ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 260, 261, 266, 270, and 271

[SWH-FRL 2873-5]

Hazardous Waste Management System; Recycled Used Oil Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 3014 of RCRA, as amended, requires EPA to establish standards for used oil that is recycled, or "recycled oil." Pursuant to this directive, EPA is today proposing standards for generators and transporters of recycled oil, and owners and operators of used oil recycling facilities. The standards would include tracking requirements when used oil is shipped off-site for recycling, and facility management requirements when used oil is stored prior to recycling. Recycled oil used as fuel would be subject to certain regulations, except that fuel meeting a specification for toxic contaminants and flashpoint would be exempt from regulation. Uses of recycled oil that constitute disposal would be regulated as land disposal, but road oiling would be prohibited outright.

This proposal is closely related to the proposed listing of used oil as a hazardous waste, also in today's **Federal Register**. The rules proposed today for used oil that is recycled would only apply to used oil covered by the listing, (except that household generated used oil would also be regulated when aggregated or accumulated for recycling).

DATES: EPA will accept public comments on this proposal until January 28, 1986. Public hearings will be held to obtain public comments on this proposal *and* the proposal to list used oil as a hazardous waste (appearing elsewhere in this **Federal Register**) on January 8, 10, and 16 of 1986. The locations for the public hearings are provided below; for additional information on the public hearings, see Part Four, Section III of this preamble.

ADDRESSES: EPA will hold public hearings at the following locations:

- *January 8, 1986*—Holiday Inn, North Park Plaza, 10650 North Central Expressway, Dallas, Texas 75231 (Phone: 214/373-6000)
- *January 10, 1986*—Ramada Renaissance, 55 Cyril Magnin Street (One block north of 5th & Market), San Francisco, California 94102 (Phone: 415/392-8000)
- *January 16, 1986*—Department of Health and Human Services, North Auditorium ("C" Street entrance), 330 Independence Ave., SW, Washington, DC 20201

Comments on this proposal should be mailed to the Docket Clerk (Docket No. 3014, Standards of Recycled Oil), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street, SW., Washington, DC, from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, call toll free at (800) 424-9346 or at (202) 382-3000. For technical information, contact Michael Petruska, Environmental Protection Specialist, Waste Management and Economics Division, Office of Solid Waste, (WH-565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-7917. Single copies of the proposal may be obtained by calling the RCRA Hotline at the number above.

SUPPLEMENTARY INFORMATION:

Overview

This preamble discussion is organized into four major Parts. Part One summarizes the legal authority for today's proposal, explains how this proposal follows from previous EPA rulemakings, and includes a statement as to the general policy EPA has followed in developing today's proposal. Part Two goes through the proposed rules section-by-section. For each section, the provision is explained and the rationale for the provision is presented. Part Three summarizes the impacts of this proposal, if adopted as proposed today, on State hazardous waste programs, on the used oil recycling industry, on the economy in general, and on small businesses. Part Four includes a general request for public comment on this proposal, lists the titles and where applicable the NTIS number of the major background documents used by EPA in developing the proposal, and provides information on the upcoming public hearings.

Note.—This proposal is one of three regulatory actions being taken this month by EPA concerning used oil. In today's issue of the **Federal Register**, this proposal for recycled oil is accompanied by a separate proposal to list used oil as a hazardous waste. Further, EPA has promulgated in final form its "Phase I" rules for the burning and blending of used oil (and hazardous waste) fuels. [Proposed January 11, 1985 at 50 FR 1684.] At this writing, it appears likely that the final Phase I rule will appear in the same **Federal Register** as the proposals for recycled oil and for listing used oil as hazardous waste. For that reason, this preamble refers to the final Phase I rule as having been "recently promulgated," but does not refer to **Federal Register** pages in the citations.

Preamble Outline

PART ONE—INTRODUCTION AND BACKGROUND

I. Legal Authority

A. General

Subtitle C of the Resource Conservation and Recovery Act (RCRA or "the Act") as amended by the Hazardous and Solid Waste Amendments of 1984, requires EPA to identify wastes that may pose a substantial hazard to human health or the environment, and to regulate hazardous waste from initial generation through end disposition.

The Congress, in passing the Used Oil Recycling Act of 1980 (Pub. L. 96-463), and the Hazardous and Solid Waste Amendments of 1984 ("the 1984 Amendments"), supplemented the basic requirements for regulation of hazardous waste with certain special requirements for used oil. These requirements are found in section 3014 of the Act.[1] Section 3014(a) retains the language of section 7(a) of the Used Oil Recycling Act:

> . . . The Administrator shall promulgate regulations . . . as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil.

Section 242 of the 1984 Amendments also added the following phrase to the above paragraph, "consistent with the protection of human health and the environment," to make it clear that protection is of prime concern under section 3014, and that certain recycling practices may indeed be discouraged by regulation if necessary to ensure an adequate level of protection. [See H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 114 (1984).]

B. Listing as Hazardous Waste

Section 3014(b) requires the Administrator to propose whether to list or identify used crankcase oil as a hazardous waste under section 3001 of RCRA by November 8, 1985. A final determination as to listing all used oils is required a year later. As explained in detail in the **Federal Register** notice accompanying this one, EPA is proposing that used oil be listed as a hazardous waste under section 3001 of the Act.

[1] Prior to the 1984 Amendments, the used oil requirements were found in section 3012 of the Act.

C. Generation and Transportation Prior to Recycling

Section 3014(c) provides special guidance to EPA for promulgation of regulations pertaining to generation and transportation of used oil identified or listed as hazardous waste that is recycled. First, section 3014(c)(1) states that standards promulgated under sections 3001(d) and 3002 of RCRA for generators (including generators of between 100 and 1000 kilograms of hazardous waste per month), and 3003 for transporters of hazardous waste shall not apply to used oil that is recycled. Section 3014(c)(2) requires EPA, by November 8, 1986, to:

> . . . promulgate such standards regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment.

This directive is qualified by the following additional guidance in section 3014(c)(2):

(1) EPA must consider, in promulgating regulations for generators, impacts on "environmentally acceptable types of used oil recycling," and on "small quantity generators" and "generators which are small businesses."

(2) Under certain conditions explained in detail below in this preamble, EPA must not impose manifest requirements for shipments of used oil sent for recycling.

Section 3014(c)(3) requires that any transporter rules promulgated by EPA (for used oil identified or listed as a hazardous waste being taken to recyclers) include, as a minimum, the requirement that the transporter deliver the oil to a facility permitted under section 3005 of RCRA to manage hazardous waste or (as described below) permitted by rule under section 3014(d) to recycle used oil.

EPA has developed the regulations for generators and transporters with the presumption that the existing hazardous waste regulations should apply, except as section 3014(c) provides otherwise. The basis for this presumption is that even though recycled oil is exempt from sections 3001(d), 3002, and 3003 [because of the more specific requirements of section 3014(c)], the ultimate standard in section 3014(c) is to protect human health and the environment, *i.e.*, the same standard as applies under sections 3001(d)-3003.

D. Facility Standards and Permitting for Recyclers

Section 3014(d) of the Act provides that the owner or operator of a facility which recycles used oil identified or

listed as a hazardous waste is "deemed to have a [RCRA] permit" for all such treatment or recycling (and any associated tank or container storage), *provided* that the owner or operator complies with the section 3004 standards promulgated by EPA for hazardous waste facilities. EPA is authorized to permit oil recycling facilities individually when deemed necessary to protect human health or the environment.

II. Preceding Rulemakings

The following summarizes, for the reader's convenience, previous EPA proposals concerning used oil. Persons who submitted comments pursuant to any of these proposals should, if they wish for EPA to consider the comments, re-submit them at this time. [Due to the time that has passed since these proposals appeared in the **Federal Register** and the new supporting data available for today's proposal, EPA will not consider comments previously submitted without re-submittal.]

A. December 18, 1978, Proposal

On December 18, 1978, EPA proposed regulations to protect human health and the environment from the improper management of hazardous waste (see 43 FR 58946–59028). The proposed regulations included: (1) Criteria for identifying and listing hazardous wastes, and a hazardous waste list; (2) standards applicable to generators and transporters of hazardous waste to ensure proper recordkeeping, reporting, labeling, containerization, and use of a transport manifest for these wastes; and (3) performance, operating, and design standards applicable to persons who treat, store, or dispose of hazardous waste. In the proposed rules, EPA would have listed all used oils as hazardous waste.

The proposed rules contained special provisions which exempted from regulation most recycled hazardous wastes. However, there were two exceptions from this exemption which affected used oil. First, if the material being recycled was reused beneficially in a manner that constitutes disposal and was either a listed hazardous waste or exhibited any of a set of characteristics (i.e., ignitability, corrosivity, reactivity, or Extraction Procedure (EP) toxicity), the material was subject to the hazardous waste regulations. This provision would have subjected to the hazardous waste rules most used oil applied to the land (e.g., used oil used as road oil, dust suppressant, pesticide carrier, etc.). The second exclusion affecting used oil dealt with the reuse of certain oils as fuel. Specifically, the regulations stated that waste lubricating, waste hydraulic, waste transmission fluid, and waste cutting oils when burned or incinerated as a fuel would also be subject to the hazardous waste regulations.

B. The May 19, 1980 Rules

On May 19, 1980, EPA issued final hazardous waste rules for many of the regulations it proposed in 1978. However, the Agency deferred the listing of used oil as a hazardous waste, pending development of standards specific to the transportation, treatment, storage, disposal, and recycling of used oil. [See 45 FR 33094–33095.] Under the May 19 rules, used oil is a hazardous waste only if it exhibits one or more of the characteristics of hazardous waste: Ignitability, corrosivity, reactivity, or EP toxicity (see 40 CFR Part 261, Subpart C). The rules also indicated, however, that only listed hazardous wastes and hazardous sludges would be subject to the hazardous waste rules when recycled. The net effect of these deferrals and exemptions was to subject to the hazardous waste rules only used oil that both exhibits one or more of the above characteristics and is *not* recycled (i.e., is disposed of). Because relatively little used oil meets both of these conditions, most used oil was not brought under the control of the federal hazardous waste program by the May 19 rules.[2]

C. Final "Solid Waste" Rule

On January 4, 1985, EPA promulgated a final rule to amend its existing definition of "solid waste" used in regulations implementing Subtitle C of RCRA. Among other things, this rule dealt with the question of which materials are solid and hazardous wastes when they are recycled; this rule also specified general and specific standards for various types of hazardous waste recycling activities. See 50 FR 614–668. The final solid waste rule is relevant with respect to today's proposal because, as explained below, EPA presumes that except as section 3014 provides otherwise, the existing hazardous waste standards apply. The requirements for recycled hazardous waste (termed "recyclable material") in 40 CFR 261.6, then, are used as a starting point in the determination as to what requirements should apply to recycled oil.

D. Burning and Blending Rules

Section 3004 (q), (r), and (s) of RCRA require EPA to establish regulations for hazardous waste burned for energy recovery by November 8, 1986. Since section 3014(d) of RCRA provides that recycled oil must be managed under the section 3004 standards, EPA has undertaken an effort to regulate hazardous waste and recycled oil fuels simultaneously. [The legislative history of the "burning and blending" amendments states that such an approach was expected. See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 39 (1983).]

On January 11, 1985, EPA proposes "Phase I" of its rules for burning and blending of hazardous wastes and used oil. [See 50 FR 1684–1723.] The rules, as recently promulgated in final form, require that anyone burning or producing a fuel made from used oil notify EPA of their waste-as-fuel activities. The rule also establishes the following fule specification for used oil fuel.

TABLE 1.—USED OIL FUEL SPECIFICATION

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flashpoint	100 °F minimum.
Halogens	4,000 ppm maximum.

Persons producing used oil fuel meeting this specification may market the fuel to any burner or to another processor, provided that he can document that the fuel meets the specification and he complies with certain recordkeeping provisions.[3] Persons producing fuel not meeting the specification are allowed to market the "off-specification" fuel only to owners and operators of industrial boilers and furnaces who have complied with the notification requirement (and certain other administrative requirements) described above. Shipments of "off specification" fuel have to be accompanied by an invoice bearing a

[2] On March 16, 1983, EPA published enforcement guidance to help implement the May 19, 1980 rules. [See 48 FR 11157–11160.] The Agency memorandum that was published provided guidance in determining when a waste being burned was legitimately a "fuel," and so exempt from regulations vs. when a waste is being burned for destruction (disposal), and so subject to the hazardous waste incineration rules in 40 CFR Parts 264 and 265, Subpart O. This is relevant for used oil because used oil is sometimes used to mask the disposal of hazardous spent chlorinated solvents. As explained at 48 FR 11159–11160, mixtures of spent hazardous chlorinated solvents and used oils are generally subject to the hazardous waste rules when burned, unless each spent solvent in the mixture has significant energy value (as-generated).

[3] Burners or processors who receive only specification fuel are not subject to any of the Phase I requirements.

notice that the fuel is subject to EPA regulations.

The Phase I rule is an interim measure. The rules proposed today, and the "Phase II" burning and blending rules (scheduled for proposal early next year) would incorporate parts of and otherwise expand the Phase I rule to cover activities besides burning and blending. Today's proposal would alter the scope or form of some of the final Phase I rules, and these proposed changes are discussed below.

E. New Tank Storage Requirements

EPA's basic storage rules were promulgated on January 12, 1981 at 46 FR 2802–2897. On June 26, 1985 EPA proposed revisions to the tank portion of the storage rules [50 FR 26444–26504]; the Agency cited as its basis for the proposal certain deficiencies in the current rules. [Id. at 26447–48.] These proposed requirements are relevant with respect to today's proposal for recycled oil because:

- As described above and in more detail in later sections of the preamble, the general hazardous waste rules are the proper starting point in determining what requirements should apply to recycled oil; and
- Tank storage is the predominant storage method throughout the used oil recycling industry.

Therefore, changes in the hazardous waste storage regulations will have significant impacts on how EPA regulates used oil storage.

As described in Section III, Part Three of this preamble ("regulatory impacts" section) and in the *Regulatory Impacts Analysis* for this proposal (Chapters V.A. and V.B. in particular), the storage portions of today's proposal account for a large portion of the total costs of the rules, but only a relatively small fraction of the risk reduction or benefits we expect to achieve. This is partly because of the great uncertainty inherent in trying to accurately quantify the many factors that determine the risk posed by various storage methods. [See the *Background Document* for the *Regulatory Impacts Analysis* for a discussion of uncertainties in the analysis.] Nonetheless, other parts of the proposal appear to achieve greater benefits compared to associated compliance costs than do the storage sections.

EPA has considered whether the proposed storage rules could be made more cost-effective. We have, however, only limited flexibility concerning the level of regulation we impose. First, RCRA section 3014 requires that, in general, used oil recycling facilities are to be regulated the same as hazardous waste facilities under section 3004.[4] The recently proposed revisions to the hazardous waste tank standards [50 FR 26444–26504; June 26, 1985] would make the rules more stringent; the cost of these new requirements are included in the cost and regulatory impact studies accompanying today's proposal and in fact account for much of the total costs of today's proposal. We are currently considering comments received on the June 26 proposal, and should we determine that requirements less costly than we proposed are adequate for hazardous waste facilities, the rules for used oil recyclers would be revised accordingly. Also, the Agency specifically solicits comments on whether storage standards for used oil can be based on the interrelationship between engineering, location, and waste-related factors. EPA requested comment on this type of approach for all tank storage situations on June 26 [see 50 FR 26452, "alternative regulatory strategy number 2,"]. We indicated that we have some administrative concerns with this type of approach [Id]; but we remain interested in the possibility of tailoring requirements to match controls with hazard-related factors.

Second, under the special RCRA section 3014(c) authority, EPA has today proposed a special, reduced set of storage standards for recycled oil generators to minimize adverse small business and recycling impacts. We believe that today's proposal accomplishes the section 3014(c) goal of protecting human health and the environment without causing significant adverse impacts on generators. We request comment on whether the proposal strikes the appropriate balance between ensuring protectiveness and minimizing adverse impacts on recycled oil generators. Further, the reader will note that in Section II.B. of Part Two of this preamble, we solicit comments on certain alternatives suggested by the public pursuant to the June 26 proposal; we will consider these suggestions and any submitted per today's proposal to determine whether sufficient protection can be achieved in ways less costly than we propose today.[5]

[4] Section 3014(c) exempts recycled oil from RCRA sections 3001(d) through 3003, but *not* from Section 3004. The House Report [H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 114 (1984)] states that this was to ensure that used oil recycling facilities would be regulated under the same substantive standards as other hazardous waste facilities.

[5] After seeing today's proposal, persons who submitted comments per the June 26 proposal may wish to revise and re-submit comments concerning used oil tank regulations.

III. EPA's Proposed Policy for Regulating Used Oil That Is Recycled

EPA's proposed policy and rationale for regulating used oil that is recycled is as follows:

- Used oil meets the criteria established in 40 CFR Part 261 for listing a waste as hazardous;
- Certain hazardous waste recycling activities have been found to pose hazards and, therefore, need to be regulated; and
- Absent special considerations, i.e., the special requirements of section 3014, used oil that is hazardous and that is recycled requires the same level of regulation as other recycled hazardous wastes.

The Agency's basis and rationale for listing used oil as a hazardous waste is discussed in detail in the **Federal Register** notice that accompanies this one. The next Part of this preamble discusses the requirements proposed for used oil that is recycled. The reader should note that an underlying premise throughout the discussion to follow is the last point above; that is, absent special considerations in Section 3014 (and accompanying legislative history), recycled used oil is to be regulated as are other recycled hazardous wastes. And as a final point, EPA has determined that used oil mixed with other hazardous waste should not be eligible for the special Section 3014 standards, but rather should be regulated under the existing hazardous waste rules.[6] This is discussed in more detail in the next Part of the preamble, as are means the Agency intends to use in distinguishing between used oil and used oil/hazardous waste mixtures.

PART TWO—DETAILED DISCUSSION OF CONTROLS PROPOSED FOR USED OIL THAT IS RECYCLED

I. Applicability and Scope of Part 266, Subpart E

Under today's proposal, the standards for used oil that is recycled would be placed in 40 CFR Part 266, Subpart E.[7] This section explains the applicability and scope of Part 266, Subpart E.

A. Definition of "recycled oil"

Section 1004(37) of the Act defines "recycled oil" as:

[6] This policy would alter the regulatory requirements for certain mixtures from the requirements recently promulgated in the final Phase I burning and blending rule; the reasons for these proposed policy changes are explained in the next Part of the preamble.

[7] The term "used oil" is defined and discussed fully in the **Federal Register** notice accompanying this one *i.e.*, the used oil listing proposal.

. . . any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed."

EPA is proposing a regulatory definition (40 CFR §260.10) for "recycled oil" as follows:

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is collected, accumulated, stored, transported, or treated prior to recycling.

(1) [Reserved to define specific types of burning considered to be recycling.]

(2) The term include mixtures of recycled oil and other material, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, subpart D of this Chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

1. *Scope of activities:* The statutory and regulatory definitions are similar in terms of the generic used oil recycling activities they include. Used oil that is either re-refined or "reprocessed" is within the scope of the definition. We have used the broad term "reclaimed" to cover all processing or treatment activities where usable materials such as fuels or lubricants are recovered from used oil. ["Reclamation" is the term used in the hazardous waste regulations to describe such activities. See § 261.1(c)(4) and 50 FR 633–634; January 4, 1985.] Burning used oil for energy recovery is also within the scope of the proposed definition. EPA has reserved "paragraph (1)" in the definition to define the specific types of burning that will be considered recycling. In the hazardous waste rules, EPA has used a tripartite division to classify combustion units: incinerators, boilers, industrial furnaces. [50 FR 625–626; January 4, 1985.] Hazardous waste with significant energy (Btu) value, as defined in enforcement guidance published March 16, 1983 at 48 FR 11157–11160, is considered to be recycled when burned in a boiler or industrial furnace (or used to produce a fuel bound for such burning). [See 50 FR 629–633; January 4, 1985.] EPA will be reconsidering this classification scheme with respect to used oil in the Phase II burning proposal, due early next year, because used oil is often burned in devices that do not neatly fit into any of the above three categories (e.g., diesel engines and space heaters) and because used oil may often be burned as a legitimate supplementary fuel in solid and hazardous waste incinerators. Until we can reconsider this policy, the general policy (described above) established for hazardous waste would apply.

Finally, EPA considers used oil that is being managed (e.g., collected, stored) prior to recycling to fall within the scope of "recycled oil." EPA has applied this general principle to hazardous wastes being recycled [see 50 FR 650–651; January 4, 1985], and we believe Congress intended a similarly broad coverage for the term "recycled oil."[8]

2. *Mixtures.* Used oil is often mixed or blended with other materials during collection, storage, or processing. EPA's policy concerning used oil mixtures is contained in the proposed "paragraph (2)" of the recycled oil definition and in certain conforming amendments to Part 261, discussed below. The most important issue with respect to classifying mixtures for regulatory purposes under today's proposal is whether or not the material(s) being mixed with the used oil is a hazardous waste.

a. *Mixing with materials that are not hazardous waste:* When recycled oil is mixed with any material that is not a hazardous waste, e.g., virgin fuel oil, the resultant mixture is considered a recycled oil. Following the general "mixture rule" policy established for hazardous waste (see § 261.3(a)(2)(iv) and (c)), mixtures remain subject to regulation unless and until specifically excluded.[9] [Although the most common situation covered by this policy would be blending of used oil with virgin fuel oil, mixtures of recycled oil and non-hazardous wastes, or with spill control materials, would also be considered recycled oil.]

b. *Mixing with hazardous waste:* Congress, as evidenced by legislative history surrounding Section 3014, is quite concerned about the problems caused by mixing of hazardous wastes with used oil. [See generally H.R. Rep. No. 96–1415, 96th Cong. 2d Sess., at 4–5, (1980), and H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 64–67 (1983).] EPA first dealt with the used oil/hazardous waste mixture problem in the Phase I burning and blending proposal. [50 FR 1691–1692; January 11, 1985.] At that time, and in the recently promulgated final Phase I rule, EPA (citing discretion granted by Congress concerning how such mixtures should be regulated) established that certain mixtures are to be regulated under the used oil fuel rules while others are regulated as hazardous waste. [Id.] EPA also explained, however, that the classification scheme in the Phase I rule is only intended as an interim regime, to be revisited in today's proposed rulemaking (particularly with respect to mixtures of used oil and small quantity generator hazardous waste). [Id.] Today, as explained in detail below, *EPA is proposing that any mixture of used oil and hazardous waste is to be fully regulated as hazardous waste.* This is a central principle of the proposed recycled oil rules, and is based on the following rationale:

- EPA's proposed rules for recycled oil were developed to control hazards associated with recycled oil as a result of hazardous constituents normally found in used oil. When hazardous wastes are mixed with used oil, the nature and severity of hazards posed can be changed and are not necessarily controlled by the proposed recycled oil rules;
- The policy is simple to understand and implement. EPA is concerned that if certain hazardous wastes could be mixed with used oil and others could not be, both industry and enforcement officials would be confused and would have to spend a great deal of time trying to determine what kind of waste was mixed, etc., and
- EPA reasons that Congress intended for used oil recyclers, who would benefit from special provisions in Section 3014 discussed below, to be involved in legitimate processing and upgrading of used oil to recover or produce high quality petroleum products. Blending and mixing of hazardous waste with used oil would not normally improve or upgrade the used oil and in fact may accomplish the opposite. [For example, chlorinated solvents, which are often detected in used oil, have Btu value less than used oil and also make used oil more difficult to re-refine.]

What follows are discussions of the various mixtures covered by the proposed policy and then a discussion of the Agency's main mechanism to be used to detect mixing, the "rebuttable presumption." Comments are requested

[8] As evidence of Congress's intent for a broad reading of the term, note that section 3014(c) includes special requirements for generators and transporters of recycled oil. Obviously, Congress intends for EPA to consider used oil to be "recycled oil" from the time it is generated and stored or accumulated.

[9] The reader should note that EPA has proposed (in the listing proposal accompanying this rule) to amend § 261.3(a)(2)(iv) to exclude wastewater containing *de minimus* amounts of used oil and certain oily wipers from regulation as hazardous waste. Also, as will be discussed below, recycled oil fuel meeting EPA's specifications would also be exempt (such fuel would often be a mixture of used oil and virgin oil).

on the general policy and rationale described above, as well as the specific aspects of the policy discussed next. [See proposed §§ 261.5(j), 261.6(a)(2)(iii), and 266.40(d), as well as the §260.10 definitions of "recycled oil," for the regulatory language that would implement this proposed mixture policy.]

(1) Listed hazardous waste from large quantity generators. When used oil is mixed with a waste that is listed in Part 261, Subpart D and generated by a "large quantity" generator (*i.e.*, a generator not subject to the special requirements of §261.5), the mixture should be regulated as hazardous waste, not recycled oil.[10] Such hazardous wastes (and associated mixtures) were already regulated when Section 3014 was passed, and we see no indication that Section 3014 was meant to reduce regulatory requirements that already apply to those wastes.[11]

(2) Characteristic waste from large quantity generators. Under the final Phase I burning rule, used oil mixed with a waste hazardous only because it exhibits one of the characteristics of 40 CFR 261.21–261.24 is regulated as hazardous waste *only* when the resultant mixture continues to exhibit one of the characteristics; otherwise, the mixture is regulated as used oil. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.3.] This policy is merely a re-statement of § 261.3(a)(2)(iii), which applies to all mixtures of "characteristic only" hazardous waste and *non*-hazardous wastes. The proposed listing of used oil as hazardous waste changes this situation completely, *i.e.*, §261.3(a)(2)(iii) no longer applies. EPA is today proposing that mixtures of used oil and characteristic-only hazardous waste be regulated as hazardous waste (not as recycled oil) regardless of whether the resultant mixture exhibits any of the characteristics. The Agency believes that this is a proper approach for the reasons outlined above and particularly because the addition of characteristic hazardous waste to used oil may change the nature of used oil (by adding unusual constituents or properties) and create hazards not adequately addressed by the recycled oil rules, e.g., reactivity.

A related point concerning hazardous characteristics and used oil is that under the final Phase I rule *and* today's proposal a used oil exhibiting one of the characteristics of §§ 261.21–261.24 but that has *not* been mixed with other hazardous waste would be (when recycled) regulated as recycled oil, not hazardous waste. For example, some used oil has a flashpoint below 140 °F and so is ignitable hazardous waste; we would not presume, however, that the low flashpoint indicates mixing. [See the discussion of this issue with respect to used oil fuels at 50 *FR* 1692–1693 and 1699–1700; January 11, 1985, and in the preamble of the final Phase I rule in Part Two, Section IV.B.3.] If, however, EPA found that used oil being recycled at a particular facility exhibited some characteristic not known to be typically associated with used oil (e.g., corrosivity, reactivity, or E.P. toxicity for a metal such as mercury), we might well begin an investigation to determine whether hazardous waste was being illicitly mixed with used oil.

(3) Hazardous waste from small quantity generators. Under § 261.5, EPA exempts hazardous waste from generators of less than 1000 kilograms per calendar month of hazardous waste from most of the Subtitle C requirements, provided that the § 261.5 conditions are complied with.[12] Under § 261.5, hazardous waste may be recycled without regulatory controls and may be mixed with used oils. In the Phase I burning and blending proposal, EPA requested comment on various approaches for controlling mixtures of used oil fuel and (the normally exempt) § 261.5 hazardous waste. [50 *FR* 1692; January 11, 1985.] In the recently promulgated final Phase I rule, we decided to regulate the mixtures as used oil fuel (not under the full set of hazardous waste rules) *as an interim measure*, pending today's proposal. [In the final Phase I preamble, see Part Two, Section IV.B.2.]

Today, we are proposing that mixtures of used oil and § 261.5 hazardous waste be *fully regulated as hazardous waste* when recycled. [See proposed § 261.5(j)(2)(ii).] We have determined, for the following reasons, that this full level of regulation is necessary to provide adequate control over these mixtures:

- Small quantity generators' hazardous waste may impart unusual constituents and properties to used oil, creating hazards not addressed by the recycled oil rules;
- Congress indicated very strong concerns over adulteration of used oil during collection and transportation. ". . . Used oil is often heavily adulterated before it reaches a recycling facility, and much of his adulteration results from haphazard mixing during transit. This provision of the bill (*i.e.*, section 3014) expressly gives the Agency authority to address these situations." [See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 67 (1983).]
- EPA studies have documented that in fact used oil is adulterated after leaving generators' sites.[13] Since so many used oil generators are "small quantity" generators under § 261.5,[14] regulation of small quantity hazardous waste is necessary to effectively control adulteration; and
- As will be discussed below, the Agency's main enforcement mechanism to detect when mixing has occurred will be the "rebuttable presumption," *i.e.*, a total halogen measurement. The rebuttable presumption only indicates when mixing has occurred; it cannot distinguish which types of generators contributed hazardous waste to the mixture. Enforcement and industry officials would be faced with uncertainty and confusion if small quantity generator hazardous waste could be legally added to recycled oil, while other hazardous waste could not be.

(4) The "rebuttable presumption" of mixing. In the final Phase I burning rule, EPA established that used oil fuel containing in excess of 1000 ppm of total halogens would be presumed to be mixed with chlorinated hazardous waste. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.1.] Today, we are proposing to use this same indicator (and the same "rebuttal" procedures) to detect mixing

[10] The reader should note that on August 1, 1985, per section 3001(d) of RCRA, EPA proposed to amend § 261.5 to provide that only generators of less than 100 kilograms of hazardous waste per calendar month would be exempt as "small quantity generators." [See 50 *FR* 31288.]

[11] At one time, EPA was reluctant to classify any used oil from the automotive service industry as hazardous waste regulated outside the scope of Section 3014 because that might render the legislation meaningless. [See 50 *FR* 1691–1692, footnotes 16 and 24 in particular; January 11, 1985.] As discussed in the final Phase I rule, however, we are now convinced that mixing by automotive generators is quite rare, and so the above-mentioned concern was unfounded. [In the final Phase I rule preamble, see Part Two, Section IV.B.2]

[12] As noted above, EPA has proposed to lower the exclusion limit from 1000 to 100 kilograms of hazardous waste per calendar month. This discussion would apply to any hazardous waste exempted under § 261.5, regardless of the quantity limit ultimately promulgated.

[13] See the report *Composition and Management of Used Oil Generated in the U.S.*, U.S. EPA, November 1984, Section 3.4.3.1. Samples taken from processors are much more contaminated with solvents than samples taken directly from generators.

[14] An estimated 82,500 Vehicle maintenance shops, for example, generate on average 50 kilograms per calendar of hazardous waste (not counting used oil), *i.e.*, mostly spent solvents. See the draft *Regulatory Impacts Analysis for Proposol Regulations for Small Quantity Generotors of Hazardous Waste*, February 1985, Exhibits 3–1 and 3–3.

in *any* recycled oil, not just used oil being used as fuel. [See proposed §§ 261.6(a)(2)(iii) and 266.40(d), as well as the proposed definition of "recycled oil."] EPA believes extension of this indicator to all used oils is appropriate because the data and analyses used to develop the presumption were based on samples of all types of recycled oils, not just used oils being used as fuels. That is, the basic premise of the presumption—used oil that contains more than 1000 ppm total halogens has been mixed with one or more hazardous chlorinated solvents—holds for all used oils.[15]

As discussed in the final Phase I burning rule, persons may rebut the presumption by demonstrating to enforcement officials that the used oil does not contain "significant levels" of hazardous chlorinated constituents identified in Appeidix VIII of Part 261.[16] [See the final Phase I preamble, Part Two, Section IV.B.1] EPA is today proposing that this same rebuttal procedure would apply to all used oils found to contain more than 1000 ppm total halogens. EPA believes the procedures are appropriate for all used oils because the question of what constitutes a "significant level" of a hazardous constituent (with respect to indicating whether mixing has occurred) is independent of the recycling method. That is, when individual hazardous solvents are present at very low levels (such as less than 100 ppm), it is difficult or impossible to pinpoint the source of contamination and mixing with hazardous waste cannot be presumed. [Id.] Higher levels of individual hazardous solvents (such as 100–1000 ppm), may or may not indicate mixing, depending on circumstances specific to individual cases. [Id.] Again, these factors would seem to apply to all used oils, not just oil fuels, and this supports our proposal to extend the rebuttable presumption (and rebuttal procedures) to all used oils covered by today's proposal, not just used oil fuels.

In summary, EPA is proposing a mixture policy for used oil as follows:

- Mixtures of recycled oil and non-hazardous wastes or virgin materials would be regulated as recycled oil; but
- Mixtures of used oil and any hazardous waste, including hazardous waste from § 261.5 small quantity hazardous waste generators, would be fully regulated as hazardous waste, not as recycled oil. The Agency's main enforcement mechanism would be the rebuttable presumption, which uses total halogens as an indicator of mixing but which also allows for case-by-case rebuttals.

Comments are requested on today's proposed mixtures policies.

B. Recycled Oil Subject to Part 266, Subpart E

1. *General.* The requirements for recycled oil are proposed in Part 266, Subpart E. The "applicability" section of Part 266, Subpart E identifies those recycled oils that would be subject to the Subpart. [See the proposed § 266.40(a)(1).] First, the Subpart would apply to recycled oil that is hazardous waste.[17, 18] Second, the Subpart would apply to household-generated recycled oil when aggregated at a collection center. Third, the Subpart would apply to recycled oil recovered from wastewater. The latter two points are discussed next.

