

The commission proposes amendments to §§324.4 and 324.11-324.14, the repeal of §§324.17-324.20, and a new §324.22, concerning used oil recycling.

EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments and new section is to incorporate requirements necessary pursuant to Texas Health and Safety Code Chapter 371, §371.026, concerning Registration and Reporting Requirements of Used Oil Handlers Other Than Generators (worded as effective September 1, 1997). One minor additional amendment is proposed to delete some unnecessary and confusing language. Also, the repeal of several sections is proposed to remove unnecessary requirements already clearly stated in statute.

The title of Chapter 324 is proposed to be changed to Used Oil Recycling because there is no longer a need to have two subchapters. The previously planned second subchapter on financial assurance is no longer needed. Instead, financial assurance requirements are planned to be included in proposed new §324.22, relating to Financial Responsibility Technical Requirements (which will subsequently be discussed in detail) and a new Chapter 37 Subchapter L, relating to Financial Responsibility for Used Oil Recycling, discussed in a companion proposal.

An amendment is proposed to §324.4, concerning Prohibitions. Paragraph (2), states, “A person commits an offense if, without benefit of a valid permit authorizing the particular action...” The language “without benefit of a valid permit authorizing the particular action” is proposed to be deleted. This language was originally placed in the rule to confirm that specific permit requirements and

allowances take precedence over the rule requirements. This is a generally applicable principle. However, some users of the rule have interpreted it to mean that they should seek permission from the commission to vary from rule requirements. Therefore, the commission is proposing to delete this unnecessary language to prevent confusion in its interpretation.

Amendments are proposed to §324.11, concerning Transporters and Transfer Facilities. Paragraph (2) is proposed to be amended to delete the requirement for biennial registration with the state, thus making it one time registration in accordance with statutory requirements, and to update the mailing address for registrations. Paragraph (3) is deleted to eliminate the annual reporting requirement in accordance with statutory requirements.

Amendments are proposed to §324.12, concerning Processors and Rerefiners. Paragraph (2) is proposed to be amended to delete the requirement for biennial registration with the state, thus making it one time registration in accordance with statutory requirements; to delete consolidated report language made unnecessary by deleting all reporting requirements but this one and the one for Collection Centers; and to update the mailing address for registrations. Paragraph (4) is amended to require the processor/rerefiner report to be submitted biennially instead of annually and to modify the reporting date in accordance with statutory requirements.

Amendments are proposed to §324.13, concerning Burners of Off-specification Used Oil for Energy Recovery. Paragraph (2) is proposed to be amended to delete the requirement for biennial registration with the state, thus making it one time registration in accordance with statutory requirements, and to

update the mailing address for registrations. Subsection (3) is deleted to eliminate the annual reporting requirement in accordance with statutory requirements.

Amendments are proposed to §324.14, concerning Marketers of Used Oil Fuel. This section is proposed to be amended to delete the requirement for biennial registration with the state, thus making it one time registration in accordance with statutory requirements, and to update the mailing address for registrations.

Proposed new §324.22, concerning Financial Responsibility Technical Requirements, implements Texas Health and Safety Code §371.026(a)(1)(C), effective as of September 1, 1997, that requires the commission to adopt rules requiring used oil handlers other than generators to “provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil, except that this provision 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.” The commission is proposing the least burdensome requirements possible to meet the state statutory requirement because this is not a federal requirement and many used oil handlers are small businesses that cannot afford a significant cost to meet financial responsibility requirements. Used oil handling facilities are proposed to be offered a choice of providing financial assurance for possible used oil contaminated soil remediation by a third party in case of abandonment of the facility or meeting more stringent facility design requirements to prevent spills for a lower amount of financial assurance. The public is particularly invited to comment on the better facility option.

Proposed new §324.22(a) spells out the applicability of the financial assurance requirements.

Proposed new §324.22(b) requires used oil transporters to meet the financial responsibility requirements in 30 TAC Chapter 37, §37.2021. It requires other used oil handlers subject to the financial responsibility requirements to meet either the requirements of subsection (c), relating to financial assurance for soil remediation, or the requirements of subsection (d), relating to so-called “enhanced facility” standards.

