

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of)
Proposed Amendment to the)
SPECIAL WASTE REGULATIONS) R06-20
CONCERNING USED OIL,)
35. Ill. Adm. Code, 808, 809)

NORA's POST-HEARING BRIEF

NOW COMES, NORA, the Association of Responsible Recyclers ("NORA"), by and through its attorney, Claire A. Manning, Brown Hay & Stephens LLP, and respectfully submit this post-hearing brief in support of its regulatory proposal to amend 35 Ill. Adm. Code, 808 and 809 ("Part 808"; "Part 809") to eliminate manifesting for used oil that is defined and managed pursuant to 35 Ill. Adm. Code, 739 ("Part 739").¹

BACKGROUND

NORA filed the Rule Proposal that is the subject of this proceeding on December 13, 2005. Prior thereto, NORA engaged in discussions with the Illinois Environmental Protection Agency ("Agency"). Representatives of the Agency agreed that it was appropriate to eliminate used oil from the special waste manifesting requirements since used oil was regulated, and subject to tracking, under Part 739. ("The Illinois EPA agrees that an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 ("Part 809") is proper for used oil that is defined by and managed in accordance with Part 739. Currently, Part 739 requires tracking of used oil shipments. Since Part 739 requires used oil to be tracked, the additional requirement of manifesting under Part 809 is unnecessary. Agency Comments May 1, 2006, page 2.) Additionally, used oil is already

¹ Part 739 mirrors 40 CFR Part 279. References herein shall be to the state regulation, although various references in the record are to the identical federal rules.

subject to U.S. Department of Transportation (DOT) bill of lading requirements. DOT shipping papers, rather than a prescribed manifest form, is the approach that the U.S. Environmental Protection Agency (U.S. EPA), and almost all states have taken for transportation of used oil and used oil mixtures.

While Parts 808 and 809 are derived from the Board's general rulemaking authority pursuant to Sections 27 and 28 of the Illinois Environmental Protection Act ("Act"), Section 739 was derived from the Board's more limited authority to develop rules which are Identical-In-Substance to certain federal programs. The identical federal used oil rules, derived from the Resource Conservation and Recover Act ("RCRA"), are found at 40 CFR 279. The Board's special waste rules pre-existed the federal used oil program. Importantly, the entire premise of the federal used oil program, and Illinois identical regulatory scheme adopted by the Board, was to encourage the recycling of used oil by taking materials that were recycled as used oil out of the realm of more rigorously regulated "waste." See Testimony of Chris Harris, May 25, 2006 pp 10-11. Materials subject to regulation as "used oil" include not only material specifically under Section 739.100², but also those materials which, through the applicability section of those rules, are entitled to be managed as used oil under the used oil program, as follows:

Section 739.110 Applicability

This Section identifies those materials that are subject to regulation as used oil under this Part. This Section also identifies some materials that are not subject to regulation as used oil under this Part, and indicates whether these materials may be subject to regulation as hazardous waste under 35 Ill. Adm. Code 702, 702, 720 through 26, and 728.

² See 739.100: *Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.* (See also 40 CFR 279.100)

a) *Used Oil.* Used oil is presumed to be recycled, unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in Section 739.111, the regulations of this Part apply to used oil and to materials identified in this Section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721.

b) *Mixtures of used oil and hazardous waste.*

1) *Listed hazardous waste.*

A) *A mixture of used oil and hazardous waste that is listed in Subpart D of 35 Ill. Adm. Code 721 is subject to regulation as hazardous waste under 35 Ill. Adm. Code 703, 720 through 726, and 728, rather than as used oil under this Part.*

B) *Rebuttable presumption for used oil.* Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of 35 Ill. Adm. Code 721. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, incorporated by reference in 35 Ill. Adm. Code 720.111, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix H of 35 Ill. Adm. Code 721).

i) *This rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Section 739.124(c), to reclaim metalworking oils or fluids. This presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.*

ii) *This rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. This rebuttable presumption does*

apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

2) *Characteristic hazardous waste. A mixture of used oil and hazardous waste that exhibits a hazardous waste characteristic identified in Subpart C of 35 Ill. Adm. Code 721 and a mixture of used oil and hazardous waste that is listed in Subpart D of this Part solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721 is subject to the following:*

A) *Except as provided in subsection (b)(2)(C) of this Section, regulation as hazardous waste under 35 Ill. Adm. Code 703, 720 through 726, and 728 rather than as used oil under this Part, if the resultant mixture exhibits any characteristics of hazardous waste identified in Subpart C of 35 Ill. Adm. Code 721; or*

B) *Except as provided in subsection (b)(2)(C) of this Section, regulation as used oil under this Part, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Subpart C of 35 Ill. Adm. Code 721.*

C) *Regulation as used oil under this Part, if the mixture is of used oil and a waste that is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under 35 Ill. Adm. Code 721.121.*

3) *Conditionally exempt small quantity generator hazardous waste. A mixture of used oil and conditionally exempt small quantity generator hazardous waste regulated under 35 Ill. Adm. Code 721.105 is subject to regulation as used oil under this Part.*

c) *Materials containing or otherwise contaminated with used oil.*

1) *Except as provided in subsection (c)(2) of this Section, the following is true of a material containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible so that no visible signs of free-flowing oil remain in or on the material:*

- A) *The material is not used oil, so it is not subject to this Part, and*
 - B) *If applicable, the material is subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 705, 720 through 726, and 728.*
- 2) *A material containing or otherwise contaminated with used oil that is burned for energy recovery is subject to regulation as used oil under this Part.*
 - 3) *Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this Part.*
- d) *Mixtures of used oil with products.*
 - 1) *Except as provided in subsection (d)(2) of this Section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this Part.*
 - 2) *Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this Part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Subpart C of this Part.*
- e) *Materials derived from used oil.*
 - 1) *The following is true of materials that are reclaimed from used oil, which are used beneficially, and which are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants):*
 - A) *The materials are not used oil and thus are not subject to this Part, and*
 - B) *The materials are not solid wastes and are thus not subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 720 through 726, and 728, as provided in 35 Ill. Adm. Code 721.103(e)(1).*
 - 2) *Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this Part.*

3) *Except as provided in subsection (e)(4) of this Section, the following is true of materials derived from used oil that are disposed of or used in a manner constituting disposal:*

A) *The materials are not used oil and thus are not subject to this Part, and*

B) *The materials are sold wastes and thus are subject to the hazardous waste regulations of 35 Ill. Adm. Code 703, 720 through 726, and 728 if the materials are listed or identified as hazardous waste.*

4) *Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this Part.*

f) *Wastewater. Wastewater, the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the federal Clean Water Act (including wastewaters at facilities that have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this Part. For purposes of this subsection, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.*

g) *Used oil introduced into crude oil pipelines or a petroleum refining facility.*

1) *Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this Part. The used oil is subject to the requirements of this Part prior to the mixing of used oil with crude oil or natural gas liquids.*

2) *Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this Part.*

3) *Used oil that is inserted into the petroleum refining process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this Part, provided that the used oil contains less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion in to the petroleum refining process, the used oil is subject to the requirements of this Part.*

4) *Except as provided in subsection (g)(5) of this Section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this Part only if the used oil meets the specification of Section 739.111. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this Part.*

5) *Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this Part. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the wastewater treatment system).*

h) *Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this Part until it is transported ashore.*

i) *Used oil contained PCBs. Used oil containing PCBs, as defined as 40 CFR 761.3, incorporated by reference at 35 Ill. Adm. Code 720.111(b), at any concentration less than 50 ppm is subject to the requirements of this Part unless, because of dilution, it is regulated under federal 40 CFR 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements of 40 CFR 761, including 40 CFR 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Part, but is subject to regulation under federal 40 CFR 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Part or federal 40 CFR 761. (See also 40 CFR 279.110)*

The key is not the limited definition of used oil, as set forth in Section 739.100 (footnote 1), but materials that are destined for recycling as used oil, and allowed for such pursuant to the above-referenced applicability section. For further and detailed information concerning what materials are subject to regulation as used oil, NORA respectfully refers the Board to a comprehensive summary found at Chapter 12 of *McCoy's RCRA Unraveled*, attached hereto as Attachment A. NORA's proposed revisions would accomplish the result desired: eliminate from special waste manifesting used oil as it is defined by and managed and regulated pursuant to Part 739. See Attachment B.

On May 1, 2006, the Agency proposed language of its own because of the following stated concern:

“The Illinois EPA agrees that an exemption from the manifesting requirement of 35 Ill. Adm. Code 809 (“Part 809”) is proper for used oil that is defined by and managed in accordance with Part 739. Currently, Part 739 requires tracking of used oil shipments. Since Part 739 requires used oil to be tracked, the additional requirement of manifesting under part 809 is unnecessary. However, a manifest exemption in Part 809 should clarify that it only applies to used oil when it is defined by and managed in accordance with Part 739 and would not apply to other waste transported in the same load.

Additionally, the Illinois EPA agrees that an exemption from the hauling permit requirement of Part 809 is proper for loads that contain no special loads other than used oil that is defined by and managed in accordance with Part 739. The Illinois EPA would require the transporter to register with the Illinois EPA as the used oil transporter in the same manner of notification as stated in Section 739.142. Also, the exemption must clarify that it applies only to the load that a vehicle is carrying and does not apply to an individual vehicle or all vehicles operated by the transporter.” See Agency Comments, May 1, 2006, page 2.

The Agency's proposed language (and articulated position) attempts to create a distinction between material that is specifically included within the definition of "used oil" as set forth in Section 739.110 and that material which is subject to regulation as "used oil" pursuant to Section 739.100. Apparently, the former would be exempt from special waste manifesting requirements and the latter would not. As there is no such distinction in the industry, the bifurcation proposed by the Agency would create an untenable position for the used oil industry. Furthermore, the Agency's proposed language contradicts definitions provided by the U.S. EPA regulatory framework and is inconsistent with the policy behind the used oil program: to encourage the recycling of used oil and used oil mixtures.

Two hearings have been held by the Board concerning NORA's proposal to eliminate manifesting for used oil. The first was held in Springfield, Illinois on May 25, 2006. Testifying for NORA were: Christopher Harris, General Counsel for NORA; Victoria Custer from Southwest Oil; and Chairperson for Illinois working group: Mike Lenz (Future Environmental, Inc.) and Greg Ray (Heritage-Crystal Clean, LLC). Testifying for the Agency was Ted Dragovich. The second hearing was held on June 29, 2006 in Chicago, Illinois. Testifying for the Agency were Ted Dragovich and Christopher Cahnovsky. Testifying for NORA were Catherine McCord (Heritage-Crystal Clean, LLC); Dan Appelt (Safety-Kleen); Mike Lenz and Victoria Custer.

Various public comments have been filed in this proceeding; all have urged the Board to adopt NORA's proposal:

8/4/06 Public Comments of John H. Datka, General Manager, Moore Oil
 Environmental Services, LLC

8/2/06 Public Comments of Chris McNeil, Compliance Officer, Aaron Oil Company

8/2/06 Public Comment of Brett Morton, Sr. Environmental Engineer/Product Stewardship, Shell Lubricants

8/1/06 Public Comments of Laura M. Krist, Territory Manager, Jacobus Environmental Services

8/1/06 Public Comments of Scott D. Parker, Executive Direction, Association of NORA Responsible Recyclers

8/1/06 Public Comments of Benjamin P. Cowart, President of General Partner Vertex Energy

7/31/06 Public Comments of W.L. Briggs, President Oil Re-refining Company, Inc.

7/31/06 Public Comments of Steve Rundell, President, Solvent Systems International

7/31/06 Public Comments of Victoria M. Custer, Vice President Southwest Oil, Inc.

7/31/06 Public Comments of Deanne Hartman, President/CEO, Approved Remediation & Recycling of Oil Waste, Inc.

7/31/06 Public Comments of Richard H. Kalin, Vice President, Noble Oil Services

7/31/06 Public Comments of Matthew Usher of Usher Oil Company

7/31/06 Public Comments of Garry R. Allen

7/31/06 Public Comments of Donald R. Kleine, Owner, Vortex Recycling

7/31/06 Public Comments of Gary L. Gunderson, President, MaxSafe Antifreeze

7/31/06 Public Comments of Ken Reif of Valley Environmental Service

7/31/06 Public Comments of David Osbourne, Manager Sales & Customer Service, Consolidated Recycling Co., Inc.

7/31/06 Public Comments of John A. Oxford, VP, Compliance, Industrial Oil, Inc.

- 7/31/06 Public Comments of John A. Oxford, VP, Compliance, Energy & Material Recovery, Inc.
- 7/31/06 Public Comments of John A. Oxford, VP, Compliance, Fuel Processors, Inc.
- 7/31/06 Public Comments of Jeffrey M. Pocisk of Waste Alternatives and Consulting, LLC
- 7/31/06 Public Comments of Lin Longshore, Sr. Vice President of Environmental Health and Safety of Safety Kleen
- 7/31/06 Public Comments of Michael Lenz of Future Environmental
- 7/31/06 Public Comments of Catherine A. McCord, Vice President, Environment, Health & Safety, Crystal Clean
- 7/28/06 Public Comments of Ken Petruck, VP Operations, Excel Environmental, Inc.
- 7/28/06 Public Comments of Ronald J. Plankis, Vice President, Consulting Services, Profit Consultants, Ltd.
- 7/28/06 Public Comments of Dave Brown, President, United Waste Water Services
- 7/28/06 Public Comments of RS Used Oil Services, Inc.: Lee J. Plankis, Senior VP Operations, Rick Shipley, National Sales Manager, and Ronald A. Winkle, President
- 7/28/06 Public Comments of Shaunti Stalluth

NORA'S PROPOSAL MEETS ALL REQUIREMENTS OF THE ACT AND SHOULD
BE ADOPTED BY THE BOARD

The Board's authority to establish environmental regulations is well-established and broad. Importantly, it is also independent of the Agency's authority under the Act. See 415 ILCS 5/5, 27 and 28 and *Rulemaking Under the Illinois Pollution Law*, 42 U. Chi L. Rev., David Currie (1975). The Act allows for any person to file a proposed rule and requires that the Board consider "economic reasonableness" in adopting rules. 415

ILCS 5/27. NORA's rule proposal promotes economic reasonableness of Illinois regulations and provides the consistency with the federal program which the Agency's language and interpretation does not.

As Christopher Harris, general counsel to NORA, testified before the Board, the federal rules were developed to encourage recycling. NORA was instrumental in the development of those federal rules:

“If I could give some background of the federal rule, which NORA helped develop, I think you'll understand exactly why our proposal comes into play. Back in 1980, congress passed the Used Oil Recycling Act of 1980, and that was the first legislative effort on the federal level to address the unique challenge of used oil, and in the congressional findings that serve as the predicate of that 1980 law, congress determined that used oil is a valuable resource of increasingly scarce energy, that technology exists to reprocess and recycle used oil and that used oil constitutes a threat to public health and the environment when disposed of improperly, and those predicate findings not only are true today, but they're true in this context as well.

Now, the EPA didn't issue any regulations as a result of the 1980 act, so in 1984 congress in the context of reauthorizing RCRA, the Resource Conservation Recovery Act, had a couple of provisions in that massive reauthorization package that said, EPA, pay attention, we really want you to develop used oil, and again, the same predicate findings were repeated; in other words, used oil is valuable as an energy resource, it can be recycled properly, but it needs some level of regulation in order to make sure that they're - - that human health and the environment are protected, but EPA in its legislative history also made clear that were protection of human health and the environment is assured - - so that's the requirement, the underlying requirement - - the EPA administrator should make every effort not to discourage the recycling of used oil, and they went on - - congress went on to say, for example, if there are several alternative controls that would be environmentally acceptable, the Agency, EPA, should allow those which would be least likely to discourage used oil recycling. That's in the legislative history. So the - - unlike hazardous waste, where it has no value and needs to be extremely carefully monitored at every turn because there's an incentive to dispose of it, used oil being a valuable commodity, the market forces can serve a role to channel it properly, so the level of regulation needs to be balanced with the market incentives for proper recycling.

Now, the EPA in November of 1985, taking the legislative history as its mandate, produced the first round of the used oil recycling regulations, or sometimes referred to as the used oil management standards, and they're now codified in Part 279; 40 CFR, Part 279. The counterpart of course is 35 Illinois Administrative Code Part 739. And what happened as a result of the 1985 regulations as well as the follow-up requirements promulgated in 1992 is a set of used oil management standards that virtually all states have adopted, most of them without any change, and of course Illinois has a few differences, but for the most part, every state in the union has followed the federal used oil requirements, and today the component that we're concerned about is the tracking of used oil." (Harris testimony, May 25, 2006, pp 10-11)

NORA witnesses who testified at hearing discussed generally what occurs in the used oil industry. NORA is a national trade association comprised of more than 200 companies that promote proper recycling through education and development of legislation at the federal, state and local levels. As Victoria Custer from Southwest Oil and Chair of NORA's Illinois Working Group testified, NORA members each year commit to the following guiding principles in the management of sound environmental policy, a high standard of integrity, continual improvement and the implementation of six principals in conducting business activities.