2. *Household waste, when aggregated.* When EPA made final many of its hazardous waste rules on May 19, 1980, "household wastes" were specifically excluded from being hazardous wastes. [See 40 CFR 261.4(a)(1).] EPA concluded [see 45 FR 33098–33099], based on the legislative history of RCRA, that Subtitle C was not intended to control the management of household refuse, garbage, etc. However, in light of the subsequent enactment of the Used Oil Recycling Act in October 1980, and the more detailed provisions of Section 3014 enacted in November 1984, EPA is proposing to modify this exemption to provide that recycled oil that is household waste *would be* subject to Part 266, Subpart E, *but only* when aggregated or accumulated at "do-it-yourselfer" collection centers such as service stations, auto centers, etc. [See the proposed § 266.40(a)(1)(ii).] EPA is proposing this special approach for recycled oil because:

(1) Section 3014(a) directs EPA to control the hazards of recycled oil regardless of its origin;

(2) A substantial portion of all of the used oil that is generated in the U.S. each year comes from homeowners; [19] and

(3) This homeowner-generated used oil is almost entirely automotive oil. EPA has a great deal of data showing that used automotive oil is contaminated with hazardous constitutents. [20] This oil is collected and recycled along with other automotive oils, and we must presume it poses similar hazards.

Since the household-generated oil presents similar hazards, we are proposing that it be subject to Part 266, Subpart E which aggreated at collection centers.

EPA is not proposing that homeowners themselves be regulated under the rules proposed today. We are proposing that household waste/recycled oil lose its exempt status where aggregated or accumulated for recycling. EPA recognizes that improper practices by homeowners themselves can also pose environmental problems.[21] The Agency does not believe, however, that Congress envisaged Section 3014 applying directly to homeowners. EPA specifically requests comment on non-regulatory means that might be used to encourage homeowners to take their used oil to collection centers. For example, would it be helpful to State agencies in this field if EPA were to publish a document summarizing various educational and informational programs currently in use in the U.S. (and perhaps abroad) to address this problem and the relative successes or problems encountered with the programs? Are there other roles EPA could adopt to aid State agencies in

[15] As discussed in the final Phase I rule, EPA recognizes that metalworking oils and re-refinery "light ends" may contain high levels of halogens but have not been mixed. [In the preamble of the final Phase I rule, see Part Two, Section IV.B.1.] Persons managing these oils can rebut the presumption under the procedures described in the final Phase I rule [Id.], summarized in this section of this preamble.

[16] As also discussed in the final Phase I rule, if a re-refiner can show that the incoming used oil does not exceed 1000 ppm halogens, the presumption would *not* apply to light ends produced at the refinery. [See the final Phase I preamble, Part Two, Section IV.C.2.a.] That is, the Agency recognizes that certain processes concentrate low boiling point materials in a light end stream, and the presumption was not developed for this type of recycled oil.

[17] Today's proposal would amend § 261.6(a)(2)(iii) to provide that recycled oil would be not subject to the full set of regulations that normally apply to recycled hazardous wastes [*i.e.*, 40 CFR Parts 262–265,] but rather would be subject to Part 266, Subpart E. As explained in the rest of this part of the preamble, Part 266, Subpart E would incorporate some, but not all, of the requirements in the existing hazardous waste regulations.

[18] The reader should note that some recycled oils (under the statutory definition) are not solid and hazardous wastes under today's proposal. Under §261.2 materials that have been reclaimed and that are then used as commercial products (but *not* as a fuel and *not* in a manner constituting disposal) are not solid wastes, and so are not hazardous wastes. Examples of recycled oils that are not solid nor hazardous wastes are reclaimed oils that are not solid nor hazardous wastes are reclaimed lubricants and asphalt roofing material containing recycled oil. The reader should further note that under §§ 260.30 and 260.31, EPA may grant requests for variances from a material's being classified as a solid waste, and under §§ 260.20 and 260.22, from a solid waste's being classified as a hazardous waste.

[19] *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associates, Ltd., November 1984; p. 1–8. Approximately 200 million gallons of used oil are generated by "do-it-yourselfers," e.g., homeowners, of the total of 1.2 billion gallons generated each year.

[20] Id., p. 3–27.

[21] A study for the U.S. Department of Energy, *Analysis of Potential Used Oil Recovery from Individuals*, by Market Facts, Inc., July 1981, found that 40% of homeowners poured their used oil on the ground, while another 21% placed it in the trash. Only 14% took the oil to a center for recycling. (See page 42.

addressing to "do-it-yourselfer" problem?

3. *Oil recovered from wastewater.* In the listing proposal elsewhere in today's **Federal Register,** EPA proposes to amend the § 261.3 "mixture rule" to excluse from the definition of hazardous waste oily wastewaters containing *de minimus* amounts of used lubricating, hydraulic, or transformer oils from machine drippings, line spillage, etc.[22] [See proposed § 261.3(a)(2(iv)(F).] In order to recover the oil (or to comply with Clean Water Act discharge limits) most industrial facilities treat oily wastewater to separate some portion of the oil. Used oil recovered from wastewater is likely to contain hazardous constitutents at levels comparable to other used oils, and therefore to pose similar hazards when managed (or mismanaged). For this reason, EPA has proposed to limit the scope of the exclusion so that used oil recovered from wastewaters remains a hazardous waste.[23] If this used oil is recovered for recycling or reuse, it would be recycled oil subject to Part 266, Subpart E. A person who recovers oil from exempt wastewater containing used oil (for recycling) would be a "generator," subject to either § 266.40(c) or § 266.41 of today's proposal. To make this point clear, we have proposed §266.40(a)(1)(iii).

C. Conditional Exemptions for Certain Recycled Oils

EPA has determined that certain types of recycled oil should be exempt from further regulation when specified conditions are met. [The proposed §266.40(a)(2) identifies the recycled oils eligible for the exemption and the proposed §266.40(b) contains the conditions.]

1. *Specification fuel.* Recently, EPA made final (the final "Phase I" burning rule) a specification for fuels made from used oils. [See Table 1, above, and in the preamble of the final Phase I rule, see the discussion in Part Two, Section IV.C.] Fuels meeting this specification would be exempt from the Phase I burning rule's notification and tracking requirements and its prohibition on burning used oils in non-industrial boilers. [Id.] EPA is today proposing to simply carry forward the exemption for specification fuel. Based on the following rationale, we can see no need to impose regulations on specification fuel, or to add any new parameters to the specification. Comments are requested on the discussion that follows.

a. *Rationale for exemption:* EPA believes that fuel meeting the specification would pose hazards not significantly greater than virgin fuel oil during handling and when burned and that therefore regulation of the used oil would not accomplish any environmental purpose. [Id.][24] The specification levels for three of the constituents, arsenic, cadmium, and chromium, were, in fact, selected to be equivalent to virgin fuel oil levels.[25] The specification selected for lead was 100 ppm. This is about ten times greater than lead levels found in virgin fuel oils, but as we explained in the final Phase I rule, the 100 ppm level is intended only as interim measure. When EPA proposes its Phase II burning rules early next year, we will re-visit the lead specification for used oil fuels and we may well establish a more stringent level. In the meantime, we do not think it appropriate to regulate fuels meeting the 100 ppm specification.[26]

The reader may also note that in the final Phase I rule EPA declined to set specification levels for certain toxic constituents. However, the parameters for which levels are not established were either found to be present in used oils at levels comparable to virgin fuel oil (and so would pose hazards no greater than virgin fuel oils when handled prior to burning) or the constituents just are not very toxic. Our conclusions concerning the need for a specification limit for individual parameters were of course based primarily on hazards posed by inhalation; we have considered whether specifications should be established for some parameters of low inhalation toxicity based on potential storage hazards. A parameter worthy of this special additional consideration is barium. Ten percent of the used oil analyses reviewed by EPA showed barium levels at or above 250 ppm.[27] While this is about 100 times greater than levels found in virgin fuel oil, the reader should note that it is only two and one-half times greater than the E.P. toxicity level of 100 ppm. [§261.24(b), Table 1, *i.e.,* "D005."] Given that the E.P. is intended for leachate analysis and that it is very unlikely that all of the barium would leach from the oily matrix, we do not expect used oil to exhibit E.C. toxicity for barium.[28] To more directly assess the potential for groundwater contamination by improper used oil storage, EPA evaluated numerous storage scenarios.[29] In all of the various scenarios evaluated, the predicted groundwater concentration of barium was below 1 milligram per liter, the standard established by EPA under the Safe Drinking Water Act. Therefore, we do not expect significant hazards to be posed by used oil high in barium, even if stored improperly, and we have not proposed any new specification for barium.

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[22] *"De minimus,"* as used in this context, is defined in the listing proposal elsewhere in today's **Federal Register.**

[23] The reader should note that this discussion only applies to wastewater contaminated with *used oil.* For example, wastewaters from petroleum refineries also contain recoverable oil, but do not necessarily contain used oil.

[24] The reader should note that EPA considers the fuel specification to constitute a standard under 3004(r) for hazardous waste fuels. The specification is issued under the joint authorities of sections 3014 and 3004(q), and as provided by section 3004(r), supersedes the otherwise applicable labeling requirement. The specification limits the composition and associated hazards of recycled oil fuel, and therefore, it in itself fulfills the informational and warning functions of the label.

[25] Also, the proposed flashpoint specification, a minimum of 100 °F is the same as allowed under ASTM specifications for commercial ("number 2") fuel oils. Further, the Phase I preamble explained that we did not propose specifications for certain constituents (such as benzene and toluene) in part because levels in used oil are likely to be equivalent to levels found in virgin fuel oils. [See the final Phase I preamble, part Two, Section IV.C.3.]

[26] A preliminary assessment of storage hazards of used oil containing lead indicates that even with a specification of 100 ppm, serious hazards from leaks are unlikely. A computer simulation of some 9000 storage situations was conducted where lead was assumed to be released to the environment. [See the *Background Document* for the *Regulatory Impact Analysis,* EPA Office of Solid Waste, November 1985, Chapter IV.G.] Of the 9000 simulations, only 28 exceeded the lead standard of 0.05 mg/1 promulgated under the Safe Drinking Water Act, *i.e.,* less than 1 percent of the cases. [This analysis is conservative in that many of the cases simulated assumed a lead content higher than the final specification of 100 ppm.] The reader should note that EPA is continuing to improve its methods for assessing storage risks, and preliminary results presented here are simply the best information currently available. Should new and better information be developed in the future, we may re-consider the storage risks posed by specification fuel.

[27] See the report *Composition and Management of Used Oil Generated in the U.S.,* U.S. EPA, November 1984, p. 1–12. The data base included 752 samples analyzed for barium; 89% of the samples contained detectable levels of barium.

[28] Also, barium is an additive used in formulation used automotive engine oil. It seems unlikely, given that automotive oils contain a variety of contaminants regulated by the specification, that used oil would meet the specification but yet still have high barium levels. Ibid at pp. 3–8 to 3–10 and p. 3–27.

[29] See the *Background Document* for the *Regulatory Impact Analysis,* EPA Office of Solid Waste, November 1985, Chapter IV.G. As discussed above for lead, this analysis included a computer simulation of some 9000 storage situations. Although only preliminary analysis, it seems unlikely that used oil can pose serious sotrage hazards because of its barium content.

Finally, under the approach proposed today where used oil with over 1000 ppm total halogens is presumed to be mixed with hazardous waste, the reader may note that it is conceivable for specification fuel to contain up to 1000 ppm of a hazardous spent solvent and yet not "trigger" the rebuttable presumption. EPA was concerned that such levels of solvents, although not hazardous with respect to burning, could pose groundwater hazards if used oil was stored improperly. We therefore conducted a storage assessment for used oil containing various spent solvents, *i.e.*, as we did for barium.[30] The individual solvent posing the highest risk level was found to be tetrachloroethene, with a mean or average cancer risk level of 7×10^{-6}, or 7 cancers per 1 million exposed population. Risk levels this high can be considered significant, but EPA notes that some 96% of the scenarios evaluated had risk levels lower than this. Additionally, the storage scenarios evaluated here concerned all used oils, while specification fuel is a special subset of used oil because, by regulatory definition, it must contain low concentrations of several toxic contaminants. We expect that specification fuel, because it will often be produced by treatment or blending, will typically contain solvent levels far below 1000 ppm; in fact, it is likely that specification fuel will often contain less than 100 ppm of any solvent.[31] Used oil containing such low levels of solvents would pose risks about one order of magnitude lower than the levels discussed above, *i.e.*, the risk of cancer would generally be less than 1 per 1 million exposed population. Such low risk levels do not appear to warrant additional controls, and we are therefore proposing no specification levels for individual solvents.

In summary, we are proposing no changes to the specification and no additional requirements for the management of specification fuel because we do not see the need for additional controls. Comments on this proposed policy are requested.

b. *Conditions for the exemption.* Persons producing specification fuel would be, under today's proposal, subject to § 266.40(b)(1). The fuel producer would have to document through analysis that the oil meets the specifications, and that it is used as fuel. To document the latter point, the person would have to keep records of the name and address of the receiving facility, the quantity of oil shipped, the date of shipment, and a cross-reference to the oil analyses performed. These requirements are carried forward from the final Phase I burning rule. [They are currently in § 266.43(b)(6); today's proposal would move the requirements to § 266.40(b)(1).]

Documentation that the fuel in fact meets the specification would normally entail analysis. Sampling and analytical procedures are part of a facility's permitting requirements discussed in later sections of this preamble.[32] Of particular relevance here, the person producing specification fuel would have to have a plan at his facility specifying the sampling and analysis procedures to be used in documenting that the oil meets the specification. Records of sales, use, or shipment would have to be kept at the facility as well. Of course, EPA reserves the right to inspect facilities producing specification fuel, to take samples of the oil, and if necessary, to check to ensure that the product produced is actually being burned or is entering the commercial fuel oil market.[33]

c. *Diesel crankcase oil:* As a final point concerning the production of specification fuel, EPA requests comment on whether it is necessary to require a different kind of documentation (or any documentation at all) than described above for those generators that blend used diesel crankcase oil with diesel fuel for use in their own vehicles. The data available to EPA (Table 2) suggest that used diesel engine crankcase oils are quite low in contaiminants as-generated. Given our limited data base, commenters are invited to submit additional data to confirm or refute this conclusion.

TABLE 2..CONCENTRATIONS OF TOXIC METALS IN USED DIESEL ENGINE CRANKCASE OILS

Metal	Number of samples		Concentration range (ppm)		
	Analyzed	Contaminant detected	Low	Median	High
Arsenic	5	1	<5.0	<5.0	5.9
Cadmium	5	3	<0.5	0.9	1.4
Chromium	5	5	0.9	1.5	3.8
Lead[1]	5	4	<5.0	13.0	78.0

[1] Some "diesel" samples may actually be contaminated with small amounts of gasoline engine crankcase oil, accounting for the presence of lead.

Source: Composition and Management of Used Oil Generated in the U.S., by Franklin Associates, Ltd., November 1984, p. 3-38.

EPA is also aware that manufacturers of diesel engines generally recommend that diesel crankcase oil be blended into diesel fuel at a maximum rate of 5% (i.e., a 19–1 virgin fuel to recycled oil dilution.)[34] Since diesel fuel is itself typically low in toxic metals,[35] a 19–1 dilution would seem to ensure the resultant blended fuel would meet the proposed specification (even if the limit for lead was ultimately set as low as 10 ppm). Should EPA, then, specifically state in the regulation that anaylsis is *not* necessary when diesel crankcase oil is blended by generators at or below 5% to produce diesel fuel?

2. *Asphalt paving material.* EPA is proposing that asphalt paving material containing certain types of recycled oil be exempt when certain conditions are met. [See the proposed § 266.40(a)(2)(ii) and § 266.40(b)(2).] EPA is basing the proposed exemption on § 266.20(b) of the existing hazardous waste regulations, which provides:

> Products produced for the general public's use that are used in a manner constituting disposal and that contain recyclable materials [*i.e.*, hazardous waste] are not presently subject to regulation if the recyclable materials have undergone a chemicial reaction in the course of producing the product so as to become inseparable by physical means.

As discussed on January 4, 1985, EPA asserts jurisdiction over these materials but has deferred regulation pending studies of how the materials are appropriately regulated. [See 50 FR 627–629 and 646–647.] EPA has determined that asphalt paving material containing either of the two following types of

[30] Id. We assessed risks posed by used oil containing three common de-greasing solvents: tetrachloroethene; 1,1,1-trichloroethane; and trichloroethene.

[31] For example, see the report *Composition and Management of Used Oil Generated in the US*, EPA, November 1984, p. 5–15. Concentrations for various constituents are projected for used oil blended at a 10% ratio with virgin fuel oil. The average concentration of tetrachloroethene here is 121 ppm, and 90% of the projected cases would contain no more than 170 ppm of that solvent.

[32] As stated above, recycled oil remains subject to Part 266, Subpart E, in its entirety until § 266.40(b) is fully complied with. In particular, § 266.43(b), discussed below, includes certain sampling and analysis requirements for persons producing specification fuel.

[33] The burden for determining and documenting that certain recycled oil should be exempt as specification fuel falls on the person claiming the exemption. When recycled oil is burned, sent off-site, or otherwise managed, it is subject to regulation under Part 266, Subpart E, absent documentation as discussed above. This proposal would incorporate the analysis requirements into the general analytical requirements for used oil recycling facilities of proposed § 266.43(b).

[34] See, for example, the bulletins by: *Catepillar*, September 1974, *Racor*, undated, *International Harvester*, February 1974 (I–H recommended up to 6.5%).

[35] See the report, *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associated, Ltd., November 1984, p. 5–10. Diesel fuel is essentially "Number 2" or "distillate fuel."

recycle oil[36] meet the criteria of § 266.20(b) and therefore are presently exempt from regulation:

- Residues (bottoms) from distillation re-refining; or
- Air pollution control residue from fabric filters (*i.e.*, baghouse dust) where used oil is burned as a fuel.

EPA is currently studying the practice of incorporating these materials into asphalt. Preliminary results indicate that the recycled oils described here substitute for virgin materials in asphalt production (*i.e.*, they add desired properties to the paving material) and that at least the bottoms are typically purchased by asphalt producers at prices near those of their nonwaste ("virgin") counterparts.[37] Therefore, we conclude that the incorporation of these materials into asphalt is a legitimate recycling practice and not merely a disposal method for the residues.

EPA is currently assessing the environmental hazards that may be associated with these asphalt products to determine what kinds of controls, if any, may be necessary.[38] Eventually, EPA might establish standards pertaining to amounts of recycled oil that could be in asphalt paving material (e.g., a maximum percentage), or we might require some form of leaching test (similar to the Extraction Procedure in 40 CFR 261.21 and Part 261, Appendix II) as a demonstration that no adverse effects are likely. For example, we might exempt asphalt of which the residues constitute less than 3% (by weight or volume)—this appears to represent current industry practice—while the use of asphalt containing greater than this amount might be regulated as land disposal or subject to some type of leach testing. Under today's rule, however, the person producing the asphalt product (and claiming the exemption) would only have to maintain adequate documentation that the recycled oil is being treated so that it is an inseparable part of the asphalt product[39] [See 50 FR 646–7; January 4, 1985, for a discussion of these terms. Most asphalt products, we expect, would qualify for the exemption.]

Comments and information are requested on the hazards and need for controls for asphalt products containing recycled oils. As a final point on this subject, we have been unable to identify any other recycled oils that meet the § 266.20(b) criterion for exemption. Therefore, when other recycled oils besides the residues and asphalt mixtures described above are placed on the ground, the product would be subject to regulation (discussed below). Comments are requested on whether any other recycled oils meet the § 266.20(b) criterion discussed above, and that therefore should be included in the proposed § 266.40(a)(2)(ii).

D. Overview of Standards and "Burden of Proof" Issues

Sections II, III, and IV of this Part of the preamble explain the requirements for generators, transporters, and owners and operators of facilities that manage recycled oil. In general:

- A person who generates or accumulates up to 1000 kilograms per month would be subject to § 266.40(c) but to no other requirements in the Subpart;
- A person who generates (in a month) or accumulates over 1000 kilograms of recycled oil would be subject to § 266.41;
- A person who initiates an off-site shipment would be subject to § 266.41(d);
- A person who transports recycled oil would be subject to § 266.42;
- An owner or operator of a facility that recycles or stores recycled oil would be subject to § 266.43;
- A person who burns recycled oil would be subject to § 266.44; and
- A person who applies or places recycled oil (or a product containing recycled oil) on the ground would be subject to § 266.23.

As explained above and in the next sections of the preamble, certain recycled oils are exempt from regulation and persons who otherwise fit into a regulatory category may be exempt from some generally applicable requirements.[40] The person claiming such an exemption is responsible for providing documentation that the exemption applies, otherwise, EPA presumes the rules apply. This is consistent with the § 261.2(f) provisions for recycled hazardous waste and merely re-states a well-established legal principle. [See 50 FR 642–643, January 4, 1985, for a full discussion of the principle and cases where the principle was upheld.]

E. Authorization to Manage Recycled Oil

As with any hazardous waste, recycled oil must be managed at an "authorized" facility.[41] We are using "authorized" as a term of convenience to include any of the following [see proposed § 266.40(e)(3)]:

- A facility permitted to manage hazardous waste under Part 270, Subpart A–E; [42] or
- A facility permitted to manage hazardous waste by a State with an EPA-approved hazardous waste program;[43] or
- A facility meeting the special permit-by-rule requirements proposed today for used oil recycling facilities (see proposed § 270.60(d)); or
- A facility in interim status, as defined by Section 3005(e) of RCRA and the requirements of Part 270, Subpart G.[44]

F. Definitions and General Provisions

Terms used in proposed Part 266, Subpart E have the same meanings as provided in § 260.10 and §§ 261.1–261.3 of the hazardous waste rules. Also, the requirements of Part 260 pertaining to availability and confidentiality of information, use of number and gender, references, and rulemaking petitions apply throughout Part 266, Subpart E. [See proposed § 266.40(e).]

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[36] Both materials discussed here are residues from treating used oils. As discussed in the Federal Register notice that accompanies this one (the listing proposal), residues derived from used oils are considered used oils. And as discussed above in this preamble, used oils (not mixed with hazardous waste) that are recycled are recycled oils.

[37] See the draft report by Research Triangle Institute, *Used Oil Recycling Evaluation: Incorporation of Residues into Asphalt and Asphalt-Containing Products*, June 1985, pages 24–29.

[38] Id. Samples of the recycled oils are being analyzed to measure concentrations of hazardous constituents (40 CFR Part 261, Appendix VIII) present, and how those concentrations compare to the virgin materials they replace. Extraction testing for toxic metals is also being conducted.

[39] The person incorporating the bottoms or baghouse dust into the asphalt would be subject to § 266.43 of today's proposal, the standards for used oil recycling facilities, discussed later in this preamble.

[40] A person may also fall into more than one regulatory category. In this case, the person is subject to more than one set of requirements.

[41] As explained in Section I.B. above, specification fuel and asphalt containing certain recycled oil residues are exempt under § 266.40(a)(2), provided that the conditions of § 266.40(b) are complied with. No authorization is necessary to manage recycled oil exempted under these provisions.

[42] The reader should note that a facility that has already been permitted under Part 270, Subparts A–E can only manage a newly-listed hazardous waste through a permit modification under §§ 124.5 and 270.41.

[43] See 40 CFR Part 271 (and Section I of Part Three of this preamble) concerning EPA approval of State hazardous waste programs.

[44] An interim status facility may only accept a newly-listed hazardous waste under the provisions of § 270.72, pertaining to changes during interim status.

II. Standards for Generators of Recycled Oil

A "generator" is ". . . any person, by site, whose act or process produces hazardous waste . . . or whose act first causes a hazardous waste to become subject to regulation." [See § 260.10.] In the case of used oil, generators include:

- Service stations, auto repair shops, and other establishments that service vehicles or that accept oil from ("do-it-yourselfer") households;
- Maintenance garages that service vehicle fleets;
- Mine and construction operators where vehicles are serviced in the field; and
- Industrial facilities such as metalworking shops, steel mills, etc., that use oils to cut, grind, or work with metal or that remove spent hydraulic fluids or greases from machinery.

These are generators of *recycled oil* when they recycle the used oil themselves, or accumulate it for shipment to an off-site recycler.

Section 3014(c)(2)(A) requires EPA to regulate generators of recycled oil ". . . as may be necessary to protect human health and the environment." In promulgating these regulations, EPA is directed to take into account the effects of regulations on:

- Environmentally acceptable types of used oil recycling;
- Small quantity generators; and
- Generators which are small businesses.[45]

The requirements proposed today were developed using as a starting point the general standards for hazardous waste generators issued under Section 3002 of RCRA. Those requirements were, however, modified to take into account the special Section 3014 mandate. A major similarity between the approach proposed today and the approach used by EPA to regulate other generators of hazardous waste is to distinguish between the classes of generators by the amount of waste they generate. The discussion that follows first centers on "small quantity recycled oil generators" subject to special, limited standards and then on other (large) generators of recycled oil, who would be subject to more extensive requirements.

A. Small Quantity Recycled Oil Generators

EPA is proposing a limited set of requirements for generators of up to 1000 kilograms (about 300 gallons) of recycled oil per month.[46] [See the proposed § 266.40(c).] The requirements would include:[47]

- A prohibition on road oiling;
- Standards pertaining to installation of storage tanks; and
- A provision that states that if more than 1000 kilograms is accumulated, the generator moves into the next "generator" category for regulatory purposes.

Generators in the less than 1000 kilogram category are termed "small quantity recycled oil generators."

The remainder of this section explains the requirements that would apply; the proposal that a separate small quantity limit be established for recycled oil; the rationale for the 1000 kilogram limit; and the proposed policy under which recycled oil from these generators would be subject to more extensive regulation when collected.

[For the reader's convenience, the discussion below notes similarities and differences between §§ 266.40(c) and 261.5. The reader should not confuse the § 266.40(c) regulatory category with § 261.5, which includes special requirements for hazardous waste generated by "small quantity generators." The two regulatory categories are similar in that the generators in each category are subject to only minimal requirements; but there are important differences, including different quantity cut-offs and the regulatory status of waste once it leaves the generator's site.]

1. *Requirements.*[48] Generators of no more than 1000 kilograms per month of recycled oil would be exempt from full regulation under the proposed Part 266, Subpart E, provided that the generator either sends the oil off-site for recycling or recycles it himself under the following requirements:

a. *On-site management:* (1) Road oiling is prohibited. Section 3004(1) of RCRA prohibits the use of hazardous waste as a dust suppressant. [See 50 FR 28718; July 15, 1985.] No exemption is provided for small quantity generators; the prohibition would become effective the day the final rule listing used oil as a hazardous waste becomes effective.

(2) *Proper installation of tank systems.* EPA is incorporating into these regulations, under the authority of section 3014, tank installation requirements similar to those required by section 9003(g) or RCRA, the latter termed the "interim prohibition." Section 9003(g) prohibits any person from installing an "underground storage tank" [as that term is defined in section 9001(1)] unless the tank and connected piping satisfy certain requirements, including that they prevent releases due to corrosion or structural failure for the operational life of the tank and that the lining or construction of the tank and piping be compatible with the substance being stored.[49]

Congress established this interim prohibition as the minimum requirement for underground petroleum tanks installed after May 7, 1985 until EPA can develop standards as mandated by section 9003(e) of RCRA. EPA believes that since the provisions of Subtitle I apply to "petroleum" (see section 9001(2) of RCRA) and used oil is a subset of petroleum, Congress intended for the provisions of Subtitle I (including the interim prohibition) to apply to used oil to provide a baseline level of control for used oil storage. Where the specific recycled oil provisions of section 3014 result in regulations more stringent than provided by Subtitle I, we presume that Congress intended for the more stringent requirements to apply.

EPA is proposing tank installation requirements that amount to a modified version of the Subtitle I interim prohibition in the small quantity generator provisions of today's rule for two reasons. First, since the interim prohibition is a minimum standard already required by Subtitle I, its inclusion in this rule puts used oil generators on notice of already applicable requirements. [This purpose is less important with respect to other parties subject to today's proposal because they generally would face requirements more stringent than the interim prohibition. As stated above, in such a case the more stringent requirement applies.] Second, EPA believes that the tank installation requirements proposed today provide a level of control that reflects the section 3014 mandate to protect human health and the environment, considering the impacts of regulation on recycled oil generators.

Finally, the reader should note that the tank installation requirements we

[45] Section 3014(c)(2)(B) contains specific directions on how off-site shipments are to be regulated. This is discussed below.

[46] Used oil accepted from households ("do-it-yourselfer" oil) would be counted in this determination.

[47] Eventually, requirements for on-site burning may also be promulgated, but as discussed below this issue is to be addressed in the Phase II burning and blending proposal later this year.

[48] The requirements discussed here are proposed in § 266.40(c). The requirements are very similar, but not identical to the requirements of § 261.5 (f) and (g) for small quantity generators of hazardous waste.

[49] Section 9003(g) does provide a limited exception for the corrosion protection requirements for tanks installed at sites where soil resistivity is 12,000 ohm-cm or more. [These requirements are codified in 40 CFR 280.1 and 280.2. See 50 FR 28734-35; July 15, 1984.]

are proposing today for small quantity recycled oil generators, although based in substance on the interim prohibition, would apply to a broader range of tanks than would be the case under section 9003(g). The broader applicability of today's proposal is brought about because instead of using the term "underground storage tank" to define coverage of the provision [defined in section 9001(1) and § 280.1], we have proposed to use the broader term "tank system." [50]

We intend for § 266.40(c)(1)(iv) to apply to all tank systems, *i.e.*, "above-ground," "inground," and "underground." (Id.) EPA believes this broader coverage, corresponding to the scope of Subtitle C, is called for by Section 3014. That is, Section 3014 directs EPA to regulate the hazards associated with recycled oil, and recycled oil is stored in all types of tanks.[51]

Comments are requested on EPA's proposed approach for regulating small quantity recycled oil generators' tanks, described above. As a final note on the subject, as EPA develops controls for underground storage tanks under Subtitle I, we will consider whether additional controls should be applied to small quantity recycled oil generators' tanks.

(3) *Accumulation of over 1000 kilograms.* If at any time a generator accumulates over 1000 kilograms of recycled oil, he would be subject to the more extensive generator requirements discussed later in this section of the preamble.[52] The reader should note, however, that recycled oil that is mixed with nonhazardous waste would continue to be subject to the limited requirements discussed here even if the 1000 kilogram limit is exceeded (as long as the recycled oil portion of the mixture does not exceed 1000 kilograms).[53] [See the proposed § 266.40(c)(3).] The rationale here is that the limits proposed are meant to apply to recycled oil and the mixing of recycled oil with non-hazardous waste does not change the quantity of, or the hazard associated with, recycled oil involved.[54]

(4) *On-site burning.* The reader will note that EPA has reserved a paragraph in proposed § 266.40(c)(1) for controls on on-site burning. For the most part, this burning involves use of used oil space heaters by service stations or blending of diesel crankcase oil into vehicles' diesel fuel. The former case has been addressed on an interim basis under the final Phase I burning and blending rule [See Part Three, Section IV of the final Phase I preamble.] As we said in that final rule, we will re-visit the need for controls on these units in the Phase II burning rules. [Id.] Any requirements for space heaters would eventually be codified in § 266.40(c)(1). At a *minimum,* we intend to ensure that space heater flue gases are properly vented. The case of diesel blending was discussed in an earlier section of this preamble pertaining to specification fuel. As described in that section, the data available to EPA indicate that this kind of blending produces specification fuel, and we are considering what type of documentation if any should be required. Comments are requested on what documentation, if any, should apply to small quantity recycled oil generators who blend diesel crankcase oil into their own diesel-fueled vehicles.

b. *Shipments off-site:* Small quantity recycled oil generators would be allowed to send recycled oil off-site for recycling without any formal tracking or recordkeeping requirements.[55] [The reader should note that, as is discussed later in this Section and then below in Section III. E. 2., transporters who collect from small quantity recycled oil generators must keep records of pick-ups and must ensure delivery to an authorized used oil recycling facility.]

2. *The separate small quantity limit for recycled oil.* Under today's proposal, recycled oil would have its own "small quantity" limit of 1000 kilograms per month; that is, recycled oil counting against the recycled oil limit would *not* also count against the § 261.5 limit for hazardous waste.[56, 57] Therefore, under our proposed approach, a generator could be subject to the "small quantity" provisions of both 40 CFR 261.5 and 266.40(c), or subject to one of the provisions but not the other one. EPA believes this approach offers the following benefits:

(1) Impacts on small quantity generators and generators who are small businesses would be reduced. Without the separate small quantity generator limits for recycled oil and other hazardous wastes, a generator of, for example, small amounts of spent hazardous solvents could have to manage his solvents under the 40 CFR Part 262 standards for hazardous waste generators because of the recycled oil he generates. This seems inappropriate because, as discussed in this **Federal Register** notice, EPA is proposing to regulate recycled oil under a special set of Part 266 standards, not the general hazardous waste standards. It also would have the effect of subjecting perhaps tens of thousands of generators of recycled oil to the hazardous waste rules (for the small quantities of other hazardous waste they generate). As described throughout this section of the preamble, EPA is attempting to minimize the adverse impacts of regulation on small quantity generators and generators who are small businesses.

