasant Hill Road
Mail: P.O. Box 960
Scarborough, ME 04070-0960
(207) 883-9586

After doing some research of my own the key element appears to be flash point. So my questions are: What is the proper US DOT description for waste petroleum with a flash point between 141 and 200 degrees Fahrenheit? What is the proper US DOT description for waste petroleum with a flash point 201 Fahrenheit degrees and above?

Exit 6, Interstate 89
Hopkinton, NH 03229
Mail: 554 Maple Street
Hopkinton, NH 03229-3343
(603) 746-4611

I am requesting a written response to these questions to keep in our files should the description on the manifest ever be in question. I appreciate your taking time to respond to this letter and thank you for your assistance.

Exit 7, Interstate 89
Route 103
Warner, NH 03278
Mail: 554 Maple Street
Hopkinton, NH 03229-3343
(603) 746-4671

90 Harts Lane
Albany, NY 12204-2489
(518) 465-5255

2158 Plainfield Pike
Commerce Park West #10
Cranston, RI 02920-2921
(401) 946-6350

Route #2 One Cat Lane
Richmond, VT 05477-9802
(802) 434-4228

Sincerely,

Edward D. Caracino

On Site Scheduled Maintenance Coordinator



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS MATERIALS
One Winter Street
Boston, Massachusetts 02108

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator US EPA ID No.	Manifest Document No.	2. Page 1 of	Information in the shaded areas is not required by Federal law.
3. Generator's Name and Mailing Address				State Manifest Document Number MA 137760	
4. Generator's Phone ()				State Generator ID	
5. Transporter 1 Company Name		6. US EPA ID Number		State Transporter ID	
7. Transporter 2 Company Name		8. US EPA ID Number		State Facility ID	
9. Designated Facility Name and Site Address		10. US EPA ID Number		State Facility ID	
11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers		13. Total Quantity	14. Unit Wt/Vol
See reverse side		No.	Type		
a.					
b.					
c.					
d.					
Additional Descriptions for Materials Listed Above (include physical state and hazard code)		K. Handling Codes for Wastes Listed Above			
15. Special Handling Instructions and Additional Information					
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.					
Printed/Typed Name		Signature		Date Month Day Year	
17. Transporter 1 Acknowledgement of Receipt of Materials		Signature		Date Month Day Year	
18. Transporter 2 Acknowledgement of Receipt of Materials		Signature		Date Month Day Year	
19. Discrepancy Indication Space					
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.					
Printed/Typed Name		Signature		Date Month Day Year	

In case of emergency or spill, immediately call the National Response Center (800) 424-8802.

MA 137760 COPY 1: FACILITY MAILED TO DESTINATION STATE