1. Make health, safety and environmental considerations a top priority in planning for all existing and new facilities, processes, products and services.
2. Commitment to comply with all applicable environmental laws and regulations.
3. Identify and implement, where practicable, pollution prevention measures, source reduction and waste minimization that are appropriate to the nature, scale and environmental impacts of our activities and service.
4. Participate with government and others in creating responsible laws, regulations and standards to safeguard our community, workplace and environment.
5. Communicate this commitment to responsible recycling and these guiding principles to employees, customers and community.

6. And continually seek opportunities to improve the principles and procedures of responsible recycling by sharing experiences with others and periodically reviewing overall environmental performance.

NORA's Illinois Working Groups' goal is to seek an Illinois program equivalent to the federal program and eliminate the burdens associated with manifesting of used oil. As Ms. Custer testified, the inconsistency adversely impacts NORA members since it is more onerous to do business in Illinois than in its neighboring states. (Custer Pre-filed Testimony.)

The testimony of other NORA members also established that the Illinois approach to used oil, which requires manifesting for materials subject to regulation under Part 739, is inequitable. Greg Ray, Vice President of Heritage-Crystal Clean, LLC testified:

“Currently, my company, HCC, collects used oil from generators in Illinois, Missouri, Indiana, Ohio, Kansas, Wisconsin, Arkansas, Louisiana, Texas, Mississippi, Alabama, Georgia, Tennessee, Kentucky, North Carolina and South Carolina. To the best of my knowledge, Illinois is the only state from this list that classifies used oil as a special waste or requires generators to manifest used oil.

NORA's statement of reasons provides some of the history explaining why Illinois is one of the very few states that have not yet adopted the uniform national approach. The current situation is unfortunate and undesirable. Illinois' unique used oil regulations make this state a more difficult place to do business for generators as well as used oil collectors and recyclers. The most significant deviation from the federal system is that Illinois continues to require generators to ship used oil using special waste manifests, which is an administrative burden with no benefit to human health or the environment.

The issue of consistency across states is important to many of our customers who have multiple facilities. Such customers include, for example, chains of auto service facilities, auto dealerships, trucking companies and even manufacturers. These customers often have one environmental manager with oversight for many facilities in different states. Obviously these customers find it much easier to follow regulations that are nearly uniform throughout their operating area and prefer this to regulations that are a patchwork of different rules for different states.

Today, Heritage-Crystal Clean has approximately 1100 customers in Illinois who are subject to the special waste manifesting provisions related to used oil. We generate about 2,800 Illinois special waste manifests for used oil annually, documents that we prepare for our customers, ensuring that they are signed by multiple parties and are promptly returned and properly filed. HCC has several full-time employees engaged in the printing and filing of manifests and another eight or ten field personnel who need to deal with Illinois special waste manifests for used oil as a significant fraction of their daily work. We estimate that our company spends \$100,000 per year on our Illinois manifesting activity, and we are one of the smallest used oil collectors in the state. It's my contention that all this paperwork does nothing to enhance the protection of human health and the environment. To the contrary, the exercise is a waste of paper, time and energy. Most state environmental agencies have apparently come to a similar conclusion as evidenced by their adoption of the federal management standards which do not require manifesting for used oil."

The used oil industry is comprised of generators, transporters and recyclers. There are an estimated 34,000 generators of used oil in Illinois, generating an estimated 42 million gallons of used oil annually. (Custer testimony, May 25, 2006, page 19) Generators give the used oil, and used oil like material as defined in 279.110, to collectors for recycling or reuse. In this industry, the reporting is generally done by the collector, not the generator. Collectors use tracking documents, pursuant to Part 739, to record each shipment and give copies to the generator. The collectors then deliver the used oil and used oil materials to recycling facilities where the oil is recovered and reused for fuel or lubricant or other legitimate reusable purposes.

In this process, generators, collectors and recyclers do not differentiate between used oil and used oil materials subject to regulation as used oil since all contain valuable recyclable oil, destined to be recycled. The key here is that material regulated under Part 739 is not regulated as waste, but as properly recyclable material. As such, waste

manifesting requirements are not necessary or appropriate. As determined already by the federal government, tracking pursuant to the tracking provisions is sufficient and encourages recycling.

Illinois situation is unusual in that it designates used oil as a special waste, which triggers a requirement for shipments to be manifested. Such requirement is redundant to the DOT shipping papers and other tracking already required pursuant to Part 739³. Additionally, manifesting is inconsistent with the federal program since the manifesting obligation is on the generator who, in the used oil context, does not conduct manifesting as a regular business practice. Nor is it desirable for the state to require a manifesting obligation on the 54,000 generators of used oil throughout the state. This is especially true since the Agency does not even receive a copy of any of the used oil manifest documents.

Testimony established that manifests do not add value for either regulators or the regulated community and manifesting requirements as they relate to used oil are a waste of time, paper and money. Moreover, they are redundant with federally required tracking documents.

Importantly, NORA's language does not change the way the used oil industry does business, nor does it seek to change what is or is not entitled to be treated as used oil pursuant to current regulations. It only seeks to eliminate special waste manifesting requirements for materials that are already tracked pursuant to Part 739 as used oil. This change, as Greg Ray from Heritage-Crystal Clean, LLC testified, would make Illinois more competitive with other states, and as it should be, identical with the federal program. Although NORA recognizes that Illinois is allowed to have stricter

³ See Sections 739.146, 739.156, 739.165 and 739.174

requirements than the federal program allows, NORA would argue that if the state desires to impose stricter conditions, such should be the subject of an Agency-proposed general rulemaking which *follows* the state's identical adoption of the federal rules. To do otherwise is to forego any public participation in the stricter state requirements as they relate to the newer federal rule.

Significant testimony was adduced concerning industry practice regarding materials which are treated as used oil pursuant to Part 739 and the tracking of all materials subject to Part 739. Specifically, company tracking documents were put in evidence in this proceeding and bear similar, if not identical, resemblance to Illinois manifesting documents. Moreover, testimony established that material regulated as used oil under Part 739 is recycled and accordingly is not waste.

NORA continues to fail to understand the focus of the Agency's position, as it is simply unworkable in practice to draw a distinction between those materials that are pure used oil and those materials which are being treated and recycled as used oil, under Part 739. As NORA general counsel Christopher Harris aptly testified, the Agency's position is like "drawing a distinction for purposes of regulation between Saturn and the moons of Saturn."⁴

At the June 29, 2006 hearing specific dialog was had between those individuals who work everyday in the used oil industry and Ted Dragovich and Christopher Kanowski from the Agency. While the Agency continued at that hearing to express concerns about drawing these real life distinctions, no real evidence was presented

⁴ In response to a question from Chairman Girard, Mr. Harris stated: "Mr. Girard, if I can make a farfetched metaphor, what NORA is proposing is that the exemption be Saturn and the moons of Saturn. What I think the Agency is saying is just Saturn, not the moons of Saturn, and we think that the moons of Saturn and Saturn make a regulatory unit and it's very clear."

regarding any danger with the current program. The Agency's concern is a bit like chasing ghosts. It is difficult for NORA to appreciate the Agency's position that an exemption for manifesting of used oil is appropriate but a manifesting for used oil like substances, recycled as used oil, is not.

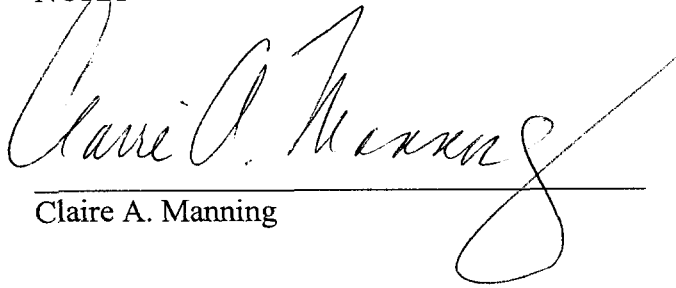
Testimony at the June 29, 2006 hearing established that the Agency's position is contrary to the status quo and inconsistent with current Illinois and federal laws that allow specific mixtures to be managed as used oil. The Agency's position appears to fatally confuse the issue that NORA has hoped to deal with effectively. The key is that if materials are properly recycled as used oil, they are regulated under Part 739, tracked pursuant to Part 739 and, accordingly, a special waste manifest obligation is neither necessary nor desirable, NORA's proposed rule change has merit and is economically reasonable and both economically and legally justified. The Agency has agreed that is appropriate to eliminate special waste manifesting as it relates to used oil. The attempted distinction between used oil and that appropriately managed as used oil under Part 739, however, creates a distinction that is unrealistic in industry practice. Thus, the Agency's position virtually negates the intended positive impact of NORA's proposal.

NORA hopes that the Board recognizes the merits of NORA's proposed rule change and agrees that it is appropriate to eliminate special waste manifesting from those materials which are legitimately managed as used oil pursuant to Part 739. The Agency has the ability to enforce against any of those companies who are not complying with Part 739. The Board should not forego NORA's meritorious proposal on the basis of the unfounded concerns expressed in this proceeding and also should not draw distinctions between used oil and materials managed as used oil under Part 739 as the Agency

suggests. NORA respectfully requests that the Board move forward with the language proposed in its ERRATA sheet to first notice and, as soon as possible, make those changes permanent in Illinois regulations so that Illinois' used oil industry is competitive with other states and so that Illinois' used oil program is, as it expected to be, consistent with the federal regulations.

Accordingly, NORA's rule proposal should be adopted by the Board.

RESPECTFULLY SUBMITTED,
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ATTACHMENT A

McCoy's RCRA Unraveled

Used Oil



*The used oil regs
are easy to meet
if you remain just
a generator—
they may get
harder if you burn
or process the oil*

From the largest industrial facility to the smallest manufacturing plant, everybody generates used oil. This chapter deals with the generation, management, and burning of used oil. The bottom line is: if you generate used oil and have a recycler come in and haul your used oil offsite, your requirements are *minimal*. If you do other things with the used oil that you generate, your requirements may increase significantly.

In the mid- to late-1980s, EPA was trying to determine whether it should add used oil destined for disposal as a listed hazardous waste. The agency swayed back and forth on this issue a couple of times but finally decided not to list it on May 20, 1992. [57 FR 21524] (Used oil is presumed to be a listed hazardous waste in the state of California and maybe some other states, but it isn't listed at the federal level.) A major reason EPA didn't list used oil as hazardous was the presence of numerous existing federal programs pertaining to mismanagement (disposal) of this oil. For example, the RCRA underground storage tank regulations, the Clean Water Act (CWA) Spill Prevention, Control, and Countermeasures (SPCC) program, and storm water provisions all address used oil management in some way. Plus, used oil destined for disposal that exhibits a characteristic must be managed under the full Subtitle C program.

Instead of listing it, EPA issued management standards for used oil that will be recycled, providing additional safeguards against mismanagement. These regulations, which are codified in 40 CFR Part 279, apply to generators, collection centers and aggregation points, transporters, processors and re-refiners, burners, and marketers of used oil. A quick guide to the Part 279 standards for each of these entities is available in *Part 279 Requirements—Used Oil Management Standards*, EPA/530/H-98/001, available from <http://www.epa.gov/epaoswer/hazwaste/usedoil/poster.pdf>. The most stringent requirements apply to used oil processors and re-refiners, because they handle the largest quantities of used oil. [September 10, 1992; 57 FR 41593, RO 11736]

12.1 Applicability of the used oil management standards

The used oil management standards are structured such that used oil that will be recycled is subject to management under the Part 279 standards, which are less stringent than the hazardous waste requirements in Parts 260–270. Such used oil can be managed under the Part 279 requirements, even if it exhibits a characteristic at its point of generation (before it is mixed with any other material). [§§261.6(a)(4), 279.10(a)]

Conversely, used oil that will be disposed is a solid waste and must be characterized for its hazardousness just like any other solid waste. The management of used oil that is destined for disposal and that exhibits a characteristic or has been mixed with listed hazardous waste is subject to the more-stringent hazardous waste regulations. (§279.81(a), September 10, 1992; 57 FR 41578, RO 11811)

Determining the applicability of the used oil standards can be confusing at times. Therefore, we have put together some logic diagrams that should provide some assistance. Figures 12-1 and 12-2 will help you determine if the Part 279 requirements apply in your specific situation. The issues that appear in the boxes on these two figures are discussed in further detail throughout Section 12.1. Once you know if the Part 279 standards apply from these figures, other logic diagrams presented later in this chapter will help you determine your compliance requirements.

12.1.1 Definition of used oil

In §279.1, EPA defines "used oil" as "any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities." This definition "covers the majority of oils used as lubricants, coolants (noncontact heat-transfer fluids), emulsions, or for similar uses [that] are likely to get contaminated through use." [September 10, 1992; 57 FR 41574]

In order to meet the definition of "used oil," a substance must meet each of the three criteria listed below [*Managing Used Oil—Advice for Small Businesses*, EPA/530/F-96/004, November 1996, available from <http://www.epa.gov/epaoswer/hazwaste/usedoil/usedoil.pdf>, RO 14090]:

- **Origin**—The substance must be derived from crude or synthetic oil;
- **Use**—The material must have been used as a lubricant, coolant, noncontact heat-transfer fluid, hydraulic fluid, buoyant, or other similar pur-

pose (to be determined by authorized states or EPA regions); and

- **Contamination**—The oil must be contaminated with physical impurities (e.g., water, metal shavings, sawdust, or dirt) and/or chemical impurities (e.g., lead, solvents, halogens, or other hazardous constituents) as a result of use.

12.1.1.1 Examples of used oil

Based on the above definition and criteria, examples of substances that, when used, are used oil are listed in Table 12-1.

12.1.1.1.1 Synthetic oil is used oil

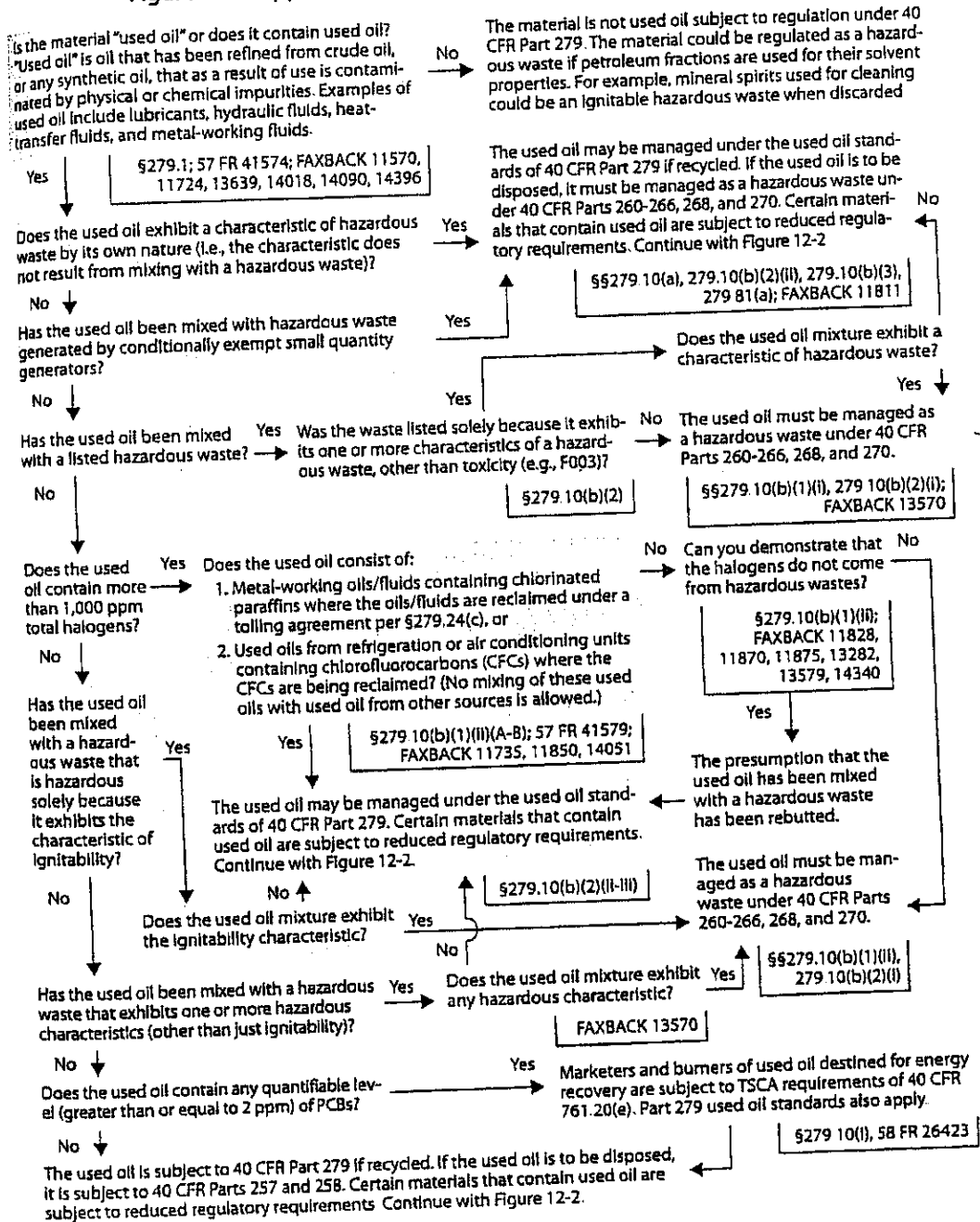
EPA has determined that synthetic oils are included in the definition of used oil because these oils 1) are generally used for the same purposes as petroleum-derived oils, 2) are usually mixed and managed in the same manner after use, and 3) present the same level of hazard as petroleum-based oils. The agency's intent is to include all synthetic oils that function similarly to petroleum-based lubricants, oils, and surface agents under the definition of used oil. Synthetic oils that may be considered used oil include oils that are not petroleum-based (i.e., those produced from coal or oil shale), oils that are petroleum-based but are water soluble (e.g., concentrates of metal-working oils/fluids), oils that are polymer-type, and nonpolymer-based oils. [September 10, 1992; 57 FR 41574, RO 11724]

12.1.1.1.2 Consolidated used oil is just used oil

In general, "EPA does not consider the consolidation of different sources of used oil to be a mixture of used oil. EPA regulates the consolidated used oil as used oil under the Part 279 used oil management standards." [RO 11786] The implication of this guidance is that used oil from anywhere in a facility can be consolidated into one or more used oil storage tanks without regulatory concern. This would not apply, however, to metal-working oils/fluids and CFC-contaminated used oil that are not subject to the rebuttable presumption (see Section 12.1.4.2).

