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Dan Pearson, *Executive Director*



amendment to
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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

February 7, 1997

Ms. Catherine Carter
Multi-Media Planning and Permitting Division
Environmental Protection Agency - Region VI
(MC 6PD-G)
Suite 1200
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Ms. Carter:

The Texas Natural Resource Conservation Commission (TNRCC) is submitting the enclosed amended pages 1 and 3 for the Attorney General's statement for final authorization for used oil pursuant to seeking delegation of 40 Code of Federal Regulations Part 279. An Attorney General's statement was submitted October 28, 1996 and clarifications (shown in bold italics) were requested by Ms. Alima Patterson in January 1997.

Also enclosed are amended pages 3, 4, 6 and 7 for the *Consolidated Checklist for the Recycled Used Oil Management Standards as of June 30, 1995*. Per the request of the Attorney General, these pages were amended to add clarifying footnotes.

If you have any questions, please feel free to call me at (512) 239-6008.

Sincerely,

A handwritten signature in cursive script that reads "Debra M. Bohl".

Debra M. Bohl
Team Leader
Used Oil & Used Oil Filter Recycling Program

Enclosures

cc: Dan Pearson, Executive Director, TNRCC
Barry Williams, Deputy Director, Office of Waste Management, TNRCC
Bryan Dixon, Director, Municipal Solid Waste Division, TNRCC
Latrice Hertzler, Manager, Technical Support & Used Oil Programs Section, TNRCC
Carol Richards, Used Oil Program Specialist, TNRCC (with enclosure)
Vic Ramirez, Staff Attorney, Legal Division, TNRCC (with enclosure)
Angela Stepherson, Staff Attorney, Legal Division, TNRCC
Hal Ray, State of Texas, Office of the Attorney General (with enclosure)

**ATTORNEY GENERAL'S STATEMENT FOR FINAL
AUTHORIZATION FOR USED OIL**

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC §6901 *et seq.*), and 40 CFR Part 271 that in my opinion the laws of the State of Texas provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the Texas Natural Resource Conservation Commission. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now. These authorities and this certification supplement the previously certified authorities described in my or my predecessor's certifications of December 4, 1989 (non-HSWA III and HSWA I), November 30, 1992 (non-HSWA VI), March 8, 1993 (non-HSWA V), and June 21, 1993 (RCRA I).

The checklists for which Texas is seeking authorization are Checklists 112, 122, and 130.

**STANDARDS FOR THE MANAGEMENT OF WASTE FUELS AND USED OIL AND
FOR THE BURNING OF THESE MATERIALS IN BOILERS AND INDUSTRIAL
FURNACES**

State statutes and regulations provide used oil management standards for used oil generators, transporters, processors, re-refiners, burners, and marketers as indicated in Revision Checklists 112, 122 and 130.

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Parts 260, 261, 266 and 279, as amended September 10, 1992 (57 Fed. Reg. 41566), May 3, 1993 (58 Fed. Reg. 26420) and March 4, 1994 (58 Fed. Reg. 10550).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Texas Used Oil Collection, Management, and Recycling Act, Chapter 371, Texas Health & Safety Code Ann. (Vernon Supp. 1992), effective September 1, 1995, as amended (H&SC).

Title 30 TAC Chapter 324, §§324.1-324.21, effective March 6, 1996, §335.1, §335.6(j), §335.24(b), §335.24(c), §335.41(g), §335.78(j), §335.221(b)(1), §335.504(1), §335.504(4), effective as amended March 6, 1996.

30 TAC §324.1, effective March 6, 1996; equivalent to federal requirements.

30 TAC §324.2, effective March 6, 1996; equivalent to federal requirements.

30 TAC §324.3, effective March 6, 1996; equivalent to federal requirements.

30 TAC §324.4, effective March 6, 1996; equivalent to federal requirements.

Code Ann. §5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt any rules it deems necessary to carry out its power and duties; (2) Tex. Health & Safety Code §361.024 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, which authorizes TNRCC to adopt rules “to establish minimum standards of operation for the management and control of solid waste”; and (3) Tex. Health & Safety Code §361.078 (Vernon 1992), effective September 1, 1989, which specifically recognizes the TNRCC’s authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization.

Following are sections of the Texas Used Oil Collection, Management, and Recycling Act in 30 TAC Chapter 324, Subchapter A that are more stringent than the federal program for the management of used oil in 40 CFR Part 279.

RULE: 30 TAC §324.4(2)

Prohibitions

The use of used oil as a dust suppressant is prohibited, except in States listed in 279.82(c).

Federal Authority: 40 CFR §§ 279.12(b) and 279.82

Remarks: Texas Health and Safety Code (H&SC) Section 371.041(b)(4) expressly prohibits the intentional application of used oil to roads or land for dust suppression without exception.

RULE: 30 TAC §324.7

Do-it-Yourselfer Used Oil Collection Centers

This section applies to owner or operators of all do-it-yourselfer (DIY) used oil collection centers. The definition of a DIY used oil collection center found in 40 CFR § 279.30(a) is incorporated into TNRCC regulations by reference.

Federal Authority: 40 CFR § 279.30(a)

Remarks: H&SC §371.003(5) allows a DIY used oil collection center that is also a used oil generator to commingle household DIY oil with the used oil it generates.

Do-it-Yourselfer Used Oil Collection Centers

Owners or operators of DIY used oil collection centers must comply with the generator standards in Subpart C of Part 279.