Proposed new subsection (c) requires used oil handlers to provide financial assurance for soil remediation, assuming third-party soil remediation of a used oil facility that has been abandoned, in amounts based on the earthen surface area at the facility over which used oil activities take place. It is proposed that such used oil handlers with active areas of over 1,000 square feet shall provide financial assurance for the costs of soil remediation at a base rate of \$0.41 per square foot. The required coverages are “lumped” or categorized into incremental amounts, as opposed to multiplying the exact number of square feet of active area by \$0.41 to determine the financial assurance amount. This incremental approach is intended to provide a measure of stability in the amount of required financial assurance by minimizing fluctuations which would otherwise be caused by relatively insignificant changes in the surface area over which used oil activities occur.

Used oil handlers are proposed to be categorized into the following four size classes: facilities with active areas of over 1,000 square feet up to 10,000 square feet, as shown under subsection (c)(1); facilities with active areas of over 10,000 square feet up to 100,000 square feet, as shown under

subsection (c)(2); facilities with active areas of over 100,000 square feet up to 1,000,000 square feet, as shown under subsection (c)(3); and facilities with active areas of over 1,000,000 square feet, as shown under subsection (c)(4). The amount of the financial assurance for soil remediation is proposed to be based on increments of area within each of the four facility size classes. For example, for a facility with a total active area of over 1,000 square feet up to 10,000 square feet, the amount is proposed to be set at \$410 for each 1,000-square-foot increment. Thus, for a facility with 8,000 square feet of active area, the required amount would be 8 times \$410, or \$3280. For a facility with a total active area of over 100,000 square feet and up to 1,000,000 square feet, the amount of financial assurance for closure is proposed to be set at \$41,000 for each 100,000-square-foot increment and \$4,100 for each 10,000-square-foot increment. Thus, for a facility with a total active area of 567,000 square feet, the required amount would be 5 times \$41,000, plus 6 times \$4,100, or \$205,000 plus \$24,600, which equals \$229,600.

Subsection (c) further proposes that a used oil handler must increase its financial assurance amount within 30 days after an increase in active area which results in a higher financial assurance requirement, and that the used oil handler must update its financial assurance at least annually to cover any increased costs due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount due to decreases in active area. It is also proposed that records demonstrating the size of the active area of the facility and related financial assurance be maintained in the operating record of the facility. The original financial assurance mechanism documentation is to be submitted to the commission per newly proposed §37.2011(c) in a companion rule package.

The derivation of these cost figures utilizes the basic assumptions that third-party remediation of a used oil facility that has been abandoned suddenly and totally by the owner or operator may be necessary, and that the earthen area at the facility (over which any transportation, storage, or processing of used oil has occurred) must be excavated and removed to a depth of six inches, and the soil disposed of at a landfill 30 miles away). The soil remediation cost estimate comprises, on a per-cubic-yard basis, \$3.75 for excavation and loading, plus \$3.93 for truck mobilization and truck time, plus \$4.50 for truck mileage, plus \$10 for landfill disposal, which equals \$22.18, and rounds off to \$22. The \$0.41 per square foot soil remediation cost estimate is then derived by multiplying \$22 per cubic yard times 0.5 foot (6-inch depth) and dividing by the conversion factor of 27 cubic feet per cubic yard.

Proposed new subsection (d) contains the soil contamination prevention requirements that used oil handlers must meet to be eligible for a lower amount of financial assurance under subsection (c). Subsection (d)(1) requires used oil handlers to demonstrate compliance by providing an annual certification statement to the executive director that the used oil handler is in compliance with the applicable requirements of this chapter and by obtaining certification from an independent Registered Professional Engineer or other qualified independent professional that the units at the facility are properly designed and constructed, and that the units exhibit mechanical integrity. Such an independent certification is also proposed to be required 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. Subsection (d)(2) requires used oil handlers to ensure compliance with the spill reporting requirements of 30 TAC Chapter 327, relating to Spill Prevention and Control, for used oil spills of 25 gallons or more. Subsection (d)(3) requires used oil handlers to provide secondary containment at any area where

used oil is stored, transferred, or otherwise handled and requires that used oil tanks, containers, and secondary containment meet certain hazardous waste regulations or certain other requirements as spelled out under proposed subsections (d)(3)(A)-(D). These other proposed requirements are that the secondary containment be non-earthen, stationary, free of cracks, gaps, or holes, and overlain with a synthetic liner with a minimum thickness of 40 mils; that the secondary containment be large enough to contain catastrophic spills plus certain freeboard requirements; that the secondary containment hold any spills or accumulated liquid until it is removed; and that spills or accumulated liquid be removed from the secondary containment system within 24 hours of discovery, or in as timely manner as possible.

