

SUBCHAPTER A: USED OIL RECYCLING
§§324.1 - 324.7, 324.11 - 324.16, 324.21, 324.22
Effective October 2, 2003

§324.1. Federal Rule Adoption by Reference.

The requirements in 40 Code of Federal Regulations, Part 279, Standards for the Management of Used Oil, as amended through May 26, 1998 at 69 FedReg 28556, are adopted by reference. However, requirements in this chapter also apply.

Adopted July 14, 1999

Effective August 8, 1999

§324.2. Definitions.

Most words are as defined in 40 CFR §279.1. However, the following words have these meanings:

(1) **Aboveground tank** - A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(2) **Administrator or Regional Administrator** - These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

(3) **Commission** - The Texas Natural Resource Conservation Commission or its successor.

(4) **Environmental Protection Agency (EPA)** - This term in 40 CFR Part 279 requirements should be replaced with "commission."

(5) **Recycling** -

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

(6) **Re-refining** - Applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

(7) **Secondary containment** - Dikes, berms, retaining walls, and/or equivalent made of a material(s) that is sufficiently impervious to used oil. These structures all potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

(8) **Sufficiently impervious to used oil** - Capable of containing all potential spills of used oil from containers and tanks until removal of the spill.

(9) **Synthetic oils** - Oils not derived from crude oil. This includes those from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids used as hydraulic or heat transfer fluids. Synthetic oils are generally used for the same purpose as crude oil derived oils and have relatively the same level of contamination after use.

(10) **Used oil handler**-A transporter or an owner or operator of a used oil transfer, processing, rerefining, or off-specification used oil burning facility.

(11) **Earthen area**-The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs.

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§324.3. Applicability.

Applicability and exemptions from applicability will be as in 40 Code of Federal Regulations (CFR) Part 279, Subpart B, and as clarified here.

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). EPA Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Part 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with

used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for “ignitability only” can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(5) Oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or that have been designed for oil-water separation must be managed under this chapter. Management of wastes from other tanks, sumps, and grit trap waste management units that are plumbed directly to a sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).

Adopted September 10, 2003

Effective October 2, 2003

§324.4. Prohibitions.

Prohibitions will be as in 40 CFR Subpart B, §279.12 and as specified here.

(1) A person must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or the environment.

(2) A person commits an offense if the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly puts used oil in waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, rerefines used oil within the state:

(i) without first complying with the registration requirements of this rule; and/or

(ii) in violation of rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false representation in any document used for program compliance.

(3) An exception to paragraph (2) of this subsection is if a person unknowingly disposes into the environment any used oil that has not been separated by the generator from other solid wastes.

(4) An exception to paragraph (2)(B) of this subsection is if the mixing or commingling of used oil with waste to be disposed of in landfills is the unavoidable result of the mechanical shredding of motor vehicles, appliances or other metals.

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Effective August 8, 1999

§324.5. Notice by Retail Dealer.

Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

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§324.6. Generators.

Rules for used oil generators shall be as in 40 CFR Part 279, particularly Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may choose to be the generator. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator will remain the generator.

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§324.7. Collection Centers.

Rules for “do-it-yourselfer used oil collection centers” and “used oil collection centers” (as defined in 40 CFR §279.1) shall be as in 40 CFR Part 279, particularly Subpart D, and as specified here. All appropriate businesses and government agencies are encouraged to serve as “do-it-yourselfer used oil collection centers” or “used oil collection centers.” Collection centers collecting used oil from households will be publicized by the commission.

(1) A “Do-it-yourselfer Used Oil Collection Center” must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) annually report the amount of household used oil collected by January 25 of each year on a commission form.

(2) Household used oil is not subject to the rebuttable presumption (a requirement to prove that used oil is not hazardous).

(3) A “Used Oil Collection Center” must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) report annually the amount of household and non-household used oil collected by January 25 of each year on a commission form. Mixtures of household used oil and non-household used oil shall be considered non-household used oil.

(4) Household used oil is not subject to the rebuttable presumption (a requirement to prove used oil is not hazardous) unless mixed with non-household used oil.

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Effective August 8, 1999

§324.11. Transporters and Transfer Facilities.

Rules for used oil transporters and transfer facilities are in 40 CFR Part 279, particularly Subpart E, and in this section.

(1) Underground storage tanks (USTs). Underground storage tanks containing used oil are subject to Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 279.

(2) Registration. Transporters must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

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Effective August 8, 1999

§324.12. Processors and Rerefiners.

Rules for used oil processors and rerefiners are in 40 CFR Part 279, particularly Subpart F, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Processors and rerefiners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Processors and rerefiners must register, through the commission, using the EPA Form 8700-12 and a

commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan. The facility will follow the plan when sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis. It must also specify procedures and analysis to assure listed hazardous wastes are not mixed with the used oil received. It must also contain procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

(B) uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements.

(4) Biennial report. The biennial report required by 40 CFR §279.57(b) covering each odd numbered year must be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year. If not, you must submit the report by January 25 of the following even numbered year. The information must be entered on a commission form. Mail the report to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

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§324.13. Burners of Off-specification Used Oil for Energy Recovery.

Rules for burners of off-specification used oil for energy recovery are in 40 CFR Part 279, particularly Subpart G, and in this section.

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Burners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

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§324.14. Marketers of Used Oil Fuel.

Rules for marketers of used oil which will be burned for energy recovery are in 40 CFR Part 279, particularly Subpart H, and this section. Marketers must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the EPA. Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.

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§324.15. Spills.

See Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities).

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§324.16. Polychlorinated Biphenyls (PCBs).

Per 40 CFR 279 (Table 1), the rules for burning used oil containing PCBs shall be as in 40 CFR 761.20(e).

