

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 261, 264, 265, 271, and 279**

[EPA/530-Z-93-004; FRL-4619-7]

RIN 2050-AC17

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; technical amendments and corrections.

**SUMMARY:** This action corrects several technical errors and provides clarifying amendments to the final recycled used oil management standards rule. The final rule was published on September 10, 1992 (57 FR 41566). This action also corrects an error in the final used oil rule published on May 20, 1992 (57 FR 21524). These revisions provide clarification and correct unintended consequences of both rules.

**EFFECTIVE DATE:** March 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Eydie Pines at (202) 260-3509 or Bryan Groce at (202) 260-9550, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

**A.1. Burning and Blending Requirements (Former Part 266, Subpart E)**

On September 10, 1992, EPA promulgated regulations to govern the management of recycled used oils. In the discussion of the state authorization process in the final rule (57 FR 41566), EPA stated that the new part 279 regulations were being promulgated under section 3014(a) of RCRA, and noted that section 3014(a) "predates the 1984 HSWA amendments." The Agency went on, in that section, to explain that the part 279 requirements would take effect in states without final RCRA authorization 6 months after publication (March 8, 1993) and that the part 279 standards would become effective in states with RCRA base program authorization only after the state revised its RCRA program to include the new requirements. This discussion implied that all of the requirements being promulgated under part 279 are RCRA requirements that are not mandated under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and that, therefore, the new standards governing

the management of recycled used oils would not be immediately enforceable by EPA in authorized states.

The discussion of the status of the part 279 requirements in authorized states was based in large part on the fact that section 3006(h) of RCRA, which was added by Congress as part of the Superfund Amendments and Reauthorization Act of 1986, allows EPA to authorize state used oil programs in the same manner as state hazardous waste programs. EPA believes that Congress did not express an intent to treat used oil requirements under section 3014(a) as "HSWA" requirements, that is, as directly enforceable by EPA prior to State authorization under Section 3006(h). After publication of the September 10, 1992 notice, however, EPA realized that its position was arguably inconsistent with statements made in the preamble to the November 29, 1985 final rule promulgating standards for the burning of used oil, and that further clarification is necessary.

Some of the part 279 provisions promulgated in the used oil management standards consist of existing requirements that have been recodified from 40 CFR part 266, subpart E, as adopted in 1985. On November 29, 1985 (50 FR 49201), EPA issued the used oil burning requirements pursuant to the authority of section 8 of the Used Oil Recycling Act of 1980 (UORA), now incorporated as section 3014(a) of RCRA. At that time, there was no section 3006(h) and, therefore, no statutory mechanism existed to authorize states to operate programs for the recycling of non-hazardous used oil. EPA, therefore, took the position that the used oil burning requirements adopted under section 3014(a) would be Federally enforceable in both authorized and non-authorized states. With the addition of section 3006(h) to RCRA in 1986, however, that statutory authority to authorize states to regulate nonhazardous used oil recycling now exists. This raises the question of whether the old part 266, subpart E requirements should be treated like the other section 3014(a) requirements issued in 1992, that is, not Federally enforceable in states that have been authorized for the RCRA base program, but are not authorized for the subpart E requirements. EPA believes that, by the addition of section 3006(h) to RCRA, Congress could not have intended to make these requirements suddenly unenforceable in authorized states where they had been previously enforceable. Indeed, EPA believes that Congress intended for these requirements to be enforced both prior

to and following the 1986 amendment to RCRA. Therefore, EPA is clarifying that all existing used oil burning requirements originally promulgated in 1985 remain Federally enforceable in all States which are not yet authorized for the former part 266, subpart E, whether or not the State has received RCRA subtitle C base program authorization.<sup>1</sup> States must modify their programs to include requirements equivalent to the Federal provisions or may promulgate more stringent regulations.

Table 1 of § 271.26 identifies which part 279 requirements represent the previous part 266, subpart E provisions that will continue to be Federally enforceable in States not authorized for these provisions. The regulatory text in part 279, subparts G and H has not been substantially changed from that previously found in part 266, subpart E. When revisions were made, the revisions were for clarification purposes only. Thus, §§ 279.10, 279.11, and most provisions of § 279.1 and of part 279, subparts G and H will continue to be Federally enforceable in states that have not yet adopted requirements equivalent to the previous part 266, subpart E requirements and received authorization from EPA to implement and enforce those requirements. For all other provisions of part 279, EPA continues to believe that it is the most consistent with the intent of Congress to treat these requirements in the same manner as non-HSWA provisions of the hazardous waste regulations, and as such, subject them to the RCRA state authorization program requirements. In the case of all new provisions (those not previously contained in part 266, subpart E), these provisions do not become effective in authorized states until individual states adopt the provisions and EPA grants the states authorization for the provisions.<sup>2</sup> In the case of those few states (Alaska, Hawaii, Iowa, Wyoming, and the U.S. Territories) that are not authorized for the RCRA base program, all part 279 provisions will be effective and Federally enforceable six months after promulgation of the part 279 provisions (March 8, 1993).

