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(1) Agency

Department of Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-342

IRRC Number: 2022

(3) Short Title

Waste Oil Regulations

(4) PA Code Cite

25 PA Code, Chapters 260a,
261a, 266a, 270a, 287, 298

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon F. Trostle, 783 -1303

Secondary Contact: William Pounds, 787-7564

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The Environmental Quality Board (EQB) is amending 25 Pa. Code, Chapters 260a, 261a and 266a (relating to hazardous waste) and 287 (relating to residual waste). In addition, the EQB is adopting 25 Pa. Code 298 (relating to standards for the management of waste oil). This rule consolidates existing waste oil regulations into a single chapter. This rule also incorporates additional management standards found in 40 CFR, Part 279 (relating to standards for the management of used oil).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are promulgated under the authority of the following:

- The Solid Waste Management Act (SWMA) (35 P.S. §§ 6018.101-6018.1003), which in §105(a) (35 P.S. §6018.105(a)) grants the Board the power and the duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.
- The Pennsylvania Used Oil Recycling Act (58 P.S. §471 - 480), grants the Department authority to deal with used oil collection, storage, transportation and recycling.
- The Clean Streams Law (CSL) (35 P.S. §§ 691.1-691.1001), which in §5(b) (35 P.S. §691.5(b)) grants the Department the authority to formulate, adopt, promulgate, and repeal the rules and regulations as are necessary to implement the provisions of the CSL and which in §402 (35 P.S. §691.402) grants the Department the power to adopt rules and regulations requiring permits or establishing conditions under which an activity shall be conducted for any

activity creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution.

- The Administrative Code of 1929 (71 P.S. §§510-1 - 510-27) which in §1917-A (71 P.S. §1917-A (71 P.S. §510-17) authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the Department and in §1920-A (71 P.S. §510-20) grants the Board the power and the duty to formulate, adopt, and promulgate such rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

In order to retain authorization to administer the hazardous waste program in lieu of RCRA, regulations addressing the recycling of waste oil are needed which are at least as effective as 40 CFR Part 279. See Sections 3009 and 3014 of the Resource Conservation and Recovery Act, 42 U.S.C.A. §§6929 and 6935; and 40 CFR 721.22(a).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This rule eliminates confusion caused by the current Pennsylvania regulations dealing with waste oil. Current regulations on waste oil, found in both the Residual Waste and Hazardous Waste Regulations, have lead to ambiguity as to which set of regulations apply under what circumstances. Applicable storage and transportation requirements are general in nature and, therefore, lack specific requirements appropriate to the management of waste oil. This rule also eliminates inconsistencies in the standards for burning waste oil for energy recovery between 266.40(e) and 287.102(g).

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The final regulations contain management standards for tanks and containers, which are absent in the current regulations. These management standards decrease the threat of pollution to the waters of the Commonwealth by requiring containment of spills.

Other materials that can be mixed with waste oil and have the resultant mixture managed as waste oil have been more clearly delineated and limited in these regulations. Since the waste oil will contain less "unexpected" hazardous constituents under this rule, the threat of harm to human health and the environment from combustion of the waste oil and to transportation and facility workers from its management will decrease.

The Department's previous regulations required individual or general permits for processing of waste oil that are protective of the public health, safety, and the environment. These regulations continue to require permits to be protective of the public health, safety, and the environment, but clarify the facility management standards and the type of permit required.

Used automotive oil from individuals who change the oil in their personal vehicles may be collected under permit-by-rule provisions in the Department's previous Residual Waste Regulations. These regulations expand these permit-by-rule provisions to include used oil filters destined for recycling and

waste oil generated by businesses in small quantities, provided the businesses transport the waste oil to the collection center themselves. This should encourage recycling and decrease the threat of harm to the environment from improper disposal.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

There are approximately 277,000 small businesses in Pennsylvania, many of whom generate waste oil. This rule will benefit those businesses who generate small quantities of waste oil by allowing them to transport their own waste oil to a collection facility rather than requiring transportation by a residual waste hauler to a permitted waste oil management facility.

There are 67 county governments and 2571 municipalities in Pennsylvania. This rule benefits the residents and small businesses in these counties and municipalities by authorizing government entities to establish waste oil collection centers.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

These regulations are not expected to have an adverse effect on the regulated community or the public. Additional requirements concerning containment systems for tanks and labeling requirements may affect some of the waste oil management facilities. However, the waste oil processors currently permitted are already using secondary containment as a matter of good business practice. Conditionally exempt small quantity hazardous waste generators who presently mix their hazardous waste with waste oil will be affected. Waste oil management facilities who currently are not complying with permitting requirements may have fewer options as to type of permit after the effective date of the final regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Current and future operators of waste oil processing facilities, transporters, facilities burning waste oil for energy recovery, marketers, and waste oil generators must comply with the regulations. There are approximately 50 waste oil processing facilities, 100 waste oil transporters, and potentially hundreds of facilities burning waste oil for energy recovery and generators who are required to comply. It should be noted that, except for businesses generating waste oil from internal combustion motors or vehicles, the other entities are subject to regulation.

(16) Describe the communications with and inputs from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department has met with its Solid Waste Advisory Committee (SWAC) on November 13, 1997, January 8, 1998, September 9, 1999, January 13, March 9, and November 2, 2000. Their ideas and comments were incorporated as part of the development of the regulatory package.

The Department also met with a workgroup consisting of representatives of the waste oil processing industry, waste oil transporters, and Associated Petroleum Industries of Pennsylvania. Their comments were addressed or incorporated as part of the development of the regulatory package.

The proposed regulations were published in the *Pennsylvania Bulletin* on April 10, 1999. The

Department held public meetings on May 11, 18 and 20, 1999 and a public hearing on May 25, 1999. A public comment period ran from April 10 to June 9, 2000. There were 123 comments received from 15 commentators. About 45 comments effected changes in the rulemaking from proposed to final.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Savings: Businesses which generate small amounts of waste oil will be able to transport their own oil in quantities up to 55 gallons to waste oil collection centers. Costs associated with transportation and waste oil acceptance procedures will be realized. This is expected to save Pennsylvania generators approximately \$1,108,000 per year

Costs: Generator recordkeeping requirements have increased slightly in some instances. Chemical analysis and screening will be required in many cases. The recordkeeping and analytical requirements are expected to cost the regulated community approximately \$1,472,100 per year. Conditionally exempt small quantity generators of hazardous waste will no longer be allowed to dispose of their hazardous waste in waste oil destined to be burned for energy recovery. Their hazardous waste must be either burned for energy recovery as hazardous waste fuel or managed at permitted hazardous waste management facilities. This is expected to cost Pennsylvania generators approximately \$84,100 per year.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Except for those municipalities that choose to operate waste oil collection facilities as a service to the public, this rule will neither increase costs nor savings to municipalities. The cost for a municipality to establish and operate a waste oil collection facility will likely be offset by the sale of the waste oil to a recycler or by use of the waste oil as fuel to heat municipal buildings.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

Estimated costs to state government for compliance assistance in the form of fact sheet development and distribution and workshop development with industry is \$10,000 and will be incurred in the first year.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	1,108,000	1,108,000	1,108,000	1,108,000	1,108,000
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Savings	0	1,108,000	1,108,000	1,108,000	1,108,000	1,108,000
COSTS:						
Regulated Community	0	1,566,200	1,566,200	1,566,200	1,566,200	1,566,200
Local Government	0	0	0	0	0	0
State Governments	0	10,000	0	0	0	0
Total Costs	0	1,576,200	1,566,200	1,566,200	1,566,200	1,566,200
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Governments	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Cost estimates were based upon charges for burning hazardous waste fuels in Pennsylvania cement kilns and typical costs for total halogen determinations.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
Residual	\$142,936	\$166,415	\$167,789	\$54,762
Hazardous	\$29,808	\$31,144	\$33,333	\$20,338

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

By revising the regulations to reflect the RBI concepts and federal used oil management standards under RCRA Subtitle C, the regulations are significantly improved without significantly increasing cost to the regulated community or local/state government and provide increased protection to the waters of the Commonwealth through requirements for containment. Limiting the types of hazardous waste that may be blended with waste oil for fuel use also does not significantly increase cost to the regulated community or local/state government and acts to protect waste oil facility workers, transporters, burners, and the air.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no non-regulatory alternatives available. The SWMA requires that a permit be issued by the Department prior to processing/treating residual/hazardous waste, such as waste oil, and directs the Department to develop regulations to implement a program for residual/hazardous waste management. Also, as explained in response to question 10, the establishment of a regulatory system for the management of waste oil is mandated by the RCRA.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

An alternative scheme is not available, as changes in federal regulations instituted in 1992 and later, are more stringent than Pennsylvania regulations. Under the Resource Conservation and Recovery Act, state regulations must be at least as stringent as the corresponding federal regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

- §298.1 (relating to definitions) The definition of "tank" does not include wooden tanks, which the Department believes are more prone to leakage than tanks made out of other non-earthen materials. The definition of a "waste oil transfer facility" is not limited to a facility where waste oil is held for at least one day and not more than 35 days. The SWMA does not have a minimum limit on the time that the waste is to be held at a transfer facility and mandates including all areas where waste oil is received as part of the definition.
- §298.10 (relating to applicability) Mixtures of hazardous waste and waste oil which can be regulated as waste oil under these regulations are limited to waste which is hazardous due to the characteristic of ignitability or exhibit a toxicity characteristic for benzene, arsenic, cadmium, chromium, or lead, when the resultant mixture no longer exhibits any hazardous characteristic (unless the generator is a conditionally exempt small quantity generator). Simple dilution of characteristic hazardous waste or listed hazardous waste with waste oil does not eliminate or neutralize the hazardous characteristic or constituent and is not protective of public health and the environment. In addition, allowing generators to get rid of their hazardous waste by mixing it with waste oil significantly reduces their incentive to adopt source reduction strategies to minimize the amount of hazardous waste they produce. For wastewater to be regulated under these regulations, it must either contain at least one percent oil or, if less than one percent recoverable oil, a sufficient amount that the operator is able to demonstrate that a marketable quantity of oil can be recovered from the wastewater. When wastewater contains less than one percent oil, it is difficult to determine whether the waste oil

processor is removing the waste oil and recycling it or using its wastewater treatment system to dispose of the waste oil along with the wastewater or with the sludge removed from the wastewater. The Department believes that disposal of wastewater is adequately regulated under other existing state regulations. These regulations allow the use of materials derived from waste oil as part of the conditions in permits. The processed waste oil may be determined to no longer be a waste or approved for beneficial use under limitations imposed by the permit, if the Department finds that some limitations are needed to protect human health or the environment.

- §298.11 (relating to waste oil specifications) These regulations require waste oil burned for energy recovery to possess a heat content of at least 8000 BTU per pound to ensure the waste oil is actually being burned for energy recovery rather than fully or partially for disposal. The limit for waste oil considered on-specification is 1000 ppm total halogens for residential and commercial burners, which has been retained due to concerns that on-specification waste oil used as home heating fuel can lead to excess corrosion in home heating systems. The excess corrosion reduces the efficiency of the burner and results in incomplete combustion and generation of more pollutants. The limit for waste oil considered on-specification is 4000 ppm for industrial burners.

- §298.20 (relating to applicability for generators) The type of processing which may be conducted by a waste oil generator under PBR rather than a permit is limited, since the Department believes that similar risks are posed, whether the processing activity is conducted by the generator or someone else. Generator recordkeeping requirements include information which should be retained as good business practice and any information obtained which shows that the waste oil was either not mixed with hazardous waste or that it was mixed with hazardous waste under the provisions in the proposed regulations.

- §298.22 (relating to waste oil storage) Standards for aboveground storage tanks have been included. This requirement is consistent with current requirements under the residual waste regulations.

- §298.25 (relating to source reduction strategy) Generators of waste oil from sources other than internal combustion engines are required to develop source reduction strategies, which furthers the Department's pollution prevention efforts and is consistent with current requirements under the hazardous waste and residual waste regulations.

- §298.26 (relating to biennial report) Generators of waste oil from sources other than internal combustion engines are required to submit biennial reports, which provide basic information the Department needs to administer waste programs. This requirement is consistent with current requirements under the hazardous waste and residual waste regulations.

- §298.30 (relating to waste oil collection centers) These regulations require waste oil collection centers to be managed and operated in a manner to prevent spills and to discourage collection of waste oil which has been improperly mixed with hazardous waste. These requirements are largely consistent with current requirements under the current residual waste PBR for used oil collection facilities.

- §298.45 (relating to transfer facilities) Permits issued by the Department, siting restrictions, bonding and insurance are required under these regulations based on the Department's experience with this type of facility and the potential that the Commonwealth will have to clean up a waste oil transfer facility. See also §298.22 above.

- §298.48 (relating to signs on vehicles) These regulations require identifying signs on vehicles used to transport waste oil, as required by the Municipal Waste Planning, Recycling, and Waste Reduction Act, 53 P.S. §1101(e).

- §298.50 (relating to applicability for waste oil processors, re-refiners) Permits issued by the Department, siting restrictions, bonding and insurance are required under these regulations based on

the Department's experience with this type of facility, the types of processing/re-refining activities being conducted, and the potential that the Commonwealth will have to clean up a waste oil processing/re-refining facility.

For a detailed description and justification of the standards more stringent than 40 CFR Part 279, please reference the Preamble at Section E, "Summary of Regulatory Requirements" for these regulations and for the proposed regulations (29 PaB. 1975).

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The Department does not believe that the regulations for waste oil management facilities and transporters in these regulations will put Pennsylvania at a competitive disadvantage with other states because these are improvements over Pennsylvania's previous regulations. While costs to generators who mix hazardous waste with waste oil destined to be burned for energy recovery will increase under this rule, the Department does not believe that the regulation puts Pennsylvania at a competitive disadvantage with other states due to the small number of generators currently practicing this mixing in accordance with existing regulations. In addition, some of the other states do not allow mixing of waste oil and characteristically hazardous waste.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These changes affect existing regulations of the promulgating agency by either consolidating them in a single chapter or otherwise replacing them. The following will be affected:

- §260a.3 (relating to terminology and citations related to Federal regulations)
- §261a.2 (relating to the definition of solid waste)
- §261a.3 (relating to the definition of hazardous waste)
- §261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators)
 - §261a.6 (relating to requirements for recyclable materials)
 - §266a, Subchapter E (relating to waste oil burned for energy recovery)
 - §287.2 (relating to scope)
 - §287.51 (relating to scope)
 - §287.102(d) (relations to transfer facilities that collect used oil)
 - §287.102(g) (relating to waste oil energy recovery)

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No further meetings or hearings are planned.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This rule adds a minor recordkeeping requirement for many waste generators, which is to keep records of type of oil used, the process which generates the waste oil, the results of halogen testing and rebuttable presumption information, and the type and quantity of any ignitable-only hazardous waste added to the waste oil. The rule also adds the requirement for transporters to keep records on total halogen determinations and waste oil tracking. Waste oil processors/re-refiners, burners, and marketers must maintain records on determination that the waste oil is on-specification and tracking. These regulations do not mandate a specific form to be used.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

These regulations will not have negative impact on any one particular person or group. The consolidation of waste oil regulations into a single chapter will have positive impact on all those involved in or affected by these regulations. A provision to allow small amounts of waste oil to be transported to waste oil collection centers by the generator without requiring transporter logs and signs on vehicles should be a benefit to many small businesses. Generator information requirements and the requirement that waste oil collection centers segregate hazardous waste and only accept halogenated waste oil from do-it-yourselfers were adopted to assist transporters and waste oil processors/re-refiners in determining whether a load of waste oil containing more than 1,000 ppm total halogens has been improperly mixed with a hazardous waste. The waste oil specification for total halogens for industrial burners has been increased to 4000 ppm.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

These amendments to the residual and hazardous waste regulations will go into effect when published as a final rulemaking in the Pennsylvania Bulletin. There are no new permitting or licensing deadlines.

(31) Provide the schedule for continual review of the regulation.

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill their respective goals.

FACE SHEET
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Copy below is hereby approved as to form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-342

DATE OF ADOPTION: _____

BY: James M. Seif

TITLE: JAMES M. SEIF, CHAIRMAN
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agency

BY: [Signature]

3/22/01
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

ORDER ADOPTING REGULATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Waste Oil Regulations

25 Pa. Code, Chapters 260a, 261a, 266a, 270a, 287, 298

ORDER

Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapters 260a, 261a, 266a, 270a, 287 and 298
Waste Oil

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapters 260a, 261a, 266a, 270a (relating to hazardous waste management), and 287 (relating to residual waste management—general provisions) and adopts Chapter 298 (relating to management of waste oil). The amendments and new chapter consolidate the requirements for recycling waste oil into one location in Pennsylvania's regulations. In addition, the waste oil regulations largely incorporate federal requirements for management of the same waste type.

This order was adopted by the Board at its meeting of March 20, 2001.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact William Pounds, Chief, Division of Municipal and Residual Waste Management, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 14th floor, 400 Market Street, P.O. Box 8471, Harrisburg, PA 17105-8491, (717) 787-7564, or Michelle M. Moses, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final rulemaking is being made under the authority of the following:

The Solid Waste Management Act (SWMA) (35 P.S. §§6018.101 – 6018.1003), which in section 105(a) grants the Board the power and duty to adopt the

rules and regulations of the Department to carry out the provisions of the SWMA.

The Clean Streams Law (CSL) (35 P.S. §§691.1—691.1001), which in section 5(b) grants the Department the authority to formulate, adopt, promulgate and repeal the rules and regulations as are necessary to implement the provisions of the CSL, and which in section 402 grants the Department the authority to adopt rules and regulations requiring permits or establishing conditions under which an activity shall be conducted for any activity that creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid pollution.

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P.S. §§4000.101 – 4000.1904), which in section 302 gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of this act.

The Pennsylvania Used Oil Recycling Act (PUORA) (58 P.S. §§471-480), which in section 480(e) grants the Department the authority to issue any rules or regulations under this act.

The Administrative Code of 1929 (AC) (71 P.S. §§510-5, 510-17 and 510-20), which in section 1905-A of the AC authorizes the Department to require applicants for permits and permit revisions to provide written notice to municipalities, in section 1917-A of the AC authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the Department and in section 1920-A of the AC grants the Board the power and the duty to formulate, adopt and promulgate rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

D. Background of the Amendments

Regulations pertaining to the waste oil recycling program were found in various sections throughout the hazardous and residual waste programs. This rulemaking is an effort to consolidate the regulations into one location, a new chapter in Article IX (relating to residual waste management). The final waste oil regulations will apply to the collection, storage, transportation, processing, rerefining and burning for energy recovery of waste oil.

These amendments also align the Department's hazardous waste management program more closely to the federal hazardous waste management program and the federal used oil management standards under

the Resource Conservation and Recovery Act (RCRA). On September 10, 1992, EPA published 40 CFR Part 279 (relating to recycled used oil management standards). These regulations apply to the recycling of nonhazardous used oil and used oil that is hazardous due to a characteristic. EPA expects all states with authorized RCRA programs to amend their programs to include these used oil recycling management standards. Pennsylvania's current authorized program does not include EPA's recycled used oil management standards and the Department will apply for authorization of this portion of the RCRA program upon completion of these final waste oil recycling regulations.

In developing these final regulations, the Department met several times with an ad hoc group of waste oil recycling companies. This waste oil stakeholders group provided invaluable input on many waste oil issues addressed by these regulations. While the amendments do not contain all the changes suggested by this group, there was consensus that the proposal significantly improves the existing regulations.

Notice of the proposed rulemaking was published at 29 *Pa. B.* 1975 (April 10, 1999). The Department held three public information meetings across the state and the Board held one public hearing on May 25, 1999, at the Department's Southcentral Regional Office on the proposed rulemaking. In addition, the Board provided a 60-day public comment period on the proposed rulemaking. During the public comment period for this rulemaking, the Department received written comments from 15 individuals and groups. Two commentators presented testimony at the public hearing.

The final rulemaking reflects recommendations as a result of experience in implementing the regulations and recommendations received during the public comment period. The Department met with the Solid Waste Advisory Committee (SWAC) to review and discuss comments received during the public comment period on this rulemaking on September 9, 1999, and January 13, 2000. On March 9, 2000, SWAC reviewed and approved the draft final waste oil regulations for consideration by the Board. On November 2, 2000, SWAC reviewed and approved additional changes to the draft final waste oil regulations. The additional changes were made for clarity and to provide consistency with the recently updated residual waste regulations.

E. Summary of Comments and Responses on the Proposed Rulemaking and Summary of Changes to the Proposed Rulemaking

Following the public comment period referred to above, the Board and the Department considered all of the comments received in formulating the final-

form regulations. The Department has prepared a comment and response document that addresses each comment on the proposed regulations.

The following is a summary of the major comments received and changes that have been made to the proposed rulemaking. The summary is listed in the same order as the final-form regulations.

Several commentators pointed out that the citations to the hazardous waste regulations in the proposed rulemaking were no longer valid due to changes in those regulations. The Department was aware that the citations would require revisions after the amendments to the hazardous waste regulations were promulgated, but based the proposed rulemaking on the regulations that were effective at the time of proposal. The Board has updated citations to the hazardous waste regulations in the final rulemaking.

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

Chapter 261a. Identification and Listing of Hazardous Waste

Section 261a.2. Definition of Solid Waste.

40 CFR 261.2(c)(2)(ii), as incorporated by reference in Section 261a.1, excludes commercial chemical products listed in 40 CFR 261.33 from being solid waste when burned for energy recovery, provided they are themselves fuel. The U.S. Environmental Protection Agency (EPA) has broadened this regulation, by policy, to include characteristically hazardous commercial fuel products. EPA has interpreted the commercial products to include tank bottoms, fuel-water mixtures and fuel-contaminated soil from spills, which require processing before they can be used as fuel. While these materials are no longer considered solid wastes under Subtitle C of RCRA, they would be considered solid waste under the Solid Waste Management Act.

These commercial fuel products are commonly managed by waste oil transporters, transfer facilities and processors. Many of these materials, such as gasoline and aviation fuels, have different handling requirements than waste oil due to their higher volatility and flammability. It is necessary for those managing these materials to use properly designed transportation vehicles and facilities and proper handling precautions for worker safety and to protect the public health and the environment. Blending these commercial fuel products with waste oil can be beneficial, since they tend to reduce the viscosity of the waste oil and produce a more widely usable fuel.

The Board has decided to modify the incorporation by reference of 40 CFR 261.2(c)(2)(ii) in new Section 261a.2 to clarify that commercial chemical

products, which include characteristically hazardous commercial fuel products, are not regulated as hazardous wastes, but are regulated under Chapters 287 through 299. The safeguards needed to provide worker safety and to protect public health and the environment can be built into the permitting process for waste oil facilities and other residual waste facilities. In addition, if these materials are to be used as fuel without processing prior to use, they may be considered coproducts under Section 287.1 and not be waste.

Chapter 270a. Hazardous Waste—Hazardous Waste Permit Program

Section 270a.60. Permits-by-rule.

Due to changes in the types of characteristically hazardous waste that can be mixed with waste oil and regulated under Chapter 298 (see Section 298.10(b)(2)), the Board decided to modify the permit-by-rule language to add new paragraph (2)(v) to allow generators to mix waste that is hazardous due to a toxicity characteristic for benzene, arsenic, cadmium, chromium or lead with waste oil.

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

Chapter 287. Residual Waste Management—General Provisions

Section 287.1 Definitions

The term “waste oil” has been moved from Section 298.1 to 287.1 on final rulemaking. A recent final rulemaking in the residual waste program includes the use of this term in Chapter 287 in the definition of “coproduct.” The addition of this term in Section 287.1 will promote consistency in the application of this term throughout Article IX. The term “used oil” has been deleted on final rulemaking because it is no longer used in Article IX.

Section 287.2. Scope

On final rulemaking, proposed subsection (l) has been deleted from this Section and relocated to new Section 298.2 to add clarification to the scope of Chapter 298.

Section 287.51. Scope.

On final rulemaking, the term “used oil” has been deleted from this section to be consistent with the decision to eliminate all references to that term in Article IX and, therefore, avoid confusion in terminology. In addition, the Board added language in subsection (c)(3) that maintains the exemption that currently applies to persons or municipalities that generate used oil.

Chapter 298. Management of Waste Oil

Section 298.1. Definitions.

The Board received several comments on this section.

Definitions used in other regulations

A commentator pointed out that terms defined differently in regulations cited by the proposed regulations could lead to confusion. In addition, the cross-referenced definitions may have different effective dates that would not necessarily apply to this rulemaking. Since Chapter 298 falls within Article IX, all definitions used in Section 287.1 apply to Chapter 298. On proposed rulemaking, terms were added to Section 298.1 for use in Chapter 298. On final rulemaking, the Board added language to clarify that terms not defined by Section 287.1 would be defined by Sections 260a.1 and 260a.10. These changes address concerns raised about using the same terms that are defined differently across regulatory programs.

Aboveground storage tanks

To avoid confusion, the word “storage” has been added to the term “aboveground tank.” This change makes the term consistent with terminology used in the storage tanks program.

Existing tank

On final rulemaking, the term “existing tank” has been deleted. The term is not used in the final regulations.

New tank

On final rulemaking, the term "new tank" has been deleted. The term is not used in the final regulations.

Tank

On proposed and final rulemaking, the EQB decided to exclude wooden tanks from the definition of "tanks" because wooden tanks are more prone to leakage than tanks made from non-earthen materials.

Underground storage tank

On final rulemaking this term was added for clarification.

Waste oil

Commentators indicated that the negative connotation of the term "waste" in "waste oil" could impact recycling of waste oil. Suggestions ranged from changing the statutory definition of "used oil" to creating a new term, such as "managed used oil" or "recycled used oil." Pennsylvania has used the term "waste oil" for well over a decade and believes it is well understood that waste oil can be recycled. The Department is committed to encouraging recycling of waste oil and has worked with organizations, such as the American Petroleum Institute, to encourage the recycling of waste oil and used oil filters in Pennsylvania. Fact sheets and other public educational efforts are being planned to encourage the recycling of waste oil and to further inform the public about this rulemaking. The Board believes a statutory change is not necessary to encourage recycling of waste oil and that creation of a new term to replace the established term, "waste oil," may lead to confusion. The Board decided to retain the term "waste oil"; however, the term has been moved to Section 287.1 (relating to definitions).

The term "waste oil" is almost identical to the federal term "used oil." Waste oil must be refined from crude oil or synthetic oil. Therefore, animal and vegetable oils cannot be waste oil. Except for automotive oils, oils must be contaminated through use rather than through handling or storage to be waste oil. In Pennsylvania, the term "waste oil" includes automotive oil that has been contaminated during use, storage or handling, based on the definition of "used oil" in the Used Oil Recycling Act of 1982. Tank bottoms from storage of virgin petroleum fuel oil and virgin fuel oil recovered from spills are not waste oil since they were not contaminated through use. Since fuel oils are consumed when used, most virgin fuel oil cannot become waste oil.

The term "oil" is not defined in the federal used oil regulations and is not being defined in these final waste oil regulations. However, since a material must first be oil before it can become waste oil, the Department would like to clarify what kinds of materials it does and does not consider oil for the purposes of Chapter 298. Oils are products used as lubricants, fuels, heat transfer fluids, buoyants, hydraulic fluids and other analogous uses. Solvents and chemicals used as raw materials in manufacturing are not oils for purposes of this chapter. Petroleum distillates, such as mineral spirits, when used as solvents do not become waste oil. Industry refers to various chemicals used as raw materials as "oils." An example is "Brinks Oil." Brinks Oil, a plasticizer used in polymer manufacturing, is comprised of phthalates and, chemically, is significantly different than waste oil.

Waste not classified as waste oil may still be managed by waste oil processors/re-refiners and transfer facilities provided these wastes are covered under the facilities' permits. This allows the Department to evaluate screening, storage, processing and handling of the other wastes to ensure the operations are protective.

Waste oil transfer facility

Several commentators raised concern that the proposed definition of a "waste oil transfer facility" was extremely broad and encompassed a much wider range of facilities than does the corresponding definition of a "used oil transfer facility" under the federal used oil regulations. This concern was mainly due to lack of a minimum holding time, 24 hours, in the definition, which could conceivably encompass a wide variety of facilities that the Department never intended to cover, such as truck stops, restaurants, motels and fueling facilities. Under the federal used oil regulations, waste oil that is stored for transfer under 24 hours is not regulated as a transfer facility. The definition of "transfer facility" in the residual waste regulations, the municipal waste regulations and the hazardous waste regulations do not contain the "24 hours" limit. In addition, the Solid Waste Management Act does not have a minimum limit on the time that the waste is to be held at a transfer facility before it is regulated. The Department has never covered truck stops, restaurants, motels and fueling facilities as transfer facilities under those regulations and has no intention to do so under these waste oil regulations. In addition, by placing the 24-hour limit in the definition, flexibility would be taken away from the Department to allow waste oil to be held longer than 24 hours, which may be appropriate in some instances. The Board has decided not to change the definition of a "waste oil transfer facility" in the final-form regulations.

Waste oil transporter

While Pennsylvania's waste management regulations clearly distinguish waste transporters from owner/operators of waste transfer facilities, federal used oil regulations blend the two together. This produced confusion in the proposed regulations as to when various requirements apply to transporters only, to transfer facilities only, or to both. The Board has modified the definition of waste oil transporter to clarify the distinction that has incorporated the use of separate terms—waste oil transporter and waste oil transfer facility—throughout the final regulations. The separate terms of “transporter” and “transfer facility” are indicated as appropriate throughout the final regulations.

Section 298.2. Scope

A new section has been added on final rulemaking to clarify that Chapter 298 applies to waste oil that is being recycled. The scope of this chapter was previously located on proposed rulemaking at Section 287.2. On final rulemaking, the language was relocated to this section for clarity.

Section 298.10. Applicability

The Board received several comments on this section.

Mixtures of listed hazardous waste and waste oil

Comments both favored prohibition of mixing listed hazardous waste from any sized generator and supported mixing by conditionally exempt small quantity generators (CESQGs) under this Chapter. One commentator indicated that waste oil facilities would have a difficult time trying to prove that a hazardous load of waste oil came from a CESQG. The Board agrees with this commentator and believes the information gathering and recordkeeping necessary to demonstrate that hazardousness of a large quantity of waste oil is due to CESQGs would be quite burdensome. Subsection (b)(1)(i) of the final regulations continues to maintain that mixing of listed hazardous waste with waste oil is regulated under the hazardous waste regulations.

Mixtures of characteristic hazardous waste and waste oil

Several commentators criticized limiting characteristic hazardous waste that can be mixed with waste oil to ignitable-only hazardous waste. While some commentators merely stated Pennsylvania should not be more

stringent than the federal used oil program, others pointed out that few, if any, characteristically hazardous wastes will be due to ignitability alone. This restriction would be especially difficult on small shops that generate limited quantities of these hazardous wastes.

The mixing of hazardous waste and waste oil is the most difficult issue to resolve in this regulatory package. On one hand, the Department is committed to the concept of source reduction. That is, it is better to not generate hazardous waste than to have to dispose or recycle it. Allowing *carte blanche* mixing of characteristic hazardous waste with waste oil supports the outmoded concept of "the solution to pollution is dilution," not source reduction. On the other hand, the commentator is correct that petroleum-based solvents, gasoline, and kerosene will usually exhibit a toxicity characteristic for benzene and often for metals.

Generators who mix characteristically hazardous waste with their waste oil will sometimes have neither the knowledge of their hazardous waste nor the inclination to bear the cost of testing to determine that the mixture will no longer exhibit characteristics of hazardous waste. A past fatal explosion involving a waste oil transporter while checking his tank would not have occurred if the load contained only waste oil or if the mixture was no longer characteristically hazardous.

Certain hazardous characteristics are expected to sometimes be present in waste oil. These characteristics include ignitability (due to slightly low flash points) and toxicity characteristic from benzene and the metals in Table 1 of § 298.11. Transporters and facilities managing waste oil should be well aware that these characteristics could be present and should be prepared to deal with them safely. However, transporters and facilities managing waste oil which contains unexpected characteristics, such as reactivity, corrosivity, or a toxicity characteristic from pesticides, etc., may not be equipped to manage them in a manner that protects the health of their workers, the public, or the environment. In addition, these unexpected characteristics could interfere with some of the processes used to recycle the waste oil. The federal used oil regulations allow the mixing of waste oil with hazardous waste that is characteristically hazardous due to any characteristic, including corrosivity and reactivity. The Department currently requires very minimal screening by operators of waste oil transfer and processing facilities. If all characteristically hazardous wastes could be mixed with waste oil, this minimal screening is insufficient to cover the gambit of characteristics necessary to warn operators of the contents of the waste oil.

The final regulations alleviate the commentators' concerns for mixing petroleum-based solvents, gasoline and kerosene with waste oil without producing a significant increase in harm to waste oil workers, the public health, and the environment or requiring excessive screening by waste oil management facilities by including an expanded, but limited mixture rule in the final rule. The Board has added new language in subsection (b)(2)(ii) to allow waste that exhibits a toxicity characteristic for benzene and the metals in Table 1 of § 298.11 to be mixed with waste oil by the generator. Large and small quantity generators will need to ensure, through testing or knowledge, that the resultant mixture is no longer characteristically hazardous. CESQGs will not have to make sure that the resultant mixture of waste oil and hazardous waste is no longer characteristically hazardous pursuant to the hazardous waste regulations.

One commentator noticed an error to a cross-reference in proposed subsection 298.10(b)(2). The corrected cross reference has been added to the end of subsection 298.10(b)(2)(iii).

Materials containing or otherwise contaminated with waste oil

Two commentators thought that the federal wastewater standard of presence of visible oil should be adopted instead of the proposed requirement that wastewater contain at least one percent waste oil or marketable quantities of oil. Their concerns were as follows: 1) the requirement differs from the federal standard; 2) the use of the term "marketable quantities" is undefined and vague; 3) the 1% and "marketable quantities" standards are inconsistent with the "*de minimis* quantities" standard in subsection (f); 4) requirements discourage recycling by prohibiting management of the wastewater by waste oil processors; and 5) it is difficult to obtain representative samples for determining the oil content.

The decision to require recoverable oil is based on what is believed to be the best way to regulate wastewater containing trace quantities of oil. The approach taken in the final regulations differs from the approach taken in the federal program. The federal approach was to "cast a large net" to bring wastewater with virtually any amount of visible oil into the used oil regulations since, otherwise, it may escape regulation and not be managed in a protective manner. Pennsylvania, with its residual waste program, did not need to cast as large a net in the waste oil regulations as EPA, since wastewaters falling out of the waste oil regulations would not fall out of regulation entirely and would still be managed in a protective manner.

In an effort to encourage legitimate recycling of waste oil, the final regulations provide reduced regulatory requirements not afforded to wastes

destined for disposal or even to other wastes being recycled. These requirements include managing waste oil which exhibits characteristics of hazardous waste as a residual waste, allowing mixtures of waste oil and characteristically ignitable hazardous waste to be managed as waste oil, allowing some waste oil transfer and processing facilities to operate under a general permit for processing prior to beneficial use, and creating a permit-by-rule for waste oil collection centers. These exceptions should not be extended to wastewaters containing so little waste oil that oil cannot be recovered and recycled or reused. Many generators of oily wastewaters perform onsite oil/water separation and remove most of the waste oil prior to shipment to an off-site facility. EPA uses the "sheen test" for wastewater; i.e., if the oil can be seen on the surface and it is not from a source of *de minimis* quantities (40 CFR 279.10(f)), then it is regulated as used oil. It is known, through basic experimentation, that the oil necessary to produce such a sheen can be as little as one molecule thick. Such a small amount of oil could not be recovered from wastewater using the technologies employed by waste oil processors today. The final regulations allow facilities to take wastewater containing less than one percent oil as waste oil if they can demonstrate that they can recover marketable quantities of oil from the wastewater. The Department believes that technologies commonly employed by waste oil processors can reasonably be expected to recover oil from wastewater containing one percent oil. This standard is currently used in waste oil facility permits and has not been problematic to date. Wastewater containing lower quantities of oil than can be recovered would be classified as either residual waste or hazardous waste, depending on its characteristics. Facilities with individual transfer facility or processing permits, including facilities that primarily manage waste oil, may accept nonhazardous wastewaters provided it is authorized under their permits. Since no beneficial use is possible for the wastewaters containing insufficient oil to recover, facilities operating under general permits are not able to accept these wastewaters.

The Department purposely chose not to define "marketable quantities." "Marketable quantities" is an economic term and is dependent on the cost of operating the technology used, quantity of wastewater and waste oil processed, fee charged for accepting the oily wastewater, market value of the recovered oil, etc. Since most of these variables are dependent on specific conditions at each facility, it would be difficult to use a set of assumptions to derive a generic definition and apply it in all cases. The owner/operator of each waste oil facility is in the best position to determine what is marketable for their particular facility. The term "marketable quantities" remains undefined in the final regulations to retain the maximum flexibility possible.

As with other heterogeneous wastes, obtaining representative samples and accurate analyses on oily wastewater can sometimes be difficult. The Department and the regulated community have been dealing with similar sampling and analytical situations in other areas and believe this can be handled in a reasonable manner.

The Board has decided to retain the standard that for wastewater to be managed under Chapter 298, it must contain either one percent or more of waste oil or marketable quantities of waste oil. Since this standard is inconsistent with the *de minimis* quantities standard in proposed subsection (f), that standard has been deleted on final rulemaking.

On final rulemaking, the Board modified subsection (c)(2) to clarify that material contaminated with waste oil that is burned for energy recovery at an industrial furnace or boiler is regulated under Chapter 298. If the material is burned for energy recovery at a resource recovery facility, then it is regulated under the municipal waste regulations, Chapters 287 and 297 of the residual waste regulations or the hazardous waste regulations. This change has been made to prevent resource recovery facilities that are energy recovery facilities from being regulated under this Chapter.

