

US EPA ARCHIVE DOCUMENT

Vernon's
TEXAS CODES
ANNOTATED

HEALTH AND SAFETY CODE

Sections 365.001 to 480

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ST. PAUL, MINN.

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3 V.T.C.A. Health and Safety
1st Reprint—1994



TEXT IS PRINTED ON 10% POST
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CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

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SUBCHAPTER A. GENERAL PROVISIONS

§ 371.001. Short Title

This chapter may be cited as the Used Oil Collection, Management, and Recycling Act.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

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Historical and Statutory Notes

Section 23(c) of Acts 1991, 72nd Leg., ch. 303, eff. Sept. 1, 1991, as amended by § 1.0261 of Acts 1991, 72nd Leg., 1st C.S., ch. 3, eff. Aug. 26, 1991, provides:

"Not later than January 1, 1992, the Texas Board of Health and the comptroller of public

accounts shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by Chapter 371, Health and Safety Code, as added by this Act."

§ 371.002. Findings

The legislature finds that:

(1) when properly managed, used oil is a valuable energy resource, the reuse of which may make a significant contribution toward energy efficiency and conservation;

(2) recycling used oil to produce fuel requires significantly less energy than is needed to refine crude oil into fuel;

(3) millions of gallons of used oil generated each year by private citizens in the state are not available for recycling because of improper disposal practices and the lack of collection facilities;

(4) although there is a reliable system for the collection and recycling of used oil generated by business and industry, private citizens have only limited access to that system and often dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface waters or groundwaters, watercourses, or marine waters;

(5) improper disposal of this used oil is both a significant environmental problem and a waste of a valuable energy resource; and

(6) adequate public funds are required to provide for the proper collection, management, and recycling of used oil.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

United States Code Annotated

Federal actions with respect to recycled oil, see 42 U.S.C.A. § 6363.

§ 371.003. Definitions

In this chapter:

(1) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck.

(2) "Board" means the Texas Natural Resource Conservation Commission.

(3) "Department" means the Texas Natural Resource Conservation Commission.

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(4) "Do-it-yourself (DIY) used oil" means used oil that is generated by a person who changes the person's own automotive oil.

(5) "Generator" means a person whose act or process produces used oil.

(6) "Public used oil collection center" means:

(A) an automotive service facility that in the course of business accepts for recycling small quantities of used oil from private citizens;

(B) a facility that stores used oil in aboveground tanks and in the course of business accepts for recycling small quantities of used oil from private citizens; and

(C) a publicly sponsored collection facility that is designated and authorized by the department to accept for recycling small quantities of used oil from private citizens.

(7) "Reclaiming" means using methods, other than rerefining, to remove insoluble impurities from used oil and making the used oil suitable for further use as a lubricant or petroleum product. The term includes settling, heating, dehydration, filtration, or centrifuging.

(8) "Recycling" means:

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

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

(9) "Rerefining" means applying refining processes to used oil to produce high-quality base stocks for lubricants or other petroleum products.

(10) "Used oil" means any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties, but that may be suitable for further use and is recyclable.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, § 1.045, eff. Aug. 12, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, chapter, see Historical and Statutory Note following § 371.001.

[Sections 371.004 to 371.020 reserved for expansion]

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

§ 371.021. Public Education

The department shall conduct an education program to inform the public of the need for and benefits of collection and recycling of used oil. The program shall:

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(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, chapter, see Historical and Statutory Note following § 371.001.
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§ 371.022. Notice by Retail Dealer

A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the department informing the public that improper disposal of used oil is prohibited by law. The sign shall also prominently display the toll-free telephone number of the state used oil information center established under Section 371.021.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 24(d) of the 1991 act provides: For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.
"Section 371.022, Health and Safety Code, as added by this Act, applies on or after April 1, 1992, to a dealer who is subject to the requirements of that section."

§ 371.023. Grants to Local Governments

(a) The department shall develop a grant program for local governments that encourages the collection, reuse, and recycling of DIY used oil.

