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Regulatory Analysis Form		This space for use by IRRRC 55 MAR 22 PM 4:07 REGULATORY REVIEW COMMISSION Harbison IRRRC Number: 2022	
(1) Agency Department of Environmental Protection			
(2) I.D. Number (Governor's Office Use) 7-342			
(3) Short Title Waste Oil Regulations			
(4) PA Code Cite 25 PA Code, Chapters 261, 266, 287, 298		(5) Agency Contacts & Telephone Numbers Primary Contact: Sharon K. Freeman, 783 -1303 Secondary Contact: William Pounds, 787-7564	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	

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

The Environmental Quality Board (EQB) proposes to amend 25 Pa. Code, Chapters 261 and 266 (relating to hazardous waste) and 287 (relating to residual waste). In addition, the EQB proposes to adopt 25 Pa. Code 298 (relating to standards for the management of waste oil). This proposal consolidates existing waste oil regulations into a single chapter. This proposal 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 proposed 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 proposal 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 proposal 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 proposed regulations contain management standards for tanks and containers, which are absent in the current regulations. These management standards will decrease the threat of pollution to the waters of the Commonwealth by requiring containment of spills.

Other materials which can be mixed with waste oil and have the resultant mixture managed as waste oil have been more clearly delineated and limited in the proposed regulations. Since the waste oil will contain less "unexpected" hazardous constituents under this proposal, 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 current regulations require individual or general permits for processing of waste oil that are protective of the public health, safety, and the environment. The proposed regulations will continue to require permits to be protective of the public health, safety, and the environment, but will 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 current Residual Waste Regulations. The proposed regulations will 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 proposal 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 proposal 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.)

The proposed 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). 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.

(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 \$1,494,500 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 \$119,500 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 which choose to operate waste oil collection facilities as a service to the public, this proposal 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 for 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	1,614,000	1,614,000	1,614,000	1,614,000	1,614,000
Local Government	0	0	0	0	0	0
State Governments	0	10,000	0	0	0	0
Total Costs	0	1,624,000	1,614,000	1,614,000	1,614,000	1,614,000
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 which 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 proposed 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 proposed 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 the proposed regulations are limited to waste which is hazardous solely due to the characteristic of ignitability, when the resultant mixture no longer exhibits the characteristic of ignitability. Simple dilution of characteristic hazardous waste or listed hazardous waste from conditionally exempt small quantity generators 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 the proposed 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. The proposed 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) The proposed 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, 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.

- §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.

- §298.21 (relating to hazardous waste mixing) See §298.10 above.

- §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) The proposed 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 the proposed 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.

- §298.48 (relating to signs on vehicles) The proposed 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 the proposed 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."

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

Requirements for waste oil management facilities and transporters in these regulations will not put Pennsylvania at a competitive disadvantage with other states because these are improvements over Pennsylvania's existing regulations. While costs to generators who mix hazardous waste with waste oil destined to be burned for energy recovery will increase under this proposal, the Department does not believe that the regulation put 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.

The proposed 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:

- §261.3 (relating to the definition of hazardous waste)
- §261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators)
- §261.6 (relating to hazardous wastes that are recycled)
- §265.435 (relating to generator treatment)
- Subchapter E of §266 (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.

The Department will hold three public meetings across the State and one public hearing. The dates and locations of these meetings and the hearing have not been scheduled at this time.

(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 proposal 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 proposal 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. The proposed 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.

The proposed 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. A PBR was included for satellite transfer facilities operated by permitted waste oil processing facilities.

(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 schedule published by the Department to determine whether the regulations effectively fulfill their respective goals.

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

Cristina J. Caputo

(DEPUTY ATTORNEY GENERAL)

MAR 05 1999.

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: *J. 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 Agencies.

BY: *Ormaleli*

3/16/99

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.

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Waste Oil Regulations
25 Pa. Code, Chapters 261, 266, 287, 298

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
Waste Oil Regulations
[25 Pa. Code Chapters 261, 266, 287, and 298]

Preamble

The Environmental Quality Board (EQB) proposes to amend Chapter 261 (relating to criteria, identification and listing of hazardous waste), 266 (relating to special standards for the management of certain hazardous waste activities), 287 (relating to residual waste management — general provisions), and to adopt Chapter 298 (relating to standards for recycling waste oil) as set forth in Annex A.

This proposal was adopted by the EQB at its regular meeting on February 16,
1999.

A. Effective Date

This proposed chapter will go into effect immediately 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 17105-8471, telephone: (717) 787-7564, or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone: (717) 787-7060. Information regarding submitting comments on this proposal appears in Section I of this Preamble. 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 proposed chapter is available electronically through the Department of Environmental Protection (Department) web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

This proposal is being made under the authority of Section 5 of the Clean Streams Law, 35 P.S. §691.105; Sections 1 - 9 of the Pennsylvania used Oil Recycling Act, 58 P.S. §471 - 480; Section 105 of the Solid Waste Management Act, 35 P.S. §6018.105; and Section 1920-A of the Administrative Code of 1929, 71 P.S. 510-20. Section 5 of the Clean Streams law directs the Department to adopt such rules and regulations as are necessary to implement the Act.

Section 9(e) of the Pennsylvania Used Oil Recycling Act authorizes the adoption of regulations. Pursuant to Section 105 of the Solid Waste Management Act, the Board has the power and duty to adopt such rules and regulations as are necessary to carry out the purposes of the Solid Waste Management Act which includes the management of solid waste to protect the public's health, safety, and welfare, as well as protect the environmental resources of the Commonwealth. Section 1920-A of the Administrative Code of 1929 grants the Board the authority to promulgate such rules and regulations as are necessary for the proper work of the Department.

D. Background of the Proposal

The existing regulatory framework addressing waste oil recycling is confusing and inconsistent. This is because the regulations pertaining to waste oil recycling are scattered throughout the hazardous and residual waste regulations.

The following examples illustrate the problem. Only §261.3(h) (relating to definition of hazardous waste) states that characteristically hazardous waste oil being recycled by means other than burning is to be managed as a residual waste. Conversely, waste oil that is a residual or characteristically hazardous waste being burned for energy recovery is managed under Chapter 266, Subchapter E (relating to burning of waste oil for energy recovery). The burning of residual waste oil for energy recovery is also subject to the requirements of §287.102(g) (relating to permit-by-rule, waste oil energy recovery). Some of the residual waste permit-by-rule requirements are more stringent than the Chapter 266, Subchapter E requirements.

To eliminate this confusion and inconsistency in standards, the EQB is proposing to place all regulations addressing waste oil recycling into a separate chapter. These waste oil recycling regulations will apply to the collection, storage, transportation, processing, re-refining and burning for energy recovery of waste oil. Though placed in Article IX (relating to residual waste management), these regulations will also apply to the recycling of waste oil that is a hazardous waste solely due to a characteristic.

This proposal also aligns the Department's hazardous waste program more closely to the federal hazardous waste management program. The U.S. Environmental Protection Agency (EPA) is directed by §3014 of the Resource Conservation and Recovery Act (RCRA) to develop, as part of its hazardous waste management program, standards for the handling and management of recycled used oil. These regulations shall not discourage the recovery or recycling of used oil consistent with the protection of human health and the environment. Any facility operating under these regulations is deemed to have a RCRA Subtitle C permit for the storage or treatment of hazardous waste. *See* 42 U.S.C.A. §6935. EPA's used oil regulations are a permit-by-rule for the storage and treatment of used oil.

On September 10, 1992, EPA published 40 CFR Part 279 (relating to recycled used oil management standards). These regulations apply to the recycling of non-hazardous used oil and used oil that is hazardous solely 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 the EPA used oil recycling standards. This is because Pennsylvania received authorization approximately six years prior to the promulgation of EPA's used oil recycling chapter. Once the proposed waste oil recycling regulations are adopted as a final rule, the Department will be able to add EPA's used oil recycling standards to its authorized program.

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

The proposed regulations were also reviewed by the Solid Waste Advisory Committee (SWAC). In November, 1997 and January, 1998, SWAC endorsed the proposed regulations for EQB consideration.

E. Summary and Purpose of Proposed Rulemaking

This proposed rulemaking was developed in response to the DEP Secretary's Regulatory Basics Initiative (RBI) and the Governor's Executive Order 1996-1 (Regulatory Review and Promulgation) which required all agencies to re-evaluate existing regulations based on the following criteria: (1) agency requirements are no more stringent than standards imposed by federal law unless justified by a compelling and articulable Pennsylvania interest or authorized by state law; (2) requirements are eliminated which are no longer necessary or redundant; (3) performance-based requirements are encouraged; (4) new green technologies are encouraged; (5) a pollution prevention approach is supported; and (6) information is prepared in plain, simple, clear and concise language.

