

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Subchapter A, §§324.1-324.7, 324.11-324.16, 324.21, and 324.22; and to repeal §§324.8-324.10; concerning Used Oil Recycling. The commission also proposes a complete review of Chapter 324, Subchapter A. This review is in accordance with the General Appropriations Act (Act), Article IX, §167, 75th Legislature, 1997. In addition to opening the rule for public comment, the Act requires state agencies to review and consider for re adoption rules adopted under the Administrative Procedure Act.

EXPLANATION OF PROPOSED RULES

The commission has conducted a regulatory reform review of the rule and is proposing 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sequencing; by reducing word, paragraph and sentence lengths; by eliminating unnecessary words; replacing complex or out-of-date words with simpler ones; and by any other changes that make the meaning clearer or reading easier.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” is proposed to be 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 324.1, concerning Adoption by Reference, is proposed to be amended to improve its readability and to provide a specific date of the last amendment of the federal rule, 40 Code of Federal Regulations (CFR) Part 279, Standards for the Management of Used Oil, that is adopted by reference.

Section 324.2, concerning Definitions, is proposed to be amended to improve the readability of its heading and the definitions of “Commission,” “Re-refining,” “Secondary containment,” “Sufficiently impervious to used oil,” and “Synthetic oils.” For greater clarity, a new definition for “Used oil handler” is also proposed to be added that has been derived from the existing language in §324.22(a) and Texas Health and Safety Code §371.026.

Section 324.3, concerning Applicability, is proposed to be amended to improve readability.

Section 324.4, concerning Prohibitions, is proposed to be amended to improve readability in paragraphs (1); 2(B), (C), and (F); (3), and (4).

Section 324.5, concerning Notice by Retail Dealer, is proposed to be amended by deleting subsection (a) because it repeats statutory language in Texas Health and Safety Code §371.022 and by revising subsection (b) for greater readability. Language in law does not need to be repeated in a rule.

Sections 324.6, concerning Generators, and 324.7, concerning Collection Centers, are proposed to be amended to improve readability.

Sections 324.8, 324.9, and 324.10 are proposed to be repealed because they repeat statutory language in Texas Health and Safety Code §§371.025, 371.0245, and 371.0246, respectively. Language in law does not need to be repeated in a rule.

Sections 324.11, concerning Transporters and Transfer Facilities; 324.12, concerning Processors and Rerefiners; 324.13, concerning Burners of Off-specification Used Oil for Energy Recovery; and 324.14, concerning Marketers of Used Oil Fuels are proposed to be amended to improve readability.

Section 324.15, concerning Spills, is proposed to be amended to update and clarify its requirements by cross-referencing the used oil spill requirements that were adopted in 30 TAC Chapter 327, concerning Spill Prevention and Control, just after the original adoption of Chapter 324 and by deleting the section language that is now adequately incorporated into Chapter 327. This should improve the rule's readability.

Sections 324.16, concerning Polychlorinated Biphenyls (PCBs) and 324.21, concerning Suspension or Revocation of Registration, are also proposed to be amended throughout to improve readability.

Section 324.22, concerning Financial Responsibility Technical Requirements, is proposed to be amended to change the section title to "Soil Remediation Requirements for Used Oil Handlers" and to improve overall readability and clarity.

SMALL BUSINESS ANALYSIS

The commission has reviewed the proposed 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.

FISCAL NOTE

Mr. Jeffrey Horvath, Strategic Planning and Appropriations Division, has determined that for the first five-year period the rules, as proposed, are in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government. This is because this rulemaking does not make rule requirements more or less stringent.

PUBLIC BENEFIT

Mr. Horvath has also determined that for the first five years the rules as proposed are in effect the public benefit anticipated will be greater readability and understanding of the used oil recycling rule requirements. The proposed rules will result in no increase in costs to the affected parties because this rulemaking does not make rule requirements more or less stringent. As a result, significant cost savings will not occur for any person or business, large or small.