(2) Segregation of wastes would be encouraged, and this facilitates recycling. The separate small quantity limits should provide an incentive for generators to segregate used oil from other hazardous wastes they generate because, as described above, mixtures of used oil and hazardous waste would be subject to full regulation as a hazardous waste, not the special "recycled oil" standards.[58] Segregation of used oil away from other hazardous waste facilitates used oil recycling. In particular, when used oil is contaminated with chlorinated solvents, the resulting mixture:

- Has a reduced BTU content and correspondingly reduced fuel value; and

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[50] As proposed on June 26, 1985, a "tank system" is comprised of a tank(s) and its ancilliary equipment (e.g., pipes, valves) [See 50 FR 26455]. The section 9001(1) definition of "underground storage tank" also includes ancilliary equipment such as pipes, but only applies when 10% or more of the system is beneath ground surface.

[51] The reader should also note that Subtitle I includes certain special exemptions [sections 9009(d) and (e)] for residential/farm motor fuel tanks and heating oil tanks. These exemptions are not relevant for Subtitle C, and we have not proposed any such exemptions today for recycled oil. Although we are today proposing to regulate certain recycled oil tanks, described above, that are not presently regulated under the section 9003(g) interim prohibition, we note that the extent of regulation (in most cases some form of corrosion protection) would cause insignificant cost impacts, typically in the range of $200 per affected generator. [See the EPA report, *Estimated Costs of Compliance with Proposed RCRA Regulations for Hazardous Waste Storage, Treatment, and Accumulation Tank Facilities* (March 1985), for a cost estimate of corrosion protection.]

[52] A similar provision applies to hazardous waste small quantity generators. See § 261.5(f).

[53] A similar provision applies to hazardous waste small quantity generators. See § 261.5(h).

[54] As described above, a mixture of used oil and *hazardous* waste is *not* recycled oil, and would not be subject to the requirements discussed here. Such a mixture would be subject to regulation as hazardous waste. [See proposed §§ 261.5(j)(2)(ii), 261.6(a)(2)(iii), and 266.40(d).]

[55] We have not proposed any time limit to accompany the 1000 kilogram accumulation limit. A time limit seems unnecessary since used oil is typically picked-up frequently by collectors. H.R. Rep. No. 98-198, 98th Cong., 1st Sess., at 67 (1983).]

[56] Congress envisaged the possibility of such an approach, as evidenced by the legislative history of Section 3014.

[57] See proposed §§ 261.6(a)(2)(iii), § 261.5(c) and § 261.5(j)(2)(i), where recycled oil is exempted from counting towards the § 261.5 quantity limit for determining "small quantity generator" status under the hazardous waste rules.

[58] That is, a generator who segregates his hazardous waste from his used oil might remain a small quantity generator under § 261.5, while a generator who mixes wastes would thereby lose his small quantity generator status and become subject to the Part 262 hazardous waste generator standards for the entire mixture. [See proposed § 261.5(j)(2).]

• Is difficult to reuse as a lubricant because the solvent reduces viscosity (i.e., "thins" the oil).[59]

(3) The separate small quantity limits proposed today would encourage environmentally acceptable types of recycling of used oils vs. disposal. This is one of the factors EPA is directed to consider in regulating recycled oil generators. Used oil, when disposed of, would count against the § 261.5 limit along with a generator's other hazardous waste. [See proposed § 261.5(j)(1).] A generator who recycles his used oil, therefore, would be eligible for the special, reduced requirements for small quantity recycled oil generators while one who disposes of his oil would be subject to the Part 262 hazardous waste generator standards. [For example, a generator of 500 kilograms of used oil who sends the oil to land disposal would exceed the § 261.5(a) limit and would therefore become subject to Part 262; however, if that generator recycled the oil, he would be covered only by proposed § 266.40(c).]

EPA requests comment on the separate small quantity limit approach described above. Do the separate limits cause undue confusion that might negate the benefits identified?

3. *Selection of 1000 kilogram as the limit.* EPA has proposed a 1000 kilogram monthly generation limit [60] to define a "small quantity recycled oil generator." [See the proposed § 266.40(c).] As Table 3 illustrates, this limit would bring the majority of the recycled oil generated within today's proposed regulatory system, while most generators would be small quantity recycled oil generators and thus exempt from the more burdensome elements of that system. Before deciding to propose the 1000 kilogram limit, EPA considered limits that would be both more and less stringent. EPA requests comment on the range of options discussed below:

a. *100 kilogram limit:* EPA considered a small quantity limit of 100 kilograms, *i.e.,* the same limit proposed on August 1, 1985 for hazardous waste in general. [50 FR 31278.] This would establish regulatory control over the great majority of the used oil generated starting at the site of generation [see Table 3]. As noted above, however, Section 3014 of RCRA specifically directs EPA to consider the impact of its regulations on small quantity generators, and small businesses, and on environmentally acceptable means of recycling. Under a 100 kilogram limit, at least 274,000 generators would be subject to regulation. EPA is concerned not only with the unwieldy size of this universe, but also with the potential impacts of regulation on the small establishments within the universe. The great majority of used oil generators are small businesses,[61], operated in large part by individuals without the technical knowledge or financial resources necessary to operate a waste management facility of any sophistication. Also, since these establishments do not generate large amounts of recycled oil, regulatory requirements can impose disproportionate costs, *i.e.,* high costs per gallon. The Agency's main concern with these small establishments is to ensure: (1) That they collect the used oil generated at their sites for recycling and not let it drain into sewers or otherwise dispose of it; and (2) that they continue to accept household-generated used oil.

TABLE 3.—NUMBER OF USED OIL GENERATORS AND QUANTITIES OF USED OIL GENERATED ANNUALLY

	Number of establishments	Size categories (kilograms generated per month)		
		<100	100-1,000	>1,000
Industrial	358,000	258,000	76,100	24,300
Non-Industrial	295,000	121,000	150,000	24,000
Total	653,000	379,000	226,100	48,300
Quantities generated (millions of gallons per year) by size category:				
Industrial	456	22.5	84	350
Non-Industrial	488	24.2	300	164
Total	944	46.7	384	514

Source: These estimates were derived from the draft report, *Characterization of Industrial Used Oil Generators,* by Franklin Associates, Ltd., (October 22, 1984), and the memorandum from Temple, Barker, and Sloane (August 8, 1984) titled "Non-Industrial Generators."

Notes:
1. These estimates do not include 167 million gallons of used oil disposed of each year by "do-it-yourselfer" oil changers, *i.e.,* homeowners.
2. Additionally, an estimated 2.4 million farms generate some 44 million gallons of "non-industrial" (automotive) oil each year. These establishments would fall in the "<100" category.
3. The "non-industrial" category includes automotive service establishments, while "industrial" includes metalworking shops, steel mills, and various other industrial concerns.

EPA considered regulating recycled oil generators of 100–1000 kilograms per month (kg/mo) under the set of requirements proposed on August 1, 1985 for hazardous waste generators of 100–1000 kg/mo. [See 50 FR 31278–31306. The proposal would amend the § 262.34 requirements.] As explained in that proposal, we developed the proposed standards for the 100–1000 kg/mo hazardous waste generators taking into account their predominantly small business nature. [Ibid at 31284–86.] EPA is concerned, however, that even though the August 1 proposal would minimize adverse small business impacts, the requirements would still adversely affect used oil recycling. [Under section 3014(c) of RCRA, EPA must, when developing rules for recycled oil generators, not only take small business impacts into account *but also* impacts on "environmentally acceptable recycling." EPA considers any increase in "do-it-yourselfer" oil changes to be, in itself, and adverse impact on recycling because this group traditionally disposes of its used oil. Sewer disposal to avoid regulations is another adverse impact on recycling that concerns EPA, as is any reluctance by establishments to accept household generated ("do-it-yourselfer") used oil.]

We estimate the rules proposed on August 1 would impose annualized costs of $1000–2000, on average, if applied to generators of recycled oil.[62] For a generator of, for example, 110 kilograms of used oil per month, this would mean costs of about $4.80 per gallon of recycled oil generated (and stored). Further, EPA is considering whether any tank system secondary containment standards should apply to generators of 100–1000 kg of hazardous waste per month. [Ibid at 31286–87] The addition of secondary containment requirements could double the costs presented above.[63] Given that recycled oil

[59] Re-refiners must remove the "light ends" (solvents and other low boiling point materials) during processing, reducing the yield of the lubricant production operation.

[60] As described above, the monthly generation limit would be accompanied by a total accumulation limit of 1000 kilograms.

[61] See the *Regulatory Impact Analysis for the Used Oil Rules,* EPA Office of Solid Waste, November 1985, pages V-54 through V-57.

[62] Unless otherwise noted, the results presented here are from the *Regulatory Impact Analysis* US EPA, Office of Solid Waste, November 1985, Chapter V.

[63] As points of clarification, the term "secondary containment" as used in today's proposal refers to the requirements proposed on June 26, 1985 for hazardous waste tank systems. [See 50 FR 26462–26482, and the proposed §§ 264.193 and 265.193.] These requirements are more extensive than, for example, the curbing and diking required for some

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generators are presently paid only 10–40 cents per gallon for their used oil, costs this high would make used oil more of a burden than a recyclable resource. It is difficult to quantitatively assess how generators would respond to regulatory costs this high, but our studies show the following to be probable outcomes:

- Price increases in oil-change services offered to the public. These price increases (we estimate an increase of 10 percent) could lead to an increase in "do-it-yourselfer" oil changes of approximately 12 million gallons per year (an increase of 4 percent);
- A reluctance of service stations and auto repair shops to accept "do-it-yourselfer"-generated used oil; and
- Increased sewage disposal by generators in areas without strict local requirements or sewer discharges.

These are the sorts of outcomes that concerned Congress when it was considering the issue of recycled oil regulation. See, for example, H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 66 (1983):

> Many used oil generators, such as service stations, will be reluctant to collect and recycle used oil if it means incurring excessive regulatory responsibilities. Any regulatory scheme for generators should . . . be structured to avoid this result . . .

For these reasons, EPA sees a clear need to establish a small quantity limit higher than 100 kilograms. A higher limit would minimize the impacts of regulation on the smallest establishments in the generator universe, and most importantly, would reduce adverse impacts on environmentally acceptable types of used oil recycling.

b. *2000 kilogram limit:* EPA considered a limit for small quantity recycled oil generators as high as 2000 kilograms per month (about 600 gallons). We believe a limit this high would exempt from full regulation most, if not all, of the automotive-related establishments. However, we are concerned that a limit this high would not be adequately protective. The same legislative history as cited above concerning the need to minimize impacts on generators goes on to say that EPA's regulations should:

> . . . encourage . . . generators to send used oil to facilities having permits. [And to] . . . regulate generators in a way that discourages unacceptable used oil recycling practices, such as unsafe storage, or potentially hazardous burning or land application. [Id.].

As Table 3 shows, even with a limit of 1000 kilograms, some 336 million gallons of used oil per year (nearly half of the oil in question) would be only minimally controlled at generators sites. Under a 2000 kilogram limit, probably all of the 488 million gallons of "non-industrial" (*i.e.*, automotive) oil and a large portion of the 456 million gallons of used industrial oils generated each year would be only minimally regulated at generators' sites. In essence, this would be virtually equivalent to not having generator regulations. In previous rulemakings concerning (§ 261.5) small quantity generators of hazardous waste, EPA has only considered exempting generators of up to 1000 kilograms per month; [see the discussions at 43 FR 58969–58971, December 18, 1978, and at 45 FR 33102–33105, May 19, 1980], and EPA sees no indication that Congress envisaged an exemption for generators of even larger quantities of recycled oil.

c. *1000 kilogram limit:* EPA has proposed a 1000 kilogram limit (about 300 gallons) to define small quantity recycled oil generators. This would subject approximately 48,000 generators to the regulations discussed later in this section. Some 514 million gallons (about 55% of the total generated each year, not counting household-generated oil) would be subject to Part 266, Subpart E, starting at the site of generation.[64] Under a 1000 kilogram limit, the vast majority of small establishments such as family farms, service stations, auto repair shops, and small industrial facilities would be subject to the very limited set of requirements discussed above. Generators of over 1000 kilograms are auto dealerships, establishments that offer "quick-lube" services to the public or that service large vehicle fleets, and industrial facilities like steel mills and automotive assembly plants. The establishments in the over 1000 kilogram group can be, but certainly are not always small businesses (e.g., steel and auto plants usually are not). For many of the establishments ("quick-lube" services), lubricant management (purchase, sale, etc.) is a central part of the operation. In these respects the large generators are unlike small auto shops and service stations (who are almost always small businesses and for whom lubricant management is only a peripheral aspect of their operations), and we believe the former are in a better position to absorb regulatory costs.[65]

EPA has determined that the 1000 kilogram limit strikes the best balance between protectiveness and economic impact concerns, as mandated by Section 3014. Comments are requested on the range of options presented. Comments are also requested on whether the limit should be expressed in gallons (*i.e.*, 1000 kilograms is about 300 gallons of used oil). Would this simplify compliance for generators?

4. *Regulation when collected.* EPA is proposing that when recycled oil from small quantity recycled oil generators is collected for shipment to an off-site facility, the oil would *then* become subject to Part 266, Subpart E in its entirety. This is different than the approach in 40 CFR 261.5 for hazardous waste from small quantity generators, where waste is exempt *through subsequent management.* What follows is first the rationale for this proposed departure from previous EPA policy regarding "small quantity" hazardous waste, and then an explanation of how collectors who service small quantity recycled oil generators would be affected by today's proposal.

a. *Rationale:* The reasoning behind today's proposal is based on the quantities of waste involved; the composition and management practices of used oil vs. other hazardous wastes; and the Congressional intent in passing Section 3014. These points are discussed here.

(1) A significant amount of used oil is generated in quantities less than 100 kilograms per month (kg/mo). Table 4 contrasts the generation pattern for used oil and other hazardous wastes.

Table 4.—GENERATION OF USED OIL VS. OTHER HAZARDOUS WASTES BY GENERATOR CATEGORY

[In thousands of tons per year]

Waste type	Generator Size Categories (kilograms per month)			
	<100	100–1000	>1000	Totals
Used oil	340	1,440	1,927	3,707
Hazardous waste other than used oil	180	760	264,000	264,940

Sources:

1. See Table 3, above. [Gallons converted to tons at 7.5 lbs per gallon of oil. Farmers' oil is included in "<100 kg/mo" category.]
2. Hazardous waste—The proposal at 50 FR 31285; August 1, 1985.

oil storage areas under EPA's Spill Prevention Control and Countermeasure rules at 40 CFR Part 112.

[64] As explained below, oil from small quantity recycled oil generators would also be regulated under today's proposal when collected for reclamation or other recycling.

[65] The requirements that would apply to large recycled oil generators are discussed in the next section, below.

As Table 4 shows, for used oil, generators of less than 100 kilograms per month (kg/mo) account for 9%, and generators of 100–1000 kg/mo for 39%, of the total generated each year. In contrast, for other hazardous waste, generators of less than 100 and 100–1000 kg/mo, respectively, account for only 0.07 and 0.3 percent of the total generated. The significant difference between used oil small quantity generators as contrasted to hazardous waste small quantity generators is also evident in terms of the absolute volumes generated by the two groups. For example, used oil generators of less than 100 kg/mo generate 340,000 tons per year, or 88% more waste, than their hazardous waste counterparts (who only generate 180,000 tons per year).

(2) "Small quantity-generated" used oil is similar to "large quantity" used oil in composition and management practices. Used oil from the less than 100 kg/mo generators is primarily used automotive oils, and can be expected to contain the same hazardous constituents (at the same levels) as found in any used automotive oil.[66] Moreover, much of this small quantity-generated oil is potentially available for off-site recycling, such as fuel use. If EPA were to exempt from regulation used oil generated in quantities less than 100 kg/mo, tens of millions of gallons of contaminated used oil could be recycled each year in unsound ways, such as being sold as residential heating oil. [If this oil was exempt from regulation, it would not be subject to the fuel specification promulgated in the final Phase I rule. See Table 1, above, for the specification. So therefore it could be contaminated with toxic constituents.] We believe it is quite conceivable that tens or even hundreds of thousands of people could be exposed to elevated levels of toxic air pollutants if used oil generated in quantities less than 100 kg/mo was exempt from regulation.[67, 68]

(3) Congress provided for recycled oil to be regulated under a unique framework. Section 3014 exempts recycled oil from the requirements of sections 3001(d), 3002, and 3003 (the Sections of RCRA guiding regulation of hazardous waste generators and transporters) and EPA is to regulate recycled oil as necessary, while minimizing adverse impacts *on generators.* The proposal to begin full regulation of small quantity recycled oil generators' oil when collected has the advantage of imposing only minimal requirements on the generators (as described above) without allowing the oil, when collected, to go completely unregulated. The proposal would allow EPA to concentrate its resources on points where larger quantities of recycled oil were being aggregated and accumulated for recycling.

Comments are requested on the proposal to regulate small quantity-generated recycled oil, and the rationale explained above.

b. *Collectors:* Under today's proposal, small quantity recycled oil genrators' oil becomes subject to full regulation under Part 266, Subpart E upon collection. [See proposed § 266.40(c)(2)(ii).] We have proposed special requirements for transporters who collect from small quantity recycled oil generators [see proposed § 266.42(e)(2)(iii)] under which the transporter would assume, in lieu of the generator, the responsibility for ensuring that the collected oil is delivered to an authorized facility. In this sense, the collector assumes certain generator-like responsibilities.[69] EPA reasons that this approach would help ensure sound management of small quantity recycled oil generators' oil, while minimizing the requirements (and costs) imposed policy for regulating collected "small quantity" recycled oil, including the proposed § 266.42(e)(2)(iii) transporter requirements.

B. Large Generators

1. *Applicability.* Generators who fail to meet the conditions for "small quantity recycled oil generators" would be subject to the generator standards of § 266.41 of today's proposal. These are "large generators" of recycled oil, or just "generators."[70] The reader should note that owners and operators of facilities would be subject to those portions of the generator rules pertaining to initiation of off-site shipments of recycled oil (even though they do not generate the recycled oil per se).[71] The proposed requirements for generators are discussed next.

2. *Identification numbers.* EPA is proposing that generators comply with 40 CFR 262.12 of the hazardous waste rules, which requires generators to notify EPA and obtain EPA identification numbers, and allows a generator to offer his waste only to transporters and facilities who have EPA identification numbers.[72] [See proposed § 266.41(b).] The notification provides EPA with the location and other information on generators. The identification number helps establish a line of accountability for waste management, starting at the site of generation.

3. *On-site management.* EPA is proposing requirements for on-site recycling by generators, and storage or accumulation prior to recycling. [See the proposed § 266.41 (a)(4) and (a)(5), and § 266.41(c).]

a. *On-site burning:* Generators who burn recycled oil on-site would be subject to the same standards as off-site burners. [Today's proposal does not establish standards for burning, but § 266.44 is "reserved" for the burner standards:]

b. *Used constituting disposal:* Generators who use recycled oil in a manner constituting disposal[73] would be subject to the same standards as persons using hazardous waste in this manner. [See § 266.23.]

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[66] See the EPA report, *Composition and Management of Used Oil Generated in the U.S.,* November 1984, p. 3–33, for composition of used automotive oils.

[67] Even if only one-half of all the used oil from generators of less than 100 kg/mo enters the commercial fuel oil market (through an exemption by EPA similar to § 261.5), *i.e.,* about 45 million gallons per year, this is enough fuel for *about 4000 residential boilers.* [This is assuming that on average, a residential boiler consumes 5 gallons of oil per hour, for 2190 hours per year, and the used oil is burned without blending. In practice, we believe the used oil would be diluted with virgin fuel oil at ratios ranging from 2/1 to 9/1, so the actual number of boilers potentially affected could range from 8000–36000.]

[68] We do not think these same high exposure scenarios would result when used oil is *disposed* of. When disposed, used oil would pose hazards similar to other hazardous waste managed under § 261.5 and for the reasons explained at 45 *FR* 33104–5 (May 19, 1980), we do not see a need for regulation of waste managed in this way. See proposed § 261.5(j)(1), which provides that used oil being disposed of would simply count along with other hazardous waste to determine § 261.5 regulatory status.

[69] The collector or transporter is *not,* however, subject to generator requirements. We have proposed § 266.41(a)(6) to clarify this point. The collector *would* be subject to the transporter requirements. See proposed § 266.42(a)(1)(i).

[70] In proposed § 266.41–266.44 and the remainder of this preamble, the term "generator" means those generators who would be subject to § 266.41, *not* small quantity recycled oil generators subject to the special requirements of § 266.40(c).

[71] As discussed later in this preamble, transporters may also be subject to the generator requirements under certain circumstances.

[72] A generator who already has an EPA identification number need not re-notify.

[73] "Used in a manner constituting disposal" means the recycled oil is applied to or is placed directly on the land or contained in products that are applied to or placed directly on the land (in either case the "product" itself remains a waste). As discussed in an earlier section of this preamble, products produced so that the recycled oil is inseparable by physical means are currently exempt. [See § 266.20 and proposed § 266.40(b)(2).]

c. *On-site reclamation:* EPA has proposed no standards for reclamation of used oil by generators. [On-site reclamation may precede reuse of used oil as a lubricant, reuse as a fuel, or shipment off-site.] Note that EPA does not presently regulate the actual reclamation of any hazardous waste, although facilities that only reclaim (without storage) are subject to RCRA Section 3010(a) notification requirements and, for off-site facilities, to the §§ 265.71, 265.72, and 265.76 manifest requirements. [See § 261.6(c)(2), and 50 FR 652; January 4, 1985.] EPA, however, would tend to view any claimed "reclamation" of used oil in a surface impoundment to be storage or even disposal, subject to regulation as described below. [Id., footnote 44; ". . . impoundments are rarely considered to be an integral part of the . . . recycling process . . ."] This policy would not, however, apply to recovery of oil from oily wastewater containing only *de minimus* amounts of oil, because such wastewater would be exempt from regulation under proposed § 261.3(a)(2)(iv)(F). As explained above, a person recovering oil from this exempt wastewater is considered, by the act of recovery itself, a generator of used oil. [If the generator then subsequently further reclaims the recovered oil, he would then be subject to the policy proposed above.]

d. *On-site storage:* EPA is proposing special standards for generators who accumulate (store) for a relatively short time under certain conditions. Generators who meet these conditions would not be subject to the storage facility regulations (discussed in a later section of this preamble) for used oil recycling facilities. A generator who fails to meet any of these conditions would be regulated as a used oil recycling facility under the proposed § 266.43 standards.[74, 75] [See the proposed § 266.41(c), introductory text.]

Each condition is discussed next. [See § 266.41(c) (1) through (6) of the proposal for the conditions.]

(1) Storage must be in a tank or container. Recycled oil, because its value is decreased when contaminated by water or dirt, is nearly always stored in a tank or container. Storage in a surface impoundment poses inherently greater risks than tank or container storage, and the greater risks call for full regulation, not reduced standards.

(2) Accumulation time must not exceed 90 days. The 90 day time limit was adopted from the hazardous waste regulations. [See § 262.34(a), introductory text.] EPA presently has no information indicating that generators of recycled oil need a longer period of time to arrange for recycling of their oil.[76] Comments are requested on this point. Is the proposed 90 day limit adequate for recycled oil generators? Are there circumstances where a longer time period is needed[77] to facilitate proper recycling?

(3) Containers and tanks must be labeled. EPA is proposing that containers or tanks used to accumulate or store recycled oil be labeled with the term "RECYCLED OIL" to clearly identify the generator's storage area. A similar provision applies to hazardous waste generators under § 262.34(a)(3).

(4) Container standards. EPA is proposing most of the same requirements for recycled oil stored in containers that apply to generators of hazardous waste under § 262.34 (which references Part 265, Subpart I):

- Containers must be maintained in good condition; and if a container leaks, the contents must be removed and transferred to a good container (or managed in some other way, according to the proposed § 266.41 rules);
- Containers holding recycled oil must be kept closed, except when it is necessary to add or remove oil;
- Containers must not be handled in a way that would cause leaks, spills, or ruptures;
- The generator must conduct a weekly inspection of the storage area to spot signs of leakage or corrosion; and
- Ignitable recycled oil (i.e., recycled oil with a flashpoint below 140° F) must be kept at least 50 feet away from the property line.[78]

EPA is not proposing that §§ 265.172 and 265.177 of the hazardous waste rules apply to recycled oil. These sections deal with hazards related to compatibility of wastes and materials, and co-management of incompatible wastes. Used oil is compatible with virtually any material so these controls are not relevant.[79] EPA has also not proposed a date marking requirement (to document compliance with the 90 day time limit) for recycled oil containers as is required for hazardous waste generators under § 262.34(a)(2). Elsewhere in today's proposal, we discuss certain recordkeeping requirements for generators. Basically, generators would have to record the date of each off-site shipment of recycled oil. Since we are attempting to minimize the administrative burdens of today's proposed recycled oil generator rules, and since most generators [*i.e.*, those who ship off-site] would be subject to this other recordkeeping requirement, we see no need to additionally require a date-marking requirement. EPA solicits comments on its proposal to not include the above requirements as part of the generator requirements.

(5) In order to meet the statutory mandate to effectively regulate recycled oil while minimizing adverse impacts on generators, EPA is proposing a tiered approach for recycled oil tank systems. [See the proposed § 266.41(c)(5).] First, all tanks would be subject to the Part 265, Subpart J standards that apply to hazardous waste generators under § 262.34(a)(1). These requirements include:

- A "freeboard" or overflow protection requirement for open-top tanks;
- A requirement that continuous-feed tanks be equipped with a shut-off or by-pass system;
- Inspection requirements for drainage, cut-off, and by-pass systems (daily), for monitoring equipment (if any, daily), for the visible portions of the tank (daily) and the area around the tank (weekly) to detect signs of leakage or corrosion;
- Buffer zone requirements for when ignitable (flashpoint below 140 ° F) oil is stored, from the NFPA code; and
- Requirements to remove and properly manage oil, residues, and

[74] Hazardous waste generators are regulated in a similar fashion. See the § 262.34 "90 day accumulator" rule. The rules proposed for recycled oil generators were developed using § 262.34 as a starting point; certain modifications are proposed pursuant to the special Section 3014 mandate discussed above.

[75] A generator who conducts on-site recycling, such as burning or reclamation, is still eligible for these special storage requirements.

[76] The vast majority of recycled oil generators either store in drums or in tanks less than 600 gallons in capacity. [See the report, *Waste Oil Storage* by Franklin Associates, Ltd., January 1984, pp. 2-3.] Since the generators subject to the requirements discussed here generate over 1,000 kilograms (300 gallons) per month, it seems apparent that on-site storage is typically much less than 90 days.

[77] Under § 262.34(b) of the hazardous waste regulations, the EPA Regional Administrator may grant an additional 30 days for "unforeseen, temporary, and uncontrollable circumstances." If EPA receives information indicating that a time period longer than 90 days is appropriate for recycled oil, we would likely specify the alternate time period in the rule itself (rather than having a provision for case-by-case extensions) by the Regional Administrator.

[78] On June 5, 1984, EPA proposed to use portions of the NFPA code as a more flexible "buffer zone" requirement. [See 49 FR 23290.] We are considering comments received. If we do adopt the more flexible approach, it would of course apply to used oil as will as other ignitable wastes.

[79] If incompatible or reactive hazardous waste was stored at a generator's site along with used oil, such waste would of course remain subject to §§ 265.172 and 265.177.

contaminated equipment when the tank is closed.

These standards have been established through previous rulemakings as necessary for tank storage to protect human health and the environment. [See 46 FR 2802–2896, January 12, 1981.] With respect to today's proposal, there are two points requiring some discussion and clarification. First, the proposed requirements would apply to recycled oil "tank systems." This term is broader than "tank" in that it includes a tank's ancillary equipment (e.g., valves, pipes, etc.). [See 50 FR 26455; June 26, 1985.] Second, the inspection requirements [proposed § 266.41(c)(5)(iii) (D) and (E)] would apply only to *above-ground* portions of tank systems. [The current hazardous waste rules do not make this explicitly clear (§ 265.194), but we have indicated that inspections of underground tanks are not expected. [See 46 FR 2832; January 12, 1981, and 50 FR 26487; June 26, 1985.] This is particularly relevant to the present discussion since most recycled oil generators store in underground tanks.[80]] These very basic requirements would impose costs less than $1,000 per year for all affected generators and would cause adverse impacts on small businesses or on used oil recycling.[81] Comments are requested on these proposed requirements.

Beyond the requirements described above, EPA is proposing additional requirements for new tank systems (*i.e.*, tank systems installed after the regulations become effective) pertaining to secondary containment systems and closure and post-closure requirements. Also, EPA is proposing special requirements for tank systems that are found to be leaking or otherwise unfit for use. The additional requirements described here are being proposed as part of the Agency's program to improve its hazardous waste storage regulations. On June 26, 1985 EPA proposed revisions and additions to the hazardous waste tank requirements of § 262.34(a), Part 264, Part 265, and the corresponding permit requirements of Part 270. [See 50 FR 26444.] As described in the June 26 proposal, EPA has determined that in certain respects, the current tank standards are incomplete and unworkable. [Ibid. at 26447.] The finding was made by EPA that additional regulations are needed to adequately control hazardous waste tank storage, particularly hazards to ground water. [Id.] For the reasons set forth in the June 26 preamble, EPA proposed new requirements for generators and owners and operators storing hazardous waste in tanks. EPA considered proposing all of these same requirements for recycled oil tank systems. We are not proposing all of the new requirements for recycled oil generators,[82] however, because pursuant to the section 3014(c) directive to consider impacts, we have found that the new requirements would adversely affect recycled oil generators who are small businesses and could discourage environmentally acceptable types of used oil recycling.[83] We estimate that the new tank system requirements, if applied *in toto*, could impose annualized costs for generators of about $1,200–$3,600 per year. For a generator of, for example, 1100 kilograms per month (about 3600 gallons per year), this would mean costs as high as $1.00 per gallon of used oil generated and stored. EPA is concerned that costs this high, if imposed throughout the recycled oil generator universe, could induce the following kinds of adverse impacts:

- Increased disposal of used oil in sewage systems;
- Reluctance by generators to accept "do-it-yourselfer" (household-generated) used oil; and
- A price increase in oil-changes services offered to the public (and a corresponding increase in do-it-yourselfer oil changes).

EPA is therefore proposing a gradual, phased approach, that reduces impacts on small businesses and on recycling by requiring stringent controls on tank systems when they are installed (*i.e.*, "new" tanks) and by requiring leaking tanks to be closed, repaired, or replaced, with the latter two actions triggering the new tank requirements.[84] Since we estimate only about 10% of generators' tank systems are presently leaking [85], most generators would not be immediately affected by the new, additional requirements proposed here. All generators would, of course, be affected eventually as they replace old tanks.

(a) *Standards for new tank systems.* EPA is proposing that *new* tank systems (*i.e.*, tanks installed after these rules are in effect) would have to comply with basically all of the same standards as would hazardous waste generators under the proposed § 262.34(a), as it would be amended per the June 26 proposal. [See 50 FR 26456.] The new requirements pertain to secondary containment, closure, and post-closure of tank systems. We have "reserved" paragraphs in the proposed § 266.41(c)(5)(vii) of the recycled oil rule for the new tank standards. For the reader's convenience we are presenting the proposed requirements here in Figures 1 and 2.

Figure 1—Proposed Requirements for New Tank Systems

Paragraphs (b) and (c) from the proposed § 265.193, secondary containment: [See 50 FR 26485–86; June 26, 1985.]

(b) Full secondary-containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil or ground water or to surface water at any time during the intended life of the tank system; and

(2) capable of detecting and collecting any waste or leak and accumulated liquids until the collected material can be removed.

(c) To meet the requirements of paragraph (b) of this section secondary-containment systems must be a minimum:

(1) Constructed of or line with materials that are compatible with the wate(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary-containment system and resistance to pressure gradients above and below the system owing to settlement, compression or uplift;

[80] See the *Regulatory Impacts Analysis, US EPA, Office of Solid Waste*, November 1985, Chapter V.

[81] Ibid. Most generators with underground tanks would incur virtually no costs under this proposal. Cost of the proposed requirements for generators with above ground tanks would be in the range of 25 cents per gallon of used oil generated and stored. The reader may note that above, EPA concluded that costs in the range of $1,000–$2,000 per year for small quantity recycled oil generators *would* be associated with adverse impacts on used oil recycling. However, the reader is reminded that for the small quantity recycled oil generators costs of $1,000–$2,000 per year can mean costs of $2.40 to $4.80 per gallon of used oil generated and stored, and these higher costs per gallon are what concern EPA (with respect to recycling impacts).

[82] That is, for those generators who meet the proposed § 266.41(c) conditions. For example, if a generator stores longer than 90 days, he would not be eligible for the special requirements being discussed here but rather would be regulated as a used oil recycling facility.