The need for a single chapter addressing the recycling of residual and characteristically hazardous waste oil was identified as a result of the RBI review of the hazardous and residual waste regulations. This proposal is based on and is largely identical to EPA's used oil regulations. The following summary will identify the differences and explain the reason for each difference.

Subchapter A. Definitions.

Proposed §298.1 (relating to definitions) defines terms specifically for the waste oil recycling regulations. The terms defined in the Department's hazardous waste and storage tank regulations will have the same meaning when used in this chapter. Most of the terms and definitions are identical to those found in EPA's regulations. The following summary identifies those terms or definitions which differ from EPA's terms or definitions and explains the reason for each difference.

Waste oil

The proposed regulations use the term "waste oil" where EPA regulations use the term "used oil". This is primarily a difference in terminology and not definition.

This difference of terms is necessitated by differences between Pennsylvania and federal law. The Pennsylvania Used Oil Recycling Act narrowly defines "used oil" as petroleum or synthetic based oil used to lubricate an internal combustion motor or a motor vehicle's transmission, gears or axles which have become unsuitable for their original purpose due to contamination or loss of properties through handling, storage or use. *See* 58 P.S. §473. In contrast, RCRA and EPA's regulations broadly define used oil as oil refined from crude or synthetic oil which has been contaminated through use. *See* 42 U.S.C. §6903(36) (relating to definitions) and 40 CFR §279.1 (relating to definitions).

To resolve this problem, the proposed regulations, like the existing regulations, use the term "waste oil" in place of "used oil". To ensure that the proposed regulations have the same scope as EPA's regulations, the definition for waste oil includes the federal and state law definitions for "used oil".

Tanks

The definition for tank in the proposed regulations is essentially identical to EPA's definition. In both cases, a tank is a stationary device used to hold waste or used oil, respectively. The difference lies in the material that the tank is composed of. EPA allows the tank to be made out of any non-earthen material, including wood. The proposed regulations do not allow the use of wooden tanks. In the Department's experience, wooden tanks are significantly more prone to leakage than tanks made out of other non-earthen materials.

Waste oil processing

The proposed regulations use the term "waste oil processing" where EPA uses the term "processing". This is merely a difference in terminology needed to avoid confusion with a term defined by Pennsylvania Law. Under the Solid Waste Management Act, processing is any technology used to reduce the volume of municipal or residual waste or to convert all or part of that waste for off-site reuse. Processing facilities include transfer, composting and resource recovery facilities. *See* 35 P.S. §6018.103 (relating to definitions). In contrast, under EPA's

used oil regulations, processing is a chemical or physical operation designed to produce a product from used oil or make it more amenable for production. Therefore, the proposed regulations use the term “waste oil processing” rather than “processing” to avoid confusion with the broad concept of processing found in the Solid Waste Management Act.

Waste oil transfer facility

Under the proposed regulations, a waste oil transfer facility is any transportation related facility, *e.g.* loading dock or parking area, that receives or holds waste oil in the normal course of business. This definition differs from EPA's definition in several ways. First, EPA's definition of “used oil transfer facilities” only includes those transportation related facilities where waste oil is held for at least one day and not more than 35 days. If the used oil is held for more than 35 days, the facility is regulated as a used oil processing facility. Secondly, EPA's definition includes areas where used oil is stored prior to on-site processing by a generator. The reasons for these differences in definitions derives from requirements of state law and differences in how the waste oil regulations work.

Eliminating the minimum holding time and expanding the definition to all areas where waste oil is received is mandated by state law. The Solid Waste Management Act defines a transfer facility as any facility that receives residual or municipal waste for transfer or processing. There is no minimum limit on the amount of time that the waste is to be held at the transfer facility. Since much of the waste oil going through waste oil transfer facilities is a residual waste, there can be no minimum holding time requirement and the waste oil transfer facility must include all areas where the waste oil is received.

The 35-day limit on holding waste oil was eliminated as an unnecessary restriction given how waste oil transfer facilities will be regulated. As explained above, EPA's used oil regulations act as a PBR for the storage or treatment of used oil. As with any other PBR, EPA cannot modify the used oil transfer facility PBR on a case-by-case basis to address the increased risks posed by storing waste oil for an extended period of time. In addition, used oil transfer facilities are not covered by a bond. In contrast, and as explained below, waste oil transfer facilities will be regulated by an individual or general permit and secured with a bond. The permit conditions and bond amount will address the increased risks and liabilities associated with waste oil transfer facilities that hold waste oil for more than 35 days.

Finally, the waste oil transfer facility definition does not include the reference to areas where waste oil is stored prior to certain waste oil processing activities conducted by a generator. This was done to eliminate confusion and ambiguity from the regulations and to ensure that the waste oil regulations will not be unnecessarily interpreted to be more stringent than EPA's used oil regulations. The activities in question are a limited set of on-site waste oil processing activities to be authorized by a PBR rather than a waste oil processing permit. Including in the waste oil transfer facility definition a reference to storage areas at generators conducting authorized on-site processing activities creates the implication that a generator conducting one of these on-site processing activities is now operating a facility subject to regulation as a waste oil

transfer facility. However, EPA never intended to subject these generators to the more stringent transfer facility regulations.

In amending the definition for used oil transfer facilities to include storage areas prior to certain on-site used oil processing activities, EPA did not intend to turn these generator sites into transfer facilities. Instead, EPA merely wanted to make it clear that a transfer facility which received used oil from field equipment, filtered the used oil and then returned it to the field equipment would not be regulated as a used oil processing facility. *See* 59 FR 1005 (March 4, 1994). As explained below, the waste oil transfer facilities regulations make it clear that such activities can occur at a waste oil transfer facility. Therefore, eliminating this reference from the definition for waste oil transfer facility will eliminate confusion and ambiguity from the regulations and have no effect on whether the waste oil regulations are more or less stringent than the used oil regulations.

Subchapter B. Applicability.

This subchapter specifies when waste oil and materials containing waste oil are to be managed under this chapter, managed as a residual or hazardous waste, or not managed as a waste. Most of the applicability standards are found in §298.10 (relating to applicability). Special standards for waste oil being burned for energy recovery are found in §298.11 (relating to waste oil specifications).

§298.10 Applicability

Waste oil.

Except as otherwise provided in this section or §298.11, this chapter applies to the management of waste oil. It applies even if the waste oil exhibits a hazardous characteristic identified in Chapter 261 Subchapter C (relating to characteristics of hazardous waste). These proposed regulations presume that waste oil is to be recycled unless the waste oil is being disposed of or shipped to someone for disposal.

Mixtures of waste oil and listed hazardous waste.

The proposed waste oil regulations do not apply to mixtures of waste oil and listed hazardous waste. These mixtures are a listed hazardous waste to be managed under the hazardous waste regulations. To ensure against mixing of waste oil and listed hazardous waste, the proposed regulations retain EPA's rebuttable presumption that waste oil containing more than 1,000 ppm total halogens is a hazardous waste because it was mixed with a listed halogenated hazardous waste.

This presumption can be rebutted in a number of ways. One obvious approach is to demonstrate that the halogens were in the oil as manufactured, *e.g.* some lubricating oils contain more than 1,000 ppm total halogens. Another approach is to demonstrate that the halogens come

from a waste that is exempt from regulation as a hazardous waste, *e.g.* household waste. The analytical presumption can also be rebutted by using an appropriate analytical method to demonstrate that the waste oil does not contain significant levels of hazardous halogenated constituents, *i.e.* chlorinated solvents.

If an analytical method is used, the critical question becomes what is a significant level of a hazardous halogenated constituent. The Department agrees with EPA's approach to addressing this issue. When individual hazardous solvents are present at very low levels, (*e.g.* 100 ppm) it is extremely difficult to identify the source of contamination, and mixing with a hazardous waste cannot be presumed. Whether higher levels of halogens (100 to 1,000 ppm) indicates that mixing has occurred depends on the circumstances of individual cases. *See* 50 Fr. 49212 and 49213 (November 29, 1985).