§12.1.1

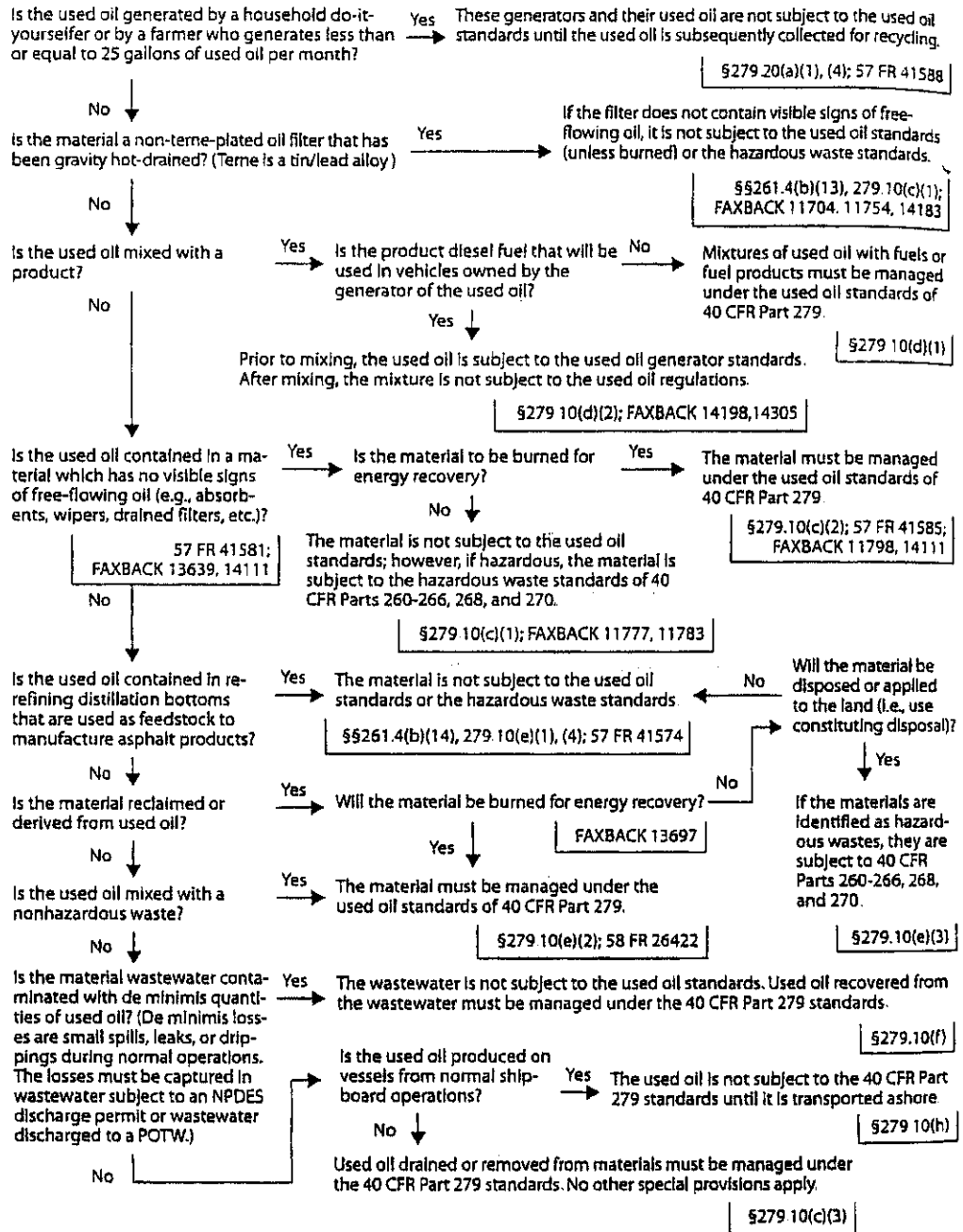
Figure 12-1: Applicability of the Used Oil Management Standards



Source: McCoy and Associates, Inc. adapted from 40 CFR Part 279. Subpart B

§12.1.1.2

Figure 12-2: Used-Oil-Containing Material Eligible for Reduced Regulation



§12.1.1.12

Source: McCoy and Associates, Inc.; adapted from 40 CFR Part 279, Subpart B.

Table 12-1: Examples of Materials That, When Used, Qualify as Used Oil¹

- Compressor oils
- Coolants
- Copper- and aluminum-wire drawing solution
- Electrical insulating oil
- Emulsions used as lubricants
- Engine oil (typically includes gasoline and diesel engine crankcase oils and piston-engine oils for automobiles, trucks, boats, airplanes, locomotives, and heavy equipment)
- Heating media
- Industrial hydraulic fluid
- Industrial process oils
- Laminating oils
- Lubricant sprayed onto the bull gears of cement kilns
- Metal-working fluids and cutting oils
- Mineral oil
- Oils used as buoyants
- Refrigeration oil
- Synthetic oil (typically derived from coal, shale, or polymer-based starting material)
- Transmission fluid
- Used oil residues or sludges resulting from the storage, processing, or re-refining of used oils (when recycled by burning for energy recovery)

¹This list is not comprehensive; other materials may also qualify as used oils when used.

Source: McCoy and Associates, Inc.; adapted from EPA/530/F-96/004, November 1996, May 3, 1993; 58 FR 26422, RO 11570, 13639, 13697, 14090.

12.1.1.1.3 Is spent grease used oil?

We have seen no guidance at the federal level since the Part 279 management standards were issued (in 1992) on the question of whether spent grease could be managed as used oil. We think this is probably a question best answered by authorized states or EPA regions. Speaking of which, EPA Region VIII weighed in on this question in 1993, concluding that used grease meets the three criteria listed in Section 12.1.1 (i.e., grease is derived from crude or synthetic oil, used as a lubricant, and contaminated during use). Thus, that re-

Table 12-2: Examples of Materials That, When Used, Do Not Qualify as Used Oil¹

- Animal and vegetable oil (even when used as a lubricant)
- Antifreeze
- Kerosene
- Petroleum distillates used as solvents to solubilize or mobilize (e.g., mineral spirits, petroleum naphthas) and solvents manufactured from synthetic materials
- Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products²
- Waste oil resulting from cleanout of fuel storage tank bottoms, spills of virgin fuel oil, or other oil wastes that have not been used

¹This list is not comprehensive; other materials may also not qualify as used oils when used.

²These wastes are also exempt from hazardous waste regulation [§261.4(b)(14)].

Source: McCoy and Associates, Inc.; adapted from §279 10(e)(4), EPA/530/F-96/004, November 1996, September 10, 1992; 57 FR 41574-41575, RO 14018, 14090, 14396, 14550.

gion would allow generators of spent grease to manage it as used oil, subject to the Part 279 management standards. [Letter from Terry Anderson, EPA Region VIII to Marion Loomis, Wyoming Mining Association, December 1, 1993]

12.1.1.2 Materials that are not used oil

The materials listed in Table 12-2 do not meet the definition and/or three defining criteria for used oil. Therefore, when these materials become solid wastes, they must be managed as hazardous wastes if they exhibit a characteristic or are listed.

Q A petroleum-based solvent is used to clean oily machined parts. When spent, the solvent contains significant quantities of oily residues. Can this spent solvent be managed as used oil?

A No. The oily residues are present because of the solvent's use in cleaning. EPA does not consider spent petroleum-based solvent to be used oil and does not allow it to be regulated as such. When the solvent is spent, it is a spent material and would be a solid waste when burned for energy

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recovery, sent for disposal, or reclaimed. A hazardous waste determination would have to be made for this solid waste using testing or knowledge. [RO 14396]

Note that "used oil" and "waste oil" are not interchangeable terms. Waste oil or oily waste does not always meet the definition of used oil. As noted in Table 12-2 for instance, tank bottoms from a fuel oil storage tank or residues from a spill of virgin oil may be contaminated with impurities but still not meet the used oil definition, because these materials have never been used. [EPA/530/K-02/025I, October 2001, available from <http://www.epa.gov/epaoswer/hotline/training/uoil.pdf>]

12.1.2 All used oil is recyclable until a decision is made to dispose

EPA has based the Part 279 used oil management standards on a presumption that all used oil is recyclable and therefore should be regulated under one set of standards—the Part 279 standards. This presumption applies regardless of whether the used oil exhibits a hazardous characteristic (at its point of generation) and regardless of whether the used oil will ultimately be recycled or disposed. [§279.10(a), RO 14739] "In other words, the generator (or any other person who handles the oil prior to the person who decides to dispose of the oil) need not decide whether the used oil eventually will be recycled or disposed and thus need not tailor its management of the oil based upon that decision (and, if destined for disposal, whether the used oil is hazardous). Rather, the Part 279 standards apply to all used oils until a person disposes of the used oil, or sends it for disposal." [September 10, 1992; 57 FR 41578]

According to EPA, "[t]he recycling presumption allows a used oil handler or any other person who handles the oil prior to the person who decides to dispose of the oil, to presume that his/her used oil will be recycled regardless of its final disposition." [RO 14054] As such, these persons (generators, transporters, processors, burners, and marketers) would only be subject to Part 279, unless one of them decides to dispose the used oil. See Case Study 12-1.

"If used oil is recycled, however, no characteristic determination is required, but all parties handling the used oil must comply with the Part 279 management standards." [57 FR 41579] Hence, the generator of used oil does not need to test it for characteristics unless he/she is going to dispose it [EPA/530/H-98/001] (If a used oil generator is sending its used oil to a processor or fuel blender, there is also no need for the generator to determine if the used oil meets the used oil specification in §279.11; a generator would only need to make such a determination if it was burning it onsite as on-spec used oil or was sending the oil directly to a burner—see Section 12.3.)

This recycling presumption applies only for "as-generated" used oil (i.e., used oil that has just been drained from equipment or service vehicles and

Case Study 12-1: Generator Requirements When Processor Disposes Used Oil Instead of Recycling It as Originally Planned

A generator sends used oil to a processor to be recycled, but the processor disposes the used oil instead. In this situation, is the generator required to determine if the used oil is hazardous and revise its records since it was not recycled as originally planned?

No. The generator does not have to perform a hazardous waste determination for used oil originally sent to the processor for recycling. The used oil is presumed to be recyclable (and therefore subject to Part 279) until the decision is made to dispose it. At that time, the person who is in control of the used oil (the processor in this case) is responsible for performing a hazardous waste determination and complying with the hazardous waste regulations if necessary. Anyone who handles the used oil prior to that time can presume that the used oil will be recycled, regardless of its final disposition. [RO 14054, 14739]

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has not been mixed with any other material) Its status may change if the used oil is mixed with hazardous waste or other materials (see Sections 12.1.3-12.1.6).

The recycling presumption and the Part 279 standards no longer apply once the entity in possession of the used oil decides to send it for disposal. Once such a disposal decision has been made, that entity must determine if the used oil is a hazardous waste and manage it as such if it is. Since used oil is not a listed hazardous waste at the federal level, used oil to be disposed would be hazardous only if it 1) exhibits a hazardous waste characteristic (by its own nature or by mixing characteristically hazardous waste into it), 2) has been mixed with ICR-only listed waste and continues to exhibit a characteristic, 3) has been mixed with non-ICR-only listed hazardous waste (other than listed waste generated by conditionally exempt small quantity generators), or 4) contains greater than 1,000-ppm total halogens and the presumption that it has been mixed with hazardous waste cannot be rebutted. Used oil disposal is subject to §279.81, which requires hazardous used oil to be managed in accordance with the hazardous waste regulations.

12.1.3 Mixing used oil with hazardous waste

The regulations governing mixtures of used oil and hazardous waste are codified in §279.10(b). The standards differ for used oil mixed with characteristic waste versus used oil mixed with listed waste, as discussed below.

Remember that used oil exhibiting a hazardous characteristic by its own nature (before it is mixed with any other material) may be handled under the less-stringent Part 279 standards and is exempt from hazardous waste regulation if recycled. Consequently, generators should think long and hard about mixing used oil with any waste that could be hazardous; doing so could jeopardize the applicability of Part 279 and may require compliance with the full set of hazardous waste regulations. Additionally, such mixing is generally considered haz-

ardous waste treatment, and a permit may be required for this activity.

Note that the §279.10(b) used oil mixture rules do not apply to mixtures of used oil and hazardous waste generated by conditionally exempt small quantity generators regulated under §261.5. Such mixtures are always regulated as used oil under Part 279, even if the total halogen concentration exceeds 1,000 ppm. [§§261.5(j), 279.10(b)(3)]

In general, mixtures of used oil and hazardous waste follow the three elements of the hazardous waste mixture rule (discussed in Section 5.1), with used oil as the solid waste.

12.1.3.1 Used oil mixed with characteristic hazardous waste

The regulations contain two scenarios for mixtures of used oil and characteristic wastes:

1. *Used oil is mixed with a waste that is hazardous solely because it exhibits the characteristic of ignitability*—In this situation, if the mixture does not exhibit the characteristic of ignitability, it can be managed as used oil under Part 279, regardless of any other hazardous characteristics that the mixture may exhibit. [§279.10(b)(2)(iii)] For example, used oil that inherently exhibits the toxicity characteristic for lead is mixed with an ignitable hazardous waste (D001), and the resulting mixture is no longer ignitable. Under §279.10(b)(2)(iii), this mixture may be managed as used oil under Part 279, even though it may still exhibit the toxicity characteristic for lead. This provision represents an expansion of the hazardous waste mixture rule. [EPA/S30/K-02/0251, RO 11776, 13590]
2. *Used oil is mixed with a waste that is hazardous because it exhibits one or more hazardous characteristics (other than just ignitability)*—When this occurs, if the mixture exhibits any hazardous characteristic, it is regulated as hazardous waste. [§279.10(b)(2)(i), RO 13570] On the other hand, if the mixture does not exhibit any hazardous characteristic, it may be managed under the

12.1.3.1

Part 279 used oil standards. [§279.10(b)(2)(ii)] If the same used oil exhibiting the toxicity characteristic for lead is mixed with a D003 reactive waste instead of an ignitable-only waste, the resulting mixture would need to be void of both the toxicity and reactivity characteristics (and all other characteristics) in order to be managed as used oil. Otherwise, it would have to be managed as a hazardous waste. [EPA/530/K-02/025I, RO 11776, 13590]

12.1.3.1.1 EPA trying to close a loophole

As noted above, the used oil regulations in Part 279 allow characteristic hazardous waste to be mixed with used oil. If the resulting mixture doesn't exhibit a characteristic, the mixture is subject to regulation as used oil—not hazardous waste. Used oil that is recycled (including burning for energy recovery) is not subject to any hazardous waste regulation in Parts 260–266, 268, and 270. [§§261.6(a)(4), 279.10] This “loophole” allows characteristic hazardous wastes to be mixed with used oil and relieved of Subtitle C regulations, specifically including the land disposal restrictions (LDR) provisions. [September 10, 1992; 57 FR 41605] EPA attempted to close this loophole in 1995 [October 30, 1995; 60 FR 55202], but the agency had to back off a few months later due to a ruling issued by the U.S. Court of Appeals for the District of Columbia Circuit. [June 28, 1996; 61 FR 33691]

Even though the loophole still exists, mixing used oil with characteristic hazardous waste is considered treatment (as noted earlier) and, therefore, would have to be performed in a 90- or 180-day accumulation unit or a permitted unit (see Case Study 12-2); in addition, the used oil generator storage tank standards in Part 279, Subpart C would apply. [RO 11679, 11708, 13570]

12.1.3.1.2 Used oil mixed with listed hazardous waste

If used oil is mixed with a listed hazardous waste (except ICR-only listed waste), the mixture is subject to regulation as hazardous waste (under Parts 260–266, 268, and 270) instead of used oil under Part

279. [§279.10(b)(1)] For example, if listed hazardous waste (e.g., waste brake cleaner or other chlorinated spent solvent) is blended into used oil, the mixture would be a hazardous waste subject to all Subtitle C regulations. If the mixture is burned for energy recovery, the boiler and industrial furnace (BIF) rules in Part 266, Subpart H will apply. [RO 13570]

There are 29 listed wastes that were listed solely because they exhibit a characteristic of ignitability, corrosivity, and/or reactivity (ICR-only listed wastes—see Table 5-1). If one of those 29 listed wastes is mixed with used oil, the rules are the same as for mixtures of used oil and characteristic wastes discussed in Section 12.1.3.1. [§279.10(b)(2)]

12.1.4 Rebuttable presumption

During the development of the Part 279 standards, EPA sampled and analyzed used oil from all

Case Study 12-2: Mixing Hazardous Waste and Used Oil Is Treatment

A facility mixes used oil and spent mineral spirits that exhibit the characteristic of ignitability only. Is the tank where mixing occurs regulated as a hazardous waste treatment tank or a used oil tank?