<sup>1</sup> In order to retain authorization for the RCRA program, states have been authorized to enforce the part 266, subpart E requirements. These states remain authorized to implement and enforce these provisions, and today's notice and the final recycled used oil regulations do not affect these states' authorities regarding the existing provisions. For convenience, authorization/processing of state applications is considered within HSWA Cluster I by EPA.

<sup>2</sup> As stated in the final rulemaking for recycled used oil management standards, authorized states must modify their programs by July 1, 1994 if no statutory changes are required, or by July 1, 1995 if statutory changes are necessary (see 57 FR 41605).



In Table 1 of § 271.26, EPA notes that there is no recodified provision in part 279 to correspond with the previous 40 CFR 266.43(b)(4)(vi). The Agency

believes that the information required under former § 266.43(b)(4)(vi), i.e., a statement reading "This used oil is subject to EPA regulation under 40 CFR

part 266," is unnecessary and redundant. Therefore, EPA has not included this requirement in the new used oil management standards.

Status of State	Before 3/8/93	As of 3/8/93
Non-authorized RCRA Base Program.	40 CFR part 266 subpart E Federally enforceable.	40 CFR part 279 is Federally enforceable.
Authorized RCRA Base Program	40 CFR part 266 subpart E is Federally enforceable.	40 CFR part 279 subparts A-F and I are not enforceable until the state is granted authorization. 40 CFR part 279 subparts G and H are Federally enforceable.
Non-authorized part 266 subpart E.		
Authorized RCRA Base Program	40 CFR part 266 subpart E is State enforceable.	40 CFR part 279 subparts A-F and I are not enforceable until the state is granted authorization. 40 CFR part 279 subparts G and H are state enforceable <sup>1</sup> .
Authorized part 266 subpart E.		

<sup>1</sup> 40 CFR part 279, subparts G and H contain certain provisions which were not in part 266, subpart E. The State will continue to enforce only those provisions for which it obtained authorization (those provisions are listed in Table 1 of § 271.26).

## B. Technical Corrections

### 1. Corrections to the Preamble Language

This action corrects several errors that were published in the September 10 final rule. There are several typographical errors in the preamble, as well as misstatements and incorrect references to regulatory and preamble sections. These corrections are described below.

1. On page 41579, in the second column, remove the word "and" in line ten so the line reads as follows: "is to be burned for energy recovery, the used oil will have to \* \* \*"

2. On page 41581, in the first paragraph in the middle column, the reference to § 260.40(d)(2) should read § 266.40(d)(2).

3. On page 41583, in the middle column, six lines from the bottom, remove the reference to "section VI.D.3." of the preamble.

4. On page 41585, in the first paragraph of the first column, the reference to section "V.D.1.h." should read "VI.D.1.h."

5. On page 41585, in the last sentence of the section entitled *b. Used oil generated on ships*, the reference to "§ 279.10(e)(3)" should read "§ 279.10(f)".

6. On page 41587, the word "send" in line 18 in paragraph two of the second column should be revised to "sent".

7. On page 41590, in footnote 17, the reference to "section VI.E.5." of the preamble should read "section VI.D.4.", referring to the discussion of secondary containment provisions at processing/re-refining facilities.

8. On page 41590, in the first column, revise the heading and the first sentence of section (e) with the following text: "DOT Requirements. Persons offering used oil for transportation as well as persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8, must comply with all

applicable regulations in 49 CFR Parts 171 through 180." Also add the additional new text after the first sentence. "On February 2, 1993, the Department of Transportation published an interim final rule which amended the DOT's hazardous materials regulation by regulating oil as a hazardous material. The interested reader is referred to this document for further information regarding the applicability of this rule."

9. On page 41591, in the second paragraph of the middle column, and on page 41596, in the first paragraph of the first column, the reference to "40 CFR 112.79(c)" should read "40 CFR 112.7(c)".

