

Determining when Waste Oil has been fully recovered: Interim Position

The Environment and Heritage Service (EHS) are currently working with the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA) and the Department for Environment, Food and Rural Affairs (DEFRA) to review the implications of the recent Court of Appeal judgement in *OSS Group Ltd v Environment Agency* and take the actions necessary.

The appeal concerned the limited question ‘whether a lubricating oil, thus not originally used as a fuel, which becomes waste can thereafter be burnt other than as waste...’ The conclusion was that, in order for a waste to cease to be waste ‘it should be enough that the holder has converted the waste material into a distinct, marketable product, which can be used in exactly the same way as an ordinary fuel, and with no worse environmental effects’. The Court also suggested that DEFRA and the EA should provide practical guidance for those affected on what it referred to as “the end of waste test”.

The EA set up a Task and Finish Group which aimed to develop a standard that satisfied the criteria set by the Court for waste lubricating oils. The initial report from that group showed that there was agreement that a specification is necessary to establish the point at which waste oil ceases to be considered as such. However, it was felt that the risks to human health and the environment of materials present in waste oils, which were subsequently burnt as a fuel, had not been clearly assessed.

The EHS agree with both DEFRA and the EA that more information is needed to develop the protocol, including the effects of zinc and certain heavy metals on human health and the environment. This will be taken forward by the EA with a view to producing a draft Protocol by the end of April.

In the meantime, the EHS believes industry requires guidance, on an interim basis, as to the circumstances in which we will regard a substance derived wholly or partially from used lubricating oils as having ceased to be waste. This guidance will be operative only until the Protocol is agreed, and is entirely without prejudice to any conclusions the protocol may produce. It should therefore not be relied upon as the basis for any long-term arrangements. During this interim period, the EHS will not regard fuel oils that are derived wholly or partly from waste lubricating oils, and that are used as fuel, as waste, if they are processed to meet the specification for Class G oils, excluding the requirements for viscosity, as specified within Table 3 of British Standard BS 2869:2006, (Fuel oils for Agricultural, domestic and industrial engines and boilers – Specification). For convenience these requirements are reproduced below.

Properties of residue-containing burner fuels

Property	Class G	Test Method
Kinematic Flash point (Pensky-Martens closed cup) (°C) (min)	66.0	BS2000-34
Sulfur content [% (m/m)] (max)	1.0	BS2000-336
Water content [% (V/V)] (max)	1.0	BS2000-3374
Ash content [% (m/m)] (max)	0.15	BS2000-4
Carbon residue [micro0 [% (m/m)] (max)	20.0	BS2000-398
Total sediment (existent) [% (m/m)] (max)	0.15	BS2000-375
Strong acid number	Zero	BS2000-336

This position reflects the minimum requirements to enable optimal performance of burners/boilers using Heavy Fuel Oil as a fuel. It is not appropriate to require compliance for viscosity, as oils derived from waste lubricants will inevitably have a different viscosity and it would be unfair to penalise them for this.

The oil supplier and users are responsible for demonstrating that reprocessed oil meets the required specification. Reprocessed oils that do not meet the required specification will remain waste, and their movement and subsequent burning as fuel without compliance with the national controls in place to fulfil the requirements of the Waste Framework Directive, the Hazardous Waste Directive and the Waste Incineration Directive will constitute a criminal offence.

Please note that where an installation receiving such a fuel is permitted under the Pollution Prevention and Control Regulations (NI) 2003 or the Industrial Pollution Control (NI) Order 1997, additional requirements may apply and you should contact the Industrial Pollution and Radiochemical Inspectorate (IPRI) of EHS on 02890 569299.

If you have any queries about this note, please contact the EHS's Hazardous Waste team on 028 90 569710.