

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of the current §§328.21-328.30, Used Oil Filter Collection, Management and Recycling, and adopts new §§328.21-328.28, Used Oil Filter Management and Recycling. New §§328.21, 328.23, 328.26, and 328.28, and the repeal of §§328.21-328.30 are adopted without changes to the proposed text as published in the September 24, 1999 issue of the *Texas Register* (24 TexReg 8139) and will not be republished. Sections 328.22, 328.24, 328.25, and 328.27 are adopted with changes to the proposed text as published.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of this rulemaking is to implement House Bill (HB) 2619, 76th Legislature, 1999. This bill amended Chapter 371 of the Texas Health and Safety Code (H&SC) by adding a new Subchapter E, titled "Filter Storage, Transportation, or Processing," to provide state statutory authority for commission rules on used oil filters. Prior to this legislation, the commission already had rules concerning used oil filter collection, management, and recycling. HB 2619 reduces transporter/transfer facility, storage facility, and processor registration and reporting requirements from annual to biennial; increases storage time at a storage facility from 90 to 120 days; and authorizes two-year variances on on-site storage volume limits and storage period limits. To streamline the rules so as not to have more stringent or expansive requirements than the corresponding statutory provisions, this action also repeals essentially all existing rule requirements not supported by the new statute, such as: the storage facility requirement to have secondary containment; the transporter requirement to have spill kits; the processing standards; the requirement for a processor to determine the environmental risk associated with the storage of materials resulting from the processing of used oil filters; all collection center

requirements; and all container labeling requirements, except for those applying to processors.

However, the allowance for a person to transport up to two 55-gallon containers of filters or the volumetric equivalent without registering as a transporter is carried over into the new rule from repealed §328.25(b). Because HB 2619 changes existing used oil filter requirements extensively, the commission is repealing the existing Chapter 328, Subchapter D and replacing it with a new version of this subchapter.

#### SECTION BY SECTION DISCUSSION

Sections 328.22, 328.24, 328.25, and 328.27 are being amended after proposal to simplify the language and to appropriately use the terms, “agency,” “executive director,” and “commission.”

Section 328.22(b)(1)(A) has been amended to adopt the term “agency” instead of “commission” because registrations are obtained from the agency, rather than the commission, per se.

Section 328.24(a) and (b) has been amended to adopt the term “agency” rather than “commission,” for the aforementioned reason. Section 328.24(c) has been rewritten for clarity by simply requiring transporters, storage facilities, and processors to have their registrations renewed and reports submitted by January 25th of every even-numbered year. The wording under adopted §328.24(c)(1) has been changed from proposal to revise the sentence structure and to insert the word “calendar” between “two” and “years” for clarity. The wording under adopted §328.24(c)(2) is a combined version of the sentence which occurred twice in the proposal under §328.24(c)(1) and (2), and now reads “Registration renewal and reporting information must be entered on an agency form.” Section

§328.24(c)(3) is part of proposed §328.24(c)(2), and has been changed from proposal to revise the sentence structure; to add the phrase “The registration and reporting information must be mailed;” and to delete a program title from the mailing address because it is too subject to change. Section 328.24(c)(4) is added to clarify the renewal requirements for transporters, storage facilities, and processors who initially register after December 31, 1999, and states that they must, after the “initial registration has been active for two years, renew its registration by January 25th of every even-numbered year.” Thus, those who register in calendar year 2001 are required to renew their registrations by January 25, 2004. Section 328.24(e) is changed from proposal by substituting “executive director” for “commission” to properly reflect the executive director’s duties and responsibilities in this area concerning financial assurance.

Section 328.25(a) is amended to substitute “executive director” for “commission” to properly reflect the executive director’s duties and responsibilities in this area of information required on the bill of lading for shipments of used oil filters. Section 328.25(c) is amended to substitute “agency personnel” for “commission” to fit the context of this requirement that the copies of bills of lading must be made available for agency personnel to inspect at any reasonable time.

Finally, §328.27(a), (b), and (c) are amended to substitute “executive director” for “commission” to properly reflect the executive director’s duties and responsibilities in this area of individual variances.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the adopted rulemaking either reduces or repeals significant regulatory requirements without adding to existing requirements, it will provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements and reducing used oil filter handler costs. The rule also would provide a benefit, as opposed to an adverse effect, in a material way to the environment and the public health and safety of the state and affected sectors of the state by prohibiting the discharge of oil into soil or water while providing for greater used oil filter recycling and the conservation of municipal landfill space for disposal of other wastes.