[83] Unless otherwise noted, the discussion here is from the *Regulatory Impacts Analysis, US EPA, Office of Solid Waste*, November 1985, Chapter V.

[84] Also, as described in the preceding section of the preamble, we are proposing only minimal requirements for generators of less than 1000 kilograms per month of recycled oil; *i.e.*, we are regulating larger generators more stringently than smaller ones.

[85] See the *Regulatory Impacts Analysis, EPA Office of Solid Waste*, November 1985, p. IV–48.

(3) Provided with a leak-detection system that is designed or operated so that it will detect the presence of any release of hazardous waste or accumulated liquid in the secondary-containment system within 24 hours of entry of the liquid into the containment system;

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accoumulated precipitation must be removed from the secondary-containment system in as timely a manner as is possible but no later than 24 hours after the detection of the release;

(5) Designed or oprated to contain 110 percent of the design capaicty of the largest tank within its boundary;

(6) Designed or operated to prevent run-on or infiltration of precipitation into the secondary-containment system unless the collection system has sufficient excess capacity in addition to that required in paragraph (c)[5) of this section to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25 year, 24 hour rain storm.

Figure 2—Proposed Requirements for New Tank Systems

Paragraphs (a) and (b) from the proposed § 265.197, closure and post-closure care. [See 50 FR 26483–84, and 26487; June 26, 1985.]

(a) At closure of a tank system, the owner or operator must remove or decontaminate all hazardous waste residues, contaminated containment system components (liners, etc.), contaminated soil, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination or contaminated components, soils, structures, and equipment as required in paragraph (a) of this secion, the owner or operator finds that not all contaminated soils can be practicably removed or decontaminated, he must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 264.310).

The rationale for these proposed requirements is discussed fully in the June 26 proposal. [See 50 FR 26456 and 26462–82.] We estimate the requirements in Figures 1 and 2 would impose average annualized costs of approximately $1200–3800 per year for a generator installing a new tank.[86] Although this would mean costs in the range of $0.35–$1.00 per gallon, of used oil we do not think that today's proposal would cause significant adverse impacts on generators, based on the following rationale:

- Of the 48,000 generators potentially subject to the requirements (*i.e.*, generators over 1000 kilograms per month), we expect that about 41,000 would incur annualized costs less than $1600 per year, that is, less than $0.45 per gallon, and costs this high are not likely to cause adverse impacts;
- The 7000 or so generators that would potentially incur larger costs (*i.e.*, up to $3600 per year) are industrial operations, and given their overall cost structures these operations would not be adversely affected by costs in this range;[87] and
- Because the requirements would be phased-in, generators would have, in most cases, years to set aside funds for new tank installation.

The last point is of particular importance. The proposed secondary containment requirements would require fairly large initial expenditures (e.g., about five times greater than the annualized costs presented above). Most recycled oil generators are small businesses and could have difficulty obtaining financing. Phasing-in the requirements not only minimizes impacts on the generator universe as a whole (and therefore on the nationwide "flow" of used oil) by spreading-out the impacts over time, but also would allow each generator to make financing arrangements suitable to his own cash flow situation.

The June 26 proposal also discussed certain alternatives to secondary containment that the Agency has considered, but did not propose. [See 50 FR 26451–53 for a full discussion of these alternatives.] These include:

- A combination of secondary containment *and* ground-water monitoring;
- National risk-based standards;
- Minimum national standards with a variance from containment requirements based upon risk;
- Minimum performance standards;
- A ban on underground tanks; and
- Forced retirement of underground tanks.

The public may comment on these requirements as they would apply to recycled oil generators as alternatives to Figures 1 and 2. Also, with respect to standards for new underground tank systems, EPA considered (in lieu of today's proposal) application of the "interim prohibition" from section 9003(g) of RCRA. As described in the previous section of this preamble, this requirements, which amounts to corrosion protection, is the Congressionally-mandated minimum level of control for underground tank systems (storing petroleum and other hazardous substances) and as the reader will note, we have proposed a modified version of the interim prohibition for small quantity recycled oil generators.[88] The Agency has concluded, however, that for hazardous waste tank systems corrosion protection alone is not as protective as full secondary containment. [See 50 FR 26450; June 26, 1985.] Since, as we discussed above, EPA intends to require secondary containment for other hazardous waste tank systems under Subtitle C and since the proposal to phase-in secondary containment requirements for recycled oil generators would not cause significant adverse impacts, we do not see a basis for proposing less stringent requirements for recycled oil tank systems within the framework of section 3014(c).

Comments regarding the adequacy (*i.e.*, protectiveness) and costs of all of the options discussed above for new tank systems are requested.

(b) Standards for leaking tank systems. For the reasons described above (*i.e.*, adverse impacts), EPA has not proposed secondary containment requirements for all recycled oil generators. Therefore, even under today's proposal some tank systems will fail and leak. EPA has proposed that (see § 266.41(c)(5)(vi) of the proposal) as soon as a generator is aware that his tank system is leaking (or otherwise unfit-for-use), he must take the following actions:[89]

- Stop the flow of oil into the tank;
- Remove the oil from the tank (to prevent continued release and allow inspection);
- Contain visible contamination; and
- Report the event to the Regional Administrator within 24 hours after discovering or confirming the release.

Tanks taken out of service as described here would either have to be closed (with the removal of contaminated soil or equipment), repaired, or replaced.

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[86] See the *Regulatory Impact Analysis* Rules, EPA Office of Solid Waste, November 1985, Chapter V.A. This includes the cost of secondary containment plus, for above-ground tanks, the inspection requirements proposed above for all recycled oil tank systems. The reader should also note that under today's proposal the closure requirements for new tank systems would be expanded as per the June 26 proposal. [50 FR 26483–84.] We do not discuss this part of the proposal in depth because it mainly is a conforming change made necessary by the proposed secondary containment requirements and because the cost impacts are insignificant; *i.e.*, an estimated $82 at closure for residue removal. [Id.]

[87] Ibid, Chapter IV–C. and D.

[88] Further, as we explained above, the section 9003(g) interim prohibition *currently* applies to all underground petroleum tanks, including used oil tanks. [See 40 CFR 280.1 and 280.2.] This requirement will remain in effect until the rules proposed today, when promulgated in final form, become effective.

[89] These requirements are taken from the proposed new § 265.192, proposed on June 26, [50 FR 26485) for hazardous waste tank systems.

When a tank is repaired or replaced, we would consider it a "new" tank, subject to the standards proposed above (Figures 1 and 2). EPA views this latter aspect of the proposal (*i.e.,* tanks returned to service being considered as "new" tanks) to be a crucial aspect of the proposal to phase-in secondary containment for recycled oil generators. In this way, tank systems posing the greatest hazards (*i.e.,* those that are leaking) would be replaced with tank systems that are not likely to pose any significant hazards, and therefore the hazards posed by the national universe of generators' tanks would be reduced overall.[90]

We do not expect the proposal (for replacement tanks to comply with secondary containment) to cause significant adverse impacts for the following reasons:

- We estimate that nationwide, only about 10% of the used oil tanks are presently leaking, so therefore most of the recycled oil generator universe would not be immediately affected by the proposal;
- Of the approximately 4500 generators thought to have leaking tanks, we estimate over 3500 would incur initial costs less than $6,000, and annualized costs less than $1600 per year; and
- Generators with leaking tanks would have the option of closing the tank system and storing the oil in some other way, for example in containers.

Finally, the reader may note that we have not at this time proposed any leak detection requirements for recycled oil generators. That is, the proposed requirements for leaking tanks have no "trigger" mechanism. EPA considered requiring a one-time "assessment and certification" provision for recycled oil generators' tank systems similar to the requirements proposed on June 26, 1985 for hazardous waste interim status facilities. [See 50 FR 26484–85, and proposed § 265.191.] This would include, among other things, leak testing for the underground portions of a tank system. [Id.] We have not proposed this requirement because we are still evaluating various leak detection schemes for petroleum materials, both in terms of their effectiveness and (as required by Section 3014(c) for recycled oil) their cost impacts.[91] At this time, the Agency does wish to specifically solicit public comment on the following suggestions made to EPA pursuant to the June 26, 1985 proposal for hazardous waste tank systems:[92]

- Observation wells (installed in the backfill material) for both new and existing tank systems;
- Inventory monitoring.

On the latter point, EPA has indicated that we believe inventory monitoring is, for several reasons, inaccurate and largely ineffective. [50 FR 26448–49; June 26, 1985.] With respect to recycled oil, we are also concerned that inventory monitoring would impose time-consuming and costly administrative burdens on generators (*i.e.,* small amounts of used oil are constantly added to storage tanks, changing the oil level with each addition). We continue to believe inventory monitoring holds little promise for controlling hazardous wastes tanks, including used oil tanks. We welcome, however, any new information on this point.

Observation wells, by contrast, may be more effective. EPA is interested in the extent to which wells are presently employed for used oil tanks, the costs of installation (particularly for retro-fitting), any technical difficulties experienced with wells, and sensitivity of wells as a leak detection mechanism. Comments are requested on observation wells and other leak detection schemes. EPA will continue its evaluation through the public comment period and we may, at some later date, propose leak detection requirements to accompany the rest of today's proposal.

(6) Standards for facility management. EPA is proposing that generators must comply with the following requirements pertaining to facility management [see proposed § 266.41(c)(6)]:

- The establishment would have to have on-site a telephone, an appropriate number and types of fire extinguishers, and spill control material (such as saw dust);
- At all times, an "emergency coordinator," (E.C.), *i.e.,* someone familiar with these requirements, must be on-site (or on call). The E.C. can also designate someone to act in his place;
- The generator must request an inspection by the local fire department to make sure the department personnel know where oil is stored, that the appropriate type and number of extinguishers are present, etc.;
- The generator must post certain information next to the telephone, including: the name and phone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or where oil reaches surface water or adjoining shoreline the generator would have to file a report with the EPA Regional Administrator; and
- The generator must ensure that his employees are familiar with these requirements.

EPA has determined that the above requirements would ensure sound facility management (or "good housekeeping"), without adversely affecting generators. The reader should make note of certain points concerning these proposed requirements. First, absorbent materials soaked with used oil (e.g., such as machine drippings) and used oil spill clean-up materials would both, via the "mixture" policies discussed above in section I.A.2. of this Part of the preamble, be subject to RCRA regulation.[93] When such materials are disposed of, they are subject to full regulation as hazardous waste under Parts 261–265, 124, and 270.[94] When recycled, the material would be considered recycled oil, subject to all applicable requirements proposed today (and if burned for energy recovery, to the final Phase I burning rule). Second, when generators train their personnel regarding the recycled oil requirements proposed today [proposed § 266.41(c)(6)(vi)], the Agency would also expect that employees be made aware (or reminded) of EPA's Chemical Advisory on the potential hazards associated with prolonged skin contact with used motor oil.[95]

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[90] See the *Regulatory Impacts Analysis*, US EPA Office of Solid Waste, November 1985, Chapter V–E, and the *Background Document* for the *RIA*, November 1985, Chapter IV, for the discussion of the environmental benefits anticipated under today's proposed storage rules.

[91] Under today's proposal, State or local agencies could conduct leak testing at generators' sites or could specify test methods within their areas of jurisdiction. In any case, when as a factual matter a leak is detected, the proposed requirements for leaking tank systems [proposed § 266.41(c)(5)(vi)] would then come in to play.

[92] Another suggested approach was to require only corrosion protection (*i.e.,* the "interim prohibition") for new tank systems in lieu of secondary containment. We discussed this issue at some length above and so here focus only on suggestions concerning leak detection.

[93] A generator who uses absorbent materials to clean-up spills or machine drippings would *not,* due to that activity, lose eligibility for the special reduced requirements for "90 day" recycled oil generators (i.e., the proposed § 266.41(c)).

[94] Note that in the listing proposal that appears elsewhere in this **Federal Register**, we propose an exemption for certain "oily wipers."

[95] EPA found that mice dermally exposed to used motor oil exhibited a significantly increased incidence of cancer. EPA recommends that to prevent cancer, personnel working with automobiles should regularly wash with soap and water and avoid unnecessary prolonged contact with used motor oil. See the *Notice of Potential Risk: Used Motor Oil* (Chemical Advisory, issued under the Toxic Substances Control Act), February 1984.

The reader may note that generators of hazardous wastes, under § 262.34(a), must comply with certain requirements from Part 265 pertaining to general facility management. These include Part 265, Subpart C (preparedness and prevention) and Subpart D (emergency procedures), and § 265.16 (personnel training).

These requirements are intended to ensure that the generator's personnel are properly prepared to manage waste and respond to any emergencies that are likely to arise. EPA considered applying these same requirements *in toto* to generators of recycled oil, but we are concerned that these requirements are: (1) Written in a manner designed to cover the multitude of hazards that may arise at any kind of generator site (*i.e.*, not specific to recycled oil); and (2) that the requirements are costly (about $1000 per facility) and, when considered along with the proposed storage requirements (above), could have adverse impacts on small businesses and sound recycling practices. Because of these concerns, we have developed a simpler set of requirements that we believe will be adequately protective and yet that would also be less costly and better-suited to the small business nature of most recycled oil generators.[96] Comments are requested on today's proposal.

4. *Shipments off-site.* Section 266.41(d) of today's proposal would establish certain requirements for used oil sent off-site for recycling.[97, 98] These requirements are based on the existing standards for hazardous waste generators in 40 CFR Part 262, taking into account the special requirements of RCRA Section 3014(c) (2) and (3) for recycled oil generators.

(1) Pre-transport requirements. Today's proposal would require that recycled oil generators comply with certain requirements for packaging (§ 262.30), labeling (§ 262.31), marking (§ 262.32), and placarding (§ 262.33) that apply to hazardous waste generators under 40 CFR Part 262. [See § 266.41(d)(1) of today's proposal.] These requirements reference standards of the U.S. Department of Transportation in 49 CFR Parts 172, 173, and 178. Further, under the proposal, generators could only offer their recycled oil to transporters with EPA identification numbers. [See the proposed § 266.41(b), which references § 262.12 of the hazardous waste rules pertaining to "identification numbers."] This is to help establish a line of accountability for shipments sent off-site, *i.e.*, to initiate a tracking system.

(2) Manifest exemption for recycled oil. Under 40 CFR Part 262, generators of hazardous waste must initiate a hazardous waste manifest, which begins the "cradle to grave" tracking system of Subtitle C. Congress, however, mandated a different approach for tracking recycled oil in section 3014(c)(2)(B). This section of the Act provides that EPA must not impose manifest requirements if a generator meets the following conditions.

- He must make arrangements to have the used oil collected and recycled at a permitted facility (either his own facility or a facility he contracts with), including those facilities deemed to have a permit under section 3014(d) of RCRA;
- He does not mix other hazardous waste in with the recycled oil; and
- He complies with whatever recordkeeping requirements promulgated by EPA in lieu of the manifest requirements.

EPA has proposed these conditions in § 266.41(d)(2)(i).[99]

EPA has further added a condition that exports of recycled oil are not eligible for the manifest exemption. As with all hazardous wastes listed or identified under section 3001, the export of such oil will be covered by the provisions of section 3017, which was specifically enacted by Congress to address hazardous waste exports.

The Agency has considered whether section 3014 requires extension of the recycled oil manifest exemption to exports. For the following reasons, we believe it does not. Although section 3014(c) broadly states that the existing Subtitle C standards under section 3001(d), 3002 (manifest requirements), and 3003 shall not apply to recycled oil, the Section also provides that the recycled oil standards must "protect human health and the environment". As explained in Section III of Part One of this preamble (above), since the environmental standard under Section 3014 is identical to that upon which existing Subtitle C hazardous waste regulations are based, the recycled oil regulations in this proposal have been developed on the presumption that Subtitle C requirements apply to recycled oil unless section 3014 specifically provides otherwise. In the case of manifests, section 3014(c)(2)(B) specifically provides that recycled oil generators are exempt from any manifest requirement if, as noted above, they arrange for delivery to a recycling facility authorized to manage recycled oil. Since the manifest exemption is conditioned upon delivery to an authorized facility, it does not extend to exports to foreign facilities, which are not covered by RCRA. This limitation on the application of the manifest exemption is supported by the legislative history of section 3014 which explains that ". . . generators of used oil that is a hazardous waste . . . are exempt from . . . manifest requirements *provided that* such used oil is delivered to one or more permitted used oil recyclers who are in compliance with the special standards adopted pursuant to this legislation" (emphasis added). [H.R. Rep. No. 98-198, 98th Cong., 1st Sess. at 66, (1983).]

This limitation is also consistent with the provisions of Section 3017(a)(1)(c) which provides that a receiving country's written consent be "attached to the *manifest* accompanying each waste shipment," (emphasis added). [Id.]

[96] The reader should note that on August 1, 1985 EPA proposed standards for generators of between 100–1000 kilograms of hazardous waste per month, as required by section 3001(d) of RCRA. [50 FR 31278.] As explained in the proposal, these hazardous waste generators are predominantly small businesses. The requirements proposed for these generators take into account small business impact concerns. [Ibid at 31283–86.] Today's proposal for recycled oil generators, as described above, takes into account similar concerns, and therefore the standards proposed today for recycled oil generators are similar to the standards proposed for the 100–1000 kg/mo hazardous waste generators.

[97] As mentioned above, owners and operators of used oil recycling facilities would also have to comply with this paragraph when sending shipments off-site, for example when one processor sends oil to another processor, or when a fuel is shipped to a burner. For simplicity, the rest of this discussion refers only to generators.

[98] The reader should note that this paragraph would not apply to the marketing of the recycled oils (specification fuel and certain asphalt products) conditionally exempted under the proposed § 266.40 (a)(2) and (b).

[99] EPA has not included the "no mixing" condition in § 266.41(d)(2)(i). As discussed in detail above, Part 266, Subpart E applied only to recycled oil. By definition, recycled oil has not been mixed with any other hazardous waste. Therefore, a similar provision in § 266.41 would be redundant. Also, we consider interim status facilities to be within the scope of "permitted" facilities in the first condition because section 3005(e)(1)(C) of RCRA states that EPA should treat these facilities as having been issued a permit (until action is taken regarding their permit application). See proposed § 266.40(e)(3) pertaining to "authorized" facilities. EPA believes such a reading is necessary because to conclude otherwise would mean that Congress was being more restrictive for generators of recycled oil than for other hazardous wastes generators (*i.e.*, hazardous waste generators can ship to interim status facilities without penalty); section 3014(c), in fact, seems to indicate that Congress's intent was just the opposite.

A generator who meets the above conditions [100] has the option of complying either with the Part 262 manifest requirements, or the special alternate requirements described here.[101] [See the proposed § 262.41(d)(2)(ii).]

(3) Shipping without a manifest.

(a) *Required notices.* Before a generator starts sending used oil to a recycler, he must obtain from the recycler a one-time written notice certifying that his facility is authorized to manage recycled oil. The generator would have to keep records of notices received from each recycler for at least three years from the time he last sends a shipment to the recycler. These requirements are necessary to ensure that the recycled oil, in the absence of the manifest, is being sent to an authorized facility. [See proposed § 266.40(e)(3) for the types of "authorized" facilities.]

(b) *Designated facilities.* The proposal [§ 266.41(d)(ii)(B)] would require that when a generator offers a shipment of recycled oil to a transporter, the generator would have to provide the transporter with a list of the names, addresses, and EPA identification numbers of those facilities who have provided notices to the generator (see above). In practice, transporters collecting from multiple generators are often associated with (or owned by) a recycler, so the "designated facility" is obvious. In other cases, however, an understanding between the generator and the transporter as to the receiving facility is a crucial part of the regulatory approach today. That is, to be exempt from the manifest under this proposal, a contractual relationship must exist to provide for recycling at an authorized facility, so one or more specific facilities must be designated by the generator as eligible to receive the generator's recycled oil.

(c) *Records of shipments.* Today's proposal would require that generators record the following (for example on a log) each time recycled oil is offered for off-site shipment:

- The name, address, and EPA identification number of the transporter accepting the oil;
- The quantity of recycled oil being shipped; and
- The date of shipment.

The generator would have to retain these records for a minimum of three years from the date of shipment. [See the proposed § 266.41(d)(2)(ii)(C).]

This recordkeeping requirement, together with the corresponding requirements for transporters and receiving facilities (discussed in later sections of this preamble), would establish a line of accountability from the generator through to the receiving facility. The records required by today's proposal would include virtually all of the information required on a hazardous waste manifest by 40 CFR 262.21. The approach proposed here is different than the Part 262 manifest requirements in that no document need travel with the shipment and the receiving facility need not send a copy of the manifest back to the generator (as required under 40 CFR 264.71 and 264.42 of the hazardous waste rules), e.g., there is no "return loop." The recordkeeping requirements proposed here, together with the condition that a recycling agreement exist for a generator to be eligible for the special, reduced requirements, serves to ensure that the generator's oil will be delivered to an authorized facility.[102]

5. *Reports.* EPA requires generators of hazardous waste to file a report with the Regional Administrator every even numbered year, describing the types and quantities of wastes generated, and the transporters and facilities used for off-site shipments, if any, during the previous calendar year.[103] [See 40 CFR 262.41, the biennial report.] EPA is proposing that recycled oil generators be exempt from the biennial reporting requirement. Due to the section 3014(c) mandate to consider impacts on small businesses and on used oil recycling, EPA has been very careful in today's proposal to keep "paperwork" to a minimum. The information that would be gathered through the biennial report can be obtained from alternate means. [For example, in support of today's proposal, EPA utilized surveys and contacts with trade associations.] Since we are able to obtain necessary data from alternate means, we have concluded that burdens on generators should be reduced by not requiring the biennial report.[104] Comments are requested on this proposal to not require the biennial report, and all other aspects of the proposed approach for regulating generators.

III. Standards for Transporters of Recycled Oil

A. Applicability

1. *General.* Section 266.42 of the proposal would establish standards for transporters of recycled oil. This section would apply to "collectors" who transport used oil from generators to reclaimers, reprocessors, and re-refiners, and to persons who transport recycled oil between reclaimers and from reclaimers to users.[105] In certain cases, a transporter would also be subject to the generator requirements of § 266.41.[106] First, if a transporter brings used oil into the United States from another country, he is the generator. Second, if he mixes recycled oils of different U.S. Department of Transportation (DOT) shipping descriptions, he would be considered a generator.[107]

2. *Mixture issues.* Several situations could arise where a transporter could have problems with mixtures. For example, generators could add hazardous waste into their used oil tanks without telling the collector. As described in Section I.A. of this Part of the preamble, a mixture of used oil and other hazardous waste is not recycled oil, and the generator is responsible for initiating a manifest for the shipment.[108]

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[100] A generator who fails to meet any of the conditions must comply with the manifest requirements of 40 CFR Part 262 in its entirety.

[101] EPA is proposing this optional approach because some generators may actually prefer to use the National Uniform Hazardous Waste Manifest, or may be required by a State to use the manifest. In either case, we do not believe a generator should have to comply with *both* the manifest *and* the rules proposed here. The manifest alone if adequate.

[102] The reader should note that similar systems are used in various State regulatory programs. See, for example, the letter from Missouri dated July 30, 1984, on "waste oil logs."

[103] The biennial report was originally intended to serve as a summary of manifests from both generators and facilities that could be used as an enforcement tool through comparisons between generator and facility reports; currently its primary function is for data collection.

[104] Authorized States may, of course, require reports from generators within their own boundaries.

[105] Transporters of the recycled oils conditionally exempted under § 266.40(b) (for example a transporter of specification fuel) would not be subject to § 266.42. Further, the transport of household-generated recycled oil would not be subject to regulation because, as explained above, we have proposed that such oil does not lose its exempt ("household") status until aggregated.

[106] Transporters who collect from small quantity recycled oil generators would also be subject to the transporter standards proposed here.

[107] Under 49 CFR 172.101, used oil, as a petroleum material, may either be classified as "combustible" (flashpoint is between 100 °–200 °F) or "flammable" (flashpoint is less than 100 °F). A transporter who is placarded for combustible material and then accepts low flashpoint/flammable oil would have to initiate a new shipping paper under 49 CFR 172.202 and would be subject to the generator requirements of § 266.41 as well as the transporter requirements of § 266.42 of this proposal.

[108] The data available to EPA indicates that most used oil being stored at generators' sites is *not* adulterated with hazardous waste. With respect to the three hazardous wastes most commonly mixed with used oil (1,1,1,-trichloroethane, trichloroethylene, and tetrachloroethylene), samples taken at generator sites do not typically even contain these constituents, and rarely are the

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This problem can often be addressed by contracts between the transporter (or the receiving facility) and the generator that forbid the generator from adding hazardous waste to the used oil. The reader should note that the "rebuttable presumption" of mixing provision proposed today for all used oils (discussed above in Section I.A.4. of this Part of the preamble) would apply to used oil being collected. That is, a truckload of used oil with a total halogen content exceeding 1000 ppm would be deemed to be a hazardous waste (not recycled oil) unless the transporter could demonstrate that mixing had not occurred.[109]

Also, some transporters collect and haul both hazardous waste and used oils. We have not proposed any rule to forbid this practice, but the transporter should be aware that when a container (vehicle) is used to hold or transport hazardous waste, any material subsequently placed in the container is deemed to be a hazardous waste.[110] The exception to this general rule is when the container is cleaned ("emptied") according to 40 CFR 261.7. This section of the regulations defines when a container that has held hazardous waste may be considered "empty," and so therefore when the mixture rule no longer applies.

3. *Storage facilities.* EPA is proposing that except for two types of "transfer facilities" discussed here, transporters who store recycled oil in the course of transportation would be regulated as a recycled oil storage facility under the proposed § 266.43 standards. [The standards for storage facilities are discussed in the next section of the preamble.]

Transporters' transfer facilities [111] meeting the conditions discussed here would be exempt from the facility standards.

a. *Container facilities:* EPA is proposing that storage of recycled oil at a transfer facility in containers meeting the U.S. Department of Transportation (DOT) packaging requirements of 40 CFR Parts 173, 178, and 179 would be exempt from the facility regulations. This exemption is currently provided for hazardous waste transporters. [See §§ 263.12, 264.1(g)(9), and 265.1(c)(12), and the discussion at 45 FR 86966–68, December 31, 1980.] We see no basis to deny recycled oil transporters this special provision, which was instituted to accomodate storage incidental to normal and routine transport and transfer activities [Id.]

b. *Tank facilities:* EPA is proposing that transfer facilities with tanks meeting the § 265.193 secondary containment standards proposed on June 26, 1985 [50 FR 26485–86] would also be exempt from the facility requirements. We have "reserved" paragraphs in the regulation [§§ 266.42(a)(3)(ii)(B) of the proposal] for these secondary containment standards. The proposal standards are presented for the reader's convenience in Figure 1 of this preamble (above, in the "generator" discussion). What follows here are two points relevant to this proposed conditional exemption:

(1) There is presently no exemption for *tank* transfer facilities in the hazardous waste regulations. EPA requested public comment on the need for such an exemption on December 31, 1980 [see 45 FR 86966–68] but since no comments were received at that time, we concluded that the exemption was unnecessary. EPA has determined, however, that tank transfer facilities are in fact the norm within the used oil recycling industry.[112] We therefore believe an exemption is appropriate for this portion (used oil recyclers) of the Subtitle C regulatory universe. In the preamble of the December 31, 1980 proposal, EPA stated its intent to impose 40 CFR Part 265, Subpart J tank standards as a condition should the tank exemption be granted. [Ibid at 86967.] EPA was concerned that the transfer and short-term storage activities conducted at transfer facilities could pose spillage and leakage hazards and that some requirements should apply. [Id.] EPA continues to believe some requirements are necessary for transfer facilities. We considered proposing the current Part 265, Subpart J tank standards for recycled oil tank transfer facilities. The Agency, however, has determined that the existing Part 265, Subpart J tank standards are inadequate in several respects [50 FR 26447–48; June 26, 1985], and as described in the "generator" section above, we have proposed revisions to that Subpart. [Some of the proposed revisions are presented in Figures 1 and 2 above.] We also considered proposing Part 265, Subpart J as it would be amended per the June 26 proposal for recycled oil tank transfer facilities. We are not proposing the revised Part 265, Subpart J in its entirety because we believe the secondary containment portions of the proposed rules (Figure 1, above) would provide adequate protection at transfer facilities.[113]

Comments are requested on applying the Figure 1 secondary containment standards to tank transfer facilities. Comments are also requested on applying:

- The existing Part 265, Subpart J standards;
- Part 265, Subpart J as it would be revised per the June 26 proposal, that is, not only the secondary containment portions of the proposal but also the remainder of proposed Subpart J; and
- The alternatives to secondary containment discussed in the June 26 proposal [50 Fr 26451–53] as they would apply to recycled oil tank transfer facilities.

(2) The proposal would adopt the 10-day time limit in the existing hazardous waste exemption. As EPA explained on December 31, 1980, the 10-day limit was selected:

> . . . to allow short term holding of waste for transfer and to account for such things as scheduling problems, weather delays, temporary closing and other factors which might cause unforseen delays." [See 45 *FR* 86967.]

The Agency determined that this time limit was adequate and would not interfere with normal transportation activities. [Id.] EPA is concerned, however, that a 10-day limit might be unduly restrictive for some used oil collector operations.[114] That is, some

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constituents present in excess of 100 ppm. *Composition and Management of Used Oil Generated in the U.S.* November 1984, pages 3–33 to 3–35.

[109] Transporters may find it desirable to conduct periodic spot checks on generators, using a simple chlorine detection test. EPA is currently assessing the reliability of chlorine field tests that collectors might use.

[110] That is, the residue remaining in the container is hazardous, and any material subsequently added is, via the "mixture rule" in 40 CFR 261.3, also a hazardous waste, except as § 261.3 or § 261.7 provides otherwise.

[111] A "transfer facility" is defined in 40 CFR 260.10 as ". . . any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments . . . are held during the normal course of transportation."

[112] *Waste Oil Storage*, Franklin Associated, Ltd., January 1984, pp. 2–2 through 2–7. A "typical" collector facility has one or two 5,000 gallon aboveground tanks. This storage is short term, and is usually associated with consolidation activities, *i.e.*, transfer of oil into larger vehicles. EPA has concluded that this storage is incidental to transportation.

[113] The secondary containment requirements (Figure 1, above) would provide a level of control equivalent to the conditions that containers meet certain DOT packaging requirements, in the existing exemption [§§ 263.12, 264.1(g)(9), 265.1(c)(12)]. That is, the existing exemption does not require compliance with the Part 265, Subpart I container standards, but rather provides that releases will be minimized through packaging requirements that ensure container integrity. Secondary containment would serve the same purpose for tank facilities, *i.e.*, minimize releases through ensuring tank system integrity. The remainder of Part 265, Subpart J, includes additional requirements necessary for storage facilities, but not, in our view, necessary for transfer facilities.

[114] See the discussion of collector impact issues in the *Regulatory Impacts Analysis* EPA, Office of Solid Waste, November 1985, Chapter V.C.

transporter/collectors may not accumulate enough recycled oil in 10 days for economical shipment to a reclamation facility. EPA does not intend for the 10-day limit to interfere with normal transport and transfer operations, and we are concerned that some small collector operations could even be forced to close due to a 10-day limit.[115] We therefore request comment on what limit would constitute normal used oil transport practice, the extent to which a 10-day limit would restrict normal practice, and whether a 20 or 30-day limit would better accommodate normal practices.

c. *General conditions:* The proposal would adopt certain restrictions or conditions from the existing hazardous waste exemptions for both tank and container facilities. These include:

- The exemption would not apply to reclamation or fuel blending facilities;[116]
- Since the recycled oil held at a transfer facility is considered in transit, the transporter responsibilities pertaining to discharge reporting and clean-up would apply to any releases occurring at the transfer facility. [See § 266.42(c) of the proposal, which references Part 263, Subpart C of the hazardous waste transporter rules]; and
- The time recycled oil is held at a transfer facility counts against the 35-day period allotted for shipments sent from generators to receiving facilities. [See the proposed § 266.42(e)(2), introductory text, for the delivery limit. The 35-day limit applies to hazardous waste transport under §§ 262.42(a) and 263.21.]

These conditions were explained on December 31, 1980 [45 FR 86966–68] for the hazardous waste exemption, and EPA can see no basis for modifying any of these requirements for recycled oil.

Comments are requested on the transfer facility exemption proposed here and supporting rationale, and the specific points raised above. The requirements for transporters are discussed next.

B. Identification Numbers

Under § 266.42(b) of today's proposal, transporters would have to comply with 40 CFR § 263.11, pertaining to the need for an EPA identification number. Under this requirement, transporters would have to notify EPA and obtain an EPA Identification Number. [Transporters who already have an EPA ID number need not re-notify.] The notification and identification number process helps establish a line of accountability for the movement of used oils from generators to recyclers, and between recyclers.

C. Discharges

Section 266.42(c) of today's proposal would require transporters to comply with 40 CFR Part 263, Subpart C, which requires hazardous waste transporters to take appropriate actions in the event of a transportation mishap, including notifying appropriate authorities and cleaning-up material discharged. These requirements are necessary to ensure public safety as hazardous materials are transported.