Materials derived from waste oil

Under the proposed regulations, materials derived from waste oil remain wastes unless the Department determines that they are no longer wastes as a condition in a permit. Commentators were concerned that oil removed from transformers, filtered, and returned to use in transformers would be considered waste. They were also concerned that a determination that materials derived from waste oil are not waste would not be available to generators processing waste oil under permit-by-rule. The Department would not ordinarily consider the transformer oil to be waste since the filtration is commonly performed as a means to protect pumps and the transformer oil is not spent (i.e., it is still useful as transformer oil without additional processing). The Board modified subsection (e)(1) in the final regulations to delete the language that referred to materials derived from waste oil as waste and also to allow such materials derived from waste oil under permit-by-rule to be eligible for a determination that they are no longer a waste.

Section 298.11. Waste oil specifications.

The specification level for total halogens in the proposed regulations, 1,000 parts per million (ppm), generated many comments. Several

commentators believe that Pennsylvania should either adopt the federal standard of 4,000 ppm or a dual system, as suggested in the preamble to the proposed regulations, where the specification would be 4,000 ppm for industrial burners and 1,000 ppm for residential burners. On the other hand, a commentator recommended that the 1,000 ppm total halogen specification is appropriate and would eliminate the confusion between the standard for on-specification fuel oil and the standard for total halogens relating to the rebuttable presumption.

The Board proposed the 1,000 ppm limit to protect residential furnaces from corrosion from hydrochloric acid produced during combustion of chlorine containing waste oil. Several manufacturers of home heating furnaces were contacted. The manufacturers could not provide information to show that elevated levels of halogens in oil would not lead to problems when burned in their furnaces. The Board does not believe that limits for waste oil burned in industrial furnaces and boilers, where higher halogen-containing oil can be burned without threatening human health and the environment, should be based on residential furnaces. Therefore, the waste specification for total halogens in Table 1 of this section of the final regulations has been amended to allow waste oil up to 4,000 ppm to be considered on-specification when used in industrial burners and is retaining 1,000 ppm as the on-specification standard when waste oil is used in commercial or residential burners.

Two comments were received on the requirement that waste oil burned for energy contain a minimum heat content of 8,000 Btu per pound. One commentator questioned the need for the minimum heat content requirement, since there is none in the federal regulations. The second requested clarification that this requirement applies to the oil as burned, not individual oils that are blended together prior to burning. As stated in the preamble to the proposed regulations, 8,000 Btu per pound is equivalent to wood or a low-grade coal, which are commonly utilized as fuels. Since oil itself contains between 16,000 and 18,000 Btu per pound, waste oil would have to contain in excess of 50 percent of a non-combustible material, such as water or clay, to fail to meet 8,000 Btu per pound. "Fuels" containing an excess of 50 percent of a non-combustible material could hardly be considered legitimate fuels. The second commentator requested clarification that this requirement applies to the oil as burned, not individual oils that are blended together prior to burning. The Department intends all the waste oil specifications, including the 8,000 Btu per pound specification, to apply to waste oil as marketed or burned. For example, the oil fraction obtained from processing an oily wastewater that has a heat content less than 8,000 Btu per pound would undoubtedly have a heat content greater than 8,000 Btu per pound and could be marketed as on-specification waste oil (provided it was on-specification for the remainder of the constituents/properties). The Board

is retaining the 8,000 Btu per pound requirement in the final regulation, but has clarified the rule to indicate it applies to the waste oil as burned.

In the proposed regulations, waste oil that does not exceed any specification level in Section 298.11 is not subject to Chapter 298 when burned for energy recovery. While the Board has not made changes to this provision in the final regulations, the Board believes clarification is needed on when waste oil meeting the specifications is no longer regulated under Chapter 298. As stated above, the waste oil specifications are intended to apply to waste oil as marketed or burned—that is, when ready to be used as fuel. If the waste oil will be processed, blended or requires other treatment prior to its use as a fuel that is not required of virgin fuel oil, it continues to be subject to Chapter 298. Filtration performed solely to protect pumps used in transfer of the oil is not considered processing for purposes of this provision.

Section 298.12. Prohibitions.

Subsection (a) states that waste oil may not be managed in surface impoundments or piles unless the units are subject to Chapter 264a or 265a of the hazardous waste regulations (relating to owners and operators of hazardous waste treatment, storage and disposal facilities and interim status standards for owners and operators of hazardous waste treatment, storage or disposal facilities). Similar language appears in Sections 298.22 (relating to waste oil storage), 298.45 (relating to waste oil storage at transfer facility), 298.54 (relating to waste oil management) and 298.64 (relating to waste oil storage). One commentator asked whether the parenthetical portion of the statement indicates that permits will be required for surface impoundments and storage units that manage waste oil, or would the permit-by-rule requirements for generators described in § 298.20(b)(3) apply. The commentator also asked for clarification that *only* Subchapters I and J (pertaining to containers and tank systems) and Subchapters K and L (pertaining to surface impoundments and waste piles) apply. The language used in the regulations closely follows the federal regulations at 40 CFR 279. The parenthetical portion of this statement was included in the proposed regulation to reference the information contained in Chapter 264a and 265a. These sections should be interpreted like the federal counterpart at 40 CFR 279.12(a), which requires full compliance with Subparts K and L in Parts 264 and 265. Storage of waste oil in surface impoundments would be considered treatment and requires a permit authorized under the hazardous waste management regulations. A permit-by-rule under this Chapter does not replace the need to comply with Chapters 264a and 265a. As a practical matter, the Department is unaware of any waste oil impoundments in Pennsylvania and believes placement of waste oil in a surface impoundment

would decrease recyclability of the oil. The U.S. Environmental Protection Agency (EPA) has numerous documented cases of environmental damage from the storage of waste oil in these units (see Environmental Damage from Used Oil Mismanagement, Final Draft Report, available in the docket to 57 FR 41566, December 10, 1992). The references in these regulations should be read to apply to the appropriate subparts and subchapters only. The Board is retaining the wording of the proposed regulations.

Section 298.20. Applicability.

Several commentators criticized the permit-by-rule (PBR) provisions of the proposed regulations. Most of the comments pertained to the stringency of these provisions compared to what is allowable under current PBR provisions in §287.102 (relating to permit-by-rule). For example, under the captive processing provisions in §287.102(b), residual waste can be processed by the generator at the same site where some or all of the waste is generated. The proposed regulations contained conflicting language in subsection (b)(3) and (b)(3)(i)(C) on whether a generator may process waste from the generator's other manufacturing locations at the site covered by the permit-by-rule. The final regulations retain the requirement in clause (b)(3)(i)(C) and delete the requirement in subsection (b)(3), tracking more closely the language in §287.102(b) for captive processing facilities. The same change has been made in clause (b)(3)(ii)(A).

On final rulemaking, the Board has added new language in subsection (b)(3), identical to language in §287.102, that incorporates the requirement for an operator to submit written notice to the Department of operation under the permit-by-rule. In subsection (b)(3)(ii), the reference in clause (C) to federal standards for preparation of preparedness, prevention and contingency (PPC) plans has been deleted and replaced, in clause (D), with language from Section 287.102 relating to PPC plans. Additionally, the final regulations include new language, in subsection (b)(8), that allows the Department to make a determination that material is no longer a waste when used in accordance with Section 287.7 (relating to determination that a material is no longer waste). The addition of this language clarifies that this opportunity is available to generators of waste oil operating under a permit-by-rule in Chapter 298.

The PBRs in this section are more stringent than the federal regulations. The EPA's used oil regulations are limited to requiring that waste oil be generated onsite and not shipped offsite to be burned for energy recovery. The federal regulations do not address the risks from mishandling the waste oil that are posed when the processing facility is conducted by the

waste oil generator. The final regulations address more directly the onsite management of waste oil by generators.

Several commentators expressed concern that the generator recordkeeping requirements in the proposed regulations were overly burdensome. They viewed the proposed regulations as requiring very detailed records on waste oil, such as recording each type of oil used and process it was used in and testing results. In addition, the commentators questioned the need to retain these records for five years when other records need only be retained for three years. At the request of the ad hoc waste oil recycling companies that provided input to the Department, these minimal generator recordkeeping requirements were developed to assist waste management personnel in identifying the types of waste they collect and process or dispose. The requirements represent basic recordkeeping associated with ordinary business practices and should not be overly burdensome. The requirements are especially simple for generators whose waste oil does not contain elevated halogens and who do not mix the waste oil with hazardous waste.

Examples of how the recordkeeping requirements will apply are as follows. First, for a company maintaining a fleet of automobiles, the entire record may consist of motor oil from changing the oil in cars. A second example is a typical generating station, where many different kinds and grades of lubricants are used (different weights and additives) for particular pieces of equipment. During major overhauls, each of these oils are not separately measured, cataloged, and tested. Like-kind lubricants are collected together and sent to appropriate reprocessing or disposal. In the generator's records, the lubricants would probably be called lubricating oils used to lubricate equipment. If some of the oils are chlorinated it may be necessary to have two categories for the lubricating oils, chlorinated and non-chlorinated. It would not be necessary to identify each particular piece of equipment in which each grade of lubricating oil is used.

There is no requirement for the generator to actually test the waste oil; however, if the waste oil has been tested, the generator should record the results. If a waste oil transporter runs a total halogen test on a generator's waste oil, and gives the results to the generator, the generator should make those results part of his records. This requirement should not increase costs for tests and materials and should only use as much time as it takes to quickly record a note in a file.

The requirement is a bit more complex for generators who mix characteristic hazardous waste with their waste oil. The records should show that the resultant mixture is no longer characteristically hazardous.

The Board has retained the generator recordkeeping requirements in the final regulation. However, the Board decided to reduce the record retention requirement from five to three years. In addition, a new recordkeeping requirement has been added to correspond with the new language added in Section 298.10(b)(2) that allows generators to mix some characteristically hazardous waste with waste oil. Subsection (c)(5) requires a generator to record analyses of hazardous waste characteristics for any mixtures of hazardous waste with waste oil.

Additional changes, relating to cross references, have been made to subsection (b). In subsection (b)(3), a cross reference to Chapter 297, that contains the application and operating requirements for incinerators and other processing facilities, was inadvertently omitted from the proposed rulemaking. In clauses (b)(3)(i)(A), (iii)(A) and (iv)(A), references to "and this article" have been deleted to indicate that waste that is not waste oil must be managed in accordance with the appropriate municipal, residual or hazardous waste regulations. In subsection (b)(ii), language added on final rulemaking allows an operator separating waste oil from wastewater generated onsite to operate under permit-by-rule if the wastewater is made acceptable for either discharge or shipment offsite.

Section 298.21. Hazardous waste mixing.

On final rulemaking, the Board added new subsection (c) to remind and clarify for generators their continuing responsibility to perform hazardous waste determinations for waste generated prior to any mixing with waste oil and on any resultant mixtures. In addition, the Board added new subsection (d) to enhance the transfer of information from a generator to a transporter so that the transporter knows whether the waste he is collecting is hazardous or not.

Section 298.22. Waste oil storage.

In subsection (b)(2), a minor correction regarding the condition of units has been made to conform to the federal regulations.

Since the federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in Pennsylvania that is different than the federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore,

provided a transition scheme of two years, in subsection (c), to comply with the new labeling requirements. Until that time, either label may be used.

On final rulemaking, the Board adopted new language, in subsections (d) and (e), that apply to storage tanks and containers used to store waste oil. Commentators suggested that storage requirements from Chapter 299 be incorporated for waste oil. The Board recently amended Chapter 299 of the residual waste regulations to include standards for storage of residual waste in tanks and has decided to incorporate those same standards in this section and Sections 298.45 and 298.54. Although the tank standards are more detailed than the federal requirements, they are largely performance-based and represent more recent experience gained through the storage tanks program. The new language pertaining to containers is also language that was recently adopted by the Board in the amended provisions to Chapter 299.

Several commentators thought the proposed regulations, along with changes made to the hazardous waste regulations after the proposed regulations were published, would require every waste oil generator to develop a written contingency plan, designate emergency coordinators, and file emergency plans with all local police, fire departments, hospitals, and state and local emergency response teams. Based on these assumptions, the commentators indicated that such requirements would be financially burdensome, especially to small generators, and suggested that waste oil generators only be required to comply with the applicable Spill Prevention, Control and Countermeasure (SPCC) provisions of 40 CFR Part 112. On final rulemaking subsection (g) has been amended to include a cross reference to 40 CFR Part 112. This addition is consistent with the parallel federal requirements.

The federal requirements under 40 CFR Part 112 would only require a generator to develop an SPCC plan if a spill has already occurred. On proposed, the regulations cross reference spill prevention, control and countermeasure requirements found in the hazardous waste regulations. To relieve some of the burden associated with following these measures, the Board has amended subsection (g) to delete the cross reference to the hazardous waste program and add a requirement to prepare a PPC plan that is consistent with the residual waste program.

Section 298.23. Onsite burning in space heaters.

Of the three commentators who commented on burning oil in space heaters, two supported the regulation as proposed. The third objected for the following reasons: 1) small furnaces have unacceptable emissions when burning waste oil; 2) there will be no testing by the burners to assure mixture

of waste oil with hazardous waste has not occurred; and 3) a seasonal demand will be created for those who currently recycle and process waste oil. The commentator that objected further explained that those who would be allowed to burn waste oil received directly from a generator will not be interested in purchasing waste oil other than in the colder months, and such a seasonal operation would not be profitable for the waste oil companies.

The proposed regulations do not expand the burning of waste oil in space heaters. Since this section in the proposed regulations is essentially the same as its federal counterpart (40 CFR 279.23), the Department is confident that the proposed requirements for space heaters are acceptable under federal requirements. We do not believe banning legitimate burning of waste oil in space heaters will prevent owners/operators of space heaters from receiving waste oil mixed with hazardous wastes. Along with this promulgation of final waste oil regulations, the Department is developing fact sheets and other informational materials to aid in complying with the requirements. What can and cannot be burned in space heaters is part of this educational effort. Under Pennsylvania's current regulations, businesses burning waste oil in space heaters may already accept on-specification waste oil directly from generators or burn their own waste oil and waste oil received from do-it-yourselfers. The proposed regulations do not change the provisions involving burning waste oil in space heaters or transportation from a generator directly to a burner. Since businesses burning waste oil are operating in Pennsylvania today, these provisions are not likely to cause waste oil providers to only operate profitably on a seasonal basis. The Board has decided not to modify this section in the final regulations.

Section 298.24. Offsite shipments.

One commentator pointed out that paragraph (1)(iv), not found in the corresponding federal rule, requires each generator to provide the collection center a written certification that the generator has not mixed its waste oil with hazardous waste, except as provided in proposed §298.10(b)(2)(ii). The commentator endorsed the concept that the generator should be responsible for not mixing waste oils with hazardous wastes. The commentator indicated, however, that many small generators, such as do-it-yourselfers, may not have sufficient knowledge of DEP's hazardous waste rules.

Over the past few years, the Department has experienced some difficulty in keeping used oil collection sites in the used oil collection program. While there have been several reasons for this, many businesses are reluctant to collect waste oil from small generators out of fear of accepting contaminated oil. The certification requirement is an attempt to provide a level of "comfort" to collection facilities that would be absent without it. As

for household do-it-yourselfers, since their wastes are exempt from regulation as hazardous under 40 CFR 261.4(b)(1), as incorporated by reference under 25 Pa. Code 261a.1, they can easily certify that they have not mixed their waste oil with hazardous waste. Even generators who are small businesses are required to determine if their wastes are hazardous (40 CFR 262.11, as incorporated by reference under 25 Pa. Code 262a.10), so they should have enough knowledge of their wastes to be able to comply with the certification. Of course, the easiest way to ensure that the certification is accurate and that they have not mixed their waste oil with hazardous waste is to train their employees not to dump anything in their waste oil. The Board has not made changes to this requirement on final rulemaking. To assist generators and facilities receiving waste from generators, the Department is developing a fact sheet explaining how to prepare a certification.

One commentator suggested that transporters under tolling arrangements should be required to have EPA ID numbers. Since, under these tolling arrangement provisions, the vehicle used to transport waste oil from the generator to the processor/rerefiner and the processed oil back to the generator must be owned and operated by the processor/rerefiner, and waste oil processors/rerefiners must obtain EPA ID numbers, requiring the transporter to obtain an EPA ID number would be redundant. The Board has not made any changes to this requirement in the final rule.

Sections 298.25. Source Reduction Strategy.

Several comments applicable to the source reduction strategy requirements were received. While one commentator questioned the need for source reduction strategies for waste oil that is recycled, most were concerned with inconsistencies in dates and requirements of this section compared with those found for other residual waste in Section 287.53. Commentators believed that separate source reduction strategies would be required for waste oil and other residual waste and that source reduction strategies for waste oil from automobile servicing would have to be developed. The federal regulations for used oil do not require the preparation of source reduction strategies for used oil.

On final regulation, the Board has deleted the proposed language containing the requirements for a source reduction strategy and cross-referenced the source reduction strategy requirements from Chapter 287 to remove the inconsistencies and to make it clear that waste oil should be included in the same source reduction strategy developed for the generator's other residual waste. This cross reference also clarifies that source reduction strategies are not required for waste oil from automotive servicing. In developing source reduction strategies, generators might consider certain

processes that can extend the useful life of oil, such as switching to a longer-lasting oil, like a synthetic, or by using additives or filtration, thereby saving the generators money and creating less waste.

Section 298.26. Biennial Report.

Several comments applicable to the biennial report requirements were received. While one commentator questioned the need for biennial reporting for waste oil that is recycled, most were concerned with inconsistencies in dates and requirements of this section compared with those found for other residual waste in Section 287.52. Commentators believed that biennial reports would be required for waste oil from automotive servicing. The federal regulations for used oil do not require the preparation of biennial reports for used oil.

The basic information contained in the biennial reports aids the Department in administering waste programs by identifying how much waste is being generated in the Commonwealth and how it is being processed, treated, disposed or recycled. The requirement for the biennial report is based on waste generated rather than its destination. It also does not apply to waste oil generators who generate oil from automotive servicing. The majority of waste oil generators who will have to include their waste oil in biennial reports are residual waste generators who are already required to file biennial reports.

On final rulemaking, the Board has deleted the proposed language containing the requirements for a biennial report and has cross-referenced the biennial report requirements from Chapter 287 to remove the inconsistencies and to make it clear that waste oil should be included in the same biennial report developed for the generator's other residual waste. This cross-reference also clarifies that the biennial report is not required for waste oil from automotive servicing.

Section 298.30. Waste oil collection centers.

Three comments were received concerning waste oil collection centers. One commentator suggested an exemption be added for state and community do-it-yourselfer (DIYer) drop-off sites. The commentator was concerned that waste oil from DIYers placed in a tank at waste oil collection centers with waste oil generated at the center could make the entire tank of waste oil hazardous. Federal law concerning hazardous waste does not exclude from regulation waste from a tank at a collection center that contains waste oil from DIYers mixed with waste oil generated at the center, since the waste oil

generated at the center might be mixed with hazardous waste. However, the Department may use its enforcement discretion to allow waste oil containing high total halogens from a collection center to be managed as nonhazardous when the collection center demonstrates that the halogens were not generated at the collection center.

The other two comments concerned the level of details in the proposed regulations. One indicated that the level of detail in the proposed regulation with regard to requiring sheltered storage of waste oil tanks is too great. The other indicated that the level of detail with regard to specifying how waste oil collection centers are to ensure that they are collecting only waste oil that has not been impermissibly mixed with hazardous wastes should be greater. The federal requirements for used oil include minimal requirements for collection centers—limiting the types of waste oil that can be accepted and the types of activities that can occur at a collection center. While the primary goal of all of Pennsylvania's environmental regulations is to protect human health and the environment, the waste oil regulations are also concerned with the recyclability of waste oil. The Board specified that the tanks at aggregation points be sheltered to protect the waste oil from the elements and from other contaminants that could be thrown into an open top of the tank. The Board also recognizes there are many ways for waste oil collection centers to ensure that they are collecting only waste oil that has not been impermissibly mixed with hazardous wastes. Rather than prescribing a single method for all, the Board decided to allow each collection center to develop and implement what will work best for their particular facility. The Board has decided not to make changes to the requirements for waste oil collection centers upon final regulation.

On final rulemaking, the Board added language to subsection (b)(8) to require the development of procedures, by the collection center, to prevent the receipt of wastes and materials that are unacceptable for collection.

Section 298.31. Waste oil aggregation points owned by the generator.

On final rulemaking, subsection (b)(5) has been added to be consistent with the other permit-by-rule provisions in Chapters 287 and 298. The new language requires an owner or operator to submit written notice to inform the Department of the person's intention to operate under the permit-by-rule.

Throughout this subchapter, the term "transfer facility" has been added to clarify those requirements that are specific to either a transporter or transfer facility. These changes are also necessary to correspond to the changes in the definition of "waste oil transporter."

Section 298.40. Applicability.

One commentator recommended that this section be clarified by adding language stating that the transportation requirements do not apply to generators who do not engage in the offsite transportation of waste oil. The regulations are clear, in subsection (a), that generators who are not transporters, or who only transport onsite, do not have to comply with the transportation requirements. Generators who transport no more than 55 gallons of waste oil to a waste oil collection site as specified in Section 298.24(a) or aggregation point as specified in Section 298.24(b), or those transporting from only do-it-yourselfers to a regulated facility are also not subject to the transportation requirements. The Board has decided to retain the proposed language in the final-form regulations.

Under the proposed regulations in subsection (b), “a transporter who imports waste oil into or exports waste oil out of this Commonwealth is subject to this subchapter from the time the waste oil enters until the time it exits this Commonwealth.” A commentator suggested revising the proposed regulation to distinguish between requirements that are applicable to transfer stations being operated within Pennsylvania and transportation activities in which shipments of waste oil are merely passing through Pennsylvania. The Board maintains that the regulation, adapted from the federal requirements, is appropriate and correct. The language “import” implies that waste oil will be brought into Pennsylvania for waste management and the word “export” implies that waste oil that is being managed in Pennsylvania will be transported outside of Pennsylvania.

Section 298.41. Restrictions on transporters who are not also processors or rerefiners

The federal rules establish a specific provision governing waste oil from electrical transformers and turbines, filtered, and returned to its original use. One commentator pointed out that, where the federal rules allow utilities to collect and filter electrical transformer and turbine oils, and return that oil to its original use, without the need for an individual permit, the proposed regulations require an individual permit in every case. The Board has modified subsection (c) of the final regulations to be compatible with the federal rule.

Section 298.42. Notification.

A commentator requested clarification of what identification number is required for a waste oil transporter under this section. The Board has modified subsection (a) in the final regulations to indicate that a waste oil transporter or a transfer facility must have an EPA identification number.

Section 298.43. Waste oil transportation.

The proposed regulations specify that waste oil transporters may only deliver waste oil to another waste oil transporter, a waste oil processing/refining facility, an off-specification waste oil burner facility or an on-specification waste oil burner facility. A commentator pointed out that noticeably absent from this list is the waste oil transfer facility. As discussed above, while Pennsylvania's waste management regulations clearly distinguish waste transporters from owner/operators of waste transfer facilities, federal used oil regulations blend the two together. This produced confusion in the proposed regulations as to when various sections apply to transporters only, to transfer facilities only, or to both. In subsection (a)(5) of the final regulations, the Board has clarified that waste oil transporters may deliver waste oil to transfer facilities.

Section 298.44. Rebuttable presumption for waste oil and flash point screening.

One commentator strongly objected to provisions in the proposed regulations that would allow waste oil transporters to apply knowledge of the halogen content of the waste oil in light of the materials or processes used to determine the total halogen content of a shipment of waste oil. The commentator indicated that the screening procedures set forth in existing waste oil permits are standards that all waste oil transporters also should be required to follow and are entirely consistent with the Department's goal of minimizing the mixing of hazardous wastes and waste oil.

The Department does not believe requiring every waste oil transporter to run total halogen determinations is necessary in every case. Existing permits for transfer facilities and processing/rerefining facilities include total halogen testing. If problems with transporters are discovered in the future due to reliance on knowledge rather than testing, the Board may reevaluate and amend the requirements in a future rulemaking. The Board decided to continue to allow knowledge of the halogen content to be applied in lieu of testing for transporters in the final regulations.

While halogen screening is a useful tool in detecting adulteration of waste oil by chlorinated solvents, this tool allows other types of hazardous waste to go undetected. Of particular concern are wastes that have the potential to initiate a fire during transportation, storage or processing. The Board has required flash point determinations as screening to protect facilities in existing waste oil permits from this danger. One commentator suggested the flash point requirement be expanded to include waste oil transporters or deleted as a requirement of existing permits. Since field methods to perform flash point analysis do not currently exist, the Board does not believe requiring every waste oil transporter to run flash point determinations is practical at this time. The Board has decided, however, that such screening at waste oil facilities is warranted to keep a "level playing field" for requirements at all Pennsylvania facilities. Therefore, subsection (d) has been added on final rulemaking to require transfer facilities to test for flash point or perform an alternative method to screen waste oil for adulteration.

On final rulemaking, the heading to this section has been modified to reflect the addition of subsection (d). The Board added language to subsection (a) that requires a waste oil transporter to make a determination about halogens at the generator's location, prior to loading on the transportation vehicle. This requirement has been added to clarify that the halogen determinations must take place before mixing several generators' wastes together. Additional language has been added that requires a transfer facility to make the determination prior to the unloading of a transportation vehicle at the transfer facility to prevent the receipt of hazardous waste at the facility.

Section 298.45. Waste oil storage at transfer facility.

The proposed regulations included permit-by-rule provisions for satellite transfer facilities. These satellite facilities would expand the service area for the permitted facility by allowing "milk runs" to be made to generators of small amounts of waste oil, where the small quantities picked up from the generators would be brought to the satellite facilities and stored until the quantity is sufficient to warrant shipment to the permitted facility. Under the proposed regulations, the satellite facility must be covered under the bond of their main facility, hence the need for their main facility to be located within the Commonwealth and permitted by the Department.

Several comments were received on this permit-by-rule for satellite transfer facilities. Some strongly supported the permit-by-rule. Others thought it should be expanded to include out-of-state main facilities. One commentator thought all waste oil transfer facilities should be covered by

permit-by-rule and not required to obtain a permit. Finally, one commentator believed the distinction between in-state and out-of-state main facilities conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution and suggested the permit-by-rule be eliminated.

Due to potential environmental harm from these facilities, as well as economic hardship for their operators during times of depressed markets for waste oil, there is a very real potential for the Commonwealth to be involved in cleanups and clean-outs of these facilities. The Department believes bonding to cover these facilities is very important and that a higher degree of detailed management of waste via permits, rather than permit-by-rule, is essential. Since the Department does not issue permits to out-of-state facilities, permit-by-rule would not be an option for facilities that are satellite to waste oil transfer and processing facilities located outside the Commonwealth. To provide a "level playing field," the Board has decided to delete the permit-by-rule provisions in subsection (b)(4) on final rulemaking.

On final rulemaking several small changes were made for purposes of clarification. A citation to chapter 293 has been added to subsection (b)(1) and (3). This citation was inadvertently omitted on proposed rulemaking. Language has been added in subsection (b)(2) and (3) to clarify the requirements. The language deleted in clause (b)(2)(ii)(B) has been deleted for stylistic purposes.

In subsection (d)(2), a minor correction regarding the condition of units has been made to conform to the federal regulations.

On final rulemaking, the Board adopted new language, in subsections (f) and (g), that apply to storage tanks and containers used to store waste oil. Commentators suggested that storage requirements from Chapter 299 be incorporated for waste oil. The Board recently amended Chapter 299 of the residual waste regulations to include standards for storage of residual waste in tanks and has decided to incorporate those same standards in this section. Although the tank standards are more detailed than the federal requirements, they are largely performance-based and represent more recent experience gained through the storage tanks program. The new language pertaining to containers is also language that was recently adopted by the Board in the amended provisions to Chapter 299.

Since the federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in Pennsylvania that is different than the

federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of two years, in subsection (h), to comply with the new labeling requirements. Until that time, either label may be used.

The proposed regulations require a waste oil transporter to comply with the preparedness, prevention and contingency plan and emergency procedures in the hazardous waste regulations and also with the underground storage tank and spill prevention program in Chapter 245. One commentator thought it was unclear why transporters should be subject to these requirements. The commentator also questioned why waste oil that does not exhibit any characteristics of hazardous waste should be subject to hazardous waste planning requirements in Chapter 264a, rather than the residual waste requirements.

As discussed above, while Pennsylvania's waste management regulations clearly distinguish waste transporters from owner/operators of waste transfer facilities, federal used oil regulations blend the two together. This produced confusion in the proposed regulations as to when various sections apply to transporters only, to transfer facilities only, or to both. The Board has modified this section in the final regulation to apply to waste oil transfer facilities rather than waste oil transporters. Subsection (j) of the final regulations tie the preparedness, prevention and contingency plan and emergency procedures to the residual waste requirements instead of those contained in the hazardous waste regulations.

Section 298.46. Tracking.

Clarification of proposed tracking provisions with respect to the applicability of these provisions to generators who are self-transporting materials to aggregation points was requested. The commentator suggested that the federal rule upon which this section is based is focused on situations where a generator consigns a shipment to a transporter, who takes the shipment to a processor. With the exception that the proposed regulations require intermediate rail transporters to sign the record of acceptance, the requirements in §298.46 are identical to those found in 40 CFR 279.46. The Board decided no change is necessary.

On final rulemaking, subsection (b) has been added requiring labeling of transportation vehicles to identify more readily the contents of the vehicle.

Throughout this subchapter, the term "transfer facility" has been added to clarify those requirements that are specific to either a transporter or

transfer facility. These changes are also necessary to correspond to the changes in the definition of “waste oil transporter.”

Section 298.50. Applicability.

In subsection (c), the Board added a cross reference to Chapter 297 which contains the application and operating requirements. This cross reference was inadvertently omitted on proposed rulemaking. In addition, language has been added in subsection (c)(3) to clarify how existing general permits will be phased out.

Section 298.51. Notification.

In subsection (a), a reference to EPA has been added to clarify the type of identification number required to be obtained by a waste oil processor or rerefiner.

Section 298.53. Rebuttable presumption for waste oil and flash point screening.

The heading to this section has been modified to reflect the addition of subsection (d). Language has been added in subsection (a) on final rulemaking that requires a processing/rerefining facility to make the determination prior to the unloading of a transportation vehicle at the processing/rerefining facility to prevent the receipt of hazardous waste at the facility.

In subsection (b), the words “total halogen” have been added for clarification.

Subsection (d) has been added on final rulemaking to require processing/rerefining facilities to test for flash point or perform an alternative method to screen waste oil for adulteration. This subsection has been added to be consistent with Section 298.44.

Section 298.54. Waste oil management.

The proposed regulations incorporate closure and postclosure care requirements applicable to hazardous waste landfills where not all contaminated soil associated with the closure of aboveground waste oil storage tanks can be practicably removed. These requirements in the proposed regulations apply even in circumstances where the waste oil that was stored would not qualify as either a listed or characteristic hazardous waste. One commentator believes these requirements expand the scope of

hazardous waste closure and postclosure obligations to aboveground storage tanks that are used to hold waste oil. The language is taken directly from the federal used oil regulations at 40 CFR Section 279.54(h)(ii). By incorporating the federal requirements, the Board is promoting consistency between the state and federal programs and has not changed it in the final regulations.

In subsection (b)(2), a minor correction regarding a performance standard for leaking has been made to conform to the federal regulations.

On final rulemaking, the Board adopted new language in subsections (d) and (e) that applies to storage tanks and containers used to store waste oil. Commentators suggested that storage requirements from Chapter 299 be incorporated for waste oil. The Board recently amended Chapter 299 of the residual waste regulations to include standards for storage of residual waste in tanks and has decided to incorporate those same standards in this section. Although the tank standards are more detailed than the federal requirements, they are largely performance-based and represent more recent experience gained through the storage tanks program. The new language pertaining to containers is also language that was recently adopted by the Board in the amended provisions to Chapter 299.

Since the federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in Pennsylvania that is different than the federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of two years, in subsection (f), to comply with the new labeling requirements. Until that time, either label may be used.

On final rulemaking, subsection (i) has been amended to include a cross reference to 40 CFR Part 112. This addition is consistent with the parallel federal requirements.

Section 298.62. Notification.

In subsection (a), a reference to EPA has been added to clarify the type of identification number required to be obtained by a waste oil burner.

Section 298.64. Waste oil storage.

In subsection (b)(2), a minor correction has been made to conform to the federal regulations.

On final rulemaking, the Board adopted new language in subsections (d) and (e), that apply to storage tanks and containers used to store waste oil. Commentators suggested that storage requirements from Chapter 299 be incorporated for waste oil. The Board recently amended Chapter 299 of the residual waste regulations to include standards for storage of residual waste in tanks and has decided to incorporate those same standards in this section. Although the tank standards are more detailed than the federal requirements, they are largely performance-based and represent more recent experience gained through the storage tanks program. The new language pertaining to containers is also language that was recently adopted by the Board in the amended provisions to Chapter 299.

Since the federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in Pennsylvania that is different than the federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of two years, in subsection (f), to comply with the new labeling requirements. Until that time, either label may be used.

In subsection (h), the Board deleted references to the federal regulations relating to preparedness, prevention and contingency plans and added a reference to the PPC plan requirements that apply to residual waste facilities to be consistent with Article IX. In addition, a cross reference to the federal requirements for spill prevention, control and countermeasures was added on final rulemaking to be consistent with the federal requirements.

Section 298.73. Notification.

In subsection (a), a reference to EPA has been added to clarify the type of identification number required to be obtained by a waste oil fuel marketer.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed regulation.

Benefits

The final amendments to the waste oil recycling regulations clarify existing regulations; eliminate requirements that are no longer necessary or are redundant; encourage performance-based requirements and encourage recycling. To promote recycling, the final regulations expand existing permit-by-rule provisions for waste oil collection facilities. These facilities will now be able to accept any type of waste oil, not just used oil from internal combustion engines or vehicles.

Compliance Costs

Generators may be most affected by the amendments. Generators of small quantities of waste oil may realize savings for storage and transportation if they transport their oil to waste oil collection facilities. Under the current regulations, generators of small quantities of waste oil would either have to use a residual waste transporter or, if transporting the waste oil themselves, comply with the residual waste transportation requirements. The final regulations will allow generators to self-transport up to 55 gallons of waste oil to a collection facility without having to comply with the residual waste transportation requirements.

Minor increased costs to industry will result from additional recordkeeping and labeling requirements. This information is needed to enable transporters, transfer facilities, processors/rerefiners, burners and the Department to determine whether the waste oil has been improperly mixed with a hazardous waste if the generator's waste oil contains more than 1,000 ppm total halogens. Some waste oil transfer facilities may need to upgrade their tanks and containment systems.

Conditionally exempt small quantity generators of hazardous waste who also generate waste oil will experience an increase in costs. These individuals will no longer be able to dispose of their listed hazardous waste and some types of characteristically hazardous waste by mixing it with their waste oil and having the mixture burned for energy recovery. Larger generators of hazardous waste also will no longer be allowed to dispose of their listed hazardous waste and some types of characteristically hazardous waste by mixing it with their waste oil. The increase in cost will occur as a result of the need to dispose of the waste in an environmentally responsible manner.

It is projected that there will be no increase costs or savings to local governments associated with these amendments.

Compliance Assistance Plan

The Department will assist the regulated community by developing fact sheets where they would be helpful based on suggestions from industry groups. The Department's field staff will provide compliance assistance during routine facility permitting and inspections.

Paperwork Requirements

Generally, no new recordkeeping and reporting requirements have been imposed by the final regulations that are not already required under existing regulations. Generators of waste oil are required to maintain records documenting the characteristics of the oil used, how it became waste oil, whether it was mixed with a hazardous waste, and all information used to demonstrate that any waste oil containing more than 1,000 ppm total halogens was not mixed with a hazardous waste. Record retention time, however, has been reduced from five to three years.

The generators, transporters, burners and waste oil processing/re-refining facility operators are required to keep records of the information used to determine whether waste oil containing more than 1,000 ppm total halogens was not mixed with hazardous waste. Generators, marketers, processors/re-refiners or any person who first determines that waste oil is on-specification waste oil must keep records showing why the waste oil met the specifications. Waste oil processors/re-refiners are required to maintain operating records and to have a written protocol for flash point screening, for determining if the total halogens in waste oil exceeds 1,000 ppm and, if applicable, for determining whether waste oil to be burned for energy recovery is on-specification. Waste oil processors/re-refiners are also required to maintain a much more detailed prevention, preparedness and contingency plan than required of other hazardous waste treatment facility operators. Transporters, waste oil processors/re-refiners, burners and marketers must maintain records tracking shipments of waste oil. These analytical and recordkeeping requirements are mandated by EPA's used oil regulations.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP encourages pollution

prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The residual waste regulations require generators, including generators of waste oil from non-automotive processes, to develop source reduction strategies since 1992. The requirement to prepare source reduction strategies continues to apply to generators in this rulemaking. The existing requirements have resulted in the development of a highly successful source reduction program.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on March 22, 1999, the Department submitted a copy of the notice of proposed rulemaking, published at 29 *Pa.B.* 1975 (April 10, 1999), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under Section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), on _____ these final form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulations.

J. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at 1 *Pennsylvania Code* §§7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 29 Pa.B. 1975 (April 10, 1999).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 *Pa. Code*, Chapters 260a, 261a, 266a, 270a, and 287 are amended by amending Sections 260a.3, 261a.2, 261a.5, 261a.6, 266a.100, 270a.60, 287.1, 287.2, 287.51, 287.102; by deleting 266a.40-266a.44; and by adding Chapter 298 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairman shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

BY:
JAMES M. SEIF
Chairman
Environmental Quality Board

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM. GENERAL

Subchapter A. GENERAL

§ 260a.3. Terminology and citations related to Federal regulations.

(a) For purposes of interfacing with 40 CFR Parts 260-279, the following terms apply, unless otherwise noted:

* * * * *

(8) The Commonwealth equivalent of 40 CFR Part 279 (relating to standards for the management of used oil) is found in [Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery)]
ARTICLE IX, CHAPTER 298 (RELATING TO MANAGEMENT OF WASTE OIL).

* * * * *

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261a.2. DEFINITION OF "SOLID WASTE."