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Effective August 8, 1999

§324.21. Suspension or Revocation of Registration.

(a) The commission may suspend or revoke a registration for:

- (1) failure to maintain complete and accurate records;
- (2) alteration of any record, except justified and documented corrections;
- (3) delivery of used oil to an unregistered entity;
- (4) failure to comply with this rule or an order issued by the commission;
- (5) failure to submit required reports;
- (6) failure to maintain financial assurance; or
- (7) failure to reasonably perform the used oil activities for which the registration was

issued.

(b) A registration shall be suspended for a period of one year. However, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically on a second suspension. If the registration is suspended or revoked, a facility must not possess or accept used oil regulated under this rule.

(c) The holder of a revoked used oil registration may reapply for registration after a period of at least one year. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) The procedure for an appeal of a suspension or revocation of registration is:

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by certified mail, return receipt requested. The request must be postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent to the last known address of the applicant.

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested. The request must be postmarked within 20 days after a notice of denial of registration has been sent to the last known address of the applicant. If the registration is denied, a person must not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of §305.68 of this title (relating to Action and Notice of Petition for Revocation or Suspension).

Adopted July 14, 1999

Effective August 8, 1999

§324.22. Soil Remediation Requirements for Used Oil Handlers.

(a) This section applies to transporters of used oil who are seeking registration under this chapter. It also applies to owners and operators of used oil transfer, processing, rerefining, and off-specification used oil burning facilities referred to as "used oil handlers." It does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated.

(b) Used oil handlers, subject to the soil remediation requirements of subsection (c) or (d) of this section, and transporters of used oil, must meet the requirements of Chapter 37, Subchapter L of this title (relating to Financial Assurance for Used Oil Recycling).

(c) Used oil handlers meeting the requirements of this subsection must provide financial assurance for soil remediation in the amounts specified. A used oil handler must, within 30 days after an increase in the active area of the facility which results in a higher financial assurance requirement, provide for increased financial assurance. Additionally, a used oil handler must, at a minimum,

update its financial assurance annually to cover any increased cost due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount. The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs. Records demonstrating the size of the active area of the facility and related financial assurance are to be maintained in the facility's operating record; however, the original financial assurance mechanism must be submitted to the commission per §37.2015 of this title (relating to Submission of Documents). The amount required for financial assurance is:

(1) for a facility with an active area of over 1,000 square feet up to 10,000 square feet, \$410 for each 1,000-square-foot increment;

(2) for a facility with an active area of over 10,000 square feet up to 100,000 square feet, \$4,100 for each 10,000-square-foot increment;

(3) for a facility with an active area of over 100,000 square feet up to 1 million square feet, \$41,000 for each 100,000 square-foot increment and \$4,100 for each 10,000 square-foot increment;

(4) for a facility with an active area of over 1 million square feet, \$410,000 for each 1-million-square foot increment, \$41,000 for each 100,000 square-foot increment, and \$4,100 for each 10,000 square-foot increment; or

(d) Used oil handlers may meet the following alternate requirements.

(1) Used oil handlers must:

(A) annually provide a certification statement to the executive director that the used oil handler is in compliance with the applicable requirements of this chapter; and

(B) obtain certification from a Registered Professional Engineer or other qualified independent professional that the used oil facility units have been designed and constructed in accordance with appropriate design standards, and that the units exhibit mechanical integrity. Such a certification must be obtained for each unit added to the facility, and for each unit that has undergone repair to restore mechanical integrity, within 90 days of the addition or completion of repair;

(2) Used oil handlers must ensure that spills in quantities of 25 gallons or greater are reported to the agency in accordance with the spill reporting requirements of Chapter 327 of this title (relating to Spill Prevention and Control);

(3) Used oil handler facilities must be provided with secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including, but not limited to, loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours; and the facility's used oil tanks, containers, and secondary containment must be

constructed, operated, and maintained to conform to the requirements of Title 40 Code of Federal Regulations §§264.174, 264.193(c)-(f), and 264.195(b), as if the used oil were hazardous waste, or to conform to the following:

(A) the secondary containment must be:

- (i) stationary;
- (ii) constructed of non-earthen material (e.g., concrete);
- (iii) maintained free of cracks, gaps, or holes; and
- (iv) overlain or underlain with a synthetic liner at least 40 mils thick;

(B) the secondary containment must:

- (i) be large enough to contain a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device; and
- (ii) have at least 12 inches of freeboard or sufficient freeboard to hold the precipitation which would be collected, including any run-on or infiltration of precipitation, as a result of a 25-year, 24-hour rainfall event;

(C) the secondary containment system must prevent the release of used oil or other accumulated liquid from the secondary containment system to the soil, ground water, or surface water until removed;

(D) used oil or other accumulated liquid must be removed from the secondary containment system within 24 hours from discovery, or in as timely manner as possible;

(4) Used oil handlers must provide spill response capability to adequately respond to a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device, plus 10% of the remaining storage capacity; and

(5) Used oil handlers must meet the requirements of subsection (c) of this section, but the amount of financial assurance provided is 10% of the amount that would otherwise be required under subsection (c).

(e) As required, processors or re-refiners who store or process used oil in aboveground tanks must, at closure of a tank system, demonstrate financial assurance in the amount of the cost to comply with the closure requirements of 40 CFR §279.54(h). If the used oil handler cannot demonstrate that all contaminated soils are removed or decontaminated as required in 40 CFR §279.54(h), the used oil handler must further demonstrate financial assurance in the amount required to cover the soil and

perform post closure in accordance with the closure and post closure care requirements that apply to hazardous waste landfills under 40 CFR §§265.310, 265.117-265.120, and 265.145.

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