10. In footnote 21 on page 41595, the reference to preamble section "VI.E.5." should read "VI.D.3."

11. On page 41598, in the last sentence of the first paragraph of the section entitled 1. *Closure*, remove the phrase "per 40 CFR 261.3(d)," and add the following sentence to the end of the paragraph: "For a determination of hazard regarding contaminated media and other materials, see 40 CFR 261.3, as well as EPA's 'contained-in principle' (57 FR 983 (Jan. 9, 1992) and 57 FR 37225 (Aug. 18, 1992))."

12. On the same page, in the last sentence of the last full paragraph in the third column, remove the phrase "per 40 CFR 261.3(d) or 261.4(b)" and add the following sentence to the end of the paragraph: "For a determination of hazard regarding contaminated media and other materials, see 40 CFR 261.3, 261.4(b), as well as EPA's 'contained-in principle' (57 FR 983 (Jan. 9, 1992) and 57 FR 37225 (Aug. 18, 1992))."

13. On page 41599, under part 5(a) revise the reference to "266.41", in the third sentence, to read "266.40".

14. On page 41600, under 5.f. Storage Requirements, after the last word of the first paragraph, add the following text "

or units subject to regulation under 40 CFR parts 264 or 265."

15. On page 41600, in the first paragraph of the middle column, the reference to preamble "section VI.5.f." should read "section VI.D.4."

16. On page 41600, in the section entitled *h. Used oil fuel analysis (halogens)*, the reference to "§ 266.40" should read more specifically as "§ 266.40(c)".

17. On page 41605, in the first column, first complete paragraph, second sentence, add the words "and on Indian lands" after the word "states" so that the text reads as follows: "The rules will take effect in states and on Indian lands that do not have final authorization . . ."

18. On page 41605, second column, first complete paragraph, second sentence, after the word "states" add the words "and Indian lands" so that the text reads as follows: "That is, in the unauthorized states and Indian lands, a used oil . . ."

### 2. Clarification of Issues Discussed in the Preamble

In addition to the corrections listed above, EPA wishes to clarify several issues discussed in the preamble of the May 20, 1992 and September 10, 1992 rule.

EPA is clarifying the definition of used oil processing as it relates to the act of gravity hot-draining used oil from non-terne plated used oil filters. The definition of used oil processing was intended to regulate the process of making used oil more amenable for production of fuel oils, lubricants and other used oil derived products. The act of physically separating used oil from non-terne plated used oil filters does not fall under the processing definition if the act is conducted for the purpose of removing the used oil for management under part 279. The Agency did not intend to regulate the removal of used



oil from non-terne plated used oil filters under the § 279.1 processing definition, and therefore clarifies the distinction between the "removal of used oil from solid waste," which does not fit under the processing definition, and "making used oil more amenable for production of fuel oils, lubricants and other used oil derived products" which does fit under the processing definition.

On page 41574, in the third column, the first sentence of the first full paragraph incorrectly states that residues or sludges from the processing of used oil are not regulated under part 279. In fact, as evidenced by § 279.10(e), EPA did intend to regulate such residuals if burned for energy recovery or used in a manner constituting disposal, with the exception of re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

On page 41583, in the first column at the end of section g.iii, EPA incorrectly states that mixtures of used oil and diesel fuel mixed by a generator for use in its own vehicles "must be managed in accordance with the used oil fuel specification regulations." In fact, as the language of section 279.20(a)(3) states, EPA does not intend to regulate such mixtures under any provision of part 279 once the mixing has occurred.

On page 41587, near the middle of the first column, EPA cites Alabama's Project ROSE as an example of a program that runs "do-it-yourself" used oil collection centers. This is not entirely accurate. While Project ROSE may administer some collection centers that accept used oil solely from household DIY generators, the preamble correctly describes the Alabama program in stating that it accepts used oil from commercial generators as well. Therefore, Project ROSE is not the best example of a "DIY used oil collection center," since by definition, such collection centers are not authorized to accept used oil from regulated generators. The Project ROSE program provides a better example of a "used oil collection center," as defined in § 279.1 and discussed above.

On page 41582, in footnote 9, EPA misquotes the words of § 279.61(a)(3) to say that off-spec. used oil may be burned in an incinerator "in compliance with subpart O of 49 CFR parts 264/265." The language of the regulation actually reads "subject to regulation under 40 CFR part 264 or 265." EPA makes the same or similar errors on page 41586 in the last full paragraph of the first column, on page 41599 in section b.(4), and on page 41600 in footnote 23.