MATERIALS THAT ARE EXCLUDED FROM THE DEFINITION OF "SOLID WASTE" IN 40 CFR 261.2(c) - (e) (RELATING TO THE DEFINITION OF "SOLID WASTE") SHALL BE MANAGED IN ACCORDANCE WITH CHAPTERS 287-299 (relating to residual waste management).

§ 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) is replaced with, **[Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery)] ARTICLE IX, CHAPTER 298 (RELATING TO MANAGEMENT OF WASTE OIL).**

* * * * *

§ 261a.6. Requirements for recyclable materials.

(a) The reference to “Part 279 of this chapter” in 40 CFR 261.6(a)(4) (relating to requirements for recyclable materials) is replaced with **[one of the following:**

(1) The residual waste regulations in Article IX (relating to residual waste management) if the waste oil is being recycled or reused in a manner other than burning for energy recovery.

(2) Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery) if the waste oil is destined to be burned for energy recovery] ARTICLE IX, CHAPTER 298 (relating to management of waste oil).

* * * * *

(e) REFERENCES TO § 279.11 IN 40 CFR § 261.6 ARE REPLACED WITH ARTICLE IX, SECTION 298.11 (relating to waste oil specifications).

CHAPTER 266a. MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

(Editor's Note: On final rulemaking, the Board is deleting the existing text of Subchapter E, which appears in §§ 266a.40–266a.44, 25 Pa. Code pages 266a-2 to 266a-8, serial pages (254994)-(255000) in its entirety.)

Subchapter E. (Reserved)

§§ 266a.40—266a.44. (Reserved)

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

§266a.100. Applicability.

The reference to “Part 279 of this chapter” in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with [Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery)]

ARTICLE IX, CHAPTER 298 (RELATING TO MANAGEMENT OF WASTE OIL).

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter F. Special Forms of Permits

§270a.60. Permits-by-rule.

* * * * *

(b) In addition to the requirements incorporated by reference, the following requirements apply:

* * * * *

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

* * * * *

(v) A GENERATOR MAY MIX WASTE OIL WITH A WASTE WHICH IS HAZARDOUS SOLELY BECAUSE IT EXHIBITS THE TOXICITY CHARACTERISTIC FOR BENZENE, ARSENIC, CADMIUM, CHROMIUM, LEAD OR IGNITABILITY, PROVIDED THAT THE RESULTANT MIXTURE DOES NOT EXHIBIT ANY CHARACTERISTIC OF HAZARDOUS WASTE UNDER CHAPTER 261a, SUBCHAPTER C, (RELATING TO CHARACTERISTICS OF HAZARDOUS WASTE) AND THAT THE MIXTURE IS MANAGED IN ACCORDANCE WITH CHAPTER 298, SUBCHAPTER C (RELATING TO WASTE OIL GENERATORS).

* * * * *

CHAPTER 287. RESIDUAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter A. GENERAL

§ 287.1. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[Used oil—A petroleum based or synthetic oil which is used in an internal combustion engine as an engine lubricant, or as a product for lubricating motor vehicle transmissions, gears or axles which through use, storage or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.]

[Used oil recycling—Preparing used oil for reuse as a petroleum product or petroleum product substitute by refining, rerefining, reclaiming, reprocessing or other means, or preparing used oil in a manner that substitutes for a petroleum product made from new oil, if the preparation or use is operationally safe, environmentally sound and complies with laws and regulations.]

* * * * *

(Editor's Note: This definition was new at proposed rulemaking and has been moved to this section. The term has been deleted in § 298.1.)

WASTE OIL—ONE OF THE FOLLOWING:

(i) OIL REFINED FROM CRUDE OIL OR SYNTHETICALLY PRODUCED, USED AND, AS A RESULT OF THE USE, CONTAMINATED BY PHYSICAL OR CHEMICAL IMPURITIES.

(ii) A LIQUID, PETROLEUM-BASED OR SYNTHETIC OIL, REFINED FROM PETROLEUM STOCKS OR SYNTHETICALLY PRODUCED WHICH IS USED IN AN INTERNAL COMBUSTION ENGINE AS AN ENGINE LUBRICANT, OR AS A PRODUCT USED FOR LUBRICATING MOTOR VEHICLE TRANSMISSIONS, GEARS OR AXLES WHICH, THROUGH USE, STORAGE OR HANDLING, HAS BECOME UNSUITABLE FOR ITS ORIGINAL PURPOSE

DUE TO THE PRESENCE OF CHEMICAL OR PHYSICAL IMPURITIES OR LOSS OF ORIGINAL PROPERTIES.

* * * * *

§287.2. Scope.

* * * * *

[(D) WASTE OIL THAT IS BEING RECYCLED SHALL BE MANAGED IN ACCORDANCE WITH CHAPTER 298 (RELATING TO MANAGEMENT OF WASTE OIL).]

Subchapter B. DUTIES OF GENERATORS

§ 287.51. Scope.

(a) A person or municipality that generates more than an average of 2,200 pounds of residual waste per generating location per month based on generation in the previous year shall submit a biennial report and source reduction strategy under §§ 287.52 and 287.53 (relating to biennial report; and source reduction strategy).

* * * * *

(c) This chapter does not apply to the following:

(1) Persons or municipalities that generate residual waste as a result of collecting the waste, including the collection of parts, machinery, vehicles[,] **AND** appliances [and used oil] from the repair or replacement of the parts, machinery, vehicles[,] **AND** appliances [and used oil].

* * * * *

(3) PERSONS OR MUNICIPALITIES THAT GENERATE OIL THAT HAS BEEN USED IN AN INTERNAL COMBUSTION ENGINE AS AN ENGINE LUBRICANT, OR AS A PRODUCT FOR

LUBRICATING MOTOR VEHICLE TRANSMISSIONS, GEARS OR AXLES WHICH, THROUGH USE, STORAGE OR HANDLING HAS BECOME UNSUITABLE FOR ITS ORIGINAL PURPOSES DUE TO THE PRESENCE OF CHEMICAL OR PHYSICAL IMPURITIES OR LOSS OF ORIGINAL PROPERTIES.

[(d) Generators and collectors of used oil who are also waste oil marketers are subject to § 266.43 (relating to standards applicable to marketers of waste oil burned for energy recovery).]

§ 287.102. Permit-by-rule.

* * * * *

(d) [*Transfer facilities that collect used oil.* A State inspection facility, oil retailer, retail service station or a captive processing facility that collects used oil generated only by the operator of the facility and by the employees of the operator who change their used oil in their vehicles which accepts used oil for recycling shall be deemed to have a residual waste transfer facility permit-by-rule under this article if the following are met:

(1) The facility is operated for the transfer of used oil only, and does not blend used oil with waste oil that is not used oil for offsite reuse.

(2) The facility maintains on the premises used oil collection tanks that are properly sheltered and protected to prevent spillage, seepage or discharge of the used oil into the water, land and air of this Commonwealth and of sufficient size to handle returns of used oil.

(3) The facility shall maintain on the premises, within a very close proximity to the collection tanks, collection facilities for the safe and proper disposal of used oil containers.

(4) A person may not deposit, dispose of or cause to be deposited or disposed of, used oil into sewers, drainage systems, surface waters or groundwaters, watercourse or marine waters in the Commonwealth, or on to public or private land within this Commonwealth.

(5) A person may not discharge water, antifreeze, other residual waste or other contaminants into a used oil collection tank or used oil storage facility.

(6) The operator submits a written notice to the Department that includes the name, address and the telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.]

[(e)] (d) * * *

* * * * *

[(f)] (e) * * *

[(g) *Waste oil energy recovery.* A facility that burns waste oil for energy recovery shall be deemed to have a residual waste processing permit if, in addition to subsection (a), the following conditions are met:

(1) The facility does not burn, or otherwise process, waste that is hazardous waste under Chapter 261 (relating to criteria, identification and listing of hazardous waste).

(2) The waste oil is burned in an enclosed device using controlled flame combustion and is directed through a flue as defined in § 121.1.

(3) The waste oil has more than 8,0000 BTUs per pound.

(4) The combustion unit recovers, exports and delivers for use at least 50% of the energy contained in the waste oil.

(5) The amount of energy recovered, exported and delivered by the process exceeds the amount of energy expended in the combustion of the waste oil.

(6) The facility has been issued a permit by the Department under the Air Pollution Control Act, if a permit is required by the act.

(7) The operator performs the analyses required by §§ 287.131–287.134 and maintains these analyses at the

facility. These analyses are required to be submitted to the Department upon written request.

(h)] (f) * * *

* * * * *

[(i)] (g) * * *

[(j)] (h) * * *

**ARTICLE IX. RESIDUAL WASTE MANAGEMENT
CHAPTER 298. MANAGEMENT OF WASTE OIL**

(Editor's Note: This chapter was new at proposed rulemaking and is printed in regular type to enhance readability. Changes made to the proposed rulemaking are bolded.)

Subch.

- A. GENERAL
- B. APPLICABILITY
- C. WASTE OIL GENERATORS
- D. WASTE OIL COLLECTION CENTERS AND AGGREGATION POINTS
- E. TRANSPORTER AND TRANSFER FACILITIES
- F. WASTE OIL PROCESSING/REFINING FACILITIES
- G. WASTE OIL BURNERS WHO BURN OFF-SPECIFICATION WASTE OIL FOR ENERGY RECOVERY
- H. WASTE OIL FUEL MARKETERS

Subchapter A. GENERAL

§ 298.1. Definitions.

Terms defined in §§ **260a.1 AND 260a.10 THAT ARE NOT DEFINED IN 287.1 [245.1 and 260.2]** have the same meanings when used in this chapter. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Aboveground STORAGE tank—A tank used to store or process waste oil that is not an underground storage tank [as defined in § 245.1.]

Container—A portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

[Existing tank—A tank that is used for the storage or processing of waste oil and that is in operation, or for which installation has commenced on or prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*) Installation will be considered to have commenced if the owner or operator has obtained all Pennsylvania and local approvals or permits necessary to begin installation of the tank and if one of the following applies:

(i) A continuous onsite installation program has begun.

(ii) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the tank to be completed within a reasonable time.]

Household “do-it-yourselfer” waste oil—Oil that is derived from households, such as waste oil generated by individuals who generate waste oil through the maintenance of their personal vehicles.

Household “do-it-yourselfer” waste oil generator—An individual who generates household “do-it-yourselfer” waste oil.

[New tank—A tank that will be used to store or process waste oil and for which installation has commenced after _____. (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*)]

Petroleum refining facility—An establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes—for example, facilities classified as SIC 2911.

Rerefining distillation bottoms—The heavy fraction produced by vacuum distillation of filtered and dehydrated waste oil. The composition of still bottoms varies with column operation and feedstock.

Tank—A stationary device, designed to contain an accumulation of waste oil which is constructed primarily of nonearthen or nonwooden materials—for example, concrete, steel, plastic—which provides structural support.

UNDERGROUND STORAGE TANK-AN UNDERGROUND STORAGE TANK AS DEFINED IN § 245.1.

[Waste oil—One of the following:

(i) Oil refined from crude oil or synthetically produced, used and, as a result of the use, contaminated by physical or chemical impurities.

(ii) A liquid, petroleum-based or synthetic oil, refined from petroleum stocks or synthetically produced which is used in an internal combustion engine as an engine lubricant, or as a product used for lubricating motor vehicle transmissions, gears or axles which, through storage or handling, has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.]

Waste oil aggregation point—A site or facility that accepts, aggregates or stores waste oil collected only from other waste oil generation sites owned or operated by the owner or operator of the aggregation point, from which waste oil is transported to the aggregation point in shipments of no more than 55 gallons. Waste oil aggregation points may also accept waste oil from household do-it-yourselfers.

Waste oil burner—A facility where waste oil not meeting the specification requirements in § 298.11 (relating

to waste oil specifications) is burned for energy recovery in devices identified in § 298.61(a) (relating to restrictions on burning).

Waste oil collection center—A site or facility that is registered, licensed, permitted and accepts, aggregates and stores waste oil collected from waste oil generators regulated under Subchapter C (relating to waste oil generators) who bring waste oil to the collection center in shipments of no more than 55 gallons under § 298.24 (relating to offsite shipments). Waste oil collection centers may also accept waste oil from household do-it-yourselfers.

Waste oil fuel marketer—A person who conducts one of the following activities:

(i) Directs a shipment of off-specification waste oil from the person's facility to a waste oil burner.

(ii) First claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11.

Waste oil generator—A person, by site, whose act or process produces waste oil or whose act first causes waste oil to become subject to this chapter.

Waste oil processing—Chemical or physical operations designed to produce from waste oil, or to make waste oil more amenable for production of, fuel oils, lubricants or other waste oil-derived products. Waste oil processing includes: blending waste oil with virgin petroleum products, blending waste oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and rerefining.

Waste oil processor/rerefiner—A facility that processes waste oil.

Waste oil transfer facility—A transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of waste oil are received or held, or both, during the normal course of transportation.

Waste oil transporter—A person who transports waste oil [,] **AND** a person who collects waste oil from more than one generator and transports the collected oil [and owners and operators of waste oil transfer

facilities]. [Waste oil transporters]TRANSPORTATION may INCLUDE consolidat[e]TION or aggregat[e]TION OF loads of waste oil [for purposes of transportation but, with the following exception, may not process waste oil] ON THE VEHICLE OR IN TRANSPORTATION CONTAINERS.

Transporters may conduct incidental waste oil [processing operations] SEPARATION that occur§ in the normal course of waste oil transportation—for example, settling and water separation[–but that are not designed to produce (or make more amenable for production of) waste oil derived products or waste oil fuel].

§ 298.2. SCOPE.

(a) THIS CHAPTER SPECIFIES GENERAL PROCEDURES AND RULES FOR PERSONS OR MUNICIPALITIES WHO GENERATE, MANAGE OR HANDLE WASTE OIL THAT IS BEING RECYCLED.

(b) WASTE OIL THAT IS BEING RECYCLED SHALL BE MANAGED IN ACCORDANCE WITH THIS CHAPTER.

Subchapter B. APPLICABILITY

Sec.

- 298.10. Applicability.
- 298.11. Waste oil specifications.
- 298.12. Prohibitions.

§ 298.10. Applicability.

(a) *Waste oil.* It is presumed that waste oil is to be recycled unless a waste oil handler disposes of waste oil, or sends waste oil for disposal. Except as provided in § 298.11 (relating to waste oil specifications), this chapter applies to waste oil and to materials identified in this section as being subject to regulation as waste oil whether or not the waste oil or material exhibits any characteristics of hazardous waste identified in [Chapter 261, Subchapter C (relating to characteristics of hazardous waste).] **40 CFR PART 261, SUBPART C (RELATING TO CHARACTERISTICS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE**

AND SCOPE).

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

(1) *Listed hazardous waste.*

(i) *Mixtures of waste oil.* Mixtures of waste oil and hazardous waste that are listed in [Chapter 261 Subchapter D (relating to lists of hazardous waste)] **40 CFR PART 261, SUBPART D (RELATING TO LISTS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)**, are subject to regulation as hazardous waste under Chapters 260_a–266_a and Chapter 270_a rather than as waste oil under this chapter.

(ii) *Rebuttable presumption for waste oil.* Waste oil containing more than 1,000 parts per million total halogens is presumed to be a hazardous waste. A person may rebut this presumption by demonstrating that the waste oil does not contain hazardous waste. For example, a person may use an analytical method from the current edition of SW-846 to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in [§ 261.34(c) (relating to appendices).] **40 CFR PART 261, APPENDIX VIII (RELATED TO HAZARDOUS CONSTITUENTS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATED TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)**. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and, therefore, under [§ 261.4(6)(a) (relating to exclusions)] **40 CFR 261.4(b)(1) (RELATING TO EXCLUSIONS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)**, are excluded from regulation as hazardous waste.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 298.24(c) (relating to offsite shipments), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if the oils/fluids are recycled in another manner or disposed.

(B) The rebuttable presumption does not apply to waste oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption applies to waste oils contaminated with CFCs that have been mixed with waste oil from sources other than refrigeration units.

(2) *Characteristic hazardous waste.* A mixture of waste oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in [Chapter 261, Subchapter C] 40 CFR PART 261, SUBPART C (RELATING TO CHARACTERISTICS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE), and mixtures of waste oil and hazardous waste that is listed in [Chapter 261, Subchapter D (relating to lists of hazardous wastes)] 40 CFR PART 261, SUBPART D (RELATING TO LISTS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE), solely because it exhibits one or more of the characteristics of hazardous waste identified in [Chapter 261, Subchapter C] 40 CFR PART 261, SUBPART C (RELATING TO CHARACTERISTICS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE), are subject to:

(i) Regulation as hazardous waste under Chapters 260a–270a, rather than as waste oil under this chapter, except as provided in subparagraph (ii) AND (iii).

(ii) REGULATION AS WASTE OIL UNDER THIS CHAPTER IF THE MIXTURE IS OF WASTE OIL AND A WASTE WHICH IS HAZARDOUS WASTE, MIXED IN ACCORDANCE WITH SECTION 270a.60(b)(2) (RELATING TO PERMIT-BY-RULE) OR IN ACCORDANCE WITH A PERMITTED HAZARDOUS WASTE TREATMENT FACILITY, AND IF THE WASTE IS HAZARDOUS SOLELY BECAUSE IT EXHIBITS THE TOXICITY CHARACTERISTIC FOR BENZENE, ARSENIC, CADMIUM, CHROMIUM OR LEAD OR IGNITABILITY, PROVIDED THAT THE RESULTANT MIXTURE DOES NOT EXHIBIT ANY CHARACTERISTIC OF HAZARDOUS WASTE IDENTIFIED UNDER CHAPTER 261a, SUBCHAPTER C, EXCEPT AS SPECIFIED IN SUBPARAGRAPH (iii).

[(ii)] (iii) Regulation as waste oil under this chapter if the mixture is of waste oil and a waste which is

hazardous solely because it exhibits the characteristic of ignitability—for example, ignitable-only mineral spirits—if the resultant mixture does not exhibit the characteristic of ignitability under [§ 261.21 (relating to characteristic of ignitability).] **40 CFR 261.21 (RELATING TO CHARACTERISTIC OF IGNITABILITY), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE).** The hazardous waste, as well as the mixing of waste oil with a waste that is hazardous solely because it exhibits the characteristic of ignitability, shall be managed in accordance with [Chapters 260a–270a] **THIS CHAPTER.**

(c) Materials containing or otherwise contaminated with waste oil.

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

(i) Are not waste oil and thus not subject to this chapter.

(ii) Are subject to regulation under Article VII, VIII (relating to hazardous waste **MANAGEMENT**; and municipal waste **MANAGEMENT**) or this article.

(2) Materials containing or otherwise contaminated with waste oil that are burned for energy recovery are subject to regulation as waste oil under this chapter **WHEN BURNED AT AN INDUSTRIAL FURNACE OR BOILER.**

(3) Waste oil drained or removed from materials containing or otherwise contaminated with waste oil is subject to regulation as waste oil under this chapter.

(4) Except as provided in paragraph (2) and subsection (f), wastewater contaminated with waste oil is managed under this chapter if it is demonstrated that one of the following applies:

(i) At least 1% of the wastewater is waste oil.

(ii) The wastewater contains marketable quantities of waste oil.

(d) Mixtures of waste oil with products.

(1) Except as provided in paragraph (2), mixtures of waste oil and fuels or other fuel products are subject to regulation as waste oil under this chapter.

(2) A mixture of waste oil and diesel fuel mixed onsite by the generator of the waste oil for use in the generator's own vehicles is not subject to this chapter once the waste oil and diesel fuel have been mixed. Prior to mixing, the waste oil is subject to Subchapter C.

(e) Materials derived from waste oil.

(1) A material reclaimed from waste oil that is used beneficially and is not burned for energy recovery or used in a manner constituting disposal—for example, rerefined lubricants—[is] **MAY** not **BE** [a waste] subject to this title **IF THE DEPARTMENT DETERMINES THAT THE MATERIAL IS NO LONGER A WASTE IN ACCORDANCE WITH SECTION 287.7 (RELATING TO DETERMINATION THAT A MATERIAL IS NO LONGER A WASTE)**. [The determination that a material derived from waste oil is not a waste shall be made as a special condition to the permit for the waste oil processing/rerefining that results in the derived material.]

(2) A material produced from waste oil that is burned for energy recovery—for example, waste oil fuels—is subject to regulation as waste oil under this chapter.

(3) Except as provided in paragraph (4), a material derived from waste oil that is disposed or used in a manner constituting disposal is:

(i) Not waste oil and thus is not subject to this chapter.

(ii) A waste subject to regulation under Article VII or this article.

(4) Waste oil rerefining distillation bottoms that are used by the rerefiner as feedstock to manufacture asphalt products are not subject to this chapter.

[(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 307(b) or section 402 of the Clean Water Act (33 U.S.C.A. §§ 1317(b) and 1342) (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of waste oil are not subject to this chapter. For purposes of this subsection "de minimis" quantities of waste oils are defined as small spills, leaks or drippings from pumps, machinery, pipes and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the waste oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills or other releases, or to waste oil recovered from wastewaters.]

[(g)](f) *Waste oil introduced into crude oil pipelines or a petroleum refining facility.*

(1) Waste oil mixed with crude oil or natural gas liquids—for example, in a production separator or crude oil stock tank—for insertion into a crude oil pipeline is exempt from this chapter. Waste oil is subject to this chapter prior to the mixing of waste oil with crude oil or natural gas liquids.

(2) A mixture of waste oil and crude oil or natural gas liquids containing less than 1 % waste oil that is being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking is exempt under this chapter.

(3) Waste oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from this chapter if the waste oil constitutes less than 1 % of the crude oil feed to a petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the waste oil is subject to this chapter.

(4) Except as provided in paragraph (5), waste oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from this chapter only if the waste oil meets the specification of § 298.11 (relating to waste oil specifications). Prior to insertion into the petroleum refining facility process, the waste oil is subject to this chapter.

(5) Waste oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining

facility process is exempt from this chapter. This exemption does not extend to waste oil which is intentionally introduced into a hydrocarbon recovery system—for example, by pouring collected waste oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of waste oil and crude oil or natural gas liquids are exempt from this chapter.

[(h)](g) Waste oil on vessels. Waste oil produced on vessels from normal shipboard operations is not subject to this chapter until it is transported ashore.

[(i)](h) Waste oil containing PCBs. In addition to the requirements of this chapter, a marketer and burner of waste oil who markets waste oil containing a quantifiable level of PCBs is subject to 40 CFR 761.20(e) (relating to prohibitions and exceptions).

§ 298.11. Waste oil specifications.

(a) Waste oil, and any fuel produced from waste oil by waste oil processing, blending or other treatment, to be burned for energy recovery either under this chapter or as specification fuel oil shall have at least 8,000 Btus per pound.

(b) Waste oil burned for energy recovery and fuel produced from waste oil by waste oil processing, blending or other treatment is subject to this chapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once waste oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with §§ 298.72–298.74 (relating to on specification waste oil fuel; notification; and tracking), the waste oil is no longer subject to this chapter. This waste oil is also known as on-specification fuel oil.

Table 1—Waste Oil Not Exceeding Any Specification Level Is Not Subject To This Chapter When Burned For Energy Recovery. ¹

Constituent/Property

Allowable Levels

Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100° F minimum
Total halogens	1,000 ppm maximum <u>FOR RESIDENTIAL AND COMMERCIAL USES AND 4,000 MAXIMUM FOR INDUSTRIAL USES.</u>

¹ The specifications do[es] not apply to mixtures of waste oil and hazardous waste that continue to be regulated as hazardous waste (see § 298.10(b)).

§ 298.12. Prohibitions.

(a) *Surface impoundment prohibition.* Waste oil may not be managed in surface impoundments or waste piles unless the units are subject to Chapter [264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).] **264a OR 265a (RELATING TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; AND INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT STORAGE AND DISPOSAL FACILITIES).**

(b) *Use as a dust suppressant.* The use of waste oil as a dust suppressant is prohibited.

(c) *Burning in particular units.* Off-specification waste oil fuel may be burned for energy recovery in only the following devices:

(1) An industrial furnace identified in [§ 260.2 (relating to definitions).] **40 CFR 260.10 (RELATING TO DEFINITIONS), INCORPORATED BY REFERENCE AT § 260a.1 (RELATING TO**

INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY).

(2) A boiler, as defined in [**§ 260.2,**] **40 CFR 260.10, INCORPORATED BY REFERENCE AT § 260a.1,** that is identified as one of the following:

(i) An industrial boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) A utility boiler used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(iii) A waste oil-fired space heaters if the burner meets the provisions of § 298.23 (relating to onsite burning in space heaters).

(3) A hazardous waste incinerator[s] subject to [**Chapter 264 Subchapter O (relating to incinerators)**] **40 CFR PART 264, SUBPART O (RELATING TO INCINERATORS), INCORPORATED BY REFERENCE AT § 264a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE),** or Chapter 265a (**RELATING TO INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES).**

Subchapter C. WASTE OIL GENERATORS

Sec.

- 298.20. Applicability.
- 298.21. Hazardous waste mixing.
- 298.22. Waste oil storage.
- 298.23. Onsite burning in space heaters.
- 298.24. Offsite shipments.
- 298.25. Source reduction strategy.
- 298.26. Biennial report.

§ 298.20. Applicability.

(a) *General.* Except as provided in paragraphs (1)–(4), this subchapter applies to a waste oil generator. A waste oil generator is a person, by site, whose act or process produces waste oil or whose act first causes waste oil to become subject to regulation.

(1) *Household “do-it-yourselfer” waste oil generators.* A household “do-it yourselfer” waste oil generator is not subject to this chapter.

(2) *Vessels.* A vessel at sea or at port is not subject to this subchapter. For purposes of this subchapter, waste oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person removing or accepting waste oil from the vessel are cogenerators of the waste oil and are both responsible for managing the waste in compliance with this subchapter once the waste oil is transported ashore. The cogenerators may decide among them which party will fulfill the requirements of this subchapter.

(3) *Diesel fuel.* A mixture of waste oil and diesel fuel mixed by the generator of the waste oil for use in the generator's own vehicles is not subject to this chapter once the waste oil and diesel fuel have been mixed. Prior to mixing, the waste oil fuel is subject to this subchapter.

(4) *Farmers.* A farmer who generates an average of 25 gallons per month or less of waste oil from vehicles or machinery used on the farm in a calendar year is not subject to this chapter.

(b) *Other applicable provisions.* A waste oil generator who conducts the following activities is subject to the requirements of other applicable provisions of this chapter **AND OTHER CHAPTERS** as indicated in paragraphs (1)–(8):

(1) A waste oil generator who transports waste oil, except under the self-transport provisions of § 298.24 [(a)](1) and [(b)](2) (relating to offsite shipments), shall also comply with Subchapter E (relating to standards for waste oil transporter and transfer facilities).

(2) Except as provided in paragraphs (3) and (4), a waste oil generator who processes or rerefines waste oil

shall also comply with Subchapter F (relating to standards for waste oil processors/rerefiners).

(3) A waste oil generator who performs the following activities is deemed to have a solid waste management permit-by-rule for the CAPTIVE processing of waste oil provided that the waste oil [is generated onsite and] is not being sent offsite to a burner of on-specification or off-specification waste oil fuel AND PROVIDED THAT THE GENERATOR SUBMITS A WRITTEN NOTICE TO THE DEPARTMENT THAT INCLUDES THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE FACILITY, THE INDIVIDUAL RESPONSIBLE FOR OPERATING THE FACILITY AND A BRIEF DESCRIPTION OF THE FACILITY. The Department may require a generator, who is conducting one of the activities in subparagraphs (i)–(iv) under a permit-by-rule, to apply for, and obtain, a permit in accordance with Chapters 287 AND 297 (relating to residual waste management–general provisions; INCINERATORS AND OTHER PROCESSING FACILITIES), or take other appropriate action, when the generator is not in compliance with the requirements for the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(i) Filtering, cleaning or otherwise reconditioning waste oil before it is reused by the generator. The generator shall also meet the following requirements:

(A) Remaining waste is managed under the act [**and this article**].

(B) Processing does not have an adverse effect on public health, safety, welfare or the environment.

(C) Processing occurs at the same manufacturing or production facility where some or all of the waste oil is generated.

(ii) Separating waste oil from wastewater generated onsite to make the wastewater acceptable for discharge OR SHIPMENT OFFSITE. For this activity to be authorized by a permit-by-rule, the generator shall also meet the following requirements:

(A) [**The facility shall be a captive facility and the only waste oil treated is generated onsite or on an interconnected adjacent site which was previously part of an integrated facility.**] PROCESSING OCCURS AT THE SAME MANUFACTURING OR PRODUCTION FACILITY WHERE SOME OR

ALL OF THE WASTE OIL IS GENERATED.

(B) The facility has an NPDES permit, if required, and complies with the conditions of that permit.

(C) The facility meets the requirements of **40 CFR §§264.11, 264.14, 264.15, 264.73, 264.75, 264.77 (RELATING TO IDENTIFICATION NUMBER, SECURITY, GENERAL INSPECTION REQUIREMENTS, OPERATING RECORD, BIENNIAL REPORT AND ADDITIONAL REPORTS), ALL OF WHICH ARE INCORPORATED BY REFERENCE AT § 264a.1** [and the applicable provisions in Chapter 264, Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency (PPC) plan and emergency procedures) as well as Chapter 265, Subchapter Q (relating to chemical, physical and biological treatment)].

(D) THE GENERATOR SHALL MAINTAIN, IN A READILY ACCESSIBLE PLACE AT THE FACILITY, A COPY OF A PREPAREDNESS PREVENTION AND CONTINGENCY (PPC) PLAN THAT IS CONSISTENT WITH THE DEPARTMENT'S MOST RECENT GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF PPC PLANS.

(iii) Draining or otherwise removing waste oil from materials containing or otherwise contaminated with waste oil to remove excessive oil to the extent possible under § 298.10(c) (relating to applicability). For this activity to be authorized by a permit-by-rule, the generator shall also meet the following requirements:

(A) Waste remaining from the filter process is managed under the act [and this article].

(B) Processing does not have an adverse effect on public health, safety, welfare or the environment.

(C) Processing occurs at the same manufacturing or production facility where some or all of the waste oil is generated.

(iv) Filtering, separating or otherwise reconditioning waste oil before burning it in a space heater under § 298.23 (relating to onsite burning in space heaters). For this activity to be authorized by a permit-by-rule, the generator shall also meet the following requirements:

(A) Waste remaining from the filter process is managed under the act [and this article].

(B) Processing does not have an adverse effect on public health, safety, welfare or the environment.

(C) Processing occurs at the same manufacturing or production facility where some or all of the waste oil is generated.

(4) A waste oil generator is not a processor when it is using oil mist collectors to remove small droplets of waste oil from in-plant air to make plant air suitable for continued recirculation. For this exemption to be applicable, the waste oil so generated is not being sent offsite to a burner of on- or off-specification waste oil fuel.

(5) A waste oil generator who burns off-specification waste oil for energy recovery, except under the onsite space heater provisions of § 298.23, shall also comply with Subchapter G (relating to waste oil burners who burn off-specification waste oil for energy recovery).

(6) A waste oil generator who directs shipments of off-specification waste oil from its facility to a waste oil burner, or first claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11 (relating to waste oil specifications) shall also comply with Subchapter H (relating to waste oil fuel).

(7) A waste oil generator shall dispose of waste oil in accordance with Article VII or IX (relating to hazardous waste MANAGEMENT; and residual waste MANAGEMENT).

(8) A MATERIAL MANAGED IN ACCORDANCE WITH THIS SECTION AND THAT IS NOT BURNED FOR ENERGY RECOVERY OR USED IN A MANNER CONSTITUTING DISPOSAL MAY NOT BE SUBJECT TO REGULATION UNDER THIS TITLE IF THE DEPARTMENT DETERMINES THAT THE MATERIAL IS NO LONGER A WASTE IN ACCORDANCE WITH SECTION 287.7 (RELATING TO DETERMINATION THAT A MATERIAL IS NO LONGER A WASTE).

(c) *Recordkeeping.* The generator is required to maintain, for [5]3 years, the following RECORDS:

- (1) The type of oil used.
- (2) A description of the process that generates the waste oil.
- (3) A record of the tests used to determine if the waste oil contains more than 1,000 parts per million total halogens.
- (4) A record of the information used to rebut the presumption in § 298.10(b)(1)(ii) (relating to applicability) if the waste oil contains more than 1,000 parts per million total halogens.
- (5) The type and quantity of any hazardous waste **GENERATED** [that is hazardous solely due to the characteristic of ignitability which, under § 298.10(b)(2)(ii) has been mixed with waste oil] **AND THE ANALYSES OF HAZARDOUS WASTE CHARACTERISTICS FOR ANY MIXTURES OF HAZARDOUS WASTE WITH WASTE OIL.**

§ 298.21. Hazardous waste mixing.

- (a) A mixture of waste oil and hazardous waste shall be managed in accordance with § 298.10(b) (relating to applicability).
- (b) The rebuttable presumption for waste oil of § 298.10(b)(1)(ii) applies to waste oil managed by generators. Under the rebuttable presumption for waste oil of § 298.10(b)(1)(ii), waste oil containing greater than 1,000 parts per million total halogens is presumed to be a hazardous waste and shall be managed as hazardous waste and not as waste oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain waste oils removed from refrigeration units, as provided for in §298.10(b)(1)(ii)(A) and (B).
- (c) **A GENERATOR SHALL PERFORM A HAZARDOUS WASTE DETERMINATION ON ANY HAZARDOUS WASTE GENERATED PRIOR TO MIXING WITH WASTE OIL AND ON THE RESULTANT MIXTURE.**
- (d) **IF A GENERATOR REBUTS THE PRESUMPTION IN ACCORDANCE WITH §298.10(b)(1)(ii).**

THE GENERATOR SHALL PROVIDE ALL INFORMATION USED TO REBUT THE PRESUMPTION TO THE TRANSPORTER.

§ 298.22. Waste oil storage.

(a) *Storage units.* A waste oil generator may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter [264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).] **264a OR 265a (RELATING TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; AND INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES).**

(b) *Condition of units.* A container or aboveground **STORAGE** tank used to store waste oil at generator facilities shall meet the following requirements:

(1) *Be in good condition.* For example, containers and aboveground **STORAGE** tanks may not exhibit severe rusting, apparent structural defects or deterioration.

(2) *Not leakING (NO VISIBLE LEAKS).*

(c) *Labels.* [An aboveground storage unit and pipes shall be labeled as follows:

(1) A container or aboveground tank used to store waste oil at generator facilities shall be labeled or marked clearly with the words “waste oil.”

(2) A fill pipe used to transfer waste oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words “waste oil.”]

(1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3), A CONTAINER OR ABOVEGROUND STORAGE TANK USED TO STORE WASTE OIL AT GENERATOR FACILITIES SHALL BE

LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(2) CONTAINERS OR ABOVEGROUND STORAGE TANKS WHICH ARE LABELED OR MARKED WITH THE WORDS "USED OIL" ON _____ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(3) CONTAINERS USED IN TRANSPORTATION MAY BE LABELED OR MARKED WITH THE WORDS "USED OIL," INSTEAD OF "WASTE OIL," OR THE WORDS REQUIRED BY A RECEIVING STATE IF THE CONTAINERS AND VEHICLES ARE DESTINED FOR RECYCLING OR DISPOSAL OUTSIDE OF PENNSYLVANIA. IF A PERSON ACCEPTS WASTE OIL FROM OR DELIVERS WASTE OIL TO A GENERATOR, TRANSFER FACILITY, OR PROCESSOR/REREFINER IN PENNSYLVANIA IN A CONTAINER USED IN TRANSPORTATION, PARAGRAPHS (1) OR (2) SHALL BE MET.

(4) FILL PIPES USED TO TRANSFER WASTE OIL INTO UNDERGROUND STORAGE TANKS AT GENERATOR FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.). FILL PIPES WHICH ARE LABELED OR MARKED WITH THE WORDS "USED OIL" ON _____ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(d) *ADDITIONAL REQUIREMENTS FOR STORAGE TANKS.* STORAGE TANKS USED TO STORE WASTE OIL SHALL BE DESIGNED AND OPERATED IN ACCORDANCE WITH §299.122(b) and (c). FOR EXISTING ABOVEGROUND STORAGE TANKS, AN ALTERNATIVE DESIGN TO

SECONDARY CONTAINMENT MAY BE DEMONSTRATED WHERE THE TANK MEETS THE GROUND.

(e) ADDITIONAL REQUIREMENTS FOR CONTAINERS. THE TOTAL CONTAINER HEIGHT OF A GROUP OF CONTAINERS MAY NOT EXCEED 9 FEET. THE MAXIMUM WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACE WHICH ENSURES ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES AND EQUIPMENT.

[(d)] (f) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*) a generator shall perform the following cleanup steps:

- (1) Stop the release.
- (2) Contain the released waste oil.
- (3) Clean up and manage properly the released waste oil and other materials.
- (4) Repair or replace any leaking waste oil storage containers or tanks prior to returning them to service, if necessary.

(e) (g) ADDITIONAL REQUIREMENTS. In addition **TO THE REQUIREMENTS OF THIS SUBCHAPTER,** a waste oil generator **SHALL MAINTAIN, IN A READILY ACCESSIBLE PLACE AT THE FACILITY, A COPY OF A PREPAREDNESS, PREVENTION AND CONTINGENCY (PPC) PLAN THAT IS CONSISTENT WITH THE DEPARTMENT'S MOST RECENT GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF PPC PLANS** [is subject to applicable spill prevention, control and countermeasures of Chapter 265, Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency (PPC) plan and

emergency procedures)]. **WASTE OIL GENERATORS ARE SUBJECT TO ALL APPLICABLE SPILL PREVENTION, CONTROL AND COUNTERMEASURES (40 CFR PART 112) IN ADDITION TO THE REQUIREMENTS OF THIS SUBCHAPTER.** Waste oil generators are also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground **STORAGE** tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.23. Onsite burning in space heaters.