Proposed new subsection (d)(4) requires used oil handlers 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 capacity of the remaining used oil equipment and devices. Proposed new subsection (d) requires such used oil handlers to meet the requirements of subsection (c) but with only 10% of the amount of financial assurance that would otherwise be required.

The commission also proposes the repeal of §§324.17- 324.20, concerning Criminal Penalties, Civil Penalty, Injunctive Relief, and Venue, respectively. These provisions are already clearly stated in statute and do not need to be repeated in the rule.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect, there will be fiscal implications as a result of enforcement

and administration of these sections. The fiscal implications of these rules are primarily attributed to the state statutory requirement for financial responsibility in Health and Safety Code §371.026(a)(1)(C).

Businesses that have not already obtained financial assurance for closure to comply with the existing statutory requirement for financial responsibility or already meet the alternate facility requirements that can substitute for financial assurance will have some increased cost to come into compliance.

Businesses that already have financial assurance for closure have some chance of experiencing a small increase or a large decrease in cost to meet the specific new rule requirements on financial assurance for soil remediation. Other rule amendments eliminating annual reporting and biennial registration will result in a small cost savings to the regulated community and the state.

Used oil handlers that were formerly required to register biennially and report annually will benefit by having reduced state regulatory requirements and by having more specific financial responsibility requirements. The financial effect of compliance with the rule requirements on financial assurance for small businesses that have not yet obtained financial assurance to comply with the statutory requirement for financial responsibility may be relatively significant.

PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be more cost-effective regulation of used oil recycling. There are no anticipated costs to persons to comply with these sections as proposed other than those described previously.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed amendments and new section is to bring 30 TAC Chapter 324 on Used Oil into compliance with Health and Safety Code Chapter 371, Section 371.026, Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The rule amendments and new section substantially advance the stated purpose by eliminating biennial registration and annual reporting requirements and implementing in rule the state statutory requirement for financial responsibility. Promulgation and enforcement of these rules will not create a new burden on private real property which is the subject of the rule amendments because financial responsibility was already required by state statute but not federal rule, and the new state rule financial assurance requirements do not affect property values; they just provide funds for cleanup of contamination, if any, at site closure.

These amendments and the new section are excepted from the Private Real Property Preservation Act under Texas Government Code, §2007.3(b)(4), because the rulemaking is reasonably taken to fulfill an obligation mandated by federal law in 40 Code of Federal Regulations, Part 279, Standards for the Management of Used Oil.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified

in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments on the proposal may be mailed to Bettie Bell, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register* and should reference Rule Log No. 97141-324-WS. For further information, please contact Debbie Bohl, Municipal Solid Waste Division, (512) 239-0044; Tooran Khosh, Municipal Solid Waste Division, (512) 239-2580; or Hygie Reynolds, Waste Policy & Regulations Division, (512) 239-6825.

STATUTORY AUTHORITY

The repealed, amended and new sections are proposed under Texas Health and Safety Code, Chapter 371, §371.026, which provides the commission with the authority to establish rules on Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The amended and new sections are also proposed under Texas Water Code, §§5.103, 5.105, and 26.011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The proposed amendments implement Texas Health and Safety Code, Chapter 371.

SUBCHAPTER A : USED OIL RECYCLING

§324.4. Prohibitions.

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

(1) (No change.)

(2) A person commits an offense if [, without benefit of a valid permit authorizing the particular action,] the person:

(A)-(F) (No change.)

(3)-(4) (No change.)

§324.11. Transporters and Transfer Facilities.

Standards for used oil transporters and transfer facilities shall be as in 40 CFR Part 279, Subpart E and as specified in this section.

(1) (No change.)

(2) Registration. Transporters must register with the EPA and the commission one time on their used oil activities [and with the commission biennially by January 25 of the year following the end of the biennial year]. Transporters must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Transporters must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission [(biennially)]. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, [Automotive Waste Management Section,] MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

[(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner.]

§324.12. Processors and Rerefiners.