In addition, the adopted rulemaking is not a major environmental rule because it does not meet any of the four applicability requirements of a “major environmental rule” found in Chapter 2001.0225 of the Texas Government Code. More particularly, the rule is specifically required by H&SC, Chapter 371, new Subchapter E, Filter Storage, Transportation, or Processing (rather than solely under the general powers of the agency) and does not exceed this express requirement of state law. There is no federal law or federal delegation agreement specifically applicable to used oil filter recycling.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement HB 2619, 76th Legislature, 1999. This bill amended Chapter 371 of the H&SC by adding a new Subchapter E, titled Filter Storage, Transportation, or Processing, to provide state statutory authority for commission rules on used oil filter recycling and to reduce existing rule requirements. The rules will substantially advance this specific purpose by repealing the existing Chapter 328, Subchapter D, Used Oil Filter Collection, Management, and Recycling, §§328.21-328.30 and replacing it with new Chapter 328, Subchapter D, Used Oil Filter Management and Recycling, §§328.21-328.28. Promulgation and enforcement of this rule will not burden private real property because private real property is not the subject of this rule as persons who handle or manage used oil filters may continue to do so under the adopted rule. The adopted rule reduces existing used oil filter rule requirements and provides benefits to society by maintaining existing prohibitions on the discharge of oil into soil or water while providing for greater used oil filter recycling and the conservation of municipal landfill space for disposal of other wastes.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the Texas Coastal Management Program.

#### HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed October 25, 1999. No comments were received.

#### STATUTORY AUTHORITY

The repeals are adopted under the authority of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and in accordance with the Texas Solid Waste Disposal Act, H&SC, §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction. Additionally, H&SC, Chapter 371, Subchapter E, Filter Storage, Transportation, or Processing, provides the commission with the authority to adopt rules to govern used oil filters.

**SUBCHAPTER D: USED OIL FILTER COLLECTION, MANAGEMENT, AND RECYCLING**

**§§328.21 - 328.30**

**§328.21. Applicability.**

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**§328.30. Generators Regulated by the Railroad Commission of Texas.**

**SUBCHAPTER D : USED OIL FILTER MANAGEMENT AND RECYCLING**

**§§328.21-328.28**

**STATUTORY AUTHORITY**

The new sections are adopted under the authority of the Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code (H&SC), §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction. Additionally, H&SC, Chapter 371, Subchapter E, Filter Storage, Transportation, or Processing, provides the commission with the authority to adopt rules to govern used oil filters.

**§328.21. Definitions.**

The following words, terms, and abbreviations when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) **Bill of lading** - A shipping document that confirms receipt of a shipment.

(2) **Bulk filter container** - A portable device that:

(A) is part of an integrated delivery and retrieval system; and

(B) has a capacity greater than 330 gallons.

(3) **Component parts** - The severable parts of an oil filter and includes oil present in an oil filter.

(4) **Do-it-yourselfer (DIY)** - An individual who removes a used oil filter in the process of an oil change or automotive repair from the engine of a light duty motor vehicle, small utility engine, noncommercial motor vehicle, or farm equipment owned or operated by the individual.

(5) **Generator** - Person whose activities produce used oil filters. The term does not include do-it-yourselfers.

(6) **Process** - To prepare a used oil filter for recycling, steel recovery, energy recovery, or proper disposal.

(7) **Processor** - A person that processes used oil filters generated by another person. The term does not include a generator that consolidates, drains, or crushes used oil filters for off-site recycling or disposal.

(8) **Store** - To hold in a location for any period.

(9) **Storage facility** - A location that stores used oil filters before transportation, processing, recycling, or disposal of the filters. The term does not include the location of a generator.

(10) **Transporter** - A person that transports used oil filters to a location for storage, processing, recycling, or disposal.

(11) **Used oil filter** - Any device that is an integral part of an oil flow system, the primary purpose of which is to remove contaminants from flowing oil contained in the system, and that as a result of use has become contaminated and unsuitable for its original purpose, is removed from service, and contains entrapped used oil. The term does not include a filter attached to the equipment containing the oil flow system. This term continues to apply regardless of prior processing until, but not after, the filter has been burned for steel recovery or energy recovery or it is separated into its component parts.

#### **§328.22. Applicability.**

(a) This subchapter applies to a used oil filter only if the filter has been determined to be nonhazardous or exempt from being hazardous waste due to draining of used oil per Title 40 Code of Federal Regulations, §261.4(b)(13) (as amended through August 24, 1998), and the filter has not been:

(1) separated into its component parts; or

(2) burned for:

(A) steel recovery; or

(B) energy recovery.

(b) This subchapter does not apply to:

(1) an industrial generator that is:

(A) registered with the agency as an industrial or hazardous waste facility; or

(B) under the waste management authority of a state agency other than the  
commission.