When the spent mineral spirits and used oil are placed in the same accumulation tank, the tank is regulated as both a hazardous waste tank under §262.34 and a used oil tank under §279.22. “Regardless of whether the resultant mixture is used oil or hazardous waste, both sets of standards apply as the used oil and hazardous waste are being mixed in the same tank. However, the only additional requirement that is added in Part 279 is that the tank must be labeled with the words ‘used oil.’ This mixing [is] considered treatment, since the purpose of the mixing is to make the waste more amenable for recovery (i.e., energy recovery), and/or to make the waste less hazardous (i.e., to remove the solvent’s ignitable characteristic.” [RO 11679, 11708, 13570]

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used oil are in a tank, the waste must be managed under the same standard as the resultant waste, both listed and hazardous. The same standard applies to the tank if it is a listed waste. This is the purpose of the recovery, recycling, and reuse provisions (i.e., characteristics

around our great country. The agency found that the used oil often contained high concentrations of halogens—especially chlorinated constituents. After researching this issue, EPA determined that the source of these halogenated compounds was often spent chlorinated solvents that were being mixed into used oil. From the used oil mixture provisions noted in the previous section, mixing listed spent solvents into used oil causes the mixture to be a listed hazardous waste.

During inspections, it is often difficult for regulatory personnel to determine if a hazardous waste has been mixed into used oil. Therefore, the agency established a rebuttable presumption in the Part 279 standards that states: if used oil contains more than 1,000-ppm total halogens, it is presumed to have been mixed with listed spent solvents, and so it is presumed to be F001 or F002 listed hazardous waste under the mixture rule. (§§261.3(a)(2)(v), 279.10(b)(1)(ii), November 29, 1985; 50 FR 49176] Such used oil must be managed as hazardous waste. [RO 13282]

Because of this rebuttable presumption, when the used oil transporter comes onto a facility's site to haul away used oil, the transporter will usually check for total halogen content (typically using a colorimetric test kit). (§279.44(a) and (b)] If the total halogen level exceeds 1,000 ppm, "[t]he transporter may accept such shipments of used oil as a hazardous waste transporter..." For situations when the transporter doesn't test for total halogens before accepting the used oil and subsequently determines it has greater than 1,000-ppm total halogens, "if the original generator of the hazardous waste cannot be identified, the transporter may have to assume hazardous waste generator responsibilities and comply with both the generator standards of 40 CFR Part 262 as well as the hazardous waste transporter requirements of 40 CFR Part 263." [September 10, 1992; 57 FR 41592]

The rebuttable presumption applies to all used oil regardless of whether it will be recycled or disposed, and must be applied to the used oil before it

is blended with other materials. Used oil containing more than 1,000-ppm total halogens may not be blended to lower the halogen level below 1,000 ppm in order to meet the rebuttable presumption and call the used oil nonhazardous. [September 10, 1992; 57 FR 41579, EPA/530/K-02/0251]

12.1.4.1 How to make a rebuttal

The agency understands that some used oils may exceed the 1,000-ppm total halogen limit without having been mixed with hazardous waste. In these cases, the generator or other entity with possession can rebut the §279.10(b)(1)(ii) presumption by demonstrating through analysis or other documentation that the used oil does not contain hazardous waste. [RO 13282] If a rebuttal is successful, the used oil will be subject to the used oil regulations instead of the hazardous waste standards.

Rebuttals can, but do not have to, be based on actual testing of the used oil. For example, an SW-846 analytical method could be used to prove that the used oil does not contain "significant concentrations" of individual halogenated hazardous constituents listed in Appendix VIII of Part 261. EPA recommended that SW-846 Method 8010 be used when rebutting the presumption based on testing. [September 10, 1992; 57 FR 41579] That method was subsequently deleted from SW-846 in December 1996. However, a table listing 10 common SW-846 methods that may be used to test used oil for halogens can be downloaded from http://www.epa.gov/epaoswer/hazwaste/test/faqs_uoil.htm.

The regulations do not define "significant concentrations." However, regarding hazardous halogenated solvents, "EPA has stated that a level of 100 ppm of individual solvent compounds is generally considered a significant concentration. Thus, one may try to rebut the presumption by showing that less than 100 ppm of any individual hazardous halogenated constituent listed as a hazardous spent solvent in 40 CFR 261.31 is present." However, other site-specific factors will also have to be considered. [November 29, 1985; 50 FR 49176, RO 13579]

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Thus, if none of the halogenated solvents in the F001 and F002 spent solvent listings (e.g., trichloroethylene, 1,1,1-trichloroethane, methylene chloride) are contained in the used oil at concentrations of ≥ 100 ppm, you can successfully rebut the presumption that hazardous waste was mixed into the used oil, and your material is just used oil subject to Part 279. If, conversely, analysis indicates that one or more of the halogenated solvents in the F001 or F002 spent solvent listings are present in the oil at ≥ 100 ppm, the presumption is not rebutted, and the material must be managed as a hazardous waste.

The presumption could also be rebutted by demonstrating that all halogens are inorganic (e.g., salts). [RO 12738]

Another way of rebutting the presumption would be to document the source of the halogens (i.e., show that the halogens are not attributable to regulated, listed spent solvents). Three examples of this approach are as follows:

1. Used oil that contains less than 1,000-ppm total halogens is placed in RCRA-empty drums. However, residues remaining in the drums cause the total halogen level to exceed 1,000 ppm. In this case, if the containers meet the definition of RCRA-empty, information attributing the source of the halogens to residues remaining in the drums would be sufficient to rebut the presumption. The halogens would not be attributable to mixing with listed spent solvents because the drums do not, by definition, contain RCRA-regulated hazardous waste. [RO 11870]
2. A company collects do-it-yourselfer oil waste from households, and the used oil contains more than 1,000-ppm total halogens. In order to rebut the presumption of mixing with listed spent solvents, the firm could provide documentation that the source of the used oil is exclusively household waste (which is excluded from the definition of hazardous waste) and prove that the chain of custody has been main-

tained to prevent mixing with hazardous waste after collection. [RO 11828, 11875]

3. A conditionally exempt small quantity generator (CESQG) mixes a small amount of F005 listed spent solvent into its used oil. The resulting used oil contains 2,000-ppm total halogens. The presumption of mixing can be rebutted by providing convincing documentation to show that the mixture is an excluded CESQG used oil mixture covered under §§261.5(j) and 279.10(b)(3). [RO 14627]

Even if a rebuttal is successful, if the total halogen level in the used oil exceeds 4,000 ppm, the used oil will not meet the used oil specification limit for total halogens (see Case Study 12-3 and Section 12.3.1). The material is still used oil subject to Part 279, but it is off-spec used oil. Consequently, if the used oil is destined to be burned for energy recovery, it will have to either be 1) processed to lower the total halogen level prior to burning, or 2) burned as off-specification used oil fuel (in

Case Study 12-3: Presumption May Be Rebutted Regardless of Halogen Level

Used oil that is burned for energy recovery is considered to be off-specification if it contains more than 4,000-ppm total halogens. [§279.11] If an automotive service station generates used oil that has a total halogen level of 5,000 ppm, can the owner still rebut the presumption that the used oil was mixed with listed spent solvents?

Yes. The rebuttable presumption operates independently of the used oil specification level for total halogens. "There is no halogen level over which it is impossible to rebut the presumption of mixing... Regardless of the specification of the used oil... a handler always has the option of seeking to rebut the presumption of mixing with a listed hazardous waste." [RO 14340]

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which case the used oil fuel handlers must comply with Part 279, Subpart G).

12.1.4.2 Exemptions from the rebuttable presumption

EPA recognizes that some oils can become contaminated with more than 1,000-ppm total halogens simply through normal use (without mixing them with hazardous waste). Accordingly, the agency has exempted two specific types of used oil from the rebuttable presumption:

1. Metal-working oils/fluids containing chlorinated paraffins are not subject to the presumption if they are processed to reclaim the oils/fluids via a tolling arrangement as described in §279.24(c). [§279.10(b)(1)(ii)(A)] EPA believes that tolling agreements "restrict the handling of the oils/fluids and provide for a mutual interest in preventing any potential contamination of the oils/fluids to assure that the oils/fluids can be recycled." Generators and/or handlers of metal-working oils that have not entered into a tolling agreement to provide for their recycling remain subject to the rebuttable presumption. Thus, they must document that the oils are not mixed with chlorinated hazardous wastes if the total halogen levels are greater than 1,000 ppm. [September 10, 1992; 57 FR 41579]
2. Used oils removed from refrigeration units that are contaminated with chlorofluorocarbons (CFCs) are not subject to the rebuttable presumption if the CFCs are destined for reclamation. [§279.10(b)(1)(ii)(B)] This exemption extends to used oil contaminated with chemicals (such as hydrochlorofluorocarbons or HCFCs and hydrofluorocarbons or HFCs) that are used in a manner similar to CFCs in refrigeration units. [RO 14400] The used oil is exempt from the rebuttable presumption at the point of draining from the compressors as long as the CFCs (or HCFCs or HFCs) are eventually reclaimed (i.e., removed from the used oil). CFC-contaminated used oils that have

been mixed with used oil from other sources remain subject to the rebuttable presumption, as do oils from which the CFCs are not reclaimed. [RO 11735, 11850, 14051]

Generators of used oil that qualify for one of these two exemptions do not have to prove that the oil has not been mixed with a hazardous waste even though it may contain more than 1,000-ppm total halogens. However, such oil remains subject to the Part 279 standards.

12.1.5 Used oil filters

Depending on their material of construction and whether or not they have been drained, most used oil filters are excluded from the hazardous waste and used oil regulations. [§261.4(b)(13)] As discussed below, if they don't qualify for that exclusion, used oil filters may be subject to the Part 279 used oil management standards, RCRA Subtitle D non-hazardous waste provisions, or, under a worst-case scenario, applicable hazardous waste regulations.

12.1.5.1 Exclusion for non-terne-plated filters

Under §261.4(b)(13), EPA excludes non-terne-plated used oil filters from automobiles, trucks, off-road vehicles, diesel-powered locomotives, and heavy equipment from the RCRA hazardous waste regulations and used oil regulations, as long as they are not mixed with listed hazardous wastes. [RO 11704] In order to qualify for the exclusion, used oil filters must be gravity hot-drained by 1) puncturing the filter anti-drain back valve or the filter dome and hot-draining, 2) hot-draining and crushing, 3) dismantling and hot-draining, or 4) any other equivalent hot-draining method that will remove the used oil. Prior to draining, the storage and handling of used oil filters must comply with the used oil management standards in Part 279. [September 10, 1992; 57 FR 41581, RO 11704, 14183]

"Hot-drained" means that the oil filter is drained near engine operating temperature and above room temperature (i.e., 60°F). EPA recommends a minimum 12-hour hot-drain time for punctured or

pierced used oil filters. The agency notes that if an oil filter is picked up by hand or lifted by machinery and used oil simply drips or runs from the filter, the filter is *not* considered to have been drained. [May 20, 1992; 57 FR 21531] Used oil removed from filters is subject to the Part 279 used oil management standards if it is recycled. [September 10, 1992; 57 FR 41581] Furthermore, any residual oil that leaks out of processed used oil filters (e.g., after the filters have been drained and crushed) remains subject to Part 279. [RO 14202]

Used oil filters that qualify for the §261.4(b)(13) exclusion (i.e., they've been hot-drained) may be disposed in a nonhazardous waste landfill without performing a hazardous waste determination. [May 20, 1992; 57 FR 21531, RO 11754, 14183] Such drained filters may alternatively be considered scrap metal [and therefore are eligible for the §261.6(a)(3)(ii) exemption] if they do not contain a significant amount of liquid and they will be recycled. Used oil filters do not contain a significant amount of liquid once the used oil has been drained or removed to the extent possible such that there are no visible signs of free-flowing oil. [§279.10(c), RO 11566, 13498, 14183, 14184] See Section 4.8.6 for additional discussion of used oil filter management

12.1.5.2 Nonexcluded oil filters

Terne-plated used oil filters are not included in the §261.4(b)(13) exclusion because the terne (tin/lead alloy) plating makes the filter exhibit the toxicity characteristic for lead. [May 20, 1992; 57 FR 21531] Terne may be used on filters found in heavy trucks or equipment. It is often difficult to differentiate between terne- and non-terne-plated filters. Generators of used oil filters may have to contact the filter's manufacturer to obtain this information.

Other types of filters, such as fuel filters, transmission oil filters, hydraulic fluid filters, and specialty filters are also not included in the scope of the §261.4(b)(13) exclusion, because EPA lacked quantitative data on these types of units. [May 20, 1992; 57 FR 21532, RO 11808]

Used oil filters that do not qualify for the used oil filter exclusion in §261.4(b)(13) or scrap metal exemption in §261.6(a)(3)(ii) are subject to the Part 279 used oil standards if they will be recycled. For example, if the filters (drained or undrained) are to be burned for energy recovery, they are regulated as used oil under Part 279. [§279.10(c)(2), RO 11808, 13639] If the filters cannot be recycled, they must be disposed. If these solid wastes are not hazardous, they may be disposed in accordance with Parts 257 and 258. [§279.81(b), RO 11808] If filters to be disposed exhibit a hazardous characteristic, they must be managed as hazardous waste.

12.1.6 Other mixtures of used oil and solid wastes/other nonhazardous materials

Used oil is often mixed with, or contaminates, many types of material besides hazardous waste and filters. The regulatory status of such mixtures and contaminated materials is detailed in §279.10(c-f) and described below.

12.1.6.1 Used oil mixed with fuels

With one exception, mixtures of used oil and fuels or fuel products are regulated as used oil under Part 279. [§279.10(d)(1)] This provision assumes that the mixture will be recycled (i.e., burned for energy recovery).

The one exception is for mixtures of used oil and diesel fuel. Under §279.10(d)(2), mixtures of used oil generated onsite and diesel fuel that are used as fuel in the generator's own vehicles are not subject to the Part 279 regulations after the mixing occurs. However, all other applicable regulations (e.g., Clean Air Act standards) pertaining to the management or burning of such mixtures apply. Prior to mixing, the standards for used oil generators (Part 279, Subpart C) apply to the used oil. [RO 14198, 14305] EPA has decided that this exception at §279.10(d)(2) also applies to mixtures of used oil and JP-8. [RO 14305]

12.1.6.2 Used oil-contaminated materials

Materials (e.g., absorbents, rags and wipers, scrap metal, etc.) that are contaminated with used oil

for the used oil or scrap metal excluded from the Part 279 recycling. For undrained) are to be regulated under 279.10(c)(2), RO 11704, 13639, 14111]. If filtered, they are not hazardous waste in accordance with RO 11808] If filterable characteristic hazardous waste.