Of course, under certain circumstances, showing that the halogenated constituent is present in low levels will not rebut the presumption of illegal mixing. For example, it is doubtful that the presumption would be rebutted if waste oil used to lubricate manufacturing equipment having more than 1,000 ppm total halogens was shown to contain 25 ppm chlordane, a chlorinated halogenated pesticide that is listed as a hazardous waste. This is because waste lubricating oil should not contain chlordane, so that its presence indicates that the waste oil was intentionally mixed with a listed hazardous waste.

There are two circumstances when the rebuttable presumption is not applicable. The rebuttable presumption does not apply to metal working oils/fluids containing chlorinated paraffins if the oils are reclaimed under an appropriate tolling agreement. As explained below, §298.24(c) (relating to off-site shipments) specifies what is an adequate tolling agreement. The reclaimed oils must be returned to the person who generated the waste oil. The rebuttable presumption also does not apply to waste oil from refrigeration units contaminated with chlorofluorocarbons (CFCs) provided the CFCs are destined for reclamation. This exemption is lost if the waste oil is mixed with waste oil from other sources.

Mixtures of waste oil and characteristically hazardous waste.

The proposed waste oil regulations apply only to mixtures of waste oil and hazardous waste that is hazardous solely due to the characteristic of ignitability. For the mixture to be managed as waste oil, it must not exhibit the characteristic of ignitability. As with the Department's existing regulations, and unlike EPA's used oil regulations, the proposed waste oil regulations will not apply to mixtures of waste oil and all other characteristically hazardous wastes. There are several reasons for excluding mixtures of waste oil and non-ignitable characteristically hazardous waste.

To begin with, allowing mixtures of waste oil and hazardous waste to be managed as waste oil runs counter to the Department's pollution prevention efforts. 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 generate.

More importantly, in the Department's experience, allowing mixtures of waste oil and non-ignitable characteristically hazardous waste to be managed as waste oil will not protect the environment or the public's health, safety or welfare. This is because merely diluting the hazardous waste with waste oil to eliminate the hazardous characteristic does not eliminate or neutralize the hazardous constituents. As a result, given the myriad methods for reprocessing waste oil and using waste oil derived products, there is the distinct risk that the hazardous constituents in the waste oil will harm the public or the environment.

Of particular concern is the recycling of these mixtures by burning for energy recovery. The criteria used by EPA and the Department for determining whether waste oil can be burned as virgin fuel oil will not detect the wide variety of hazardous constituents that can occur in these mixtures. Even if these mixtures are to be burned in a boiler or industrial furnace, it will be impossible to establish appropriate air quality limits because there is no way the Department and the burner can know all the types of hazardous waste that may have been disposed of in the waste oil.

CESQG generated mixtures of waste oil and hazardous waste.

Unlike EPA's used oil regulations and the Department's existing regulations, the waste oil regulations will not allow a conditionally exempt small quantity generator ("CESQG") to mix any type of hazardous waste oil with its waste oil and have the mixture or its products burned for energy recovery as waste oil. As with mixtures of waste oil, and characteristically hazardous waste which do not exhibit the hazardous characteristic, allowing CESQG generated mixtures of hazardous waste and waste oil to be recycled as waste oil undercuts the Department's pollution prevention efforts and will not be protective of the public's health, safety, welfare or the environment. In particular, allowing CESQGs to mix any type of hazardous waste and waste oil and have it recycled as waste oil poses a more significant risk to the public's health, safety, welfare and the environment than the mixtures of non-ignitable characteristically hazardous waste and waste oil discussed above. This is because the CESQG mixture could either contain a listed hazardous waste or still exhibit the hazardous waste characteristic. As explained above, there is no assurance that the recycling process, be it re-processing, re-refining or burning for energy recovery, will neutralize the hazardous constituents which will exist in the waste oil.

In addition, allowing CESQG generated mixtures of waste oil and any type of hazardous waste to be managed as waste oil makes compliance assurance difficult. In the Department's experience, waste oil transporters and processors/re-refiners accept waste oil from CESQGs along with waste oil from all other generators. As a result, if the waste oil contains more than 1,000 ppm total halogens, it is very difficult to determine whether someone other than a CESQG has mixed hazardous waste with its waste oil.

This difference in how the EPA used oil regulations and the proposed waste oil regulations address CESQG generated mixtures of waste oil and hazardous waste stem from a fundamental difference in how CESQG hazardous waste is regulated. EPA exempts CESQG generated hazardous waste from regulation as a hazardous waste. In contrast, the Commonwealth, through the Department's regulations, has always recognized that CESQG

generated hazardous waste is still hazardous and should be disposed of or treated at a permitted hazardous waste facility. In a recent set of amendments to the hazardous waste regulations, the EQB had proposed to allow CESQG hazardous waste to be disposed at municipal or residual waste facilities. In response to concerns from the legislature and commentators, that proposal was withdrawn and replaced with a commitment not to allow CESQG hazardous waste to be disposed at a municipal or residual waste facility. *See 27 Pa. B. 237* (January 11, 1997).

Materials containing or otherwise contaminated with waste oil.

A material containing or otherwise contaminated with waste oil is managed under this chapter as waste oil. This waste oil contaminated material can be burned for energy recovery in accordance with the requirements of this chapter. Once the waste oil is drained or removed to the extent practical from the contaminated material, it ceases to be waste oil. In general, the test for determining whether the waste oil has been drained or removed from the contaminated material is that there is no visible waste oil in or on the material. Unless it is to be disposed, the waste oil drained or removed from the contaminated material will be managed under these waste oil regulations. The remaining material is managed as a municipal, residual or hazardous waste.

Unlike EPA's used oil regulations, the proposed waste oil regulations contain a special standard for wastewaters containing or contaminated with waste oil. Wastewaters that contain at least 1% recoverable waste oil is waste oil to be managed under this chapter. For wastewaters containing less than 1% waste oil to be managed as waste oil, the operator must demonstrate that it can recover marketable quantities of waste oil from the contaminated wastewaters.

This special rule is being established because in the Department's experience the no visible waste oil test is not applicable to the reclamation of waste oil from wastewater. When wastewater contains less than 1% waste 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. This special requirement for wastewaters containing less than 1% recoverable waste oil is appropriate because the person claiming that it is recovering waste oil is the only one capable of establishing that the waste oil is actually being recycled.

The differences between EPA's waste regulations and the Department's waste regulations also explain why the waste oil regulations have this special rule. Except for the used oil regulations, EPA's hazardous and industrial waste regulations do not apply to wastewaters containing used oil. Therefore, regulating all wastewater with visible oil (an oily sheen) as used oil represents an increase in regulation by EPA. On the other hand, the Department's existing residual waste regulations already apply to wastewaters containing waste oil. These existing regulations are more appropriate for the management of wastewaters containing small amounts of waste oil which are not being recycled.

Mixtures of waste oil and products.

Mixtures of waste oil and fuels or fuel products are managed as waste oil. The only exceptions are mixtures of waste oil and diesel fuel. This mixture is not a regulated waste provided the waste oil generator is creating the mixture for use in its own vehicles. Prior to mixing, the waste oil must be managed in accordance with the requirements of Subchapter C (relating to generator standards).

Materials derived from waste oil.

A material derived from waste oil that is beneficially used is not a waste provided it is neither burned for energy recovery nor used in a manner constituting disposal. EPA's used oil regulations do not contain any standards or procedures for determining when materials derived from waste oil are being beneficially used and are not a waste. In contrast, the proposed waste oil regulations require this determination to be made as a special condition to the permit for the waste oil processing/re-refining facility producing the product.

As explained below, waste oil processing/re-refining facilities must be authorized by a permit issued under Chapter 287 (relating to residual waste management — general provisions). Since 1992, the standards and procedures in this chapter have been used to make the determination that a material derived from a residual waste can be deregulated, *e.g.* dewatering determinations or beneficial use permits. The Department has already issued a number of waste oil processing permits which include conditions determining certain materials derived from waste oil not to be a waste or to be beneficially used. Given the risks to the environment and the public's welfare from the misuse of materials derived from waste oil, there is no sound reason for treating these materials differently from any other material derived from a residual waste.

If the material derived from the waste oil is to be burned for energy recovery, *e.g.* waste oil fuels, it is subject to the proposed waste oil regulations. Materials derived from waste oil that are to be used in a manner constituting disposal are not waste oil and are managed either as a residual or hazardous waste. For example, waste oil being used as a dust suppressant is a use constituting disposal. It should be noted that using waste oil as a dust suppressant is expressly prohibited by the hazardous waste regulations and will not be authorized under the residual waste regulations. Finally, re-refining distillation tank bottoms used as to make asphalt will not be regulated as waste oil.