D. Manifested Shipments

Whenever a generator of recycled oil initiates a manifest, transporters would have to (under § 266.42(d) of the proposal) comply with 40 CFR Part 263, Subpart B, the hazardous waste manifest rules. This situation could occur because the generator failed to meet one of the conditions in § 266.41(d)(2)(i) of the proposal, or even though he may meet the conditions, company or State policy requires the use of the National Uniform Hazardous Waste Manifest. In this situation, the recycled oil transporter is functioning as any other hazardous waste transporter and would be regulated as such.

E. Shipments Without Manifests

As discussed above (in Section II of this Part of the preamble), EPA has proposed that generators who meet certain conditions may, at their option, comply with the special requirements of § 266.41(d)(2)(ii) in lieu of the hazardous waste manifest requirements. Also, transporters may collect from small quantity recycled oil generators under § 266.40(c)(2), and these generators are not subject to the manifest. In either instance, the transporter may accept recycled oil without a manifest and must comply with the proposed § 266.42(e) in lieu of Part 263, Subpart B of the hazardous waste regulations. The proposed § 266.42(e) requirements for transporters would be as follows:

1. *Records of acceptance.* Under § 266.42(e)(1), the transporter would have to record (for example on a log) certain information at each collection stop, specifically:

- The name, address, and when applicable,[117] The generator's EPA identification number;
- The quantity of recycled oil accepted;
- The shipping description required by the U.S. DOT under 49 CFR Part 172; and
- The date the oil is accepted.

These records would help establish a line of accountability for the movement of the used oil to a recycler. Also, the shipping description provides certain information that may be helpful in case of a transportation accident. [In nearly all cases, the description of recycled oil would be: "Waste Oil; NA1270"; and either "combustible liquid" or "flammable liquid." See 49 CFR Part 172. If a generator does not know whether the oil is "combustible" or "flammable," the transporter would be advised to describe the oil as "flammable," (the more stringent category) to be on the safe side.] Finally, the transporter would have to keep these records for at least three years from the date of acceptance.

2. *Delivery.* As required by section 3014(c)(3) of the Act, EPA has proposed in § 266.42(e)(2) that transporters must deliver all recycled oil collected to a facility authorized to manage recycled oil.[118] Also (under the proposed § 266.42(e)(2)(ii)) the transporter would have to deliver the oil to a facility designated by the generator. These "designated facilities" are those which have entered into appropriate agreements with the generator and who have notified the generator [under § 266.41(d)(2)(ii)(B)] that they are authorized to accept recycled oil.[119] Delivery would have to occur within 35 days of acceptance, the same time limit as required under §§ 262.42 and 263.21 for manifested shipments of hazardous waste. The delivery time limit helps ensure that hazardous waste arrives promptly at the generator's intended destination. The Agency determined that 35 days was an adequate period of

[115] Id.

[116] A facility could conduct incidental settling of bottom sediment and water and still qualify for the exemption. [This type of activity is not considered "reclamation."] Also, different used oils could of course be "blended," *i.e.*, placed in a single tank. Operations that blend used oil with virgin fuel oil, however, are not within the intended scope of the proposed transfer facility exemption.

[117] Small quantity recycled oil generators need not obtain EPA identification numbers under today's proposal.

[118] This would include those facilities permitted-by-rule under the special provisions of section 3014(d) of RCRA. [See the proposed § 270.60(d) for permit-by-rule conditions and requirements.] Facility permitting is discussed later in this preamble. The reader should note that the transporter may also deliver the recycled oil to a facility in interim status under section 3005(e) of RCRA and 40 CFR 270, Subpart G. See proposed § 266.40(e)(3) for the types of facilities authorized to manage recycled oil.

[119] As discussed above in section II.A.4., collectors who accept from small quantity recycled oil generators would be required (in lieu of the generator) to ensure the receiving facility is authorized to accept recycled oil.

time for normal hazardous waste transport, taking into account storage at transfer facilities and any minor delays. EPA believes that since recycled oil collection and marketing is typically local or regional in nature, the 35-day limit would not interfere with normal recycled oil transportation activities. However, the Agency solicits comments on the 35 day time limit; are there circumstances where a longer time period, e.g., 45 days, would be necessary to ensure efficient transportation of recycled oil?

3. *Records of delivery.* When the transporter delivers the oil to the receiving facility, § 266.42(e)(3) would require him to record the following information:

- The name, address, and EPA I.D. number of the facility;
- The quantity of oil delivered; and
- The delivery date.

These records would have to be retained for 3 years from the date of delivery by the transporter, and would serve to provide another link in the line of accountability for the oil as it is recycled.

Comments are requested on all aspects of the approach proposed for regulating transporters.

IV. Standards for Owners and Operators of Used Oil Recycling Facilities

A. Applicability and General Approach to Regulation

Section 266.43 of today's proposal would apply to owners and operators of any facility that recycles or stores recycled oil.[120] The kinds of operators that would be subject to § 266.43 include reclaimers, reprocessors, re-refiners, blenders, and burners. Facilities subject to any § 266.43 requirements are knowns "used oil recycling facilities." With the exception of those generators who accumulate recycled oil under the special "90-day" rule in § 266.41(c)(2) of today's proposal, generators who store, accumulate, or recycle on-site would also be subject to § 266.43.[121] And, as discussed above, with the exception of certain transfer facilities, transporter storage facilities would be subject to § 266.43. Finally, recyclers and reclaimers who do not store would be subject only to identification and notice requirements (§§ 264.11 and 264.12); to waste analysis requirements (§ 266.43(b)(1)–(3)); and to recordkeeping requirements (§ 266.43 (e) and (f)), discussed below.[122] [See the proposed § 266.43(a)(4).]

This last provision is analogous to § 261.6(c)(2) of the hazardous waste regulations. As discussed in the final solid waste rule [see 50 FR 652, January 4, 1985], at present we do not regulate the actual process of reclamation. The proposed § 266.43(a)(4)(ii) does make it clear that this exemption does *not* apply to facilities processing in an impoundment. Such a facility is not exempt because as we stated on January 4, 1985, surface impoundments are rarely considered a legitimate recycling device. [See 50 FR 652.] This is especially true in the case of used oil. Storage in an open impoundment allows petroleum loss through seepage, and water and dirt contamination. Petroleum products, for these reasons, are not typically stored or processed in impoundments. In summary, the coverage of § 266.43 is analogous to the coverage of the standards for hazardous waste recycling (and storage) facilities.

Before discussing the requirements of § 266.43 in detail, EPA must note that as a general policy, any facility storing, treating, or disposing of hazardous waste is subject to the section 3004 standards, *i.e.,* the standards for hazardous waste treatment, storage, and disposal facilities in 40 CFR Parts 264 and 265. Congress did not exempt used oil recycling facilities from this general requirement, as they did for generators and transporters under section 3014(c)(1) with respect to sections 3001(d), 3002, and 3003. [In fact, the Conference Report states that ". . . facilities which recycle used oil will need to comply fully with the standards applicable to owners and operators of any hazardous waste treatment, storage, and disposal facility." See H.R. Conf. Rep. No. 1133, 98th Cong., 2 Sess. at 113 [1984].]

Section 3014(d) also provides that, except for certain kinds of facilities, used oil recycling facilities that comply with the section 3004 standards are deemed to have a RCRA permit. In other words, these facilities would not normally be subject to section 3005 of the Act, nor to section 7004, which specify procedures for permitting of hazardous waste facilities. The § 266.43 standards, therefore, are based on RCRA section 3004 but are intended to be implemented through a special permit-by-rule procedure, discussed in the next section of the preamble.

Section 3014(d), however, also grants EPA the authority to permit used oil recycling facilities individually under section 3005(c) if EPA determines that individual permitting ". . . is necessary to protect human health and the environment." The following kinds of facilities have been determined by EPA to be inappropriate for the permit-by-rule approach, and would be permitted individually:[123]

- Facilities where used oil is stored or treated in a surface impoundment or used in a manner constituting disposal; and
- Facilities that manage other hazardous waste in addition to recycled oil.

The reasons that these kinds of facilities have been deemed not eligible for the section 3014(d) permit-by-rule are discussed in the "permitting" section of the preamble, (the section after this one). A pont that is relevant here is that these facilities would be subject to 40 CFR Part 270 Subpart G, the requirements for interim status hazardous waste treatment, storage, and disposal facilities *as well as* proposed § 266.43. [See proposed § 266.43(a)(5)(i).][124,125]

What follows is a detailed discussion of the standard proposed for used oil recycling facilities in § 266.43. The reader is referred to 45 FR 33158–33220, May 19, 1980 for an explanation of the 40 CFR Part 264 and Part 265 standards for hazardous waste facilities, and to 46 FR 2802–2897, January 12, 1981, for certain additions to Parts 264 and 265. As discussed above, these standards would, in general, apply to used oil recycling facilities. However, EPA is proposing in § 266.43 some variations to the hazardous waste standards for used oil recycling facilities and these differences are discussed here. [Permitting requirements are discussed in the next section of the preamble.]

These proposed variations would not substantially change the level of protection achieved, but rather are

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[120] The reader is reminded that the term "recycled oils" as used here does not include list exempted from regulation. For example, § 266.40(b) conditionally exempts specification fuel and certain asphalt products from Subpart E. Facilities accepting only these recycled oils would be subject to § 266.43.

[121] Small quantity recycled oil generators who recycle on-site under § 266.40(c)(1) would also not be subject to § 266.43.

[122] The owner or operator may also be subject to § 266.40(b), if he produces one of the conditionally exempt oils; to § 266.41(d), if he ships recycled oil off-site; to § 266.23 if recycled oil is used in a manner constituting disposal; and to § 266.44 if he burns recycled oil. The latter two practices are discussed later in this section.

[123] See § 270.60(d)(1) of today's proposal.

[124] The reader should note that EPA does not grant interim status. The criteria for determining interim status eligibility are specified in RCRA section 3005(e) and 40 CFR Part 270, Subpart G. A facility that does not qualify for interim status and does not have a permit is subject to enforcement action if it continues operation. See § 270.70(b).

[125] For a facility that is already permitted, the permit would have to be modified to allow management of the newly regulated hazardous waste (*i.e.*, recycled oil). See § 270.41 and 124.5 for permit modification procedures.

necessary to implement the special recycled oil permitting (and tracking) system mandated by Section 3014.

B. Waste analysis requirements

Under 40 CFR 264.13, owners and operators of hazardous waste facilities must comply with a general set of requirements to ensure that all of the information needed for proper waste management is available. Sampling and analysis parameters and procedures must be specified in a waste analysis plan, which becomes part of the facility's permit. EPA has determined that in the case of used oil recyclers, much of the waste analysis plan can be specified in the rule itself. The special analytical requirements for used oil recyclers are proposed in § 266.43(b) (1)–(3), and would replace the 40 CFR § 264.13 requirements. The special requirements are equivalent to § 264.13 in protectiveness but are more specific; this should simplify compliance.[126]

1. *Parameters.* All used oil recyclers must develop or obtain information concerning the first two of the parameters below, and many would need information on the third. Only operators of hazardous waste facilities need be concerned with the fourth group of parameters.

a. *Halogens:* As discussed in Section I.A.4. above, we are proposing that any used oil containing in excess of 1000 ppm total halogens will be presumed to have been mixed with hazardous waste (and therefore is not "recycled oil") unless a person successfully rebuts the presumption. Therefore, the owner or operator must determine the halogen content of used oil accepted at the facility. This does not necessarily mean that the used oil must be sampled and analyzed for halogens. Nonetheless, if used oil with over 1000 ppm halogens is accepted at the facility, the owner or operator must either rebut the presumption of mixing (by showing that the used oil has not been mixed with hazardous waste) or manage the oil *as hazardous waste* (not recycled oil). If EPA (or a State agency) samples used oil at a facility and finds total halogens exceeding 1000 ppm and the presumption cannot be successfully rebutted, the owner or operator must be in compliance with all applicable Part 264 or 265 hazardous waste requirements (and the Part 270 permit or interim status requirements), not today's proposed recycled oil standards. Otherwise, the owner or operator is subject to enforcement action for violations of applicable Subtitle C requirements.

EPA expects that some used oil recyclers will, on a routine basis, accept recycled oil that is high in total halogens but that has not been mixed with hazardous waste. The most common such cases are expected to be processors of used chlorinated metalworking oils and re-refiners. In the former case, some metalworking fluids contain high levels of chlorinated extreme pressure additives that are not listed as hazardous constituents in 40 CFR Part 261, Appendix VIII. These processors, we expect, will conduct analysis to document that hazardous constituents are not present at significant levels (e.g., generally less than 100 ppm) in the used oil they accept, and that therefore the 1000 ppm total halogen presumption does not apply. Re-refiners, by contrast, often produce light end streams high in total halogens because low boiling point solvents are present at low levels in incoming used oil, and distillation or dehydration concentrates the "low boilers" in the light ends. In this case, if used oil accepted does not exceed the 1000 ppm total halogen level, the presumption would not apply to the light ends produced.

Finally, in either of the above cases, the reader should note that the recently promulgated final Phase I established a specification for used oil fuels of 4000 ppm total halogens. [See the preamble of the final Phase I rule, Part Two, Sections IV.B. and IV.C.] When a recycler establishes that the 1000 ppm presumption does not apply, he must nonetheless document compliance with 4000 ppm limit in order to market (exempt) specification fuel. [Id.]

b. *Ignitability:* Under Part 264, certain special standards apply to ignitable hazardous waste.[127] [See 40 CFR 264.176, 264.198 and 264.229.] The owner or operator must, therefore, determine if the oil received exhibits the characteristic of ignitability. Alternatively, the owner or operator could simply manage all recycled oil he accepts as ignitable waste. In this case, analysis to determine flashpoint may not be necessary.

c. *Fuel specification:* As discussed in Section I.C. of today's proposal, EPA has proposed to carry forward the exemption for specification fuel (Table 1 above). The owner or operator of a facility producing specification fuel would have to document that in fact the specification is met. [See § 266.40(b)(1) of today's proposal.] Therefore, analysis of the specification parameters—namely, arsenic, cadmium, chromium, lead, halogens and flashpoint—would be necessary.

d. *Additional parameters:* In addition to the analytical requirements described above, the owner or operator of a facility where other hazardous wastes in addition to recycled oil are managed would have to comply with additional requirements. [See § 266.43(b)(1)(iv) of today's proposal.] The owner or operator would have to identify at least one indicator parameter for each hazardous waste managed at the facility. For wastes listed in 40 CFR Part 261, Subpart D, the indicator parameter would normally be one of the constitutents identified in Appendix VII of Part 261 as a basis for listing. Where the Appendix VII constituent is, however, also a normal contaminant of used oil, the EPA permit writer may specify one or more other indicator parameters.[128] Recycled oil managed at facilities along with other hazardous wastes would have to be analyzed for these indicator parameters (along with total halogens) to help document that mixtures of hazardous waste and recycled oil are not being managed under Part 266, Subpart E.[129] [Such mixtures are hazardous waste, subject to 40 CFR Parts 261–266, Subpart D.] As an alternative to the special sampling and analysis requirements discussed above, EPA considered whether hazardous waste facilities should simply be prohibited from handling recycled oil.[130] This would simplify enforcement. The Agency is concerned, however, that many hazardous waste facilities can properly manage recycled oil without mixing, and that it would be unfair not to allow management of both types of

[126] Part of the simplification comes from the fact that used oil is a fairly stable liquid, e.g., it is not reactive nor volatile. Also, used oil is not corrosive. Therefore, the information needed to manage this waste is narrowed as compared to the variety of hazardous wastes some facilities may manage.

[127] An ignitable waste, as defined in 40 CFR 261.21, has a flashpoint of less than 140 °F. Approximately 28% (80 of 289) of the used oil analyses EPA reviewed exhibited this characteristic. See *Composition and Management of Used Oil Generated in the U.S.* by Franklin Associates, Ltd., November 1984; p. 3–56.

[128] As discussed above, a facility managing both recycled oil and other hazardous waste would be permitted individually, not by-rule. Interaction between the owner or operator and the EPA permit writer will therefore be possible in selecting these indicator parameters. EPA is, however, concerned that this provision, because it is not self-implementing, may not work effectively during interim status. This problem is discussed below.

[129] The reader should note that an owner or operator remains subject to §§ 265.13 and 264.13 for any *other* hazardous waste that he manages.

[130] A similar approach would be for EPA to presume that any used oil managed at a hazardous waste facility is mixed with hazardous waste. Under this kind of approach, a person might or might not have the opportunity to rebut the presumption through analysis.

materials. EPA requests comment on this alternative (and on the variations described in footnote 130, below). EPA specifically requests comment on applying the prohibition during interim status. During this period, § 266.43(b)(1)(iv) would not be fully effective because EPA would not yet specify indicator parameters and therefore no direct control beyond the rebuttable presumption would be in place to document the "no-mixing" rule. Should co-management (of recycled oil and other hazardous wastes) be allowed *only* at *permitted facilities*? [Under this approach, the prohibition would supplement, but not replace the proposed § 266.43(b)(1)(iv).]

2. *Analysis plans.* As required for all hazardous waste facilities under § 264.13(b), we are proposing that the owner or operator of a used oil recycling facility must develop and follow a written plan describing his sampling and analysis procedures.[131] Under today's proposal [§ 266.43(b)(2)(iii)], the owner or operator would have to describe the following kinds of arrangements made to comply with the analysis requirements.

a. *Halogens and flashpoint:* The owner or operator may obtain information on halogen content and flashpoint of the oil he accepts by obtaining data, information, or samples from generators, and/or by sampling incoming shipments. The analysis plan would have to describe these arrangements, e.g., which (if any) generators would be providing information on the halogen or flashpoint content of oil they generate, vs. a schedule of sampling incoming shipments. In either case, it is the responsibility of the owner or operator to ensure used oil high in halogen (exceeding the rebuttable presumption) is managed as a hazardous waste and to ensure ignitable used oil is managed under the special requirements for ignitable hazardous waste.

b. *Specification fuel:* The owner or operator would have to describe at what point(s) in his fuel production process the oil would be sampled to document compliance with the fuel specification. For example, he could designate certain tanks "for product only" and test these tanks when near full, or alternately, he could analyze his incoming used oil and the virgin fuel oil used for blending and then blend at a certain ratio designed to meet the specification. (In this case, he may not need to analyze the final product.) In any case, a shipment sent off-site is subject to § 266.41(d) (of the generator requirements) of today's proposal *unless* the requirements of § 266.40(b)(1) for specification fuel are complied with. Whenever a person initiates a shipment without complying with § 266.41(d) (or he burns without complying with § 266.44) because he claims to have specification fuel, he is responsible for obtaining the necessary documentation as required by § 266.40(b)(1), including analysis of the specification parameters.

c. *Frequency:* For all of the analyses described above, the owner or operator would have to specify in the plan the frequency of sampling and analysis. The owner or operator must perform sampling and analysis on a schedule that is adequate to meet all applicable requirements. [See proposed § 266.43(b)(1).] EPA considered whether some minimum frequency should be specified for the various kinds of sampling and analysis required under today's proposal, but we have been unable to develop a schedule that would appropriately take into account the many facility-specific variables that affect sampling and analysis frequency. For example, if weekly sampling and analysis is specified, different size facilities would be affected very differently, e.g., some operations process 100,000 gallons in a week, and others only 10,000 gallons. In some operations where specification fuel is produced, the owner or operator might use a large tank to hold the "product" fuel and test only when the tank is full (which may not mean weekly testing). In other operations, for example where on-site lab facilities are available, daily testing may be feasible.

Comments are requested on the need for a specific sampling and analysis schedule. To encourage public comment on this subject, EPA has included in Table 5 below a schedule adapted from one used by the State of Rhode Island as permitting guidance for used oil burners. Comments are requested on whether this or a similar schedule should be specified by-rule for used oil recycling facilities.

TABLE 5.—EXAMPLE OF A SAMPLING AND ANALYSIS SCHEDULE FOR USED OIL RECYCLING FACILITIES (SAMPLES ANALYZED PER YEAR)

Analysis parameter	Facility throughput (gallons/week)			
	<2,000	2-6,000	6-15,000	15,000+
Lead (and other metals)	4	12	26	52
Halogens	4	12	26	52
Flashpoint	2	4	12	26

Notes:
1. Samples would be analyzed on a regular schedule, e.g., 12 samples per year means one per month.
2. Samples are taken from each load sent off-site and blended into a composite sample, for analysis on a schedule as above.

Source: Adapted from Rhode Island's Air Pollution Control Regulations Number 20, *Burning of Alternative Fuels*, Appendix B. See the letter from Rhode Island Department of Environmental Management, March 29, 1985.

The reader should note that if EPA did promulgate a sampling and analysis schedule like the one in Table 5, compliance with the schedule would be an independently enforceable provision. That is, the owner or operator would still be responsible for ensuring that all applicable requirements pertaining to, for example, producing specification fuel are complied with *as well as* compliance with the schedule itself.

All of the requirements described above for analytical plans would help EPA determine whether a facility has the means and intentions of complying with the proposed standards. Under the proposed § 266.43(b)(3), records of analysis would have to be kept at the facility as part of the operating record for the operating life of the facility.

Comments are requested on the analytical requirements described above.

C. Acceptance of Recycled Oil From Off-Site

An important purpose of EPA's hazardous waste regulations is to establish a line of accountability when waste is shipped from a generator's site to another facility. The requirement for a receiving facility to keep records of wastes they accept from off-site helps complete the tracking system and provides information for owners, operators, and inspection officials concerning the nature of wastes managed at a facility.

1. *Manifested recycled oil.* When receiving manifested recycled oil, the owner or operator must comply with the following requirements from the hazardous waste regulations:

- Section 264.71 requires the owner or operator to sign and date the manifest and return a copy to both the generator and the transporter, and retain a copy for himself for a minimum of three years;
- Section 264.72 requires the owner or operator to reconcile significant manifest discrepancies with the

[131] Acceptable analytical procedures under the hazardous waste regulations (including procedures for oily wastes) are included in the EPA publication SW-846, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, Second Edition, 1982. See § 260.11, "references."

generator or transporter, and if not able to do so, to file a report with EPA's Regional Administrator; and

- Except as discussed below (pertaining to special arrangements and the manifest exemption) § 264.76 requires that when hazardous waste unaccompanied by a manifest is accepted the owner or operator must file a report with the EPA Regional Administrator.

2. *Unmanifested recycled oil.* As discussed above in Section II.B.4. of this preamble, EPA has proposed that under certain conditions generators may ship recycled oil without using the manifest.[132] Under these circumstances, the owner or operator would comply with § 266.43(e)(2) of today's proposal in lieu of §§ 264.71 and 264.72.[133]

Section 266.43(e)(2) would require that, for each acceptance, the owner or operator would have to record the following:

- The name, address, and EPA identification number of the transporter who delivered the shipment;
- The name, address, and EPA identification number of each generator who contributed to the shipment. [The transporter is required to keep this information and the owner or operator, may, for example, obtain a copy of the transporter's collection log.]
- The quantity of recycled oil in the shipment; and
- The date of acceptance.

These records would have to be kept for a minimum of three years (from the acceptance date). As discussed previously, the recordkeeping requirements proposed today, in conjunction with the condition that a recycling arrangement exists, provides a tracking system virtually as protective as the hazardous waste manifest, while still complying with the directive in section 3014(c)(2)(B) of the Act (to not impose the manifest).

3. *Receipt of hazardous waste mixtures.* EPA is proposing that when an owner or operator receives a shipment of used oil that he believes to have been mixed with other hazardous waste (e.g., when it contains total halogens in excess of 1000 ppm), he must take action as described here. [Proposed § 266.43(e)(3).]

a. *Acceptance of shipment:* Facilities may only accept hazardous wastes specifically described in their RCRA permits.[134] Since mixtures of used oil and other hazardous waste(s) are not "recycled oil," a facility receiving such mixtures would have to be permitted to accept both used oil and the other waste(s) in the mixture (e.g., spent trichloroethylene, etc.). A facility not permitted to accept such mixtures must turn away the shipment.[135] A facility permitted to accept the wastes in the mixture may do so, but the mixture must be managed as hazardous waste (not as recycled oil).

b. *Unmanifested shipments:* In addition to the requirements described above pertaining to acceptance of used/oil hazardous waste mixtures, if the shipment is not manifested an owner or operator must comply with § 264.76 pertaining to "unmanifested waste reporting." That is, the owner or operator must submit a report to EPA within 15 days as specified in § 264.76.

D. Storage in Tanks

We discuss here how tanks used to reclaim or store recycled oil would be regulated under today's proposal first in general, and then taking into account two on-going EPA rulemakings.

1. *General.* EPA is proposing that all owners or operators of used oil recycling facilities be subject to the tank storage standards of Part 265, Subpart J, but only those owners and operators who must obtain individual permits would be subject to Part 264, Subpart J.[136] [See the proposed § 266.43(h)(2).] EPA is not proposing to require all owners or operators to comply with Part 264, Subpart J because we do not believe that § 264.191(a), the "shell thickness" design standard, can be effectively implemented through a permit-by-rule.[137] [See 46 FR 2831–32 for a discussion of the shell thickness rule and the permitting interaction necessary to implement the rule.] The Part 265 standards, by contrast, are designed to be self-implementing and so are more amenable to a permit-by-rule approach.[138]

2. *Revisions to the tank standards.* EPA proposed on June 26, 1985 to revise Part 265, Subpart J, and Part 264, Subpart J to include requirements for secondary containment (among other requirements) for most aboveground, underground, and in-ground tanks used for storing hazardous waste. [See 50 FR 26444.] This proposal is relevant to the present discussion because as stated above used oil recycling facilities are subject to Section 3004, *i.e.,* to Parts 264 and 265. Therefore, amendments to Part 264 or 265 would apply to used oil recycling facilities when final. Figures 1 and 2 above present some of the requirements proposed on June 26. The reader is advised to review the June 26 **Federal Register** proposal in its entirety for a full understanding of the proposed revisions. The public is invited to comment on the proposed tank rules, and alternatives presented at 50 FR 26451–53, as they would apply to recycled oil.[139] Commenters should consider the following in preparing comments:

(1) Used oil recycling facilities are, under Section 3014, to be subject to the Part 264 and 265 requirements. Any regulatory distinction made for recycled oil must be based on technical factors, not adverse economic impacts.[140] Since used oil is very similar to other hazardous wastes stored in tanks (*i.e.,* it is liquid, it contains toxic and carcinogenic constituents), we have proposed that used oil recycling facilities will be regulated the same as hazardous waste treatment and storage facilities. [The reader should note one important difference. As discussed above, specification fuel (a recycled oil low in contaminants) would be exempt

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[132] As described in Section II.A., above, small quantity recycled oil generators need to comply with no requirements when initiating an off-site shipment. [See proposed § 266.40(c)(2).] Large generators may comply with alternate recordkeeping requirements in lieu of the manifest if certain conditions pertaining to recycling contracts are met. [See proposed §§ 266.41(d)(2) and 266.42(e)(2).]

[133] And when recycled oil is accepted under these conditions, the owner or operator would, of course, not be required to file an unmanifested waste report under § 264.76.

[134] Facilities in interim status may accept wastes identified in their "Part A" permit application. [See §§ 270.71, 270.72.] The reader should also note that we are today proposing a special permit-by-rule [See proposed §270.60(d)] for certain facilities managing recycled oil.

[135] In this case, the transporter must take the shipment to an alternate facility, if one is designated by the generator, or return the waste to the generator. [See § 262.20.]

[136] As explained above and in the next section of the preamble, some facilities are not eligible for the permit-by-rule. [See proposed § 270.60(d)(1).] Also, some facilities may be required to obtain individual permits on a case-by-case basis. [See the proposed § 270.60(d)(3).]

[137] Except for the shell thickness requirement, Subpart J of Parts 264 and 265 are virtually identical.

[138] EPA considered requiring all facilities to comply with Part 264, Subpart J, and to obtain individual permits. Since nearly all used oil recyclers store in tanks, however, this would effectively negate the section 3014(d) permit-by-rule Congress envisaged. This would appear contrary to congressional intent, *i.e.,* the language of section 3014(d) specifically includes "tank and container storage" within the scope of the permit-by-rule.

[139] The *Regulatory Impacts Analysis* for today's proposal includes the costs of the proposed new standards.

[140] This in contrast to the requirements for recycled oil generators, where the reader will note that because of RCRA requirements have been reduced to mitigate adverse impacts on generators.

from all requirements, including the storage requirements discussed here.]

(2) Some of the proposed new Part 264 standards would require a great deal of interaction between the permit applicant and the permitting official.[141] [See, for example, the proposed §§ 264.191 pertaining to design of tank systems, and 264.192(e) pertaining to corrosion protection.] Therefore, we would not change the policy proposed above to require Part 264, Subpart J *only* for those facilities that must be permitted individually. We believe the proposed Part 265, Subpart J requirements (see Figures 1 and 2 for some of the requirements) are self-implementing, protective, and amenable to a permit-by-rule approach.

3. *Reclamation in tanks.* Under 40 CFR 261.6(c), EPA regulates the storage of hazardous waste prior to (and in some cases following) reclamation. Further, the Part 264/265 Subpart J tank standards apply to treatment tanks; these standards, however, do *not* apply when hazardous waste is actually being reclaimed in a tank. (See 45 FR 33093, May 19, 1980; and 50 FR 652, January 4, 1985.] Tanks used for "incidental settling," however, are not meant to be exempt from the Subpart J standards. [Id.][142] EPA recognizes that this policy requires specific interpretation as it would apply to used oil recyclers, because virtually all used oil recycling facilities perform at least some minimal amount of reclamation.

First, some devices (which may arguably be "tank-like") such as distillation columns at re-refineries are clearly used for recycling and would not be subject to Subpart J. Many tanks, however, are used for settling and blending, and it may not be obvious whether the tank is used primarily for storage vs. recycling. EPA currently addresses this question on a case-by-case basis. An owner or operator who claims to be exempt from Subpart J because the device is used for recycling bears the burden of proof to document the claim. [See the discussion at 50 FR 642, January 4, 1985, relating to similar exemptions and variances.] EPA requests comment on whether specific criteria should be added to the rules (or whether detailed guidance should be provided) to aid owners, operators and enforcement officials in determining when a tank may be exempted under the above-described recycling policy.

E. Uses Constituting Disposal

On January 4, 1985, EPA promulgated 40 CFR Part 266, Subpart C for hazardous wastes used or reused in a manner constituting disposal. [See 50 FR 627–629.) Under § 266.23, hazardous wastes (or those products which contain hazardous waste) applied to or placed directly on the land are subject to the land disposal standards of Part 264, Subpart A–N, e.g., users of such "products" are fully regulated as land disposal facilities.[143] Further, Part 266, Subpart C was recently revised on July 15, 1985 to incorporate the statutory prohibition (section 213(1) of the Hazardous and Solid Waste Amendments of 1984) on the use of hazardous waste as a dust suppressant. [See 50 FR 28718.] Therefore, when EPA lists used oil as a hazardous waste (proposed today else where in this **Federal Register**), road oiling would be prohibited.

A used oil recycling facility where recycled oil is used in a manner constituting disposal (according to § 266.20) would be subject to the same standards (§ 266.23) as apply to any hazardous waste used is this manner.[144] As described above, recycled oil is not exempt from section 3004, and the requirements of § 266.23 (issued under section 3004) have been deemed necessary by EPA, and in the case of the dust suppression ban, by Congress, for all hazardous wastes used in this manner.

F. Burning for Energy Recovery

Today's proposal does not include air emissions standards pertaining to the burning of recycled oil as fuel. As explained in Section II of Part One of this preamble, EPA recently promulgated Phase I of its Section 3004 burning standards and we plan to propose Phase II (the technical controls) early next year.[145] Today's proposal, however, would impose certain requirements on facilities that produce, market, on burn recycled oil as fuel.[146] These are discussed here.

1. *Facility standards.* Burners of off-specification used oil would be subject to some or all of the requirements for used oil recycling facilities in the proposed § 266.43. Storage of recycled oil at a burner facility poses the same hazards as storage at any other type of recycling facility. Further, in EPA's view, burners are within the scope of section 3014(d) which requires compliance with the section 3004 standards. Finally, generators who burn on-site will be subject to the burning standards of § 266.44 (when promulgated) as well as the § 266.41 generator requirements discussed above.

2. *Fuel transportation.* Under today's proposal, any person initiating a shipment of recycled oil (including off-specification fuel) off-site would be subject to § 266.41(d) of the generator standards.[147] [This provision would eventually replace the requirements for "marketers of used oil fuel" in the Phase I burning and blending rule.] Under § 266.41(d), off-site shipments would either be subject to the hazardous waste manifest or if the recycling agreement conditions of § 266.41(d)(2)(i) are met, to the special recordkeeping requirements of § 266.41(d)(2)(ii). [See the "generator" discussion, above.] We discuss here first, how today's proposal would alter requirements applicable to fuel marketers promulgated in the Phase I burning rule, and second how today's proposal would fulfill the section 3004(r) labeling requirements.

a. *New requirements for marketers:* In the final Phase I burning rule, EPA promulgated § 266.43 requirements for marketers. [In the final Phase I preamble, see Part Four, Section I.] This section includes certain notice, invoice, and recordkeeping requirements to control shipments of off-specification fuel. [Id.] The requirements proposed today pertaining to shipment of recycled oil [proposed § 266.41(d), applicable to owners and operators of used oil

[141] The reader should note that we have proposed to delete the § 264.191 "shell thickness" requirement. [See 50 FR 26458–59; June 26, 1985.]