Used oil and solid materials

contaminates, many of these waste and filterable mixtures and covered by 279.10(c-f) and

Fuels

used oil and fuels are used oil under RCRA provision assumes that (i.e., burned for

uses of used oil and filterable mixtures of used oil that are used in vehicles are not subject to RCRA after the mixing of filterable regulations pertaining to the use of these mixtures apply to used oil generators. RCRA provides that this exclusion applies to mixtures of

Used materials

and wipers, scrap metal coated with used oil


fall into two regulatory categories [279.10(c), September 10, 1992; 57 FR 41581, May 3, 1993; 58 FR 26423, RO 11704, 13639, 14111]:

1. Materials that contain visible signs of free-flowing oil—As long as they are destined for recycling, such materials are regulated as used oil under Part 279 until the used oil is removed from the material (i.e., the material no longer contains visible signs of free-flowing oil).
2. Materials that do not contain visible signs of free-flowing oil—These materials are not used oil and are not subject to Part 279.

EPA recommends that used oil be separated from used oil-contaminated materials before the mixture is managed. Prior to separation, the mixtures (e.g., dripping rags) must be stored and handled in compliance with Part 279.

After separating used oil from these materials such that they show no visible signs of free-flowing oil, the materials are no longer subject to Part 279. As such, if the materials will be disposed, they are solid wastes, and the generator must determine whether or not they are hazardous. Because used oil is not listed (at the federal level), the only way these used oil-contaminated solid wastes could be hazardous is if they exhibit a characteristic or if they were mixed with listed hazardous waste. If so, they must be managed as hazardous waste. If these materials do not exhibit a characteristic (and were not mixed with listed hazardous waste), they are nonhazardous solid waste. (A hazardous waste determination is not required for drained non-terne-plated used oil filters, as discussed in Section 12.1.5.1.) [57 FR 41585, RO 11777, 11783]

However, even if a used oil-contaminated material to be disposed does not exhibit a characteristic (e.g., a wrung-out oily rag) and, therefore, is not considered a hazardous waste under the federal regulations, some states may regulate them as "special wastes" (e.g., certain petroleum-contaminated, non-hazardous wastes) when disposed. [RO 11798]

 Steel turnings generated during machine shop operations are coated with cutting oil. As

noted in Section 12.1.1, used cutting oil is considered used oil. What is the regulatory status of the used oil-coated turnings?

A The steel turnings coated with used oil would be regulated as used oil if they were visibly dripping with used oil. Once the used oil has been removed so that they no longer contain visible signs of free-flowing oil, they may be managed as scrap metal if recycled. [RO 11184, 11783, 13639]

Used oil that is separated from such used oil-contaminated materials is subject to the Part 279 regulations unless it is destined for disposal (in which case it is a solid waste and must be evaluated to determine if it is a hazardous waste). For instance, used oil recovered from sorbents, industrial wipers, and scrap metal is subject to Part 279 when recycled. [57 FR 41581]

12.1.6.2.1 Contaminated materials are used oil when burned for energy recovery

Materials that contain or are contaminated with used oil are regulated as used oil if they are burned for energy recovery. [279.10(c)(2), 57 FR 41585] This applies regardless of whether the materials contain visible signs of free-flowing oil. More detail on this issue is provided in Case Study 12-4 and Section 12.3.4.

12.1.6.3 Residues from managing used oil

The regulatory status of materials that are reclaimed or derived from used oil depends on how they are managed. If the materials are used beneficially (e.g., re-refined lubricants) and are not 1) burned for energy recovery, 2) disposed, or 3) used in a manner constituting disposal, they are products—not used oil (and therefore are not regulated under Part 279). [279.10(e)] In addition, such materials are not solid wastes and, therefore, cannot be hazardous wastes. On the other hand, any materials produced from used oil that are burned for energy recovery are regulated as used oil. Finally, any materials derived from used oil (except used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products) that are disposed or

Case Study 12-4: Used Oil Storage Tank Bottoms Burned for Energy Recovery

An automotive repair shop stores used oil in an onsite storage tank. The used oil is not mixed with any other waste streams. Over time, the solids and heavy fractions have settled out of the used oil, causing a thick tar-like layer to accumulate at the bottom of the used oil storage tank. The tank bottoms typically exhibit the toxicity characteristic for benzene, cadmium, chromium, and lead. If the owner sends these tank bottoms offsite to be burned for energy recovery, must they be handled as used oil or hazardous waste?

According to §279.10(e)(2), residues or sludges resulting from the storage, processing, or re-refining of used oil are considered used oil when they are recycled by burning them for energy recovery.

Therefore, when the repair shop's tank bottoms are sent offsite for energy recovery, they qualify as used oil and may be handled according to the Part 279 regulations. The fact that the tank bottoms exhibit several hazardous characteristics does not alter their status as used oil. In this case, the tank bottoms would have to be handled as hazardous waste only if they fail the rebuttable presumption [§279.10(b)(1)(ii)] or they have been mixed with hazardous waste [§279.10(b)(1-2)]. However, if the tank bottoms are not burned for energy recovery, and are disposed instead, they must be managed as characteristic hazardous waste. [May 3, 1993; 58 FR 26422, RO 13697]

used in a manner constituting disposal are solid wastes and therefore are subject to the hazardous waste regulations if they exhibit a characteristic or are listed.

12.1.6.4 Used oil-contaminated wastewater

Unless contaminated with de minimis amounts, wastewater that contains used oil meets the §279.1 definition of "used oil" and therefore is subject to the Part 279 standards. The used oil regulations also apply to [58 FR 26422, RO 11818]:

- Used oil recovered during wastewater treatment to meet a CWA-permitted discharge;
- Oil recovered from wastewater generated from a used oil recovery process; and
- Residues or sludges resulting from CWA treatment of wastewater containing used oil.

However, wastewater contaminated with de minimis levels of used oil is *not* regulated under Part 279 if it is subject to Section 402 (the NPDES program) or 307(b) (discharges to POTWs) of the CWA. This includes wastewater at facilities that have eliminated their wastewater discharge as a direct result of the CWA. EPA defines "de minimis" quantities of used oil as "small spills, leaks, or drippings from

pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations." The exception does not apply if the used oil enters the wastewater system as a result of abnormal manufacturing operations that cause substantial leaks, spills, or other releases. [§279.10(f)] For example, pouring collected used oil into any part of a wastewater treatment system is not covered under the de minimis exemption. [RO 11858]

12.1.6.4.1 Used oil-contaminated wastewater at petroleum refineries

Per §279.10(g)(5), used oil that incidentally enters and is captured by a petroleum refinery's wastewater treatment system that is subsequently recovered along with other oil in the refinery's recovered oil system (for insertion into the refining process) is not regulated as used oil under Part 279. Such oil recovered from this system is more properly characterized as crude feedstock than used oil. Such incidental losses of used oil would include drippage and minor spillage. [March 4, 1994; 59 FR 10555, July 28, 1994; 59 FR 38543]

Energy Recovery

air shop's tank bottom recovery, they be handled accordingly. The fact that the hazardous character as used oil. In should have to be handled if they fail the 29.10(b)(1)(ii) or hazardous waste the tank bottoms recovery, and are managed as characterized by 3, 1993; 58 FR

other similar equipment, or small amounts treatment system durations." The exception oil enters the waste-normal manufacturing leaks, spills, For example, pour part of a wastewater treated under the de 3]

Recycled wastewater

that incidentally enters a petroleum refinery's wastewater that is subsequently treated in the refinery's refinery into the refining process. The oil under Part 279 system is more expensive feedstock than recycled used oil would be. [March 4, 1994; 59 FR 38543]

However, this exemption is void if used oil is deliberately poured into a refinery's wastewater treatment system; if this occurs, the recovered oil from the wastewater treatment system would not be exempt from Part 279 standards under §279.10(g)(5). For example, used oil collected from equipment or vehicle maintenance activities that is intentionally introduced into a refinery's wastewater treatment system would not be exempt from the Part 279 standards once recovered. Similarly, used oil that is generated offsite and brought into the refinery may not be added to the refinery's wastewater treatment system and be exempt from Part 279 per §279.10(g)(5) once recovered. [March 4, 1994; 59 FR 10555]

12.1.6.5 Used oil mixed with nonhazardous waste

People sometimes ask about the regulatory status of mixtures of used oil and nonhazardous solid waste. EPA has clarified in EPA/530/K-02/0251 that mixtures of used oil with nonhazardous solid waste are regulated as used oil under Part 279. However, we caution entities about mixing solid waste into used oil, as your used oil recycler may not want the mixture.

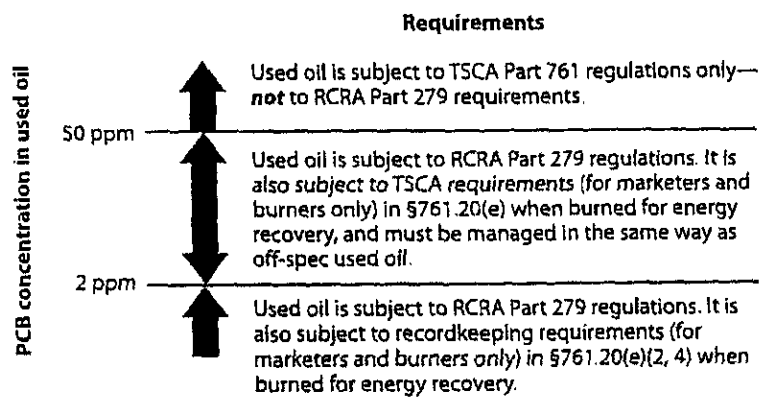
12.1.7 PCBs in used oil

Polychlorinated biphenyls (PCBs) can sneak into used oil in a couple of different ways. Since PCBs are still prevalent in electrical transformers, capacitors, and other older equipment, PCB-containing oil shows up frequently at utility power plants and other industrial facilities. Additionally, some facilities use recycled lubricating oil; PCBs can sometimes be unknowingly recycled into such lubricants.

Materials and wastes that contain PCBs are subject to standards promulgated under the Toxic Substances Control Act (TSCA); these requirements are codified in 40 CFR Part 761. A question often raised is whether PCB-containing used oil is regulated under the TSCA regulations, RCRA Part 279 standards, or both.

EPA clarified the status of PCB-contaminated used oil in a July 30, 2003 final rule. [68 FR 44659] From a regulatory perspective, the agency has divided the universe of PCB-containing used oil into three groups, as shown in Figure 12-3. The RCRA Part 279 used oil standards will apply to only two of the three groups, while the TSCA PCB regs in Part 761 potentially apply to all used oil.

Figure 12-3: Regulation of PCB-Containing Used Oil



Source: McCoy and Associates, Inc.; adapted from 68 FR 44660, RO 14606.

512.1.7

First, used oil shown to contain <2 ppm PCBs (via testing or through "other information") is subject to the Part 279 used oil standards and also to the TSCA recordkeeping requirements in §761.20(e)(2,4) if burned for energy recovery. ("Other information" consists of personal knowledge of the source and composition of the used oil, or a certification that the used oil contains <2 ppm PCBs from the person generating the used oil. [§761.20(e)(2)(iii)]) However, these TSCA recordkeeping requirements apply only to marketers and burners of the used oil—not to entities that are generators only (although a marketer may request the generator to certify that the used oil contains <2 ppm PCBs).

Used oil that contains greater than or equal to 2 ppm but less than 50 ppm of PCBs is also subject to the RCRA Part 279 standards and, for marketers and burners of used oil, the marketing, testing, burning, and recordkeeping requirements codified in the TSCA regs in §761.20(e), when such used oil is burned for energy recovery. [§279.10(i), 68 FR 44660, RO 14117] As an aside, EPA has noted in guidance that, when two environmental programs both apply—in this case RCRA and TSCA—the more stringent requirements govern. [§761.1(e), July 8, 1987; 52 FR 25770, August 18, 1992; 57 FR 37237, RO 11470]

Used oil that contains less than 50 ppm PCBs that is recycled in ways other than burning for energy recovery is regulated under Part 279 but is excluded from TSCA Part 761 requirements unless 1) it was diluted to below the 50-ppm threshold; or 2) the PCBs were not legally manufactured, processed, distributed in commerce, or used under TSCA. [§§761.3 "Excluded PCB Products," 761.20(a)(1), 761.20(c), 68 FR 44660] However, §761.20(d) prohibits the use of used oil that contains any detectable level of PCBs as a sealant, coating, or dust-control agent (e.g., road oiling).

Finally, used oil containing 50 ppm PCBs or more must be managed only under TSCA; therefore, Part 279 doesn't apply to such high-PCB used oil. [§761.60] EPA believes that the current require-

ments in TSCA for PCB-contaminated wastes adequately control the management and disposal of such used oil. [68 FR 44660]

Used oil that contains PCBs may not be diluted to avoid a particular regulatory requirement. [§761.1(b)] When PCB concentrations in used oil are diluted, the used oil is subject to the requirements applicable at the original PCB concentration. So, for example, used oil that contains >50 ppm PCBs at its point of generation that has been diluted so that its PCB concentration is <50 ppm is still subject only to regulation under TSCA. [68 FR 44660]

However, used oils of unknown PCB concentration can be mixed with other such used oils in a common container and subsequently tested to determine the PCB concentration. (However, no chemicals or other nonused oils may be added to the container to take advantage of this provision.) [§§761.20(e)(2), 761.60(g)(2), 68 FR 44660]

12.2 Used oil management standards for generators

According to §279.1, a "used oil generator" is:

"[A]ny person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation."

The first part of this definition is fairly straightforward. The second part, "any person whose act first causes used oil to become subject to regulation," is a little vague; we'll clear that up in our discussions below. Examples of used oil generators include car repair shops, automobile service stations, quick-lube shops, government motor pools, grocery stores, metal-working industries, and boat marinas. [EPA/530/F-96/004] Additional guidance on who qualifies as a used oil generator was given in preamble language:

"[Used oil] generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from

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[September 10, 1992; 57 FR 41584]

As both of these quotations imply, certain entities that generate used oil are exempt from regulation under Part 279. These entities, along with the point that the used oil they generate becomes subject to regulation, are as follows [§279.20(a)]:

- Household do-it-yourselfers (DIYs) are exempt from Part 279. The used oil these households generate (from changing their own oil in their personal vehicles) becomes subject to regulation when it is accepted/aggregated at a used oil collection center (e.g., operated by a service station or quick-lube shop). Under this scenario, the collection center is considered the generator of the used oil. [May 3, 1993; 58 FR 26423, RO 11828]
- Vessels at sea or in port that produce used oil are not subject to Part 279, until the used oil they generate is transported ashore. Once ashore, the used oil is subject to Part 279 regulation. In this case, the vessel owner/operator and the person who removes or accepts the used oil from the vessel are cogenerators of the used oil. Under this arrangement, both parties are responsible for managing the oil under the applicable provisions of the Part 279, Subpart C generator standards. "The cogenerators may decide among them which party will fulfill the requirements of this subpart." [§279.20(a)(2)]
- Generators who mix used oil generated onsite with diesel fuel for use in their own vehicles are not subject to Part 279 once the mixing has occurred. In this case, the used oil is subject to regulation prior to mixing.
- Farmers who generate an average of 25 gallons/mo or less of used oil in a calendar year from vehicles or machinery used on the farm are not subject to the requirements of this part. As long as this threshold is not exceeded, the farmer remains exempt from Part 279. Similar to household DIYs, used oil generated from these farmers becomes subject to Part 279 regulation when collected at a used oil collection center.

Note that there is no such thing as a small quantity used oil generator. Thus, no need exists for a generator to measure the quantities of used oil collected and stored each month. [57 FR 41585]

12.2.1 Used oil generator standards

Figures 12-4a and 12-4b show the issues that generators of used oil must address in terms of management requirements. As referenced in these two logic diagrams, most of the management standards applicable to used oil generators are codified within Subpart C to Part 279. Additional requirements are applied to generators via references to other Part 279 subparts, other RCRA regulations, and CWA rules.

A useful document for reviewing a generator's compliance with the used oil regulatory requirements is *Protocol for Conducting Environmental Compliance Audits of Used Oil and Universal Waste Generators Under RCRA*, EPA/300/B-00/002, March 2000, available from <http://www.epa.gov/compliance/resources/policies/incentives/auditing/oil.pdf>

12.2.1.1 Used oil storage

The used oil management standards for generators address storage in three primary categories of units: 1) containers and aboveground tanks, 2) underground storage tanks (USTs), and 3) other units.