Wastewaters.

The proposed waste oil regulations do not apply to waste waters containing *de minimis* quantities of waste oil provided the waste waters are being discharged under a National Pollutant Discharge Elimination System permit or pursuant to a pre-treatment plan. For the purposes of this section, *de minimis* quantities of waste oil are small unintentional discharges from equipment in normal operation or small quantities of waste oil lost to the wastewater treatment system. This exception does not apply to large leaks or spills or to waste oil recovered from wastewater treatment systems.

Waste oil introduced into crude oil pipelines or a petroleum refining facility.

The proposed waste oil regulations do not apply to mixtures of waste oil and crude oil or natural gas liquids that are to be inserted into a crude oil pipeline. However, prior to mixing, the management of the waste oil is subject to the proposed regulations.

The proposed waste oil regulations do not apply to the storage or transportation of mixtures of waste oil with crude oil or natural gas, containing less than 1% waste oil that are to be inserted into the refining process prior to distillation or catalytic cracking. Also, waste oil inserted into the refining process prior to distillation or catalytic cracking is not subject to regulation provided that no more than 1% of the feed stock going to any unit at any time contains waste oil. In addition, waste oil meeting the specifications of §298.11(b) (relating to waste oil specifications) inserted into the refining process after distillation or catalytic cracking is not subject to the proposed regulations. Prior to insertion into the refining process, the waste oil is subject to the proposed regulations. Finally, waste oil incidentally recovered from a hydrocarbon recovery unit or wastewater treatment unit and returned to the refining process is not subject to these proposed regulations.

Waste oil on vessels.

Waste oil generated on vessels from normal shipboard operations is not subject to regulation as waste oil until it is brought ashore.

Waste oil containing PCBs.

The proposed waste oil regulations will apply to the recycling of waste oil containing less than 50 ppm polychlorinated biphenyls (PCBs). If the waste oil contains 50 ppm or more PCBs, its recycling is exclusively regulated under the Toxic Substances Control Act, 15 U.S.C.A. §§2901-2916 and 40 CFR Part 761. Waste oil containing less than 50 ppm PCBs which is being recycled by burning for energy recovery will be subject to these proposed regulations as well as TSCA and 40 CFR 761.20(e) (relating to prohibitions).

§298.11. Waste oil specifications

The proposed waste oil regulations contain two special applicability rules for waste oil being burned for energy recovery. These rules specify the minimum heat value for the waste oil being burned for energy recovery and limits on certain contaminants which, if satisfied, allow the waste oil to be burned as if it was not a waste.

Unlike EPA's used oil regulations, the proposed waste oil regulations require waste oil being burned for energy recovery to contain at least 8,000 BTUs per pound. This rule applies whether or not the waste oil is to be burned under this chapter. If the waste oil contains less than 8,000 BTUs per pound, then the waste oil is being incinerated as a hazardous or residual waste, rather than being burned for energy recovery.

The Department's regulations for burning waste oil for energy recovery have always contained the 8,000 BTU per pound limit. *See* §266.40(b)(2) (relating to applicability). In the Department's experience, the BTU restriction, being equivalent to wood or low grade coal, provides some assurance that materials containing or otherwise contaminated with waste oil are actually being burned for energy recovery and not disposal.

This proposed regulation retains the on/off specification table. Except for some recordkeeping requirements, on-specification waste oil being burned for energy recovery is not subject to regulation as a waste and can be substituted for a virgin fuel oil.

The on/off-specification table was established by EPA in 1985, 50 FR. 49164 (November 29, 1985). The limits in the table identify those contaminants EPA believes are likely to occur in waste oil at levels to be protective of public health in urban settings. These contaminants are: arsenic-5 ppm. max., cadmium-2 ppm. max., chromium-10 ppm. max., lead-100 ppm max., flash point-100 f min, total halogens-4,000 ppm. max. Except for total halogens, the proposed waste oil on/off-specification table is identical to EPA's on/off specification table.

The existing limit of 1,000 ppm total halogens has been retained to protect the health and property of individuals using on-specification waste oil as home heating fuel oil. When chlorinated halogens are burned, they produce hydrochloric acid which can damage the burner resulting in incomplete combustion and the generation of more pollutants. In developing its limit for used oil, EPA did not consider home heating systems. It was assumed that on-specification waste oil would be burned in small non-industrial boilers used in businesses and apartment buildings. These boilers are largely converted coal burners that were designed to withstand the corrosive effects of burning high chlorine coal. The 4,000 ppm limit was selected because heating fuel oil containing 4,000 ppm total halogens will generate the same quantity of hydrochloric acid as the comparable quantity of high chlorine coal. 50 FR at 49164. Unfortunately, EPA's assumption ignores the fact that on-specification used/waste oil can be substituted for virgin home fuel oil. For the most part, home oil heating systems are not converted coal burners and were not designed to withstand the corrosive effects of burning high chlorine coal. In the Department's experience, the 1,000 ppm limit is more appropriate for protecting home oil burners.

An alternative approach for addressing this problem is to include in the on/off specification two limits for total halogens. A limit of 1,000 total halogens will be applicable to waste oil being burned for energy recovery as home heating fuel. The limit of 4,000 total halogens is applicable for all other methods of energy recovery. The EQB is requesting comments on this alternative approach.

§298.12. Prohibitions

This section contains a number of prohibitions concerning the management or use of waste oil. Waste oil cannot be stored in surface impoundments or waste piles unless the storage unit is authorized by a hazardous waste permit. Also, waste oil cannot be used as a dust suppressant. Finally, off specification waste oil can be burned only in authorized boilers,

industrial furnaces, space heaters, and hazardous waste incinerators.

Subchapter C. Standards for waste oil generators.

Subchapter C establishes who is subject to regulation as a waste oil generator, as well as the applicable management and recordkeeping requirements.

§298.20. Applicability

General rule.

In general, a waste oil generator is the person who generates waste oil or who first causes it to be subject to regulation. There are several exceptions to this rule. The following individuals and entities are not generators: (1) farmers who generate less than an average of 25 gallons a month from their equipment; (2) household do-it-yourselfers; and (3) vessels at port or sea, however once the waste oil comes ashore, the vessel and receiving person are joint generators.

The proposed waste oil regulations do not continue to exempt from regulation as generators businesses which generate waste lubricating oils from internal combustion engines or vehicles. This exemption was established by the Pennsylvania Used Oil Recycling Act, 58 P.S. §§471-480. RCRA and its implementing regulations pre-empt all less stringent state laws. See 42 U.S.C.A. §6929. Therefore, EPA's definition for used oil generators which includes businesses that generate waste lubricating oil from internal combustion engines and vehicles, pre-empts this aspect of the Pennsylvania Used Oil Recycling Act.

Other Applicable Provisions.

Waste oil generators must dispose of their waste oil in accordance with either the other provisions of the residual waste regulations or the hazardous waste regulations. Except as provided for in this subchapter, waste oil generators who transport, process/re-refine, burn for energy recovery or market waste oil, or first declares the waste oil to be on-specification must comply with the other subchapter addressing that activity. Section 298.24(a) and (b) (relating to off site shipments) authorizes waste oil generators to transport small quantities of their waste oil and do-it-yourselfer waste oil to a waste oil collection center or aggregation point. Section 298.23 (relating to on-site burning in space heaters) authorizes waste oil generators to burn small quantities of their off-specification waste oil in a space heater. Waste oil generators who use mist collectors to remove small droplets of waste oil from the air are not waste oil processors provided the waste oil is not being shipped off site to be burned for energy recovery.

There are three types of waste oil on-site processing activities which a waste oil generator can conduct pursuant to a PBR rather than a permit issued pursuant to Subchapter F (relating to standards for waste oil processors/re-refiners). These on-site processing activities are: (1) the reconditioning of waste oil for the generator's re-use; (2) separating waste oil from wastewater to make the wastewater acceptable for discharge; and (3) removing waste oil from materials

containing or otherwise contaminated with waste oil.

For the PBR to be applicable, regardless of the type of processing activity, the waste oil generator must be processing only waste oil generated on-site and the waste oil cannot be shipped off-site to be burned for energy recovery. If the waste oil generator is reconditioning waste oil or removing waste oil from materials containing or otherwise contaminated with waste oil, the remaining wastes must be managed in accordance with the Solid Waste Management Act and the applicable regulations and the processing activity can not adversely affect the environment or the public's health, safety or welfare. If the waste oil is being separated from wastewater to make it more acceptable for discharge, the waste oil must have been generated on-site; the wastewater was either treated on-site or at a previously interconnected facility; the discharge from the facility is in compliance with its National Pollutant Discharge Elimination System permit; and the facility has an hazardous waste identification number; the facility is regularly inspected and maintained; a hazardous waste operating report for the facility is maintained; the hazardous waste quarterly facility reports are submitted; and the facility complies with Chapter 265, Subchapter Q (relating to chemical, physical and biological treatment).