On page 41601, the first paragraph of section 6 states that the requirements for marketers formerly contained in § 266.43 were recodified in part 279, subpart H "without modification." In fact, EPA did introduce certain changes to these requirements. EPA added certain exemptions to the "rebuttable presumption" of mixing used oil with hazardous waste, added additional definitions, and made certain changes to the record-keeping requirements on marketers. EPA also amended the definition of "marketer" to include only those persons who initiate the shipment of off-specification used oil fuel directly to a used oil burner or who are the first to claim that a used oil fuel meets the specification. The former definition of marketer included those who market off-specification fuel to other marketers. EPA made this change because those persons who initiate shipments of off-specification fuel to other marketers are already covered by the new tracking requirements in part 279 for generators, transporters, or recycling facilities. Similarly, the first full sentence in the middle column following Table VI.6. implies that there is an entity called a "fuel oil dealer" who is neither a generator, transporter, or recycling facility who may be selling on-specification fuel. This statement is misleading in light of the revised definition of marketer in part 279. "Fuel oil dealers" who never handle used oil fuel were never intended to be regulated by part 266, subpart E, and are not regulated under the new part 279, subpart H. Persons who accept off-specification used oil fuel from a generator, transporter, or recycling facility and market it to a burner are subject to regulation under part 279 as marketers.

EPA discussed the requirements for used oil storage at several places in the preamble. The regulations at §§ 279.22(a), 279.45(b), 279.54(a), and 279.64(a) state that used oil generators, transporters, processors/re-refiners, and burners must not store used oil in units other than tanks, containers, or units subject to regulation under part 264 or 265 of 40 CFR. In the preamble discussions of storage (57 FR 41586, 41591, 41594, and 41600), EPA makes reference to compliance with parts 264 or 265 only with respect to surface impoundments (parts 264 or 265, subpart K). EPA clarifies that nothing precludes a used oil handler from storing used oil in a container or tank that is subject to regulation under the applicable requirements of part 264 or 265 (i.e., subparts I and J, respectively). These requirements are more stringent

than the used oil management standards promulgated on September 10 and, therefore, provide an adequate level of protection of human health and the environment. As stated on page 41591 in the discussion of storage at used oil transfer facilities, any used oil transfer facility that is currently in compliance with the part 265, subpart J requirements (for aboveground tanks) will be deemed in compliance with the requirements promulgated today. Such is the case for other types of used oil handlers and other types of storage units as well.

On page 41599, EPA explained that off-specification used oil may be burned only in certain devices. In the preamble to the 1985 regulations, EPA explained that the regulations were designed only to address the burning of used oil in such devices and that they did not apply to the burning of used oil in other devices such as diesel and marine engines because EPA did not develop the used oil specification with these types of devices in mind (see 50 FR 49192). EPA wishes to clarify that the provisions of §§ 279.12(c) and 279.61(a) were not intended to alter this pre-existing policy. Therefore, the burning of used oil in devices such as diesel and marine engines is not subject to regulation under part 279, subpart G.

### 3. Corrections to the Regulatory Language

In the September 10 rule, EPA exempted from regulation both as used oil and as hazardous waste, those distillation bottoms from used oil re-refining that are used for making asphalt products from regulation [§ 279.10(e)]. This action moves part of that provision without change to § 261.4(b), the appropriate location for an exclusionary provision from the definition of hazardous waste. In addition, this notice corrects a numbering error that was made in the May 20, 1992 final rule (57 FR 21534) and repeated in the Correction Notice of July 1, 1992 (57 FR 29220). In both the May 20 final rule and the subsequent correction notice, the exclusion for non-terne plated used oil filters was codified as subparagraph (b)(15) of § 261.4 even though EPA had not yet promulgated paragraphs (b)(13) or (b)(14). This action corrects these errors by redesignating the used oil filter exclusion as § 261.4(b)(13).

The Agency is amending § 271.16, *Requirements for Enforcement Authority*, to add language regarding violations of the used oil management standards. This section sets out the requirements for criminal enforcement authority for states seeking authorization to operate state programs



in lieu of subtitle C programs. Congress amended RCRA in 1986 to clarify that EPA's criminal enforcement authorities for violations of subtitle C requirements extend to violations of requirements for used oil that is regulated under section 3014 of RCRA but not listed or identified as a hazardous waste. Congress also amended section 3006(h) to require EPA to apply the same standards and procedures in its review of state programs for nonhazardous used oil, that it applies when reviewing programs for hazardous wastes under subtitle C. In other words, state programs for nonhazardous used oil must be equivalent to and consistent with the federal program (and programs in other states). Such programs must also provide for adequate enforcement.