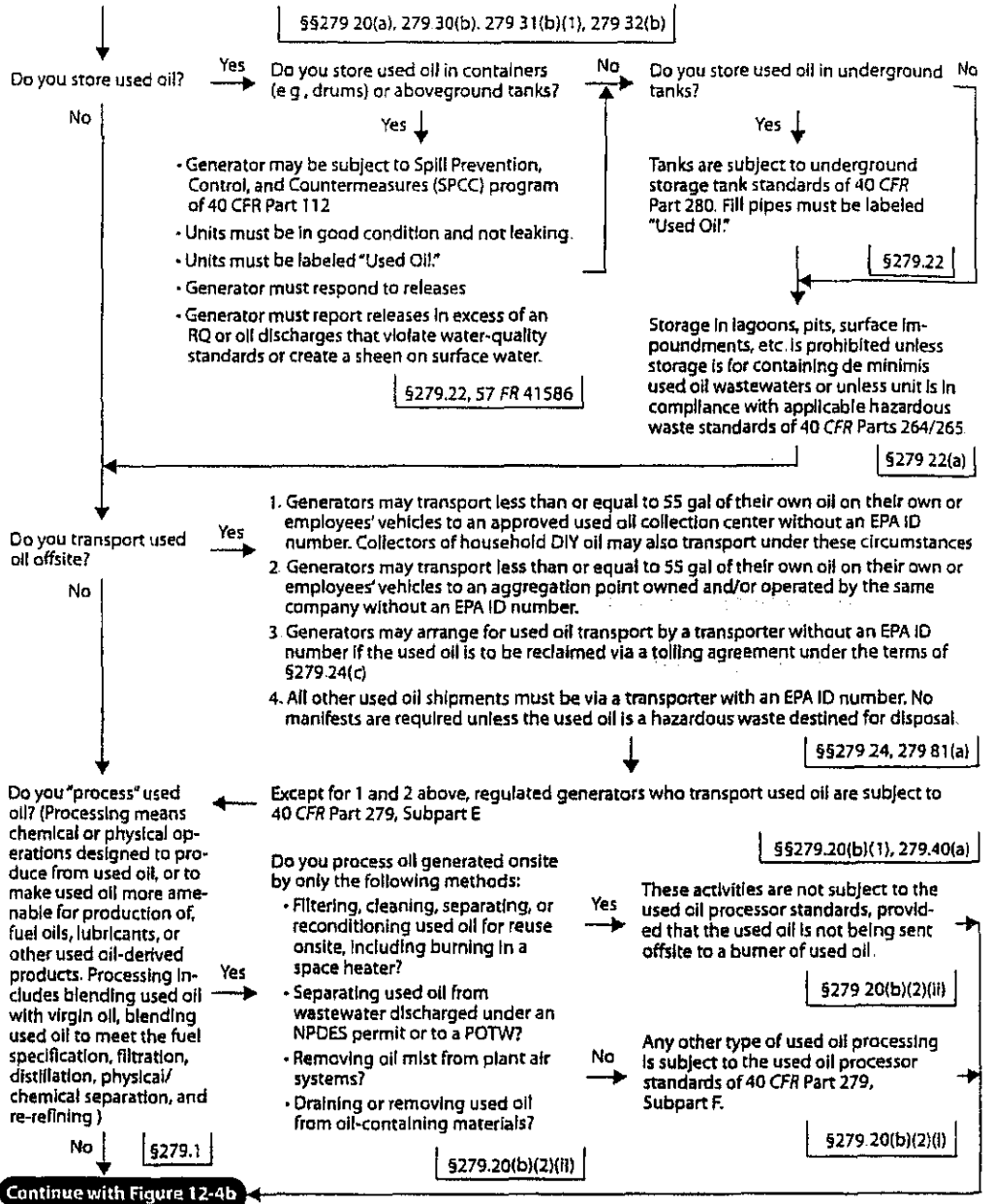
12.2.1.1.1 Containers and aboveground tanks

The wording in §279.22(a) could be misinterpreted, requiring containers and tanks used to store used oil to comply with Part 264/265, Subparts I and J, respectively. This was not EPA's intent; used oil storage containers and tanks need not comply with those requirements unless the used oil has been mixed with hazardous waste. [RO 14118] Instead, such storage units must meet the following.

According to §279.22(b-c), containers and aboveground tanks used to store used oil must 1) be in good condition with no severe rust, structural defects, or deterioration; 2) have no visible leaks; and 3) be labeled clearly with the words "Used

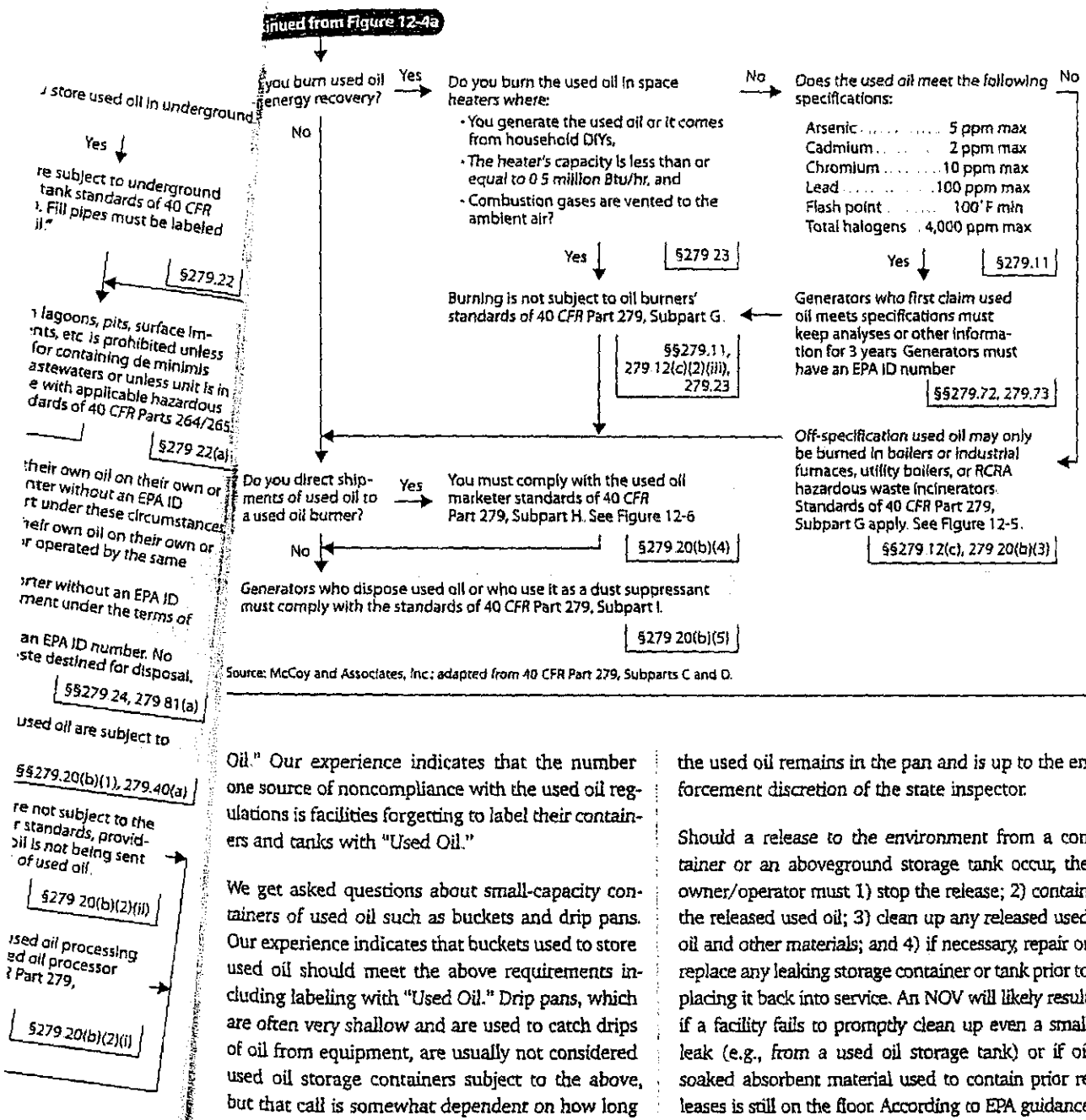
Figure 12-4a: Regulatory Requirements for Generators of Used Oil

Generators of used oil are persons who produce used oil or who first cause it to be regulated under 40 CFR Part 279 (e.g., persons who collect or aggregate used oil).



§12.2.1.1.1

Figure 12-4b: Regulatory Requirements for Generators of Used Oil (Continued)



"Oil." Our experience indicates that the number one source of noncompliance with the used oil regulations is facilities forgetting to label their containers and tanks with "Used Oil."

We get asked questions about small-capacity containers of used oil such as buckets and drip pans. Our experience indicates that buckets used to store used oil should meet the above requirements including labeling with "Used Oil." Drip pans, which are often very shallow and are used to catch drips of oil from equipment, are usually not considered used oil storage containers subject to the above, but that call is somewhat dependent on how long

the used oil remains in the pan and is up to the enforcement discretion of the state inspector.

Should a release to the environment from a container or an aboveground storage tank occur, the owner/operator must 1) stop the release; 2) contain the released used oil; 3) clean up any released used oil and other materials; and 4) if necessary, repair or replace any leaking storage container or tank prior to placing it back into service. An NOV will likely result if a facility fails to promptly clean up even a small leak (e.g., from a used oil storage tank) or if oil-soaked absorbent material used to contain prior releases is still on the floor. According to EPA guidance,

§12.2:1:1

these requirements would not apply to releases within contained areas, such as concrete floors or impervious containment areas. However, facilities would normally clean up such spills as a matter of good housekeeping practices; in any event, they would be obligated to clean up contained spills or leaks before they reach the environment. [September 10, 1992; 57 FR 41586, RO 14339]

Used oil generators are also required to report a release of hazardous substances to the environment under other environmental programs. Releases of used oil that is contaminated with CERCLA hazardous substances (e.g., lead) must be reported to the National Response Center (NRC) if the reportable quantity (RQ) of the contaminating substance is released within a 24-hr period. [§302.6(a)] Additionally, any discharge of used oil that violates a water-quality standard or causes a film or sheen on navigable water must be reported to the NRC per 40 CFR 110.3.

Besides the common-sense requirements noted above, owners/operators using containers and aboveground tanks for oil storage may also be required to prepare and follow an SPCC plan for these units. See Section 12.2.1.1.4 for more details.

Finally, it is interesting to note what requirements are *not* imposed on container and aboveground tank storage of used oil by Part 279. First, because EPA views used oil as a marketable commodity and wants to encourage its recycle and reuse, there is no accumulation time limit and no limit on the quantity of used oil that may be stored. [EPA/530/K-02/025I] Also, there are no secondary containment, inspection, or closure requirements (although one or more of these may be imposed under SPCC plans). Finally, used oil generators are not required to obtain EPA ID numbers.

12.2.1.1.2 USTs

EPA believes that used oil stored in USTs poses similar risks to the underground storage of gasoline and other petroleum products. Thus, the agency requires underground used oil storage tanks to meet

the requirements of 40 CFR Part 280, which apply to USTs managing CERCLA hazardous substances and petroleum products.

While a complete review of Part 280 requirements is beyond the scope of this text, these provisions are comparable in many respects to Part 264/265, Subpart J requirements for hazardous waste storage tanks (which are covered in Chapter 10). These include design and management standards, corrosion protection, leak detection, spill response and notification, and closure plans. Thus, used oil storage in USTs may be more involved compared to the requirements for containers and aboveground tanks.

Additionally, fill pipes associated with USTs storing used oil must be labeled with the words "Used Oil."

12.2.1.1.3 Other units

Regarding the storage of used oil in units other than tanks and containers, EPA noted:

"Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewaters containing de minimis quantities of used oil, or unless the unit is in full compliance with 40 CFR Part 264/265, Subpart K." [57 FR 41586]

In other words, the agency will allow the storage of used oil in alternate units only if they meet stringent Subtitle C RCRA requirements for hazardous waste management units.

12.2.1.1.4 SPCC plans

As part of the CWA regulations, SPCC requirements, which are spelled out in 40 CFR Part 112, apply to facilities that manage oil (including petroleum, fuel oil, and used oil) and are designed to prevent discharges to navigable waters. All facilities handling oil must prepare a plan if they are located in an area where a release to a navigable waterway could be expected and they:

- Have an underground oil storage capacity of more than 42,000 gallons; or
- Have a container and aboveground tank oil storage capacity of more than 1,320 gallons. When

180, which apply to hazardous substances. SPCC requirements are quite extensive, so we won't try to cover them in detail here. To summarize, they include tank and piping design, construction, and inspection requirements; secondary containment requirements; personnel training provisions; unit security and vehicle control requirements; storm water diversion and control requirements; contingency planning; and emergency response and notification procedures. Besides the regulations themselves, a good reference document for more detail on SPCC plans is Appendix D to *Environmental Regulations and Technology—Managing Used Motor Oil* [EPA/625/R-94/010, December 1994, available from <http://nepis.epa.gov/pubtitleORD.htm> by downloading the report numbered 625R94010].

12.2.1.2 Offsite shipments

Part 279 rules governing the offsite transportation of used oil are very simple: "generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers." [§279.24] When the transporter comes to

the generator's facility to pick up the used oil, no manifest is required. EPA believes that the information maintained by used oil transporters will be sufficient to track used oil shipments without the need for a manifest. [57 FR 41587]

The Part 279 regs provide three options to using a used oil transporter with an EPA ID number. First, used oil generators may self-transport small amounts of used oil offsite to used oil collection centers, without first obtaining an EPA ID number, provided:

- No more than 55 gallons of used oil is transported at any one time;
- The used oil is transported in a vehicle owned by the generator or one of its employees; and
- The used oil is transported to a used oil collection center that is registered, licensed, permitted, or otherwise recognized/allowed to manage used oil by a state, county, or municipal government.

This option allows generators of small quantities of used oil and generators who have several, separate generation points (each producing small quantities of used oil) to recycle their used oil without significant cost. A typical application is given in Case Study 12-5. Note that used oil collection centers

Case Study 12-5: Servicing a Customer's Fleet of Vehicles

A service company employee drives to a customer's site, where the employee services the customer's fleet of vehicles. Part of this service involves changing the oil in the vehicles. The fleet's used oil is collected in an empty 55-gallon drum—never more than 45 gallons of used oil are collected in any one day. The company employee leaves the customer's site with 45 gallons or less of used oil in a drum in the service company's vehicle. Because the customer's fleet is often serviced at night, the used oil drum may be stored in the service company's vehicle until the next business day. At that time, the employee delivers the used oil drum to either the customer's used oil aggregation point or a third-party, government-registered, used oil collection center. Can the service company transport the used oil in this manner without having an EPA ID number and without complying with the used oil transporter standards in Part 279, Subpart E?

Because the service company is handling shipments of used oil totaling 55 gallons or less from the generation site to a used oil aggregation point or collection center, the activity would not be regulated under the Subpart E standards for used oil transporters and transfer facilities. Rather the transportation would be regulated under the used oil generator standards in Part 279, Subpart C.

determining aboveground storage capacity, only containers of oil with a capacity of ≥55 gallons are counted.

SPCC plan requirements are quite extensive, so we won't try to cover them in detail here. To summarize, they include tank and piping design, construction, and inspection requirements; secondary containment requirements; personnel training provisions; unit security and vehicle control requirements; storm water diversion and control requirements; contingency planning; and emergency response and notification procedures. Besides the regulations themselves, a good reference document for more detail on SPCC plans is Appendix D to *Environmental Regulations and Technology—Managing Used Motor Oil* [EPA/625/R-94/010, December 1994, available from <http://nepis.epa.gov/pubtitleORD.htm> by downloading the report numbered 625R94010].

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must use used oil transporters with EPA ID numbers when shipping the collected used oil offsite for recycling

A second option allows generators to self-transport small amounts of used oil without an EPA ID number to an aggregation point. Again, no more than 55 gallons of used oil may be transported at any one time and a generator- or generator employee-owned vehicle must be used. Most importantly, the generating facility and the aggregation point must have the same owner. Again, the aggregation point would have to use a transporter with an EPA ID number to ship collected used oil offsite.

Under the third option, a generator may arrange for used oil transportation offsite by a transporter without an EPA ID number if the used oil is to be reclaimed and eventually returned to the generator for reuse as a lubricant, cutting oil, or coolant. The reclaiming arrangement must be spelled out in a contractual tolling agreement that indicates 1) the type of used oil involved and the frequency of the offsite shipments, 2) that the reclaimed oil will be returned to the generator, and 3) that the vehicles used to transport the used oil to the processor and the reclaimed oil back to the generator are owned by the processor.

Note that the above discussion is for offsite shipments of used oil. Onsite movement of used oil is not subject to either §279.24 or to the Part 279, Subpart E used oil transporter and transfer facility standards. [RO 11762]

12.2.1.3 Other generator operations

Used oil generators may manage used oil in ways other than simple storage and offsite shipment to a processor. Such operations include used oil processing, burning for energy recovery, and disposal, each of which is addressed later in this chapter. However, processing, burning, and/or disposal of used oil will subject the generator to more-stringent standards. In addition, used oil generators may ship this material directly to used oil burners. In this case, the generator would also be subject to

requirements applicable to used oil marketers, which are contained in Part 279, Subpart H and are discussed in Section 12.3.5.

A facility sometimes hires a contractor to conduct activities that generate used oil instead of using its own personnel. In such a situation, both entities are cogenerators of the used oil. An example of used oil activities conducted by contractor personnel is given in Case Study 12-6.