These PBRs do not establish new requirements. The existing regulations require generators, including waste oil generators, to conduct on-site processing/reclamation activities pursuant to a written permit or a PBR. *See e.g.*, 25 Pa. Code §287.102 (relating to permit-by-rule), §265.433 (relating to wastewater treatment), and §266 Subchapter H (relating to on-site reclamation). If anything, the proposed PBRs for the reconditioning and removal of waste oil are less stringent than the existing applicable PBRs.

These PBRs are more stringent than their EPA used oil counterparts. EPA's used oil regulations only require the waste oil to be generated on-site and the waste oil cannot be shipped off-site to be burned for energy recovery. EPA regulations do not address the risks from mishandling the waste oil which are posed when the processing activity is conducted by the waste oil generator or someone else. The PBR addresses on-site management of waste oil.

Recordkeeping.

In the Department's experience, it is very difficult to determine whether a particular load of waste oil has been improperly mixed with hazardous waste unless the generator has maintained on record basic information concerning the oil used and how it became a waste. This regulation was drafted to respond to concerns raised by the ad hoc waste oil recycling industry group that without basic information concerning the waste oil and how it was generated, it is difficult for waste oil recyclers to determine whether a particular load of waste oil has been improperly mixed with hazardous waste. Therefore, even though EPA's used oil regulations do not have generator record keeping requirements, the proposed waste oil regulations will require waste oil generators to keep for five years records concerning their waste oil. These records shall identify the type of oil being used, the process generating the waste oil, all tests and the results thereof used for determining whether the waste oil contains more than 1,000 ppm total halogens, any information used to rebut the presumption that the waste oil was improperly mixed with a hazardous waste, and the type and quantity of any characteristically ignitable hazardous waste

mixed with the waste oil where the resulting mixture did not exhibit the characteristic of ignitability.

§298.21. Hazardous waste mixing

Waste oil generators must follow the mixture rules of §298.10(b). In other words, mixtures of waste oil and hazardous waste is a hazardous waste and must be managed as such. The only exemption to this prohibition is for mixtures of waste oil and characteristically ignitable hazardous waste where the mixture does not exhibit the characteristic of ignitability. In addition, waste oil generators are subject to the rebuttable presumption that waste oil containing more than 1,000 ppm total halogens is a hazardous waste because it has been mixed with a listed hazardous waste.

§298.22. Waste oil storage

Waste oil generators may use tanks, containers or other units subject to the Department's hazardous waste regulations to store waste oil. Underground storage tanks used to hold waste oil, even characteristically hazardous waste oil, are subject to the Department's storage tank regulations found in Chapter 245 (relating to administration of storage tank and spill prevention program) including corrective action. Aboveground tanks and containers must be leak free and in good condition, *e.g.*, structurally sound. Field pipes conveying waste oil to underground tanks, aboveground tanks and containers must be identified with the words 'waste oil'. The waste oil generator must comply with the applicable hazardous waste regulations concerning spill prevention, control and counter measures. For releases of waste oil not subject to the underground tank corrective action requirements of Chapter 245 Subchapter D, the generator shall stop and contain the leak, clean up all spill waste oil and contaminated material, and repair or replace any leaking containers.

§298.23. On-site burning in space heaters

Waste oil generators are deemed to have a PBR to burn waste oil. To be eligible for this PBR the space heater can only burn waste oil generated by the heater's owner/operator or by household do-it-yourselfers; the heater can have a maximum design capacity of .5 million BTUs per hour, and be vented to the ambient air.

§298.24. Off-site shipments

Except as provided for in this section, waste oil generators must use a transporter who has an EPA identification number to transport their waste oil. The generator must certify to the transporter that, except for mixtures of waste oil and ignitable characteristically hazardous waste which no longer exhibits the characteristic of ignitability, the waste oil has not been mixed with a hazardous waste.

Under the following criteria a generator can transport waste oil without using a transporter holding an EPA identification number. The generator can transport up to 55 gallons

of its own waste oil or do-it-yourselfer waste oil to an authorized collection center by means of a vehicle owned by the generator or one of its employees. The generator must certify to the owner/operator of the collection center that, except for mixtures of ignitable characteristically hazardous waste which do not exhibit the characteristic of ignitability, hazardous waste has not been mixed with the waste oil. Alternatively, a generator can transport to its own off-site aggregation point up to 55 gallons of its own waste oil in a vehicle owned by the generator or one of its employees. Finally, the generator can arrange, via a tolling agreement, to have its waste oil reclaimed and have the processor/re-refiner return to the generator reclaimed waste oil to be used as a lubricant, cutting oil or coolant. This tolling agreement must identify the frequency and type of waste oil to be shipped, require the processor/re-refiner to use its own vehicles to pickup the waste oil from the generator and to deliver the reclaimed oil to the generator, and provide for the return of reclaimed oil to the generator.

§298.25. Source reduction strategy

Both the hazardous and residual waste regulations require generators to perform a source reduction strategy. The proposed regulations retain this requirement. This requirement significantly furthers the Department's pollution prevention efforts. Therefore, even though there is no counterpart in EPA's used oil regulations, waste oil generators will be required to prepare a strategy for reducing the amount of waste oil being generated. However, to remain consistent with the existing regulations, waste oil generators which generate only waste lubricating oil used in internal combustion engines or vehicles which generate less than 12,000 kgs annually of residual waste plus waste oil regulated by this chapter are not required to prepare a source reduction strategy.

This strategy shall be signed by the generator, kept on the premises, made available for inspection and upon request, a copy shall be made available to the Department. Information concerning production processes will be kept confidential if so designated by the generator. The source reduction strategy shall be updated at least every five years or when there is a significant change in the waste oil stream or the manufacturing process generating the waste oil.

The source reduction strategy must contain the following information. A description of the source reduction activities taken in the past three years (including an estimate of the resulting reduction in weight or toxicity of the waste oil) must be included. If the generator is planning to adopt further source reduction programs, then the report shall identify the measures to be taken, when the measures are to be implemented, and the projected reduction in the weight or toxicity of the waste oil being generated. If the waste oil generator is not planning to institute any new source reduction measures, then the report shall characterize the waste oil stream. This characterization shall include an analysis of the waste oil stream, an identification of the waste oil source, an estimate of generation rates, and a description of management techniques and costs. In addition the report shall describe the options considered, how the options were evaluated, and explain why they were rejected.

§298.26. Biennial reports

In order to administer the waste programs, the Department needs basic information identifying the amount of waste generated in Pennsylvania and how it is being processed, treated, or disposed of. As a result, both the residual and hazardous waste regulations require generators to submit biennially a report identifying the generator, describing the waste generated and identifying how their waste was processed, treated or disposed of. The Department believes that this information is essential. Therefore, even though EPA's used oil regulations have no counterpart to this requirement, the proposed waste oil regulations retain the requirement that generators submit this type of biennial report. However, to remain consistent with the existing regulations, waste oil generators which generate only waste lubricating oil used in internal combustion engines or vehicles or which generate less than 12,000 kgs annually of residual waste plus waste oil regulated by this chapter are not required to prepare a source reduction strategy.

Subchapter D. Standards for waste oil collection centers and aggregation points.

This subchapter contains the standards applicable to waste oil collection centers and aggregation points. Unlike EPA's used oil regulations, this subchapter does not have separate standards for do-it-yourselfer waste oil collection centers. There are two reasons for this. EPA's minimal standards for do-it-yourselfer waste oil collection centers are less stringent than the requirements of Pennsylvania's Used Oil Recycling Act, 58 P.S. §476. In addition, in the Department's experience, EPA's standards are not protective of the environment or the public's health, safety and welfare. Since 1992, 287.102(d) (relating to permit-by-rule) has authorized facilities to collect, store and aggregate waste lubricating oil from internal combustion engines and vehicles. To the extent this type of waste oil is generated by households, it is the type of used oil covered by EPA as do-it-yourselfer used oil. The requirements found in §287.102(d) (permit-by-rule) should continue to be the basis for authorizing facilities to accept do-it-yourselfer waste oil.

