

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16; and repeals §324.5.

These amendments were originally published for proposal in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3011), withdrawn on September 19, 2012, and are re-proposed herein.

Background and Summary for the Factual Basis of the Proposed Rules

The federal used oil recycling program is authorized under the Used Oil Recycling Act of 1980, Resource Conservation and Recovery Act of 1976 (RCRA), §3014. The United States Environmental Protection Agency (EPA) sets standards for used oil destined for recycling to prevent mismanagement by generators, collection centers, transporters, processors and re-refiners, burners, and marketers. Those federal standards are located in 40 Code of Federal Regulations (CFR) Part 279.

States may obtain authorization from the EPA to administer the used oil recycling program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA used oil recycling program to individual states in lieu of EPA. This process ensures national consistency

and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal used oil recycling program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations periodically to meet the changing federal regulations.

The commission proposes in this rulemaking parts of RCRA Rule Clusters XIX - XXI that implement revisions to the federal used oil recycling program. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal used oil recycling program in lieu of the EPA. All proposed rule changes are further discussed in the Section by Section Discussion portion of this preamble.

Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

Section by Section Discussion

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These proposed changes include correcting typographical, spelling, and grammatical errors throughout the chapter and also incorporating by reference the typographical, spelling, and grammatical corrections in 40 CFR Part 279. In addition, the commission proposes to replace the phrases "shall be as" and "will be as" with the phrase, "The commission incorporates by reference." This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Finally, the commission proposes to adopt substantive changes throughout the chapter such as: removing the requirement to use SW-846 as the testing method to ensure that used oil does not contain significant concentrations of halogenated hazardous constituents, adding clarifying language regarding used oil containing polychlorinated biphenyls (PCBs), and tracking requirements for used oil marketers. The changes would make it easier for recyclers to comply with the RCRA regulations.

§324.1, Federal Rule Adoption by Reference

The commission proposes to amend §324.1 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). Specifically, this amendment would update the "amended through" date to "July 14, 2006 at 71 FedReg 40280." An introductory sentence is proposed to be added to make clear that recyclers in Texas must comply with federal used oil regulations and

with any additional requirements specified in Chapter 324. The terms "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission" are proposed to be moved to this section from the definition section in §324.2.

§324.2, Definitions

The commission proposes to amend §324.2 to make five changes. First, the commission proposes to amend §324.2 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280).

Specifically, this amendment would correct the spelling of the word "kerosine" to "kerosene" in the definition for "Petroleum refining facility" found in 40 CFR §279.1.

Second, the commission proposes to amend §324.2(5) to replace the word "Recycling" with the phrase "Recycling of used oil." This change would clarify that this definition pertains to used oil. Third, the commission proposes to add language to §324.2(7) to revise the definition of "Secondary containment" to add the clause "shall be designed to meet the specifications found in §324.22(d)(3) to retain." This language is integral to the state's program requirements regarding secondary containment for used oil.

Fourth, the definitions for "Administrator or Regional Administrator" found in §324.2(2), "Commission" found in §324.2(3), and "Environmental Protection Agency (EPA)" found in §324.2(4) are proposed to be removed. The terms, "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission"

are proposed to be moved to §324.1 as part of the Federal Rule Adoption by Reference section. Section 324.2 has been alphabetized and modified accordingly. Fifth, the introductory phrase "Most words are as defined" is proposed to be changed to "The commission incorporates by reference the definitions" to make clear that all definitions in 40 CFR §279.1 are part of the state regulations and enforceable. However, the commission also proposes certain additional definitions as part of §324.2.

§324.3, Applicability

The commission proposes to amend §324.3 to make five changes. First, the commission proposes to amend §324.3 to adopt by reference the regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment would add revised language in 40 CFR §279.10(i) relating to Used Oil Containing PCBs.

Specifically, this amendment would clarify when used oil contaminated with PCBs is regulated under the RCRA used oil management standards and when it is not. Second, the commission proposes an amendment to §324.3 to adopt by reference the regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement in 40 CFR §279.10(b)(1)(ii) relating to Applicability, to use SW-846 as the testing method. This change would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and would make it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Third, the commission

proposes to amend §324.3 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections to 40 CFR §279.10(b)(2) relating to Applicability, and would change the language in 40 CFR §279.11 relating to Used Oil Specifications. Fourth, the commission proposes to amend §324.3 by adding the phrases "The commission incorporates by reference" and "In addition, the commission adds the following clarifications and requirements:", and removing the phrases "applicability will be as" and "and as clarified here." These revisions would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements. Fifth, the commission proposes language to be added to §324.3(5) which reads "and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer." This amendment would clarify that the State of Texas is not allowing the discharge of hazardous waste into a sanitary sewer.