Standards for used oil processors and rerefiners shall be as in 40 CFR Part 279, Subpart F and as specified in this section.

(1) (No change.)

(2) Registration. Processors and rerefiners must register with the EPA and the commission one time on their used oil activities[and with the commission biennially by January 25 of the year following the end of the biennial year]. Processors and rerefiners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Processors and rerefiners must register, through the commission, using the EPA Form 8700-12 (one time) and a form provided by the commission [(biennially)]. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, [Automotive Waste Management Section,] MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) (No change.)

(4) Biennial report [Annual report]. The processor/rerefiner biennial report [information] required by 40 CFR §279.57(b) covering each odd numbered year shall be provided to the commission [annually] by December 1 of the odd numbered year if all used oil operations have been completed for that year; if not, the processor/rerefiner must submit a letter to the commission by December 1 of the odd-numbered year requesting an extension to the report submittal date. No extension will be granted past January 25 of the following even numbered year. [A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner]. The information shall be entered on a commission-prescribed form and forwarded to the commission. Mail the report form to the Texas

Natural Resource Conservation Commission, Municipal Solid Waste Division, [Automotive Waste Management Section,] MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

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

Standards for burners of off-specification used oil for energy recovery shall be as in 40 CFR Part 279, Subpart G and as specified in this section.

(1) (No change.)

(2) Registration. Burners of off-specification used oil for energy recovery must register with the EPA and the commission one time on their used oil activities [and with the commission biennially by January 25 of the year following the end of the biennial year]. Burners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Burners must register, through the commission, using the EPA Form 8700-12 (one time) and a form provided by the commission [(biennially)]. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, [Automotive Waste Management Section,] MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

[(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, and

the date of receipt. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner.]

§324.14. Marketers of Used Oil Fuel.

Standards for marketers of used oil which will be burned for energy recovery shall be as in 40 CFR Part 279, Subpart H, and this subchapter. Marketers of used oil which will be burned for energy recovery must register with the EPA and the commission one time on their used oil activities [and the commission biennially by January 25 of the year following the end of the biennial year]. Marketers must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Marketers must register, through the commission, using the EPA Form 8700-12 (one time) and a form provided by the commission [(biennially)]. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, [Automotive Waste Management Section,] MC 125, P.O. Box 13087, Austin, TX 78711-3087.

§324.22. Financial Responsibility Technical Requirements

(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, hereinafter 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) Within 90 days after the effective date of this rule, transporters of used oil must meet the financial responsibility requirements provided in 30 Texas Administrative Code Chapter 37, §37.2021 and used oil handlers subject to the requirements of either subsection (c) or (d) of this section must meet the financial responsibility requirements provided in §37.2011 of this title (relating to Financial Responsibility Requirements for Used Oil Handlers).

(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 subject to this subsection 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 due to a decrease in the active area of the facility. 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 operating record of the facility. (Also, see 30 TAC §37.2011(c) of this title (relating to Financial Responsibility Requirements for Used Oil Handlers.)) The specified amount for which financial assurance must be provided is as follows:

(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 1,000,000 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 1,000,000 square feet, \$410,000 for each 1,000,000-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 demonstrate compliance with this chapter, as follows:

(A) used oil handlers must 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) all used oil handlers must obtain certification from an independent 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 used oil 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; 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 stationary and constructed of non-earthen material (e.g., concrete) and which is maintained to be free of cracks, gaps, or holes, and which is overlain with a synthetic liner with a thickness of at least 40 mils ;

(B) the secondary containment must 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 within the containment area, plus at least 12 inches of freeboard or sufficient freeboard to hold the precipitation which would be collected within the containment area, including any run-on or infiltration of precipitation, which would occur 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 the collected material is removed;~~and~~

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

(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 capacity of the remaining used oil, storage, transfer, and other handling equipment and devices; and

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on

Chapter 324 : USED OIL RECYCLING

§§324.17-324.20

The repeal is proposed under Texas Health and Safety Code, Chapter 371, §371.026, which provides the commission with the authority to establish rules on Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The repeal is also proposed under Texas Water Code, §§5.103, 5.105, and 26.011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The proposed repeal implements Texas Health and Safety Code, Chapter 371.

§324.17. Criminal Penalties.

§324.18. Civil Penalty.

§324.19. Injunctive Relief.

§324.20. Venue.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on