

The Texas Natural Resource Conservation Commission (commission) adopts amendments to Subchapter A, §§324.1-324.7, 324.11-324.16, 324.21, and 324.22; and the repeals of §§324.8-324.10; concerning Used Oil Recycling. Sections 324.1, 324.4-324.7, 324.11-324.16, 324.21, and 324.22; and the repeals of §§324.8-324.10 are adopted without change to the proposed text as published in the March 12, 1999, issue of the *Texas Register* (24 TexReg 1741) and will not be republished. Sections 324.2 and 324.3 are adopted with changes to the proposed text as published.

The commission also readopts Chapter 324, Subchapter A, as required by the General Appropriations Act (Act), Article IX, §167, 75th Legislature, 1997. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 324, Subchapter A, and determined that the reasons for adopting those rules continue to exist. The rules are necessary to encourage the recycling of used oil; to protect the environment from used oil contamination; to implement Texas Health and Safety Code Chapter 371, Used Oil Collection, Management, and Recycling; and to implement 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil.

EXPLANATION OF ADOPTED RULES

The commission has conducted a regulatory reform review of the rule and is adopting amendments and repeals to improve the readability of the rule. Generally, readability is improved by deleting repeats of legal statutes; by providing lists where possible; by providing more logical sequencing; by reducing word, paragraph and sentence lengths; by eliminating unnecessary words; replacing complex or

out-of-date words with simpler ones; and by any other changes that make the meaning clearer or reading easier. Readability changes should not cause a rule requirement to become more or less stringent. In most instances, the word “shall” was replaced with the word “must” because the word “shall” is not commonly used in normal conversation and correspondence and is not necessary to make rule requirements legally enforceable.

Section 324.2 has been changed from the proposed version. In the §324.2(6) definition of “re-refining,” the language giving examples of re-refining has not been deleted as proposed because a commenter felt that it made the definition clearer. The deletion was only proposed because less words are generally believed to make a rule more readable. Although the commission intends to make the rule more readable, it does not insist on a wording deletion if someone in the regulated community feels that the deletion makes the rule less clear. Also, a definition of “earthen area” has been added at §324.2(11) because this was requested by a commenter and it merely repeats wording already reflected in §324.22(c). Restating this information in the definitions section can do no harm and may help the users of the rule.

Section 324.3 has been changed from the proposed version. In §324.3(1), the word “waste” has been added back into the first line where it had been inadvertently omitted in the proposed version. In §324.3(3), in the fourth sentence, the word “hazardous” has been added back in front of “ignitability characteristic” as requested by a commenter. The deletion of this word was only proposed because less words are generally believed to make a rule more readable. Although the commission intends to make

the rule more readable, it does not insist on a wording deletion if someone in the regulated community feels that the deletion makes the rule less clear.

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no adverse economic effect on small businesses because the readability changes are not intended to cause a rule requirement to become more or less stringent and this rulemaking does not amend any underground storage tank rule requirement.

FINAL REGULATORY IMPACT ANALYSIS

The rulemaking does not 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 because it merely improves the readability of the used oil recycling rule requirements without making them more or less stringent. Therefore, this rulemaking does not constitute a major environmental rule.

Chapter 324 implements federal law regarding used oil recycling in 40 CFR Part 279, Standards for the Management of Used Oil.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to improve the readability of Chapter 324, Subchapter A, concerning Used Oil Recycling. The rules will substantially advance this specific purpose by amending or repealing all of the rule sections in Chapter 324, Subchapter A. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they improve the readability of used oil recycling rule requirements without making them more or less stringent.

Also, the following exception to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code §2007.003(b) applies to Chapter 324: the rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the Coastal Management Program. In addition, this rulemaking does not amend any underground storage tank rule requirement or make any Chapter 324, Subchapter A, used oil recycling rule requirement more or less stringent.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed April 12, 1999. Written comments were submitted by Central and South West Services, Inc.

ANALYSIS OF COMMENTS

On §324.2(6), the commenter felt that the deletion of the phrase containing examples of re-refining, i.e., “including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing,” made the definition less clear.

The commission agrees to retain these examples of re-refining in §324.2(6). The deletion was only proposed because fewer words are generally believed to make a rule more readable. The commission does not, however, support sacrificing clarity for streamlining. The examples proposed for deletion have been retained in §324.2(6).

On §324.2(10), the commenter stated that there is no mention of marketer in the definition of used oil handler.