§324.4, Prohibitions

The commission proposes to amend §324.4 by adding the phrases "The commission incorporates by reference the" and "In addition, the commission requires the following:" and removing the phrases "will be as" and "and as specified here." These changes in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements.

§324.5, Notice by Retail Dealer

The commission proposes the repeal of §324.5 and proposes to add the statement concerning where to obtain a sign to §324.7(1)(A) and (3)(A). The proposed repeal allows the regulated community to find the contact address in the same section where the requirement for signs is placed.

§324.6, Generators

The commission proposes to amend §324.6 to replace the phrase "shall be as" with the phrase "The commission incorporates by reference." This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

§324.7, Collection Centers

The commission proposes to amend §324.7 to make four changes. First, the commission proposes to amend §324.7 to replace the phrases "Rules for" and "shall be as" with the phrase "The commission incorporates by reference rules for owners or operators of all" in front of the phrase "do-it-yourselfer (DIY) used oil collection centers." This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules, is consistent with the federal rules and clarifies that the section applies to the owners or operators of these facilities. Second,

the commission proposes to remove the phrase "and as specified here" and to add the phrase "In addition, the commission requires the following:". This proposed change clarifies that there are additional state requirements that must be followed by collection centers. Third, the commission also proposes to amend §324.7(1)(A) and (3)(A) to add the statement concerning where to obtain a sign. This proposed change would organize all the information on obtaining a sign in one place. The regulated community would no longer have to refer to §324.5 to determine how to obtain a sign that is required to be posted per §324.7(1)(A) and (3)(A). Fourth, the commission also proposes to amend §324.7(1)(B) and (3)(B) to remove the mailing address because it is provided on commission cover letters and forms and to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality.

§324.11, Transporters and Transfer Facilities

The commission proposes to amend §324.11 to make four changes. First, the commission proposes to amend §324.11 by adding the phrase "The commission incorporates by reference" and removing the words "are" and ", and in this section" and adding the phrase "In addition, the commission requires the following:". These changes would avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules and clarify that there are additional state requirements. Second, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would

remove the requirement to use SW-846 as the testing method in 40 CFR §279.44(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and would make it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Third, the commission proposes to amend §324.11 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.43(c)(3)(i) and (5) relating to Used Oil Transportation, 40 CFR §279.44(a) and (c)(2) relating to Rebuttable Presumption for Used Oil, and 40 CFR §279.45(a) relating to Used Oil Storage at Transfer Facilities. Fourth, the commission proposes to adopt §324.11(2) to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality and to remove the mailing address because it is provided on commission cover letters and forms.

§324.12, Processors and Rerefiners

The commission proposes to amend §324.12. First, the commission proposes to amend §324.12 by adding the phrases "The commission incorporates by reference," "owners and operators of" and "In addition, the commission requires the following:". These additions would require changing the tense of the words "processors" and "re-refiners" to "processing" and "re-refining," and removing the words "are" and "and in this

section." These changes would avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules, clarify that the section applies to the owners and operators of these facilities and clarify that there are additional state requirements. Second, the commission proposes to amend §324.12(2) and (4) to remove the mailing address because it is provided on commission instruction letters and forms. Third, the commission proposes to amend §324.12 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement to use SW-846 as the testing method in 40 CFR §279.53(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Fifth, the commission proposes to amend §324.12 to adopt by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.52(a) - (b), (b)(1)(ii), (6)(ii) and (iii) relating to General Facility Standards; 40 CFR §279.54(g) relating to Used Oil Management; 40 CFR §279.55(a) and (b)(2)(i)(B) relating to Analysis plan; 40 CFR §279.56(a)(2) relating to Tracking; 40 CFR §279.57(a)(2)(ii) relating to Operating record and reporting; and 40 CFR §279.59 relating to the Management of residues.

Additionally, the commission proposes to amend the title of §324.12 from "Processors and Rerefiners" to "Processors and Re-refiners".

§324.13, Burners of Off-Specification Used Oil for Energy Recovery

The commission proposes to amend §324.13 to make five changes. First, the commission proposes to amend §324.13 by adding the phrase "The commission incorporates by reference" and removing the word "are." This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Second, the commission proposes to add the phrase "In addition, the commission requires the following:" and remove the phrase ", and in this section." This change would clarify that there are additional state requirements. Third, the commission proposes to amend §324.13(2) to remove the mailing address for the agency because it is provided on commission cover letters and forms and update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement to use SW-846 as the testing method in 40 CFR §279.63(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection

and use. Fifth, the commission proposes to amend §324.13 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This proposed amendment would make grammatical corrections in 40 CFR §279.63(b)(3) relating to Rebuttable Presumption for Used Oil and 40 CFR §279.64(e) relating to Used Oil Storage.