DRAFT 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.

This rulemaking also 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 this rulemaking: 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 proposed 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 proposal 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.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by April 12, 1999, and should reference Rule Log No. 98040-324-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Hygie Reynolds at (512) 239-6825.

SUBCHAPTER A : USED OIL RECYCLING

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

STATUTORY AUTHORITY

The amended sections are proposed 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 proposed under Texas Health and Safety Code Chapter 371, relating to Used Oil Collection, Management and Recycling.

The proposed amended sections implement the Texas Health and Safety Code, Chapter 371.

§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. [Except as provided in §§324.3, 324.4, 324.6, 324.7, 324.11-324.13, of this title (relating to Applicability, Prohibitions, Generators, Collection Centers, Transporters and Transfer Facilities, Processors and Rerefiners, and Burners of Off-specification Used Oil for Energy Recovery), and subject to the changes indicated in §324.2 of this title

(relating to Definitions), the regulations contained in 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil, as amended, are adopted by reference.]

§324.2. Definitions.

Most words are as defined in 40 CFR §279.1. However, the [The] following words [and terms, when used in this chapter, shall] have these [the following] meanings:[, except when the context clearly indicates otherwise.] [Terms defined in 40 CFR §279.1 shall have the same meaning when used in this rule, except as specifically defined in this section.]

(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 [(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 [lubricants or other] petroleum products[, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing].

(7) Secondary containment - Dikes [Structures (dikes), berms, [and/or]retaining walls, and/or] or] equivalent [secondary containment systems that are]made of a material(s) that is sufficiently impervious to used oil. These structures [and capable of] contain [containing] all potential spills [and releases] of used oil from the tanks or containers, plus run-on water, until removal of the spill [the facility owner or operator can take measures to clean up the released used oil and the run-on water].

(8) Sufficiently impervious to used oil - Capable of containing all potential spills [and releases] of used oil[to soil, surface water, and ground water] from containers and tanks until removal of the spill [the facility owner or operator can take measures to clean up the released used oil].

(9) Synthetic oils - Oils not derived from crude oil. This includes[, including] those [derived] from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids [which are] used as hydraulic [fluids] or [and] heat transfer fluids[, such as those based on phosphate esters,

diphenyl oxide or alkylated benzenes]. Synthetic oils are generally used for the same purpose as crude oil derived oils[, are usually mixed and managed in the same manner,] and have [present] relatively the same level of contamination [hazard] 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.

§324.3. Applicability.

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

(1) A used oil contaminated with a [that has been determined to be] listed hazardous must be handled under [in accordance with] Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)[hazardous waste rules]. EPA Hazardous Waste Number "F002" must [shall] be used on used oil that is listed hazardous due to halogenated contaminants₂[, because the EPA has not provided a Hazardous Waste Number to properly manifest such listed hazardous waste].

(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 [full] compliance with 40 CFR Part 264/265, Subpart K. [Used oil can be stored in tanks and containers not subject to 40 CFR Part 264 or 265].

(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,[but] the resultant mixture cannot exhibit the [hazardous characteristic of]ignitability characteristic to manage it [if it is to be managed] 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[; 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[, lubricants,] or [other used oil derived] 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 [under this chapter and 40 CFR Part 279] 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 [herein].

(1) A person must [shall] 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 [endangers or damages] 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 [mixes or commingles] used oil in [with] 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[, or causes any] used oil[to be transported or otherwise handled] within the state:

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

(ii) in violation of [standards or] 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 [that introduce used oil into the environment];

(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 [statement or] representation in any [an] document [application, label, manifest, record, report, permit or other document filed, maintained or] used for [purposes of] program compliance.

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

(4) An [It is an] exception to [the application of] paragraph (2)(B) of this subsection is if the mixing or commingling of used oil with waste [that is] to be disposed of in landfills is [incident to and] the unavoidable result of the mechanical shredding of motor vehicles, appliances or other [items of scrap, used, or obsolete] metals.