A generator is deemed to have a solid waste management permit-by-rule to burn waste oil in waste oil-fired space heaters if the following apply:

- (1) The heater burns only waste oil that the owner or operator generates or waste oil received from household do-it-yourselfer waste oil generators.
- (2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.
- (3) The combustion gases from the heater are vented to the ambient air.

§ 298.24. Offsite shipments.

Except as provided in paragraphs (1)–(3), a generator shall ensure that waste oil is transported only by transporters who have obtained identification numbers. The generator shall provide the transporter with a certification that, except as provided for in § 298.10(b)(2)(ii) (relating to applicability), its waste oil has not been mixed with a hazardous waste.

(1) *Self-transportation of small amounts to approved collection centers.* Generators may transport, without an identification number, waste oil that is generated at the generator's site and waste oil collected from household do-it-yourselfers to a waste oil collection center if the following apply:

- (i) The generator transports the waste oil in a vehicle owned by the generator or owned by an employee of the generator.

(ii) The generator transports no more than 55 gallons of waste oil at any time.

(iii) The generator transports the waste oil to a waste oil collection center that is one of the following:

(A) Operated in accordance with the requirements of Subchapter D (relating to standards for waste oil collection centers and aggregation points) if the facility is located within this Commonwealth.

(B) Registered, licensed, permitted or recognized by a state/county/municipal government to manage waste oil if the facility is located outside this Commonwealth.

(iv) The generator shall provide the waste oil collection center with a certification that except as provided for in § 298.10(b)(2)(ii), the generator has not mixed its waste oil with hazardous waste.

(2) Self-transportation of small amounts to aggregation points owned by the generator. A generator may transport, without an identification number, waste oil that is generated at the generator's site to an aggregation point if the following apply:

(i) The generator transports the waste oil in a vehicle owned by the generator or owned by an employee of the generator.

(ii) The generator transports no more than 55 gallons of waste oil at any time.

(iii) The generator transports the waste oil to an aggregation point that is owned or operated, or both, by the same generator.

(3) Tolling arrangements. A waste oil generator may arrange for waste oil to be transported by a transporter without an identification number if the waste oil is reclaimed under a contractual agreement under which reclaimed oil is returned by the waste oil processor/rerefiner to the generator for use as a lubricant, cutting oil or coolant. The contract, known as a tolling arrangement, shall indicate the following:

(i) The type of waste oil and the frequency of shipments.

(ii) The vehicle used to transport the waste oil to the waste oil processing/rerefining facility and to deliver recycled waste oil back to the generator is owned and operated by the waste oil processor/rerefiner.

(iii) Reclaimed oil will be returned to the generator.

§ 298.25. Source reduction strategy.

[(a)] A waste oil generator subject to this subchapter shall prepare a source reduction strategy in accordance with [this] section S 287.51, 287.53 and 287.54 (RELATING TO SCOPE; SOURCE REDUCTION STRATEGY, AND SMALL QUANTITY GENERATOR RECORD KEEPING REQUIREMENTS).

[The strategy shall be signed by the waste oil generator, shall be maintained on the premises where the waste oil is generated, shall be available on the premises for inspection by any representative of the Department and shall be submitted to the Department upon request. The strategy may designate certain production processes as confidential and this confidential information may not be made public without the expressed written consent of the generator. Unauthorized disclosure is subject to appropriate penalties as provided by law.

(b) The strategy shall include:

(1) A description of the source reduction activities conducted by the generator in the 3 years prior to the date that the strategy is required to be prepared. The description shall quantify reductions in the weight or toxicity of the waste oil generated on the premises.

(2) A statement of whether the generator has established a source reduction program.

(3) If a generator has established a source reduction program as described in paragraph (2), the strategy shall:

(i) Identify the methods and procedures that the waste oil generator will implement to achieve a reduction in the weight or toxicity of waste oil generated on the premises.

(ii) Quantify the projected reduction in weight or toxicity of waste to be achieved by each method or

procedure.

(iii) Specify when each method or procedure will be implemented.

(4) If the waste oil generator has not established a source reduction program as described in paragraph (2), the strategy shall include the following:

(i) A waste oil stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.

(ii) A description of potential source reduction options.

(iii) A description of how the options were evaluated.

(iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when one or more of the following occur:

(1) There is a significant change in the waste oil generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes in writing a different period for the waste oil generator.

(d) This section does not apply to waste oil generators who generate:

(1) Oil that has been used in an internal combustion engine as an engine lubricant, or as a product for lubricating motor vehicle transmissions, gears or axles which through use, storage or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

(2) Annually no more than 12,000 kilograms of residual waste and waste oil subject to this chapter.

(e) A waste oil generator may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR 261.41(a)(5)-(7) (relating to biennial report).]

§ 298.26. Biennial report.

[(a)] By March [3]1 of each odd numbered year [after _____ (*Editors Note: The blank refers to the effective date of adoption of this proposal.*)] a waste oil generator subject to this subchapter shall file a BIENNIAL report with the Department IN ACCORDANCE WITH SECTIONS 287.51, 287.52 AND 287.55 (RELATING TO SCOPE; BIENNIAL REPORT; AND SMALL QUANTITY GENERATOR RECORD KEEPING REQUIREMENTS).

[(b)] The report, which shall be submitted on a form prepared by the Department, shall include the following:

- (1) The waste oil generator's name, mailing address, county and telephone number.
- (2) A generator identification number for the facility that generated the waste, which will be provided by the Department. If an EPA identification number has been assigned to the person or municipality, the EPA identification number shall be the generator number.
- (3) The name and telephone number of a contact person who can answer questions about the report.
- (4) A brief description of the nature of the business and up to four Standard Industrial Code (SIC) numbers which best reflect the principal products or services provided by the waste oil generator.
- (5) The amount of waste oil generated in the previous year. The report shall also state the following:
 - (i) Whether and to what extent the waste oil was processed at the site of generation.
 - (ii) Whether and to what extent the waste oil was shipped offsite for processing/rerefining.

(6) A description of the waste oil generator's efforts to implement its source reduction strategy under § 298.25 (relating to source reduction strategy) and, to the extent the information is available for 3 years before _____ (Editors Note: The blank refers to the effective date of adoption of this proposal.), a description of changes in the weight or toxicity of waste oil achieved during the year compared to previous years.

(7) The name, location and identification number for each waste oil processing/rerefiner, or waste oil transporter, waste oil collection center or waste oil marketer that has been authorized to receive the generator's waste oil.

(c) The report shall be signed by a responsible official for the waste oil generator. If the waste oil generator is a corporation or partnership, the report shall be signed by an officer of the corporation or a partner in the partnership, whichever is applicable.

(d) This section does not apply to waste oil generators who generate:

(1) Oil that has been used in an internal combustion engine as an engine lubricant, or as a product for lubricating motor vehicle transmissions, gears or axles which, through use, storage or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

(2) Annually no more than 12,000 kilograms of residual waste and waste oil subject this chapter.]

Subchapter D. WASTE OIL COLLECTION CENTERS AND AGGREGATION POINTS

Sec.

298.30. Waste oil collection centers.

298.31. Waste oil aggregation points owned by the generator.

§ 298.30. Waste oil collection centers.

(a) *Applicability.* This section applies to owners or operators of waste oil collection centers. A waste oil collection center is any site or facility that accepts/aggregates and stores waste oil collected from waste oil generators regulated under Subchapter C (relating to waste oil generators) who bring waste oil to the collection center in shipments of no more than 55 gallons under § 298.24(a) (relating to offsite shipments). Waste oil collection centers may also accept waste oil and oil filters from household do-it-yourselfers.

(b) *Permit-by-rule for waste oil collection centers.* For the operation of a waste oil collection center to be deemed to have a permit-by-rule, the owner or operator of a waste oil collection center shall do the following:

(1) Be a state inspection facility, oil retailer, retail service station, a facility owned or operated by a municipality, municipal authority, or state agency, or a facility owned or operated by a nonprofit organization.

(2) Not blend oil for offsite reuse.

(3) Comply with the generator standards in Subchapter C.

(4) Maintain on the premises waste oil collection tanks that are properly sheltered and protected to prevent spillage, seepage or discharge of the waste oil into the water, land and air of this Commonwealth and of sufficient size to handle returns of waste oil.

(5) Have collection facilities for the safe and proper disposal of waste oil containers within a very close proximity to the collection tanks.

(6) Not accept water, antifreeze, other residual or hazardous wastes or other contaminants.

(7) Design, construct and operate the facility in a manner to ensure that any hazardous waste generated at the facility is not mixed with the waste oil being collected at the facility.

(8) Have a procedure for ensuring that **ITEMS IN PARAGRAPH (6) ARE NOT COLLECTED AT THE FACILITY AND THAT** if waste oil collected at the facility contains more than 1,000 parts per million total halogens it is due to the household do-it yourselfer waste oil collected by the facility.

§ 298.31. Waste oil aggregation points owned by the generator.

(a) *Applicability.* This section applies to owners or operators of all waste oil aggregation points. A waste oil aggregation point is any site or facility that accepts, aggregates or stores waste oil collected only from other waste oil generation points owned or operated by the owner or operator of the aggregation point, from which waste oil is transported to the aggregation point in shipments of no more than 55 gallons under § 298.24(b) (relating to offsite shipments). Waste oil aggregation points may also accept waste oil from household do-it-yourselfers.

(b) *Permit-by-rule for waste oil aggregation points.* The owner or operator of an aggregation point may operate the aggregation point under a permit-by-rule. The Department may require the owner or operator of an aggregation point operated under a permit-by-rule to apply for and obtain a permit or take other appropriate action, when the generator is not in compliance with the requirements for the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth. For the operation of a waste oil aggregation point to be authorized by a permit-by-rule, the owner or operator shall:

(1) Comply with the generator standards in Subchapter C (relating to waste oil generators).

(2) Maintain on the premises waste oil collection tanks that are properly sheltered and protected to prevent spillage, seepage or discharge of the waste oil into the water, land and air of this Commonwealth and of sufficient size to handle returns of waste oil.

(3) Have within a very close proximity to the collection tanks, collection facilities for the safe and proper disposal of waste oil containers.

(4) Not accept water, antifreeze, other residual or hazardous wastes or other contaminants.

(5) SUBMIT A WRITTEN NOTICE TO THE DEPARTMENT THAT INCLUDES THE NAME, ADDRESS AND THE TELEPHONE NUMBER OF THE FACILITY, THE INDIVIDUAL RESPONSIBLE FOR OPERATING THE FACILITY AND A BRIEF DESCRIPTION OF THE FACILITY.

Subchapter E. WASTE OIL TRANSPORTER AND TRANSFER FACILITIES

Sec.

- 298.40. Applicability.
- 298.41. Restrictions on transporters who are not also processors or refiners.
- 298.42. Notification.
- 298.43. Waste oil transportation.
- 298.44. Rebuttable presumption for waste oil.
- 298.45. Waste oil storage at transfer facility.
- 298.46. Tracking.
- 298.47. Management of wastes.
- 298.48. Signs on vehicles.

§ 298.40. Applicability.

(a) *General.* Except as provided in paragraphs (1)–(4), this subchapter applies to all waste oil transporters **AND TRANSFER FACILITIES.**

(1) This subchapter does not apply to onsite transportation.

(2) This subchapter does not apply to a generator who transports shipments of waste oil totaling 55 gallons

or less from the generator to a waste oil collection center as specified in § 298.24(a) (relating to offsite shipments).

(3) This subchapter does not apply to a generator who transports shipments of waste oil totaling 55 gallons or less from the generator to a waste oil aggregation point owned or operated by the same generator as specified in § 298.24(b).

(4) This subchapter does not apply to transportation of waste oil from household do-it-yourselfers to a regulated waste oil generator, collection center, aggregation point, **TRANSFER FACILITY**, processor/rerefiner or burner subject to this chapter. Except as provided in paragraphs (1)–(3), this subchapter does apply to transportation of collected household do-it-yourselfer waste oil from regulated waste oil generators, collection centers, aggregation points or other facilities where household do-it-yourselfer waste oil is collected.

(b) *Imports and exports.* A transporter who imports waste oil into or exports waste oil out of this Commonwealth is subject to this subchapter from the time the waste oil enters until the time it exits this Commonwealth.

(c) *Trucks used to transport hazardous waste.* Unless trucks previously used to transport hazardous waste are emptied as described in [§ 261.7 (relating to empty containers)] **40 CFR 261.7 (RELATING TO RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS) INCORPORATED BY REFERENCE AT § 261a.1 (RELATED TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE), AND MODIFIED AT § 261a.7 (RELATED TO RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS)** prior to transporting waste oil, the waste oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under § 298.10(b)(2) (relating to applicability), the hazardous waste/waste oil mixture is determined not to exhibit the characteristic of ignitability.

(d) *Other applicable provisions.* A waste oil transporter **OR TRANSFER FACILITY** [who] **THAT** conducts the following activities is also subject to other applicable provisions of this chapter as indicated in paragraphs (1)–(5):

(1) A transporter **OR TRANSFER FACILITY** [who] **THAT** generates waste oil shall also comply with Subchapter C (relating to waste oil generators).

(2) A transporter **OR TRANSFER FACILITY** [who] **THAT** processes or rerefines waste oil, except as provided in § 298.41 (relating to restrictions on transporters who are not also processors or rerefiners), shall also comply with Subchapter F (relating to waste oil processors rerefiners).

(3) A transporter **OR TRANSFER FACILITY** [who] **THAT** burns off-specification waste oil for energy recovery shall also comply with Subchapter G (relating to waste oil burners who burn off-specification waste oil for energy recovery).

(4) A transporter **OR TRANSFER FACILITY** [who] **THAT** directs shipments of off-specification waste oil from its facility to a waste oil burner or first claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11 (relating to waste oil specifications) shall also comply with Subchapter H (relating to waste oil fuel).

(5) A transporter **OR TRANSFER FACILITY** shall dispose of waste oil in accordance with Article VII or IX (relating to hazardous waste **MANAGEMENT**; and residual waste **MANAGEMENT**).

§ 298.41. Restrictions on transporters AND TRANSFER FACILITIES who are not also processors or rerefiners.

(a) A waste oil transporter may, at a transfer facility authorized under § 298.45 (relating to waste oil storage at transfer facilities), consolidate or aggregate loads of waste oil for purposes of transportation. Except as provided in subsections (b) and (c), waste oil transporters may not process waste oil unless they also comply with the requirements for processors/rerefiners in Subchapter F (relating to waste oil processors/rerefiners).

(b) A transporter **OR TRANSFER FACILITY** may conduct incidental waste oil processing operations that occur in the normal course of waste oil transportation—for example, settling and water separation that occurs in a transport vehicle or in a single consolidation tank—but that are not designed to produce (or make more amenable for production of) waste oil derived products unless they also comply with the processor/rerefiner

requirements in Subchapter F.

(c) A transporter [~~of~~]**OR TRANSFER FACILITY MANAGING** waste oil that is removed from oil bearing electrical transformers and turbines and filtered **BY THE TRANSPORTER IN THE COURSE OF LOADING OR UNLOADING WASTE OIL OR** at a transfer facility authorized under § 298.45 (relating to waste oil storage at transfer facilities) prior to being returned to its original use is not subject to the waste oil processor/rerefiner requirements in Subchapter F.

§ 298.42. Notification.

(a) *Identification numbers.* A waste oil transporter **OR TRANSFER FACILITY** shall have an **EPA** identification number.

(b) *Mechanics of notification.* A waste oil transporter **OR TRANSFER FACILITY** [who] **THAT** has not received an identification number may obtain one by notifying the EPA Region III Administrator of its waste oil activity by submitting one of the following:

(1) A completed EPA form 8700-12. (To order information for EPA form 8700-12, call RCRA/Superfund hotline at (800) 424-9346 or (703) 920-9810.)

(2) A letter requesting an identification number. Call RCRA/Superfund hotline to determine where to send a letter requesting an identification number. The letter should include the following information:

(i) The transporter **OR TRANSFER FACILITY** company name.

(ii) The owner of the transporter **OR TRANSFER FACILITY** company.

(iii) The mailing address for the transporter **OR TRANSFER FACILITY**.

(iv) The name and telephone number for the transporter **OR TRANSFER FACILITY** point of contact.

(v) The type of transport activity—for example, transport only, transport and transfer facility, transfer

facility only.

(vi) The location of all transfer facilities at which waste oil is stored.

(vii) The name and telephone number for a contact at each transfer facility.

§ 298.43. Waste oil transportation.

(a) *Deliveries.* A waste oil transporter shall deliver all waste oil received to one of the following:

(1) Another waste oil transporter, if the transporter has obtained an identification number.

(2) A [n oil] waste oil processing/rerefining facility who has obtained an identification number.

(3) An off-specification waste oil burner facility who has obtained an identification number.

(4) An on-specification waste oil burner facility.

(5) A WASTE OIL TRANSFER FACILITY THAT HAS OBTAINED AN IDENTIFICATION NUMBER.

(b) *Department of Transportation requirements.* A waste oil transporter shall comply with the applicable requirements under the United States Department of Transportation regulations in 49 CFR Parts 171–180. Persons transporting waste oil that meets the definition of a hazardous material in 49 CFR 171.8 (relating to definitions and abbreviations) shall comply with applicable regulations in 49 CFR Parts 171–180.

(c) *Waste oil discharges.*

(1) In the event of a discharge of waste oil during transportation, the transporter shall notify the appropriate Departmental office of emergency response and take appropriate immediate action to protect human health and the environment—for example, notify local authorities, dike the discharge area—and the like.

(2) If a discharge of waste oil occurs during transportation and the Department determines that immediate removal of the waste oil is necessary to protect human health or the environment, the Department may authorize the removal of the waste oil by transporters who do not have identification numbers.

(3) An air, rail, highway or water transporter who has discharged waste oil shall do the following:

(i) Give notice if required by 49 CFR 171.15 (relating to immediate notice of certain hazardous materials incidents) to the National Response Center (800) 424-8802 or (202) 426-2675).

(ii) Report in writing as required by 49 CFR 171.16 (relating to detailed hazardous materials incident reports) to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(4) A water transporter who has discharged waste oil shall give notice as required by 33 CFR 153.203 (relating to procedure for the notice of discharge).

(5) A transporter shall clean up any waste oil discharge that occurs during transportation or take action as required or approved by the Department so that the waste oil discharge no longer presents a hazard to human health or the environment.

§ 298.44. Rebuttable presumption for waste oil AND FLASH POINT SCREENING.

(a) To ensure that waste oil is not a hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), the waste oil transporter **AND THE TRANSFER FACILITY** shall determine whether the total halogen content of waste oil being transported or stored at a transfer facility is above or below 1,000 parts per million. **THE WASTE OIL TRANSPORTER SHALL MAKE THE DETERMINATION AT THE GENERATOR'S LOCATION, PRIOR TO LOADING ON THE TRANSPORTATION VEHICLE. THE WASTE OIL TRANSFER FACILITY SHALL MAKE THE DETERMINATION PRIOR TO THE UNLOADING OF A TRANSPORTATION VEHICLE AT THE TRANSFER FACILITY.**

(b) The transporter **AND TRANSFER FACILITY** shall make this **TOTAL HALOGEN** determination by:

(1) Testing the waste oil.

(2) Applying knowledge of the halogen content of the waste oil in light of the materials or processes used.

(c) If the waste oil contains greater than or equal to 1,000 parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in [**Chapter 261, Subchapter D (relating to lists of hazardous waste.)**] **40 CFR PART 261, SUBPART D (RELATING TO LISTS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE.)** The owner or operator may rebut the presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from SW-846, current edition, to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in [**§ 261.34(c) (relating to appendices)**] **40 CFR PART 261, APPENDIX VIII (RELATED TO HAZARDOUS CONSTITUENTS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATED TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE.)** EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and therefore under [**§ 261.4(a)(6) (relating to exclusions)**] **40 CFR 261.4(b)(1) (RELATING TO EXCLUSIONS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)** are excluded from regulation as a hazardous waste.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 298.24(c) (relating to offsite shipments), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if the oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to waste oils contaminated with CFCs removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to waste oils contaminated with CFCs that have been mixed with waste oil from sources other than refrigeration units.

(d) THE OWNER OR OPERATOR OF A WASTE OIL TRANSFER FACILITY SHALL TEST WASTE OIL FOR FLASH POINT OR SHALL REQUEST APPROVAL FROM THE DEPARTMENT FOR AN ALTERNATIVE METHOD TO SCREEN WASTE OIL FOR THE PURPOSES OF DETECTING ADULTERATION OF WASTE OIL AND PROVIDING A SAFETY MEASURE IN DETERMINING THE POTENTIAL FOR A WASTE OIL TO INITIATE A FIRE DURING STORAGE AND PROCESSING.

[(d)](e) Records of analyses conducted or information used to comply with subsections (a)–[c](d) shall be maintained by the transporter AND TRANSFER FACILITY for at least 3 years.

§ 298.45. Waste oil storage at transfer facility.

(a) *Applicability.* This section applies to a waste oil transfer facility. A waste oil transfer facility is a transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of waste oil are received or held during normal course of transportation.

(b) *Permits.*

(1) [Except as provided for in paragraph (4), t]The owners or operators of a transfer facility shall obtain a permit issued under ChapterS 287 AND 293 (relating to residual waste management-general provisions; AND TRANSFER FACILITIES FOR RESIDUAL WASTE).

(2) A general permit is only available [for the] IF ALL OF THE following [types of waste oil transfer facilities] ARE MET:

(i) The owner or operator of the waste oil transfer facility is responsible for transporting the waste oil from the generator to the transfer facility or the waste oil is from a household do-it-yourselfer waste oil generator.

(ii) The owner or operator of the waste oil transfer facility only:

(A) Consolidates/aggregates waste oil.

(B) Conducts incidental waste oil processing operations that occur in the normal course of waste oil transportation[–for example, settling and water separation that occur in a transport vehicle] or in a single consolidation tank.

(3) The owners or operators of a waste oil transfer facility **AUTHORIZED PRIOR TO _____ (EDITOR'S NOTE: The blank refers to the effective date of adoption of this proposal)** [operating under] **BY** a general permit [for activities other than those described in this subsection] **ISSUED PRIOR TO _____ (EDITOR'S NOTE: The blank refers to the effective date of adoption of this proposal)** may continue to operate the facility under the general permit for the term of the permit. At the end of the permit term, this general permit is not renewable. The owner or operator of the transfer facility may only continue to operate the facility **AFTER THE TERM HAS EXPIRED ON THE GENERAL PERMIT** if the owner or operator has obtained an individual permit issued under Chapter **§ 287 AND 293**.

[(4) The owner or operator of a waste oil transfer facility is deemed to have a permit-by-rule if the following apply:

- (i) The other requirements of this subchapter have been met.
- (ii) The waste oil is stored at the facility for no more than 35 days.
- (iii) None of the activities described in § 298.41 (b) or (c) (relating to restrictions on transporters who are not also processors or rerefiners) occur at the facility.
- (iv) The waste oil collected at the transfer facility is destined for a waste oil transfer or waste oil processing/rerefining facility located in this Commonwealth which is permitted by the same person who owns/operates the waste oil transfer facility.
- (v) The owner or operator's liability for cleanup and third party injury at the waste oil transfer facility is covered by the bond and insurance covering the receiving waste oil transfer or processing/rerefining facility.

(vi) The owner or operator has submitted to the Department the following information:

(A) The location of the waste oil transfer facility.

(B) A description of the facility.

(C) The identity of a contact person including telephone number.

(D) Data demonstrating that the waste oil transfer facility will not be located within a 100-year floodplain.

(E) Data demonstrating that the waste oil transfer facility will not be located within 300 feet of a wetland.

(F) Data demonstrating that the waste oil transfer facility will not be located within 300 feet of an occupied dwelling.

(G) Data demonstrating that the waste oil transfer facility will not be located within 100 feet of a perennial stream.

(H) Data demonstrating that the waste oil transfer facility will not be located within 50 feet of a property line.]

[(5)](4) A copy of the protocol for satisfying the requirements of § 298.44 (relating to rebuttable presumption for waste oil) shall be maintained at [the] A facility OPERATING UNDER PARAGRAPHS (2) OR (3).

[(6) The Department may require the owner or operator of a waste oil transfer facility operating under the permit-by-rule in paragraph (4) to apply for, and obtain, a permit in accordance with Chapter 287, or take other appropriate action. The Department may require a permit or take other appropriate action when the generator is not in compliance with the requirements for the permit-by-

rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.]

(c) *Storage units.* The owner or operator of a waste oil transfer facility may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter 264a OR [Chapter 264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).] 265a (RELATING TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; AND INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES).

(d) *Condition of units.* A container[s] or aboveground STORAGE tank used to store waste oil at transfer facilities shall meet the following requirements:

(1) Be in good condition. For example—containers and aboveground STORAGE tanks may not exhibit severe rusting, apparent structural defects or deterioration.

(2) Not leakING (NO VISIBLE LEAKS).

(e) *Secondary containment for containers.* A container used to store waste oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dikes, berms or retaining walls.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to the migration of waste oil to prevent any waste oil released into the containment system from migrating out of

the system to the soil, groundwater or surface water.

(f) [*Secondary containment for existing aboveground tanks.* An existing aboveground tank used to store waste oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to the migration of waste oil to prevent any waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.] ADDITIONAL REQUIREMENTS FOR CONTAINERS. THE TOTAL CONTAINER HEIGHT OF A GROUP OF CONTAINERS MAY NOT EXCEED 9 FEET. THE MAXIMUM WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACE WHICH ENSURES ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES AND EQUIPMENT.

(g) [*Secondary containment for new aboveground tanks.* A new aboveground tank used to store waste oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to the

migration of waste oil to prevent any waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.] **ADDITIONAL REQUIREMENTS FOR STORAGE TANKS. STORAGE TANKS USED TO STORE WASTE OIL SHALL BE DESIGNED AND OPERATED IN ACCORDANCE WITH §299.122(b). FOR EXISTING ABOVEGROUND STORAGE TANKS, AN ALTERNATIVE DESIGN TO SECONDARY CONTAINMENT MAY BE DEMONSTRATED WHERE THE TANK MEETS THE GROUND.**

(h) *Labels.*

(1) [A container or aboveground tank used to store waste oil at transfer facilities shall be labeled or marked clearly with the words "waste oil."] **(1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3), A CONTAINER OR ABOVEGROUND TANK USED TO STORE WASTE OIL AT TRANSFER FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FROM THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).**

(2) [Fill pipes used to transfer waste oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "waste oil."] **(2) CONTAINERS OR ABOVEGROUND STORAGE TANKS WHICH ARE LABELED OR MARKED WITH THE WORDS "USED OIL" ON _____ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FROM THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).**

(3) CONTAINERS USED IN TRANSPORTATION MAY BE LABELED OR MARKED WITH THE WORDS "USED OIL," INSTEAD OF "WASTE OIL," OR THE WORDS REQUIRED BY A RECEIVING STATE IF THE CONTAINERS AND VEHICLES ARE DESTINED FOR RECYCLING OR DISPOSAL OUTSIDE OF PENNSYLVANIA. IF A PERSON ACCEPTS WASTE OIL FROM OR DELIVERS WASTE OIL TO A GENERATOR, TRANSFER FACILITY, OR PROCESSOR/REREFINER IN PENNSYLVANIA IN A CONTAINER USED IN TRANSPORTATION, PARAGRAPHS (1) OR (2) SHALL BE MET.

(4) FILL PIPES USED TO TRANSFER WASTE OIL INTO UNDERGROUND STORAGE TANKS AT TRANSFER FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO SIX MONTHS FROM THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.). FILL PIPES WHICH ARE LABELED OR MARKED WITH THE WORDS “USED OIL” ON _____ (EDITOR’S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO TWO YEARS FROM THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(i) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after _____ (*Editor’s Note: The blank refers to the effective date of adoption of this proposal.*), the owner or operator of a transfer facility shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

(3) Clean up and manage properly the released waste oil and other materials.

(4) If necessary, repair or replace any leaking waste oil storage containers or tanks prior to returning them to service.

[(c)](j) Additional requirements. In addition to the requirements of this subchapter, a waste oil [transporter] **TRANSFER FACILITY** is subject to Chapter **293 §§ 293.109, 293.241, 293.242 AND 293.243 (RELATING TO CONTINGENCY PLAN; HAZARD PREVENTION; EMERGENCY EQUIPMENT AND IMPLEMENTATION OF CONTINGENCY PLAN).** [264, Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency plan (PPC) and emergency procedures).] **WASTE OIL TRANSFER FACILITIES ARE SUBJECT TO ALL APPLICABLE SPILL PREVENTION, CONTROL AND COUNTERMEASURES (40 CFR PART 112)**

IN ADDITION TO THE REQUIREMENTS OF THIS SUBCHAPTER. A waste oil [transporter] **TRANSFER FACILITY** is also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground **STORAGE** tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.46. Tracking.

(a) *Acceptance.* A waste oil transporter **AND TRANSFER FACILITY** shall keep a record of each waste oil shipment accepted for transport. Records for each shipment shall include the following:

(1) The name and address of the generator, transporter, **TRANSFER FACILITY** or processor/rerefiner who provided the waste oil for transport.

(2) The identification number (if applicable) of the generator, transporter, **TRANSFER FACILITY** or processor/rerefiner who provided the waste oil for transport.

(3) The quantity of waste oil accepted.

(4) The date of acceptance.

(5) The signature of a representative of the generator, transporter, **TRANSFER FACILITY** or processor/rerefiner who provided the waste oil for transport, dated upon receipt of the waste oil.

(b) *Deliveries.* A waste oil transporter **AND TRANSFER FACILITY** shall keep a record of each shipment of waste oil that is delivered to another waste oil transporter, or to a waste oil burner, processor/rerefiner, **TRANSFER FACILITY** or disposal facility. Records of each delivery shall include the following:

(1) The name and address of the receiving facility or transporter.

(2) The identification number of the receiving facility or transporter.

(3) The quantity of waste oil delivered.

(4) The date of delivery.

(5) The signature, dated upon receipt of the waste oil, of a representative of the receiving facility or transporter.

(6) An intermediate rail transporter is not required to sign the record of delivery.

(c) *Exports of waste oil.* Waste oil transporters **AND TRANSFER FACILITIES** must maintain the records described in subsection (b)(1)–(4) for each shipment of waste oil exported to a foreign country.

(d) *Record retention.* The records described in subsections (a)–(c) shall be maintained for at least 3 years.

§ 298.47. Management of wastes.

A transporter **OR TRANSFER FACILITY** who generates wastes from the storage or transport of waste oil shall manage the wastes as specified in § 298.10(e) (relating to applicability).

§ 298.48. Signs on vehicles.

(a) A vehicle that is ordinarily or primarily used for the transportation of waste oil shall bear a sign that meets the following:

(1) The sign shall include the name and business address of the waste oil transporter that owns the vehicle.

(2) The sign shall have lettering that is 6 inches in height. The required information shall be clearly visible and easily readable.

(b) TRANSPORTATION VEHICLES MAY BE LABELED OR MARKED WITH THE WORDS “USED OIL,” INSTEAD OF “WASTE OIL,” OR THE WORDS REQUIRED BY A RECEIVING STATE IF THE VEHICLES ARE DESTINED FOR RECYCLING OR DISPOSAL OUTSIDE OF PENNSYLVANIA. IF A PERSON ACCEPTS WASTE OIL FROM OR DELIVERS WASTE OIL TO

A GENERATOR, TRANSFER FACILITY, OR PROCESSOR/REREFINER IN PENNSYLVANIA IN A TRANSPORTATION VEHICLE, THE FOLLOWING SHALL BE MET:

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), THE TRANSPORTATION VEHICLE SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THE PROPOSAL.).

(2) TRANSPORTATION VEHICLES THAT ARE MARKED OR LABELED "USED OIL" ON _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FROM THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE MARKED OR LABELED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

Subchapter F. WASTE OIL PROCESSING/REFINING FACILITIES

Sec.

- 298.50. Applicability.
- 298.51. Notification.
- 298.52. General facility standards.
- 298.53. Rebuttable presumption for waste oil.
- 298.54. Waste oil management.
- 298.55. Analysis plan.
- 298.56. Tracking.
- 298.57. Operating record and reporting.
- 298.58. Offsite shipments of waste oil.
- 298.59. Management of waste.

§ 298.50. Applicability.

(a) *General.* Except as provided in this subsection, this subchapter applies to owners and operators of waste

oil processing/rerefining facilities. This subchapter does not apply to:

(1) A transporter **OR TRANSFER FACILITY** that conducts incidental waste oil processing operations that occur during the normal course of transportation as provided in § 298.41 (relating to restrictions on transporters **AND TRANSFER FACILITIES** who are not also processors or rerefiners).

(2) A burner that conducts incidental waste oil processing operations that occur during the normal course of waste oil management prior to burning as provided in § 298.61(b) (relating to restrictions on burning).

(b) *Other applicable provisions.* A waste oil processor/rerefiner who conducts the following activities is also subject to other applicable provisions of this chapter as indicated in paragraphs (1)–(5).

(1) A processor/rerefiner who generates waste oil shall also comply with Subchapter C (relating to waste oil generators).

(2) A processors/rerefiner who transports waste oil shall also comply with Subchapter E (relating to waste oil transporter and **[transport] TRANSFER** facilities).

(3) Except as provided in subparagraphs (i) and (ii), a processor/rerefiner who burns off-specification waste oil for energy recovery shall also comply with Subchapter G (relating to waste oil burners who burn off-specification waste oil for energy necessary). A processor/rerefiner burning waste oil for energy recovery under the following conditions is not subject to Subchapter G.

(i) The waste oil is burned in an onsite space heater that meets the requirements of § 298.23 (relating to onsite burning in space heaters).

(ii) The waste oil is burned for purposes of waste oil processing which is considered burning incidentally to waste oil processing.

(4) A processor/rerefiner who directs shipments of off-specification waste oil from its facility to a waste oil burner or first claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11 (relating to waste oil specifications) shall also comply with Subchapter H (relating

to waste oil fuel).

(5) A processor/rerefiner shall dispose of waste oil in accordance with Article VII or IX (relating to hazardous waste MANAGEMENT; and residual waste management).

(c) *Permits.*

(1) The owner or operator of a waste oil processing facility shall obtain a permit issued under Chapter § 287 AND 297 (relating to residual waste management—GENERAL PROVISIONS; RELATING TO INCINERATORS AND OTHER PROCESSING FACILITIES).

(2) A general permit is only available for the following types of waste oil processing/rerefining facilities:

(i) A mobile waste oil processor/rerefiner that operates at the site of waste oil generation.

(ii) A waste oil processor/rerefiner that reclaims waste oil under toll arrangements as specified in § 298.24[(c)](3) (relating to offsite shipments).

(3) The owner or operator of a facility authorized PRIOR TO _____ EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL) by a WASTE OIL PROCESSING/REREFINING general permit [for waste oil processing/rerefining activities other than those identified in this subsection] ISSUED PRIOR TO _____ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL) may continue to operate its facility under the general permit for the permit term. At the end of the permit term, this general permit is not renewable. The owner or operator of the waste oil processing/rerefining facility AFTER THE TERM HAS EXPIRED ON THE GENERAL PERMIT may only continue to operate the facility if the owner or operator has obtained an individual permit issued under Chapter § 287 AND 297.

§ 298.51. Notification.

(a) *Identification numbers.* A waste oil processor or rerefiner who has not previously obtained an identification number shall comply with [§ 264.11 (relating to identification numbers)] 40 CFR 264.11

(RELATING TO IDENTIFICATION NUMBER), INCORPORATED BY REFERENCE AT § 264a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE), AND MODIFIED AT § 264a.11 (RELATING TO IDENTIFICATION NUMBER AND TRANSPORTER LICENSE) and obtain an **EPA** identification number.

(b) *Mechanics of notification.* A waste oil processor or rerefiner who has not received an identification number may obtain one by notifying the regional administrator of the waste oil activity by submitting one of the following:

(1) A completed EPA form 8700-12 (to obtain EPA form 8700-12, call RCRA/Superfund hotline at (800) 424-9346 or (703) 920-9810).

(2) A letter requesting an identification number. Call RCRA/Superfund hotline to determine where to send a letter requesting an identification number. The letter should include the following information:

(i) The processor or rerefiner company name.

(ii) The owner of the processor or rerefiner company.

(iii) The mailing address for the processor or rerefiner.

(iv) The name and telephone number for the processor or rerefiner point of contact.

(v) The type of waste oil activity—for example, process only, process and rerefine.

(vi) The location of the processor or rerefiner facility.

§ 298.52. General facility standards.

(a) *Preparedness and prevention.* The owner and operator of a waste oil processor or rerefiners facility shall comply with the following requirements:

(1) *Maintenance and operation of facility.* A facility shall be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or nonsudden release of waste oil to air, soil or surface water which could threaten human health or the environment.

(2) *Required equipment.* A facility shall be equipped with the following, unless none of the hazards posed by waste oil handled at the facility could require a particular kind of equipment specified in subparagraphs (i)–(iv):

(i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments or State or local emergency response teams.

(iii) A portable fire extinguisher, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas or dry chemicals), spill control equipment and decontamination equipment.

(iv) Water at adequate volume and pressure to supply water hose streams, foam producing equipment, or automatic sprinklers or water spray systems.

(3) *Testing and maintenance of equipment.* The facility communications or alarm systems, fire protection equipment, spill control equipment and decontamination equipment, when required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) *Access to communications or alarm system.*

(i) Whenever waste oil is being poured, mixed, spread or otherwise handled, the personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employe, unless the device is not required in paragraph (2).

(ii) When there is just one employe on the premises while the facility is operating, the employe shall have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless the device is not required in paragraph (2).

(5) *Required aisle space.* The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) *Arrangements with local authorities.*

(i) The owner or operator shall attempt to make the following arrangements, as appropriate, for the type of waste oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of waste oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes.

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority.

(C) Agreements with State emergency response teams, emergency response contractors and equipment suppliers.

(ii) Arrangements to familiarize local hospitals with the properties of waste oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

(iii) If State or local authorities decline to enter into these arrangements, the owner or operator shall document the refusal in the operating record.