The commission agrees with the commenter. However, the omission of marketer from the definition of used oil handler is intentional. The commission only uses the term used oil handler to define which entities are subject to the state requirement for financial responsibility. A marketer is someone who either directs a shipment of off-specification used oil to a burner or is the first to claim that his used oil is on-specification. Therefore, a generator could be a marketer,

and the state's financial responsibility requirement is not intended to apply to generators. That is why the term marketer is intentionally omitted from the definition of a used oil handler. No rule change was made in response to this comment.

On §324.2, the commenter stated that "earthen area" should be defined as "the active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs.

The commission agrees to define earthen area in §324.2 as recommended by the commenter. This wording is already reflected in §324.22(c), and restating it in the definitions section may help the users of the rule. The earthen area definition has been added as §324.2(11), as recommended by the commenter.

On §324.3(1), the commenter felt that the requirement to use EPA Hazardous Waste Number F002 for used oil that is listed hazardous due to mixing with halogenated contaminants was incorrect.

The commission agrees that EPA Hazardous Waste Number F002 is normally used for spent halogenated solvents and not used oil. However, under the federal used oil rule that Chapter 324 implements, used oil that contains greater than 1,000 ppm total halogens is assumed to be listed hazardous due to mixing with listed hazardous halogenated wastes. An EPA Hazardous Waste Number is required to manifest and transport a hazardous waste and the federal used oil rule, 40 CFR Part 279, does not specify an EPA Hazardous Waste Number for used oil that contains

greater than 1,000 ppm total halogens. Used oil is usually made a “listed” hazardous waste by mixing with halogenated solvents. Therefore, because an EPA Hazardous Waste Number is absolutely required to manifest a hazardous waste and the federal used oil rule did not provide one for used oil that contains more than 1,000 ppm total halogens, the commission selected the EPA Hazardous Waste Number F002 for spent halogenated solvents as the best choice to use in manifesting such used oil. No rule change was made in response to this comment.

On §324.3(2), the commenter stated that the rule statement that used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265 might conflict with the federal rule on used oil, 40 CFR Part 279.

The commission does not agree that the rule statement conflicts with the federal rule, 40 CFR Part 279. The federal rule states: “Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.” The commission agrees that the federal rule could easily be interpreted to mean that used oil must be stored in tanks and containers regulated under 40 CFR Parts 264 or 265. However, in a subsequent preamble changing the first version of the federal rule (Fed Reg 26422, May 3, 1992) and subsequent training and guidance, the Environmental Protection Agency (EPA) explained that the federal rule should not be interpreted to require that used oil be stored in tanks and containers regulated under 40 CFR Parts 264 or 265. That is why the commission added §324.3(2) to the state used oil rule, i.e., to explain that used oil can be stored in tanks and containers not regulated

under 40 CFR Parts 264 or 265. EPA intended only to restrict used oil storage in surface impoundments. No rule change was made in response to this comment.

On §324.3, the commenter requested that the word “hazardous” be retained in the statement:

“However, the resultant mixture cannot exhibit the (hazardous) ignitability characteristic.”

The commission agrees to retain the word “hazardous” in this rule statement. The deletion was only proposed because fewer words are generally believed to make a rule more readable. The commission does not, however, support sacrificing clarity for streamlining.

On §324.12(3), the commenter stated that the requirement for the processor to include in his analysis plan “procedures for handling a shipment of contaminated used oil” is not in the federal used oil rule and should not be included in the state rule.

The commission agrees with the commenter that this wording is not in the federal rule. However, the commission notes that this wording is derived from the preamble for the original federal rule (Fed Reg 41597, September 10, 1992) which states: “In addition, EPA believes that an analysis plan will also indicate a procedure for handling a shipment of adulterated used oil if received by a used oil processor/re-refiner facility especially when the given facility is not a co-management facility (i.e., permitted to manage hazardous waste).” The commission considers it reasonable to require that the analysis plan indicate a procedure to properly handle adulterated used oil.

However, the commission interprets that the analysis plan exemption under §324.12(3)(A)-(B), for

a facility which only processes its own used oil and uses process knowledge instead of analysis, applies to a holding company and its sister operating companies if (1) sister operating companies ship used oil to each other for processing; (2) the holding company has incorporated common policies, procedures, and sampling protocols for sister operating companies; and (3) communication takes place between the companies on their process knowledge of the oil involved. The commenter was satisfied with this interpretation and no change was made to the rule in view of this interpretation of the rule.