(b) A grant may be made for any project approved by the department. The department shall consider for grant assistance any local government project that uses one or more of the following programs:

(1) curbside pickup of containers of DIY used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of DIY used oil;

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- (3) establishment of publicly operated DIY used oil collection centers at landfills, fire stations, or other public places;
 - (4) provision of containers and other materials and supplies that can be used to store DIY used oil for pickup or delivery to a used oil collection center in an environmentally sound manner; and
 - (5) any other activity the department determines will encourage the proper recycling of DIY used oil.
- (c) The board by rule shall establish procedures for the application for and criteria for the award of grants under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.024. Collection Facilities

- (a) All businesses that change motor oil for the public and all appropriate government agencies are encouraged to serve as public used oil collection centers.
- (b) A public used oil collection center annually shall:
- (1) register with the department; and
 - (2) report to the department the amounts of used oil collected by the center from the public.
- (c) The board shall adopt rules governing the registration of and reporting by public used oil collection centers.
- (d) The board by rule shall adopt standards for managing and operating a public used oil collection center.
- (e) The department may impose a registration fee in an amount sufficient to cover the cost of registering public used oil collection centers.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Civil penalties, application, see § 371.043.

Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

§ 371.025. Limitation of Liability

- (a) A person may not recover from the owner, operator, or lessor of a registered public used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

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- (1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);
 - (2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and
 - (3) the collection center is in compliance with management standards adopted by the department.
- (b) For purposes of this section, the owner, operator, or lessor of a public used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.
- (c) This section applies only to activities directly related to the collection of used oil by a public used oil collection center. This section does not apply to grossly negligent activities related to the operation of a used oil collection center.
- (d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.
- (e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, chapter, see Historical and Statutory Note following § 371.001.

§ 371.026. Registration of Persons Transporting, Marketing, or Recycling Used Oil

- (a) A person who transports over public highways of this state more than 500 gallons of used oil annually, who markets more than 500 gallons of used oil annually, or who recycles more than 10,000 gallons of used oil annually shall register annually with the department on forms prescribed by the department and in accordance with board rules.
- (b) The department shall develop a registration program for transporters, marketers, and recyclers of used oil.
- (c) The board shall adopt rules governing registration and reporting of used oil transporters, marketers, and recyclers. The rules shall require that a used oil transporter, marketer, or recycler:
- (1) register annually with the department;

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(2) report annually the sources of used oil transported, marketed, or recycled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil;

(3) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil transportation, marketing, or recycling; and

(4) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in transporting, marketing, or recycling used oil.

(d) The board by rule shall adopt reasonable management and safety standards for the transportation, marketing, and recycling of used oil.

(e) The department may impose a registration fee in an amount sufficient to cover the cost of registering used oil transporters, marketers, and recyclers.

(f) A utility or industrial generator of used oil that transports its own used oil from one generator-owned or generator-operated facility to another or that recycles its own used oil for use in its operations is not required to register or report under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

Section 24(e) of the 1991 act provides:
"Section 371.026, Health and Safety Code, as added by this Act, applies only to a person who transports, markets, or recycles used oil on or after April 1, 1992."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Civil penalties, application, see § 371.043.

Noncompliance with registration requirements as an offense, see § 371.041.

Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

§ 371.027. Gifts and Grants

The department may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

Cross References

Used oil recycling fund, contributions from gifts collected under this section, see § 371.061.

§ 371.028. Rules

The board may adopt any rules necessary to carry out the purposes of this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, chapter, see Historical and Statutory Note following § 371.001.
standards, and procedures to implement this

[Sections 371.029 to 371.040 reserved for expansion]

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

§ 371.041. Actions Prohibited

(a) A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

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

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

(2) knowingly mixes or commingles used oil with solid waste that is to be disposed of in landfills or directly disposes of used oil on land or in landfills;

(3) intentionally mixes or commingles used oil with hazardous waste or other hazardous substances or PCBs;

(4) transports, markets, or recycles used oil within the state without first complying with the registration requirements of Section 371.026 and rules adopted under that section;

(5) applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment; or

(6) violates an order of the department to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity.

(c) It is an exception to the application of Subsection (b) if a person unknowingly disposes into a landfill any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(d) It is an exception to the application of Subsection (b)(2) if the mixing or commingling of used oil with solid 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.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

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Historical and Statutory Notes

Section 24(b) of the 1991 act, effective September 1, 1991, provides:

"Subchapter C, Chapter 371, Health and Safety Code, as added by this Act, takes effect April 1, 1992, and applies only to an offense that occurs on or after April 1, 1992. For pur-

poses of this subsection, an offense is committed on or after April 1, 1992, if any element of the offense occurs on or after that date."