Congress clearly felt that criminal enforcement authorities were essential to successful implementation of federal regulatory program for nonhazardous used oils. EPA believes that criminal enforcement authority is equally important to adequate enforcement of state programs for nonhazardous used oils. Consequently, EPA is amending § 271.16 to clarify that any state that decides to regulate recycled used oil as nonhazardous waste and apply to EPA for authorization to operate its state program in lieu of the federal program must show that it has authority to bring criminal enforcement actions for specified violations of its used oil program.

In addition, EPA is amending § 279.10(i), dealing with PCB-contaminated used oil. The language codified in the September 10 rule indicated that used oils contaminated with PCBs, which are regulated under part 761 of the TSCA regulations, are exempt from the part 279 requirements. EPA's intent was to avoid duplicative regulation of such used oils, and the Agency mistakenly included this language in § 279.10(i), assuming that the requirements in § 761.20(e) comprehensively regulated such oils. The language in § 761.20(e), however, incorporates by reference the requirements of the former part 266, subpart E and supplements them, rather than substitutes for them, such that PCB-contaminated used oils are currently subject to both RCRA and TSCA regulations governing the burning of used oil for energy recovery. EPA did not intend, by the promulgation of part 279, to relax the existing requirements on used oils containing PCBs. EPA, therefore, is amending § 279.10(i) to accurately reflect the complementary nature of the RCRA and TSCA regulations. Marketers and burners who market used oil containing any

quantifiable level of PCBs must comply with applicable standards of part 279 as well as additional standards and restrictions under 40 CFR 761.20(e).

Consistent with this change to the regulations, in the preamble statement on page 41583, in section (v) in the middle column, *PCB-contaminated used oils*, the following clarifying sentences should be added to the end of the paragraph: "Marketers and burners of used oil who market used oil fuel containing any quantifiable level of PCBs are subject to applicable standards on marketing and burning used oil containing PCBs found at 40 CFR 761.20(e). Blending for the purpose of reducing the concentration of PCBs to below 50 ppm or the level of detection is prohibited."

On page 41581 of the preamble, EPA explained that it was adopting a "no free flowing oil" concept to address the regulation of materials containing or otherwise contaminated with used oil. EPA explained that if there was no visible sign of free-flowing oil on or in a material, the material would not be regulated as used oil. Materials containing or otherwise contaminated with used oil would be regulated as used oil until the used oil was removed from the material, and the oil removed from such a material would also be regulated as used oil. The regulatory language in § 279.10(c), however, unintentionally suggests that such materials continue to be regulated as used oil even after the oil is removed. Therefore, EPA is amending § 279.10(c) to implement the "free-flowing oil" concept to be consistent with its original intent.

EPA has added a paragraph to § 279.12(c) so that it is consistent with the language in § 279.61(a).

The language in § 279.21(a) mistakenly suggests that used oil generators may not mix used oil with hazardous waste if the resulting mixture is hazardous. In fact, EPA meant only to clarify that used oil generators must comply with § 279.10(b) as well as any subtitle C requirements that may apply to the mixture. EPA has amended the provision accordingly.

The storage provisions in the September 10, 1992 rule (§§ 279.22, 279.45, 279.54, and 279.64) all contain similar errors. Each provision contains a reference to the "de minimis" wastewater provision of § 279.10(f) which is unnecessary and somewhat confusing. EPA is deleting these references. In addition, all four provisions refer to used oil "generators," even though only § 279.22 applies to generators. EPA corrects these

errors. EPA also corrects the reference to "generators" in § 279.74(a).

EPA is amending the first sentence of § 279.40(a)(4) by deleting the misleading phrase "from the initial generator." EPA did not intend for do-it-yourselfers to be considered generators. Rather, the generator is to be considered the person who accepts or picks up the DIY oil for proper management.

EPA is revising the language in § 279.43 (b), which merely cross-references DOT hazardous materials transportation regulations in title 49 of the CFR to which used oil transporters may be subject. The original language could have been interpreted to expand the scope of the DOT regulations, which was not EPA's intent.