12.2.1.4 No recordkeeping required

No specific tracking or recordkeeping are required in the used oil generator standards. [EPA/530/H-98/001] When the agency issued the Part 279 standards, it noted:

"EPA has determined that information maintained by used oil transporters will provide sufficient records of used oil transport activities without burdening used oil generators with additional tracking

Case Study 12-6: Used Oil Activities Conducted by Contractors

A facility hires a contractor to come onsite and service equipment that contains oil. If the contractor removes oil from the equipment during servicing, is the contractor considered the used oil generator, since the contractor's act first causes the used oil to become subject to regulation?

According to EPA, the contractor and the facility owner/operator are cogenerators of the used oil and both are responsible for managing the oil under the applicable provisions of Part 279. As with the situation where a separate entity offloads used oil from ships, the cogenerators must decide between themselves who will fulfill the used oil generator requirements. For example, the contractor could self-transport up to 55 gallons of the removed used oil to a collection center or aggregation point without an EPA ID number. [RO 14116]

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requirements. Information collected when accepting used oil shipments, such as quantities and type of used oil collected, the name and location of used oil generators, and analytical data for the rebuttable presumption, would be maintained by the used oil collectors/transporters as part of the recordkeeping requirements. . . . Using this information maintained by used oil transporters, the agency can track a used oil generator, if needed. Therefore, the agency has eliminated the tracking requirements for used oil generators." [September 10, 1992; 57 FR 41587]

The agency noted in that same preamble, however, that "EPA believes that used oil generators maintain used oil collection and shipment records as standard business information." [57 FR 41587]

12.2.2 Generators: don't process the oil you generate

Just as facilities that generate and accumulate hazardous waste can avoid many of the more-stringent RCRA requirements by not *treating* their waste, used oil generators should avoid *processing* their oil lest they face the tough provisions for processors and re-refiners in Part 279, Subpart F. EPA defines used oil processing in §279.1 as:

"[C]hemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining."

If a generator does something to its used oil to make it more amenable for someone else to take and burn for energy recovery, that's "processing" subject to the Subpart F requirements. For example, a generator that blends off-spec used oil with fuel oil to meet the specification is a processor. [RO 14110]

Conversely, there are a handful of specific activities that a used oil generator can carry out on its used oil and remain just a generator; the following four activities are *not* considered processing [§279.20(b)(2)(ii)], provided the used oil resulting from the listed activities is not sent directly to an offsite used oil burner:

1. Filtering, cleaning, separating, or otherwise reconditioning used oil before reusing it onsite, including burning it in a space heater pursuant to §279.23—For example, onsite maintenance and reconditioning activities designed to extend the life of used oil is not considered processing. [March 4, 1994; 59 FR 10555] A typical example is filtering contaminants from used metal-working fluids and then recycling the fluids back into machining, grinding, and/or boring operations; such reconditioning is not considered processing. [59 FR 10556, RO 11783, 14055] Additionally, the removal of CFCs and/or HCFCs from drained compressor oil (so that an owner/operator can take advantage of the exemption from the rebuttable presumption) is not processing. [RO 11850, 14051] Finally, filtering off-specification used oil for subsequent burning for energy recovery in an onsite industrial furnace is also not processing. (Had the filtered used oil been shipped offsite for burning, the generator would have been subject to Subpart F processor requirements.) [RO 13666]
2. Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge under an NPDES permit or POTW pretreatment standards—The separation of used oil from wastewater can also be accomplished to recover the used oil for reuse. [59 FR 10556, RO 11783, 11818] For example, recovery of metal-working fluids from a facility's wastewater treatment system for onsite recycling is not processing. This activity is incidental or ancillary to normal manufacturing operations (i.e., used oil processing is not the

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facility's primary purpose) [RO 11792] Note that entities conducting oil-water separation on wastewater that is received from offsite would be considered used oil processors [59 FR 10557, RO 11818]

3. Using oil-mist collectors to remove small droplets of used oil from plant air systems
4. Draining or otherwise removing used oil from used oil-contaminated materials—Removing or separating used oil from materials, such as draining used oil from non-terne-plated filters or separating used oil from sorbent materials is not processing [May 3, 1993; 58 FR 26421, RO 11874] In another situation, onsite dewatering of used oil-based coolant so that the coolant can then be sent to an offsite re-refiner or fuel blender (but not directly to an offsite burner) is not processing. [RO 13757] Wringing out a rag or absorbent pad that contains used oil is not processing.

As noted above, these four activities are not considered processing as long as any used oil produced is not sent directly to an offsite used oil burner. Additionally, such produced used oil can be burned onsite without triggering processor requirements. EPA noted that it:

"[I]s allowing onsite but not offsite burning of used oil generated from designated onsite activities because the agency believes that this approach best enables EPA to strike a reasonable balance between encouraging beneficial onsite reuse and recycling activities that should pose very limited risks, on one hand, and ensuring that activities undertaken primarily to make used oil more amenable for burning (i.e., used oil processing) are adequately controlled under the more-stringent used oil processing standards." [59 FR 10556; see also RO 11874, 13666]

Mixing used oil generated onsite with diesel fuel for use in a generator's own vehicles as fuel is also excluded from the processor standards. [EPA/530/K-02/0251]

What additional requirements does a processor of used oil face versus a simple generator? Processors must have an EPA ID number and implement preparedness and prevention plans to prevent and respond to fires, explosions, spills, and other incidents. They must provide secondary containment for containers and tanks used to store used oil, and they must meet closure requirements for tanks and containers upon cessation of operations. An analysis plan must be prepared and followed to determine compliance with the used oil fuel specification and to ensure their compliance with the rebuttable presumption. Finally, used oil processors must track their receipts and shipments of used oil, maintain a written operating record for their facility, and report annually to EPA on their activities.

12.2.3 Used oil disposal

Subpart I to Part 279 details requirements for generators (and others) who dispose used oil. First of all, EPA will allow the use of used oil as a dust suppressant only in those states that successfully petition the agency under the terms of §279.82(b). As of October 2005, no such petitions have been approved.

Aside from the dust suppressant issue, used oil that will be disposed rather than recycled is a solid waste. Therefore, before a facility may dispose used oil, it must first determine whether that material is a RCRA hazardous waste. Used oil is a hazardous waste if it 1) exhibits a hazardous waste characteristic (by its own nature or by mixing characteristically hazardous waste into it), 2) has been mixed with ICR-only listed wastes and continues to exhibit a characteristic, 3) has been mixed with non-ICR-only listed hazardous waste (other than listed waste generated by conditionally exempt small quantity generators), or 4) contains greater than 1,000-ppm total halogens and the presumption that it has been mixed with hazardous waste cannot be rebutted.

Hazardous used oil must be disposed as follows:

- Combusted in incinerators that meet Part 264/265, Subpart O standards; or

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■ Disposed in another manner (e.g., solidified and landfilled) in units that meets applicable provisions of Parts 260-266, 268, and 270.

Used oils that are not RCRA hazardous must be disposed per the terms of 40 CFR Parts 257 and 258.

12.3 Burning used oil

Used oil is burned for energy recovery at numerous facilities throughout the United States. This section discusses the regulatory aspects of such combustion. Figure 12-5 shows the Part 279 issues that must be considered when burning used oil.

12.3.1 The used oil specification

In the 1970s and 1980s, numerous facilities were burning used oil for energy recovery, because it was a cheap, high-Btu fuel. However, EPA became concerned about the potential human health effects associated with air emissions from such used oil burning. Some used oil contains fairly high levels of carcinogenic or toxic constituents that could be emitted in stack gas. Schools, hospitals, and apartment buildings that burn contaminated used oil typically use low-efficiency boilers, have little or no air pollution controls associated with them, and are located in residential areas.

In writing the Part 279 provisions dealing with used oil burning, EPA attempted to balance its desire to encourage recycling by energy recovery and its concern over the potential impact of air emissions from used oil combustion. The primary means that the agency formulated to balance these conflicting issues is the used oil fuel specification. EPA established the specification for used oil that will be burned for energy recovery on November 29, 1985 [50 FR 49164]. As shown in Table 12-3, the specification addresses the heavy metal and total halogen content, as well as the flash point, of used oil slated for energy recovery.

Arsenic, cadmium, and chromium are known carcinogens, and increased ambient concentrations would cause an increased risk of cancer to exposed individuals. Specification levels for these three met-

als were set based on metal concentrations found in dirty virgin fuel oils. The specification level for lead, conversely, was set based on meeting the National Ambient Air Quality Standard (NAAQS) for lead in densely populated areas [November 29, 1985; 50 FR 49184-6].

The total halogen specification will minimize hydrogen chloride emissions that can increase ambient levels of hydrochloric acid and contribute to acid rain. [50 FR 49181] Note that the total halogen limit of 4,000 ppm operates independently of the 1,000-ppm rebuttable presumption level for determining if listed spent solvents have been mixed into used oil. In other words, used oil for which the presumption of mixing with hazardous waste has been rebutted may be burned as on-specification used oil if the total halogen content is no greater than 4,000 ppm, or as off-spec used oil if the content is greater than 4,000 ppm. [RO 14340]

Although used oil typically has a flash point of greater than 200°F, a minimum flash point of 100°F is included in the specification because that is the American Society for Testing and Materials (ASTM) specification level for virgin fuel oils. [50 FR 49187]

The presence of PCBs in used oil is not one of the used oil fuel specifications. In a footnote to the specification contained in §279.11, however, EPA has noted that used oil containing PCBs that will be

Table 12-3: The Used Oil Fuel Specification

Constituent/property	Allowable level
Arsenic	5 ppm maximum ¹
Cadmium	2 ppm maximum ¹
Chromium	10 ppm maximum ¹
Lead	100 ppm maximum ¹
Total halogens	4,000 ppm maximum
Flash point	100°F minimum

¹Total analysis, not TCLP [RO 14584]

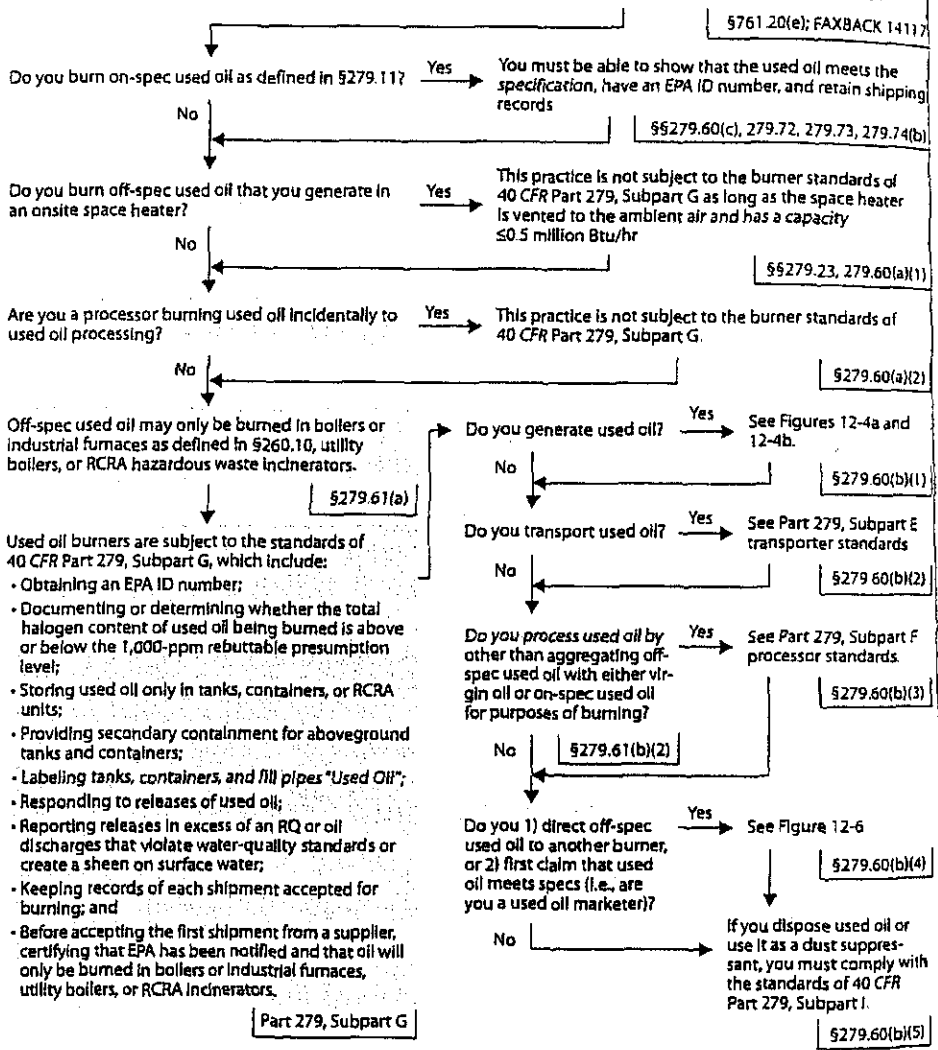
Source: Adapted from §279.11, Table 1

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Figure 12-5: Regulatory Requirements for Burners of Used Oil

Used oil burned in diesel engines is not subject to the 40 CFR Part 279, Subpart G burner standards.

Used oil that contains ≥ 2 ppm and <50 ppm of PCBs and that is burned for energy recovery must be burned in a 1) TSCA or RCRA incinerator, 2) TSCA high-efficiency boiler, 3) Industrial furnace or boiler as defined in 5260.10, or 4) utility boiler. A burner accepting such used oil must provide the marketer a one-time notification/certification per 5761.20(e)(3)(ii). (TSCA prohibits the burning of any used oil containing ≥ 50 ppm of PCBs for energy recovery.)



Source: McCoy and Associates, Inc.; adapted from 40 CFR Part 279, Subpart G

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of PCBs and that is burned for or RCRA incinerator, 2) TSCA boiler as defined in §260.10, or oil must provide the marketer a (e)(3)(ii). (TSCA prohibits the PCBs for energy recovery)

§761.20(e); FAXBACK 14117

that the used oil meets the ID number, and retain shipping

9.60(c), 279.72, 279.73, 279.74(b)

to the burner standards of as long as the space heater air and has a capacity

§§279.23, 279.60(a)(1)

to the burner standards of

§279.60(a)(2)

See Figures 12-4a and 12-4b.

§279.60(b)(1)

See Part 279, Subpart E transporter standards

§279.60(b)(2)

See Part 279, Subpart F processor standards.

§279.60(b)(3)

See Figure 12-6.

§279.60(b)(4)

If you dispose used oil or use it as a dust suppressant, you must comply with the standards of 40 CFR Part 279, Subpart I

§279.60(b)(5)

burned for energy recovery is subject to §761.20(e). That section of the TSCA regs notes that PCB-contaminated used oil (containing between 2 and 50 ppm PCBs) may only be combusted in certain types of units (TSCA or RCRA incinerators, TSCA high-efficiency boilers, industrial furnaces or boilers as defined in §260.10, or utility boilers); certain notification requirements apply as well. "Although the RCRA regulations do not identify the presence of PCBs in used oil as relevant to the determination of whether the used oil is on- or off-specification, the presence of PCBs in used oil is relevant for determining the applicability of the TSCA regulations for the burning of used oil." Note that used oil containing 50 ppm PCBs or more is prohibited from burning for energy recovery. [§761.20(a), RO 14117, 14606]

The existence of the used oil specification does not require generators to analyze their used oil to determine if it meets spec before the oil is transported offsite to a processor or fuel blender—that's the receiving facility's job. [EPA/530/H-98/001] A generator would only have to determine compliance with the used oil specification if it was burning on-spec used oil onsite or was sending used oil directly to a burner; in either of these situations, the generator would also be a used oil marketer, as discussed in Section 12.3.5. We find that some generators (especially at utility power plants) do analyze their used oil on a routine basis; however, such practice is typically required because of TSCA concerns or as a business arrangement with the used oil collector.

In another footnote to the used oil specification, EPA notes that the spec is not applicable for used oil that is mixed or contaminated with hazardous waste. [RO 14110, 14606] With the exception of noncharacteristic mixtures of characteristic waste and used oil (and noncharacteristic mixtures of ICR-only listed waste and used oil), mixtures of hazardous waste and used oil are regulated under the BIF regs in Part 266, Subpart H when burned for energy recovery.

12.3.2 Burning on-specification used oil

Once it's established that a given used oil meets the fuel specification, the scope of regulations that apply to that material diminishes dramatically. Provided the entity who asserts that the used oil is on-spec meets the following three qualifying conditions, neither Part 279 nor any other RCRA requirement applies to that material [§279.11, RO 14606]:

- Documents the finding that the used oil meets the specification via testing or other methods and retains records of these documents for three years [§279.72],
- Has an EPA ID number [§279.73], and
- Maintains records of any shipments of the on-spec oil to used oil burners [§279.74(b)].