(b) *Contingency plan and emergency procedures.* Owners and operators of waste oil processing and

rerefining facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or nonsudden release of waste oil to air, soil or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion or release of waste oil which could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with paragraphs (1) and (6) in response to fires, explosions or any unplanned sudden or nonsudden release of waste oil to air, soil or surface water at the facility.

(ii) If the owner or operator has already complied with [Chapter 264, Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency (PPC) plan and emergency procedures)] **40 CFR PART 264, SUBPARTS C AND D (RELATING TO PREPAREDNESS AND PREVENTION; AND CONTINGENCY PLAN AND EMERGENCY PROCEDURES), INCORPORATED BY REFERENCE AT §264a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE), AND MODIFIED AT § 264a.56 (RELATING TO EMERGENCY PROCEDURES)** or has already prepared some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate waste oil management provisions that are sufficient to comply with this chapter.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors and State and local emergency response teams to coordinate emergency services, under subsection (a)(6).

(iv) The plan shall list names, addresses and the office and home phone numbers of the persons qualified to

act as emergency coordinators, as described in paragraph (5), and this list shall be kept up to date. If more than one person is listed, one person shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

(v) The plan shall include a list of all emergency equipment at the facility—such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external) and decontamination equipment—if this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel if there is a possibility that evacuation could be necessary. This plan shall describe signals to be used to begin evacuation, evacuation routes and alternate evacuation routes, in cases where the primary routes could be blocked by releases of waste oil or fires.

(3) *Copies of contingency plan.* A copy of the contingency plan and revisions to the plan shall be:

(i) Maintained at the facility.

(ii) Submitted to all local police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services.

(4) *Amendment of contingency plan.* The contingency plan shall be reviewed and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised.

(ii) The plan fails in an emergency.

(iii) The facility changes in its design, construction, operation, maintenance or other circumstances in a way that materially increases the potential for fires, explosions or releases of waste oil, or changes the response necessary in an emergency.

(iv) The list of emergency coordinators changes.

(v) The list of emergency equipment changes.

(5) *Emergency coordinator.* At all times, there shall be at least one employe either on the facility premises or on call—for example, 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. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, the operations and activities at the facility, the location and characteristic of waste oil handled, the location of all records within the facility and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) *Emergency procedures.*

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately do the following:

(A) Activate internal facility alarms or communication systems, if applicable, to notify all facility personnel.

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire or explosion, the emergency coordinator shall immediately identify the character, exact source, amount and real extent of any released materials. The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire or explosion. This assessment shall consider both direct and indirect effects of the release, fire or explosion—for example, the effects of any toxic, irritating or asphyxiating gases that are generated or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire or explosion which could threaten human health or the environment, outside the facility, the emergency coordinator shall report the findings as follows:

(A) If the assessment indicated that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify the appropriate Departmental office of emergency response and the appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

(B) The emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for the geographical area in the applicable regional contingency plan or the National Response Center (using the 24-hour toll free number (800) 424-8802). The report shall include:

- (1) The name and telephone number of reporter.
- (2) The name and address of the facility.
- (3) The time and type of incident—for example, release or fire.
- (4) The name and quantity of materials involved, to the extent known.
- (5) The extent of injuries, if any.
- (6) The possible hazards to human health, or the environment, outside the facility.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions and releases do not occur, recur or spread to other waste oil or hazardous waste at the facility. These measures shall include, if applicable, stopping processes and operation, collecting and containing released waste oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation or ruptures in valves, pipes or other equipment,

wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing or disposing of recovered waste oil, contaminated soil or surface water, or any other material that results from a release, fire or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected areas of the facility, the following conditions apply:

(A) No waste or waste oil that may be incompatible with the released material is recycled, treated, stored or disposed of until cleanup procedures are completed.

(B) The emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Department and applicable local authorities that the facility is in compliance with clauses (A) and (B) before operations are resumed in the affected areas of the facility.

(ix) The owner or operator shall note in the operating record the time, date and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator shall submit a written report on the incident to the Department. The report shall include the following:

(A) The name, address and telephone number of the owner or operator.

(B) The name, address and telephone number of the facility.

(C) The date, time and type of incident—for example, fire or explosion.

(D) The name and quantity of materials involved.

(E) The extent of injuries, if any.

(F) An assessment of actual or potential hazards to human health or the environment, if applicable.

(G) An estimated quantity and disposition of recovered material that resulted from the incident.

§ 298.53. Rebuttable presumption for waste oil AND FLASH POINT SCREENING.

(a) To ensure that waste oil managed at a waste oil processing/rerefining facility is not hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), the owner or operator of a waste oil processing/rerefining facility shall determine whether the total halogen content of waste oil managed at the facility is above or below 1,000 parts per million. **THE WASTE OIL PROCESSING/REREFINING FACILITY SHALL MAKE THE DETERMINATION PRIOR TO THE UNLOADING OF A TRANSPORTATION VEHICLE AT THE PROCESSING/REREFINING FACILITY.**

(b) The owner or operator shall make this **TOTAL HALOGEN** determination by either:

(1) Testing the waste oil.

(2) Applying knowledge of the halogen content of the waste oil in light of the materials or processes used.

(c) Waste oil containing more than 1,000 parts per million total halogens, is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed [under Subchapter D (relating to waste oil collection centers and aggregation points).] **IN 40 CFR PART 261, SUBPART D (RELATING TO LISTS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE).** Persons may rebut this presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from the current edition of SW-846 to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in [§ 261.34(c) (relating to appendices).] **40 CFR PART 251, APPENDIX VIII (RELATED TO HAZARDOUS CONSTITUENTS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATED TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE).** EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box

371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1).

Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and therefore under [§ 261.4(a)(6) (relating to exclusions)] 40 CFR § 261.4(b)(1) (RELATING TO EXCLUSIONS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE) are excluded from regulation as hazardous waste.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if the oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to waste oils contaminated with CFCs removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to waste oils contaminated with CFCs that have been mixed with waste oil from sources other than refrigeration units.

(d) THE OWNER OR OPERATOR OF A WASTE OIL PROCESSING/REFINING FACILITY SHALL TEST WASTE OIL FOR FLASH POINT OR SHALL REQUEST APPROVAL FROM THE DEPARTMENT FOR AN ALTERNATIVE METHOD TO SCREEN WASTE OIL FOR THE PURPOSES OF DETECTING ADULTERATION OF WASTE OIL AND PROVIDING A SAFETY MEASURE IN DETERMINING THE POTENTIAL FOR A WASTE OIL TO INITIATE A FIRE DURING STORAGE AND PROCESSING.

§ 298.54. Waste oil management.

(a) *Management units.* [A waste oil processor/rerefiner is subject to Chapter 264 Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency plan (PPC) and emergency procedures), in addition to the requirements of this subchapter. Waste oil processor/rerefiners is also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground **STORAGE** tanks whether or not the waste oil exhibits any characteristics of hazardous waste, in addition to this subchapter.] **WASTE OIL PROCESSOR/REREFINERS MAY NOT STORE WASTE**

OIL IN UNITS OTHER THAN TANKS, CONTAINERS, OR UNITS SUBJECT TO REGULATION UNDER CHAPTERS 264a OR 265a (RELATING TO STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES AND INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES).

(b) *Condition of units.* A container or aboveground tank used to store or process waste oil at waste oil processing and rerefining facilities shall meet the following conditions:

(1) *Be in good condition.* For example, containers and aboveground **STORAGE** tanks may not exhibit severe rusting, apparent structural defects or deterioration.

(2) *Not leakING (NO VISIBLE LEAKS).*

(c) *Secondary containment for containers.* A container used to store or process waste oil at waste oil processing and rerefining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent any waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.

(d) [*Secondary containment for existing aboveground storage tanks.* Existing aboveground storage tanks used to store or process waste oil at waste oil processing and rerefining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent any waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.] ADDITIONAL REQUIREMENTS FOR CONTAINERS. THE TOTAL CONTAINER HEIGHT OF A GROUP OF CONTAINERS MAY NOT EXCEED 9 FEET. THE MAXIMUM WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACE WHICH ENSURES ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES AND EQUIPMENT.

(e) [*Secondary containment for new aboveground storage tanks.* New aboveground storage tanks used to store or process waste oil at waste oil processing and rerefining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent any waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.] ADDITIONAL REQUIREMENTS FOR STORAGE TANKS. STORAGE TANKS USED TO STORE WASTE OIL SHALL BE DESIGNED

AND OPERATED IN ACCORDANCE WITH §299.122(b). FOR EXISTING ABOVEGROUND STORAGE TANKS, AN ALTERNATIVE DESIGN TO SECONDARY CONTAINMENT MAY BE DEMONSTRATED WHERE THE TANK MEETS THE GROUND.

(f) *Labels.*

(1) [A container or aboveground tank used to store or process waste oil at waste oil processing and rerefining facilities shall be labeled or marked clearly with the words "waste oil."] **EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3), A CONTAINER OR ABOVEGROUND TANK USED TO STORE WASTE OIL AT PROCESSING AND REREFINING FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).**

(2) [Fill pipes used to transfer waste oil into underground storage tanks at waste oil processing and rerefining facilities shall be labeled or marked clearly with the words "waste oil."] **CONTAINERS OR ABOVEGROUND STORAGE TANKS WHICH ARE LABELED OR MARKED WITH THE WORDS "USED OIL" ON _____ (EDITORS'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).**

(3) CONTAINERS USED IN TRANSPORTATION MAY BE LABELED OR MARKED WITH THE WORDS "USED OIL," INSTEAD OF "WASTE OIL," OR THE WORDS REQUIRED BY A RECEIVING STATE IF THE CONTAINERS AND VEHICLES ARE DESTINED FOR RECYCLING OR DISPOSAL OUTSIDE OF PENNSYLVANIA. IF A PERSON ACCEPTS WASTE OIL FROM OR DELIVERS WASTE OIL TO A GENERATOR, TRANSFER FACILITY, OR PROCESSOR/REREFINER IN PENNSYLVANIA IN A CONTAINER USED IN TRANSPORTATION, PARAGRAPHS (1) OR (2) SHALL BE MET.

(4) FILL PIPES USED TO TRANSFER WASTE OIL INTO UNDERGROUND STORAGE TANKS

AT PROCESSING OR REREFINING FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.). FILL PIPES WHICH ARE LABELED OR MARKED WITH THE WORDS "USED OIL" ON _____ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS "WASTE OIL" BY NO LATER THAN _____ (EDITOR'S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245 Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*) An owner or operator shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

(3) Clean up and properly manage the released waste oil and other materials.

(4) If necessary, repair or replace any leaking waste oil storage containers or tanks prior to returning them to service.

(h) *Closure.*

(1) *Aboveground STORAGE tanks.* The owner and operator who stores or processes waste oil in an aboveground tank shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate waste oil residues in tanks, contaminated containment system components, contaminated soils and structures and equipment

contaminated with waste oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subsection (i)(1)(i), the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to hazardous waste landfills. (See [§ 265.310, relating to closure and postclosure care].) **40 CFR 265.310 (RELATING TO CLOSURE AND POST-CLOSURE CARE), INCORPORATED BY REFERENCE AT § 265a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY).**

(2) *Containers.* An owner or operator who store waste oil in containers shall comply with the following requirements:

(i) At closure, containers holding waste oils or residues of waste oil shall be removed from the site.

(ii) The owner or operator shall remove or decontaminate waste oil residues, contaminated containment system components, contaminated soils and structures and equipment contaminated with waste oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Chapter 261a (relating to [criteria,] identification and listing of hazardous waste).

(iii) *Additional requirements.* In addition to the requirements of this subchapter, waste oil processor/rerefiners are subject to **ALL APPLICABLE SPILL PREVENTION, CONTROL AND COUNTERMEASURES (40 CFR PART 112) [the requirements of Chapter 264 Subchapters C and D (relating to preparedness and prevention; and preparedness, prevention and contingency (PPC) plan and emergency procedures)], 40 CFR PART 264, SUBPARTS C AND D (RELATING TO PREPAREDNESS AND PREVENTION; AND CONTINGENCY PLAN AND EMERGENCY PROCEDURES), INCORPORATED BY REFERENCE AT § 264a.1 (RELATED TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE), AND MODIFIED AT § 264a.56 (RELATING TO EMERGENCY PROCEDURES).** In addition to the requirements of this subchapter, a waste oil processor/rerefiner is also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored

in underground **STORAGE** tanks whether or not the waste oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subchapter.

§ 298.55. Analysis plan.

The owner or operator of a waste oil processing or rerefining facility shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of § 298.53 (relating to rebuttable presumption for waste oil) and, if applicable, § 298.72 (relating to on-specification waste oil fuel). The owner or operator shall keep the plan at the facility.

(1) *Rebuttable presumption for waste oil **AND FLASH POINT SCREENING** in § 298.53.* At a minimum, the plan shall specify the following:

(i) Whether sample analyses or knowledge of the halogen content of the waste oil will be used to make this determination.

(ii) If sample analyses are used to make this determination:

(A) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(I) One of the sampling methods in 40 CFR Part 261, Appendix I (relating to [identification and listing of hazardous waste]) **REPRESENTATIVE SAMPLING METHODS INCORPORATED BY REFERENCE AT § 261a.1 (INCORPORATION BY REFERENCE, PURPOSE AND SCOPE).**

(II) A method shown to be equivalent under [**§ 260.21 (relating to hazardous waste mixing)**] **40 CFR 260.20 AND 260.21 (RELATING TO GENERAL; AND PETITIONS FOR EQUIVALENT TESTING OR ANALYTICAL METHODS), INCORPORATED BY REFERENCE AT § 260a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY).**

(B) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite.

(C) The methods used to analyze waste oil for the parameters specified in § 298.53.

(iii) The type of information that will be used to determine the halogen content of the waste oil.

(2) *On-specification waste oil fuel in § 298.72.* At a minimum, the plan shall specify the following if § 298.72 applies:

(i) Whether sample analyses or other information will be used to make this determination.

(ii) If sample analyses are used to make this determination:

(A) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using one of the following:

(I) One of the sampling methods in 40 CFR Part 261, Appendix I[.], **INCORPORATED BY REFERENCE AT § 261a.1.**

(II) A method shown to be equivalent under [**§ 260.21, (relating to requests for determination of equivalent testing or analytical methods.)**] **40 CFR 260.20 AND 260.21 INCORPORATED BY REFERENCE AT § 260a.1.**

(B) Whether waste oil will be sampled and analyzed prior to or after any waste oil processing/rerefining.

(C) The frequency of sampling to be performed and whether the analysis will be performed onsite or offsite.

(D) The methods used to analyze waste oil for the parameters specified in § 298.72.

(iii) The type of information that will be used to make the on-specification waste oil fuel determination.

§ 298.56. Tracking.

(a) *Acceptance.* A waste oil processor/rerefiner shall keep a record of each waste oil shipment accepted for waste oil processing/rerefining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivered the waste oil to the processor/rerefiner.
- (2) The name and address of the generator, **TRANSFER FACILITY** or processor/rerefiner from whom the waste oil was sent for waste oil processing/rerefining.
- (3) The identification number of the transporter who delivered the waste oil to the processor/rerefiner.
- (4) The identification number (if applicable) of the generator, **TRANSFER FACILITY** or processor/rerefiner from whom the waste oil was sent for waste oil processing/rerefining.
- (5) The quantity of waste oil accepted.
- (6) The date of acceptance.

(b) *Delivery.* A waste oil processor/rerefiner shall keep a record of each shipment of waste oil that is shipped to a waste oil burner, processor/rerefiner, **TRANSFER FACILITY** or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivers the waste oil to the burner, processor/rerefiner, **TRANSFER FACILITY** or disposal facility.
- (2) The name and address of the burner, processor/rerefiner, **TRANSFER FACILITY** or disposal facility who will receive the waste oil.
- (3) The identification number of the transporter who delivers the waste oil to the burner, **TRANSFER FACILITY**, processor/rerefiner or disposal facility.

(4) The identification number of the burner, processor/rerefiner, **TRANSFER FACILITY** or disposal facility who will receive the waste oil.

(5) The quantity of waste oil shipped.

(6) The date of shipment.

(c) *Record retention.* The records described in subsections (a) and (b) shall be maintained for at least 3 years.

§ 298.57. Operating record and reporting.

(a) *Operating record.*

(1) The owner or operator shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of waste oil analysis performed as described in the analysis plan required under § 298.55 (relating to analysis plan).

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in § 298.52(b) (relating to general facility standards).

(b) *Reporting.* A waste oil processor/rerefiner shall report to the Department in the form of a letter, on a biennial basis (by March 1 of each even numbered year), the following information concerning waste oil activities during the previous calendar year:

(1) The identification number, name, and address of the processor/rerefiner.

(2) The calendar year covered by the report.

(3) The quantities of waste oil accepted for waste oil processing/rerefining and the manner in which the waste oil is processed/rerefined, including the specific processes employed.

§ 298.58. Offsite shipments of waste oil.

A waste oil processor/rerefiner who initiates shipments of waste oil offsite shall ship the waste oil using a waste oil transporter who has obtained an identification number.

§ 298.59. Management of waste.

An owner or operator of waste oil processing/rerefining facilities who generates waste from the storage, waste oil processing or rerefining of waste oil shall manage the wastes from its operations as specified in § 298.10(e) (relating to materials derived from waste oil).

Subchapter G. WASTE OIL BURNERS WHO BURN OFF-SPECIFICATION WASTE OIL FOR ENERGY RECOVERY

Sec.

- 298.60. Applicability.
- 298.61. Restrictions on burning.
- 298.62. Notification.
- 298.63. Rebuttable presumption for waste oil.
- 298.64. Waste oil storage.
- 298.65. Tracking.
- 298.66. Notices.
- 298.67. Management of waste.

§ 298.60. Applicability.

(a) *General.* This subchapter applies to waste oil burners except as specified in paragraphs (1) and (2). A

waste oil burner is a facility where waste oil not meeting the specification requirements in § 298.11 (relating to waste oil specifications) is burned for energy recovery in devices identified in § 298.61(a) (relating to restrictions on burning). A waste oil burner who complies with this subchapter is deemed to have a solid waste permit for the burning of that waste oil. The Department may require a waste oil burner subject to permit-by-rule to apply for, and obtain, an individual or general permit, or take other appropriate action, when the waste oil burner is not in compliance with the requirements for the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth. Facilities burning waste oil for energy recovery under one or more of the following conditions are not subject to this subchapter:

(1) The waste oil is burned by the generator in an onsite space heater under the provisions of § 298.23 (relating to onsite burning in space heaters).

(2) The waste oil is burned by a processor/rerefiner for purposes of processing waste oil which is considered burning incidentally to waste oil processing.

(b) *Other applicable provisions.* A waste oil burner who conducts the following activities is also subject to other applicable provisions of this chapter as follows:

(1) A burner who generates waste oil shall also comply with Subchapter C (relating to waste oil generators).

(2) A burner who transports waste oil shall also comply with Subchapter E (relating to waste oil transporters and transfer facilities).

(3) Except as provided in § 298.61(b), a burner who processes or rerefines waste oil shall also comply with Subchapter F (relating to waste oil processors/rerefiners).

(4) A burner who directs shipments of off-specification waste oil from its facility to a waste oil burner or first claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11 shall also comply with Subchapter H (relating to waste oil fuel).

(5) A burner shall dispose of waste oil in accordance with Article VII or IX (relating to hazardous waste

management; and residual waste management).

(c) *Specification fuel.* This subchapter does not apply to a person burning waste oil that meets the waste oil fuel specification of § 298.11, if the burner complies with Subchapter H.

§ 298.61. Restrictions on burning.

(a) Off-specification waste oil fuel may be burned for energy recovery in only the following devices:

(1) An industrial furnace identified in [**§ 260.1**] **40 CFR 260.10** (relating to definitions)[.], **INCORPORATED BY REFERENCE AT § 260a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY).**

(2) A boiler, as defined in [**§ 260.1**] **40 CFR 260.10, INCORPORATED BY REFERENCE AT § 260a.1** that is identified as follows:

(i) An industrial boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) A utility boiler used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(iii) A waste oil-fired space heaters if the burner meets the provisions of § 298.23 (relating to onsite burning in space heaters).

(3) A hazardous waste incinerator subject to [**Chapter 264 Subchapter O or Chapter 265 (relating to incinerators; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).**] **40 CFR PART 264, SUBPART O (RELATING TO INCINERATORS), INCORPORATED AT § 264a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE), OR 40 CFR PART 265, SUBPART O (RELATING TO INCINERATOR), INCORPORATED BY REFERENCE AT §**

265a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY).

(b) A person burning waste oil in a boiler or industrial furnace specified in paragraph (1) or (2) shall have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality, or written approval from the Bureau of Air Quality if the fuel is burned in Allegheny or Philadelphia counties if Allegheny or Philadelphia county is issued first.

(c) Except as provided in subsection (d), a waste oil burner may not process waste oil unless it also complies with the requirements of Subchapter F (relating to waste oil processing/refining facilities).

(d) A waste oil burner may aggregate off-specification waste oil with virgin oil or on-specification waste oil for purposes of burning, but may not aggregate for purposes of producing on-specification waste oil.

§ 298.62. Notification.

(a) *Identification numbers.* A waste oil burner which has not previously complied with the notification requirements of [§§ 264.11 and 265.11 (relating to identification numbers)] **40 CFR 264.11 (RELATING TO IDENTIFICATION NUMBER), INCORPORATED BY REFERENCE AT § 264a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND REFERENCE), AND 40 CFR 265.11 (RELATING TO IDENTIFICATION NUMBER), INCORPORATED BY REFERENCE AT § 265a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE, SCOPE AND APPLICABILITY)**, shall comply with these requirements and obtain an EPA identification number.

(b) *Mechanics of notification.* A waste oil burner who has not received an identification number may obtain one by notifying the regional administrator of their waste oil activity by submitting one of the following:

(1) A completed EPA form 8700-12 (to obtain EPA form 8700-12 call RCRA/Superfund hotline at (800) 424-9346 or (703) 920-9810).

(2) A letter requesting an identification number. A burner may call the RCRA/Superfund hotline to

determine where to send a letter requesting an identification number. The letter should include the following information:

- (i) The burner company name.
- (ii) The owner of the burner company.
- (iii) The mailing address for the burner.
- (iv) The name and telephone number for the burner point of contact.
- (v) The type of waste oil activity.
- (vi) The location of the burner facility.

§ 298.63. Rebuttable presumption for waste oil.

(a) To ensure that waste oil managed at a waste oil burner facility is not hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), a waste oil burner shall determine whether the total halogen content of waste oil managed at the facility is above or below 1,000 parts per million.

(b) The waste oil burner shall determine if the waste oil contains above or below 1,000 parts per million total halogens by one of the following:

- (1) Testing the waste oil.
- (2) Applying knowledge of the halogen content of the waste oil in light of the materials or processes used.
- (3) If the waste oil has been received from a processor/rerefiner subject to regulation under Subchapter F (relating to waste oil processors rerefiners), using information provided by the processor/rerefiner.

(c) Waste oil containing more than 1,000 parts per million total halogens, is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed under [Subchapter D (relating to waste oil collections centers and aggregation points).] **40 CFR PART 261, SUBPART D (RELATING TO LISTS OF HAZARDOUS WASTE), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)**. A person may rebut this presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from the current edition of SW-846 to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in [§ 261.34(e) (relating to appendices).] **40 CFR PART 261, APPENDIX VIII (RELATED TO HAZARDOUS CONSTITUENTS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)**. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and, therefore, under [§ 261.4(a)(6) (relating to exclusions)] **40 CFR 261.4(b)(1) (RELATING TO EXCLUSIONS), INCORPORATED BY REFERENCE AT § 261a.1 (RELATING TO INCORPORATION BY REFERENCE, PURPOSE AND SCOPE)** are excluded from regulation as hazardous waste.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in § 298.24(c) (relating to offsite shipments), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if the oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to waste oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to waste oils contaminated with CFCs that have been mixed with waste oil from sources other than refrigeration units.

(d) *Record retention.* Records of analyses conducted or information used to comply with subsections (a)–(c) shall be maintained by the burner for at least 3 years.

§ 298.64. Waste oil storage.

(a) *Storage units.* A waste oil burner may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter [264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities).] 264a OR 265a (RELATING TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES; AND INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES).

(b) *Condition of units.* Containers and aboveground **STORAGE** tanks used to store oil at burner facilities shall meet the following conditions:

(1) *Be in good condition.* For example, containers and aboveground **STORAGE** tanks shall not exhibit severe rusting, apparent structural defects or deterioration.

(2) *Not leakING (NO VISIBLE LEAKS).*

(c) *Secondary containment for containers.* A container used to store waste oil at burner facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) Dikes, berms or retaining walls and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.

(d) [*Secondary containment for existing aboveground storage tanks.* Existing aboveground storage tanks used to store waste oil at burner facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) A dike, berm or retaining wall and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent waste oil released into the containment system from migrating out of the system to the soil, groundwater or surface water.] ADDITIONAL REQUIREMENTS FOR CONTAINERS. THE TOTAL CONTAINER HEIGHT OF A GROUP OF CONTAINERS MAY NOT EXCEED 9 FEET. THE MAXIMUM WIDTH AND DEPTH OF A GROUP OF CONTAINERS SHALL PROVIDE A CONFIGURATION AND AISLE SPACE WHICH ENSURES ACCESS FOR PURPOSES OF INSPECTION, CONTAINMENT AND REMEDIAL ACTION WITH EMERGENCY VEHICLES AND EQUIPMENT.

(e) [*Secondary containment for existing aboveground storage tanks.* A new aboveground tank used to store waste oil at a burner facility shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of one of the following:

(i) A dike, berm or retaining wall and a floor. The floor shall cover the entire area within the dike, berm or retaining wall.

(ii) An equivalent secondary containment system.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to the migration of waste oil to prevent waste oil released into the containment system from migrating out of

the system to the soil, groundwater or surface water.] ADDITIONAL REQUIREMENTS FOR STORAGE TANKS. STORAGE TANKS USED TO STORE WASTE OIL SHALL BE DESIGNED AND OPERATED IN ACCORDANCE WITH §299.122(b) (RELATING TO STORAGE TANKS). FOR EXISTING ABOVEGROUND STORAGE TANKS, AN ALTERNATIVE DESIGN TO SECONDARY CONTAINMENT MAY BE DEMONSTRATED WHERE THE TANK MEETS THE GROUND.

(f) *Labels.*

(1)[A container or aboveground tank used to store waste oil at a burner facility shall be labeled or marked clearly with the words “waste oil.”] EXCEPT AS PROVIDED IN PARAGRAPH (2), A CONTAINER OR ABOVEGROUND TANK USED TO STORE WASTE OIL AT BURNER FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(2) [A fill pipe used to transfer waste oil into an underground storage tank at a burner facility shall be labeled or marked clearly with the words “waste oil.”] CONTAINERS OR ABOVEGROUND STORAGE TANKS WHICH ARE LABELED OR MARKED WITH THE WORDS “USED OIL” ON _____ (EDITOR’S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.).

(3) FILL PIPES USED TO TRANSFER WASTE OIL INTO UNDERGROUND STORAGE TANKS AT BURNER FACILITIES SHALL BE LABELED OR MARKED CLEARLY WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO SIX MONTHS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.). FILL PIPES WHICH ARE LABELED OR MARKED WITH THE WORDS “USED OIL” ON _____ (EDITOR’S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.) SHALL BE LABELED OR MARKED WITH THE WORDS “WASTE OIL” BY NO LATER THAN _____ (EDITOR’S NOTE: THE BLANK REFERS TO

TWO YEARS FOLLOWING THE EFFECTIVE DATE OF ADOPTION OF THIS PROPOSAL.

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after _____ (*Editor's Note: The blank refers to the effective date of the adoption of this proposal.*), a burner shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

(3) Clean up and properly manage the released waste oil and other materials.

(4) Repair or replace any leaking waste oil storage containers or tanks prior to returning them to service, if necessary.

(h) In addition to the requirements of this subchapter, a waste oil [processor/rerefiner] **BURNER SHALL MAINTAIN, IN A READILY ACCESSIBLE PLACE AT THE FACILITY, A COPY OF A PREPAREDNESS, PREVENTION AND CONTINGENCY (PPC) PLAN THAT IS CONSISTENT WITH THE DEPARTMENT'S MOST RECENT GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF PPC PLANS.** [is subject to Chapter 264 Subchapters C and D (relating to preparedness and prevention; preparedness, prevention and contingency (PPC) plan; and emergency procedures)] **WASTE OIL BURNERS ARE SUBJECT TO ALL APPLICABLE SPILL PREVENTION, CONTROL AND COUNTERMEASURES (40 CFR PART 112)** in addition to [this] **THE REQUIREMENTS OF THIS SUBCHAPTER. A WASTE OIL BURNER IS ALSO SUBJECT TO THE** underground storage tank standards for waste oil stored in underground **STORAGE** tanks in Chapter 245 (relating to administration of the storage tank and spill prevention program) whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.65. Tracking.

(a) *Acceptance.* A waste oil burner shall keep a record of each waste oil shipment accepted for burning.

These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivered the waste oil to the burner.
 - (2) The name and address of the generator, **TRANSFER FACILITY** or processor/rerefiner from whom the waste oil was sent to the burner.
 - (3) The identification number of the transporter who delivered the waste oil to the burner.
 - (4) The identification number (if applicable) of the generator, **TRANSFER FACILITY** or processor/rerefiner from whom the waste oil was sent to the burner.
 - (5) The quantity of waste oil accepted.
 - (6) The date of acceptance.
- (b) *Record retention.* The records described in subsection (a) shall be maintained for at least 3 years.

§ 298.66. Notices.

(a) *Certification.* Before a burner accepts the first shipment of off-specification waste oil fuel from a generator, transporter, **TRANSFER FACILITY** or processor/rerefiner, the burner shall provide to the generator, transporter, **TRANSFER FACILITY** or processor/rerefiner a one-time written and signed notice certifying the following:

- (1) The burner has notified EPA stating the location and general description of its waste oil management activities.
- (2) The burner will burn the waste oil only in an industrial furnace or boiler identified in § 298.61(a) (relating to restrictions on burning).

(b) *Certification retention.* The certification described in subsection (a) shall be maintained for 3 years from the date the burner last receives shipment of off-specification waste oil from that generator, transporter, **TRANSFER FACILITY** or processor/rerefiner.

§ 298.67. Management of waste.

A burner who generates waste from the storage or burning of waste oil shall manage the waste as specified in § 298.10(e) (relating to materials derived from waste oil).

Subchapter H. WASTE OIL FUEL MARKETERS

Sec.

- 298.70. Applicability.
- 298.71. Prohibitions.
- 298.72. On-specification waste oil fuel.
- 298.73. Notification.
- 298.74. Tracking.
- 298.75. Notices.

§ 298.70. Applicability.

(a) A person who conducts one of the following activities is subject to the requirements of this subchapter:

- (1) Directs a shipment of off-specification waste oil from its facility to a waste oil burner.
- (2) First claims that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications in § 298.11 (relating to waste oil specifications).

(b) The following persons are not marketers subject to this subchapter:

(1) Waste oil generators, [and] waste oil transporters, **AND WASTE OIL TRANSFER FACILITIES** who transport waste oil received only from waste oil generators, unless the waste oil generator, [or] waste oil transporter **OR WASTE OIL TRANSFER FACILITY** directs a shipment of off-specification waste oil from its facility to a waste oil burner. However, waste oil processors/rerefiners who burn some waste oil fuel for purposes of waste oil processing are considered to be burning incidentally to waste oil processing. Thus, waste oil generators, [and] waste oil transporters **AND WASTE OIL TRANSFER FACILITIES** who direct shipments of off-specification waste oil to waste oil processors/rerefiners who incidentally burn waste oil are not marketers subject to this subchapter.

(2) Persons who direct shipments of on-specification waste oil and who are not the first person to claim the oil meets the waste oil fuel specifications of § 298.11 (relating to waste oil specifications).

(c) Any person subject to the requirements of this subchapter must also comply with one of the following:

(1) Subchapter C of this chapter—Standards for Waste Oil Generators.

(2) Subchapter E of this chapter—Standards for Waste Oil Transporters and Waste Oil Transfer Facilities.

(3) Subchapter F of this chapter—Standards for Waste Oil Processors and Rerefiners.

(4) Subchapter G of this chapter—Standards for Waste Oil Burners Who Burn Off-Specification Waste Oil For Energy Recovery.

§ 298.71. Prohibitions.

A waste oil fuel marketer may initiate a shipment of off-specification waste oil only to a waste oil burner which:

(1) Has an identification number.

(2) Burns the waste oil in an industrial furnace or boiler identified in § 298.61(a) (relating to restrictions on burning).

§ 298.72. On-specification waste oil fuel.

(a) *Analysis of waste oil fuel.* A waste oil generator, waste oil transporter, **WASTE OIL TRANSFER FACILITY**, waste oil processor/rerefiner or waste oil burner may determine that waste oil that is to be burned for energy recovery meets the fuel specifications of §298.11 (relating to waste oil specifications) by performing analyses or obtaining copies of analyses or other information documenting that the waste oil fuel meets the specifications.

(b) *Record retention.* A waste oil generator, waste oil transporter, **WASTE OIL TRANSFER FACILITY**, waste oil processor/rerefiner or waste oil burner who first claims that waste oil that is to be burned for energy

recovery meets the specifications for waste oil fuel under § 298.11 shall keep copies of analyses of the waste oil (or other information used to make the determination) for 3 years.

§ 298.73. Notification.

(a) *Identification numbers.* A waste oil fuel marketer subject to this subchapter who has not previously obtained an identification number shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an identification number may obtain one by notifying the EPA Regional Administrator of its waste oil activity by submitting one of the following:

(1) A completed EPA form 8700-12.

(2) A letter requesting an identification number. The letter shall include the following information:

(i) The marketer company name.

(ii) The owner of the marketer.

(iii) The mailing address for the marketer.

(iv) The name and telephone number for the marketer point of contact.

(v) The type of waste oil activity (for example, generator directing shipments of off-specification waste oil to a burner).

§ 298.74. Tracking.

(a) *Off-specification waste oil delivery.* A waste oil marketer who directs a shipment of off-specification waste oil to a burner must keep a record of each shipment of waste oil to a burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

- (1) The name and address of the transporter who delivers the waste oil to the burner.
- (2) The name and address of the burner who will receive the waste oil.
- (3) The identification number of the transporter who delivers the waste oil to the burner.
- (4) The identification number of the burner.
- (5) The quantity of waste oil shipped.
- (6) The date of shipment.

(b) *On-specification waste oil delivery.* A generator, transporter, **TRANSFER FACILITY**, processor/rerefiner or burner who first claims that waste oil that is to be burned for energy recovery meets the fuel specifications under § 298.11 (relating to waste oil specifications) shall keep a record of each shipment of waste oil to the facility to which it delivers the waste oil. Records for each shipment shall include the following information:

- (1) The name and address of the facility receiving the shipment.
- (2) The quantity of waste oil fuel delivered.
- (3) The date of shipment or delivery.
- (4) A cross reference to the record of waste oil analysis or other information used to make the determination that the oil meets the specification as required under § 298.72(a) (relating to on-specification waste oil fuel).

(c) *Record retention.* The records described in subsections (a) and (b) shall be maintained for at least 3 years.

§ 298.75. Notices.

(a) *Certification.* Before a waste oil generator, transporter, **TRANSFER FACILITY** or processor/rerefiner directs the first shipment of off-specification waste oil fuel to a burner, it shall obtain a one-time written and signed notice from the burner certifying the following:

(1) That the burner has notified EPA stating the location and general description of waste oil management activities.

(2) That the burner will burn the off-specification waste oil only in an industrial furnace or boiler identified in § 298.61(a).

(b) *Certification retention.* The certification described in subsection (a) shall be maintained for 3 years from the date the last shipment of off-specification waste oil is shipped to the burner.

WASTE OIL AMENDMENTS

COMMENT AND RESPONSE DOCUMENT

Re: Proposed Rulemaking: Waste Oil Amendments (#7-342)

This is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation.

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
1	Mr. Timothy R. Tuttle Chief Engineer Department of the Army Scranton Army Ammunition Plant Scranton, PA	18505-1130			
2	Mr. Scott Avery RecOil, Inc. 280 East Street York, PA	17403-1292		T*	X
3	Mr. Robert J. Krawiecki Mrs. Rose Krawiecki The C.R. Warner Companies Yankee Point Terminal 6050 West Passyunk Ave. Philadelphia, PA	19153		T	
4	Mr. David E. Vollero Manager York County Solid Waste and Refuse Authority 2700 Blackbridge Road York, PA	17402-7901			
5	Mr. Kent V. Hart President Petromax, Ltd. 301 Prestley Avenue Carnegie, PA	15106			
6	Ms. Mary Beth Bosco Regulatory Counsel Used Oil Management Association 2550 M Street, NW Washington, DC	20037-1350			X
7	The Honorable Joe Conti Senate of Pennsylvania Room 459, Main Capitol Building Senate Box 203010 Harrisburg, PA	17120-3010			

*This commentator also submitted written comments.

Re: Proposed Rulemaking: Waste Oil Amendments (#7-342)

ID	Name/Address	Zip	Submitted 1 pg Summary	Provided Testimony	Req Final Rulemaking
8	Mr. Michael G. Young Director of Regulatory Affairs Pennsylvania Coal Association 212 North Third Street, Suite 102 Harrisburg, PA	17101	S		X
9	Mr. Christopher Harris National Oil Recyclers Assoc. 1439 West Babcock Bozeman, MT	59715			
10	Mr. Fred A. Sembach Vice President Government Affairs Pennsylvania Chamber of Business and Industry 417 Walnut Street Harrisburg, PA	17101-1902			
11	Mr. Dan Regan General Counsel Pennsylvania Gas Association 800 North Third Street Harrisburg, PA	17102			
12	Safety-Kleen Systems, Inc. c/o Michael M. Meloy Manko, Gold and Katcher, LLP Suite 500 401 City Avenue Bala Cynwyd, PA	19004			
13	J. K. Cool Manager, Environmental Affairs Unit Duquesne Light 411 Seventh Avenue P.O. Box 1930 Pittsburgh, PA	15230-1930	S		
14	Richard B. Hoyt Specialty Steel Industry of Pennsylvania Allegheny Ludlum Corporation 1000 Six PPG Place Pittsburgh, PA	15222			

15 Independent Regulatory
Review Commission

COMMENT RESPONSE DOCUMENT

General

1. **Comment:** We generally endorse the Department of Environmental Protection's efforts to conform its regulation of (waste) oil to the United States Environmental Protection Agency's regulations and to simplify and make more user friendly the state's regulations governing (waste) oil. (6,7,9,10)

Response: The Department acknowledges your support.

