

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of the current §§328.21-328.30, concerning Used Oil Filter Collection, Management and Recycling, and proposes new §§328.21-328.28, concerning Used Oil Filter Management and Recycling.

EXPLANATION OF PROPOSED RULE

The purpose of this rulemaking is to implement House Bill (HB) 2619, 76th Legislature, 1999. This bill amended Chapter 371 of the Texas Health and Safety Code (H&SC) by adding a new Subchapter E, titled “Filter Storage, Transportation, or Processing,” to provide state statutory authority for commission rules on used oil filters. Prior to this legislation, the commission already had rules concerning used oil filter collection, management, and recycling. HB 2619 reduces transporter/transfer facility, storage facility, and processor registration and reporting requirements from annual to biennial; increases storage time at a storage facility from 90 to 120 days; and authorizes the commission to grant two-year variances on on-site storage volume limits and storage period limits. To streamline the rules so as not to have more stringent or expansive requirements than the corresponding statutory provisions, the proposal would also repeal essentially all existing rule requirements not supported by the new statute, such as: the storage facility requirement to have secondary containment; the transporter requirement to have spill kits; the processing standards; the requirement for a processor to determine the environmental risk associated with the storage of materials resulting from the processing of used oil filters; all collection center requirements; and all container labeling requirements, except for those applying to processors. However, the allowance for a person to transport up to two 55-gallon containers of filters or the volumetric equivalent without registering as a transporter is proposed to be carried over into the new rule from repealed §328.25(b). Because HB 2619 changes existing used oil

filter requirements extensively, the commission proposes to repeal the existing Chapter 328, Subchapter D and replace it with a new version of this subchapter.

Proposed new §328.21, relating to Definitions, contains the following terms defined in new H&SC, §371.101: “bill of lading,” “bulk filter container,” “component parts,” “do-it-yourselfer,” “generator,” “process,” “processor,” “store,” “storage facility,” “transporter,” and “used oil filter.”

Proposed new §328.22, relating to Applicability, contains the same applicability as in new H&SC, §371.102, except that wording has been added that the filters first have to be determined to be nonhazardous or exempt from hazardous waste regulation per 40 Code of Federal Regulations (CFR) §261.4(b)(13) before the filters are subject to these nonhazardous waste requirements. H&SC, §371.102 and proposed new §328.22 state that the filter requirements are applicable to a used oil filter only if it has not been separated into its component parts or burned for steel or energy recovery; and that the requirements are not applicable to industrial generators registered with the commission as an industrial or hazardous waste facility or industrial generators under the waste management authority of another state agency.

Proposed new §328.23, relating to General Requirements, contains the same requirements as in new H&SC, §371.103. This new proposed section prohibits the storage, processing, or disposal of a used oil filter in a manner that results in a discharge of oil into soil or water; prohibits placing a filter on land unless the filter is in a container; prohibits owners or operators of landfills permitted by the commission from intentionally or knowingly accepting used oil filters for disposal or placing used oil

filters in their landfills; and specifies that a bulk filter container must not leak and must be securely closed, waterproof, and in good condition.

Proposed new 328.24, relating to Registration and Reporting, includes requirements from H&SC, §371.104, such as a requirement that a used oil filter transporter, storage facility, or processor must register with the commission, renew registration biennially, and report biennially. Also, storage volume is limited to six 55-gallon drums or one bulk filter container unless the person is registered with the commission as a storage facility. The following additional registration and reporting requirements are included in the proposed section that are not specifically included under H&SC, §371.104: the specific submission date; the need to request a commission form; the mailing address; a phone number to call for more information; and an Internet address where forms can be obtained. Also, the allowance for a person to transport up to two 55-gallon containers of filters or the volumetric equivalent without registering as a transporter is proposed to be added as subsection (d) and is carried over from repealed §328.25(b). In addition, subsection (e) contains the general financial responsibility language derived from repealed §328.4(c) that implements new H&SC, §371.109 on financial responsibility. This bill section requires a registrant to demonstrate financial responsibility. The commission's intent in this rule subsection is to implement the bill's financial responsibility requirement with rule language that is no more stringent than the current rules.

Proposed new §328.25, relating to Shipment Records, contains the same requirements as in new H&SC, §371.105, except that wording is carried over from repealed §328.25(a)(4) on the bill of lading content and processing. H&SC, §371.105 and proposed §328.25 require that a bill of lading

accompany each shipment; a copy be maintained by the generator, transporter, storage facility, and processor for three years; and copies of the bills of lading be made available for commission inspection.