§324.14, Marketers of Used Oil Fuel

The commission proposes to amend §324.14 to make five changes. First, the commission proposes to amend §324.14 by adding the phrases "The commission incorporates by reference," "These rules," "In addition" and the word "found" and remove the phrase "and this section." These changes would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and make the sentence more readable. Second, the commission proposes to amend §324.14 to remove the mailing address because it is provided on commission cover letters and forms. Third, the commission proposes to amend §324.14 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment would revise the language in 40 CFR §279.74(b) relating to Tracking. Specifically, the amendment would allow the initial marketer of used oil that meets the used oil fuel specifications in 40 CFR §279.11 to only keep a record of a shipment of used

oil to the facility to which the initial marketer delivers the used oil. Fifth, the commission proposes to amend §324.14 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.70(b)(1) relating to Applicability.

§324.15, Spills

The commission proposes to amend §324.15 by adding the phrase "The commission incorporates by reference" and removing the word "See." This revision would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. The commission also proposes additional language which would require recyclers to immediately clean up spills that meet the reportable quantity limit. Specifically, the amendment would incorporate federal requirements found in 40 CFR §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64 regarding Reporting and Managing Spills. The section would continue to require used oil recyclers to comply with 30 TAC Chapter 327 relating to Spill Prevention and Control.

§324.16, Polychlorinated Biphenyls (PCBs)

The commission proposes to amend §324.16 by adding the phrase "The commission incorporates by reference" and removing the phrase "shall be as," and restructuring the

sentence to make it easier to read. These changes would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are not expected to have a significant fiscal impact on state agencies or units of local government since the rules impose no additional requirements, clarify ambiguities for the regulated community, and allow for more flexible testing methods of used oil.

The proposed rules are part of a comprehensive rule package implementing RCRA requirements involving proposed changes to several chapters of 30 TAC. This fiscal note applies only to the proposed changes to Chapter 324 which include adoption by reference of federal rule changes to the RCRA Used Oil Management program that were adopted by EPA from July 2003 through July 2006 for used oil facilities. The proposed rulemaking would also incorporate several grammatical corrections to errors found in 40 CFR Chapter 279. A used oil facility may have several regulated participants (marketers, burners, transporters, etc.) at the same facility.

Parts of the proposed rules for Chapter 324 are expected to clear up current ambiguities regarding the used oil recycling program for the regulated community. For example, the proposed rulemaking incorporates EPA's intent to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. Specifically, the rulemaking clarifies that used oil that contains less than 50 parts per million of PCBs is generally subject to regulation under the RCRA used oil management standards. The proposed rulemaking also incorporates clarifying language regarding tracking requirements for used oil marketers. Specifically, the initial marketer need only keep a record of a shipment of used oil to the facility to which the used oil is delivered.

The proposed rulemaking also makes it easier for used oil facilities to ensure that used oil does not contain significant concentrations of halogenated hazardous constituents by removing the requirement to use only one testing method (SW-846) as the testing method for these hazardous elements. Used oil facilities could use other, equally protective testing methods.

In general, the proposed rules are not expected to have a significant fiscal impact on governmental entities. The agency knows of only one governmental entity (a state agency) that participates in used oil recycling. The proposed rules are clarifying in nature or provide alternative testing methods for used oil recycling. All testing methods for concentrations of halogenated hazardous constituents in used oil cost about the

same, and the flexibility of testing methods is not expected to generate significant cost savings.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be protection of the environment and public safety through continued consistency with federal regulations for recycling used oil.

In general, the proposed rules are not expected to have a significant fiscal impact on individuals. The proposed rules are clarifying in nature or provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil.

The proposed rules are not expected to have a significant fiscal impact on large businesses that own or operate used oil facilities. The agency estimates there may be as many as 397 used oil facilities statewide. The proposed rules clarify ambiguities regarding the used oil recycling program for the regulated community and provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil. Since all testing methods cost about the same, the flexibility of testing methods is not expected to generate significant cost savings.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules clarify ambiguities regarding the used oil recycling program for the regulated community and provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil. Since all testing methods cost about the same, the flexibility of testing methods is not expected to generate significant cost savings.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and to comply with federal regulations.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community benefits from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules would not cause any adverse effects. There is no adverse

effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the rulemaking does not exceed a standard set by federal law because the commission proposes this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other changes do not alter substantive requirements although various changes may increase flexibility for the regulated community and move forward compliance deadlines. Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general

powers of the agency instead of under a specific state law. The commission proposes this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicits public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit

the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-038-335-WS. The comment period closes November 5, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information, please contact Cynthia Palomares, P.G., P.E., Industrial and Hazardous Waste Permits Section, (512) 239-6079, MC-130, P.O. Box 13087, Austin, TX 78711-3087.

SUBCHAPTER A: USED OIL RECYCLING
§§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §371.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 371.