[142] That is, the tank must actually be an integral component of a recycling system, not merely a storage tank in which some settling happens to occur. The Part 264/265 Subpart J tank standards apply to storage (and treatment) tanks.

[143] As explained in Section I.C., above, § 266.20(b) conditionally exempts hazardous wastes incorporated into commerical products (produced for the general public's use) where the hazardous waste become inseparable from the product. EPA has identified those recycled oils which meet these criteria and included the conditional exemption in the proposed §§ 266.40(a)(2)(ii) and 266.40(b)(2). The controls described here would not apply to these exempt recycled oils. The reader should note the § 266.40(b)(2) products are the *only* recycled oils we have found that meet the § 266.20(b) criteria; therefore, other recycled oils applied to or placed directly on the land would be regulated under § 266.23 as land disposal.

[144] Sections § 266.21 and § 266.22, respectively, include standards for generators, transporters, and storers of hazardous waste used in a manner constituting disposal. These requirements would *not* apply to recycled oil. As explained above, generators, transporters, and storers of recycled oil would be subject to proposed §§ 266.41–266.43.

[145] The reader will note that we have "reserved" § 266.44 for controls on burners. This is where an emissions standard, when developed, would be placed.

[146] The standards discussed here would *not* apply to specification fuel exempted from regulation under §§ 266.40(a) (2)(i) and 266.40(b) (1). For convenience, we will use the term "off-specification fuel" (the same term we used in the Phase I burning rule) to describe recyled oil subject to the regulations discussed in this section.

[147] See the proposed §§ 266.41(a)(2) and 266.43(a)(2)(ii).

recycling facilities under § 266.43(a)(2)(ii)] are different from the recently promulgated marketer standards in the following ways:

(1) Under today's proposal, shipments of recycled oil would be subject to the hazardous waste manifest unless the conditions of proposed § 266.41(d)(2)(i) pertaining to recycling contracts are met. In this case, proposed § 266.41(d)(2)(ii) would require notice and recordkeeping requirements very similar to the current § 266.43 marketer standards. As discussed above (in the "generator" discussion, Section II. B. 4. of this Part of the preamble), this approach is based on Section 3014(c)(2)(B) of the Act. The proposal is different than current § 266.43 in that if the recycling contract conditions are not met, the hazardous waste manifest would apply.

(2) The reader may note that the current § 266.43(b)(4)(vi) of the marketer standards requires a statement on the invoice as follows: "This used oil is subject to EPA regulation under 40 CFR Part 266," while today's proposal does not contain such a requirement. We believe the requirements proposed today render this label unnecessary. This is discussed next in the context of the RCRA Section 3004(r) labeling requirement.

b. *Labeling of fuel shipments:* Section 3004(r) requires that any fuel made from hazardous waste must bear a warning label stating that the fuel contains hazardous waste, and listing the contents contained therein. [See 50 FR 28724–25; July 15, 1985.] Listing used oil as hazardous waste (proposed elsewhere in this **Federal Register**) would trigger this labeling requirement. In fact, EPA recently promulgated the Phase I labeling requirement for off-specification used oil fuel (even though used oil is not currently a hazardous waste) in response to the Congressional concern with persons unknowingly receiving contaminated fuels. [See 50 FR 1704; January 11, 1985.] We believe, for the following reasons, today's proposal renders the warning label requirement unnecessary by fulfilling the same functions as would a label.[148]

(1) For those shipments of off-specification fuel that are manifested, clearly a warning label would be redundant and unnecessary. [Id.]

(2) To be exempt from manifest requirements, the fuel seller and purchaser must have a recycling agreement; further, facilities that receive off-specification fuel (including burners) must be authorized to manage recycled oil and would be subject to the proposed § 266.43 requirements for used oil recycling facilities. In this situation, *i.e.*, where the receiving party would be regulated, a warning label also seems unnecessary.

3. *On-site burning of de minimus quantities.* Section 3004(q)(2)(B) provides that EPA may exempt on-site burning of *de minimus* quantities of hazardous waste (to be defined by the Administrator), provided certain conditions are met. EPA is currently considering whether such an exemption is appropriate for recycled oil generators. Any exemption of this sort would be proposed with the Phase II burning and blending rules early next year.

G. Corrective Measures

Section 3004(u) of RCRA, as amended, requires EPA to develop standards pertaining to corrective action for releases of hazardous waste or hazardous constituents[149] from solid waste units at facilities seeking permits under section 3005(c) (including releases that occurred in the past).[150] EPA amended Parts 264 and 270 to include provisions to implement this requirement. [50 FR 28711–16; July 15, 1985.] The requirements are to be administered during the facility permitting process. These corrective action requirements would apply, therefore, to all used oil recycling facilities that are required to obtain individual facility permits under section 3005(c). [See proposed § 270.60(d)(1), which would exclude certain facilities from the permit-by-rule, and proposed § 270.60(d)(3), which specifies criteria EPA would use in determining on a case-by-case basis when an individual permit is necessary.] In fact, as discussed in the next section of the preamble, one criterion EPA will consider in determining which facilities should be individually permitted is the need for corrective measures at a facility.

V. Permitting of Used Oil Recycling Facilities

This section of the preamble discusses EPA's proposed approach to implement the permitting provisions of section 3014(d) of the Act. Most used oil recycling facilities would, under today's proposal, be permitted-by-rule; in contrast, most other hazardous waste facilities are (usually after an "interim status" period) permitted individually. This special approach is undertaken due to the special section 3014(d) mandate for recycled oil. We discuss next the eligibility criteria for this special permit-by-rule, the requirements that apply to facilities permitted-by-rule, the provisions for modifications to the permit-by-rule, and the duration of the permit-by-rule. Some facilities would not be eligible for the permit-by-rule; the owners or operators of these facilities would have to obtain individual facility permits. We do not discuss procedures for individual facility permitting here as these procedures have been established for hazardous waste facilities through previous rulemakings. [See 40 CFR Part 270, and 48 FR 14228; April 1, 1983.] Finally, we discuss the issue of interim status for used oil recycling facilities, and then some enforcement principles that would apply to all used oil recyclers.

A. Eligibility for Permit-by-Rule

Section 3014(d) provides that owners and operators of used oil recycling facilities [151] are deemed to have a permit for their recycling activities and associated tank and container storage, provided the owner or operator complies with the standards for hazardous waste treatment and storage facilities promulgated by EPA under section 3004.[152] EPA is authorized under section 3014(d) to permit used oil recycling facilities individually as necessary to protect human health and the environment. EPA has proposed to exclude certain kinds of facilities from the permit-by-rule and has proposed

[148] Today's proposed rules for recycled oil are issued under the joint authorities of sections 3004 and 3014 of RCRA. As such, section 3004(r) allows EPA to supersede the statutory warning label with regulations.

[149] See Part 261, Appendix VIII, for the list of hazardous constituents.

[150] The reader should note that releases of oil and/or hazardous substances trigger certain other EPA requirements as well. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), a person in charge of a vessel or facility having knowledge of a release to the environment from that vessel or facility of a quantity of a hazardous substance at or above the reportable quantity of that substance must report that release to the National Response Center (NRC). In the case of used oil, EPA is proposing a reportable quantity of 100 pounds. See the listing proposal elsewhere in this **Federal Register**. If the discharge of the used oil occurs in a navigable waterway and is sufficient to cause a sheen on the water, then the discharge must also be reported to the NRC pursuant to regulations promulgated by EPA under section 311 of the Clean Water Act. [40 CFR Part 110.]

[151] The term "used oil recycling facility" is used for convenience to describe those facilities subject to § 266.43 of today's proposal, e.g., processors, re-refiners, and burners of off-specification fuel.

[152] The reader is reminded that used oil being disposed of without recycling would be subject to full regulation under 40 CFR Parts 262–265 and facilities disposing of used oil (or storing or treating used oil before disposal) would be permitted individually under Part 270.

criteria for case-by-case determinations for when individual permitting is necessary.

1. *General exclusions from the permit-by-rule.* EPA has determined that permitting-by-rule is inappropriate for the following kinds of facilities:

- Recycled oil is stored or treated in a surface impoundment;
- Recycled oil is used or reused in a manner constituting disposal;

Other hazardous wastes are managed at the facility in addition to recycled oil. [See the proposed § 270.60(d)(1).]

a. *Surface impoundment storage:* Section 3014(d) provides that treatment, recycling, and associated *tank and container* storage may be permitted-by-rule. Storage or treatment of recycled oil in a surface impoundment is not included in the statutory language, and the legislative history indicates the omission was deliberate. [See H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 69 (1983). Surface impoundment storage is used as an example of an activity meant to be permitted individually.]

b. *Uses constituting disposal:* The standards for persons using hazardous waste in a manner constituting disposal (§ 266.23, which references Part 264, Subparts A–N) cannot, in EPA's view, be effectively implemented through a permit-by-rule,[153] but rather must be implemented through individual facility permitting.[154] See, for example, the Part 264, Subpart F ground-water monitoring requirements. The EPA Regional Administrator must specify certain requirements in §§ 264.91(b), 264.93(a), 264.94(a), 264.94(b), 264.95(a), and 264.96(a).

c. *Hazardous waste facilities:* The third group of facilities that would be excluded from the permit-by-rule under today's proposal are facilities that manage other hazardous wastes in addition to recycled oil. These facilities are likely sources of hazardous waste/used oil mixing,[155] and they therefore require the additional scrutiny provided by individual facility permitting.[156, 157] Finally, as discussed in Section IV.B. above, EPA has proposed special analytical requirements for facilities managing both recycled oil and other hazardous wastes [the proposed § 266.43(b)(1)(iv)]. In general, we have made the analytical requirements self-implementing, but the special requirements for facilities managing both recycled oil and other hazardous waste require interaction between EPA and the owner or operator and are best implemented with the significant Agency oversight provided by facility permitting.

2. *Case-by-case exclusions.* In § 270.60(d)(3) of today's proposal, EPA has included provisions under which the Regional Administrator (or the Director of an authorized State hazardous waste program) may require the owner or operator of a used oil recycling facility, on a case-by-case basis, to apply for an individual RCRA permit. The basis for requiring an individual permit would be the receipt of information (through site inspection, or other means) indicating that any of the following situations exist at the facility.[158]

- The owner or operator is not fully in compliance with one of the permitting requirements of § 270.60(d)(2), discussed below; or
- The facility, because of the quantities of recycled oil being managed or the management methods in use, or the facility's location, could pose a substantial potential hazard to human health or the environment; or
- There has been a release of recycled oil, hazardous waste, or a hazardous constituent at the facility and corrective measures taken by the owner or operator are not adequate to protect human health and the environment.

In the first situation, an owner or operator may make a good faith effort to comply with the permit-by-rule requirements of § 270.60(d)(2), discussed below, and believes that he is in compliance. A site inspection by EPA, however, may lead to a determination by EPA that the steps taken by the owner or operator to comply with § 270.60(d)(2) are not adequate, and that additional measures are necessary. In such cases, EPA would either initiate an enforcement action to bring the facility into compliance, and/or could make the determination that the facility in question is more appropriately regulated through an individual permit. For example, a facility may be more appropriately regulated under an individual permit where site-specific conditions exist that require special, individual consideration.

The second situation, where the facility is posting a potential hazard, also requires explanation. Some facilities, in the judgment of the Regional Administrator, may pose at least a potential hazard even though they are technically in compliance with § 270.60(d)(2). An example might be a facility reclaiming, storing, or burning large quantities of recycled oil in a densely populated urban area. In this case, the Regional Administrator would not have grounds to cite the facility for violations of the permit-by-rule conditions. The potential for a hazard, however, may be substantial because of proximity to population centers or to sensitive population groups, such as children. In this case, individual permitting would provide the maximum scrutiny possible under Subtitle C and would also allow for public participation in the permitting and siting process. Finally, as described above, if the Regional Administrator determines that an owner/operator's response to a release is inadequate, he can require the owner or operator to apply for an individual permit to institute the corrective action requirements of Parts 264/270.[159]

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[153] This problem would also exist for surface impoundment regulation and permitting.

[154] EPA could conceivably require compliance with Part 265, not Part 264, for persons using recycled oil in manner constituting disposal and perhaps for surface impoundment storage in that the Part 265 standards are meant to be self-implementing. This is what we have proposed for tanks. [See the discussion in Section IV.D. above.] We have not proposed this approach because Congress has registered a strong concern with land disposal and surface impoundment storage of hazardous waste [see section 1002(b)(7) of RCRA, as amended] indicating a need for maximum scrutiny of these practices by EPA, *i.e.*, individual facility permitting.

[155] See the report, *Composition and Management of Used Oil Generated in the U.S.*, by Franklin Associates, Ltd., November 1984, pp. 3–32 through 3–37. It appears obvious that hazardous solvents are commonly introduced either during collection or at facilities during storage or processing. To cite just one example, samples of used automotive oil taken at generator sites had 90th percentile values of trichloroethane, trichloroethylene, and tetrachloroethylene (three hazardous spent solvents) of 19, 11, and 55 ppm, respectively (p. 3–33). The 90th percentile values of these same constituents in "automotive oil" samples at processor facilities ar 6000, 800, and 3000 ppm (p. 3–34).

[156] Since these facilities manage other hazardous wastes, they are presently subject to individual permitting under 40 CFR Part 270. [The most EPA could do under Section 3014(d) would be to permit the recycled oil portion of the facility by-rule.] For those facilities that are permitted before today's rules become effective, a permit modification would be necessary to allow acceptance of used oil or recycled oil. See §§ 124.5 and §270.41 regarding permit modifications.

[157] The reader should note that in Section IV.A., above, EPA has requested comment on whether we should *prohibit* co-management of recycled oil and other hazardous wastes.

[158] A State authorized by EPA to manage its own hazardous waste program under 40 CFR Part 271 could, by its own regulations, require some or all of the used oil recycling facilities within the State to apply for individual RCRA permits. How today's proposed rules would operate in authorized States is discussed more fully in the next part of the preamble.

[159] The reader should note that when an owner or operator is required to obtain an individual permit under § 270.60(d)(3), he must then also comply with the "corrective measure" provisions of § 264.101. [See the proposed § 266.43(a)(5)(iv).] This is because section 3004(u) of RCRA requires any permit issued by EPA to include corrective measures requirements as appropriate.

Under § 270.60(d)(3)(ii) of today's proposal, the Regional Administrator (or State Director) would notify the owner or operator of the determination that an individual RCRA permit is required; the owner or operator would then have 180 days to submit "Part B" to the RCRA permit application.[160]

B. Requirements of the Permit-by-Rule

EPA has proposed requirements for the permit-by-rule in § 270.60(d)(2) for those facilities not excluded from eligibility (as described above). These requirements are based on the statutory provision [section 3014(d)] that the facility must be in compliance with standards promulgated under section 3004.[161] First, the proposed § 270.60(d)(2)(i) provides that the owner or operator comply with §§ 266.43 and 266.44, the standards proposed today for used oil recycling facilities (including burners). These standards are proposed under the joint authorities of sections 3004 and 3014. In the case where these rules are amended or modified, the owner or operator would have to comply with the modified requirement within the time limit as specified in the appropriate **Federal Register** notice. [This will be particularly important for burners. Today, § 266.44 is reserved for the standards that will apply to burners.]

Paragraphs (ii) through (xvi) of the proposed § 270.60(d)(2) contain requirements that are necessary to ensure compliance with § 266.43 or § 266.44. These requirements apply to EPA issued permits (see § 270.30), and are proposed here under the authority of section 3014 to implement this special permit-by-rule. The conditions are summarized here:

- Paragraph (ii) provides that noncompliance with §§ 266.43 or 266.44 is allowable only under terms of an emergency permit issued under § 270.61;
- Paragraph (iii) provides that it shall not be a defense in an enforcement action to claim that it would have been necessary to halt or reduce a permitted activity in order to maintain compliance with § 266.43 or § 266.44;
- Paragraph (iv) requires that in event of non-compliance, the owner or operator must take all reasonable steps to minimize any impacts on human health or the environment;
- Paragraph (v) provides that the facility's operating equipment must be properly operated and maintained (including adequate staffing and training of personnel, quality assurance procedures, etc.);
- Paragraph (vi) makes it clear that the permit-by-rule conveys no property right or exclusive privilege;
- Paragraph (vii) requires the owner or operator to provide EPA or a State with any information relevant to determining compliance or the need for an individual permit;
- Paragraph (viii) codifies some of EPA's inspection and entry authorities granted by Section 3007 of RCRA;
- Paragraph (ix) provides that any sampling or other measurements taken to comply with the regulations must be representative of the volume and nature of the measured activity;
- Paragraph (x) stipulates specific recordkeeping requirements for any sampling or monitoring performed to comply with the regulations;
- Paragraph (xi) codifies that requirement for a facility to have an operation record [required under § 264.73, reference by the proposed § 266.43(e)(3)];
- Paragraph (xii) stipulates signatory requirements for any reports or information submitted to EPA or a State;
- Paragraph (xiii) requires the owner or operator to notify EPA or the State of any activity that may cause noncompliance;
- Paragraph (xiv) specifies reporting procedures the owner or operator must follow in the event of a serious mishap at the facility;
- Paragraph (xv) specifies procedures for submission of the RCRA biennial report; and
- Paragraph (xvi) requires the owner or operator to promptly submit any relevant information when omissions or mistakes are discovered.

In summary, when an owner or operator meets all of the requirements of § 270.60(d)(2), he is deemed to hold a RCRA permit under the special authority of section 3014(d). The requirements of § 270.60(d)(2) would be applicable to the owner or operator as if he held an individual permit. [See section 3008 of RCRA, federal enforcement authorities.]

C. Modifications to and Duration of the Permit-by-Rule

As discussed above, EPA intends to propose burner standards in the near future [the "reserved" § 266.44]. Also, over time, EPA may amend the § 266.43 standards for used oil recycling facilities. Owners or operators would have to comply with the new or revised standards within the time limits specified in the **Federal Register**. [See the proposed § 270.60(d)(2)(i).] Finally, because of the on-going, continuing nature of a permit-by-rule, the permit is not issued for a fixed term, but rather continues in force as long as the facility meets the eligibility criteria and the requirements are complied with.[162]

D. Interim Status for Used Oil Recycling Facilities

1. *General.* The preceding discussions concerned facilities that would be eligible for the proposed permit-by-rule. For those facilities that meet all of the proposed § 270.60(d)(2) permit-by-rule requirements immediately interim status is not relevant. An issue that requires additional discussion, however, is the question of facilities that are not completely in compliance with the permit-by-rule requirements when the latter become effective. Such a facility is subject to enforcement action under RCRA section 3008 not simply for non-compliance with applicable requirements but *also* for operating an unauthorized hazardous waste facility. Under proposed § 266.40(e)(3), facilities are only authorized to manage recycled oil if they are permitted or in interim status.[163, 164] A facility is not permitted-by-rule *unless* it is in full compliance with proposed § 270.60(d)(2). [This requirement is from RCRA section 3014(d).]

With respect to those facilities that are not in compliance on the effective date of this regulation, EPA believes that the permit-by-rule authority of section 3014(d) should be read in conjunction with the existing interim status provisions of section 3005(e). Pursuant to the terms of these two sections, used oil recycling facilities that fail to meet the § 270.60(d)(2) requirements by the effective date of this regulation (and thus do not qualify for the permit-by-rule) become subject to the section 3005(a) prohibition against operating without a permit and must either shut down or seek interim status authorization under section 3005(e). Owners and operators of used oil

[160] During this time, the owner or operator would remain subject to § 270.60(d)(2). If compliance with those standards cannot be maintained through the permitting process, at a minimum through an interim understanding between the owner or operator and the permitting authority, the facility would have to cease operation. See RCRA section 3008 pertaining to compliance orders.

[161] The reader should note that except for facilities excluded from eligibility from the permit-by-rule under § 270.60(d)(1), owners or operators are subject to § 270.60(d)(2).

[162] Because the permit-by-rule for used oil recycling facilities would be issued under section 3014 and not section 3005 of the Act, section 3005(c)(3) pertaining to "permit terms" does not apply.

[163] This is the general policy for all hazardous wastes. See § 270.1(b), "overview of the RCRA permit program."

[164] As described in Section I.E. of this Part of the preamble, certain recycled oil (e.g., specification fuel) are exempt from regulation and can be managed at facilities without authorization.

recycling facilities should note that under this approach they have a choice. If a used oil recycling facility meets all the requirements of § 270.60(d)(2) on the effective date of this regulation, it is deemed to have a permit under section 3014(d) and, therefore, interim status is not required. However, if there is some doubt as to the extent of a facility's compliance, an owner or operator may wish to consider taking the steps necessary to qualify for interim status to avoid being vulnerable to a possible enforcement action for operating without a permit.

To receive interim status authorization under section 3005(e), a facility must meet three requirements. First, the facility must have been in existence on November 19, 1980 or the effective date of the statutory or regulatory changes that rendered it subject to the requirement to have a permit. Second, it must comply with the notification requirements of section 3010(a). And third, it must submit an application for a permit. On the effective date of this regulation, existing used oil recycling facilities will, by definition, meet the first requirement of section 3005(e). With respect to the second requirement (*i.e.*, notification), many used oil recyclers are presently required to notify the Agency under the Phase I burning rule.[165] [In the final Phase I preamble, see Part Four, Section I.B.] EPA has determined that the third requirement (for permit applications) calls for an approach slightly different than the one that currently applies to hazardous waste facilities; this is discussed next.

2. *Permit applications.* EPA is proposing that the owner or operator of a used oil recycling facility that seeks interim status (because he is not in compliance, or is not sure of whether he is in compliance with proposed § 270.60(d)(2)), must inform EPA that information submitted to the Agency under the RCRA section 3010(a) notification requirement is *also* intended to fulfill the "permit application" requirement of RCRA section 3005(e)(1)(C).[166] [See proposed § 270.10(a)(3).]

EPA considered whether owners and operators should submit full "Part A" RCRA permit applications, as is required for all other hazardous waste facilities under §§ 270.70(a)(2) and 270.10(a)(1). We are not requiring the full Part A submission because much of the Part A information is, for used oil recyclers, not relevant. That is, the Part A submission was intended as the first step in individual facility permitting. [See 45 FR 33322–23; May 19, 1980.] We fully expect, however, that most used oil recycling facilities that seek interim status will eventually come into full compliance with § 270.60(d)(2), and at that point, they will be deemed to have a permit. Therefore, we see no need to require additional information beyond the RCRA section 3010(a) notification requirements. We must require the special "interim status notification" to ensure that the RCRA section 3005(e)(1)(C) "permit application" has been complied with. This special notification to EPA would ensure that a used oil recycling facility, even if subject to enforcement action for being in violation of § 270.60(d)(2), would maintain its legal authorization to operate.

3. *Alternatives considered.* As an alternative to the proposed interim status approach, EPA considered a second approach of extending the permit-by-rule to all recycled oil facilities, regardless of their compliance status, on the effective date of these regulations. Under this approach, the Agency would pursue case-by-case enforcement against those facilities later found to be out of compliance. The major difficulty with this approach is that it is inconsistent with the explicit language of section 3014(d). Congress specifically provided that an owner or operator of a used oil recycling facility "shall be deemed to have a permit under this subsection for all treatment or recycling . . . *if* such owner or operator *comply* with the standards promulgated by the Administrator under section 3004 . . ." (emphasis added). As EPA does not have the information or data on which to conclude that all used oil recycling facilities will come into compliance by the effective date of this regulation, it lacks an adequate basis for implementing this approach.

EPA also considered an approach under which a facility not fully in compliance with § 270.60(d)(2) on the effective date of the requirements would thereby lose eligibility for the permit-by-rule, and would have to seek interim status and a full RCRA individual facility permit as would any hazardous waste facility. EPA did not propose this approach because it could result in outcomes contrary to Congressional intent. Many owners or operators may simply be unsure of their compliance when today's proposed rules become effective, or may make good faith efforts to comply but are still not completely in compliance. To make a blanket determination that all used oil recycling facilities must be permitted individually does not seem in line with Congressional intent that EPA avoid discouraging used oil recycling consistent with protection of human health and the environment. See H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess., at 114 (1984).

Comments are requested on the Agency's proposed interim status approach.

E. Enforcement

All used oil recycling facilities would be, under today's proposal, subject to § 266.43 (and burners would also be subject to § 266.44). Whether a facility is authorized to operate under interim status, or an individual facility permit, or the proposed permit-by-rule, EPA may take enforcement actions under RCRA section 3008 for violations of applicable requirements. With respect to those facilities that qualify for the permit-by-rule and then later are found in violation of an applicable requirement, EPA would proceed as it does against any permitted facility found in violation. That is, EPA may issue compliance orders and schedules under RCRA section 3008, and in some cases may seek injunction for temporary or permanent facility closure. Our reasoning for treating facilities permitted individually under section 3005(c) and by-rule section 3014(d) in a similar fashion is that permits issued under both Sections serve the same statutory purpose, *i.e.*, implementation of the Section 3004 standards.[167] Regulations issued under each section are designed to provide specific guidance as to what constitutes compliance with those standards. Because of the similarity of these sections not only in their purpose but also in many of the section 3004 requirements they implement, EPA sees no reason for treating noncomplying facilities differently under each

[165] For those facilities not subject to the special "waste-as-fuel" notification of the final Phase I rule, the reader should note that under § 264.11 (referenced by § 266.43(b), introductory text, of today's proposal), facility owners and operators must notify the Agency and obtain EPA identification numbers. Owners and operators who file "waste-as-fuel" notifications need not re-notify under today's proposal, except as discussed next, *i.e.* those facilities who must obtain interim status.

[166] This discussion only applies to facilities that would otherwise be eligible for the permit-by-rule, but are not fully in compliance. Facilities excluded from eligibility by § 270.60(d)(1) must obtain interim status and apply for a full permit under 40 CFR Part 270, as would any hazardous waste facility.

[167] Section 3005(c), however, has a broader scope than does section 3014(d); for example, section 3004(u) corrective action requirements are implemented through section 3005(c) permits.

section.[168] The Agency therefore believes that since a facility's failure to comply with a permit condition does not lead to a loss of authority to operate under RCRA section 3005(c), it should not do so under section 3014(d).

VI. Proposed Effective Dates

This section discusses when various parts of the proposed rules would become effective. The public is invited to comment on the proposed effective dates as well as the substantive requirements themselves.

A. General

Under RCRA section 3010(b), hazardous waste regulations are generally to become effective six months after final rule promulgate for good cause. Except as discussed below, we are proposing that the recycled oil rules would become effective six months after the day they are published in final form in the **Federal Register.**

B. Prohibition on Dust Suppression

As discussed above in Section IV.E. of this Part of the preamble, RCRA section 3004(l) prohibits the use of hazardous waste for road treatment or dust suppression (*i.e.,* road oiling). As discussed elsewhere in today's **Federal Register** used oil would become a hazardous waste six months after the final listing notice appears in the **Federal Register.** Because of the strong concern Congress has registered against using hazardous waste for dust suppression (*i.e.,* the passage of section 3004(l)), EPA considered whether perhaps the prohibition on road oiling should become effective either immediately when, or shortly after (e.g., 30 days) the final listing notice for used oil appears in the **Federal Register.** We have not proposed this action today because of the possible confusion that could result from an early effective date for one particular management practice (*i.e.,* road oiling). Comments are requested on the issue of an early effective date for the road oiling prohibition.

C. Tank System Secondary Containment Standards

EPA proposed that interim status hazardous waste facilities and "90 day" generators have one full year, instead of six months, to comply with tank system secondary containment requirements. [See proposed §§ 265.193(a) and 261.34(a)(2); June 26, 1985.] This same extended effective date would apply to all persons subject to tank system secondary containment requirements under today's proposed rules. In the case of the proposed requirements for recycled oil generators, EPA has proposed secondary containment only for "new" tank systems, including leaking tanks taken out of and then returned to service. [See proposed § 266.41(c)(5) (vi) and (vii), discussed in Section IV.B, above.] Tanks installed during the one year period following publication of the final § 266.41 in the **Federal Register** would not be subject to the secondary containment requirements, but *would* remain subject to the Section 9003(g) "interim prohibition" for all petroleum materials stored in underground tanks. [See §§ 280.1 and 280.2.] After the 1 year period, generators installing new tanks would then be subject to the secondary containment standards, no longer to the interim prohibition.[169]

PART THREE—ADMINISTRATIVE, ECONOMIC, AND ENVIRONMENTAL IMPACTS

I. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. [See 40 CFR Part 271 for the standards and requirements for authorization.] Following authorization EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), provides that new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is authorized to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

It should also be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of a RCRA, States are allowed to impose standards more stringent than those in the Federal program. Under today's proposal, some of the standards for used oil would be less stringent than the requirements that would apply to hazardous wastes in general. Authorized States that have already listed used oil as a hazardous waste and subject used oil to full regulation under the States' analogues to Parts 261–266 would not be required to revise their standards to conform with the special Part 266, Subpart E requirements proposed today (when promulgated in final form). However, those States must apply to be authorized for that aspect of the RCRA program, and after review and acceptance by EPA, a **Federal Register** notice will announce that the State is authorized to run that part of the program.

B. Effect on State Authorizations

Today's announcement proposes standards that would be effective in all States since the requirements are imposed pursuant to section 242 of the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus EPA will implement the standards in nonauthorized States, and in authorized States until they revise their programs to adopt these rules and the revision is approved by EPA.

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State

[168] Indeed, since one of the general objectives of section 3014 is to avoid discouragement of recycling consistent with protection of human health and the environment, the Agency believes that a result which increases rather than decreases the burden and stringency of regulatory requirements for recyclers would generally be consistent with Congress' stated concern to reduce unnecessary impediments to recycling.

[169] Small quantity recycled oil generators would be subject to the proposed modified version of the interim prohibition 6 months after publication of the final rule [proposed § 266.40(c)(1)(iv)]. As with all petroleum materials in underground tanks, the section 9003(g) interim prohibition will continue to apply to recycled oil until Part 266, Subpart E becomes effective.

adoption of these regulations is described in 40 CFR 271.21. [See 49 FR 21678; May 22, 1984.] See also 50 FR 28731; July 15, 1985.

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases. [See 40 CFR 271.21(e)(3).]

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program revision is approved. As a result, the standard proposed in today's rule will apply in all States, including States with existing standards similar to those in today's rule. States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

Finally, we have proposed to amend Part 271, the Requirements for Authorization of State Hazardous Waste Programs, by amending Table 1 of § 271.1(j) to add the citations and the standards for managment of recycled oil to the list of regulations implementing the Hazardous and Solid Waste Amendments of 1984.

II. Relationship of Today's Proposal to Certain Other EPA Programs

This section discusses the relationship of today's proposal to certain other EPA regulatory programs. This discussion is for informational purposes only; no new requirements are proposed here. [Note that in the listing Federal Register notice, we propose to alter the CERCLA "reportable quantity" for used oil.]

A. PCB Program

Under section 6(e) of the Toxic Substances Control Act (TSCA), EPA has promulgated regulations on the use, manufacture, processing, distribution in commerce, and disposal of PCB items, including oils containing PCBs. When the rules proposed today become effective in their final form, used oil containing PCBs would be subject to these rules *and* the PCB rules at 40 CFR Part 761. EPA estimates that 18% of the used oil generated and managed in the U.S. currently contain some measureable quantity of PCBs.[170] EPA is currently considering whether, nad how, the TSCA PCB and RCRA Subtitle C regulations should be integrated. Until such a determination is made, hazardous wastes containing PCBs will continue to be subject to both sets of rules. This is necessary for used oil because the TSCA PCB rules do not address hazards associated with toxic metals or flashpoint (as do the rules proposed today). Where both sets of rules are applicable, EPA will apply the more stringent of the two requirements.

B. SPCC Program

Under section 311 of the Clean Water Act (CWA, also known as the Federal Water Pollution Control Act, 33 U.S.C. 1321(j)(1)(c)), EPA has promulgated regulations for the prevention of and response to oil spills into navigable water. These rules (40 CFR Part 112), known as the Spill Prevention Control and Countermeasure (SPCC) regulations, apply to non-transportation-related facilities with underground storage capacity over 42,000 gallons or above ground storage capacity greater than 1,320 gallons. Because the SPCC definition of oil includes "oil refuse" (40 CFR 112.2(a)), persons storing used oil encompassed by today's proposed rule may already be subject to SPCC management regulations.

When the rules proposed today become effective in their final form, used oil stored in tanks or containers meeting the SPCC requirements will be subject to these rules *and* the SPCC rules at 40 CFR Part 112.

EPA is currently considering whether, and how, the SPCC and RCRA Subtitle C regulations should be integrated. Until such a determination is made, stored hazardous waste meeting both SPCC and RCRA requirements, will continue to be subject to both sets of regulations.