§298.30. Waste oil collection centers

Waste oil collection facilities are limited to accepting, aggregating, and storing waste oil from generators regulated under Subchapter C which are brought by the generator in shipments that do not exceed 55 gallons. In addition, the center can accept do-it-yourselfer waste oil including waste oil filters. The operation of these facilities can be authorized by a PBR. To qualify for the PBR the facility must be a state inspection facility, an oil retailer, service station or a facility owned by a municipality, state agency, or non-profit organization. In addition, the operator must: (1) comply with the applicable generator requirements of Subchapter C, *i.e.* §298.23 (relating to storage); (2) maintain waste oil tanks with a sufficient capacity to hold incoming waste oil and that are protected or sheltered so as to prevent leakage of waste oil into the environment; (3) have in close proximity to the waste oil tank collection facilities for holding the waste oil containers prior to disposal; (4) only accept waste oil; (5) be designed, constructed and operated so as to prevent any hazardous waste generated on-site from being mixed with the

waste oil; and (6) have a method for ensuring that the only waste oil received at the facility that contains more than 1,000 ppm total halogens is do-it-yourselfer waste oil.

EPA's used oil regulations mandate the limit on the types of waste oil the collection center can accept, the activities that can occur at the collection center, and the necessity for complying with the generator standards of Subchapter C. EPA also requires these collection facilities to be authorized by the state or other governmental unit to manage used oil. In the Department's experience, the other requirements in this section are necessary to ensure the proper management of waste oil at a waste oil collection center. Most of these additional requirements are not new; they are contained in §287.102(d). The requirements relating to preventing the operator from improperly mixing hazardous waste and waste oil and only accepting waste oil with more than 1,000 ppm from do-it-yourselfers are new. These requirements have been developed in response to the experience of waste oil transporters, re-refiners and the Department in determining whether a load of waste oil from a collection center has been improperly mixed with a hazardous waste.

§298.31. Used oil aggregation points

Waste oil aggregation points are facilities that accept, aggregate and store waste oil only from other waste oil generation sites owned or operated by the same person who owns or operates the waste oil aggregation point. The waste oil has to be transported by the generator in shipments of no more than 55 gallons. The waste oil aggregation point can also accept do-it-yourselfer waste oil. These facilities can be authorized by a PBR. In order to qualify for the PBR, the facility must comply with the waste oil generator standards of Subchapter C, i.e. §298.23 (relating to storage), have waste oil tanks of sufficient capacity to accept the incoming waste oil that are sufficiently protected to prevent leakage of the waste oil into the environment, and have in close proximity to the waste oil tanks and facilities for collecting waste oil containers for disposal. The requirement that the facility comply with the generator standards of Subchapter C is mandated by EPA. Waste oil aggregation points pose the same risk of spillage or leakage of waste oil into the environment as posed by waste oil collection centers. Therefore, operators of waste oil aggregation points will be subject to the same requirements pertaining to the capacity of waste oil tanks, the prevention of leaks from waste oil tanks, and location of a facility for holding used waste oil containers as will be imposed on waste oil collection centers.

Subchapter E. Standards for waste oil transporters and transport facilities.

This subchapter contains the standards applicable to transporters of waste oil and waste oil transport facilities.

§298.40. Applicability

Except as provided in this section, this subchapter applies to persons who transport waste oil and owners/operators of waste oil transfer facilities. This subchapter does not apply to on-site transportation of waste oil, transportation of waste oil by the generator in accordance with

§298.24(a or b) or the transportation of waste oil from do-it-yourselfers to an entity regulated under this Chapter. Transporters who import waste oil into or export waste oil out of Pennsylvania are subject to this subchapter while the waste oil is within Pennsylvania. Waste oil transported in trucks used to transport hazardous waste are considered to be mixed with hazardous waste unless the truck has been emptied in accordance with §261.7 (relating to empty containers). However, the load can continue to be managed as waste oil if the truck carried hazardous waste that was hazardous solely due to the characteristic of ignitability and the waste oil load does not exhibit that characteristic. Except as provided in this subchapter, transporters which generate waste oil, process/re-refine waste oil, burn waste oil for energy recovery, market waste oil or first determine that waste oil is on-specification, are subject to other applicable subchapters. Finally, transporters must dispose of hazardous waste in accordance with either the applicable provisions of the hazardous or residual waste regulations.

§298.41. Restrictions on transporters who are not also waste oil processors/re-refiners

Waste oil transporters can consolidate or aggregate waste oil at a waste oil transfer facility. Except as provided in this section, transporters cannot engage in any waste oil processing/re-refining activity unless they comply with the requirements of Subchapter F (relating to standards for waste oil processors/re-refiners). The processing of waste oil which is incidental to and in the normal course of transportation can be conducted at a waste oil transfer facility provided the activity is not designed to make a waste oil derived product. A good example of this type of activity is the settling and separation of oil from water that occurs in a transport vehicle or a single consolidation tank. Waste oil can be removed from transformers and turbines and filtered at a waste oil transfer facility provided the waste oil is returned to be used in other turbines or transformers.

The only difference between this section and EPA used oil regulations is the requirement that the activities occur at a regulated waste oil transfer facility. The activities authorized by this section, *e.g.* removing waste oil from a transformer and filtering it, pose a risk to the environment and the public from spillage or leakage of waste oil. Limiting these activities to waste oil transfer facilities, with their waste oil containment systems, is the most reasonable method of limiting this risk and allowing the activity to occur.

§298.42. Notification

If the waste oil transporter does not already have an EPA identification number, it must obtain one. EPA transporter identification numbers can be obtained by submitting to EPA either a completed EPA form 8700-12 or a letter. Letters must identify the transporter company and its owner, a contact person, whether the company is engaged in transportation of waste oil and/or the operation of a transfer facility, the location of all transfer facilities storing waste oil, and a contact person at each transfer facility.

§298.43. Deliveries

The waste oil must be delivered to another waste oil transporter, a waste oil processor/re-

refiner, or a person who burns waste oil for energy recovery. Except for burners of on-specification waste oil, all other entities receiving the waste oil must have an EPA identification number. The transporter must comply with the applicable U.S. DOT regulations found at 29 CFR Parts 171-180.

If during transportation there is a discharge of waste oil, the transporter shall immediately notify the appropriate Departmental emergency response office and take all necessary steps to protect human health and the environment. The Department can authorize transporters who do not have EPA identification numbers to immediately remove the waste oil in order to protect human health or the environment. The transporter is responsible for cleaning up or abating the affects of the discharge. Finally, the transporter is also subject to the discharge notification requirements established by the U.S. DOT and 33 CFR §153.203, if the discharge is from a water transporter.

§298.44. Rebuttable presumption for waste oil

To ensure that waste oil being transported or stored has not been improperly mixed with hazardous waste, the transporter must determine if the waste oil being transported or stored at its transfer facility contains more than 1,000 ppm total halogens. This determination can be made by either testing the waste oil or relying on knowledge as to how the waste oil was generated. A record of all analysis and information used to comply with this section must be maintained for at least three years.

If the waste oil contains more than 1,000 ppm total halogens, it is presumed that the waste oil has been improperly mixed with a hazardous waste and must be managed as such. This presumption does not apply to certain metalworking oils/fluids and certain waste oils removed from refrigeration units. A showing that the waste oil was not mixed with a hazardous waste will rebut this presumption.

§298.45. Waste oil storage at transfer facilities

This section applies to waste oil transfer facilities. In addition to the requirements of this Section, transporters must have a prevention, preparedness and contingency plan as well as a spill prevention plan, as provided for in Chapter 264. Also, all underground waste oil storage tanks at the facility must comply with the Department's storage tank regulations found in Chapter 245 (relating to administration of storage tank and spill prevention program).

Permits

Except for satellite waste oil transfer facilities, the proposed waste oil regulations retain the existing requirement that a waste oil transfer facility must be authorized by either an individual or a general permit. EPA's approach of authorizing all waste oil transfer facilities with a PBR was not followed for several reasons. In the Department's experience, transfer facilities are too varied to be effectively regulated by a one permit fits all approach. These variations include different sources of waste oil, different types of incidental processing

activities, and different types of ownership and control over the transportation of the waste oil to the facility. Neither does EPA's PBR address issues such as locating the transfer facility in or near a wetland, a flood plane or too close to occupied dwellings. Furthermore, the operation of these facilities is not risk free. There is always the potential that the Commonwealth will have to clean up a waste oil transfer facility or that third parties will suffer injuries resulting from the facility's activities. Therefore, there is a compelling reason that these facilities be covered by adequate bonds and insurance.