§324.1. Federal Rule Adoption by Reference.

Person(s) managing used oil must comply with the requirements in this chapter and the [The] requirements in 40 Code of Federal Regulations (CFR)[,] Part 279, Standards for the Management of Used Oil, as amended through July 14, 2006, at 71 FedReg 40280 [May 26, 1998 at 69 FedReg 28556], which are adopted by reference.

For purposes of this chapter, the term "Administrator" or "Regional Administrator" used in 40 CFR Part 279 shall be read to mean "State Administrator, the Executive Director of the Texas Commission on Environmental Quality, or his representative."

The term "Environmental Protection Agency" or "EPA" used in 40 CFR Part 279 shall be read to mean "the Texas Commission on Environmental Quality or its successor."

[However, requirements in this chapter also apply.]

§324.2. Definitions.

The commission incorporates by reference the definitions [Most words are as defined] in 40 Code of Federal Regulations (CFR) §279.1. However, the following words have these additional 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) **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.

[(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."]

(3) [(5)] **Recycling of used oil**--

(A) Preparing used oil for reuse as a petroleum product by re-refining [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.

(4) [(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.

(5) [(7)] **Secondary containment**--Dikes, berms, retaining walls, and/or equivalent structures made of a material(s) that is sufficiently impervious to used oil. These structures shall be designed to meet the specifications found in §324.22(d)(3) of this title (relating to Soil Remediation Requirements for Used Oil Handlers) to retain [all] potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

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

(7) [(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.

(8) [(10)] **Used oil handler**--A transporter or an owner or operator of a used oil transfer, processing, re-refining [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.]

§324.3. Applicability.

The commission incorporates by reference the Applicability and the Exemptions [exemptions] from Applicability requirements [applicability will be as] in 40 Code of Federal Regulations (CFR) Part 279, Subpart B, §279.10 and §279.11. In addition, the commission adds the following clarifications and requirements: [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). United States Environmental Protection Agency [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 40 CFR 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 Re-refiners [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 and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer. Management of wastes from other tanks, sumps, and grip 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).

§324.4. Prohibitions.

The commission incorporates by reference the Prohibitions [will be as] in 40 Code of Federal Regulations [CFR] Subpart B, §279.12 [and as specified here]. In addition, the commission requires the following:

(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 of 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, re-refines [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 knowingly 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.

§324.6. Generators.

The commission incorporates by reference rules [Rules] for used oil generators [shall be as] in 40 Code of Federal Regulations [(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.

§324.7. Collection Centers.

The commission incorporates by reference rules for owners or operators of all [Rules for] "do-it-yourselfer used oil collection centers" and "used oil collection centers" (as defined in 40 Code of Federal Regulations (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. In addition, the commission requires the following:

- (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. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [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. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [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.

§324.11. Transporters and Transfer Facilities.

The commission incorporates by reference rules [Rules] for used oil transporters and transfer facilities [are] in 40 Code of Federal Regulations (CFR) Part 279,

particularly Subpart E [, and in this section]. In addition, the commission requires the following:

(1) Underground storage tanks (USTs). 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 United States Environmental Protection Agency (EPA). Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.12. Processors and Re-refiners [Rerefiners].

The commission incorporates by reference rules [Rules] for owners and operators of used oil processing [processors] and re-refining facilities [rerefiners are] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart F [, and in this section.]. In addition, the commission requires the following:

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

(2) Registration. Processors and re-refiners [rerefiners] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Processors and re-refiners [rerefiners] must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 87811-3087].

(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 Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

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

The commission incorporates by reference rules [Rules] for burners of off-specification used oil for energy recovery [are] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart G [, and in this section]. In addition, the commission requires the following:

(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 United States Environmental Protection Agency (EPA). Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.14. Marketers of Used Oil Fuel.

The commission incorporates by reference rules [Rules] for marketers of used oil which will be burned for energy recovery. These rules are found in 40 Code of Federal Regulations [CFR] Part 279, [particularly] Subpart H [, and this section]. In addition, marketers [Marketers] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration

forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.15. Spills.

The commission incorporates by reference the Used Oil Spill Prevention, Detection of Releases, and Spill Response requirements in 40 Code of Federal Regulations §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64. In addition, used oil recyclers shall immediately clean up and properly dispose of any spills of used oil consistent with [See] Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities).

§324.16. Polychlorinated Biphenyls (PCBs).

The commission incorporates by reference [Per 40 CFR 279 (Table 1),] the rules for burning used oil containing PCBs [shall be as] in 40 Code of Federal Regulations Part 279 (CFR) (Table 1) and in 40 CFR §761.20(e).

SUBCHAPTER A: USED OIL RECYCLING
§324.5

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §361.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed repeal implements THSC, Chapter 371.

[§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.]