2. **Comment:** We appreciate DEP's effort to consult with industry groups to help develop the Pennsylvania Used Oil Management Standards. (2,9)

Response: The Department acknowledges your support.

3. **Comment:** We are discouraged by the statement of the Department's general "experience" as justification for deviating from federal law and regulations. This does not conform to the intent of the Regulatory Basics Initiative (RBI), which generally requires a compelling or unique state interest to impose such requirements. (8)

Response: The Department's experience in this regard represents a compelling reason to differ from federal regulations. Experiences, such as improper mixing, substandard tanks and inadequate or non-existent waste screening discovered through inspections, are sufficiently common to justify deviating from federal requirements. In addition, Pennsylvania's residual waste program is designed to manage wastes not managed under the federal program.

4. **Comment:** The proposed regulation contains several references to other chapters of regulations that have recently changed. Specifically, incorrect citations are made to the recently revised hazardous waste regulations. The EQB should review the proposed regulation to correct outdated cross-references. In addition, the regulation is amending portions of Sections 261.3, 261.5 and 261.6. These sections have recently been changed and need to be corrected to reflect the new sections. (10,15)

Response: The necessary changes have been made in the final regulations.

5. **Comment:** It is unclear why DEP has relied on elements of the hazardous waste program when waste oil is not a hazardous waste but a residual waste. Certainly the residual waste regulations provide appropriate controls for the management of residual wastes. It makes little sense to include the waste oil regulations standards that are designed for the management of hazardous wastes when the waste oil is not hazardous waste. (10)

Response: The language adopting elements of the hazardous waste program is taken directly from the federal used oil regulations at 40 CFR Part 279. By incorporating these requirements, the Department is promoting consistency between the state and federal programs.

6. **Comment:** We strongly support the Department's efforts to address the management of waste oil into a single set of regulations. A unified regulatory approach will be of assistance to both the Department and regulated community, and will greatly improve the fractured regulatory structure that presently exists in Pennsylvania with respect to waste oil. (12)

Response: The Department acknowledges your support.

7. **Comment:** While waste oil subject to the proposed waste oil regulations is classified as a residual waste, a number of specific provisions within the proposed regulations incorporate or reflect management standards and requirements that are applicable to the handling of hazardous wastes. We believe that in many instances, such standards and requirements are unnecessarily stringent and will result in additional costs for the regulated community with no significant environmental benefits. Moreover, the proposed waste oil regulations have the effect of subjecting waste oil that would not qualify as hazardous waste in any circumstances to hazardous waste requirements and standards. Accordingly, if the proposed waste oil regulations are finalized in their current form, waste oil being recycled will be subject to regulations that are substantially more restrictive than those currently in place. By contrast, waste oil that is destined for disposal will typically be subject to basic residual waste requirements which are less stringent than those contained in the proposed waste oil regulations. Such a structural flaw in the proposed regulations, unless corrected, will discourage recycling activities and encourage disposal of waste oil. (12)

Response: The reason behind referencing the management standards in the hazardous waste regulations instead of those in the residual waste management regulations is two-fold. First, the federal counterpart of these regulations found at 40 CFR Part 279 reference the federal hazardous waste management standards in the federal regulations. In order to obtain authorization by U. S. EPA under RCRA for these proposed regulations, they must be no less stringent than the federal counterparts. The management requirements under the residual waste regulations are generally less stringent than those in the hazardous waste regulations. Second, by allowing limited

mixing of hazardous waste into waste oil under these proposed regulations, the Department believes the management standards under the hazardous waste regulations are necessary to be protective of human health and the environment. The Department is not aware of significant quantities of waste oil being managed at Pennsylvania's residual or municipal waste disposal facilities. While this may be, in part, due to most of the facilities not being approved to manage bulk liquids, the higher cost of disposal compared to burning for energy recovery is considered the main reason. These regulations will not change this economic incentive to recycle waste oil.

8. Comment: 25 Pa. Code Section 298.1 incorporates by reference the definitions contained in PA's hazardous waste regulations. By contrast, the definitions contained in PA's residual waste regulations are nowhere mentioned. (12)

Response: Since Chapter 298 falls within Article IX, Section 287.1 indicates that the words and terms defined in that section apply to the entire Article. Additional terms identified in Chapter 298 include definitions for items used in the hazardous waste and storage tanks programs, as applicable.

9. Comment: 25 Pa. Code Section 298.12 prohibits the management of waste oil in surface impoundments or waste piles unless such units are subject to the requirements applicable to hazardous waste impoundments and waste piles. By contrast, the residual waste regulations contain detailed requirements governing the use of impoundments that are nowhere mentioned. (12)

Response: The language is taken directly from the federal used oil regulations at 40 CFR Section 279.12. By incorporating these requirements, the Department is promoting consistency between the state and federal programs.

10. Comment: 25 Pa. Code Section 298.20(b)(3)(ii) authorizes waste oil generators to use oil/water separators as part of wastewater treatment units only if such wastewater treatment units satisfy the permit-by-rule standards for wastewater treatment units formerly found in PA's hazardous waste regulations rather than the permit-by-rule standards for wastewater treatment units found in PA's residual waste regulations. (12)

Response: The Department agrees and has incorporated the permit-by-rule requirements for managing residual waste.

11. Comment: 25 Pa. Code Sections 298.22(a), 298.45(c) and 298.64(a) provide that waste oil may not be stored in units other than tanks, containers or units "subject to regulation under Chapter 264 or 265" of PA's hazardous waste regulations. The relevant provisions of PA's residual waste regulations are nowhere mentioned in these sections of the proposed waste oil regulations. (12)

Response: The language is taken directly from the federal used oil regulations at 40 CFR Sections 279.22(a), 279.45(b) and 279.64(a). By incorporating these requirements, the Department is promoting consistency between the state and federal programs.

12. Comment: 25 Pa. Code Section 298.45(j) (misdesignated as section 298.45(c)) subjects waste oil transporters to 25 Pa. Code Chapter 264, Subchapters C and D (relating to preparedness, prevention and contingency plans) rather than analogous provisions in PA's residual waste regulations. 25 Pa. Code Sections 298.22(e) and 298.54(a) contain parallel provisions applicable to waste oil generators and waste oil processors and refiners, respectively. (12)

Response: The Department agrees that the references may be changed and has cited sections in the residual waste regulations pertaining to transfer facilities (Sections 293.109, 293.241, 293.242, and 293.243) and processing facilities (Sections 297.111, 297.251, 297.252 and 297.253).

13. Comment: 25 Pa. Code Section 298.54(h)(1)(ii) incorporates closure and postclosure care requirements applicable to hazardous waste landfills where not all contaminated soil associated with the closure of aboveground waste oil storage tanks can be practicably removed. These requirements in the proposed waste oil regulations apply even in circumstances where the waste oil that was stored would not qualify as either a listed or characteristic hazardous waste. As such, the requirements expand the scope of hazardous waste closure and postclosure obligations to aboveground storage tanks that are used to hold waste oil. (12)

Response: The language is taken directly from the federal used oil regulations at 40 CFR Section 279.54(h)(ii). By incorporating the federal requirements, the Department is promoting consistency between the state and federal programs.

14. Comment: To the extent that EPA sought to reference existing waste management standards in its used oil regulations, the standards in the federal hazardous waste regulations were the only viable options. Such is not the case under Pennsylvania's regulatory structure under the SWMA, which includes the residual waste program. (12)

Response: RCRA's definition of "solid waste" includes industrial, mining and agricultural wastes. In PA, these wastes are regulated as "residual waste" under the SWMA. EPA has the authority to develop regulations for managing "residual waste" but has chosen not to at this time. In addition, EPA could have adopted additional requirements under Chapter 279 to manage waste oil differently rather than merely citing to hazardous waste regulations, but it opted not to exercise its authority to do so. To eliminate confusion and to promote consistency, the Department adopted the federal references.

15. Comment: It is unclear whether Section 3009 of RCRA, 42 U.S.C. Section 6929, actually requires the Department to conform PA's waste oil regulations to the specific language of EPA's used oil regulations, at least with respect to generators and transporters of waste oil. Section 3014(c)(1) of RCRA specifically provides that "with respect to generators and transporters of used oil identified or listed as a hazardous waste under Section 6921 of this title, the standards promulgated under Sections 6921(d), 6922 and 6923 of this title shall not apply to such used oil if such used oil is recycled." 42 U.S.C. Section 6935(c)(1). (12)

Response: The requirements adopted for generators and transporters of waste oil are consistent with those that apply to generators and transporters of residual waste under the SWMA. Recordkeeping requirements for generators were recommended to the Department by an industry-wide work group that advised the Department on issues pertaining to this rulemaking. Facilities that collect waste oil for processing recommended the inclusion of recordkeeping by generators in order to make them accountable for the characteristics of waste oil that is entering the waste management system.

16. Comment: Although the wording of §§ 298.22, 298.45 and 298.64 is borrowed from the corresponding federal rules, the Department should recognize some ambiguity in the language and clarify the concepts in the preamble. These sections indicate that waste oil must be stored in "tanks, containers or units *subject to regulation* under Chapter 264 or 265." Read quite literally, this would mean that all waste oils would only be placed in units at facilities that hold hazardous waste storage permits or interim status. To our knowledge, that has never been the interpretation of the federal rule, and the Department should take steps to avoid such a misunderstanding here. Rather, it is our understanding that these provisions, like their federal counterparts, means that waste oil is to be stored in tanks, containers or other units which *meet the design standards and specifications* contained in the relevant sections of what are now Chapters 264a and 265a. (10,13)

Response: The Department agrees with the commentator and has clarified these sections in the preamble to the final rulemaking.

17. Comment: Certain provisions of the proposed waste oil regulations indicate that tanks used to hold waste oil are subject to the requirements under the Pennsylvania Storage Tank and Spill Prevention Act ("STSPA"). Generators of waste oil are subject to the underground tank standards in Chapter 245 (§ 298.45(e)). The same requirements are applicable to waste oil transporters (§ 298.45(j)), waste oil processing and refining facilities (§ 298.54(a)), and burners who burn off-specification waste oil for energy recovery (§ 298.64(h)). These provisions are confusing in that it is unclear how such requirements interrelate with the standards under the hazardous waste regulations for tanks that are also referenced in the proposed waste oil regulations. For example, the proposed waste oil regulations provide that waste oil is not to be stored in units other than tanks, containers or units "subject to regulation under Chapter 264 or 265" of the

hazardous waste regulations. See §§ 298.22(e), 298.45(c), and 298.64(a). At the same time, the proposed regulations provide that underground storage tanks holding waste oil are subject to the regulations implementing the STSPA. See §§ 298.22(e), 298.45(j), 298.54(i), and 298.64(a). To the extent that conflicts or inconsistencies exist between the technical requirements under the STSPA and the hazardous waste regulations, the proposed waste oil regulations are silent as to how such conflicts and inconsistencies will be resolved. (12,13,14)

Response: The provision that waste oil may not be stored “in units other than tanks, containers or units subject to regulation under Chapter 264 or 265” in these sections has apparently been misinterpreted by the commentators. This language is taken directly from the federal used oil regulations. This provision should be interpreted as meaning waste oil may be stored in tanks or containers. If stored in a unit other than a tank or container, that unit is subject to regulation under Chapter 264 or 265. If stored in an underground tanks, they are subject to the underground tank standards in Chapter 245, just as they would be subject to the standards under 40 CFR Part 280 in the federal program. This issue has been clarified in the preamble to the final rule.

18. Comment: Sections 298.22(c) and 298.45(h) require that all containers and aboveground tanks be labeled “waste oil,” while corresponding federal rules mandate that such containers and tanks bear the words “used oil.” Similarly, the state rules would require fill lines to be labeled “waste oil,” while the federal rules mandate use of the words “used oil.” If §§ 298.22(c) and 298.45(h) are adopted, generator and transfer facility operators will need to double label every container to meet both federal and state rules. We would recommend that §§ 298.22(c) and 298.45(h) be amended to require labels which read “used oil” to remain consistent with the federal nomenclature and to avoid the negative connotation that the word “waste” carries. In the event the Department is unwilling to use the term “used oil,” we strongly recommend the Department amend those sections to require labels that read either “waste oil” or “used oil.” (10,13)

Response: Since “used oil” has a statutory meaning in Pennsylvania, labeling waste oil tanks, etc. “used oil” would not be correct. The Department does recognize that some companies may have already been using “used oil” labels and will build in a “grandfathering” provision for existing labels and a liberal transition time in which either label may be utilized. In addition, the final regulations have been modified to allow shipping containers and trucks to be labeled “used oil” instead of “waste oil,” if “used oil” is the labeling requirement in the destination state.

19. Comment: If a shipment of waste oil has been tested to determine its halogen content, those transporters and processors that receive that shipment should be able to rely on the test results rather than retesting the shipment. Such procedures are recognized in the requirements for burners who burn off-specification waste oil for energy recovery, § 298.63(b)(3), but are missing from the sections applicable to transporters and

processors. We suggest that this omission be corrected in the final version of the waste oil regulations. (12)

Response: This testing requirement for transporters (§ 298.44(b)) and processors/re-refiners (§ 298.53(b)) is essentially identical to those found in the federal counterparts at 40 CFR 279.44(b) and 279.53(b). As stated in the preamble to the federal rule (57 FR 41566, September 10, 1992), "EPA is requiring used (waste) oil transporters to determine the total halogen content as used (waste) oil shipments prior to accepting the shipments for transport." The preamble also states, "An owner or operator of a used (waste) oil processor/re-refiner facility must ensure that any used (waste) oil handled (i.e., received from a used (waste) oil generator or a collector/transporter) at the facility is not mixed with hazardous wastes. Procedures should be established within the facility's written analysis plan (required in § 279.55) and the results of each procedure documented as part of the facility operating record, to demonstrate that the owner or operator will assure against such mixing and comply with the halogen determination requirements of § 279.53. Under § 279.53, analyzing for total halogens is required to determine whether used (waste) oil has been mixed with chlorinated (halogenated) listed hazardous wastes." The commentator's suggested change would make the waste oil regulations less stringent than the corresponding federal regulations; therefore, the Department has not made the suggested changes.

20. Comment: The proposed waste oil regulations are silent with respect to any requirement for waste oil transporters and processors to test shipments of waste oil for flash point. Flash point analysis is costly for waste oil generators and time consuming. Moreover, field methods to perform flash point analysis do not currently exist, thereby requiring that individual samples be sent to a laboratory for evaluation. The Department has included flash point testing requirements in General Permit Number WMGR029. We believe that all waste oil transporters should be subject to the same testing requirements as imposed under that general permit. In the alternative, we request that § 298.44(e) be modified to supercede any inconsistent provisions in the general permit. (12)

Response: Flash point provides an additional method of detecting adulteration of waste oil and a safety measure in determining the potential for a waste to initiate a fire during transportation, storage and processing. However, for reasons stated by the commentator, the Department does not believe that requiring every waste oil transporter to run flash point determinations is practical at this time. The Department agrees that all waste oil transfer facilities and waste oil processing facilities should be subject to the same testing requirements. As the commentator is aware, at the request of the applicant, General Permit Number WMGR029 requires testing by the transporter at the site of generation, rather than at the transfer facility, when the owner/operator of the transfer facility is the transporter. In addition, the permittee of the general permit has been allowed to utilize an inexpensive instrument in lieu of actual flash point determinations as a screening tool. As field flash point methods or acceptable alternatives are developed and proven effective, the Department may decide to add a testing requirement for transporters in a future rulemaking.

21. Comment: The proposed waste oil regulations specify that waste oil is to be held in containers or aboveground storage tanks that “do not leak.” See e.g. §§ 298.22(b)(2), 298.45(d)(2), 298.54(b)(2), and 298.64(b)(2). The analogous provisions of the federal used oil regulations provide that containers and aboveground storage tanks used to hold used oil “be ... not leaking (no visible leaks).” The federal standards require that tanks and containers not be actively leaking. By contrast, the proposed waste oil regulations require the tanks and containers not leak (ever). This creates an absolute standard which may be difficult if not impossible to satisfy. (12)

Response: The Department did not intend the term “not leak” to be an absolute standard meaning “never leak.” These sections have been modified in the final rulemaking to reflect the federal language.

22. Comment: Under the current residual waste regulations, persons or municipalities that “generate residual waste as a result of collecting the waste, including the collection of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil” are not required to prepare source reduction strategies and complete biennial reports. 25 Pa. Code 287.51(c)(1). It is very unclear whether this exemption will continue to apply under the waste oil regulations. The considerations that led DEP to include this exemption in the residual waste regulations continue to have bearing and militate in favor of including the exemption in the waste oil regulations. (If DEP so intends, the waste oil regulations need to be clarified to expressly reflect this intent.) (10)

Response: The Department believes the proposed language is clear in §§ 298.25(d)(1) and 298.26(d)(1) that the requirement to prepare source reduction strategies and complete biennial reports does not apply to waste oil generators who generate oil that has been used in an internal combustion engine as an engine lubricant. However, §§ 298.25 and 298.26 have been modified in the final rule to indicate that the waste exemption in §287.51 applies.

23. Comment: It is extremely unclear how §§ 298.25(d) and 298.26(d) are intended to operate. Under the first prong of these provisions, it would appear that generators who generate oil that has been used in an internal combustion engine or as a vehicle lubricant are not subject to source reduction strategy or biennial reporting requirements. Under the second prong of these provisions, generators of less than 12,000 kg of residual waste and waste oil are exempt. However, the oil described in the first prong of these provisions also qualifies as a waste oil. The preamble is also confusing. It is unclear whether the 12,000 kg threshold includes the combined weight of residual wastes and waste oil that a generator produces or applies only to residual wastes that are not waste oil. (10)

Response: Sections 298.25 and 298.26 have been modified to indicate that the waste threshold in §287.51 will determine when a source reduction strategy and biennial report are required.

24. Comment: The majority of the proposed regulation mirrors the code of Federal Regulations (40 CFR Part 279). We seriously question the need for the Department to promulgate an entire set of complex regulations, duplicating (but in more than a few cases departing from) what are already applicable national standards for used oil management. The rulemaking could have incorporated the CFR by reference and then added regulatory provisions where Pennsylvania's requirements differ. This would allow the reader to easily identify provisions that differ from the CFR. As published, Pennsylvania's regulations would have to be read side by side with the CFR to find any differences. This is a tedious process. It would seem far less cumbersome, and much less confusing, to adopt a waste oil regulation which cleanly and clearly cross-references the corresponding provisions of 40 CFR Part 279. We recognize that the CFR uses the term "used oil" where the proposed regulation uses "waste oil." However, the regulation could include language addressing the difference in terminology. The EQB should consider incorporating the CFR by reference, rather than duplicating the bulk of the federal regulations in Pennsylvania's regulations. This would also be consistent with Executive Order 1996-1. (13,15)

Response: The Department agrees that incorporating the CFR by reference would allow the reader to easily identify provisions that differ from the federal provisions. However, in developing the waste oil regulations in the form which was proposed, it was thought that the sheer number of definitional and substantive differences between the proposal and corresponding federal used oil regulations would make the package quite difficult to read, understand, and comment upon if a multitude of cross references were included. For example, the term "used oil" has a specific (and different) meaning in Pennsylvania because of state statutes. The Department therefore decided to print the entire set of proposed regulations and address cross referencing federal regulations in the final rulemaking, if that was deemed to be the best course. After much consideration, the Department has decided to publish the entire set of regulations as final rule rather than include cross-references to the federal rules. The Department believes that a blanket substitution of the terminology in the federal regulations by the different terminology used in this package, such as "waste oil" for "used oil" and "waste oil processor" for "used oil processor" would lead to confusion from the sheer number of times these terms appear in the federal regulations alone. In addition, it was thought that companies who only operate within the Commonwealth who are not familiar with the federal used oil regulations would have a more difficult time interpreting the regulations if cross-referencing was used than those familiar with the federal regulations will have interpreting a comprehensive chapter. Finally, unlike Pennsylvania's hazardous waste regulations, the residual waste regulations, within which Chapter 298 will reside, do not include cross-references to federal rules. The Department believes the style of Chapter 298 should be consistent with the residual waste regulations in Chapters 287 through 299.

25. Comment: §§ 298.25 and 298.26 perpetuate and expand the paperwork burdens imposed on PA facilities by mandating waste oil generators develop written source reduction strategies and submit biennial reports to the Department. Although we support and practice source reduction efforts, in our view, imposing paperwork requirements is not the most effective path to this laudable objective. Technology transfer, education and outreach programs are far more likely to stimulate interest in positive changes as to equipment designs, longer lasting lubricant materials, and maintenance work practices. Because of the cost of the oils involved in many industrial processes, there is already an economic incentive to pursue conservation/source reduction efforts – and this is a far better incentive than to mandate a state plan. We would respectfully suggest that the Commonwealth’s resources would be better invested by reprogramming the dollars presently expended on staff who shuffle such reports into such outreach and technology transfer programs. (13)

Response: We believe that the vast majority of waste oil generators who will have to include their waste oil in biennial reports and source reduction strategies are residual waste generators and already are required to file biennial reports and develop source reduction strategies. The basic information contained in the biennial reports aids the Department in administering waste programs by identifying how much waste is being generated in the Commonwealth and how it is being processed, treated, disposed or recycled. In developing a source reduction strategy, a generator may find that the useful life of their oil may be extended for some processes by switching to a longer-lasting oil, such as a synthetic, or by using additives or filtration, thereby saving the generator money and creating less waste. The Department’s outreach program, part of the Office of Pollution Prevention and Compliance Assistance, can use non-proprietary information from one company’s source reduction strategy to aid others.

26. Comment: The regulation provides no permit-by-rule for intra-company transport and treatment of waste oil. Many companies have centralized waste oil treatment and recovery facilities and provisions for these facilities must be included in the regulations. (14)

Response: The proposed regulations do contain a permit-by-rule for intra-company treatment of waste oil at §§ 298.20(b)(3) and (4). Since a permit is not required to transport waste oil under this proposal, no permit-by-rule for intra-company transport is needed.

Section 298.1 Definitions

27. Comment: This section begins by stating that the terms defined in Section 245.1 (relating to storage tanks) and 260.2 (relating to hazardous waste) have the same meaning when used in this chapter. We have several concerns with this provision because some terms are defined differently in this rulemaking than they are in Sections 245.1 and 260.2. First, the terms “existing tank” and “new tank” are defined in this regulation, as well as in Sections 245.1 and 260.2. Each definition contains a different effective date. Therefore, the

EQB should clarify the appropriate effective date for this regulation. Second, Section 245.1 contains the definition of "aboveground storage tank." This rulemaking contains a definition of "aboveground tank." Are these two terms meant to be the same? If the terms are the same, the inconsistencies between the definitions in this rulemaking and Section 245.1 must be resolved. Third, the regulation defines "tanks" by providing that they are constructed *primarily* of nonearthen or *nonwooden* materials. In contrast, Section 245.1 provides that they are constructed of nonearthen material. Clarification is necessary as to which definition will be used for this regulation. (15)

Response: Section 298.1 has been clarified to indicate that terms not defined in this chapter but defined in Sections 245.1, 260.2 or 287.1 will have the same meaning as in those sections. The confusion over the different effective dates for terms "existing tank" and "new tank" has been eliminated in the final rule, since those terms are not used.

28. **Comment:** The proposed term "waste oil" does not accurately represent "used oil." This is a serious problem which leads to predetermined conclusions regarding the end product which results from recycling used oil. The EPA has never considered recycled used oil a waste. By using the term "waste" in the proposed amendments, the opportunity is given to PA DEP, particularly in the enforcement division, to assume that used oil is a waste which must be properly disposed. We believe the term "used oil" is the nationally accepted term for properly identifying and referring to this material. (2,3,9,10)

Response: As discussed in the preamble to the proposed rulemaking, Pennsylvania's "used oil" was defined in an overly specific manner in Pennsylvania's Used Oil Recycling Act. The Department does not have the authority to change this statutory definition through rulemaking, so it uses "waste oil" to define the broader substances regulated. Pennsylvania has used the term "waste oil" for close to 20 years and believes it is well understood that waste oil can be recycled. The Department believes it is incorrect to assume that EPA does not consider recycled used oil a waste, as evidenced by the management standards in 40 CFR Part 279. Finally, the Department is committed to encouraging recycling of waste oil and has worked with organizations, such as the American Petroleum Institute, to encourage the recycling of waste oil and used oil filters in Pennsylvania.

29. **Comment:** Use of the term "waste oil" is somewhat of a misnomer. We fear the term "waste oil" has negative connotations that will have the effect of discouraging recycling efforts. We therefore suggest utilization of a new term in the proposed regulations, such as "managed used oil," "recycled used oil," or "recyclable used oil." (6,7,8)

Response: The Department appreciates the concern that the negative connotations of the term "waste" in "waste oil" will discourage recycling efforts. However, the term "waste oil" has been used in Pennsylvania for close to twenty years, and waste oil is being recycled in the Commonwealth. We believe that coining new terms will add confusion,

especially for companies doing business in other states as well as Pennsylvania, and that retaining the terminology in the proposed regulations is best for clarity purposes. The suggested terms, "managed used oil," "recycled used oil," and "recyclable used oil" contain the term "used oil" and, therefore, are not as broad as "waste oil." The Department will release educational material upon final publication of the regulations that will promote the recyclability of waste oil.

30. Comment: The proposed definition of "waste oil" incorporates both the federal and state definitions of "used oil." The resulting definition is confusing and redundant and does not recognize the overlap between the two federal and state definitions. We suggest the proposed regulations be revised to define the term "used oil" from the Used Oil Recycling Act, drop the second prong from the definition of "waste oil" and replace with "waste oil includes used oil." (12)

Response: The Department does not believe that this suggestion adds to clarity. In fact, the suggestion may actually add to the confusion by requiring two definitions, instead of just one, to understand the term "waste oil." In addition, those familiar with the federal term "used oil" may believe the definition refers to the federal term and not realize a different "used oil" from the Used Oil Recycling Act is what is part of "waste oil."

31. Comment: While the definition of "waste oil" may be similar to that contained in the federal regulations, the proposed regulations do not recognize that used oil destined for recycling is exempt from the definition of waste. Indeed, the proposed regulations track the residual waste regulations and therefore are significantly more burdensome than the federal requirements. Furthermore, no evidence of which we are aware demonstrates that waste oil destined for recycling causes a threat to human health or the environment. (14)

Response: Used oil destined to be recycled is not exempt from the definition of waste under either federal or state regulations.

32. Comment: The proposed regulation defines both "waste oil" and "used oil." The EQB has previously defined both terms in the residual waste regulations (Section 287.1). There are minor differences in definitions between this regulation and the residual waste regulation. To avoid confusion, there needs to be consistent definitions and use of terms. (15)

Response: The term "waste oil" was defined in the proposed regulations to include both the federal definition of "used oil" and Pennsylvania's statutory definition of "used oil." The term "used oil" has been removed from § 287.1 in the final rulemaking.

33. Comment: Our permit requires our customers (generators) to certify whether their oil is “waste oil” or “used oil.” Waste oil and used oil are two different products, determined by how the oil was generated. The proposed amendments do not address this conflict at all. (3)

Response: Since “used oil” (PA definition) is a subset of “waste oil”, all used oil is also waste oil. While “used oil” (PA definition) is statutory and will still be a valid term after these amendments become final rules, we have chosen not to use the term in the regulations due to confusion between our statutory definition and the broader federal definition. As far as the use of the term in existing permits, the Department has anticipated the need for unilaterally modifying existing permits for requirements which may be in conflict with the amended rules.

34. Comment: The exemptions to “generator” should be included in the regulatory definition of “waste oil generator,” as they are in the federal regulations. (8)

Response: The federal definition of a “used oil generator” is “any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.” There are no exemptions in the federal definition. The definition in these regulations is essentially the same as this federal definition.

35. Comment: There are several problems with the definition of “waste oil transfer facility.” First, DEP assumes that every transfer facility handles residual waste. However, waste oil that is not disposed of is not “residual waste.” Applying the Residual Waste Act eliminates the exemption for facilities that store waste oil for less than 35 days. This is inconsistent with the federal regulations and the intent of the law and seems very onerous to small businesses – particularly those who are now deemed “generators” because of their use of oil as an engine lubricant. (8)

Response: There are several ways in § 298.10(e) in which materials derived from waste oil can be determined not to be waste. Facilities, which transfer the oil that was determined not to be waste, are not waste oil transfer facilities. The 35-day limit in the federal regulatory “used oil transfer facility” definition is just that, a limit, rather than an exemption. Under the federal regulations, used oil transfer facilities, which store oil in excess of 35 days, are classified as used oil processors/re-refiners. Since the Department issues permits for transfer facilities, we believe we can adequately address longer storage times and consider the 35-day limit overly restrictive. The commentator appears to mistakenly consider that the 35-day limit somehow applied to generators, and the lack of this limit in this proposal would cause generators to become waste oil transfer facilities. The proposed regulations expressly exempt in § 298.40(a)(1) onsite transportation and transfer.

36. Comment: The proposed definition of a “waste oil transfer facility” is extremely broad and encompasses a much wider range of facilities than does the corresponding definition of a “used oil transfer facility” under the federal used oil regulations. For example, the federal definition includes the concept that used oil (waste oil) be held at a transfer facility for more than 24 hours. We are extremely concerned that this definition is so broad that it will encompass a wide variety of facilities that the Department never intended to cover, such as truck stops, restaurants, motels, and fueling facilities. (10,12,13)

Response: The definition of “transfer facility” in the residual waste regulations, the municipal waste regulations and the hazardous waste regulations do not contain the “24-hour limit.” The Department has never covered truck stops, restaurants, motels and fueling facilities as transfer facilities under those regulations and has no intent to do so under these waste oil regulations.

37. Comment: Areas where shipments are simply moved from one of the generator’s trucks to another truck in order to facilitate transportation to the processor or recycling center should not be regulated as transfer units (waste oil transfer facilities). The facility never “receives” or stores the material. (10,13)

Response: The Department agrees that areas where shipments are simply moved onsite from one of the generator’s trucks to another truck are not waste oil transfer facilities. On the other hand, areas where shipments are moved from one of the generator’s trucks to another truck that are not located at the site of generation are waste oil transfer facilities. At the generator’s facility, the waste oil transfer facility could be covered under permit-by-rule if the shipments are less than 55 gallons (§ 298.24(2)) or processed at the facility (§ 298.20(b)(3)). The advantage of transferring larger quantities from one of the generator’s facilities to another of the generator’s facilities to facilitate transportation to the processor or recycling center is small, since the shipments are large enough to be transported directly to the processor or recycling center.

38. Comment: As EPA explained in the preamble to the federal rules, the concept of a “transfer facility” is a “site for temporary storage of used oil that is picked up from one or more original generators and is on its way” to a processing facility, to be reintroduced into the refining process or to be burned as fuel. 57 FR 41,490, 41,590 (Sept. 10, 1992). This preamble language at the federal level makes clear that the area where waste oil is stored at the site of generation while awaiting shipment is not a transfer facility. Storage before the “course of transportation” or “shipment” starts is outside the concept of a transfer facility. (13)

Response: The Department has never interpreted storage at the site of generation while awaiting transportation as a transfer facility in any current regulations and will not do so with the waste oil regulations. This position has been clarified in the preamble to the final rule.

39. **Comment:** "Waste oil transfer facility" is defined as follows:

A transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of waste oil are received or held, or both, during the normal course of transportation.

The definition of this term is largely consistent with the federal definition of "used oil transfer facility." However, the federal definition specifies that shipments of oil at a transfer facility are held for more than 24 hours and not longer than 35 days. The definition in the proposed regulation does not include minimum and maximum time frames.

In the Preamble, the EQB asserts that it is precluded by the Solid Waste Management Act (Act) from adopting the federally specified time frames. According to the EQB, the definition of "transfer facility" in the Act does not include time frames; therefore, they cannot be included in the definition of "waste oil transfer facility." We disagree with this analysis. The Act defines "transfer facility" in part as follows:

A facility which receives and processes or **temporarily** stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. (Emphasis added.)

The Act does not contain parameters for what period of time will be considered "temporarily." Consequently, the EQB has the discretion and authority to include minimum and maximum time frames for waste oil storage in the definition of "waste oil transfer facility." Commentators are concerned that without adopting the federal time frames, sites where transporters stop for very short periods of time could be considered transfer facilities and would be subject to the requirements of Subchapter E. The EQB should include the time frames contained in the CFR in the definition of "waste oil transfer facility." Furthermore, the EQB should consider amending the definition to more closely match the definition in the Act by replacing "received or held, or both," with "received and processed or temporarily stored." (15)

Response: Pennsylvania's definition of transfer facility in the Solid Waste Management Act applies to the transfer of many different waste types. This statutory definition contains neither a minimum nor a maximum time limit. If the "24 hours limit" was placed in the definition of a "waste oil transfer facility," flexibility would be taken away from the Department to allow waste oil to be held longer than 24 hours, which we believe is appropriate in some instances. In addition, due to our permitting program, we do not believe we need to impose a 35-day limit on storage at waste oil transfer facilities as a matter of regulation. Longer storage periods can adequately be covered for a waste oil transfer facility, based on the specific operational plans of a facility, in the facility's permit.

Section 298.10 Applicability

40. Comment: The rules should emphasize the presumption that waste oil will be recycled by promulgating distinct definitions of recyclable and non-recyclable substances. (8)

Response: By promulgating distinct definitions of recyclable and non-recyclable substances, the Department would be locking in what wastes can and cannot be recycled. As new technologies are developed, what was once a non-recyclable substance may become a recyclable substance. In addition, what is recyclable to one company may not be recyclable to another. The Department prefers the flexibility afforded by not fixing such terms.

Section 298.10(b) Mixtures of waste oil and hazardous waste

41. Comment: We are never in favor of generators of any size mixing listed hazardous wastes in their waste oil. We are in favor of not allowing CESQGs to dispose of listed hazardous wastes in with their waste oil. If we get a hazardous load of oil on one of our trucks, we would have a difficult time trying to prove whether it came from a CESQG. (2)

Response: The Department understands the difficulty posed by CESQGs mixing listed hazardous wastes in their waste oil for the waste oil management facilities in demonstrating where the hazardous waste was added to the waste oil. That was one reason the proposed regulations did not follow the federal rule with respect to the mixing of hazardous wastes from CESQGs with waste oil. The final rule does not allow CESQGs to mix listed hazardous wastes in their waste oil.

42. Comment: The way the mixture rule is addressed in the proposed regulations would exclude waste oil from being mixed with any quantity of certain other materials, including petroleum-based solvents, gasoline and kerosene. These would usually fail a TCLP test for benzene and metals and would exhibit a hazardous characteristic for toxicity. Waste oil contains gasoline (or other fuel) caused by "combustion blow-by." This inherent fuel contamination cannot be distinguished from fuel contamination caused by generator mixing. We are trying to come up with a way for generators to safely dispose of small amounts of gasoline, mineral spirits and kerosene in an economical and environmentally sound way. If you allow the mixing of *de minimis* amounts of gasoline, mineral spirits and kerosene with waste oil, more generators will be disposing of these materials in an environmentally safe way. (2)

Response: The mixing of hazardous waste and waste oil is the most difficult issue to resolve in this regulatory package. On one hand, the Department is committed to the concept of source reduction, that is, it is better to not generate hazardous waste than to have to dispose or recycle it. Allowing *carte blanche* mixing of characteristic hazardous waste with waste oil supports the outmoded concept of "the solution to pollution is

dilution,” not source reduction. On the other hand, the commentator is correct that petroleum-based solvents, gasoline, and kerosene will usually exhibit a toxicity characteristic for benzene and often for metals.

Generators who mix characteristically hazardous waste with their waste oil will sometimes have neither the knowledge of their hazardous waste, nor the inclination to bear the cost of testing, to determine that the mixture will no longer exhibit characteristics of hazardous waste. About two years ago, a fatal explosion involving a waste oil transporter while checking his tank would not have occurred if the load contained only waste oil or if the mixture was no longer characteristically hazardous.

Certain hazardous characteristics are expected to sometimes be present in waste oil. These include ignitability (due to slightly low flash points) and toxicity characteristic from benzene and the metals in Table 1 of § 298.11. Transporters and facilities managing waste oil should be well aware that these characteristics could be present and should be prepared to deal with them safely. Transporters and facilities managing waste oil which contains unexpected characteristics, such as reactivity, corrosivity, or a toxicity characteristic from pesticides, etc., may not be equipped to manage them in a manner that protects the health of their workers, the public, or the environment. In addition, these unexpected characteristics could interfere with some of the processes used to recycle the waste oil. The Department has required very minimal screening by operators of waste oil transfer and processing facilities. This minimal screening is insufficient to cover the gamut of characteristics necessary to warn operators what could be in the waste oil, if all characteristically hazardous wastes were allowed to be mixed with waste oil.

The Department believes it has alleviated the commentator’s concerns for mixing petroleum-based solvents, gasoline and kerosene with waste oil without producing a significant increase in harm to waste oil workers, the public health, and the environment or requiring excessive screening by waste oil management facilities by including an expanded, but limited mixture rule in Section 298.10(b)(2) of the final rule. The language has been adjusted to also allow waste that exhibits a toxicity characteristic for benzene and the metals in Table 1 of § 298.11 to be mixed with waste oil by the generator.

43. Comment: The last sentence in § 298.10(b)(2)(ii) is written incorrectly. It should say “be regulated as waste oil under this chapter,” not “shall be managed in accordance with Chapters 260 through 270.” (2)

Response: The Department agrees and has made the correction.