Once these conditions are met, the on-spec used oil is not subject to RCRA regulation and may be managed the same as any conventional fuel, such as virgin fuel oil. [November 29, 1985; 50 FR 49189] On-spec used oil may be burned in any type of combustion unit, including those in schools, hospitals, apartment complexes, etc. In fact, the agency will even allow on-spec used oil to be used in the manufacture of products such as ammonium nitrate fuel oil blasting agents. [RO 11807]

Q Bilge water collected from ships contains small amounts of used oil. Once the used oil is separated from the water (using filtration, centrifugation, and emulsification), the recovered used oil is burned for energy recovery. However, because the bilge water meets the used oil spec and the generator complies with §§279.72, 279.73, and 279.74(b), does the processing of the bilge water escape Part 279 standards per §279.11?

A No. What escapes Part 279 management [if it meets the used oil spec and the generator complies with §§279.72, 279.73, and 279.74(b)] is "used oil that is to be burned for energy recovery." According to RO 12738, it is the as-burned used oil that must meet the specification to be unregulated. In this example, it is not the bilge water

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but the recovered used oil that will be burned for energy recovery. "On-specification used oil that is re-refined, rather than burned for energy recovery, is subject to all applicable requirements of Part 279." [RO 14110] Thus, bilge water processing would be subject to Part 279, Subpart F standards.

Although its management is outside of RCRA, on-spec used oil is still subject to other applicable regulations. For example, on-spec used oil stored in USTs will be subject to Part 280 requirements, and used oil transport would still face DOT rules. Also, facilities handling on-spec used oil may be required to prepare and implement SPCC plans. In addition, when an action is taken at the generating facility that may affect the chemical or physical properties of the on-spec used oil, that oil must be reevaluated in terms of the specification. [RO 14110] On-spec used oil that will be processed/re-refined or disposed, rather than burned for energy recovery, remains subject to Part 279 standards. [RO 14110]

Also note that on-spec used oil that contains PCBs at a concentration between 2 and 50 ppm and that will be burned for energy recovery is subject to certain marketing and burner requirements as discussed in Sections 12.1.7 and 12.3.1 above. These requirements, which come from TSCA—not RCRA, reference some of the standards in Part 279 for marketers and burners of off-spec used oil. "Therefore, by operation of the TSCA rules, used oil that is on-specification under the RCRA rules may nevertheless be subject to certain requirements specified in the RCRA rules for off-specification used oil. . . . The fact that the TSCA rules incorporate by reference these RCRA standards does not mean that PCB-containing [on-spec] used oil is regulated under RCRA or that such used oil is off-specification as defined by Part 279." [68 FR 44661, RO 14117] This appears to be a meaningless distinction, however, because used oil containing between 2 and 50 ppm PCBs that will be burned for energy recovery must be managed as

off-spec used oil—not because of RCRA but because of TSCA.

Used oil generators that burn their own on-spec used oil for energy recovery in onsite boilers or industrial furnaces (i.e., without complying with the off-spec burner requirements in Part 279, Subpart G) are, by definition, used oil marketers. In order to avoid the Subpart G burner standards, they must determine that their used oil meets the used oil fuel specification. That makes them a marketer per §279.70(a)(2). [RO 14280]

12.3.3 Burning off-specification used oil

Facilities that combust used oil that does not meet the fuel specification face a much different outlook than their counterparts that burn on-spec material. EPA limits the type of units in which off-spec used oil may be burned and imposes additional requirements on such facilities. These requirements are reviewed below.

12.3.3.1 Allowable units

Off-spec used oil may be burned only in a boiler or industrial furnace as defined in §260.10, utility boiler, or RCRA hazardous waste incinerator. In the case of a boiler or industrial furnace, such units do not have to be BIFs subject to regulation under Part 266, Subpart H; they simply must meet the definition of boiler or industrial furnace in §260.10. Hazardous waste incinerators, of course, must be in compliance with Part 264/265, Subpart O. There is one exception to these allowable units, which we address in the next subsection.

The four types of units noted above that are allowed to burn off-spec used oil address EPA's air emission concerns. These units typically use high-efficiency boilers, have significant air pollution controls associated with them, and may not be located in residential areas.

The agency has noted in guidance that facilities do not have to analyze their used oil to see if it meets the fuel specification if it will be combusted for energy recovery or incineration in one of the units

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Used oil generators that burn their subpart G requirements for burning used
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per §279.70(a)(2). [RO 14280] sent to a RCRA incinerator. Does that oil

12.3.3 Burning off-specification units

Facilities that combust used oil that do not meet Part 279? It can be managed as used oil
the fuel specification face a much different number 10, 1992; 57 FR 41582]

EPA limits the type of units in which off-spec oil may be burned and imposes additional
requirements on such facilities. These requirements (without complying with the
§279, Subpart G burner standards) provided

12.3.3.1 Allowable units

Off-spec used oil may be burned only in a space heater that the facility generates or re-
ceives from household DIYs is burned in such
industrial furnace as defined in §260.10
boiler, or RCRA hazardous waste inciner-
ators, a space heater is rated at not more than 0.5
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do not have to be BIFs subject to regulation
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§260.10. Hazardous waste incinerators, of
erators taking advantage of this exception do
must be in compliance with Part 264/266
Part O. There is one exception to these allow-
units, which we address in the next subsection.

he four types of units noted above that are above is considered a nonindustrial boiler.
wed to burn off-spec used oil address EPA's, the owner/operator is prohibited from burn-
mission concerns. These units typically use off-spec used oil in such a unit. [RO 14280]
iciency boilers, have significant air pollution Case Study 12-7 for an example of the applica-
ls associated with them, and may not be used in residential areas.

2.3.3.3 Off-spec used oil burner requirements

agency has noted in guidance that facilities must determine if they must
have to analyze their used oil to see if it meets Part 279, Subpart G, facilities that burn off-
spec used oil must meet a number of conditions.
recovery or incineration in one of the ways they must:

- Obtain an EPA ID number;
- Document or determine whether the halogen content of the used oil they burn is above or below 1,000 ppm and, if above, rebut the presumption that the used oil has been mixed with a hazardous waste;
- Store used oil only in tanks, containers, or RCRA units;
- Provide secondary containment for containers and aboveground tanks used to store used oil;
- Label tanks, containers, and UST fill pipes "Used Oil";
- Respond to releases of used oil;
- Report releases of used oil in excess of CERCLA reportable quantities and releases that violate water-quality standards or create a sheen on surface water;
- Keep records of each shipment of used oil accepted for burning; and
- Before accepting the first shipment from a supplier, certify that EPA has been notified and that oil will only be burned in §260.10 boilers and industrial furnaces, utility boilers, or hazardous waste incinerators.

12.3.4 Burning used oil-contaminated and derived materials

Materials that contain or are contaminated with used oil are regulated as used oil if they are burned for energy recovery. [§279.10(c)(2), 57 FR 41585] This applies regardless of whether the materials contain visible signs of free-flowing oil. For instance, hydraulic fluid filters and other used oil filters are regulated under Part 279 if they are burned for energy recovery, regardless of the degree of oil removal [RO 11808] Similarly, sorbents containing used oil (without any free-flowing oil visible) are subject to the Part 279 used oil regulations if they are to be burned for energy recovery. [RO 11798] However, EPA has provided a caveat to the above:

§12.3.4

Case Study 12-7: Burning Used Oil in a County Maintenance Facility Space Heater

A county highway maintenance garage wants to burn off-spec used oil generated at three offsite sources, along with its own oil, in an onsite space heater. The three offsite sources are 1) other, nonrelated businesses, 2) other county maintenance facilities, and 3) county-run DIY collection centers. (The onsite space heater itself meets the Btu-limit and combustion-gas-venting provisions noted in §279.23.) Is this allowed?

The space heater exception allows generators to burn only their own used oil or that received from DIYs. (§279.23(a)) The first source of offsite used oil, from nonrelated businesses, would not qualify for the space heater exception. Here, the county would be accepting used oil generated by other entities; this is not allowed under §279.23(a).

The second source of used oil would qualify for the space heater exception. In this case, the maintenance garage would be considered a used oil aggregation point, because the garage aggregates

used oil from other generation sites that are owned by the same entity (the county). Thus, all of the used oil from those sources is considered to be generated by the same entity. Note, however, that the used oil from sites other than the garage would have to be transported per the terms of §279.24(b) (i.e., in quantities of no more than 55 gallons in county- or county employee-owned vehicles), unless the county chose to meet used oil transporter requirements of Part 279, Subpart E.

The third source of offsite used oil would also qualify for the space heater exception under the same terms as the second source (i.e., the garage is an aggregation point and shipments must follow §279.24(b)). Note, however, that only used oil from county-run DIY collection centers may be burned in the space heater. Used oil from a state- or privately-run DIY collection center would not qualify. (RO 11944)

§12.3.5

"[S]ome sorbents have a high [Btu] value and once contaminated with used oil are managed by burning for energy recovery and, therefore, are regulated under Part 279. Contaminated materials (after draining) which provide little or no energy when burned, such as soil or clay-based sorbents, are not subject to Part 279. Whether a material is 'burned for energy recovery' depends on the type of materials being burned and the combustion equipment being used. For purposes of the EPA regulations governing boilers and industrial furnaces, burning for energy recovery is limited to materials that have a heating value of at least 5,000 Btu/pound... EPA believes it is reasonable and consistent with the regulations to apply the same interpretation under Part 279. Of course, an authorized state may interpret what constitutes 'burning for energy recovery' more stringently

than EPA and that interpretation could be controlling..." (RO 14111)

12.3.5 Used oil marketer requirements

Besides regulating used oil burned for energy recovery, Part 279 also addresses used oil "marketers." Any entity that conducts one of the following two activities is subject to Subpart H requirements as a used oil marketer:

1. Directs a shipment of off-spec used oil from their facility to a used oil burner; or
2. First claims that used oil to be burned for energy recovery meets the used oil fuel specification.

Subpart H does not apply to used oil generators and transporters who send shipments of off-spec used oil to processors, even if such processors incidentally burn used oil. The marketer regs also don't apply to persons who direct shipments of on-spec

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Oil in a County Maintenance Facility Space Heater

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279, Subpart E.

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low §279.24(b)). Note, however, that onl
oil from county-run DIY collection centers
burned in the space heater. Used oil from a
or privately-run DIY collection center wou
qualify. [RO 11944]

...but are not the first person to claim the oil
specification.
used oil generators that burn their own
used oil for energy recovery in onsite boil-
industrial furnaces (i.e., without complying
Part 279, Subpart G requirements) are, by
used oil marketers. In order to avoid the
G burner standards, they must determine
what puts them into the marketer category
second activity above. [RO 14280]

Oil marketer requirements focus on analyti-
calts, tracking, and recordkeeping. Specifi-
marketers must:
in an EPA ID number;
are that off-spec used oil is shipped only to
oil burners who 1) have an EPA ID number,
2) plan to combust that oil in a §260.10
er or industrial furnace, utility boiler, or haz-
ous waste incinerator;

tain a certification of compliance from the
mer prior to the first shipment of off-spec
d oil to that party; and
maintain records of 1) on-spec used oil analyses,
d 2) shipments of on-spec and off-spec used
Marketers must keep records of shipments
ly to the initial facility to which it delivers the
[§279.74(b), 68 FR 44662] Marketers are
r required to maintain records of subsequent
ansfers of this used oil to other entities.

example, a service station that generates used
to be burned for energy recovery and claims
it meets the fuel specification is a used oil mar-
ter. The facility must obtain an EPA ID number

than EPA and that interpretation could
rolling ..." [RO 14111]

12.3.5 Used oil marketer requirements

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- rt H does not apply to used oil generators
orters who send shipments of off-spec
processors, even if such processors incl
urn used oil. The marketer regs also de
persons who direct shipments of on-

and test the oil to show that it is on-spec. These
requirements must be met prior to the used oil
being shipped offsite as on-spec—the oil cannot be
shipped under the assumption that it is or will be
blended into on-spec used oil. [RO 14110] Finally,
the service station must maintain records of used
oil analyses and on-spec oil shipments

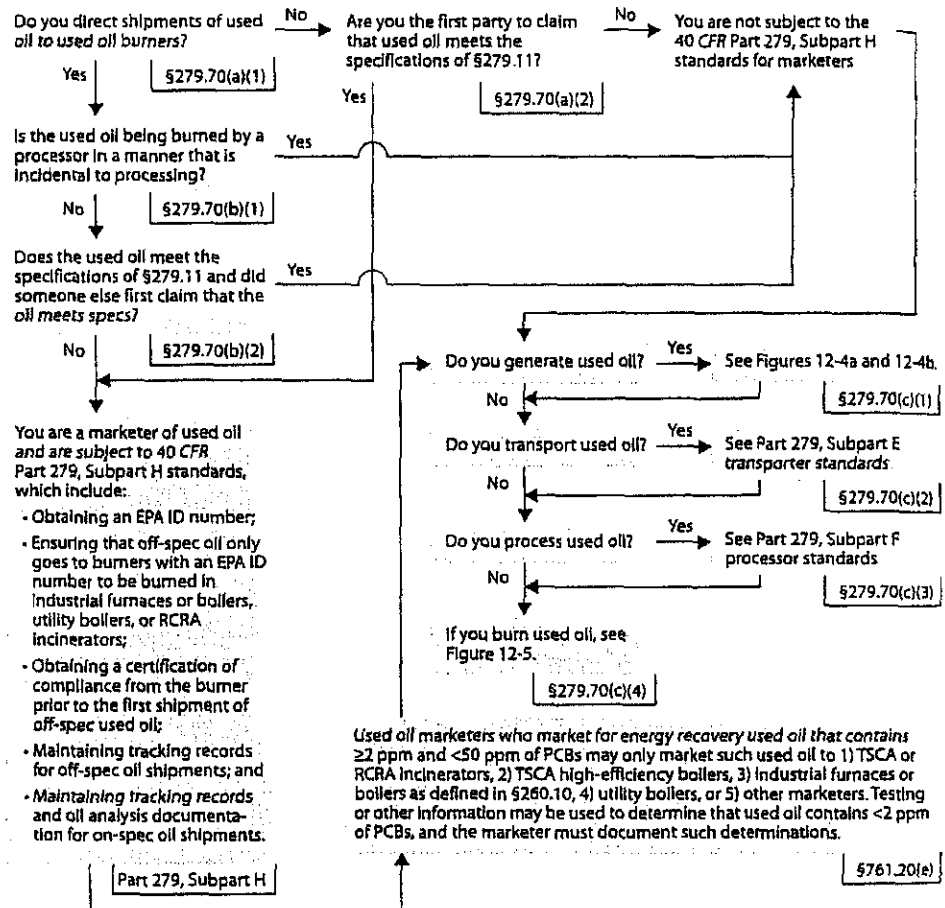
Section 761.20(e)(2) requires marketers (and
burners) to presume that used oil to be burned for
energy recovery contains ≥2 ppm PCBs and is,
therefore, subject to the TSCA requirements in
§761.20(e)(1). The presumption can be overcome
if a marketer determines through testing or "other
information" that the used oil contains <2 ppm
PCBs. [RO 14606] ("Other information" consists
of personal knowledge of the source and composi-
tion of the used oil, or a certification that the used
oil contains <2 ppm PCBs from the person generat-
ing the used oil. [§761.20(e)(2)(iii)])

In guidance, EPA noted that the frequency of test-
ing used oil to ensure it meets the fuel specifica-
tion depends on a number of site-specific consider-
ations. For example, if some action, mixing, or stor-
age conditions affect the physical or chemical
composition of the used oil, a marketer must reeval-
uate whether it meets the specification. [RO
14110, 14626] Entities making a claim that used
oil meets the fuel specification should provide docu-
mentation of testing and sampling methods used
as well as the frequency of sampling/testing in the
facility's records. [September 10, 1992; 57 FR
41597]

The applicability requirements, management stan-
dards, and other Part 279 provisions that apply to
used oil marketers are shown in Figure 12-6.

§12.3.5

Figure 12-6: Regulatory Requirements for Marketers of Used Oil



Source: McCoy and Associates, Inc.; adapted from 40 CFR Part 279, Subpart H

§12.3.5

ATTACHMENT B
ERRATA SHEET

EXHIBIT A

ERRATA SHEET #1

Section 808.121(b)(5)(6)

INSERT:

- (5) The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739.
- (6) A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.

Section 809.211(l)

INSERT:

“Any person who hauls material subject to regulation pursuant to 35 Ill. Adm. Code Part 739 and who has registered with the Agency as a used oil transporter.”

Section 809.301(a)

INSERT:

“The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”

Section 809.302(a)

INSERT:

“The generator is not required to complete a manifest for material subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”

Section 809.501(a)

INSERT:

“The generator (or transporter) is not required to complete a manifest for material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739. A transporter is not required to have a special waste hauling permit to transport material that is subject to regulation pursuant to 35 Ill. Adm. Code Part 739, if the transporter has registered with the Agency as a used oil transporter.”