EPA is revising the language in § 279.45(d)(1) by adding a paragraph (d)(1)(iii) to this section. Paragraph (d)(1)(iii) provides an equivalent secondary containment system for used oil stored in containers. EPA already provides an equivalent secondary containment system for used oil stored in existing and new aboveground tanks. Therefore, EPA is now providing this regulation for used oil stored in containers to allow for consistency in the storage of used oil stored in aboveground tanks and containers. This revision is also added to § 279.54(c)(1).

#### **Administrative Procedures Act (APA) Requirements**

Today's rule is issued without prior notice and comment. All changes being made either correct errors or help to clarify the language contained in the May 20, 1992 and September 10, 1992 final rules. No further public comment is necessary.

#### **List of Subjects**

##### **40 CFR Part 261**

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

##### **40 CFR Part 264**

Hazardous waste, Packaging and containers, Security measures, Surety bonds.

##### **40 CFR Part 265**

Hazardous waste, Packaging and containers, Security measures, Surety bonds.

##### **40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and



recordkeeping requirements, Water pollution control, Water supply.

#### 40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: March 22, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Acting Assistant Administrator.

For the reasons set out in the preamble title 40 of the Code of Federal Regulations is amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

##### § 261.4 [Amended]

2. Section 261.4 is amended by redesignating paragraph (b)(15) as (b)(13).

3. Section 261.4 is amended by adding paragraph (b)(14) to read as follows:

##### § 261.4 Exclusions.

\* \* \*

(b) \* \* \*

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

\* \* \*

##### § 261.5 [Amended]

4. In paragraph (j), revise the phrase "subpart G of part 279," to read "part 279."

#### PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

6. Section 264.1 is amended by revising paragraph (g)(2) to read as follows:

##### § 264.1 Purpose, scope, and applicability.

\* \* \*

(g) \* \* \*

(2) The owner or operator of a facility managing recyclable materials described in § 261.6 (a)(2), (3), and (4) of this chapter (except to the extent they are referred to in part 279 or subparts C, D, F, or G of part 266 of this chapter).

\* \* \*

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

7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

8. Section 265.1 is amended by revising paragraph (c)(6) to read as follows:

##### § 265.1 Purpose, scope, and applicability.

\* \* \*

(c) \* \* \*

(6) The owner or operator of a facility managing recyclable materials described in § 261.6 (a)(2), (3), and (4) of this chapter (except to the extent they are referred to in part 279 or subparts C, D, F, or G of part 266 of this chapter).

\* \* \*

#### PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

9. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

10. Section 271.16 is amended by revising paragraph (a)(3)(ii) to read as follows:

##### § 271.16 Requirements for enforcement authority.

(a) \* \* \*

(3) \* \* \*

(ii) Criminal remedies shall be obtainable against any person who knowingly transports, treats, stores, disposes or recycles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; or who makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste).

\* \* \*

##### § 271.26 [Amended]

11. The second sentence in § 271.26(g) is amended by adding a parenthesis after the phrase "as part of its authorization petition submitted to EPA under § 271.5"

12. Section 271.26 is amended further by adding paragraph (h) and Table 1 to read as follows:

##### § 271.26 Requirements for used oil management.

\* \* \*

(h)(1) Unless otherwise provided in part 271, state programs shall have standards for the marketing and burning of used oil for energy recovery that are at least as stringent as the requirements and prohibitions that EPA adopted on November 29, in 40 CFR part 266, subpart E of this chapter. The part 279 of this chapter requirements specified in Table 1 (except those provisions identified in footnotes 1 and 2 of Table 1) are Federally enforceable in those states that have not adopted state requirements equivalent to 40 CFR part 279, subparts G and H of this chapter requirements and have not been authorized to enforce the state requirements.

TABLE 1.—REGULATIONS ADOPTED NOVEMBER 29, 1985 REGARDING THE BURNING OF USED OIL FOR ENERGY RECOVERY

[These Part 279 provisions will continue to be enforced by EPA]