The waste oil transfer facility permit is issued in accordance with the requirements of Chapter 287 (relating to residual waste management — general provisions). This permit can take the form of either an individual permit or a general permit. General permits are only available where the waste oil comes directly from waste oil generators and household do-it-yourselfers in vehicles under the transporter's control. In addition, the only activities that can occur at the facility are the consolidation/aggregation of waste oil and those processing activities which are incidental to and necessary for transportation, *e.g.*, the separation of water from waste oil in a single vehicle or tank. Transfer facilities conducting other activities raise problems and risks that are too site specific to be authorized by a general permit. However, as a matter of fairness, transfer facilities operating in a manner other than that described above pursuant to a general permit may continue to do so for the term of the permit. Upon expiration of the general permit, the continued operation of the facility will then have to be authorized by an individual permit.

There is a PBR for waste oil transfer facilities under the ownership and control of another waste oil transfer facility or waste oil processor/re-refiner. For this PBR to be applicable, the transfer facility must comply with all other requirements of this subchapter, waste oil is only consolidated/aggregated or stored at the facility, storage is limited to 35 days, and the owner's liability for cleanup and third party injuries is being covered by the bond and insurance covering the receiving facility. Prior to commencing operation under this PBR the operator must submit to the Department documentation describing and identifying the location of the facility, a contact person, and that the facility will not be located within 100 feet of a floodplain or perennial stream, 300 feet of a wetland or occupied dwelling, or 50 feet of a property line. Finally, the operator must keep at the facility a copy of the protocols used for determining whether waste oil contains more than 1,000 ppm total halogens and for rebutting the presumption that the waste oil has been improperly mixed with a hazardous waste.

Storage Units

Waste oil at transfer facilities must be stored in tanks, containers or other units regulated under the hazardous waste regulations. Containers and above ground tanks must be in good condition, *e.g.* structurally sound, not leaking, and be within a secondary containment system. This secondary containment system must be constructed using dikes, berms or walls and a floor, or an equivalent system. This system must prevent any released waste oil from migrating into the soils, or into the waters of the Commonwealth. Finally, all aboveground tanks, containers and field pipes conveying waste oil to underground storage tanks must be marked or labeled as waste oil.

Response to releases

For releases not subject to the underground tank corrective action requirements of Chapter 245, Subchapter D the operator shall stop, contain, and clean the release of waste oil. All leaking storage tanks and containers shall be repaired or replaced.

§298.46. Tracking

Waste oil transporters must maintain a record of all shipments of waste oil accepted or shipped by the transporter. For shipments accepted, the record shall identify the source of the waste oil, the quantity of waste oil accepted, the date of acceptance and, unless the waste oil came from an intermediate rail transporter, the signature of a representative from the entity supplying the waste oil. For shipments delivered, the record shall identify the entity receiving the waste oil, the quantity of waste oil delivered, the date of delivery and, unless the shipment is to an intermediate rail transporter, the signature of a representative from the receiving entity. Except for the signature, records of deliveries to foreign countries must contain the same information as any other record of a delivery. All records of acceptance and delivery must be maintained for at least three years.

§298.147. Management of residues

Wastes generated from the transport or storage of waste oil must be managed in accordance with the requirements for waste derived materials under §298.10(e) (relating to applicability).

§298.48. Signs on Vehicles

Vehicles exclusively or primarily used to transport waste oil shall have an identifying sign. This sign shall: (1) identify the transporter; and (2) be clearly visible with lettering that is at least six inches high. This requirement is mandated by Section 1101(e) of the Municipal Waste Planning, Recycling, and Waste Reduction Act, 53 P.S. §1101(e) and has no counterpart in EPA's used oil regulations.

Subchapter F. Standards for waste oil processing/re-refining facilities.

This subchapter specifies the requirements for waste oil processing/re-refining facilities.

§298.50. Applicability

Except for incidental processing activities conducted by transporters under §298.41 or conducted by burners of waste oil under §298.61(b), all waste oil processing/re-refining activities must be conducted at a waste oil processing/re-refining facility authorized by this subchapter.

Waste oil processing/re-refining facilities that: (1) generate waste oil; (2) transport waste oil; (3) burn waste oil for energy recovery, except in space heaters under §298.23 or incidentally to waste oil processing; or (4) direct shipments of off-specification waste oil to burners or claim waste oil is on-specification waste oil, are subject to the applicable subchapter for that activity. The disposal of waste oil must be done in accordance with the requirements of either the applicable provisions of the residual or hazardous waste regulations.

Permits

The proposed waste oil regulations retain the existing requirement that a waste oil processing/re-refining facility must be authorized by either an individual or a general permit. EPA's approach of authorizing all used oil processing/re-refining facilities with a PBR was not followed for several reasons. In the Department's experience, waste oil processing/re-refining facilities are too varied to be effectively authorized by a one-size-fits-all PBR. In particular, there is a wide variation in the types of waste oil being accepted, the types of processing/re-refining activities being conducted, and how the waste oil is transported to the facility. Neither does EPA's PBR address issues such as locating the facility in or near a wetland, a floodplain or an occupied dwelling. Furthermore, the operation of these facilities is not risk free. There is always the potential that the Commonwealth will bear the cost of cleaning up a waste oil processing/re-refining facility or that third parties will suffer injuries resulting from the facility's activities. Therefore, it is essential that these facilities be covered by adequate bonds and insurance.

Waste oil processing/re-refining facilities must be authorized by either an individual or a general permit issued pursuant to Chapter 287 (relating to residual waste — general provisions). A general permit is only available for mobile waste processing/re-refining facilities that operate at the site of generation and facilities that reclaim waste oil pursuant to a tolling agreement under §289.24(c) (relating to off-site shipment). In the Department's experience these are the only types of waste oil processing/re-refining activities that are uniform enough to be authorized by a general permit. All other processing/re-refining activities are so site specific that they should be authorized by an individual permit. As a matter of fairness, facilities already conducting different types of processing/re-refining activities pursuant to a general permit may do so for the term of that permit. Upon termination of the general permit, the continued operation of the facility will have to be authorized by an individual permit.

§298.51. Notification

If a waste oil processing/re-refining facility does not already have an EPA identification number, it must obtain one. To obtain an identification number the operator can submit to EPA either a completed EPA form 8700-12 or a letter. The letter shall identify the facility, the owner of the facility, the facilities mailing address, the contact person, whether the facility is processing and/or re-refining waste oil, and the facility's location.

§298.52. General facility standards

Preparedness and prevention.

The facility must be maintained so as to minimize the risk of fire, explosion or unplanned release of waste oil to the environment. In order to minimize the risk of harm, unless the hazards of the waste oil being managed indicate otherwise, the facility shall maintain an emergency communication system; a device, *e.g.* a phone or radio, for requesting emergency assistance from government agencies; portable fire extinguishers, fire control equipment; spill control equipment and decontamination equipment; and water for fire hoses or an automatic sprinkler or foam system. All emergency equipment must be tested and maintained to ensure its effectiveness. Whenever waste oil is being handled, *e.g.* poured or mixed, all personnel engaged in the activity must have access to emergency communication equipment unless the activity poses no risk of harm to the employees. If there is only one employee at the facility, then that employee must have immediate access to a communication device, *e.g.* phone or radio, for calling external emergency assistance, unless there are no risks at the facility which may require an emergency response. All aisles through which emergency personnel and equipment must pass shall be wide enough to allow their unobstructed movement. Finally, the owner or operator of the facility must attempt to inform local emergency officials as to the hazards at the facility, and the facility layout, including evacuation routes and work areas, arrange between agencies with overlapping jurisdiction as to which is the lead agency, arrange with state emergency response systems agencies, and inform local hospitals as to the types of injuries which can occur at the facility.

Each facility must have a contingency plan for minimizing the hazards to human health and the environment from fire, explosion and unplanned release of waste oil into the environment. This plan must be immediately implemented in response to a fire, explosion or unplanned release of waste oil into the environment. Operators who already have emergency contingency plans need only amend those plans to address waste oil management provisions sufficient to comply with this subchapter. The plan must describe all coordination agreements with state and local emergency response agencies including a current list of persons who will act as emergency response coordinators, all emergency equipment at the facility, and an evacuation plan. Copies of the contingency plan must be kept at the facility and submitted to all emergency response agencies which may be called upon. The plan shall be amended to address changes in applicable regulations, instances where the plan failed, changes in any aspect of the facility which materially increases the risk of harm or changes the nature of the response, changes in the list of emergency response coordinators, and changes in the list of emergency equipment.