44. Comment: Waste oil that has never been mixed with any hazardous waste, characteristic or listed, can exhibit characteristics of hazardous waste. In proposed §298.10(b)(2), there is concern that this will make all waste oil hazardous waste. A distinction should be made if the waste oil is destined for disposal. If the waste oil is

destined for any kind of valid recycling, the oil could exhibit characteristics of hazardous waste and still be regulated as waste oil, not hazardous waste. (5)

Response: The Department agrees. There was an error in the last sentence in § 298.10(b)(2)(ii) which may have lead to confusion. The error has been corrected.

45. Comment: We applaud the PA DEP for adopting the waste oil mixture rule for ignitable-only waste. (2,9)

Response: The Department acknowledges your support.

46. Comment: We disagree with the proposal to modify the mixture rule. We do not believe this rule is an open invitation to diluting characteristic hazardous waste. On the contrary, it is a rule intended to avoid the absurdity of prohibiting or even criminalizing sensible mixing activities (such as neutralizing acidic, i.e., corrosive, waste water). In the absence of specific examples of how and when the 1980 RCRA mixture rule has been abused by generators or other compelling reasons, there would be no overall benefit to the environment of removing this rule from existing regulations. Moreover, since most mixtures involve *de minimis* quantities of waste materials, the effect of the proposed change would be to criminalize the activities of thousands of small businesses throughout the Commonwealth. (9)

Response: The commentator's example illustrates a problem with the federal mixture rule. What would be the purpose of mixing an acidic wastewater with waste oil? Waste oil will not contain sufficient alkalinity to neutralize the acid in the wastewater. The wastewater will not make it easier to recycle the waste oil and, in fact, may make it more difficult or costly to recycle the oil. The acidic wastewater in the commentator's example could easily be treated by the generator under the existing PBR in § 270a.60(b)(1). A major problem with allowing mixtures of waste oil with any kind of characteristically hazardous waste is that the people managing the waste oil will have no idea what is actually in the waste oil. The minimal screening requirements for transporters and management facilities do not cover all hazardous waste characteristics, such as corrosivity in the acidic wastewater example. In addition, this and another commentator had negative comments about generator recordkeeping and a perceived requirement for generator testing. If a broader mixture rule was enacted, the Department believes testing by the generator to ensure the hazardous characteristic was no longer present and accompanying recordkeeping would be imperative to protect the transporter and destination facility. About two years ago, a waste oil transporter was killed in the Commonwealth when shipments of waste oil containing other wastes exploded in the transportation vehicle.

47. Comment: § 298.10(b)(2)(ii) imposes unnecessary additional burdens on companies that may have metal shavings inadvertently mixed with cutting fluids or tramp oils. For

example, if the metal shavings are characteristic hazardous waste for chromium, then the mixture of this material would be hazardous according to the proposed regulations (even though the volume of shaving may be insignificant in comparison to the amount of waste oil in the mixture). (10)

Response: Since recyclable scrap metal is excluded from regulation as hazardous waste (40 CFR 261.6(a)(3)(iii), as incorporated by reference at 25 Pa. Code 261a.1), the metal shavings will not cause the waste oil to become hazardous waste via the mixture rule. The Department expects that most generators would avoid such inadvertent mixing and would, in fact, separate metal shavings from cutting oil and other oils, since the value of scrap metal is significantly greater than the value of waste oil.

48. Comment: In determining whether a mixture of used oil and “characteristically hazardous” waste will be subject to the storage and shipment regulations for used oil, or the significantly more stringent (and costly) shipment and storage regulations for hazardous waste, the federal regulations look to the properties of the mixture. If the mixture does not qualify as characteristically hazardous waste, the mixture is subject to the used oil regulations. In all pertinent respects, the federal used oil mixture rule applies equally to all characteristic wastes, whether the waste is characteristically hazardous due to ignitability, corrosivity, reactivity, toxicity or a combination of these properties. In contrast, the proposed waste oil regulations apply only to mixtures containing wastes that are characteristically hazardous solely due to ignitability. The proposed mixture rule is particularly inappropriate and unjustified in its exclusion of wastes that are characteristically hazardous due to toxicity. In transporting, storing and distributing natural gas, our members routinely encounter wastes that are characteristically hazardous both due to ignitability and toxicity (mainly for benzene content). We would add that in our members’ considerable experience, there are almost no wastes (other than mineral spirits) that are characteristically hazardous solely due to ignitability. A mixture rule that applies to only a handful of wastes (perhaps only one), while consigning all remaining mixtures to the significantly more stringent hazardous waste regulations, should not be adopted without far more justification than appears in the preamble. For these reasons, we respectfully urge adoption of the federal mixture rule, particularly as to inclusion of wastes that are characteristically hazardous due to toxicity. (11)

Response: As stated above, the Department is committed to the concept of source reduction, that is, it is better to not generate hazardous waste than to have to dispose or recycle it. Allowing *carte blanche* mixing of characteristic hazardous waste with waste oil supports the outmoded concept of “the solution to pollution is dilution,” not source reduction. Transporters and facilities managing waste oil which contains unexpected characteristics, such as reactivity, corrosivity, or a toxicity characteristic from pesticides, etc., may not be equipped to manage them in a manner that protects the health of their workers, the public, or the environment. In addition, these unexpected characteristics could interfere with some of the processes used to recycle the waste oil. The Department believes adoption of the federal mixture rule in its entirety is not appropriate. However, the mixture rule in the final regulations has been adjusted to also allow waste that

exhibits a toxicity characteristic for benzene and the metals in Table 1 of § 298.11 to be mixed with waste oil. This should cover their members' natural gas pipeline waste, which is ignitable and exhibits a toxicity characteristic for benzene.

49. Comment: The Department contends that an expanded mixture rule would undermine its pollution prevention efforts by reducing generators' incentives to adopt source reduction strategies to minimize the amount of hazardous waste they generate. This argument does not support the exclusion of wastes that are characteristically hazardous for toxicity. These wastes are hazardous not because they contain listed hazardous waste, but because listed contaminants are present at concentrations that exceed specified thresholds. By bringing concentrations down below federal thresholds, blending eliminates the hazardous characteristic. Extending the mixture rule to wastes that are characteristically hazardous for toxicity would not only be consistent with waste minimization, it exceeds the objective by reducing hazardous wastes to a non-hazardous state. The Department argues that a narrow mixture rule advances a policy of eliminating hazardous constituents from the waste stream. Put differently, the Department suggests that constituent minimization is a valid policy in itself, to be pursued even after the concentrations fall to non-hazardous levels. The Department offers no evidence to demonstrate why this policy is appropriate or necessary. (11)

Response: The Department strongly disagrees with the commentator. The outmoded concept of "the solution to pollution is dilution," is not source reduction. While dilution can eliminate hazardous characteristics, it eliminates neither the constituents that caused the waste to be hazardous nor their entire threat. Waste reduction is not only in terms of toxicity but also in terms of volume of total waste generated. We have found economic incentives, that is, avoiding treatment and disposal costs, to be more effective in reducing the amount of hazardous waste generated than providing a cheap means of disposal.

50. Comment: Subsection (b)(2) provides that mixtures of waste oil and hazardous waste are subject to regulation as a hazardous waste. The exception to this requirement occurs if a mixture contains waste that is hazardous solely due to ignitability and the resultant mixture does not exhibit the characteristic of ignitability. This provision is more stringent than the corresponding federal mixture rule. Under the federal regulations, if the mixture does not qualify as a characteristically hazardous waste, it is only subject to the used oil regulations.

In the preamble, the EQB asserts that allowing mixtures of waste oil and hazardous substances contradicts its pollution prevention efforts. The EQB is concerned that allowing generators to mix hazardous waste with waste oil will reduce generators' incentive to use source reduction strategies to minimize the amount of hazardous waste they generate. The EQB is also concerned that the federal mixture rule will not protect the environment or the public health, safety or welfare.

Executive Order 1996-1 requires that Pennsylvania's regulations "not exceed federal standards unless justified by a compelling and articulable Pennsylvania interest or required by state law." The EQB has not demonstrated the unique circumstances in Pennsylvania that warrant a more restrictive mixture rule than that contained in the federal regulations. If mixing reduces the contaminants to a level that is no longer hazardous, it is unclear how the environment or the public health, safety or welfare will be harmed. The EQB should consider adopting the federal mixture rule or explain the unique and compelling Pennsylvania interests that justify a more stringent mixture rule. (15)

Response: The Department believes that the preambles to both the proposed and final rules articulate the justification for a more stringent mixture rule than that adopted in the federal program. The Department has, however, expanded the final rule in Section 298.10(b)(2) in a manner to allow some additional characteristic hazardous wastes to be mixed with waste oil. This change will alleviate the concerns of most of the commentators who provided specific examples.

51. Comment: The flaws in the proposed mixture rule become particularly evident when one considers that the rule, if adopted, would be applied to CESQGs. Under the federal mixture rule, a CESQG can blend its hazardous waste and waste oil together, and, if the blend is no longer hazardous, the CESQG's storage, labeling, recordkeeping, and shipping activities will be defined by the federal used oil regulations. This avenue offers significantly lower compliance costs, as compared to treating the blend as hazardous waste or keeping the streams separate and maintaining two separate compliance systems. This savings in compliance costs provides powerful incentive for a CESQG to keep its volume of hazardous wastes to levels that permit the blending option. (11)

Response: The commentator has misinterpreted the federal mixture rule as it applies to a CESQG. The federal rule would allow any hazardous waste, characteristic or listed, to be mixed with waste oil by a CESQG. The resultant mixture could continue to exhibit a hazardous characteristic and still be regulated as waste oil. In addition to reducing the incentive of switching to less hazardous materials or processes, the federal CESQG mixture rule can lead to confusion with compliance for all involved. For example, if employees collect spent solvent and waste oil in a common tank, they may have a difficult time determining whether they were within the CESQG quantity limits for that month. If not and the solvent was listed, the entire mixture would have to be managed as hazardous waste. If the solvent was characteristic only, the generator must determine whether the mixture exhibits hazardous characteristics. If it does, again the entire mixture would have to be managed as hazardous waste. The waste oil management facility also can have a difficult time with mixtures from CESQGs. If the total halogens in a load of waste oil exceed 1000 ppm, it becomes difficult to successfully rebut the presumption that the waste oil was mixed with hazardous waste within allowable limits under the regulations. It also becomes difficult for a regulatory agency to determine whether generators and waste oil management facilities are in compliance in these matters. For these reasons, the Department has decided to propose the same mixture rule

for all generators. We believe the expanded mixture rule in the final regulations, which has been adjusted to also allow waste which exhibits a toxicity characteristic for benzene and the metals in Table 1 of § 298.11 to be mixed with waste oil, will cover most of the hazardous waste likely to be mixed by CESQGs. In addition, we believe mixtures from CESQGs could retain their hazardous characteristics and still be protective, since the quantities involved are small, benzene is a normal constituent of petroleum, and flash point (for the ignitability characteristic) and the metals involved are part of the waste oil specifications in Table 1 of § 298.11.

52. Comment: The proposed waste oil regulations should be structured to provide incentives to promote both the recycling of waste oil by means other than burning and the recycling of hazardous wastes. At a minimum, this means that the regulations should provide for a “level playing field” between waste oil that is destined to be recycled by means other than burning and waste oil that is destined to be burned. Because the proposed regulations as currently drafted do not favor burning of waste oil over other types of recycling by allowing mixtures of waste oil and hazardous wastes from CESQGs to be burned but not reclaimed under reduced regulatory requirements as the Department has proposed in the past, we support the Department’s proposed requirements relating to mixtures of waste oil and hazardous wastes. (12)

Response: The Department acknowledges your support.

53. Comment: The Department’s proposed requirements relating to mixtures of waste oil and hazardous wastes are consistent with the Department’s goals of fostering the reuse and recycling of waste materials. If generators segregate their hazardous waste streams from waste oil, there will be enhanced opportunities to effectively recycle such hazardous wastes. Waste oil that is generated may also be more amenable to being reused and recycled by means other than burning if hazardous wastes have not been mixed with the waste oil. These factors strongly militate in favor of the Department’s proposed requirements. (12)

Response: The Department acknowledges your support.

54. Comment: § 298.10(b)(2)(ii) exempts only ignitable wastes from the characteristically hazardous waste definition. This section should include other D listed wastes by adopting the federal provisions verbatim. (14)

Response: The Department is committed to the concept of source reduction, that is, it is better to not generate hazardous waste than to have to dispose or recycle it. Allowing *carte blanche* mixing of characteristic hazardous waste with waste oil supports the outmoded concept of “the solution to pollution is dilution,” not source reduction. Transporters and facilities managing waste oil which contains unexpected characteristics, such as reactivity, corrosivity, or a toxicity characteristic from pesticides, etc., may not be

equipped to manage them in a manner that protects the health of their workers, the public, or the environment. In addition, these unexpected characteristics could interfere with some of the processes used to recycle the waste oil. The Department believes adoption of the federal mixture rule in its entirety is not appropriate. However, the mixture rule in the final regulations has been adjusted to also allow waste which exhibits a toxicity characteristic for benzene and the metals in Table 1 of § 298.11 to be mixed with waste oil.

Section 298.10(c) Materials containing or otherwise contaminated with waste oil

55. Comment: § 298.10(c)(1) states the intent that materials containing or otherwise contaminated with waste oil cease being regulated as waste oil once the oil has been removed from those materials. Unfortunately, § 298.10(c)(2) confuses this issue when such materials are managed via resource recovery. The proposed rulemaking should be modified to clearly state that materials from which waste oil has been properly drained or removed are not subject to regulation under Chapter 298 when incinerated at a resource recovery facility permitted under Chapter 283. (4)

Response: The Department agrees and has modified § 298.10(c)(2) to clarify that materials contaminated with waste oil that are burned for energy recovery must be regulated under Chapter 298 if the materials are burned at an industrial furnace or boiler.

56. Comment: We believe the Department should conform the proposed waste oil regulations with the federal used oil regulations with respect to the classification of mixtures of waste oil and water. It is difficult to obtain representative samples of waste oil and water to determine whether the 1% standard (or a lower numerical standard as applicable) is being met. The proposed requirements will be difficult for the Department to administer and for the regulated community to satisfy. A standard that relies on a non-numeric standard, such as the presence of visible oil, is much easier for the Department to administer and the regulated community to use. These proposed regulations ignore the environmental benefits that result from such waste oil processors recovering as much oil as possible and treating any remaining wastewater in an environmentally friendly manner. By prohibiting mixtures of waste oil and water containing low levels of waste oil from being handled at such facilities, the Department is simply forcing such mixtures to be handled at other wastewater treatment plants and creating incentives for generators to skirt the regulations by illegally handling oily wastewaters. (12)

Response: In an effort to encourage legitimate recycling of waste oil, these proposed regulations provide reduced regulatory requirements not afforded to wastes destined for disposal or even to other wastes being recycled. These include managing waste oil which exhibits characteristics of hazardous waste as a residual waste, allowing mixtures of waste oil and characteristically ignitable hazardous waste to be managed as waste oil, allowing some waste oil transfer and processing facilities to operate under a general permit for processing prior to beneficial use, and permit-by-rule for waste oil collection

centers. We believe these exceptions should not be extended to wastewaters containing so little waste oil that oil cannot be recovered and recycled or reused. Many generators of oily wastewaters perform onsite oil/water separation and remove most of the waste oil prior to shipment to an off-site facility. The proposed regulations allow facilities to take wastewater containing less than 1% oil as waste oil if they can demonstrate that they can recover marketable quantities of oil from the wastewater. Wastewater containing lower quantities of oil would be classified as either residual waste or hazardous waste, depending on its characteristics. Facilities with individual transfer or processing permits, including facilities that primarily manage waste oil, may accept nonhazardous wastewaters provided it is authorized under their permits. Since no beneficial use is possible for the wastewaters containing insufficient oil to recover, facilities operating under general permits are not able to accept these wastewaters. As with other heterogeneous wastes, obtaining representative samples and accurate analyses on oily wastewater can sometimes be difficult. The Department and the regulated community have been dealing with similar sampling and analytical situations in other areas and believe this can be handled in a reasonable manner.

57. Comment: Subsection (c)(4) provides two criteria for when wastewater will be managed under this chapter. The first criterion is that the wastewater contains at least one-percent of waste oil. The other criterion is that that the wastewater contains marketable quantities of waste oil. We have several concerns with this provision.

First, the EQB is creating a different standard than the Environmental Protection Agency's (EPA) regulation on used oil. The EPA standard is that the wastewater contains no visible signs of free-flowing oil. The EQB contends the "no visible waste oil test" does not apply to the reclamation of waste oil from wastewater. The EQB should explain why the proposed standard is necessary and how the EPA's standard does not provide adequate protection. Second, if the EQB demonstrates the need to differ from the EPA, it should explain the reasonableness of the one-percent standard. Third, the criterion that the wastewater contains marketable quantities of waste oil is vague. We understand that some facilities have the technological capability of extracting very small quantities of waste oil. However, the EQB should define what it will consider "marketable quantities" of waste oil. Finally, Subsection (c)(4) is inconsistent with Subsection (f). Subsection (f) uses the standard of "de minimis quantities" of waste oil in the wastewater compared to the one-percent and marketable quantity standard in Subsection (c)(4). The EQB should resolve this inconsistency. (15)

Response: The EPA's standard of "no visible signs of free-flowing oil" really pertains to solids, rather than wastewater. EPA uses the "sheen test" for wastewater; i.e., if the oil can be seen on the surface and it is not from a source of *de minimis* quantities (40 CFR 279.10(f)), then it is regulated as used oil. We know through basic experimentation (common to freshman chemistry labs) that the oil necessary to produce such a sheen can be as little as one molecule thick. Such a small amount of oil could not be recovered from wastewater by the technologies employed by waste oil processors today.

The decision to require recoverable oil is based on what is believed to be the best way to regulate wastewater containing trace quantities of oil, rather than protection. This best way differs in the federal and state programs. The federal approach was to "cast a large net" to bring wastewater with virtually any amount of visible oil into the used oil regulations since, otherwise, it may escape regulation and not be managed in a protective manner. Pennsylvania, with its residual waste program, did not need to "cast as large a net" in the proposed waste oil regulations as EPA, since wastewaters falling out of the waste oil regulations would not fall out of regulation entirely and would still be managed in a protective manner.

The Department believes that oil can reasonably be expected to be recovered from wastewater containing one percent oil using the technologies commonly employed by waste oil processors. This standard has been included in existing waste oil facility permits and has not been problematic to date. We purposely chose not to define "marketable quantities." "Marketable quantities" is an economic term and is dependent on the cost of operating the technology used, quantity of wastewater and waste oil processed, fee charged for accepting the oily wastewater, market value of the recovered oil, etc. Since most of these variables are dependent on specific conditions at each facility, it would be difficult to use a set of assumptions to derive a generic definition and apply it in all cases. We believe the owner/operator of each waste oil facility is in the best position to determine what is marketable for their particular facility and will keep "marketable quantities" undefined to retain the maximum flexibility possible.

The commentator is correct that the one percent and marketable quantities standard is inconsistent with the *de minimis* quantities in § 298.10(f). Section 298.10(f) has been deleted, since the one percent and marketable quantities standard makes it unnecessary.

Section 298.10(e) Materials derived from waste oil

58. Comment: The proposed rule starts to follow the federal rule that waste oil which is used beneficially and not burned for energy recovery or used in a manner constituting disposal are not solid wastes, but then adds a critical extra burden by stating:

The determination that a material derived from waste oil is not a waste shall be made as a special condition to the permit for the waste oil processing/re-refining that results in the derived material.

On its face value, this means for filtered mineral oil or re-refined motor oil to not be a waste, one must apply for and obtain an individual permit from DEP containing a "special condition" determining a material is not a waste. For example, § 298.41(c) declares that "transporters" who remove oil from transformers at a facility under § 298.45, prior to returning the oil to its original use are not subject to the waste oil processor/re-refiner requirements. However, as written, § 298.10(e) would indicate such filtered oil would stay a "waste," because no permit has been issued for the processing or re-refining, and hence no special condition has been issued to declare the material is not a

waste. Taking the Department's logic to the next step, one supposes that the transformers into which this oil is placed would then become waste oil storage units.

Similarly, § 298.20(b)(3) provides "permit-by-rule" for generator-conducted waste oil processing of oils, including for example, filtering of waste oil before the oil is reused by the generator, and recovery of oil from oil/water separators. The "permit-by-rule" contains no "special provisions." If the filtered or recovered oil waste is put back to the uses from which it came, § 298.10(e) would consider it to remain a "waste," rendering the units where the material is placed to be waste units.

Similarly, § 298.50 provides for a "general permit" for mobile waste oil processors who operate at the site of waste oil generation. "The "general permit" contains no "special provision," and thus, ostensibly, all reprocessed oil exiting the mobile unit would continue to be a waste. (10,13)

Response: The Department understands the commentators' confusion over this section and has modified the language to clarify that, as a condition of an individual or general permit, the Department may determine that beneficially used waste oil is not waste. In addition, the final regulations cross reference to § 287.1, which describes the standards for such a determination. With regard to the permit by rule in § 298.20(b)(8), language has been added there to clarify that a determination that a material is not a waste may be obtained in writing.

The intent of § 298.41(c) was to make it clear that transporters who merely filter used transformer oil prior to returning the oil for use, once again, in transformers are not waste oil processors/rerefiners and do not require a permit for that activity. In fact, the Department would not ordinarily consider the oil to be a waste, since the filtration is commonly performed as a means to protect pumps and the transformer oil is not spent (i.e., it is still useful as transformer oil without additional processing). § 298.10(e) has been modified in the final rulemaking to allow such waste to be eligible for a determination that the material is no longer a waste. This determination may be made as a condition of the transfer facility permit required by § 298.41(c).

Section 298.11 Waste oil specifications

59. Comment: We are in favor of allowing two limits for total halogens in the on/off-specifications. A higher limit of 4000 ppm for on-specification energy recovery in non-home heating systems will encourage the proper recycling of waste oil between 1000 ppm and 4000 ppm total halogens. (2,9)

Response: The Department agrees with the commentator's suggestion and has included two total halogen limits in the specification levels: 1000 ppm for residential and commercial uses (homes, apartments, office buildings) and 4000 ppm for industrial uses.

60. Comment: Table 1 in Section 298.11(b) lists the specifications for waste oil burned for energy recovery and fuel produced from waste oil by processing, blending or other treatment. Waste oil that falls within the specification in Table 1 is not regulated as a waste and can be substituted for virgin fuel oil. Waste oil that exceeds the specifications in Table 1 is subject to the requirements of Chapter 298. Except for the limit for total halogens, Table 1 is identical to the corresponding table in the federal regulations (40 CFR § 279.11).

The proposed regulation contains a 1000 parts per million (ppm) limit for halogens, while the federal regulations contain a 4000-ppm limit for halogens. According to the Preamble, the 1000-ppm limit is designed to protect the health and property of individuals using waste oil for home heating fuel, since when the federal regulations were adopted, EPA did not consider home heating applications. The Department asserts that modern home heating systems are not designed to withstand the corrosive effects of burning chlorine-containing fuels. However, that statement is not backed up with citation to any studies of heating system designs or materials. We would observe, if anything, modern heating systems are being better built, with more durable designs and materials. The EQB and DEP should seek specific input from the home heating system manufacturers before assuming that such systems are vulnerable to corrosion based on the suggested levels of halogens in the fuel. As an alternative, the EQB is seeking comment on the possibility of using two limits for halogens. The two limits would be 1000 ppm for home heating applications and 4000 ppm for all other methods of energy recovery. Since the 1000-ppm limit is a direct result of the Department's concern relating to home heating applications, it is reasonable to apply this limit only to waste oil marketed for home heating fuel. The EQB should retain the federal standard of 4000 ppm for all other methods of energy recovery. (13,15)

Response: The Department did contact manufacturers of home heating systems, but was unable to obtain any information on their durability to corrosion due to halogen combustion byproducts. The Department decided to include two total halogen limits in the specification levels: 1000 ppm for residential and commercial use (homes, apartments, office buildings) and 4000 ppm for industrial uses. This dual scheme for the halogen specification addresses the Department's concern for corrosion in home heating systems without being overly restrictive towards waste oil burned in industrial boilers and furnaces.

61. Comment: The proposed regulation contains important definitions and specific criteria for exempting from the waste regulation, oils that can be substituted directly for on-specification fuel. This is a welcomed improvement over the present regulations. Highly refined process oils, which may be inadequate to perform properly as intended, can be measured directly against known criteria and exempted from the waste regulations. The references, §287.2. Scope and §298.11(a), (b) and Table 1 give clear guidance for defining what is and what is not waste oil. (10)

Response: The Department acknowledges your support.

62. Comment: We believe that the limit of 1000 ppm total halogens in order for waste oil to qualify as on-specification fuel oil, rather than the 4000 ppm total halogens found in the federal used oil regulations, is appropriate. It will help eliminate the confusion between the standard for on-specification fuel oil and the standard for total halogens relating to the rebuttable presumption for waste oil. By making these standards consistent with each other, those handling waste oil can use a single benchmark for determining whether waste oil satisfies the rebuttable presumption and whether it potentially qualifies as on-specification fuel oil. (12)

Response: The Department agrees with the commentator that retaining the 1000 ppm total halogen limit as the on-specification fuel standard would help eliminate the confusion between the standard for on-specification fuel oil and the standard for total halogens relating to the rebuttable presumption for waste oil. However, the Department does not believe this forms a sufficient basis for Pennsylvania to remain more stringent than EPA with regards to the halogen specification for non-residential waste oil fuel. The final regulations include two total halogen limits in the specification levels: 1000 ppm for residential and commercial uses (homes, apartments, office buildings) and 4000 ppm for industrial uses.

63. Comment: The minimum BTU standard for waste oil burned for energy recovery in § 298.11(a) should be clarified to apply to the oil as burned, not individual oils that are blended together prior to burning. A reference to “processing, blending or other treatment” in this section would suggest that a blended oil burned for energy recovery could contain oils that have less than 8000 BTU per pound, provided the blended oil, as burned, had at least 8000 BTU per pound. Unfortunately, the preamble clouds the matter, perhaps inadvertently, by admonishing that “if a waste oil contains less than 8000 BTU per pound, the waste oil is being incinerated as a hazardous or residual waste, rather than being burned for energy recovery.” (11)

Response: The Department has clarified in the preamble to the final rule that this 8000 BTU per pound standard applies to the waste oil as burned rather than before blended.

64. Comment: Subsection (a) requires any waste oil or any oil produced by waste oil to have a minimum 8,000 Btu value in order to be burned for energy recovery. This threshold is not contained in the federal used oil regulations. The EQB should justify the need for this provision. If the EQB demonstrates the need for a minimum Btu value, it should explain why 8,000 Btus is a reasonable minimum standard. (15)

Response: As stated in the preamble, 8000 BTU per pound is equivalent to wood or a low grade coal, which are commonly utilized as fuels. Since oil itself contains between

16,000 and 18,000 BTU per pound, waste oil would have to contain in excess of 50 percent of a non-combustible material, such as water or clay, to fail to meet 8000 BTU per pound. "Fuels" containing in excess of 50 percent of a non-combustible material could hardly be considered legitimate fuels.

Sections 298.12(a) and 298.22(a) Prohibitions and Waste Oil Storage

65. **Comment:** Both paragraphs state that these units are "subject to Chapter 264 or 265 (relating to new and existing hazardous waste management facilities applying for a permit; and interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities)." The parenthetical portion of the statement leads me to believe that permits will be required for surface impoundments and storage units that manage waste oil. Is this a reference to the permit by rule requirements described in § 298.20(b)(3) or is there intent to institute a formal permitting process for these units? (1)

Response: The parenthetical portion of this statement was included in the proposed regulation to reference the information contained in Chapter 264 and 265. These sections should be interpreted exactly like their federal counterparts at 40 CFR 279.12(a) and 298.22(a), which require full compliance with Subpart K. Storage of waste oil in surface impoundments would be considered treatment and requires a permit authorized under the hazardous waste management regulations. As a practical matter, the Department is unaware of any waste oil impoundment in Pennsylvania and believes placement of waste oil in a surface impoundment would decrease recyclability of the oil. EPA has numerous documented cases of environmental damage from the storage of waste oil in these units (see Environmental Damage from Used Oil Mismanagement, Final Draft Report, available in the docket to 57 FR 41566, December 10, 1992).

66. **Comment:** Much of chapters 264 and 265 do not pertain to surface impoundments or storage units. Is it the intent to apply *only* Subchapters I and J (pertaining to containers and tank systems) and Subchapters K and L (pertaining to surface impoundments and waste piles) to these sections? If so, it would clarify this portion of the rule by specifying only these subchapters. (1)

Response: The style used in the proposed regulations closely follows the federal regulations at 40 CFR 279. In the above sections, as well as others, the federal regulations refer to the entire Parts 264 and 265, rather than the appropriate subparts. The references in both the federal and state regulations should be read to apply to the appropriate subparts and subchapters only. To avoid different interpretations between state and federal regulations for these requirements, the proposed language has been retained. Clarification is provided in the preamble to the final rule.

Section 298.20 Applicability

67. Comment: DEP needs to re-think the relationship between the Pa. Used Oil Recycling Act and the corresponding federal statutes and regulations. We believe there is considerably greater flexibility under RCRA in this area. This act, as implemented by DEP, includes the exemption for engine lubricants generated by businesses. (8)

Response: The federal rules applying RCRA do not pre-empt state statutes governing the management of used oil. Both apply concurrently. Therefore, the state Solid Waste Management Act also governs the management of engine lubricants. Submitting a comprehensive plan under 40 CFR § 6941 will not eliminate the need to manage lubricants under the Solid Waste Management Act. In addition, the Used Oil Recycling Act and engine lubricants are only a small percentage of the solid waste stream that would need to be addressed in a comprehensive plan.

68. Comment: We believe that a generator should be allowed to process waste oil from other sites it owns and operates at a single site, operating under the permit-by-rule provisions. The proposed rules do not allow any processing of off-site wastes under permit-by-rule. (8)

Response: The Department agrees. Section 298.20(b)(3)(i)(C) is designed to allow generators to process waste oil at one of their facilities which was generated at another of their generation sites.

Sections 298.20(b) Other applicable provisions

69. Comment: Under the residual waste regulations, generators of residual waste may conduct captive processing operations under a permit-by-rule pursuant to § 287.102(b). This permit-by-rule allows generators to bring wastes from other facilities which they own or operate to the captive processing facility as long as "some or all of the waste" is being generated at the facility. The proposed waste oil regulations significantly limit such options.

For example, while the proposed waste oil regulations contain a permit-by-rule for waste oil aggregation points, any shipments of waste oil must be 55 gallons or less. The permit-by-rule authorizations under § 298.20(b)(3) are also much more restrictive than the current permit-by-rule for captive processing activities in the residual waste regulations. In a number of instances, the permit-by-rule authorizations appear to limit generators to processing waste oils that are generated on-site. To correct this problem, DEP should reevaluate the permit-by-rule authorizations contained in the waste oil regulations and expand those authorizations to allow for centralized captive processing. (10)

Response: The Department agrees with the commentator and has adjusted the permit-by-rule in § 298.20(b)(3) to track the language in § 287.102(b) more closely. However, the

commentator has incorrectly applied the self-transport to aggregation points volume limitation of 55 gallons or less to this captive processing permit-by-rule. Section 298.20(b)(3) does not contain a volume restriction. Therefore, a generator may accept or self-transport larger volumes of waste oil from one of the generator's facilities to another for captive processing. Of course, the transporter or generator, if self-transporting, would be subject to the transportation requirements in Subchapter E.

70. Comment: Section 298.20(b)(3)(ii)(A)-(C) goes beyond the equivalent federal regulations and imposes a number of burdensome requirements, such as inspections, a hazardous waste operating report, quarterly reports, and compliance with Subchapter Q. Oil-water separators are typically covered by NPDES permits and as such require no further regulation. These additional requirements provide incentives against oil-water separation. The residual waste regulations are sufficient to cover this process and waste stream. (10,14)

Response: Oil-water separators are not always covered by NPDES Permits. However, the Department believes the proposed requirements in § 298.20(b)(3)(ii) may be more stringent than necessary. The final rulemaking has been modified to remove some of the requirements in the comment, such as a hazardous waste operating report, quarterly reports, etc., since, the Department believes compliance with Subchapter Q for facilities separating oil from wastewater may be more stringent than necessary.

71. Comment: We endorse the general concepts set forth in § 298.20(b)(3), which establishes a permit-by-rule for generator-conducted oil reconditioning and processing activities. Some clarification, however, may be warranted to avoid confusion. This section starts out by referring to waste oil that is "generated onsite" and "is not being sent to a burner of on-specification or off-specification waste oil." In discussing filtration, cleaning, or other reconditioning activities, § 298.20(b)(3)(i)(C) refers to processing "at the same manufacturing or processing facility where some or all of the waste oil is generated." Regarding oil/water separation activities, § 298.20(b)(3)(ii)(A) refers to use of captive facilities and treatment of waste oil "generated onsite or on an interconnected adjacent site which was previously part of an integrated facility." Read together, these provisions raise the question of precisely what is "onsite." More specifically, we note the question whether materials generated by the same generator at several related locations (such as a series of electrical substations tied together on a transmission line or several collection points along a natural gas pipeline) are or are not covered by this permit-by-rule. We would suggest and support a permit-by-rule that would allow a generator to operate a captive facility (i.e., a facility which handles only that generator's oil generated at one or more related facilities), where the generator meets specified conditions and follows stipulated practices. The equivalent of such a permit-by-rule is contained in the federal rules for the kinds of transformer oil filtration and reconditioning activities we routinely conduct. (13)

Response: The permit-by-rule was designed to let generators process, at one location, waste oil generated at more than one of their facilities, such as several electrical substations. The permit-by-rule language in the final rulemaking tracks the language in § 287.102(b) for captive processing facilities more closely for purposes of clarification.

72. Comment: Subsection (b)(3) creates a permit by rule for the processing of waste oil generated onsite and not sent offsite. Commentators questioned what will be considered “onsite” and whether materials generated by the same generator at several related locations and processed at a central location will be eligible for the permit by rule. The EQB should clarify these issues in the final form regulation. (15)

Response: Waste oil generated by the same generator at several related locations and processed at a central location will be eligible for the permit by rule. As stated above, the permit-by-rule language has been modified in the final rulemaking for clarification.

73. Comment: In § 298.20(b)(1), the reference to the “self transport provisions of § 298.24(a)” should refer to “§ 298.24(1).” (13)

Response: The reference to § 298.24(a) and (b) has been changed to § 298.24(1) and (2).

Sections 298.20(c) Recordkeeping

74. Comment: Requiring generators to provide information on their waste oil and how it is generated is a good idea, but in reality this information will not always be accurate and will cause much paperwork, laboratory analysis and recordkeeping for the transporter/processor. Special condition #30 in (draft) General Permit WMGR041 has placed the burden of proof, not on the generator, but on the transporter/processor. As a compromise, I would like to see this requirement for generators who produce over 12,000 kg of waste oil annually, as outlined in the source reduction strategy and biennial report sections. (2)

Response: At the request of representatives of the waste oil industry, these minimal generator recordkeeping requirements were developed. They believed that if the generators maintained basic records on the type of oil used and process generating the waste oil, any information on halogen testing, if available, information to support the rebuttable presumption, if applicable, and information on mixing with hazardous waste, if applicable, it would make it easier for the transporter/processor. This recordkeeping requirement does not require chemical analysis by the waste oil generator, and this has been clarified this in the preamble to the final rulemaking. The commentator has confused the generator recordkeeping requirement with permit requirements for waste management facilities. It is quite common to require waste prequalification and screening in permits to verify the acceptability of waste at facilities. Whether or not

generator recordkeeping was required under this rulemaking, the requirement for screening and recordkeeping by permittees of waste oil facilities, such as those in draft General Permit Number WMGR041, would remain. The Department chose to require the recordkeeping for all generators, rather than only the larger ones, because we do not see the requirements as burdensome. These are especially simple requirements for generators whose waste oil does not contain elevated halogens and who do not mix the waste oil with hazardous waste. For example, for a company maintaining a fleet of automobiles, the entire record may consist of motor oil from changing the oil in cars. Much of these recordkeeping requirements should be retained by generators as a matter of common business sense. Generators of halogenated waste oil who rebut the presumption that the waste oil was mixed with hazardous waste should keep records on how the presumption was rebutted. Generators who mix characteristically ignitable hazardous waste with their waste oil should keep records showing the resultant mixture is no longer characteristically ignitable.

75. Comment: We believe that the recordkeeping for used oil generators would constitute overly burdensome and redundant recordkeeping. The recordkeeping requirements may discourage used oil recycling by increasing costs for time, tests and materials. Used oil collectors already test the used oil for halogenated materials. Subsection (c) requires generators to maintain certain records for five years. It is unclear why it is necessary to retain generator records for five years. The other recordkeeping requirements in the regulation require three-year record retention. At a minimum, the EQB should consider amending Subsection (c) to require that generator records be maintained for three years. For small operators, record keeping will become a service that they rely upon their oil recycling vendor to provide. (2,9,10,14,15)

Response: This requirement is meant to codify what should be common-sense recordkeeping and should not be overly burdensome. There is no requirement for the generator to actually test the waste oil; however, if the waste oil has been tested, the generator should record the results. For example, if the waste oil transporter runs a total halogen test on a generator's waste oil, and gives the results to the generator, the generator should make those results part of his records. If small operators rely upon their oil recycling vendor to provide a record keeping service, they are making the recordkeeping more complex than the Department expects. This requirement should not increase costs for tests and materials and should only use as much time as it takes to scribble a note in a file. This has been clarified in the preamble to the final rulemaking. The Department agrees that the recordkeeping requirements should be consistent and has changed the requirement for generators to maintain records to 3 years.