C. NPDES Program

Under section 402 of the Clean Water Act, EPA has promulgated regulations regarding its issuance of National Pollution Discharge Elimination System (NPDES) permits. An important part of many permits issued under these regulations is the limit placed on "oil and grease" discharges. When oil is collected in greater than de minimis quantities in order to comply with permit requirements, the collected oil may be subject to the requirements of today's proposed rule. The general relationship between the RCRA and NPDES regulatory programs is discussed more fully at 45 FR 33096–98 and 33171–72; May 19, 1980.

III. Regulatory Impact Analysis—Executive Order 12291

A. Purpose

The Agency conducted analyses to estimate the costs, benefits, and impacts of the proposed regulations. We conducted cost and economic impact studies to determine whether this proposed regulation is a major rule (under Executive Order 12291), and whether this proposed regulation causes significant small business impacts (as required by the Regulatory Flexibility Act). EPA had the additional mandate to study specifically the effects of used oil regulations on recycling (section 3014(a) of RCRA, as amended) and on generators (section 3014(c)).

EPA has determined that the rules proposed today (the listing proposal and the proposed rules for recycled oil, taken together) are "major." This section of the preamble is a summary of the regulatory impact analysis (RIA) documented in U.S. EPA, *Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil*, November 1985. This document is available in the public docket for this rulemaking. The Office of Management and Budget received a copy of the draft RIA, as required by E.O. 12291.

B. Methodology

EPA conducted an assessment of the costs, benefits, and economic impacts of this proposal and major regulatory alternatives.[171] We evaluated, for each,

[170] See the report by Franklin Associates, LTd., *Composition and Measurement of Used Oil Generated in the U.S.*, November 1984, p. 1-12. 142 of 753 samples showed some PCBs present. The median value is 5 ppm, the 90th percentile value is 50 ppm.

[171] In order to provide a more complete, integrated assessment of the used oil system, the RIA includes the aggregate effects on not only today's proposals (i.e., the listing and management standards), but also standards for used oil burners (i.e., proposed administrative burner standards (50 FR 1684) and potential technical burner standards (yet to be proposed)).

costs of requirements, costs to facilities, impacts on businesses and used oil recycling, and changes in potential risks.

1. *Data Collection.* Before initiating its regulatory impact analysis, the Agency collected data on current used oil management practices. These efforts included a survey of used oil handlers and burners, a site visit program, test burns of used oil combustion devices, a used oil sampling and testing program, and discussion with many used oil businesses and experts, including state program officials. EPA's understanding of the used oil system is summarized in U.S. EPA, *Composition ond Management of Used Oil Generated in the U.S.*, (by Franklin Associates) November, 1984.

2. *Economic Methodology.* The economic impact analysis involved the following steps. We developed model used oil facilities. We estimated compliance costs for each model facility. We conducted a market, or macro, analysis to estimate changes in prices, changes in used oil supply and demand, and aggregate national costs. We also conducted a financial, or micro, analysis to estimate changes in profits, and closure and employment impacts.

To estimate costs and economic impacts, we first developed thirteen model facilities to represent the used oil recycling system which includes gernerators, collectors, processors, and rerefiners. We also evaluated end user costs, but did not develop end user model facilities. Instead we modeled end users as markets demanding used oil "products."

We separated used oil generators into industrial used oil generators who produce used oil from maintenance of machinery and non-industrial used oil generators who produce used oil from maintenance of vehicles. We also split generators by size. Large generators produce greater than 1000 kilograms (about 300 gallons) per month.

Collectors purchase used oil from generators and transport it to processors and rerefiners. We developed three sizes of collectors: small collectors who handle an average of 125,000 gallons per year, medium collectors who handle 300,000 gallons per year, on average, and large collectors who handle an average of one million gallons per year.

We developed model facilities for used oil processors and rerefiners who produce used oil "products," such as fuels and lubricants, for sale to end users.

We also evaluated end use markets for used oil. These included use as fuel (in boilers and other combustion devices), use as rerefining feedstock, use as road oil, miscellaneous non-fuel uses, and disposal.

Next, for each of the model plants (and end users), we estimated compliance costs. To estimate these costs, we conducted engineering studies of the activities and costs required to comply with the regulatory provisions.[172] These estimates included initial, capital, and annual costs, which we annualized.

For one-time costs, such as many of the capital costs, we assumed that facilities could amortize these costs over 20 years, at a nominal interest rate of 13%.[173] This rate corresponded to real costs of capital, not to an estimate of social discount rates, or social costs. For annual and recurring costs, we converted uneven streams of payments to annualized present values using discounted cash flow calculations. We discounted future costs to current dollars assuming a six percent annual inflation rate and a three percent real discount rate. Finally, we multiplied the model facility incremental costs by the total number of facilities to obtain the national aggregate cost estimates.

Next, for each of the model facilities and end users, we collected information on prices in used oil markets; we estimated costs of production for used oil collectors, processors, and rerefiners; and lastly, we estimated flows of used oil from generators to different end users. We combined all of this information into an economic model to simulate current supply and demand for used oil, and the macro and micro level impacts of regulatory costs on supply and demand. (This model is documented in detail in U.S. EPA, *Background Document: Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil,* November 1985.)

We first conducted a macroeconomic impact analysis using our supply and demand model, and our estimates of regulatory compliance costs for each model facility. We used the model to predict: (1) Changes in supply to and demand for used oil in end use markets, (2) changes in flows through intermediary facilities, and (3) price changes. We also calculated aggregate national costs of the regulation.

Secondly, we conducted a microeconomic impact analysis by evaluating facility finances, using the same model facilities (disaggregated into small, medium, and large facilities), to predict closures and employment effects. For each model facility, we developed income statements using publicly available financial data and data on the used oil industry collected by the Agency. Using these income statements, we calculated current cash flows and net value of the businesses. To these baseline finances, we then imposed net regulatory costs, which included the effect of price changes. First, we estimated how these changes affected the profitability of firms. Next we estimated business closures by comparing the value of the firm after regulation to the value of selling a firm, that is, the "salvage value." If a firm's salvage value was greater than its value after regulation, we predicted closure of that firm.

3. *Benefits Methodology.* To compare the benefits of the proposal and regulatory alternatives, we estimated the changes in potential health risks from used oil practices before and after regulation. We estimated risks of five types of used oil practices:

—Burning in space heaters, asphalt plants, and boilers and other devices;
—Road oiling;
—Disposal in incinerators and landfills;
—Storing in drums, aboveground tanks, and underground tanks; and
—Dumping.

For each practice, we estimated potential releases of and potential exposures of people (and the environment) to constituents in used oil. We estimated benefits as the reduction in potential health risks resulting from management practices after regulation compared to potential health risks from current practices.

To estimate national aggregate health risks from used oil practices, we made a number of simplifying calculations and assumptions. First, based on our sampling data, we calculated mean concentrations of hazardous constituents in different types of used oils (that is, for used oils recycled in different ways). We then designed model practices to represent average practices, such as road oiling and disposal. For these practices, we estimated quantities likely to be released from routine emissions and accidental releases. We then calculated concentrations of hazardous constituents that would result from dispersion and degradation of the releases. By assuming population densities, we estimated exposures. We then estimated health effects using dose-

[172] Most of these cost estimates appear in *Cost of Control Options for Reducing Waste Oil Handling Risks, Draft* (prepared by P.E.I., formally PEDCo), May 1984.

[173] We used 13% to represent the cost of borrowing money at the prime rate plus three percent. (Because few of the regulatory costs are capital costs, assumptions about interest rates are not critical to the conclusions.)

response data for individual constituents, assuming lifetime (seventy year) exposures. (The risk analysis is discussed in detail in the *RIA Background Document.*)

4. *Limitations.* The economic impact analysis depended upon our characterization of current used oil practices and the responses of facilities to regulatory costs and constraints. We presumed that businesses will make economically rational and legal decisions. We modeled used oil markets using accepted macroeconomic assumptions about supply and demand. We also assumed that facilities could finance regulatory compliance expenditures.

The Agency's benefit analysis of the regulatory alternatives also depended upon characterizing model practices. To estimate the regulatory benefits as accurately as possible given our data, we used assumptions, simplified practices, and representative (or average) parameters. Therefore, the benefits results are best used to compare across the alternatives included in the analysis.

Because we recognized variability in the practices, we analyzed the variability in the parameters that determine risks, and changes in risk. The analysis of variance is discussed in more detail in the *RIA Background Document.*

The RIA risk analysis did not capture all benefits of the regulation. In addition to reducing cancer cases, the proposed regulation creates other health benefits (such as reduced lead poisoning) and environmental benefits.

Because we characterized average practices in the benefits analysis, we quantified the health effects of only typical practices. We estimated the effects of hazardous constituents typically found in used oil. When other hazardous constituents are present in used oil they may pose additional risks that we have not quantified—but risks that the regulation does prevent. For example, in the aggregate analysis we did not analyze the risks of road oiling with used oil containing dioxin. The proposed regulation would, however, help prevent such risks. The listing preamble and listing background document cite instances of extreme cases that have caused damages that are not fully captured by the risk assessment.

The regulation also produces environmental benefits that we did not quantify. Improperly managed used oil and its hazardous constituents can create environmental damage. Constituents in used oil are toxic to plants and animals. The physical properties of oils may also affect organisms. Used oil releases can also degrade environmental media, such as ground and surface water.

C. Results

1. *Macroeconomic Impacts.* Table 6 presents our estimate of the aggregate annualized national costs of the proposal. Even though most of the regulatory requirements fall on the intermediary facilities that control the flow and quality of recycled used oil, generators and end-users incur high aggregate costs (almost three quarters of the total), primarily because of their large numbers. Although regulated generator costs average only $650 per year, they incur in aggregate $31 million per year. Annualized intermediary costs range from $4,300 to $356,700 per facility, and total $36 million per year. End user costs total $91 million per year. Major costs by regulatory component include disposal ($10 million), storage ($67 million), testing ($16 million), administrative requirements ($10 million), substitute dust suppressants ($26 million); and off-spec pollution control and test burns ($37 million).

TABLE 6.—AGGREGATE (ANNUALIZED) NATIONAL COSTS OF REGULATION

[Dollar amounts in millions per year]

Model facility/regulatory requirement	Annualized cost
Generators:	
Storage	$26
Administrative	4
Tracking	1
Subtotal	31
Intermediaries:	
Storage	15
Administrative	4
Tracking	1
Testing	16
Subtotal	36
End users:	
Road oil substitutes	26
Storage	26
Administrative	2
Pollution control and test burns	37
Subtotal	91
Disposal costs	10
Total	168

The Agency evaluated how these costs (and regulatory constraints) affect markets and recycling. First, we predicted the effect of the proposed regulation on supply of and demand for used oil in different markets—see Table 7. These predicted changes represent significant changes in recycling. By establishing fuel specifications, the proposal changes the reuse of used oil as a fuel, largely by shifting recycled oil to controlled burners. Use of used oil as a dust suppressant (currently 69 million gallons per year) is banned. The displaced oil flows largely to use as a rerefining feedstock, which increases from 85 to 135 million gallons per year. We estimate that, overall, used oil recycling will increase by about 100 million gallons per year.

TABLE 7.—EFFECT OF REGULATION ON MARKET FLOWS OF USED OIL

[Million gallons per year]

	Baseline	Regulatory impact
Burning:		
Industrial boilers	249	185
Asphalt and cement kilns	94	309
Non-industrial boilers	121	117
Diesel engines	15	15
Space heaters	34	34
On-site boilers	73	48
Total-burned	586	708
Rerefining:		
Lube oil	59	101
(total rerefined)	(85)	(135)
Non-fuel industrial	36	40
Road Oiling	69	0
Disposal	405	305
Total	1,155	1,155

2. *Microeconomic Impacts.* Table 8 contains our estimates of the annualized costs of compliance for the model facilities. These estimates are based on our characterization of these facilities, their current practices, and their responses to regulatory requirements. Facility costs vary a great deal, depending on the size of the faility and the regulatory requirements. Processors are larger and face more requirements. Generators and collectors are smaller and face less extensive regulation. As the costs per gallon demonstrate, there are economies of scale for larger facilities.

TABLE 8.—ESTIMATES OF MODEL AVERAGE FACILITY COSTS

Model facility [1]	Annualized regulatory cost (year)	Cost per gallon (cents)
Generators:		
Large industrial	$200 to $3,700	<6-<105
Large automotive.	$200 to $1,300	<6-<37
Collectors:		
Small	$4,300 to $9,700	3-6
Medium	$8,500 to $16,300	3-5
Large	$29,400	3
Processors and rerefiners.	$17,400 to $356,700	3-9

[1] Model facilities are described in the RIA.

We evaluated also the facility level (or microeconomic) impacts of regulatory costs—measured as changes in prices, reductions in profits, closures, and employment effects. Table 9 presents the price changes we predicted in the markets in which used oil intermediaries purchase and sell used oil. Price changes help processors offset

their regulatory costs by increasing revenues (by as much as fourteen cents per gallon).

TABLE 9.–PRICE CHANGES FOR INTERMEDIARIES

[Cents per gallon]

	Average purchase price			Average selling price			Net gain	Regulatory cost/gallon
	Pre-regulatory	Post regulatory	Change	Pre-regulatory	Post regulatory	Change		
Collectors	21	19	−2	40	36	−4	−2	3-8
Processors	21-24	18-22	−2-(−3)	45-55	55-59	+4−(+11)	+6−(+14)	5-6

We also predicted closures that might result from the resulting changes in profits (or net present value). For small collectors, particularly, profits decrease significantly. Reduced profits may not cause a business closure, if a facility choose to continue operating with reduced profits. Table 10 presents our estimate of facility closures predicted by comparing net present value to salvage value, and considering changes in flows of used oil implied by the market changes presented in Table 7. The discussion below provides a more detailed explanation of impacts on used oil generator, collector, and processor facilities.

TABLE 10.--CLOSURES AND CHANGES IN AVERAGE SIZE CREATED BY FINANCIAL IMPACTS AND FLOW CHANGES

	Ratio NPV/ salvage value [1]	Change in flow (percent change)	Number of predicted closures	Change in average facility size (percent change)
Collectors	−2.6-7.9	+17	318	+172
Minor processors	1.5-5.6	−14-(−20)	12	−5-(−20)
Major processors	2.2-6.6	−2-(−4)	3	−10-(+2)
Rerefiners	[2] NC	+59	[3] −6	0
			327	

[1] Ratio of net present value (NPV) to salvage value. Ratios less than one (including negative ratios) imply closure.
[2] NC=not calculated, see discussion in RIA.
[3] Negative closures represent new facilities (or expanded capacity).

For industrial generators, used oil management is generally a very minor part of their production processes. This waste provides revenue when sold to a collector or processor. Once regulated, larger industrial generators may spend as much as $3,700 per year (only $910, on average) to comply with the proposed requirements. Used oil will still be sold to collectors and processors, but for a lower price. Although net revenues from used oil will decrease, these changes will represent an insignificant change in overall production costs for industrial generators.

For non-industrial (automotive) generators, however, regulatory costs are more important. Based on discussions with a number of used oil generators, we have assumed that automotive generators pass through regulatory costs to their customers by increasing the price of their service—oil changes. We have assumed that oil changes will decrease by the same percentage, i.e., the elasticity of substitution equals one. More people will change their own oil, and recycling will decrease since most homeowners dump their used oil, according to our information. Full Subtitle C regulations cause an increase in these homeowner oil changes of twelve million gallons per year. We therefore have tailored used oil regulations to reduce burdens on generators.

The regulations will seriously affect collectors. EPA predicts that it will be uneconomical for 473 small and medium collectors to continue operating as small, independent businesses. Although these small collectors represent about fifty percent of the facilities within the used oil recycling industry, they currently handle only about ten percent of the volume of oil entering the recycling system. EPA predicts that these collectors will close because their annualized regulatory costs will be between $4,300 and $9,700 per year, compared to net earnings before regulation of only $2,500 per year. We also predict, however, that 155 of these smaller collectors will grow or become part of larger businesses, because: (1) The total quantity of used oil flowing through collectors will increase and (2) larger collector (and medium transporter) businesses will be economically viable. Larger collectors will be able to afford the regulations; as will other used oil businesses that handle larger quantities of oil. This is because many costs are fixed, independent of quantities handled. That is, there are economies of scale—the regulatory cost per gallon is three cents for larger collectors, eight cents for small.

Overall, the closure rate for today's proposal is less than one precent. That is, we predict only 327 net closures from over 50,000 establishments that would be subject to regulation. It should be noted that approximately three million establishments would be exempt from regulation under the provision described in Section II, Part Two of this preamble. The closure rate of establishments *potentially* subject to regulation is therefore about one one-hundredth of a percent.

3. *Benefits.* Table 11 presents our estimates of the health effects (cancers) in the U.S. potentially caused by used oil management practices as we have modeled them before and after the proposed regulation. The variation around these point estimates is several orders of magnitude, particularly for risks caused by releases to ground water. The regulation reduces risks by controlling several practices. Most importantly, the fuel specification and burning in controlled devices reduce combustion risks. Cancer risks from burning decrease by almost fifty percent. (The prohibition of unvented space heaters prevents unsafe exposures to lead, which in the baseline cause almost 25 health effects per year.) Requirements for secure disposal of used oil also significantly reduce risks. Disposal risks decrease by seventy percent. Overall, the proposal reduces potential cancer risks by half, in addition to eliminating lead poisoning cases from used oil space heaters. (Calculated without dumping, which the regulations don't address, cancer risks decrease by more than sixty percent.)

TABLE 11.—RIA ESTIMATES OF POTENTIAL RISKS OF AVERAGE USED OIL PRACTICES.[1]

Practice	Risks (cases per year)	
	Baseline	Proposed regulation
Burning	95	50
Dumping	55	55
Disposal	110	30
Space heaters [2]	<1	<1
Storage	5	<5
Road oiling	<5	0
Total	270	135
Percent change		−50

[1] These numbers are most properly used to compare potential risks before and after regulation. The RIA and its background document discuss in detail the limitations of these estimates.
[2] The regulation also prevents lead poisoning from indoor space heater emissions, estimated at 25 cases per year (in the baseline).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires the Agency to evaluate the impacts of regulations on small entities. When a regulation imposes significant impacts on a substantial number of small businesses, the Agency must conduct a regulatory flexibility analysis to evaluate regulatory options to reduce impacts on small entities (consistent with other mandates, such as protection of human health and the environment). Although today's proposal imposes impacts on many small businesses, the total fraction of small businesses significantly affected (less than one percent) is not substantial. Nevertheless, to meet the requirements of section 3014 (to avoid discouragement of recycling, to reduce impacts on generators, and to protect human health and the evironment), the Agency has reduced regulatory burdens to the extent possible. These are documented in the RIA which includes evaluation of the impacts of full Subtitle C regulations, in addition to the impacts of the proposal.

In the used oil system, most establishments are small businesses. We estimate that approximately ninety percent (about 880 of 950) of the intermediary facilities (collectors, processors, and rerefiners) are small businesses. These small businesses employ less than 100 people and have annual revenues less than $1.5 million. Most of these businesses are small collectors employing one or two people. We predict that (net) 318 collectors will close. The increased flow of oil through collectors, however, will mitigate employment impacts.

The proposed regulation reduces small business impacts when compared to Subtitle C requirements. Instead of full hazardous waste facility standards, EPA has proposed a special provision that would expand the transfer facility exemption in the hazardous waste rules to include recycled oil transporter tanks with secondary containment. This would allow most collectors to avoid being a RCRA facility, and would reduce impacts. Costs for small collectors drop from about $9,700 to $4,300 per year—for medium collectors from $16,300 to $8,500 per year. Without tailored standards, we predict that an additional 301 collectors would close. The tailored requirements reduce impacts consistent with environmental protection.

We have not proposed any special requirements to mitigate impacts on processor facilities because Congress did not exempt used oil recylcers from Section 3004. We have proposed to use the permit-by-rule authorized by Congress for most recycling facilities. We estimate that the permit-by-rule reduces costs by $10,000 to $20,000 per facility.

Like the intermediaries, almost all used oil generators are small businesses (based solely on number of employees). Congress exempted generators who recycle used oil from Sections 3001(d) and 3002, and directed EPA to consider small business impacts on generators in promulgating used oil regulations. The proposal includes a limited set of requirements for generators that are less stringent than the standards that apply to hazardous waste generators, and that reduce impacts. Specifically, EPA has proposed (in lieu of Subparts C, D, and § 265.16 of Part 265) simplified and tailored facility management requirements for recycled oil generators (see the proposed § 266.41(c)(6)). As described in section II, Part Two of the preamble, we are proposing these reduced requirements to reduce impacts on recycled oil generators (many are small businesses). Further, we have proposed: (1) limited secondary containment requirements for generator storage tanks, and (2) a conditional exemption for "small quantity" recycled oil generators. These provisions significantly reduce regulatory costs to generators, and substantially reduce the number of generators regulated. Although the intent of these provisions is primarily to mitigate adverse impacts on environmentally acceptable recycling, the reduced standards also serve to mitigate small business impacts.

V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

This regulation will require collection logs or shipping papers, internal recordkeeping, and facility operation records, including testing records. Table 12 presents our estimates of the numbers of shipping forms the regulation will require.

The purpose of these forms is to bring more accountability to the system, and to provide a means for enforcing against violations. We have reduced the burden of these requirements by proposing alternatives to the analogous Subtitle C requirements of manifesting and full Part B permits.

TABLE 12.—PAPERWORK REQUIREMENTS

[Shipments per year requiring tracking]

Generators: Shipments with collection logs	797,000
Intermediate facilities: Shipments with collection logs	122,000
Total number of shipments requiring tracking	919,000

PART FOUR—PUBLIC COMMENTS, BACKGROUND DOCUMENTS, PUBLIC HEARINGS, AND LIST OF SUBJECTS

This Part provides information that should aid interested parties to understand EPA's rationale and to prepare comments on today's proposal.

I. Solicitation of Public Comments

Today's two notices describe regulatory proposals, and therefore the public may comment on any aspect of or issue related to the proposals. Commenters who have previously submitted comments pursuant to previous EPA used oil proposals and **Federal Register** notices (such as 50 FR 1684, 1/11/85) should re-submit those comments at this time so they may be considered in today's proposal. The Agency will not address comments submitted pursuant to prior **Federal Register** notices unless the comments are re-submitted.

II. Availability of Background Documents

EPA relied on the following primary documents in developing today's proposal. All documents cited in the preamble are available in the public

docket for this rulemaking, located at EPA Headquarters, Room S-212, 401 "M" Street, Southwest, Washington, DC, 20460. The docket is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on holidays. Some of the documents listed below are also available through the National Technical Information Service (NTIS), an agency of the U.S. Department of Commerce, located in Springfield, Virginia (703) 487-4650. (NTIS does charge a fee per-page for documents ordered.)

Composition and Management of Used Oil Generated in the U.S., by Franklin Associates, Limited, November 1984. NTIS #PB/85-180-297.

Listing Background Document for Used Oil, U.S. EPA Office of Solid Waste, November 1985.

Regulatory Impact Analysis of the Proposed Standards for the Management of Used Oil, U.S. EPA, Office of Solid Waste, November 1985.

III. Announcement of Public Hearings

EPA will hold public hearings on the rules (both the listing and management standards) proposed today as follows:

- *January 8, 1986*—Holiday Inn, North Park Plaza, 10650 North Central Expressway, Dallas, Texas 75231 (Phone: 214/373-6000)
- *January 10, 1986*—Ramada Renaissance, 55 Cyril Magnin Street (One block north of 5th & Market), San Francisco, California 94102 (Phone: 415/392-8000)
- January 16, 1986—Department of Health and Human Services, North Auditorium ("C" Street entrance), 330 Independence Ave., SW, Washington, DC 20201

The hearings will begin at 9:30 a.m. (registration at 9:00 a.m.) and will end at 4:30 p.m. unless concluded earlier. EPA encourages all interested persons to attend one of the public hearings. If you would like to present an oral statement at one of the hearings, please notify in writing Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, Washington, DC, 20460.

Oral and written statements may be submitted at the public hearings. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to provide written copies of their complete comments for inclusion in the official record.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 266

Hazardous waste, Recycling.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

For the reasons set out in the Preamble, it is proposed to amend 40 CFR Chapter I as set forth below:

Dated: November 8, 1985.

Lee M. Thomas,

Administrator.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

2. In Part 260, a new definition is added to § 260.10 to read as follows:

§ 260.10 Definitions.

* * * * *

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is accumulated, collected, stored, transported, or treated prior to recycling.

(1) [Reserved to define specific types of burning considered to be recycling.]

(2) The term includes mixtures of recycled oil and other materials, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this Chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this Chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3001, 3002, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservaton and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, 6922, and 6934].

4. In § 261.5, paragraphs (b) and (j) are revised to read as follows:

§261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(b) Except as provided by paragraphs (e), (f), and (j) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265, 270, and 124 of this chapter, nor to the notification requirements of section 3010 of RCRA, provided the generator complies with paragraph (g) of this section.

* * * * *

(j) *Used oil.* (1) Used oil that is disposed of (and not recycled) is included in the quantity determinations of this section and is subject to the requirements of this section.

(2) Used oil that is recycled is subject to regulation as follows:

(i) Recycled oil is not included in the quantity determinations and is not subject to the requirements of this section, but instead is subject to Part 266, Subpart E of this chapter.

(ii)(A) When hazardous waste that would otherwise be conditionally exempt from full regulation under paragraph (b) of this section is mixed with used oil in the course of recycling (e.g., during collection or storage) the resultant mixture is no longer subject to the reduced requirements of this section but instead is subject to full regulation under Parts 262 through 265, Part 266, Subparts Subparts C and D, and Parts 270 and 124 of this chapter, and to the notification requirements of section 3010 of RCRA.

(B) Used oil containing more than 1000 ppm of total halogens is presumed to have been mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant

concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

5. In § 261.6, paragraph (a)(2)(iii) is revised to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(a) * * *

(2) * * *

(iii) *Recycled oil.* (Subpart E).

Note.—Mixtures of used oil and hazardous waste are not recycled oil and when recycled, are subject to full regulation under this section.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6934].

7. In Part 266, § 266.30(b)(1) is revised to read as follows:

§ 266.30 Applicability.

* * * * *

(b) * * *

(1) Recycled oil is subject to Subpart E of this Part, not to this Subpart.

* * * * *

8. In Part 266, Subpart E is revised to read as follows:

* * * * *

Subpart E—Standards for the Management of Recycled Oil

Secs.

266.40 Applicability.
266.41 Standards for generators.
266.42 Standards for transporters.
266.43 Standards for owners and operators of used oil recycling facilities.
266.44 Standards for burners.

Subpart E—Standards for the Management of Recycled Oil

§ 266.40 Applicability.

(a) *General.* (1) This subpart applies to recycled oil that is:

(i) Hazardous waste, as defined by §§ 261.1–261.3 of this chapter; or

Note: Recycled oil is a subset of used oil, the latter being listed as "F030" in § 261.31 of this chapter.

(ii) Household waste, but only when aggregated or accumulated at service stations, auto centers, or other "do-it-yourselfer" collection centers. The owner or operator of a collection center that accepts household recycled oil is considered a "generator" for the purposes of this Subpart, and is subject either to paragraph (c) of this section or to § 266.41 of this subpart, as applicable; or

(iii) Recovered from only wastewater exempted from regulation under § 266.3(a) (2) (iv) (F) of this chapter. The person who recovers the oil is considered a "generator" for the purposes of this Subpart, and is subject either to paragraph (c) of this section or to § 266.41 of this subpart, as applicable.

(2) *Conditional exemptions.* The following recycled oils, when recycled in compliance with paragraph (b) of this section, are not subject to any further requirements under this subpart:

(i) Fuel meeting the following specification, to be known as "specification fuel:"

RECYCLED OIL FUEL SPECIFICATION

Constituent/Property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Total halogens	4000 ppm maximum.
Flashpoint	100 ppm maximum.

Notes—The specification does not apply to used oil mixed with hazardous waste. Such mixtures must be managed as hazardous waste.

(ii) Asphalt paving material containing either of the following used oil recycling residues:

(A) Distillation bottoms from used oil re-refining; or

(B) Residue (*i.e.*, baghouse dust) from a fabric filter air pollution control device used to control emission from recycled oil combustion.

(b) *Conditions to exempt certain recycled Oils.* Recycled oil is subject to this Subpart until the conditions of this paragraph have been complied with:

(1) *Specification fuel.* In order for fuel to be exempted from regulation under paragraph (a) (2) (i) of this section, the person first claiming the exemption must:

(i) Document through analysis that the recycled oil does meet the specification in § 266.40(a) (2) (i) of this subpart. Analytical procedures must be specified in the plan required by § 266.43 (b) (2) of this subpart; and

(ii) Record the following information for each shipment of specification fuel:

(A) The name and address of the receiving facility;

Note—Since this exemption is for *fuel*, the receiving facility is expected to either burn the recycled oil or use it to produce fuel.

(B) The quantity of specification fuel sent;

(C) The date of shipment; and

(D) A cross-reference to analysis performed under § 266.43 (b) (2) of this subpart (*i.e.*, the documentation that the fuel meets the specification of pargraph (a) (2) (i) of this section).

(iii) Maintain records of analyses and shipments of specification fuel as part of the facility's operating record required under § 266.43(f) of this subpart.

(2) *Asphalt paving material.* In order for asphalt paving material to be exempted from regulation under paragraph (a) (2) (ii) of this section, a person must ensure that the distillation bottoms or baghouse dust that has been incorporated into the paving material has undergone a chemical reaction in the course of producing the material so as to become inseparable by physical means.

(c) *Small quantity recycled oil generators.* A generator of 1000 kilograms or less of recycled oil per calender month need not manage the recycled oil generated in that month under this Subpart, provided the following requirements are complied with. Such a generator is a "small quantity recycled oil generator." Requirements:

(1) *On-site management.* If the recycled oil is managed on-site, the following requirements apply:

(i) The use of recycled oil for road treatment, dust suppression, or road oiling is prohibited;

(ii) [*Reserved for controls on burning.*]

(iii) Small quantity recycled oil generators may accumulate and store recycled oil on-site. If more than 1000 kilograms is accumulated at any time, all of the accumulated recycled oil is subject to the remainder of this subpart, not to the special requirements of paragraph (c) of this section. The generator, when the quantity limitation is exceeded, becomes subject to the generator requirments of § 266.41 of this Subpart.

(iv) A small quantity recycled oil generator must not install a tank system unless the following installation requirements are complied with. Paragraph (c) (1) (iv) (B) of this section does not apply if soil tests conducted in accordance with ASTM Standard G57–78 show that soil resistivity at the site is 12,000 ohm-cm or more. Installation requirements:

(A) Such tank will prevent releases due to corrosion or structural failure for the operational life of the tank; and

(B) Such tank is cathodically protected against corrosion, constructed of non-corrosive material, or designed in a manner to prevent the release of recycled oil; and

(C) The material used in the construction or lining of the tank is compatible with recycled oil.

Note.—Steel and fiberglass are both compatible with most used oils.

(2) *Off-site recycling.* (i) A small quantity recycled oil generator may send his recycled oil off-site for legitimate recycling.

(ii) When a small quantity recycled oil generator sends oil off-site for recycling, it becomes subject to the remainder of this subpart upon collection (*i.e.*, when accepted by the transporter).

Note.—A person who collects recycled oil from small quantity recycled oil generators is subject to the transporter requirements of § 266.42 of this subpart.

(3) *Mixing with non-hazardous waste.* A small quantity recycled oil generator may mix his recycled oil with non-hazardous waste and remain subject to paragraph (c) of this section as long as the recycled oil portion of the mixture does not exceed 1000 kilograms.

(d) *Used oil mixed with hazardous waste.* (1) Used oil that has been mixed with hazardous waste, including waste from generators that would otherwise be subject to the special requirements of § 261.5 of this chapter, is not subject to this Subpart but instead is subject to full regulation under Parts 262 through 265, Part 266, Subparts C and D, and Parts 270 and 124 of this chapter, and to the notification requirements of section 3010 of RCRA.

(2) Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

(e) *Definitions and other general provisions.* (1) The terms used in this Subpart, unless otherwise noted, have the meanings provided in §§ 260.10, 261.1, 261.2, and 261.3 of this chapter.

(2) The following general provisions of Part 260 apply throughout this subpart:

Section 260.2, availability and confidentiality of information;
Section 260.3, use of number and gender;
Section 260.11, references; and
Subpart C, rulemaking petitions.

(3) *Authorized facilities:* When used in this Subpart, the term "authorized facility" means a facility authorized to manage recycled oil under one of the following authorities:

(i) The facility has been permitted by EPA under Part 270, Subparts A through E of this chapter; or

(ii) The facility has been permitted-by-rule under § 270.60 of this chapter; or

(iii) The facility has been permitted by a State with a hazardous waste program approved by EPA under Part 271 of this chapter; or

(iv) The facility is in interim status under section 3005(e) of RCRA and Part 270, Subpart G of this chapter.

§ 266.41 Standards for generators.

(a) *Applicability*—(1) *General.* This section applies to generators of recycled oil, including persons who aggregate household-generated recycled oil and persons who recover used oil from oily wastewater (for recycling), but not to small quantity recycled oil generators who comply with § 266.40(c) of this subpart.