§324.5. Notice by Retail Dealer.

[(a) A retail dealer who annually sells directly to the public more than 500 gallons of automotive oil annually in containers for use off-premises shall post in a prominent place a sign provided by the commission:]

[(1) informing the public that improper disposal of used oil is prohibited by law;]

[(2) informing the public that used oil filters cannot be disposed of in municipal landfills or waste going to municipal landfills;]

[(3) prominently displaying the toll-free telephone number of the state used oil information center.]

[(b)] Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087.

§324.6. Generators.

Rules [Standards] 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 [opt] to be the generator [of the used oil]. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator [where the used oil is removed] will remain the generator.

§324.7. Collection Centers.

Rules [Standards] 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 [herein]. All appropriate businesses and government agencies are encouraged to serve as “do-it-yourselfer used oil collection centers” or “used oil collection centers”. Collection [All collection] centers collecting used oil from households will be publicized by the commission.

(1) A “Do-it-yourselfer Used Oil Collection Center” [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] [registration requirements:]

(B) [(i)] must register each odd numbered year [biennially], [by] no later than January 25 following the close of the [biennial] year, with the Texas Natural Resource

Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form [provided by the commission]. Registrations [will] expire on December 31 in even numbered years. [Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year.] New collection centers must [shall] register within 30 days of initial operation;

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

(D) [(C)] [must] notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of [the cessation of accepting] household used oil[from private citizens]; and

(E) [(D)] [shall] annually report the amount of household used oil collected by January 25 of each year on a commission form [provided by the commission];

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

(3) [(2)]A “Used [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)] [registration requirements:]

(B) [(i)] [must] register each odd numbered year [biennially, by] no later than January 25 following the close of the [biennial] year, with the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087 utilizing a commission form [provided by the commission]. Registrations [will] expire on December 31 in even numbered years. [Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year.] New collection centers must [shall] register within 30 days of initial operation;

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

(D) [(C)] [must] notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of [the cessation of accepting] household used oil [from private citizens]; and

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

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

§324.11. Transporters and Transfer Facilities.

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

(1) Underground storage tanks (USTs). Underground storage tanks containing [that contain] used oil are subject to [the UST standards in 30 TAC] Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and [in addition to those in] 40 CFR Part 279.

(2) Registration. [Transporters must register with the United States Environmental Protection Agency (EPA) and the commission one time on their used oil activities.] 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 commission form [provided by the commission]. Mail registration [Registration] forms [should be mailed] to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087.

§324.12. Processors and Rerefiners.

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

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

(2) Registration. [Processors and rerefiners must register with the EPA and the commission one time on their used oil activities.] 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 commission form [provided by the commission]. Mail registration [Registration] forms [should be mailed] to the Texas Natural Resource Conservation Commission, Used Oil Recycling

Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan. The [which a] facility will follow the plan when [performing] sampling and analyzing [analysis], keeping records, and [when] 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), and] procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it: [that only processes its own used oil and uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements need not prepare an analysis plan.]

(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 [processor/rerefiner] biennial report required by 40 CFR §279.57(b) covering each odd numbered year must [shall] 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 [; if] not, you [the processor/rerefiner] must [shall] submit the report by January 25 of the following even

numbered year. The information must [shall] be entered on a commission[-prescribed] form [and forwarded to the commission]. Mail the report [form] to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087.

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

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

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

(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.] 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 commission form [provided by the commission]. Mail registration [Registration] forms [should be mailed] to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], P.O. Box 13087, Austin, Texas 78711-3087.

§324.14. Marketers of Used Oil Fuel.