Former provisions of 40 CFR part 266, subpart E (1992)	Recodified provisions within 40 CFR part 279
Sec. 266.40(a) .....	Sec. 279.60(a)
Sec. 266.40(b) .....	Sec. 279.1 <sup>1</sup>
Sec. 266.40(c) [rebuttable presumption].	Sec. 279.63(a), (b) and (c) <sup>2</sup>
Sec. 266.40(d)(1) and (2).	Sec. 279.10(b)(2) and (3)
Sec. 266.40(e) .....	Sec. 279.11
	Sec. 279.60(c)
	Sec. 279.71
Sec. 266.41(a)(1) and (2).	
266.41(b)(1) and (2) ...	Sec. 279.61(a)
	279.23(a)
Sec. 266.42(a) .....	Sec. 279.60(a)
Sec. 266.42(b) .....	Sec. 279.70(a)
Sec. 266.42(c) .....	Sec. 279.60(a)
Sec. 266.43(a)(1) .....	Sec. 279.70(a) and (b)(1)
	Sec. 279.70(b)(2)
Sec. 266.43(a)(2) .....	Sec. 279.72(a)
Sec. 266.43(b)(1) .....	Sec. 279.71
Sec. 266.43(b)(2) .....	Sec. 279.73(a)
Sec. 266.43(b)(3) .....	Sec. 279.74(a)
Sec. 266.43(b)(4)(i-v) ..	not included
Sec. 266.43(b)(4)(vi) ..	Sec. 279.75(a)
Sec. 266.43(b)(5)(i) and (ii).	
Sec. 266.43(b)(6)(i) ....	Sec. 279.74(b) and (c)
	279.72(b)
Sec. 266.43(b)(6)(ii) ...	Sec. 279.74(a)
	Sec. 279.75(b)
Sec. 266.44(a) .....	Sec. 279.61(a)
	Sec. 279.23(a)
Sec. 266.44(b) .....	Sec. 279.62(a)
Sec. 266.44(c) .....	Sec. 279.66(a)
Sec. 266.44(d) .....	Sec. 279.72(a)



**TABLE 1.—REGULATIONS ADOPTED NOVEMBER 29, 1985 REGARDING THE BURNING OF USED OIL FOR ENERGY RECOVERY—Continued**

[These Part 279 provisions will continue to be enforced by EPA]

Former provisions of 40 CFR part 266, subpart E (1992)	Recodified provisions within 40 CFR part 279
Sec. 266.44(e) .....	Sec. 279.65(a) and (b) Sec. 279.66(b) Sec. 279.72(b)

<sup>1</sup> Contains additional new definitions that were not included in the 1985 rule.

<sup>2</sup> Paragraphs (c)(1) and (2) of § 279.63 contain new exemptions from the rebuttable presumption that were not part of the 1985 rule.

(2) In states that have not been authorized for the RCRA base program, all requirements of Part 279 will be Federally enforceable effective March 8, 1993.

#### **PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL**

13. The authority citation for part 279 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

#### **§ 279.1 [Amended]**

14. In § 279.1, the definition of "used oil," is amended by revising the phrase "if contaminated" to read "is contaminated."

15. Section 279.10 is amended by revising paragraph (b)(2) introductory text to read as follows:

#### **§ 279.10 Applicability.**

\* \* \* \* \*

(b) \* \* \*  
(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristic identified in subpart C of part 261 of this chapter and mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C are subject to:

\* \* \* \* \*

16. Section § 279.10(b)(2)(ii) is amended by adding the phrase "Except as specified in § 279.10(b)(2)(iii)" at the beginning of the paragraph.

17. In § 279.10(b)(2)(iii) revise the phrase "because it exhibits" to read "because it exhibits".

18. In § 279.10(d)(1) revise the phrase "or other products" to read "or other fuel products".

19. In § 279.10(e)(3)(ii) revise the phrase "if the materials are identified as hazardous waste" to read "if the materials are listed or identified as hazardous wastes."

20. Section 279.10 is amended further by revising paragraph (c), paragraph (e)(4) and paragraph (i) to read as follows:

#### **§ 279.10 Applicability.**

\* \* \* \* \*

(c) *Materials containing or otherwise contaminated with used oil.* (1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to this part, and

(ii) If applicable are subject to the hazardous waste regulations of parts 124, 260 through 266, 268, and 270 of this chapter.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this part.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this part.

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

(i) *Used oil containing PCBs.* In addition to the requirements of 40 CFR part 279, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e).

21. The table in § 279.11 is amended by adding a note to the end to read as follows:

#### **§ 279.11 Used oil specifications.**

\* \* \* \* \*

**Note:** Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

22. Section 279.12 is amended by adding paragraph (c)(3) to read as follows:

#### **§ 279.12 Prohibitions.**

\* \* \* \* \*

(c) \* \* \*

(3) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter.

\* \* \* \* \*

23. Section 279.21 is amended by revising paragraph (a) to read as follows:

#### **§ 279.21 Hazardous waste mixing.**

(a) Mixtures of used oil and hazardous waste must be managed in accordance with § 279.10(b).