On §324.22, the commenter was concerned that the financial responsibility requirement exemption statement “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,” might be interpreted not to apply to geographically separate sites under the same ownership, such as substations and sister operating companies under a utility holding company. The commenter felt that the exclusion should not be geographically specific.

In discussions with the commenter, the commission agreed that the exclusion is not geographically specific and applies to used oil generated at all owned facilities of a used oil handler. With this agreement between the commission and the commenter on proper interpretation of the rule, there was no need to change the rule language in response to this comment.

SUBCHAPTER A : USED OIL RECYCLING

§§324.1-324.7, 324.11-324.16, 324.21, 324.22

STATUTORY AUTHORITY

The amended sections are adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105 which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The amended sections are also adopted under Texas Health and Safety Code Chapter 371, relating to Used Oil Collection, Management and Recycling.

§324.1. Federal Rule Adoption by Reference.

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

§324.2. Definitions.

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

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

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

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

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

(5) **Recycling** -

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

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

(C) Burning used oil for energy recovery.

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

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

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

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

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

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

§324.3. Applicability.

Applicability and exemptions from applicability will be as in 40 CFR Part 279, Subpart B, and as clarified here.

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

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Parts 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 264/265, 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 30 TAC §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 chapter (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and 30 TAC §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

§324.4. Prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

§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.

§324.6. Generators.

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

§324.7. Collection Centers.

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

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

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

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

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

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

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

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

(3) A "Used Oil Collection Center" must:

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

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

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

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

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

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

§324.11. Transporters and Transfer Facilities.

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

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

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

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

§324.12. Processors and Rerefiners.

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

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

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

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

procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

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

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

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

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

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

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

§324.14. Marketers of Used Oil Fuel.

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

§324.15. Spills.

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

§324.16. Polychlorinated Biphenyls (PCBs).

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

§324.21. Suspension or Revocation of Registration.

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

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

(7) failure to reasonably perform the used oil activities for which the registration was issued.

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

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

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

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

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested. The request must be postmarked within 20 days after a

notice of denial of registration has been sent to the last known address of the applicant. If the registration is denied, a person must not possess used oil regulated under this rule.

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

§324.22. Soil Remediation Requirements for Used Oil Handlers.

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

(b) Transporters of used oil must meet the requirements as they pertain to insurance in Chapter 37, §37.2021 of this title (relating to Financial Responsibility Requirements for Transporters of Used Oil). Also, used oil handlers subject to the requirements as they pertain to soil remediation of either subsection (c) or (d) of this section must meet the requirements 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 must, within 30 days after an increase in the active area of the facility which results in a higher financial assurance requirement, provide for increased financial assurance. Additionally, a used oil handler must, at a minimum, update its financial assurance annually to cover any increased cost due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount. The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs. Records demonstrating the size of the active area of the facility and related financial assurance are to be maintained in the facility's operating record; however, the original financial assurance mechanism must be submitted to the commission per §37.2011(c) of this title. The amount required for financial assurance is:

(1) - (4) (No change.)

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

(1) used oil handlers must:

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

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

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

(3) Used oil handler facilities must have secondary containment for all areas where used oil is stored, transferred, or otherwise handled. These areas include but are not limited to loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours. Also, the facility's used oil tanks, containers, and secondary containment must be constructed, operated, and maintained to meet the requirements of 40 Code of Federal Regulations §§264.174, 264.193(c)-(f), and 264.195(b), or to meet the following requirements:

(A) the secondary containment must be:

(i) stationary;

(ii) constructed of non earthen material (e.g., concrete);

(iii) maintained free of cracks, gaps, or holes; and

(iv) overlain or underlain with a synthetic liner at least 40 mils thick;

(B) the secondary containment must:

(i) be large enough to contain a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device; and

(ii) have at least 12 inches of freeboard or sufficient freeboard to hold the precipitation which would be collected, including any run-on or infiltration of precipitation, as a result of a 25-year, 24-hour rainfall event;

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

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

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

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

SUBCHAPTER A : USED OIL RECYCLING

§§324.8-324.10

STATUTORY AUTHORITY

The repeals are adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule. The repeals are also adopted under Texas Health and Safety Code, Chapter 371, relating to Used Oil Collection, Management and Recycling.

§324.8. Limitation of Liability.

§324.9. Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense.

§324.10. Procedures for Reimbursement of Collection Centers.