Federal Authority: 40 CFR § 279.30(b)

Remarks: H&SC §371.024(b)(1) requires a DIY used oil collection center to register biennially. H&SC §371.024 (b)(2) requires a DIY used oil collection center to report annually the amount of household used oil collected.

CONSOLIDATED CHECKLIST: Recycled Used Oil Management Standards
as of June 30, 1995 (cont'd)

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation; rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units	112	261.3(a)(2)(v)(B)	335.221(b)(1)	X			

EXCLUSIONS

1,2 261.4(b)(15) redesignated as (b)(13)	122	261.4(b)(13)	335.504(1)	X			
1 add paragraph excluding from regulation used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products	122	261.4(b)(14)	335.504(1)	X			
**2 1,2 redesignate as 261.4(b)(13)	122	261.4(b)(15)	335.504(1)	X			

SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS

replace "subpart E of part 266" with "part 279"	112,122	261.5(j)	335.78(j)	X			
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**1 These citations both refer to used oil that is characteristically hazardous by use and not by mixing. CUO_95J.16 - Revised: 6/30/95
Printed: 3/13/96

**2 Renumbering of citations in the final rule redesignated 261.4(b)(15) as 261.4(b)(13)

**CONSOLIDATED CHECKLIST: Recycled Used Oil Management Standards
as of June 30, 1995 (cont'd)**

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
REQUIREMENTS FOR RECYCLABLE MATERIALS							
remove 261.6(a)(2)(iii); redesignate 261.6(a)(2)(iv) and (v) as 261.6(a)(2)(iii) and (iv)	112	261.6(a)(2)(iii)	335.24(b)	X			
		261.6(a)(2)(iv)	335.24(b)	X			
		261.6(a)(2)(v)					
remove 261.6(a)(3)(iii); redesignate 261.6(a)(3)(iv)-(viii) as 261.6(a)(3)(iii)-(vii)	112	261.6(a)(3)(iii)	335.24(c)	X			
		261.6(a)(3)(iv)	335.24(c)	X			
		261.6(a)(3)(v)	335.24(c)	X			
		261.6(a)(3)(vi)					
		261.6(a)(3)(vii)					
		261.6(a)(3)(viii)					
used oil that is recycled and is hazardous waste solely because it exhibits a characteristic is not subject to Parts 260-268 but is regulated under Part 279; definition of used oil that is recycled	112	261.6(a)(4)	335.6(j)	X			

*3 Due to renumbering and redesignation of citations that has occurred since development of the checklist, 261.6(a)(2)(v), 261.6(a)(3)(vi), 261.6(a)(3)(vii) and 261.6(a)(3)(viii) do not exist in the current chapter. References to 335.24(b) and 335.24(c) pertain to sections of 30 TAC Chapter 335 that were modified to delete references to used oil that were moved from Chapter 335 to 30 TAC Chapter 324.

CONSOLIDATED CHECKLIST: Recycled Used Oil Management Standards
as of June 30, 1995 (cont'd)

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

**PART 265 - INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

SUBPART A - GENERAL

PURPOSE, SCOPE, AND APPLICABILITY

3 change "owner and operator" to "owner or operator"; change "261.6(a)(2) and (3)" to "261.6(a)(2), (3), and (4)"; change "that requirements of this part" to "they"; add "part 279 or" before "subparts"; change "subparts C, F, G or H" to "subparts C, D, F or G" (note, this last change appears to be an error; see Endnote 3 for this checklist)	122	265.1(c)(6)	335.41(g)	X			
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**PART 266 - STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND
SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES**

SUBPART E - USED OIL BURNED FOR ENERGY RECOVERY

**4

remove and reserve Subpart E	112	266.40-266.44	335.24(c) 335.221(b) (1)	X			
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SUBPART H - HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

APPLICABILITY

substitute "part 279 of this chapter" for "subpart E of part 266 rather than this subpart"	112	266.100(b)(1)	335.221(b) (1)	X			
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**4 Subpart E of Part 266 (Sections 40-44) was removed because the information in the subpart was moved to Part 279. Title 30 TAC Chapter 335, Sections 24(c) and 221(b)(1), were removed or modified since they contained references to Subpart E of Part 266.

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CONSOLIDATED CHECKLIST: Recycled Used Oil Management Standards
as of June 30, 1995 (cont'd)

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

PART 279 - STANDARDS FOR THE MANAGEMENT OF USED OIL

SUBPART A - DEFINITIONS

DEFINITIONS

terms defined in sections 260.10, 261.1 and 280.12 have same meanings in Part 279	112	279.1	324.2	X			
"aboveground tank"	112	279.1	324.2	X			
"container"	112	279.1	324.2	X			
"do-it-yourselfer used oil collection center"	112	279.1	324.2	X			
"existing tank"	112	279.1	324.2	X			
"household 'do-it-yourselfer' used oil"	112	279.1	324.2	X			
"household 'do-it-yourselfer' used oil generator"	112	279.1	324.2	X			
"new tank"	112	279.1	324.2	X			
"petroleum refining facility"	130	279.1	324.2	X			
"processing"	112	279.1	324.2	X			
"re-refining distillation bottoms"	112	279.1	324.2	X			
"tank"	112	279.1	324.2	X			
♦ "used oil"	112,122	279.1	324.2	X			
"used oil aggregation point"	112	279.1	324.2	X			
♦ "used oil burner"	112	279.1	324.2	X			

**5 These definitions were adopted from 40 CFR Part 279 by reference. Terms in statute were not repeated in 30 TAC Chapter 324. The word "rule" in 30 TAC Chapter 324, Section 2 means "chapter".