Rules [Standards] for marketers of used oil which will be burned for energy recovery are [shall be as] in 40 CFR Part 279, particularly Subpart H, and this section [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.] 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 commission form [provided by the commission]. Mail registration [Registration] forms [should be mailed] to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program [Municipal Solid Waste Division, Management Section, MC 125], 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) (relating to Reportable Quantities). [Whenever there is a catastrophic release or discharge of used oil and used oil reaches the environment, corrective measures must be immediately taken by the responsible person to adequately protect human health and the environment from potential damages. A spill of used oil in an amount sufficient to cause a sheen on water or a spill of automotive engine used oil or a mixture of automotive used oil and other used oil of 25 gallons or more that goes into the

environment at a do-it-yourselfer used oil collection center should be reported to the commission as soon as possible and not later than 24 hours after discovery. (See 40 CFR §279.43(c) for discharges during transport.) A spill or overflow of used oil at an underground storage tank that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water shall be reported and handled as in 30 TAC Chapter 334, §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills). All other used oil spills must be reported in accordance with other applicable commission requirements and agreements. The responsible person may notify the commission in any reasonable manner including by telephone, in person, or by any other method approved by the commission.]

[(1) During normal business hours, the responsible person may notify the regional office for the commission region in which the discharge or spill occurred; or]

[(2) After normal business hours, the responsible person may call the commission Emergency Response Unit 24-hour number at (512) 239-2507 or the State toll-free Spill Reporting Hotline at (800) 832-8224.]

§324.16. Polychlorinated Biphenyls (PCBs).

Per [Pursuant to] 40 CFR 279 (Table 1), the rules [applicable standards] for [the] burning [of] used oil containing PCBs shall be as [set out] 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 [maintained or received by the registrant], except [outside of] justified and documented corrections;

(3) delivery of used oil to an unregistered entity [not registered with the commission];

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit required [annual] reports [as required];

(6) failure to maintain financial assurance [as required]; 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[; however], depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased.

A registration is revoked automatically on [upon] a second suspension. If the registration is suspended or revoked, a facility must [shall] not possess or accept used oil regulated under this rule.

(c) The holder of a revoked used oil registration [that has been revoked by the commission] may reapply for registration [pursuant to this rule as if applying for the first time,] after a period of at least one year [from the date of revocation]. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) The procedure for an appeal [Appeal] of a suspension or revocation of registration is [procedures are as follows]:

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing [by the applicant] by certified mail, return receipt requested. The request must be [, provided the request is] postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent [from the executive director] 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 [, provided the request is] postmarked within 20 days after a notice of denial of registration [suspension or revocation] has been sent [from the executive director] to the last known address of the applicant [listed on the application]. If the registration is denied, a person must [shall] 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) [the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992), the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapters 361 and 371 (Vernon 1992), and the rules of the commission].

§324.22. Soil Remediation Requirements for Used Oil Handlers. [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) Transporters [Within 90 days after the effective date of this rule, transporters] of used oil must meet the [financial responsibility] requirements as they pertain to insurance [provided] in [30 Texas Administrative Code] Chapter 37, §37.2021 of this title (relating to Financial Responsibility Requirements for Transporters of Used Oil). Also, [and]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 [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 facility's operating record [of the facility]; however, the original financial assurance mechanism must be submitted to the commission per §37.2011(c) of this title. [(Also, see 30 TAC §37.2011(c) of this title (relating to Financial Responsibility Requirements for Used Oil Handlers.))] The [specified] amount required for [which] financial assurance is [must be provided is as follows]:

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

(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 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 [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 have [be provided with] secondary containment for all areas where used oil is stored, transferred, or otherwise handled. These areas include [, including] 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,[; and] the facility's used oil tanks, containers, and secondary containment must be constructed, operated, and maintained to meet [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 meet [conform to] the following requirements:

(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;]

(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: [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 either 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;]

(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 [the collected material is] 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 [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, but [except] the [specified] amount of [for which] financial assurance [must be] 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 repealed sections are proposed 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 repealed sections are also proposed under Texas Health and Safety Code, Chapter 371, relating to Used Oil Collection, Management and Recycling.

The repeal of the sections implements Texas Health and Safety Code, Chapter 371.

§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.