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

§ 371.042. Criminal Penalties

(a) Except as provided by Subsection (b), an offense under Section 371.041 is a Class C misdemeanor.

(b) If it is shown on the trial of an offense under Section 371.041 that the defendant has previously been convicted of an offense under Section 371.041, the offense is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

Cross References

Punishment,

Class A misdemeanor, see V.T.C.A. Penal Code, § 12.21.

Class C misdemeanor, see V.T.C.A. Penal Code, § 12.23.

§ 371.043. Civil Penalty

(a) Except as provided by Subsection (c), a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to pay a fee under Section 371.062 or failure to file a report under Section 371.024 or 371.026.

(d) The department, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

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Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

§ 371.044. Injunctive Relief

(a) If it appears that a violation or threat of violation of this chapter or any rule or order adopted under this chapter has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the department, the local government, or the state may bring suit in district court for injunctive relief to restrain the violation or the threat of violation.

(b) In a suit for injunctive relief, the court may grant any injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

§ 371.045. Venue

A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

- (1) the county in which the defendant resides;
- (2) the county in which the violation or threat of violation occurs; or
- (3) Travis County.

Added by Acts 1991, 72nd Leg., ch. 303, § 8.

Historical and Statutory Notes

For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

For effective date and applicability provisions of the 1991 Act, see Historical and Statutory Note following § 371.041.

[Sections 371.046 to 371.060 reserved for expansion]

§ 371.061

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SUBCHAPTER D. USED OIL RECYCLING FUND; FEES

§ 371.061. Used Oil Recycling Fund

- (a) The used oil recycling fund is in the state treasury.
- (b) The fund consists of:
 - (1) fees collected under Sections 371.024, 371.026, and 371.062;
 - (2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and
 - (3) gifts, grants, donations, or other financial assistance the department is authorized to receive under Section 371.027.
- (c) Except as provided by Subsection (d), the department may use money in the fund for purposes authorized by this chapter, including:
 - (1) public education;
 - (2) grants;
 - (3) registration of used oil collection centers, used oil transporters, used oil marketers, and used oil recyclers; and
 - (4) administrative costs of implementing this chapter.

Text of Subsec. (d) effective until Jan. 1, 1997

(d) The department shall transfer 25 percent of the fees collected under Section 371.062 to the Texas Water Commission for the sole purpose of restoring the environmental quality of those sites in the state that the commission has identified as having been contaminated through improper used oil management and for which other funds from a potentially responsible party or the federal government are not sufficient. This subsection expires on January 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

Historical and Statutory Notes

For note regarding the adoption of rules, chapter, see Historical and Statutory Note following § 371.001.

§ 371.062. Fee on Sale of Automotive Oil

(a) In this section:

(1) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. The term does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state. This term does not include sales of automotive oils for resale to or use by vessels engaged in foreign or interstate commerce.

(2) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

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(3) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil.

(b) An oil manufacturer or importer who makes a first sale of automotive oil is liable for a fee.

(c) Each oil manufacturer or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale for four years from the date of sale; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(d) Records required to be maintained under Subsection (c) shall be available for inspection by the comptroller at all reasonable times.

(e) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(f) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(g) The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. The department shall monitor the unobligated balance of the used oil recycling fund and shall adjust the fee rate to meet expenditure requirements of the used oil recycling program and to maintain an appropriate fund balance. The fee imposed under this section may not exceed five cents per quart or 20 cents per gallon of automotive oil. On or before September 1 of each year, the department and the comptroller jointly shall issue notice of the effective fee rate for the next fiscal year.

(h) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(i) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling fund.

Added by Acts 1991, 72nd Leg., ch. 303, § 8, eff. Sept. 1, 1991.

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Historical and Statutory Notes

Section 24(f) of the 1991 act provides: For note regarding the adoption of rules, standards, and procedures to implement this chapter, see Historical and Statutory Note following § 371.001.

"Section 371.062, Health and Safety Code, as added by this Act, applies only to a first sale of automotive oil that occurs on or after January 1, 1992."

Cross References

Civil penalties, application, see § 371.043.
Used oil recycling fund, contributions from fees collected under this section, see § 371.061.

United States Code Annotated

Energy conservation program for consumer products other than automobiles, see 42 U.S.C.A. § 6291 et seq.

