

US EPA ARCHIVE DOCUMENT

CL 112, 122 & 130
Signed & dated
10/16/96

**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 U.S.C. §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, §335.41, §335.78, §335.221, and §335.504, 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.

30 TAC §324.4(2)(D), effective March 6, 1996; more stringent than the Federal requirements stated in §§279.12(b), 279.82(a), 279.82(b) and 279.82(c).

30 TAC §324.6, effective March 6, 1996; equivalent to federal requirements.

30 TAC §324.7, effective March 6, 1996; equivalent to federal requirements except that it is more stringent than the federal requirements stated in §§279.30(a), 279.30(b) and 279.31(b)(2).

30 TAC §324.11, effective March 6, 1996; equivalent to federal requirements except that 30 TAC §324.11(2), effective March 6, 1996, is more stringent than the federal requirements stated in §§279.42(a), 279.42(b), 279.42(b)(1), 279.42(b)(2), 279.42(b)(2)(i) - (vii).

30 TAC §324.12, effective March 6, 1996; equivalent to federal requirements except that §§324.12(2) is more stringent than the federal requirements stated in §§279.51(a), 279.51(b), 279.51(b)(1), 279.51(b)(2)(i) - (vi).

30 TAC §324.12, effective March 6, 1996; equivalent to federal requirements except that §§324.12(2) is more stringent than the federal requirements stated in §§279.51(a), 279.51(b), 279.51(b)(1), 279.51(b)(2)(i) - (vi); and that §324.12(4) is more stringent than the federal requirements stated in §§279.57(b) and 279.57(b)(1)-(3).

30 TAC §324.13, effective March 6, 1996; equivalent to federal requirements except that §324.13(2) is more stringent than the federal requirements stated in §§279.62(a), 279.62(b), 279.62(b)(1), 279.62(b)(2)(i) - (vi).

30 TAC §324.14, effective March 6, 1996; equivalent to federal requirements except that §324.14 is more stringent than the federal requirements stated in §§279.73(a), 279.73(b), 279.73(b)(1), 279.73(b)(2)(i) - (v).

Remarks of the Attorney General

The Texas Used Oil Collection, Management, and Recycling Act requires that the used oil program be consistent with, but not more stringent than, the federal program for the management of used oil under 40 C.F.R. Part 279, unless otherwise required by state or federal law. The Texas Used Oil Program promulgated in 30 TAC Chapter 324, Subchapter A, is consistent with the federal program with the exception of those sections indicated in the EPA Authorization checklist and discussed below. In those instances, the State's rules reflect the requirements in the State statutes.

The State adopts by reference 40 CFR Part 279, except where required by State statute to be more stringent. TNRCC has authority to incorporate federal rules by reference and to adopt hazardous waste rules in general pursuant to the following statutory provisions: (1) Tex. Water

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 powers 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.

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 Part 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 used 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.

Used Oil Collection Centers

Used oil collection centers must be registered/licensed/permited/recognized by a state/county/municipal government to manage used oil.

Federal Authority: 40 CFR §279.31(b)(2)

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

RULE: 30 TAC §324.11(2)**Notification**

Used oil transporters who have not previously done so must comply with RCRA §3010 notification requirements and obtain an EPA ID number. Standards for used oil transporters and transfer facilities found in 40 CFR Part 279 are incorporated into TNRCC regulations by reference.

Federal Authority: 40 CFR §279.42(a)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

Notification

Used oil transporters without an EPA ID number may obtain one by submitting either: a completed EPA Form 8700-12; or a letter requesting an EPA ID number. The requirements for registering for an EPA ID number by letter found in 40 CFR §279.42(b) are incorporated into TNRCC regulations by reference.

Federal Authority: 40 CFR §279.42(b)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

RULE: 30 TAC §324.12

Notification

Used oil processors/re-refiners who have not previously done so must comply with RCRA §3010 notification requirements and obtain an EPA ID number.

Federal Authority: 40 CFR §279.51(a)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

Notification

Used oil processors/re-refiners without an EPA ID number may obtain one by submitting either: a completed EPA Form 8700-12; or a letter requesting an EPA ID number. The requirements for registering for an EPA ID number by letter found in 40 CFR §279.51(b) are incorporated by reference into TNRCC regulations.

Federal Authority: 40 CFR §279.51(b)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

Operating Record and Reporting

A processor/re-refiner must send a letter by March 1 of each even-numbered year to the Regional Administrator on used oil activities during the previous calendar year. The report must include the EPA number, name and address of the processor/re-refiner, the calendar year covered by the report, the quantities of used oil accepted, and the manner in which the used oil is processed/re-refined.

Federal Authority: 40 CFR §279.57(b)

Remarks: H&SC §371.026(a)(2) requires a used oil handler other than a generator to report annually to the TNRCC by January 25 of each year the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil.

RULE: 30 TAC §324.13

Notification

Used oil burners who have not previously done so must comply with RCRA §3010 notification requirements and obtain an EPA ID number.

Federal Authority: 40 CFR §279.62(a)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

Notification

Used oil burners without an EPA ID number may obtain one by submitting either: a completed EPA Form 8700-12; or a letter requesting an EPA ID number; and what the letter should include.

Federal Authority: 40 CFR §279.62(b)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

RULE: 30 TAC §324.14

Notification

Used oil fuel marketers who have not previously done so must comply with RCRA §3010 notification requirements and obtain an EPA ID number.

Federal Authority: 40 CFR §279.73(a)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

Notification

Used oil fuel marketers without an EPA ID number may obtain one by submitting either: a completed EPA Form 8700-12; or a letter requesting an EPA ID number. The requirements for registering for an EPA ID number by letter found in 40 CFR §279.73(b) are incorporated into TNRCC regulations by reference.

Federal Authority: 40 CFR §279.73(b)

Remarks: H&SC §371.026(a)(1) requires a used oil handler other than a generator to register biennially with the State of Texas.

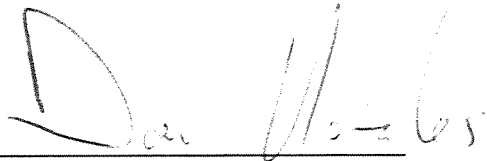
MEMORANDUM OF AGREEMENT (MOA)

- (1) The State has the authority to enter into the agreement;
- (2) The State has the authority to carry out the agreement; and
- (3) No applicable State statute (including the State Administrative Procedure Act) requires that the procedure be promulgated as a rule in order to be binding.

Date

10/16/96

By



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