(2) a do-it-yourselfer.

**§328.23. General Requirements.**

(a) A person may not store, process, or dispose of a used oil filter in a manner that results in the discharge of oil into soil or water.

(b) A person may not knowingly place on land a used oil filter that contains used oil unless the used oil filter is in a container.

(c) A bulk filter container used to store used oil filters:

(1) must not leak; and

(2) must be securely closed, waterproof, and in good condition.

(d) A used oil filter may not be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission.

**§328.24. Registration and Reporting.**

(a) A transporter, storage facility, or processor may not store, process, recycle, or dispose of used oil filters unless the person is registered with the agency. These persons must register using an agency form and have a valid registration prior to operation. Mail the form to the Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087. For further information, call 1-888-TX CRUDE or for forms and publications use Internet address:  
<http://www.tnrcc.state.tx.us>.

(b) Unless the person is registered with the agency as a storage facility, a person may not store used oil filters:

- (1) that in the aggregate have a volume greater than six 55-gallon drums; or
- (2) in more than one bulk filter container.

(c) Transporters, storage facilities, and processors must renew their registrations by January 25th of every even-numbered year, and must report by January 25th of every even-numbered year, in accordance with paragraphs (1) - (4) of this subsection.

(1) The report must include the number of used oil filters the person transported, stored, or processed in the preceding two calendar years.

(2) Registration renewal and reporting information must be entered on an agency form.

(3) The registration and reporting information must be mailed to the Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087. For further information, call 1-888-TX CRUDE or for forms and publications use Internet address:  
<http://www.tnrcc.state.tx.us>.

(4) A transporter, storage facility, or processor who initially registers after December 31, 1999 must, after its initial registration has been active for two years, renew its registration by January 25th of every even-numbered year.

(d) Persons transporting used oil filters may transport up to two 55-gallon containers, or the volumetric equivalent, without registering as a transporter.

(e) A transporter, storage facility, or processor is required to provide evidence of financial responsibility with registration as the executive director deems necessary to assure that the facility has sufficient assets to provide for proper closure. Financial assurance for closure may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds guaranteeing payment or performance, letters of credit, insurance, or financial test and corporate guarantee. These mechanisms shall be prepared on forms approved by the executive director.

**§328.25. Shipment Records.**

(a) Each shipment of used oil filters must be accompanied by a bill of lading. The bill of lading must demonstrate a transfer of custody of the used oil filters from the shipping facility to the registered transporter, and from the transporter to the registered storage facility or processor. The bill of lading must contain the date of such transfer, the name and physical address of the shipping facility, the name and address of the receiving facility, and the name and address of the transporter, the quantity

of used oil filters removed and any other information which the executive director may deem necessary to protect the environmental quality of the State of Texas. The shipping facility must verify the information within the bill of lading, and demonstrate concurrence by the signature of an authorized representative.

(b) A copy of the bill of lading for each shipment of used oil filters must be maintained by the generator of the filters, transporter of the filters, storage facility at which the filters were stored, and processor of the filters for at least three years after the date the filters were transported, stored, or processed.

(c) The copies of bills of lading must be made available for agency personnel to inspect at any reasonable time.

**§328.26. Limitations on Storage.**

(a) A storage facility may not store a used oil filter for more than 120 days.

(b) A transporter may not store a used oil filter for more than ten days.

(c) A processor may not store a used oil filter for more than 30 days before it is processed.

(d) A processor that stores used oil filters in a container shall label each container clearly with the phrase "Used Oil Filters."

**§328.27. Variances.**

(a) The executive director may grant an individual variance to allow:

(1) a generator to store used oil filters in a greater aggregate volume than the volume prescribed in §328.24(b) of this title (relating to Registration and Reporting); or

(2) a person to store used oil filters for a period longer than the period prescribed for that person in §328.26 of this title (relating to Limitations on Storage).

(b) Factors to be considered in determining whether a variance should be granted include but are not limited to, the risk to human health and the environment that is posed by the requested variance. The burden of justifying the need for a variance is on the requestor, and the requestor must submit the information in writing to clearly indicate the issues involved, the reason(s) for the request, and both positive and negative impacts that may result from the granting of the variance. Prior approval of the variance must be obtained before any change is authorized. If a variance is denied, the executive director will provide an explanation of the reason(s) for the denial in a written response to the requestor.

(c) The executive director may not grant a variance under this section for a period longer than two years.

**§328.28. Spill Prevention and Control.**

Each registered storage facility and each facility of a registered processor shall develop a plan to prevent spills and respond to spills in accordance with the federal spill prevention, control, and countermeasure requirements provided by Title 40 Code of Federal Regulations, Part 112 (as amended through July 1, 1998).