(2) Owners and operators of facilities that recycle or store recycled oil are subject to paragraph (d) of this section in addition to § 266.43 of this subpart when they initiate off-site shipments.

(3) A generator who transports recycled oil off-site is subject to the transporter standards of § 266.42 of this subpart in addition to this section.

(4) A generator who uses recycled oil on-site in a manner constituting disposal as defined by § 266.20 of this chapter is subject to the standards for persons using hazardous waste in a manner constituting disposal of § 266.23 of this chapter in addition to this section.

(5) A generator who burns recycled oil on-site is subject to the burner standards of § 266.44 of this subpart in addition to this section.

(6) A person who collects recycled oil from small quantity recycled oil generators under § 266.40(c) of this subpart is subject to the transporter standards of § 266.42 of this subpart but is not subject to this section.

(b) *Identification numbers.* Generators must comply with § 262.12 of this chapter.

(c) *On-site storage.* Except as provided by this paragraph a generator who stores on-site is subject § 266.43 of this subpart as well as this section. Generators who meet the following requirements are not subject to § 266.43 of this subpart:

(1) The generator only stores recycled oil in either tanks or containers;

(2) Recycled oil is stored on-site no longer than 90 days;

(3) Tanks and containers must be clearly labeled with the term "RECYCLED OIL;"

(4) *Container standards.* Generators storing in containers must comply with the following requirements from Subpart I of Part 265 of this Chapter:

Section 265.171, the condition of containers;
Section 265.173, the management of containers;
Section 265.174, inspections; and
Section 265.176, special requirements for ignitable waste.

(5) *Standards for tank systems.* Generators storing in tanks must comply with the following requirements for tank systems:

(i) *Uncovered tanks* must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a secondary containment structure (e.g., dike or trench) or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank;

(ii) *Continuously fed tanks.* Where recycled oil is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., a waste feed cutoff system or bypass system to a standby tank);

(iii) *Tank system inspection requirements.* The generator must conduct and document an inspection of (where present):

(A) Discharge control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) and leak detection equipment, at least once each operating day, to ensure that the tank system and leak detection system (if any) are being operated according to their design;

(C) For uncovered tanks, the level of recycled oil in the tank at least once each operating day;

(D) The aboveground portions of the tank system, if any, at least once each operating day, to detect corrosion or leaking of fixtures, joints, or seams; and

(E) The construction materials of, and the area immediately surrounding the externally accessible portion of the tank system and secondary containment structure (if any) at least weekly to detect erosion or signs of leakage (e.g., oil spots, dead vegetation).

(iv) *Closure of tank systems.* At closure, all recycled oil and associated residues must be removed from tanks, discharge control equipment, and discharge confinement structures (if present).

Note.—Used oil and associated residues removed at closure are subject to this subpart if recycled. If disposed of (or if mixed with another hazardous waste) the used oil and residues are subject to the hazardous waste regulations of Parts 261–265 of this chapter.

(v) *Special requirements for ignitable recycled oil.* A generator who stores ignitable recycled oil, as defined by § 261.21 of this chapter, must comply with the buffer zone requirements for tanks contained in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquid's Code" 1977 or 1981 [incorporated by reference, see § 260.11 of this chapter].

(vi) *Special requirements for tank systems that are leaking or otherwise unfit-for-use.* A generator with a tank system that is leaking or otherwise unfit-for-use must comply with the following in addition to otherwise applicable paragraphs of this section:

(A) A tank system found to be leaking must be immediately removed from service and the generator must satisfy the following requirements:

(*1*) The flow or addition of recycled oil into the tank system must be stopped immediately;

(*2*) The remaining recycled oil in the tank system (or its secondary containment system, if any) must be removed as quickly as possible and no later than 24 hours after detection of the leak so that no further release of recycled oil is permitted to occur and inspection or repair of the tank system can be performed;

(*3*) Necessary steps must be immediately taken to contain any visible contamination resulting from a release from the tank system that has occurred or is occurring; and

(*4*) The Regional Administrator must be notified within 24 hours after confirmation of the leak.

(B) Tank systems taken out of service in accordance with paragraph (c)(5)(vi)(A) of this section must be (at the option of the generator) either:

(*1*) Closed in accordance with Paragraph (c)(5)(v) of this section; or

(*2*) Repaired; or

(*3*) Replaced.

(C) When the generator repairs or replaces a tank system under paragraph (c)(5)(vi)(B) of this section, he must then comply with the standards for new tank systems in paragraph (c)(5)(vii) of this section.

(vii) *Special requirements for new tank systems.* A generator who installs a tank system after [*reserved for the effective date of these regulations*] must comply with the following requirements in addition to otherwise applicable paragraphs of this section:

(A) [*Reserved for secondary containment standards*]; and

(B) [*Reserved for closure and post-closure requirements*].

(6) *Standards for facility management.* Generators must comply with the following requirements:

(i) *Required items.* The following items must be on-site:

(A) A telephone;

(B) An appropriate number and type of portable fire extinguishers; and

(C) Absorbents (e.g., sawdust) or other spill control material.

Note.—Used oil spill clean-up materials and used oil-soaked absorbents are hazardous wastes. If recycled, the materials are subject to this Subpart. If disposed of, the material is subject to full regulation as hazardous waste under Parts 261–265, 270, and 124 of this chapter.

(ii) *Emergency coordinator.* At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (c)(6)(v) of this section. This is the emergency coordinator.

(iii) *Arrangements with local authorities.* The generator must request an inspection by the local fire department to familiarize the fire personnel with the layout of the facility, where oil is stored, and entrances to and roads within the facility, and to determine that an appropriate number and type of fire extinguishers are present. Where the fire department declines to conduct such an inspection, the generator must document such refusal and keep a record of the refusal at the facility.

(iv) *Posting of information.* The generator must post the following information next to the telephone:

(A) Name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers, spill control materials, and if present, fire alarm; and

(C) Telephone number of the fire department, unless the facility has a direct alarm.

(v) *Emergency procedures.* Either the emergency coordinator or his designee must respond to emergencies as follows:

(A) In the event of a fire, attempt to extinguish it using a fire extinguisher and call the fire department;

(B) In the event of a spill, contain the flow of oil to the extent possible and as soon as practical clean-up the oil and any contaminated materials or soil;

(C) When either the fire department must be summoned or when a spill reaches surface waters or an adjoining shoreline the generator must file a report with the Regional Administrator within 15 days including the following:

(*1*) The name, address, and EPA identification number of the generator;

(*2*) Date, time, and type of incident (e.g., spill or fire);

(*3*) Quantity of oil involved in the incident;

(*4*) Extent of injuries, if any; and

(*5*) Estimated quantity and disposition of recovered materials.

(vi) *Personnel training.* The generator must ensure that all employees are thoroughly familiar with proper handling and emergency procedures under paragraph (c) of this section.

(d) *Shipments off-site.* A generator or an owner or operator who initiates a shipment off-site must comply with the following:

(1) *General.* (i) A generator (or owner or operator) must comply with the pre-transport requirements of §§ 262.30, 262.31, 262.32, and 262.33 of this chapter, and the international shipment requirements of § 262.50 of this chapter.

(ii) Except as provided by paragraph (d)(2) of this section, a generator (or owner or operator) must comply with the manifest requirements of Part 262, Subpart B of this chapter, and the exception reporting requirements of § 262.42 of this chapter.

(2) *Special requirements when a recycling contract exists.* When the conditions of paragraph (d)(2)(i) of this section are met, the generator (or owner or operator) may, at his option, comply with paragraph (d)(2)(ii) of this section in lieu of the manifest requirements of Part 262, Subpart B of this chapter, and the exception reporting requirements of § 262.42 of this chapter.

(i) *Conditions.* The generator (or owner or operator) must either:

(A) Enter into a written agreement for delivery of recycled oil to an authorized facility. The generator (or owner or operator) must keep a copy of each agreement at his site for as long as the agreement is in effect; or

(B) Manage the recycled oil at a facility that he owns and that is authorized to manage recycled oil.

Note.—Section 266.40(e)(3) defines the types of facilities authorized to manage recycled oil.

(ii) *Requirements*—(A) *Required notices.* The generator (or owner or operator), before initiating a shipment off-site, must obtain a one-time written and signed notice from the owner or operator of the receiving facility certifying that the facility is authorized to manage recycled oil, and including the facility's EPA identification number. The generator (or owner or operator) must keep each written notice received

for at least three years from the date recycled oil is last sent to the facility.

(B) *Designated facilities.* When offering a shipment of recycled oil to a transporter, the generator (or owner or operator) must provide the transporter with the names, addresses, and EPA identification numbers of those facilities who have provided the written notice required by pararaph (d)(2)(ii)(A) of this section.

(C) *Records of shipments.* For each shipment off-site, the generator (or owner or operator) must record the following information. The records must be retained for at least three years from the date of shipment. Required information:

(*1*) The name, address, and EPA identification number of the transporter;

(*2*) The quantity of recycled oil being shipped; and

(*3*) The date of shipment.

§ 266.42 Standards for transporters.

(a) *Applicability.* (1)(i) This section applies to transporters of recycled oil, including persons who collect from small quantity recycled oil generators under § 266.40(c)(2) of this subpart;

(ii) This section does not apply to on-site transportation either by generators or by owners or operators of facilities.

(iii) This section does not apply to transportation of the recycled oils exempted under §§ 266.40(a)(2) and 266.40(b) of this subpart, nor to transportation of household-generated recycled oil from households to collection centers.

(2) A transporter is subject to the generator standards of § 266.41 of this Subpart in addition to this section if he:

(i) Transports recycled oil into the United States from abroad; or

(ii) Mixes recycled oils of different DOT shipping descriptions by placing them in the same container.

(3)(i) Except as provided by paragraph (a)(3)(ii) of this section, a transporter who recycles or stores recycled oil at a facility is subject to the standards for used oil recycling facilities of § 266.43 of this subpart.

(ii) Storage of recycled oil at a transfer facility for a period not exceeding 10 days is exempt from § 266.43 of this subpart and from permitting under Part 270 of this chapter, provided the following conditions are met:

(A) Containers used for storage must meet applicable packaging requirements of the U.S. Department of Transportation under 49 CFR Parts 173, 178, and 179; and

(B) [*Reserved for tank system secondary containment standards.*]

(b) *Identification numbers.* Transporters must comply with § 263.11 of this chapter.

(c) *Discharges.* Transporters must comply with Part 263, Subpart C of this chapter.

(d) *Manifested shipments.* When a transporter accepts a shipment of recycled oil accompanied by a hazardous waste manifest he must comply with the manifest and recordkeeping requirements of Part 263, Subpart B of this chapter.

(e) *Shipments without manifests.* A transporter may accept recycled oil from a generator without a hazardous waste manifest under the special conditions of either § 266.40(c)(2) of this subpart pertaining to small quantity recycled oil generators or of § 266.41(d)(2)(i) of this subpart pertaining to recycling contracts. When so accepting unmanifested shipments, the transporter must comply with the following requirements in lieu of Part 263, Subpart B of this chapter.

(1) *Record of acceptance.* For each acceptance, the transporter must record the following information. The record must be retained for at least three years from the date of acceptance. Required information:

(i) The name, address, and (when applicable) EPA identification number of the generator (or the owner or operator) offering the shipment;

(ii) The quantity of recycled oil accepted;

(iii) The proper shipping name of the oil under U.S. Department of Transportation rules in 49 CFR Part 172; and

(iv) The date the recycled oil is accepted.

(2) *Delivery.* Transporters must deliver all recycled oil accepted within 35 days of acceptance to a facility that meets the following conditions:

(i) The facility is authorized to manage recycled oil; and

(ii) Except for recycled oil collected from small quantity recycled oil generators under § 266.40(c) of this subpart, the facility is one of the facilities designated according to § 266.41(d)(2)(ii)(B) of ths subpart; and

(iii) When recycled oil is collected from small quantity recycled oil generators under § 266.40(c)(2) of this subpart, the transporter must, before delivering oil to a facility, obtain from the owner or operator of the facility a one-time written and signed notice certifying that the facility is authorized to manage recycled oil, and including the facility's EPA identification number. The transporter must keep each notice received for at least three years from the date recycled oil is last delivered to the facility.

(3) *Records of delivery.* For each delivery, the transporter must record the following information. The records must be retained for at least three years from the date of delivery. Required information:

(i) The name, address, and EPA identification number of the receiving facility;

(ii) The quantity of recycled oil delivered; and

(iii) The date of delivery.

§ 266.43 Standards for owners and operators of used oil recycling facilities.

(a) *Applicability*—(1) *General.* (i) This section applies to owners and operators of facilities that recycle or store recycled oil, including, but not limited to: Reclaimers, reprocessors, re-refiners, blenders, and burners. A facility subject to any paragraph of this section will be known as a "used oil recycling facility."

(ii) This section does not apply to facilities that only manage recycling oil that has been exempted under §§ 266.40(a)(2) and 266.40(b) of this subpart.

(2) *Generators.* (i) Except as provided by §§ 266.40(c) and 266.41(c) this subpart, generators who recycle or store recycled oil are subject to this section as well as § 266.41 of this subpart.

(ii) Except as provided by the conditional exemptions §§ 266.40(a)(2) and 266.40(b) of this subpart, an owner or operator who initiates a shipment off-site must comply with § 266.41(d) of the generator requirements of this subpart.

(3) *Transporters.* Except as provided by the special provisions of § 266.42(a)(3) of this subpart for transfer facilities, a transporter who recycles or stores recycled oil at a facility is subject to this section as well as § 266.42 of this subpart.

(4) *Recyclers without storage.* (i) Except as provided by paragraph (a)(4)(ii) of this section, the owner or operator of a facility who recycles but does not store recycled oil is subject only to the following requirements from this part or Part 264 of this chapter, as applicable:

Section 264.11, EPA identification numbers;
Section 264.12, required notices;
Section 266.23, standards for uses constituting disposal;
Section 266.41(d), requirements for shipments sent off-site;
Section 266.43(b)(1), (b)(2), and (b)(3), analysis requirements;
Section 266.43(e), acceptance of recycled oil from off-site;
Section 266.43(f), recordkeeping and reporting; and
Section 266.44, the standards for burners.

(ii) The owner or operator of a facility who recycles used oil in a surface impoundment is subject to all applicable paragraphs of this section, not to the reduced requirements of paragraph (a)(4)(1) of this section.

(5) *Additional requirements for certain facilities.* In addition to all other applicable provisions of this Subpart, the following owners and operators are subject to additional requirements as follows:

(i) An owner or operator of any of the following kinds of facilities must comply with Part 270, Subpart G of this Chapter pertaining to requirements for interim status facilities:

(A) A facility where recycled oil is stored or recycled in a surface inpoundment; or

(B) A facility where hazardous waste is managed in addition to recycled oil; or

(C) A facility where recycled oil is managed in a manner constituting disposal (as defined by § 266.20 of this Chapter).

Note.—A facility that has received a permit under Part 270 or Part 271 of this chapter is not eligible for interim status. In order to manage recycled oil, a facility that has received a permit must comply with §§ 124.5 and 270.41 pertaining to permit modifications.

(ii) An owner or operator who uses recycled oil in a manner constituting disposal (as defined in § 266.20 of this chapter is subject to § 266.23 of this chapter.

(iii) An owner or operator who burns recycled oil for energy recovery is subject to § 266.44 of this subpart.

(iv) An owner or operator who is either excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual facility permit under § 270.60(d)(3) of this chapter, must comply with § 264.101 of this chapter pertaining to corrective measures for releases from solid waste management units, as applicable.

(b) *General facility standards.* The owner or operator must comply with Part 264, Subpart B of this chapter, except that in lieu of the analysis requirements of § 264.13 of this chapter, the owner or operator must comply with paragraphs (b)(1) through (b)(3) of this section.

(1) *Analysis requirements.* The owner or operator must perform sampling and analysis as necessary to comply with applicable provisions of this Subpart. At a minimum, the analysis must include the following:

(i) *Halogens.* The owner or operator must determine the total halogen content of used oil managed at the facility. Used oil containing more than 1000 ppm total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume that used oil has been mixed with hazardous waste if it does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this chapter.

(ii) *Ignitability.* The owner or operator must determine whether recycled oil managed at the facility is ignitable according to § 261.21 of this chapter, unless all recycled oil is managed as ignitable waste under § § 264.17, 264.176, and 264.198 of this chapter;

(iii) *Specification fuel.* An owner or operator who produces fuel he claims is exempt from regulation under § 266.40(a)(2) of this subpart ("specification fuel") must analyze the fuel for arsenic, cadmium, chromium, lead, total halogens, and flashpoint. An owner or operator who produces specification fuel is subject to § 266.40(b)(1) of this subpart as well as this section.

(iv) *Mixing indicator parameters for hazardous waste facilities.* The owner or operator of a facility where hazardous waste is managed in addition to recycled oil must comply with the following in addition to applicable the requirements of paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) of this section:

(A) For each hazardous waste managed at the facility, the owner or operator must identify at least one indicator parameter that is found in the hazardous waste but not normally found in the recycled oil managed at the facility. For wastes listed in Part 261, Subpart D of this chapter, the indicator parameter would normally be the constituent specified in Appendix VII of Part 261, Subpart D of this chapter as the basis for listing; however, the Regional Administrator may, on a case-by-case basis, specify one or more alternate or additional indicator parameters; and

(B) The owner or operator must analyze the recycled oil managed at the facility for the parameters identified in paragraph (b)(1)(iv)(A) of this section to document that no mixing of hazardous waste and recycled oil occurs.

(2) *Analysis plan.* The owner or operator must develop and follow a written analysis plan describing the procedures he will use to comply with paragraph (b)(1) of this section. He must keep the plan at the facility. At a minimum, the plan must specify the following:

(i) The methods used to analyze recycled oil for the parameters specified in paragraph (b)(1) of this section;

(ii) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Appendix I of Part 261 of this chapter; or

(B) A method shown to be equivalent under §§ 260.20 and 260.21 of this chapter.

(iii) For paragraphs (b)(1)(i) and (b)(1)(ii) of this section, whether samples or other information will be obtained from generators, or alternatively, whether analyses will be performed on incoming shipments of recycled oil;

(iv) For paragraph (b)(1)(iii) of this section, whether recycled oil will be sampled and analyzed prior to or after any blending or treatment in the course of fuel production; and

(v) For all requirements in paragraph (b)(1) of this section, the frequency of sampling to be performed, and whether analysis will be performed on-site or off-site.

(3) *Analysis records.* Records of analyses conducted to comply with this paragraph must be maintained at the facility as part of the facility's operating record.

(c) *Preparedness and prevention.* The owner or operator must comply with Part 264, Subpart C of this chapter.

(d) *Contingency plan and emergency procedures.* The owner or operator must comply with Part 264, Subpart D of this chapter.

(e) *Acceptance of recycled oil from off-site*—(1) *Manifested recycled oil.* (i) When a shipment of recycled oil accompanied by a hazardous waste manifest is accepted, the owner or operator must comply with §§ 264.71 and 264.72 of this Chapter.

(2) *Unmanifested recycled oil.* (i) When recycled oil is accepted without a manifest in compliance with the special provisions of §§ 266.41(d)(2) and 266.42(e) of this subpart, the owner or operator must record the following information for each acceptance. The records must be retained for at least three years from the date of acceptance. Required information:

(A) The name, address, and EPA identification number of the transporter;

(B) The name, address, and (when applicable) EPA identification number of each generator who contributed to the shipment;

(C) The quantity of recycled oil accepted; and

(D) The date of acceptance.

(ii) When recycled oil is delivered without a manifest but arrangements have not been made under §§ 266.41(d)(2) and 266.42(e) of this chapter, the owner or operator must comply with § 264.76 of this chapter pertaining to unmanifested waste reports.

(3) *Hazardous waste mixtures.* When an owner or operator determines through analysis required by paragraph (b)(1)(i) of this section or other means that an incoming shipment (that was expected to be recycled oil but instead) has been mixed with hazardous waste, he must:

(i) Either refuse to accept the shipment, or accept the shipment and manage the mixture as hazardous waste under Parts 262–265, Part 266 Subparts C and D, and Parts 270 and 124 of this chapter; and

Note.—Under §§ 262.20 and 263.21, when a shipment of hazardous waste cannot be delivered to the generator's designated facility, the transporter must take the waste to an alternate facility or return it to the generator.

(ii) If the shipment is not manifested, comply with the requirements of § 264.76 of this chapter pertaining to unmanifested waste reports.

(f) *Recordkeeping and reporting.* In addition to the requirements of paragraphs (b)(3) and (e) of this section, the owner or operator must comply with the following record-keeping and reporting requirements from Part 264 of this chapter:

Section 264.73, operating record;
Section 264.74, availability, retention, and disposition of records;
Section 264.75, biennial report; and
Section 264.77, additional reports.

(g) *Closure, post-closure, and financial requirements.* (i) Owners or operators must comply with Subparts G and H of Part 265 of this chapter.

(ii) The owners or operator of any of the facility types excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual permit under §270.60(d)(3) of this chapter, must comply with Subparts G and H of Part 264 of this chapter as well as Subparts G and H of Part 265 of this chapter.

(h) *Storage requirements*—(1) *Containers.* An owner or operator who stores recycled oil in containers is subject to Part 264, Subpart I of this chapter.

(2) *Tank systems.* (i) An owner or operator who stores recycled oil in tanks is subject to Part 265, Subpart J of this chapter.

(ii) The owner or operator of any of the facility types excluded from permitting-by-rule under § 270.60(d)(1) of this chapter, or who is required to obtain an individual permit under § 270.60(d)(3) of this chapter, must comply with Part 264, Subpart J as well as Part 265, Subpart J of this chapter.

(3) *Surface impoundments.* An owner or operator who recycles or stores recycled oil in a surface impoundment is subject to Part 265, Subparts F and K and Part 264, Subparts F and K of this chapter.

§ 266.44 Standards for burners.

(a) *Applicability.* (1) *General.* (i) This section applies to any person (by site) who burns recycled oil. A person who burns will be known as a "burner."

(ii) This section does not apply when the special requirements of § 266.40(b)(1) pertaining to specification fuel are complied with.

(iii) This section does not apply to small quantity recycled oil generators who burn on-site in compliance with § 266.40(c)(1) of this subpart.

(2) Generators who burn on-site are subject to § 266.41 of this subpart in addition to this section.

(3) Burners are subject to the standards for used oil recycling facilities in § 266.43 of this subpart in addition to this section.

(b) [Remainder of this section reserved for substantative standards for burners.]

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3005, 3007, 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6901, 6912(a), 6925, 6927, 6934, and 6974] unless otherwise noted.

10. In Part 270, a new definition is added to § 270.2 to read as follows:

* * * * *

§ 270.2 Definitions.

* * * * *

"Recycled oil" means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or re-refined), or otherwise recycled, or that is accumulated, collected, stored, transported, or treated prior to recycling.

(a) [Reserved to define specific types of burning considered to be recycling.]

(b) The term includes mixtures of recycled oil and other materials, but not mixtures containing hazardous waste (other than used oil). Used oil containing more than 1000 ppm of total halogens is presumed to be mixed with chlorinated hazardous waste listed in Part 261, Subpart D of this chapter. Persons may rebut this presumption by demonstrating that the used oil has not been mixed with hazardous waste. EPA will not presume mixing has occurred if the used oil does not contain significant concentrations of chlorinated hazardous constituents listed in Appendix VIII of Part 261 of this Chapter.

* * * * *

11. In § 270.10, paragraph (a) is revised to read as follows:

§ 270.10 General application requirements.

(a) *Permit application.* (1) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73.

(2) Persons currently authorized with interim status shall apply for permits when required by the Director.

Except as provided by this paragraph for used oil recycling facilities, persons covered by RCRA permits-by-rule (§ 270.60) need not apply. The owner or operator of a used oil recycling facility who is not excluded from permit-by-rule eligibility by § 270.60(d)(1) of this part but who is not in full compliance with the permit-by-rule requirements of § 270.60(b)(2) of this Part as of [*insert effective date of the final rule § 270.60(d)(2)*] must provide written notice to EPA, *by [insert effective date of the final rule § 270.60(d) (2)]* that notification information submitted to EPA pursuant to RCRA section 3010 is intended to also satisfy the RCRA section 3005(e)(1)(C) "permit application" requirements for interim status.

(4) Procedures for applications, issuance, and administration of emergency permits are found exclusively in § 270.61.

* * * * *

12. In Part 270, a new paragraph (d) is added to § 270.60 to read as follows:

* * * * *

§ 270.60 Permits by rule.

* * * * *

(d) *Used oil Recycling Facilities.* Except as provided by paragraph (d)(1) or (d)(3) of this section, the owner or operator of a facility that recycles or stores recycled oil, if the owner or operator complies with the requirements of paragraph (d)(2) of this section.

(1) *Exclusions from the permit-by-rule.* Owners and operators of the following kinds of facilities are not eligible for the permit-by-rule, and are subject to individual permitting under this Part:

(i) Recycled oil is stored in a surface impoundment; or

(ii) Recycled oil is used at the facility in a manner constituting disposal, as defined by § 266.20 of this Chapter; or

(iii) Other hazardous wastes are managed at the facility in addition to recycled oil.

(2) *Requirements.* An owner or operator not excluded from permit-by-rule eligiblity by paragraph (d)(1) of this section must comply with the following requirements:

(i) *Standards.* The owner or operator must comply with §§ 266.43 and 266.44 of this Chapter, including amendments or modifications to § 266.43 or § 266.44 of this chapter within time limits as specified in the **Federal Register**;

(ii) *Duty to comply.* The owner or operator must comply with all conditions of § 266.43 and 266.44 of this chapter except that the owner or operator need not comply with the conditions to the extent and for the duration such non-compliance is authorized in an emergency permit as provided by § 270.61 of this Part. Any non-compliance, except under the terms of an emergency permit, constitutes a violation of the Act and is grounds for an enforcement action.

Note.—When there is a violation of § 270.60(d)(2) of this Part, the EPA Regional Administrator may take enforcement action under section 3008 of RCRA. Such action may include compliance orders and schedules, including monitoring schedules, and including revocation of authorization to manage recycled oil, as appropriate.

(iii) *Need to halt or reduce activity not a defense.* It shall not be a defense for an owner or operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the requirements of § 266.43 or § 266.44 of this chapter.

(iv) *Duty to minimize.* In the event of noncompliance, the owner or operator must take all reasonable steps to minimize releases to the environment, and must carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

(v) *Proper operation and maintenance.* The owner or operator must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner or operator to achieve compliance with § 266.43 or § 266.44 of this chapter. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

(vi) *Property rights.* The permit-by-rule of this section does not convey any property rights of any sort, nor any exclusive privilege.

(vii) *Duty to provide information.* The owner or operator must furnish to the Director, within a reasonable time, any relevant information which the Director may request to determine whether cause exists for revocation of permit-by-rule authorization or for requiring an individual permit, or to determine compliance with § 266.43 or § 266.44 of this chapter. The owner or operator must also furnish to the Director, upon request, copies of records required to be kept by § 266.43 or § 266.44 of this chapter.

(viii) *Inspection and entry.* The owner of operator must allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law to:

(A) Enter at reasonable times upon the owner or operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under § 266.43 or § 266.44 of this chapter;

(B) Have access to and copy, at reasonable times, any records that must be kept under § 266.43 or § 266.44 of this chapter;

(C) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under § 266.43 or § 266.44 of this chapter; and

(D) Sample or monitor at reasonable times, for the purposes of assuring compliance with § 266.43 or § 266.44 or as otherwise authorized by the Act, any substances or parameters at any location.

(ix) *Representative sampling.* Samples and measurements taken to comply with § 266.43 or § 266.44 of this chapter must be representative of the volume and nature of the sampled or measured activity.

(x) *Recording of monitoring.* The owner or operator must retain records of all monitoring information and copies of all reports required for a period of at least 3 years from the date of the sample, measurement, or report. Records of monitoring must include:

(A) The date, exact place, and time of sampling or measurement;

(B) The individual(s) who performed the sampling or measurements;

(C) The dates analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(xi) *Operating record.* A written operating record must be kept at the facility. The following information must be recorded as it becomes available and maintained in the operating record until facility closure:

(A) A description of and the quantity of recycled oil managed at the facility;

(B) The location of recycled oil stored at the facility and the quantity stored at each location;

(C) Summary reports and details of all incidents that require implementation of the contingency plan;

(D) Records and results of inspections (including the date and nature of any necessary repairs); and

(E) Results of any monitoring performed to comply with § 266.43 or § 266.44 of this chapter.

(xii) *Signatory requirement.* All reports or information submitted to the Director must be signed by a responsible corporate officer [as defined by § 270.11(a)(1) of this part], by a general partner, by the sole proprietor, or by the principal executive officer or ranking elected official, and must include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(xiii) *Anticipated noncompliance.* The owner or operator must give notice to the Director of any planned changes in the facility or activity which may result in noncompliance with either § 266.43 or § 266.44 of this chapter.

(xiv) *24 hour reporting.* (A) The owner or operator must report any noncompliance which may endanger human health or the environment orally within 24 hours from the time he or she becomes aware of the circumstances, including:

(*1*) Information concerning release of any recycled oil or hazardous

constituent thereof that may cause an endangerment to public drinking water supplies; and

(2) Any information of a release or discharge of recycled oil or hazardous constituent thereof or of a fire or explosion from the facility, which could threaten the environment or human health outside the facility.

(B) The description of the occurrence and its cause must include:

(1) The name, address, and telephone number of the owner or operator;

(2) The name, address, and telephone number of the facility;

(3) The date, time, and type of incident;

(4) The name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment outside the facility, if applicable; and

(7) Estimated quantity and disposition of recovered material, if any, resulting from the incident.

(C) A written submission must also be provided with in 5 days of the time the owner or operator becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Director may waive the 5 day written notice requirement in favor on a written report within 15 days.

(xv) *Biennial report.* The owner or operator must prepare and submit a single copy of a biennial report to the Director by March 1 each even-numbered year. The report must cover activities of the previous year (odd-numbered year) and must be prepared in accordance with the requirements of § 264.75 of this chapter and submitted on EPA Form 8700-1 3B.

(xvi) *Other information.* When the owner or operator becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in any report to the Regional Administrator, he or she must promptly submit corrected information or additional facts.

(3) *Individual permits.* (i) The Director may require an owner or operator to apply for and (as a condition of continued operation) obtain an individual RCRA facility permit under this Part if he obtains information through site inspections or other means indicating any of the following conditions:

(A) The owner or operator has not met one of the requirements of paragraph (d)(2) of this section; or

Note.—The EPA Regional Administrator may, in addition to requiring an individual permit, take enforcement action under section 3008 of RCRA for a violation of § 270.60(d)(2) of this chapter.

(B) The facility, because of the type or quantities of recycled oil being managed, or the management methods in use, or the facility's location, or other relevant factors, could in the judgment of the Director, pose a substantial potential or present hazard to human health or the environment and that individual facility permitting under this Part is necessary to provide adequate protection; or

(C) There has been a release of recycled oil, hazardous waste, or a hazardous constituent from a solid waste management unit at the facility to the environment and in the judgment of the Director, the corrective action measures implemented by the owner or operator are inadequate to ensure protection of human health and the environment.

Note.—When an owner or operator is required to obtain an individual RCRA permit, he is subject to § 264.101 of this chapter pertaining to corrective action for releases from solid waste management units, as applicable.

(ii) Within 180 days of notification by EPA that an individual RCRA facility permit is required, the owner or operator must submit Part B of the RCRA permit application under Subpart B of this part. The owner or operator remains subject to paragraph (b)(2) of this section until final disposition is made concerning the individual facility permit.

(iii) If the Director denies the owner's or operator's application for a permit he is not eligible for the permit-by-rule under paragraph (d) of this section.

Note.—The owner or operator of a facility whose permit application is denied is not eligible for interim status under section 3005(e) of RCRA.

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a) and 6926].

14. In Part 271, § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the FEDERAL REGISTER	Title of regulation
* * * * *	
[insert date of publication of the final rule].	Standards for the Management of Recycled Oil
* * * * *	

[FR Doc. 85-27902 Filed 11-27-85; 8:45 am]

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40 CFR Parts 260, 261, 271, and 302

[SWH-FRL-2873-5(a)]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to amend the regulations for hazardous waste managment under Subtitle C of the Resource Conservation and Recovery Act (RCRA), by listing used oil as a hazardous waste. EPA has determined that used oil typically and frequently contains significant quantities of lead and other metals, chlorinated solvents, toluene, and naphthalene which would pose a substantial hazard to human health and the environment, if improperly managed. Today's notice also proposes a regulatory definition of used oil and proposes two modifications to the mixture rule to exempt certain mixtures of used oil from regulation. Finally, because used oil will become a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a result of today's listing, EPA is also proposing to adjust the statutory one pound CERCLA reportable quantity (RQ) for used oil to 100 pounds. The effect of today's proposal, if promulgated, would be to control the treatment and disposal of used oil (as well as its transportation, accumulation, or storage prior to treatment or disposal), by subjecting it to full hazardous waste regulation under Subtitle C of RCRA. At the same time, most used oil that is recycled would be subject to the special management standards for recycled oil being proposed in another Section of today's **Federal Register.**