76. Comment: Requiring five years of record retention, including detailed records of every type of oil used in the process that generates that oil, is going too far. At a typical generating station, many different kinds and grades of lubricants are used (different weights and additives) for particular pieces of equipment. During major overhauls, each of these oils are not separately measured, cataloged, and tested. Like-kind lubricants are

collected together, and sent to appropriate reprocessing or disposal. This section would purport to require oil-by-oil testing and recordkeeping. (13)

Response: The commentator is interpreting this section to require a great deal more detail than the Department expects. In the example, the “like kind lubricant” which “are collected together” would probably be called lubricating oils used to lubricate equipment in the generator’s records. If some of the oils are chlorinated, it may be necessary to have two categories for the lubricating oils: chlorinated and non-chlorinated. It would not be necessary to identify each particular piece of equipment in which each grade of lubricating oil is used. Again, this requirement is meant to codify what should be common-sense recordkeeping. We will discuss (and ease) recordkeeping fears in the preamble to the final rule. We do agree with the commentator that the recordkeeping requirements should be consistent and will change the requirement for generators to maintain records to 3 years.

Sections 298.22 Waste oil storage

77. **Comment:** The federal rules require that waste oil generators comply with the applicable Spill Prevention, Control and Countermeasure (SPCC) provisions of 40 CFR Part 112. As the Department is aware, the Part 112 rules do *not* apply to every waste oil generator. Part 112 requires preparation of SPCC plans for facilities that have discharged oil in harmful quantities to the waters of the United States, or that, due to their location, could reasonably be expected to discharge oil in harmful quantities to the waters of the United States or adjoining shorelines. Under § 298.22(e) every waste oil generator would be made subject to the spill prevention, control, and countermeasure provisions of Chapter 265, Subchapters C and D. (Note: the referenced subchapters were recently repealed and replaced by Chapter 265a, incorporating the federal hazardous waste regulations.) Via this change in references, ostensibly every waste oil generator would be required to develop a written contingency plan, designate emergency coordinators, and file emergency plans with all local police, fire departments, hospitals, and state and local emergency response teams. The Department should simply follow the federal rule and require compliance with the Part 112 SPCC planning requirements, where applicable. (10,11,13)

Response: The federal requirements under 40 CFR Part 112 would only require a generator to develop a SPCC plan if a spill has already occurred. The Department believes that a plan for managing spills should apply in advance, as a planning device, instead of a response to a problem. However, the requirements for SPCC plans appear to be substantially more involved than what was intended by this requirement or is necessary to be protective. This section has been revised to require generators to have a very simple, scaled-back spill plan. A fact sheet developed to aid generators in developing the plan will be released upon final publication of the regulations.

78. Comment: Subsection (e) provides that waste oil generators are subject to Chapter 265, which requires all generators to implement a spill prevention control and countermeasure program. Several commentators express concern that the EQB will require every waste oil generator to submit a spill prevention control and countermeasure plan. Commentators assert that requiring small generators to comply with these planning requirements will be financially burdensome. The EQB should consider whether it is necessary for a small generator to develop and implement a full contingency plan or if another alternative is appropriate. (15)

Response: This subsection has been revised to require generators to have a very simple, scaled-back spill plan. A fact sheet will be developed to aid generators in developing the plan.

79. Comment: Under § 298.22(c), aboveground storage tanks and pipes would have to be labeled “waste oil.” The corresponding federal regulation requires the same facilities to be labeled “used oil.” Some recognition should be given to the thousands of “used oil” labels that have already been affixed by generators complying with the federal regulations. In these cases, it cannot be reasonably argued that a second “waste oil” label would be anything but a duplication of efforts and costs. We suggest the federal and state labeling requirements be harmonized by (1) adopting a grandfathering provision that would deem “used oil” labels currently in place sufficient for state regulations; and (2) developing a state-federal memorandum of understanding or other cooperative document to establish a single labeling standard going forward. The EQB should allow either a “waste oil” or “used oil” label to satisfy the labeling requirements. If the EQB objects to allowing the use of either term, it should consider seeking a legislative amendment to the Used Oil Recycling Act to make Pennsylvania’s definition of “used oil” consistent with the federal definition. (11,14,15)

Response: Since “used oil” has a statutory meaning in Pennsylvania, labeling waste oil tanks and pipes “used oil” would not be correct. In recognition that some companies may have already been using “used oil” labels, the final rulemaking includes a “grandfathering” provision and a liberal transition time (two years) in which either label may be utilized.

Sections 298.23 Onsite burning in space heaters

80. Comment: The ideal use for waste oil is combustion in large industrial burners with controlled “stackhouses” or bag houses to prevent unacceptable emissions of particulates to the ambient air. Entities which own large industrial burners, such as utilities, have the financial wherewithal to install such proper equipment to address inevitable particulate emissions from combustion of waste oil, which contains ash and metals at levels not found in virgin fuel sources. Entities which own large industrial burners can burn waste

oil within acceptable limits because they have large volume requirements, enabling them to create a market for the blending of waste oil with other fuel sources of lower ash and metal content. The proposed rules would establish a system of direct shipment to small users without such blending. It is unrealistic to expect that all, or even a sizable number, of these small users will invest the resources needed to attain proper blending and assure proper ash and metal content. The Federal air emissions require that ash content be at no more than a .1 ash. Waste oil, well-documented, never even comes close to a .1 ash. It is usually around a .5 ash. The proposed rules would establish a system of direct shipment to small users, such as space heaters, without the rigorous testing and reporting requirements that apply to currently permitted waste oil recyclers. Again, it is unrealistic to expect that all, or even a sizable number, of these small users will invest the resources needed to assure no impermissible mixing of waste oil with unacceptable materials, especially when many of them are not required to test their waste oil, and it is unrealistic to assume proper handling and disposal of any impermissible mixtures will occur. The proposed rule will permit the unchecked proliferation of space heaters, in reality "mini-incinerators," for use by virtually anyone in the state, no matter how small or unsophisticated, and relies on these users to enforce important, expensive technical requirements to protect the State's environment. Space heaters will receive from the uninformed, the unaware and the unlawful, off-specification waste oil and waste oil mixed with unwanted solvent waste, degrease waste, paint thinners, and other hazardous wastes. (3)

Response: There are three instances under the current regulations when waste oil may be burned in a space heater: 1) off specification waste oil generated by the owner/operator of the space heater; 2) waste oil collected by the owner/operator of the space heater from household do-it-yourselfers; and 3) waste oil meeting the specifications from any source. The proposed regulations do not expand the burning of waste oil in space heaters. The Department consulted with US EPA with regard to a federal ash content limit for waste oil burned in space heaters, and found there is no such limit. Since this section is essentially the same as its federal counterpart (40 CFR 279.23), the Department is confident that the proposed requirements for space heaters are acceptable under federal requirements. We do not believe banning legitimate burning of waste oil in space heaters will prevent owners/operators of space heaters from receiving "from the uninformed, the unaware and the unlawful, off-specification waste oil and waste oil mixed with unwanted solvent waste, degrease waste, paint thinners, and other hazardous wastes." Along with promulgation of final waste oil regulations, the Department will release fact sheets and other informational materials upon final publication of the regulations to aid in complying with the requirements. What can and cannot be burned in space heaters will be part of this educational effort.

81. Comment: The system contemplated by the proposed rules will result in a seasonal demand for those who currently recycle and process waste oil. Those who would be allowed to burn waste oil received directly from a generator will not be interested in purchasing waste oil other than in the colder months. Businesses, such as ours, will be

needed during the warmer months, but cannot operate profitably on a seasonal basis and will disappear. (3)

Response: Under our current regulations, businesses burning waste oil in space heaters may already accept on-spec. waste oil directly from generators, or burn their own waste oil and waste oil received from do-it-yourselfers. The proposed regulations do not change the provisions involving burning waste oil in space heaters or transportation from a generator directly to a burner. Since businesses, such as that of the commentator, are operating in Pennsylvania today, these provisions are not likely to cause such businesses to only operate profitably on a seasonal basis or to disappear.

82. Comment: Subsequent to federal delisting of used oil as a hazardous waste, DEP undertook to draft regulations (30 N.J.R. 4004) which would permit used oil combustion in a manner consistent with federal used oil management standards, 40 CFR 279. The proposed rules set forth the following key concepts: (1) regulation of used ash content and air emissions; (2) registration of on-site space heaters to burn on-specification used oil in lieu of an APC permit; (3) space heater combustion of used oil collected from do-it-yourselfers and used oil generated on-site; and (4) self-monitoring and inspection of composition, air emissions and space heater operation. (3)

Response: It appears that the commentator's remarks pertain to used oil regulations proposed by the state of New Jersey rather than these proposed waste oil regulations.

83. Comment: We applaud DEP's retention of the "space heater exemption," which permits the exemption of off-specification waste oil in heaters. As you are aware, states which have recently studied this issue, such as Vermont, Texas and New Jersey, have found that the use of waste oil fired heaters is an environmentally sound, economically beneficial practice that greatly assists small businesses. (6,7)

Response: The Department acknowledges your support.

84. Comment: The proposed regulation needs to change § 298.23 to § 298.22. (10)

Response: The Department does not see any typographical error in the numbering of § 298.23, as it appeared in the April 10, 1999, *Pennsylvania Bulletin*.

Sections 298.24 (1) Self-transportation of small amounts to approved collection centers

85. Comment: § 298.24(1)(iv) adds a certification requirement not found in the corresponding federal rule that each generator will be required to provide the collection center a written certification that the generator has not mixed its waste oil with hazardous

waste, except as provided in § 298.10(b)(2)(ii). While we endorse the concept that the generator should be responsible for not mixing waste oils with hazardous wastes, the fact is that many small generators may not have the sophisticated knowledge of DEP's hazardous waste rules. Will the do-it-yourselfer know, for sure, whether any other ignitable materials were placed in the used motor oil barrel, and will he/she test the resultant mixture for the characteristic of ignitability before delivering it to the collection center? In reality, if a certification is required, it may need to be framed as a certification to the "best of the generator's knowledge, information, and belief." (13)

Response: Over the past few years, the Department has experienced some difficulty in keeping collection sites in the program. While there have been several reasons for this, many businesses are reluctant to collect waste oil from small generators out of fear of accepting contaminated oil. The certification requirement is an attempt to provide a level of "comfort" to collection facilities that would be absent without it. As for household do-it-yourselfers, since their wastes are exempt from regulation as hazardous under 40 CFR 261.4(b)(1), as incorporated by reference under 25 Pa. Code 261a.1, they can easily certify they have not mixed their waste oil with hazardous waste. Even generators who are small businesses are required to determine if their wastes are hazardous (40 CFR 262.11, as incorporated by reference under 25 Pa. Code 262a.10), so they should have enough knowledge of their wastes to be able to comply with the certification. Of course, the easiest way to ensure that the certification is accurate and that they have not mixed their waste oil with hazardous waste is to train their employees not to dump anything in their waste oil.

Sections 298.24 (3) Tolling arrangements

86. Comment: We object to the transporter under this arrangement not having an EPA ID number. This number allows tracking, etc. The transporter in all transportation of waste oil should have an identification number. It is not a burden to obtain and carries little paperwork burden. (5)

Response: Since, under these tolling arrangement provisions, the vehicle used to transport waste oil from the generator to the processor/rerefiner and the processed oil back to the generator must be owned and operated by the processor/rerefiner, and waste oil processors/rerefiners must obtain EPA ID numbers, requiring the transporter to obtain an EPA ID number would be redundant.

Section 298.25 Source reduction strategy

87. Comment: The entire section should be written to conform to the residual waste regulations to allow the use of Form 25R and associated programs to be implemented similarly, without confusion. It would be very cumbersome to manage residual waste using SRS requirements under the residual waste regulations and then manage waste oil under a different set of rules. At a minimum, §§ 298.25(b)(1) and 298.26(b)(6) should be changed to 5 years to be consistent with the residual waste regulations. (10)

Response: The Department envisions that the source reduction strategy for waste oil will be part of the generator's residual waste source reduction strategy and has modified Sections 298.25 and 298.26 to incorporate the source reduction strategy and biennial report requirements in §287.51.

88. Comment: One member raises this concern: as a manufacturing facility with a large quarry, they will always generate large quantities (>1200 kg) of waste oil from truck maintenance. How do they write an SRS for this type of operation? This requirement creates unnecessary paperwork and should be eliminated from the regulations. (10)

Response: The member would not have to write a SRS, since § 287.51 will not apply to waste oil generators who generate oil that has been used in an internal combustion engine as an engine lubricant.

89. Comment: This section is overly burdensome and an exercise in futility. Oil is sent to recyclers when it is contaminated to a point that it no longer serves its original purpose, by definition. Therefore, the volume generated cannot be reduced. This section should be eliminated or limited to oil that is not destined for recycling. (14)

Response: Since most non-automotive waste oil generators also generate other residual waste, we do not believe it is overly burdensome to include their waste oil in their source reduction strategies. Some processes can extend the useful life of their oil by switching

to a longer-lasting oil, such as a synthetic, or by using additives or filtration, thereby saving the generators money and creating less waste.

90. Comment: This section requires all waste oil generators subject to this regulation to submit and prepare a source reduction strategy. However, Section 287.51 of the residual waste regulations has an exemption from the source reduction strategy requirements for persons or municipalities who “generate residual waste as a result of collecting the waste, including the collecting of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil.” Since “used oil” in the residual waste regulation would be included as waste oil in this rulemaking, there is an inconsistency between the proposed regulation and the residual waste regulation. This inconsistency should be resolved. (15)

Response: The final regulations include revisions to § 287.51 that maintain the exemption described by the commentator.

Section 298.26 Biennial report

91. Comment: § 298.26(a) requires the report to be submitted by March 3. Other regulations require March 1. These regulations should reflect the same date. Also, the Report for Waste Oil should be required the same years as the residual waste Biennial Report. (10)

Response: The Department agrees and has made the dates consistent. In addition, the Department has clarified that separate biennial reports for waste oil and other residual waste are not required by incorporating the source biennial report requirements in § 287.51 into § 298.26.

92. Comment: We are not clear why this report is necessary - particularly if the waste oil is being recycled. The regulation is not clear on who must submit a report. If a business generates more than 1200 kg of waste oil but recycles it, would they complete a 330-GM? This proposal requires too much paperwork. (10)

Response: The basic information contained in the biennial reports aids the Department in administering waste programs by identifying how much waste is being generated in the Commonwealth and how it is being processed, treated, disposed or recycled. The requirement for the biennial report is based on waste generated rather than its destination. This requirement does not apply to generators who generate annually less than 12,000 kg of residual waste, including waste oil, rather than 1200 kg as in the comment. It also does not apply to waste oil generators who generate oil that has been used in an internal combustion engine as an engine lubricant. The Department believes that the vast majority of waste oil generators who will have to include their waste oil in biennial reports are residual waste generators and already are required to file biennial reports.

93. Comment: Signature of the biennial report by an officer for corporations is inconsistent with other regulations. This level of signing should not be required for a facility that has an environmental policy officially endorsed by top management and follows ISO 14000 programs. There is no reason why officers of corporations need to certify biennial waste reports. Certifications should be by plant managers or environmental personnel. For international corporations trying to do business in PA, corporate officers may be overseas and thus not available to view whatever needs certified. In only serves to make it harder to do business in PA. (10)

Response: Since the Department envisions that the biennial report for waste oil will be part of the generator's residual waste biennial report, the requirements in § 298.26 need to be the same as those in § 287.52. This will be less burdensome to business than two separate biennial reports with different requirements. Since § 287.52 is beyond the scope of this rulemaking, the suggested change cannot be made at this time. The Department will consider the commentator's suggestion on who can certify biennial reports for corporations in a future rulemaking. In the meantime, the Department is exploring mechanisms to allow electronic submission of data. This should make it considerably easier to comply with the current requirements, especially when officers of international corporations are located overseas.

94. Comment: This section requires all waste oil generators subject to this regulation to file a biennial report. However, Section 287.51 of the residual waste regulations does not require a report for persons or municipalities who "generate residual waste as a result of collecting the waste, including the collecting of parts, machinery, vehicles, appliances and used oil from the repair or replacement of the parts, machinery, vehicles, appliances and used oil." Since "used oil" in the residual waste regulation would be included as waste oil in this rulemaking, there is an inconsistency between the proposed regulation and the residual waste regulation. This inconsistency should be resolved. (15)

Response: The final regulations include revisions to § 287.51 that maintain the exemption described by the commentator.

Section 298.30 Waste oil collection centers

95. Comment: There is concern that waste oil from "do-it-yourselfers" (DIYers) placed in a tank at waste oil collection centers with waste oil generated at the center could make the entire tank of waste oil hazardous. An exemption should be added for state and community DIYer drop off sites. This type of exemption should be similar in nature to the exemption adopted for superfund immunity. (2)

Response: The Department lacks the authority to promulgate an exclusion, from regulation as hazardous waste, of waste from a tank at a collection center containing waste oil from DIYers and waste oil generated at the center. However, the Department

can use, and has used, its enforcement discretion to allow waste oil containing high total halogens from a collection center to be managed as non-hazardous when the collection center could demonstrate that the halogens were not used at the center and must have come from a DIYer.

96. Comment: The waste oil regulations do not specify how waste oil collection centers are to ensure that they are collecting only waste oil that has not been impermissibly mixed with hazardous wastes. (12)

Response: The Department recognizes there are many ways for waste oil collection centers to ensure that they are collecting only waste oil that has not been impermissibly mixed with hazardous wastes. Rather than prescribing a single method for all, the Department chose to allow each collection center to develop and implement what they believe will work best for their particular facility.

97. Comment: Section 298.31(b)(2) refers to sheltered storage of waste oil tanks. The definition of shelter is not clear, although one can conclude that it means a cover, roof, etc. The DEP should not write regulations to this level of detail. The remainder of the section is adequate to protect human health and the environment. A well coated, sealed impermeable barrier serving as secondary containment with an oil/water separator for precipitation would also be adequate, but is not sheltered. (10)

Response: While the primary goal of all of Pennsylvania's environmental regulations is to protect human health and the environment, the waste oil regulations are also concerned with the recyclability of waste oil as well. The Department specified that the tanks at aggregation points be sheltered to protect the waste oil from the elements and from other contaminants that could be thrown into an open top of the tank. While the commentator is correct that this could mean a cover or a roof over the tank, the Department believes most common tanks used to hold waste oil have closed tops. While the commentator is also correct that impermeable secondary containment and an oil/water separator may adequately protect human health and the environment, most generators will not have the oil/water separation equipment. The higher the water content in waste oil, the lower the value of the oil.

Section 298.31 Waste oil aggregation points

98. Comment: The current regulations, for which there is no EPA equivalent, allows a generator to receive waste from an off-site facility owned by the same generator under the permit-by-rule, captive facility clause. The waste oil rules, as proposed, prohibit that action. (10)

Response: Both federal regulations and these final regulations contain provisions for self transportation of small quantities of waste oil to aggregation points owned by the generator. See § 298.24(2). In addition, permit-by-rule provisions in § 298.20(b) allow

generators to process waste oil at one site that was generated at another site by the same generator.

99. Comment: We support the basic provisions of § 298.31, which allows the operation by generators of waste oil aggregation points, including the acceptance of oil from household do-it-yourselfers. For many years, we have led in efforts to encourage employee participation in such recycling efforts by allowing our employees to bring their DIY used oils to our aggregation points, where the material can be properly handled along with our-generated waste oils. (13)

Response: The Department acknowledges your support.

100. Comment: We have a concern regarding one of the conditions in the aggregation point permit-by-rule. Section 298.31(b)(4) states that a waste oil aggregation point may not “accept water, antifreeze, other residual or hazardous wastes or other contaminants.” The fact is that some companies who operate waste oil aggregation points may also accept other materials (such as batteries) for similar recycling at the same location. If those materials are being properly handled in accordance with the rules applicable to their management, why should the waste oil aggregation site lose coverage under the permit-by-rule for the oil aspect of its operation? (13,15)

Response: The aggregation point permit-by-rule applies to waste oil only and does not prevent the generator from accepting other wastes under other applicable regulatory provisions, such as a permit-by-rule for captive processing, which would allow their transfer.

Section 298.40(a) Applicability

101. Comment: There needs to be language in this section which makes it clear that this section does not apply to persons who are generators only. The explanation in the preamble is unclear. We would suggest some sort of wording for § 298.40(a)(1) “This subchapter does not apply to onsite transportation, or to generators who do not engage in the off-site transportation of waste oil, other than those activities described below in (2), (3) or (4). (10)

Response: The Department believes the proposed regulations are clear that generators who are not transporters, or who only transport on-site, do not have to comply with the transportation requirements.

Section 298.40(b) Imports and exports

102. **Comment:** Under the proposed regulations, a “transporter who imports waste oil into or exports waste oil out of this Commonwealth is subject to this subchapter from the time the waste oil enters until the time it exits this Commonwealth.” This provision on its face applies to shipments of waste oil that are merely passing through Pennsylvania to reach destination points outside the Commonwealth. We suggest revising the proposed regulation to distinguish between requirements that are applicable to transfer stations being operated within Pennsylvania and transportation activities in which shipments of waste oil are merely passing through Pennsylvania. (12)

Response: The Department believes that the regulation, adopted from the federal requirements, is appropriate and correct. The language “import” implies that waste oil will be brought into Pennsylvania for waste management and the word “export” implies that waste oil that is being managed in Pennsylvania will be transported outside of Pennsylvania.

Section 298.41 Restrictions on transporters who are not also processors or rerefiners

103. **Comment:** The federal rules establish a specific provision governing waste oil from electrical transformers and turbines, filtered, and returned to its original use. In the process of transposing these provisions to § 298.41(c) of the proposed rules, key words were dropped and a circular cross-reference was added, making the provision virtually useless. Under federal rules, if the waste oil is filtered within 24-hours of being drained, it would be considered as being filtered “during transportation” and would not trigger transfer facility requirements. Under this proposed section, the processor/re-refiner requirements do not apply only if oil removed from transformers and turbines are filtered “at a transfer facility authorized under § 298.45...” Thus, where the federal rules allow utilities to collect and filter electrical transformer and turbine oils, and return that oil to its original use, without the need for an individual permit, the Department’s version requires an individual permit in every case. (13)

Response: The Department agrees and has changed this section in the final rule to be compatible with the federal rule.

Section 298.42(a) Identification numbers

104. **Comment:** This section states that a waste oil transporter must have an identification number. Does the DEP mean an EPA identification number? If so, please state as such for clarification. (10)

Response: The section has been modified to make it clear that an EPA identification number is required.

Section 298.43(a) Deliveries

105. **Comment:** The proposed regulations specify that waste oil transporters may only deliver waste oil to another waste oil transporter, a waste oil processing/refining facility, an off-specification waste oil burner facility or an on-specification waste oil burner facility. Noticeably absent from this list are waste oil transfer facilities. We recommend the Department include waste oil transfer facilities within the list of permissible destination points. (12)

Response: The Department agrees and has added waste oil transfer facilities to the list of permissible destination points.

Section 298.44 Rebuttable presumption for waste oil

106. **Comment:** Under § 298.44(b), the proposed waste oil regulations will allow waste oil transporters to apply “knowledge of the halogen content of the waste oil in light of the materials or processes used” to determine the total halogen content of a shipment of waste oil. We strongly object to this provision to the extent that it will allow other waste oil transporters to avoid testing requirements that the Department imposed on our company in General Permit Number WMGR029. While we believe that the screening procedures set forth in the general permit are standards that all waste oil transporters should be required to follow and are entirely consistent with the Department’s goal of minimizing the mixing of hazardous wastes and waste oil, we recognize that knowledge of the halogen content of waste oil in the light of materials and processes used can be an appropriate mechanism for evaluating the halogen content of a shipment of waste oil in certain circumstances. We recommend that the proposed waste oil regulations be modified to be consistent with the requirements imposed in General Permit Number WMGR029. This course of action will ensure that waste oil transporters are taking the appropriate steps to screen shipments of waste oil for halogen content and will best effectuate the goals of the Department. We have identical concerns for waste oil processing and refining facilities under § 298.53(b) and burners who burn off-specification waste oil for energy recovery under § 298.63(b). (12)

Response: The Department does not believe requiring every waste oil transporter to run total halogen determinations is necessary in every case. Instead, the final rule includes a requirement for total halogen determinations in both general and individual permits for waste oil transfer and processing/re-refining facilities. As the commentator is aware, at the request of the applicant, General Permit Number WMGR029 requires testing by the transporter at the site of generation, rather than at the transfer facility, when the owner/operator of the transfer facility is the transporter. In addition, the permittee of the general permit has been allowed to utilize an inexpensive instrument in lieu of actual total halogen determinations as a screening tool. After the regulations are implemented, if problems are discovered with transporters basing the halogen content on knowledge of the oil used and processes used, the Department will consider removing the option of applying knowledge in lieu of total halogen determinations in a future rulemaking.

Section 298.45(b) Permits

107. Comment: The proposed regulation allowing permit-by-rule for transfer facilities that are owned by the same person(s) who own permitted processing facilities in the state is a very sound proposal. This will allow facilities operating in the state to reach rural areas that have always had a more difficult time finding waste oil transporters/processors. It is also fair to companies which have gone through the time and expense of permitting a facility in the Commonwealth, unlike out of state companies which haul this reusable resource out of our state and do not have the same bonding, permit and operating costs incurred by Pennsylvania's recycling companies. (2,9)

Response: The Department acknowledges your support. However, due to concerns raised by other commentators about conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution and use of trucks and rail cars as storage tanks at facilities (See comment numbers 108 and 110), this permit-by-rule has not been included in the final rulemaking.

108. Comment: The proposed regulations include a permit-by-rule authorization under § 298.45(b)(4) for certain types of waste oil transfer stations. We have significant concerns that this provision will create an uneven playing field. Some transporters will be able to operate under the permit-by-rule authorization while others will be required to obtain either individual or general permits. This evaluation depends, in large part, on whether the transporter is a processing or refining facility inside Pennsylvania. Such a distinction conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution. We suggest that the permit-by-rule authorization be eliminated. (12)

Response: The Department believes the commentator's concerns are valid and has removed the permit-by-rule authorization for transfer facilities that are owned by the same person(s) who own permitted processing facilities in the state from the final rule.

109. Comment: Paragraph (b)(4) lists the conditions a waste oil transfer facility must meet to qualify for a general permit. Condition (iv) states the following:

(iv) The waste oil collected at a transfer facility is destined for a waste oil transfer or waste oil processing/refining facility located in this Commonwealth which is permitted by the same person who owns/operates the waste oil transfer facility.

Why must the oil be sent to a transfer or processing/refining facility within Pennsylvania? If the oil is sent to a facility outside of Pennsylvania, that facility would be regulated by the appropriate state jurisdiction. Furthermore, the waste oil would no longer be in Pennsylvania. The risks associated with transportation would apply to both an in-state and out-of-state transfer. Therefore, it is unclear how Pennsylvania would be harmed by

sending the waste oil to an out-of-state facility. We request the EQB explain the reasonableness of and need for general permit condition (b)(4)(iv). (15)

Response: In developing these proposed regulations, the Department was approached by permitted waste oil transfer and processing facilities who wanted to operate satellite transfer facilities. These satellite facilities would expand the service area for the permitted facility by allowing "milk runs" to be made to generators of small amounts of waste oil, where the small quantities picked up from the generators would be brought to the satellite facilities and stored until the quantity is sufficient to warrant shipment to the permitted facility. Due to potential environmental harm from these facilities, as well as economic hardship for their operators during times of depressed markets for waste oil, there is a very real potential for the Commonwealth to be involved in cleanups and clean-outs of these facilities. We believe bonding for these facilities is very important and that Department control via permits, rather than permit-by-rule, is essential. However, by tying the bonding and insurance for the satellite facilities to permits issued by this Department for waste oil transfer and processing facilities, we believe that permit-by-rule would be adequate. Since the Department does not issue permits to out-of-state facilities, permit-by-rule is not an option for facilities that are satellite to waste oil transfer and processing facilities located outside the Commonwealth. Due to valid concerns raised by other commentators concerning conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution and other issues, this permit-by-rule is not included in the final rulemaking.

110. **Comment:** This allows the continued practice of using spotted trucks or rail cars as a permitted facility. All transfer facilities should have an individual or general permit. (5)

Response: The Department agrees and has not included this permit-by-rule in the final rulemaking.

111. **Comment:** DEP argues that the federal approach of providing a permit-by-rule for all transfer facilities is troublesome because allegedly "transfer facilities are too varied to be effectively regulated by a one-permit-fits-all approach." DEP fails to explain why it has selected the bureaucratic approach of requiring hundreds of individual permits, instead of trying to frame several permits-by rule tailored to several possible classes of transfer facilities. (13)

Response: Of all the types of residual waste transfer facilities, the Department believes that waste oil transfer facilities pose the greatest threat to human health and the environment, as well as a high potential for the Commonwealth to be involved in cleaning up or cleaning out abandoned facilities. We do not believe, with a few exceptions, that adequate regulation of these facilities will be afforded by permit-by-rule. In addition, most of these facilities accept other residual wastes, specific to each individual facility, such as antifreeze, tank bottoms, and asphalt condensate. These

additional wastes are not waste oil and are not regulated under this chapter. We question the commentator's value of "hundreds of individual permits" and believe the actual number of waste oil transfer facilities that will require permits is closer to 35. Since waste oil transfer facilities operating under current regulations are required to be permitted, facilities complying with the regulations already possess permits.

112. Comment: We believe that the Department's formulation of siting restrictions in § 298.45(b)(4)(iv), coupled with the seeming expansive definition of "transfer facility," is destined to create unintended, but serious, problems. Many substations and maintenance facilities where trucks may come bearing one or a few drums of transformer oil on the way to a recycling facility are located in urban areas, within 50 feet of a property line or 300 feet of a dwelling. Barring such a facility from ever storing a single drum for a few hours, or requiring individual permits for such an activity, is regulatory overkill. Notably, the federal permit-by-rule for transfer facilities avoids such cumbersome and restrictive siting criteria. (13)

Response: As proposed, § 298.45(b)(4)(iv) was a permit-by-rule for satellite transfer facilities associated with permitted waste oil transfer or processing/re-refining facilities. The commentator appears to have mistakenly applied siting criteria under this permit-by-rule to generators' substations and maintenance facilities. The commentator also has interpreted the lack of a minimum time in the waste oil transfer facility definition to mean that every time a truck stops for a few hours while in the normal course of transporting waste oil, the location must satisfy these siting restrictions. This permit-by-rule, which has been removed in the final rulemaking, would not have applied to either of these situations.

Section 298.45(c) Additional requirements

113. Comment: Section 298.45(c) is misdesignated and should be Section 298.45(j). (12,13)

Response: This misnumbering has been corrected.

114. Comment: Subsection (j) (which is incorrectly labeled (c) in the *Pennsylvania Bulletin*) requires a waste oil transporter to comply with the preparedness, prevention and contingency plan and emergency procedures in Subchapters C and D of Chapter 264. A transporter is also required to comply with the underground storage tank and spill prevention program in Chapter 245. These requirements apply regardless of whether the waste oil exhibits any characteristics of hazardous waste.

These provisions are incorrectly cited. Chapter 264 was repealed and replaced with Chapter 264a, and Subchapter C no longer exists. The contingency plan and emergency procedures are now contained in Chapter 264a, Subchapter D.

Furthermore, it is unclear why transporters should be subject to these chapters. The underground storage tank requirements in Chapter 245 do not appear to be relevant to transporters since transportation would not occur in underground tanks. It is also unclear why waste oil that does not exhibit any characteristics of hazardous waste should be subject to hazardous waste planning requirements in Chapter 264a, rather than the residual waste requirements. The EQB should address these issues in the final regulation. (15)

Response: The mislabeling has been corrected and citations to the hazardous waste regulations, which were promulgated after this chapter was proposed, have been updated.

The tank and contingency requirements in this section apply to waste oil transfer facilities, rather than owners and operators who transport waste oil. The confusion in the requirements is a result of the proposed definition of "waste oil transporter" which, like the federal "used oil transporter" definition, includes waste oil transfer facilities as transporters. For clarification, waste oil transfer facilities have been removed from the definition of "waste oil transporter" in the final rulemaking. The final regulations also indicate the requirements that apply to transporters, those that apply to transfer facilities, and those that apply to both.

Section 298.46 Tracking

115. **Comment:** Clarification of this provision is needed with respect to the applicability of these tracking provisions to generators who are self-transporting materials to aggregation points or, for example, to generator-operated filtration facilities described in § 298.41(c). The corresponding federal rule upon which this section is based is focused on situations where a generator consigns a shipment to a transporter, who takes the shipment onto a processor. This level of paperwork should not be required where a utility is draining its own transformers and turbines, and taking that material to its own filtration facility, in order to recondition the oil for replacement back into the transformers and turbines. (13)

Response: With the exception that the proposed regulations require intermediate rail transporters to sign the record of acceptance, the requirements in § 298.46 are identical to those found in 40 CFR 279.46.

Section 298.64(e) Secondary containment for existing aboveground tanks

116. **Comment:** The title of this section should have the word "existing" changed to "new." (10)

Response: The Department agrees that the word "existing" should have been "new" in the proposed regulations. However, the final regulations cite the aboveground storage

tank requirements in the residual waste regulations. Therefore, references to new tanks have been removed.

Duquesne Light Company's Comments on Proposed Waste Oil Management Regulations

Duquesne Light Company is involved in a variety of activities that will be impacted by the proposed changes to the Pennsylvania waste oil regulations – ranging from the regular filtration and recycling of insulating oil during maintenance of electrical equipment, to fleet maintenance and encouragement of employee recycling through company-operated aggregation centers.

In keeping with Executive Order 1996-1 and the Regulatory Basics Initiative, we urge a close examination of the proposed waste oils rules, and question why the Commonwealth should not simply adopt by cross-reference the federal rules, following the approach recently taken with the Pennsylvania hazardous waste rules. Unless strongly justified by a compelling state interest (which we do not perceive), the state rules on this subject should not exceed the federal standards.

Our specific concerns include the following:

- §298.1 – The definition of “transfer facility” is broader than the corresponding federal counterpart, and may extend to both generation sites and locations (such as electrical substations) where small quantities of material are temporarily held for short periods awaiting shipment onward for recycling.
- §298.10(e) – The mandate that any determination that a material derived from waste oil is not a waste be made only as a special condition in a permit is inconsistent with federal provisions. This requirement leads to absurd results negating the usefulness of both permits-by-rule and general permits.
- §298.20(b)(3) – The permit-by-rule for generator waste oil processing needs clarification, particularly with respect to allowing the processing of oils drawn from several related facilities operated by the same generator (*e.g.*, oil collected from several maintenance garages).
- §298.20(c) – The proposed state recordkeeping requirements go substantially beyond the federal rules, and would be overly cumbersome in terms of detail.
- §298.22(c) & 298.45(h) – In light of the federal labeling rules, the state should allow containers to be labeled either “used oil” or “waste oil” to avoid a double labeling requirement.
- §298.22(e) – The federal rules refer to compliance with applicable Spill Prevention, Control and Countermeasure (SPCC) provisions, which only apply to certain used oil sites. The state rule would appear to impose written contingency plan requirements on every waste oil storage site, no matter how small.
- §298.31 – The aggregation point rules need to be clarified to allow collection of other materials, so long as those activities are in compliance with applicable requirements.
- §298.41(c) & 298.45 – Where the counterpart federal rule grants what is, in effect, a permit-by-rule for filtration and recycling of electrical transformer and turbine oils, the state rule drops key words. In the process, the state version of the permit-by-rule is virtually useless, since §298.45(b) disallows coverage for facilities engaging in filtration activities.

One-Page Summary of Comments by Pennsylvania Coal Association
To Proposed Rulemaking, 25 Pa. Code Chapter 298

- Numerous provisions are more stringent than federal requirements without any stated compelling interest beyond DEP's general "experience."
- Term "waste oil" should be discarded in favor of "recyclable" and "nonrecyclable used oil."
- Consistent with our proposed definitions, the presumption that used oil will be recycled and the exclusion of recyclable oil from the definition of residual waste, DEP should allow facilities which store used oil for less than 35 days to be exempt from designation as "transfer facilities," as they are under federal law.
- DEP needs to try to preserve the state law exemption for businesses which use motor vehicle or engine lubricants from the definition of "generator." PCA believes this may be done consistent with the federal Resource Conservation and Recovery Act.



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
March 23, 2001**

The Secretary

717-787-2814

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisburg II
Harrisburg, PA 17101

RE: Final Rulemaking: Waste Oil Amendments (#7-342)

Dear Bob:

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. This final rulemaking was approved by the Environmental Quality Board (EQB) on March 20, 2001.

This final rulemaking consolidates waste oil recycling regulations into one location – a new Chapter 298 – in the residual waste regulations. The rulemaking applies to waste oil collection, storage, transportation, processing, re-refining and burning for energy recovery. It also more closely aligns Pennsylvania's waste oil program with the federal used oil management standards under the Resource Conservation and Recovery Act (RCRA).

The Department worked with a group of waste oil stakeholders in developing the proposed rulemaking. The stakeholders group included waste oil processors, transporters, and the Associated Petroleum Industries of Pennsylvania. The Solid Waste Advisory Committee (SWAC) also reviewed the proposal. The proposed rulemaking was published April 10, 1999, with a 60-day public comment period and two public hearings. Fifteen commentators responded, two of which presented oral testimony at the hearings.

DEP had delayed developing the final rulemaking in order to address numerous cross-references to the comprehensive residual waste regulatory revisions, which were recently published. SWAC reviewed and endorsed a draft of the final regulations on November 2, 2000.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this final-form regulation. Section 5.1(e) of the Act provides that the Commission shall, within ten days after the expiration of the committee review period, approve or disapprove the final-form regulation.



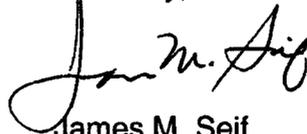
Mr. Robert E. Nyce

- 2 -

March 23, 2001

For additional information, please contact Sharon Trostle, Regulatory Coordinator,
at 783-8727.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Seif". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James M. Seif
Secretary

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-342
 SUBJECT: Waste Oil Regulations
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2001 MAR 23 AM 10:55
 REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/23/01		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-23-01		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
Stephen F. Hoffman 3/23/01		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

March 22, 2001