Proposed new §328.26, relating to Limitations on Storage, contains the same requirements as in new H&SC, §371.106. These requirements include a 120-day storage time limit on storage facilities, a ten-day storage time limit on transporters, a 30-day storage time limit on processors before filters are processed, and a processor requirement to label each storage container “Used Oil Filters.”

Proposed new §328.27, relating to Variances, contains the same authorization for the commission to approve storage volume limit and storage period limit variances as in new H&SC, §371.106, except that subsection (b) adds more detail on factors to be considered, including the risk to human health and the environment, variance request content, and variance approval/disapproval. H&SC, §371.106 and proposed §328.27(c) also limit the duration of a commission variance to no longer than two years.

Proposed new §328.28, relating to Spill Prevention and Control, contains the same requirement as in new H&SC, §371.108. That requirement is for each storage facility or processor to develop a plan to prevent and respond to spills in accordance with Title 40 CFR, Part 112.

FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rulemaking is in effect there will be no significant fiscal implications for units of state and local government as a result of administration or enforcement of the

proposed rulemaking. The rulemaking would repeal the existing Chapter 328, Subchapter D, establish a new Subchapter D, and implement provisions contained in HB 2619, 76th Legislature, 1999, an act relating to the collection and management of used oil filters; providing civil and administrative penalties.

The proposed rulemaking would establish procedures for used oil filter collection, management, transport, storage, and processing. In addition, the proposed rulemaking would reduce registration and reporting requirements for transporter/transfer facilities, storage facilities, and processors; increase storage time at storage facilities from 90 to 120 days; and authorize the commission to grant two-year variances on storage volume and storage time limits. In addition, the proposed rulemaking repeals the existing requirements in Chapter 328, Subchapter D, such as: 1. storage facility requirements to have secondary containment; 2. transporter requirements to have spill kits; 3. processing standards; 4. the requirement for a processor to determine environmental risk associated with the storage of materials resulting from the processing of used oil filters; 5. all collection center requirements and; 6. all container labeling requirements, except for processors.

Non-household used oil generators, transporters, transfer facilities, storage facilities, and commercial processors will be affected by the proposed rulemaking as well as interested members of the general public.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed rulemaking to Chapter 328 are in effect the public benefit anticipated from enforcement of and compliance with the proposed new sections will be reduced regulatory requirements, anticipated increased recycling of used oil filters, increased protection of the environment from oil contamination, and conservation of municipal landfill space.

The purpose of the proposed rulemaking is to establish procedures for the management, transport, storage, and processing of used oil filters as specified in HB 2619, to encourage used oil filter recycling, and to reduce oil filter handler costs by reducing certain existing regulatory requirements. Specifically, the proposed rulemaking would reduce registration and reporting requirements for transporter/transfer facilities, storage facilities, and processors; increase storage time at storage facilities from 90 to 120 days; and authorize the commission to grant two-year variances on storage volume and storage period limits. In addition, significant regulatory requirements would be repealed as noted in the FISCAL NOTE section of this preamble. Since the proposed rulemaking reduces or repeals some existing regulatory requirements, it is anticipated that there will be no adverse economic effects to any person required to comply with the proposed new sections in Chapter 328. Because significant existing regulatory requirements have been either reduced or repealed, the proposed rulemaking may be considered to have potentially positive economic effects which may encourage increased recycling of used oil filters.

SMALL BUSINESS ANALYSIS

No significant additional costs are anticipated to small businesses as a result of complying with the proposed rulemaking. It will establish new procedures for the management, transport, storage, and processing of used oil filters while significantly reducing or eliminating existing regulatory requirements for this program. Specifically, registration and reporting frequency has been reduced from annually to biennially; storage time at a storage facility has been extended from 90 to 120 days; the commission is authorized to grant two-year variances on storage volume and storage period limits; and significant regulatory requirements have been repealed. The requirement for transporters, storage facilities, and processors to provide evidence of financial responsibility is continued in the proposed rulemaking as specified in HB 2619 but is not more stringent than current rules. Because significant existing regulatory requirements have been either reduced or repealed, the proposed rulemaking may be considered to have potentially positive economic effects for small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the proposed rulemaking either reduces or repeals significant regulatory requirements without adding to existing requirements, it is not

anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, the proposed rulemaking is not a major environmental rule because it does not meet any of the four applicability requirements of a “major environmental rule.” Specifically, the proposed changes will not impose any significant additional requirements not already required by state or federal law and the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the proposed rulemaking is not proposed under the general powers of the agency but is proposed to comply with the requirements of HB 2619.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to implement HB 2619, 76th Legislature, 1999. This bill amended Chapter 371 of the H&SC by adding a new Subchapter E, titled Filter Storage, Transportation, or Processing, to provide state statutory authority for commission rules on used oil filter recycling and to reduce existing rule requirements. The rules will substantially advance this specific purpose by repealing the existing Chapter 328, Subchapter D, Used Oil Filter Collection, Management, and Recycling, §§328.21-328.30 and replacing it with new Chapter 328, Subchapter D, Used Oil Filter Management and Recycling, §§328.21-328.28. Promulgation and enforcement of these rules will not burden private real property because private real property is not the subject of these rules and the proposed rulemaking only reduces existing used oil filter rule requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by October 25, 1999, and should reference Rule Log No. 99039-328-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 Jamie Robinson, Registration and Evaluation Division, at (512) 239-3619 or Hygie Reynolds, Policy and Regulations Division, at (512) 239-6825.

STATUTORY AUTHORITY

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

Subchapter E, Filter Storage, Transportation, or Processing, provides the commission with the authority to adopt rules to govern used oil filters.

The proposed repeals implement H&SC, Chapter 371, Subchapter E.

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

§§328.21 - 328.30

§328.21. Applicability.

§328.22. Definitions.

§328.23. General Requirements.

§328.24. Storage Facilities.

§328.25. Transportation of Used Oil Filters.

§328.26. Processors.

§328.27. Public Used Oil Filter Collection Centers and Used Oil Filter Generators.

§328.28. Shipping Documentation.

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

SUBCHAPTER D : USED OIL FILTER MANAGEMENT AND RECYCLING

§§328.21-328.28

STATUTORY AUTHORITY

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

The proposed new sections implement H&SC, Chapter 371, Subchapter E.

§328.21. Definitions.

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

- (1) **Bill of lading** - A shipping document that confirms receipt of a shipment.
- (2) **Bulk filter container** - A portable device that:
 - (A) is part of an integrated delivery and retrieval system; and
 - (B) has a capacity greater than 330 gallons.

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

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

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

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

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

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

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

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

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

not after, the filter has been burned for steel recovery or energy recovery or it is separated into its component parts.

§328.22. Applicability.

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

(1) separated into its component parts; or

(2) burned for:

(A) steel recovery; or

(B) energy recovery.

(b) This subchapter does not apply to:

(1) an industrial generator that is:

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

or

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

(2) a do-it-yourselfer.

§328.23. General Requirements.

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

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

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

(1) must not leak; and

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

(d) A used oil filter may not be intentionally or knowingly placed in or accepted for disposal in

a landfill permitted by the commission.

§328.24. Registration and Reporting.

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

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

(1) that in the aggregate have a volume greater than six 55-gallon drums; or

(2) in more than one bulk filter container.

(c) A registered transporter, storage facility, or processor shall:

(1) renew the registration after each two-year period by January 25th of the following year. The information must be entered on a commission form.

(2) report to the commission after each two-year period by January 25th of the following year the number of used oil filters the person transported, stored, or processed in the preceding two years. The information must be entered on a commission form. Mail the report to the Texas Natural Resource Conservation Commission, Used Oil Filter Recycling Program, P. O. Box 13087, Austin, Texas 78711-3087. For further information, call 1-888-TX CRUDE or for forms and publications use Internet address: <http://www.tnrcc.state.tx.us>.

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

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

§328.25. Shipment Records.

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

must contain the date of such transfer, the name and physical address of the shipping facility, the name and address of the receiving facility, and the name and address of the transporter, the quantity of used oil filters removed and any other information which the commission may deem necessary to protect the environmental quality of the State of Texas. The shipping facility must verify the information within the bill of lading, and demonstrate concurrence by the signature of an authorized representative.

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

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

§328.26. Limitations on Storage.

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

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

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

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

§328.27. Variances.

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

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

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

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

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

§328.28. Spill Prevention and Control.

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