\* \* \* \* \*

#### **§ 279.22 [Amended]**

24. The first sentence of § 279.22 is removed.

#### **§ 279.23 [Amended]**

25. In § 279.23 remove paragraph (b) and redesignate paragraph (a) as introductory text and paragraphs (a)(1) through (3) as (a) through (c) respectively.

#### **§ 279.40 [Amended]**

26. In the first sentence of § 279.40 (a)(4), revise the words "generated by," to read "from" and remove the words "from the initial generator."

27. In § 279.40 (d)(4), the phrase "of the partial Marketers" is removed.

#### **§ 279.42 [Amended]**

28. In § 279.42 paragraph (a) is revised to read as follows:

#### **§ 279.42 Notification.**

(a) *Identification numbers.* Used oil transporters that have previously notified EPA of hazardous waste and other used oil management activities and obtained a U.S. EPA Identification Number must renotify to identify their used oil transporter activities.

\* \* \* \* \*

29. In § 279.42(b)(1), revise the phrase "To obtain EPA Form 8700-12" to read "To obtain ordering information for EPA Form 8700-12".

30. Section 279.43 is amended by revising paragraph (b) to read as follows:

#### **§ 279.43 Used oil transportation.**

\* \* \* \* \*

(b) *DOT Requirements.* Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR parts 171 through 180.

\* \* \* \* \*

#### **§ 279.45 [Amended]**

31. Section 279.45 is amended by removing the first sentence and revising



the word "generators" in the third sentence to read "transporters".

32. In § 279.45 add paragraph (d)(1)(iii) and revise the period at the end of paragraph (d)(1)(ii) to read "; or" as follows:

**§ 279.45 Used oil storage at transfer facilities.**

(d) \* \* \*

(1) \* \* \*

(iii) An equivalent secondary containment system.

\* \* \* \* \*

**§ 279.51 [Amended]**

33. Paragraph (a) of § 279.51 is revised to read as follows:

**§ 279.51 Notification.**

(a) Identification numbers. Used oil processors/rerefiners that have previously notified EPA of hazardous waste and other used oil management activities and obtained a U.S. EPA Identification Number must renotify to identify their used oil processors/rerefiners activities.

\* \* \* \* \*

**§ 279.52 [Amended]**

34. In § 279.52(b)(6)(viii)(C) revise the phrase "paragraph (h) of this section" to read "paragraphs (b)(6)(viii) (A) and (B) of this section."

**§ 279.54 [Amended]**

35. In § 279.54, remove the first sentence and revise the word "generators" in the third sentence to read "processors/re-refiners".

36. In § 279.54(a) remove the words "or process".

37. Section 279.54 is amended by adding paragraph (c)(1)(iii) and by revising the period after paragraph (c)(1)(ii) to read "; or" as follows:

**§ 279.54 Used oil management.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) An equivalent secondary containment system.

\* \* \* \* \*

**§ 279.60 [Amended]**

38. In § 279.60 (b)(1) revise "this subpart" to read "with subpart".

**§ 279.62 [Amended]**

39. In § 279.62 paragraph (a)(1) is revised to read as follows:

**§ 279.62 Notification.**

\* \* \* \* \*

(a) Used oil burners that have not previously notified EPA of their used oil burning activities must notify EPA to identify their used oil burning activities. Even if a burner has previously notified EPA of hazardous waste management activities under section 3010 of RCRA and obtained an identification number, the used oil burner must renotify to identify used oil burning activities.

\* \* \* \* \*

**§ 279.64 [Amended]**

40. Section 279.64 is amended by removing the first sentence of this section and revising the word

"generators" in the third sentence to read "burners".

**§ 279.70 [Amended]**

41. In § 279.70(a), revise the word "section" to read "subpart."

**§ 279.72 [Amended]**

42. In § 279.72(a), remove the last sentence.

**§ 279.73 [Amended]**

43. In § 279.73(a), revise "this section" to read "this subpart."

44. In § 279.73 paragraph (a) is revised to read as follows:

**§ 279.73 Notification.**

(a) Used oil fuel marketers that have not previously notified EPA of their used oil fuel marketing activities must notify EPA to identify these used oil fuel marketing activities. Even if a used oil fuel marketer has previously notified EPA of hazardous waste management activities under section 3010 of RCRA and obtained an identification number, the used oil fuel marketer must renotify to identify used oil fuel marketing activities.

\* \* \* \* \*

**§ 279.74 [Amended]**

45. In the first sentence of § 279.74(a), revise the word "generator" to read "marketer."

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