At all times there must be at least one emergency response coordinator either at the facility or on call. The emergency coordinator must know the contingency plan, all operations and activities at the facility, the location and characteristics of waste oil at the facility, and the facility layout. The emergency coordinator must have the authority to implement the contingency plan.

The emergency coordinator has the following duties. If there is an eminent or actual emergency situation the emergency coordinator, or its designees, shall immediately activate the

internal emergency communication system and, if necessary, notify facility personnel and state and local emergency agencies with designated roles. If there is a release, fire or explosion the emergency coordinator shall immediately identify the character, amount, source and the extent of any released materials. At the same time, the emergency coordinator must assess the risk to human health or the environment from the explosion, fire or release. This assessment includes any affects from gases generated or hazardous water runoff resulting from the agents used to control fires and heat-induced explosions. If the emergency coordinator determines that the fire, explosion or release poses a risk to human health or the environment outside the facility then he or she must notify the appropriate Departmental emergency response office and the appropriate local agencies. If an evacuation is necessary, the emergency response coordinator assists in determining which areas should be evacuated and notify the appropriate national emergency response offices. During an emergency, the emergency response coordinator must take all reasonable measures to prevent the occurrence of explosions, fires or releases or their spread to other areas containing waste oil or hazardous wastes at the facility. If the facility operation is ceased, in hole or in part, the emergency coordinator must, as appropriate, monitor the operation to ensure against leaks or ruptures.

Immediately following an emergency, the emergency coordinator is responsible for removing all materials generated or contaminated by the explosion, fire or release. Finally, the emergency coordinator must ensure that no waste or waste oil which is incompatible with any released material is stored or recycled until cleanup is completed and that all emergency equipment is cleaned and ready for use. Before operations can resume in the affected portions of the facility, the operator must notify the Department and appropriate local agencies that all released materials which are incompatible with any waste or waste oil handled at the facility has been cleaned up and that all listed emergency equipment is clean and ready for use.

The operator must note in the operating record the details of any incident triggering the contingency plan. Within 15 days of the incident, the operator must report it to the Department. The report must identify the operator, facility, incident, materials involved, injuries resulting from the incident, hazards resulting from the incident, and the disposition of material recovered from the incident.

§298.53. Rebuttable presumption for waste oil

To ensure that waste oil at a waste oil processing/re-refining facility has not been improperly mixed with hazardous waste, the operator of a waste oil processing/re-refining facility shall determine whether the waste oil managed at the facility has more than 1,000 ppm total halogens. This determination can be made by either testing the waste oil or relying upon knowledge of the material and how it was generated.

If the waste oil contains more than 1,000 ppm total halogens, it is presumed to have been improperly mixed with a hazardous waste. This presumption does not apply to certain metalworking oil/fluids and certain waste oils removed from refrigeration units. A showing that the waste oil was not mixed with a hazardous waste will rebut this presumption.

§298.54. Waste oil management

General

In addition to the requirements of this Subchapter, operators of waste oil processing/re-refining facilities are subject to the requirements of Chapter 264, Subchapters C and D (relating to prevention, preparedness and contingency plan and emergency procedures). Also, all underground tanks used to store waste oil must comply with the storage tank requirements of Chapter 245 (relating to administration of storage tank and spill prevention program).

Storage units

All waste oil must be stored in tanks, containers or other management units authorized by the hazardous waste regulations. Containers and tanks must be in good condition, structurally sound and not leaking. The aboveground tank or container must have a secondary containment system which at a minimum consists of walls, dikes or berms and a floor, or its equivalent. This secondary containment system must be capable of keeping any released waste oil from migrating into the soils or water. The aboveground tanks, containers and field pipes conveying waste oil to underground tanks must be marked or labeled with the words "waste oil". Except for leaks from storage tanks subject to the corrective action requirements of Chapter 245 Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties), operators shall respond to releases of waste oil by stopping the release, containing the release, cleaning up the released waste oil and other contaminated materials, and, if necessary, repair or replace any tank or container.

Closure

At closure of an aboveground tank system, the waste oil residues must be removed or decontaminated from the tank and all other components of the system and the surrounding soils. These materials must then be managed as a residual or hazardous waste. If not all contaminated soils can be practicably removed or decontaminated, the tank system must be closed and managed like a hazardous waste landfill.

At closure of a container storage system, the operator shall remove all containers holding waste oil or waste oil residues from the site. All remaining waste oil residues in the containment system and surrounding soils must be removed or decontaminated. The contaminated containment system and affected soils shall be managed as a residual or hazardous waste.

§298.55. Analysis plan

The operator shall develop and follow an analysis plan for determining whether waste oil contains more than 1,000 ppm total halogens. If the waste oil processor/re-refiner declares the waste oil to be on-specification, the analysis plan must also address how that determination was made.

For determining the level of total halogens in the waste oil, the analysis plan shall indicate whether the determination will be based upon knowledge of how the waste oil was produced or sample analysis. If sample analysis is to be used, the plan must indicate the sampling method to be used, *i.e.* one of the methods identified in Appendix I of Chapter 261 or its equivalent; the frequency of sampling; whether the analysis will occur at the facility; and the analytical methods used to determine the halogen content. Finally, the plan must identify other information that will be used to determine the halogen content.

For determinations that waste oil is on-specification, the plan shall indicate whether sample analysis or other information will be used to make this determination. If sample analysis is to be used, the plan must indicate: (1) the sampling method to be used, *i.e.* one of the methods identified in Appendix I of Chapter 261 or its equivalent; (2) the frequency of sampling; (3) whether the analysis will occur at the facility; and (4) whether the waste oil will be sampled and analyzed prior to or after waste oil processing and the analytical methods used for determining the on-specification parameters. Finally, the plan shall identify other information used to make this determination.

§298.56. Tracking

Waste oil processing/re-refining facilities must maintain a record of all waste oil shipments accepted by the facility or delivered by the facility to another entity. This record can take the form of a log, invoice, manifest or other shipping document. The record must identify the transporter, source of the waste oil, quantity of waste oil accepted and the date of acceptance. For deliveries shipped from the facility, the documents must identify the transporter, receiving entity, quantity of waste oil shipped, and the date of shipment. This record must be maintained for at least three years.

§298.57. Operating record and reporting

The owner or operator shall keep an operating record at the facility. This operating record shall be maintained until the facility is closed. It shall contain records and results of waste oil analysis in accordance with the facilities analysis plan and reports of incidents requiring implementation of the contingency plan.

The operator shall submit, biennially, a report to the Department documenting the facility's activities for the proceeding year. The report shall be in the form of a letter and shall identify the processor/re-refiner, the calendar year being covered and the quantities of waste oil accepted and the manner the waste oil was processed or re-refined.

§298.58. Off-site shipments of waste oil

Waste oil processors/re-refiners who arrange for shipments of waste oil to be brought to the facility must use transporters who have an EPA identification number.

§298.59. Management of waste

Owners and operators of waste oil processing/re-refining facilities must manage their wastes in accordance with the other applicable provisions of the hazardous and residual waste regulations.

Subchapter G. Standards for burners of waste oil who burn off-specification waste oil for energy recovery.

This subchapter sets forth the standards applicable to burners of off-specification waste oil.

§298.60. Applicability

Except as provided in this section, individuals burning off-specification waste oil ("burners") must comply with the requirements of this subchapter. This subchapter does not apply to generators burning their own off-specification waste oil in appropriate space heaters under §298.23 and a waste oil processor/re-refiner burning waste oil incidentally to the waste oil processing. This subchapter is a PBR for the burning of waste oil.

Burners which generate waste oil, transport waste oil, process or re-refine waste oil, (except for aggregating it with virgin fuel or on-specification waste oil prior to burning), determine waste oil to be on-specification waste oil or ship it to other burners are subject to the other subchapters applicable to that activity. Any waste generated by the burner must be disposed of in accordance with the other residual or hazardous waste regulations.

§298.61. Restrictions on burning

Off-specification waste oil can be burned in industrial furnaces, in a limited class of boilers, by the generator in a small space heater under §298.23, or a hazardous waste incinerator. The allowable boilers are boilers located on a manufacturing facility, utility boilers used to produce electricity, steam, or other substances which are sold. Persons burning off-specification waste oil in a boiler or industrial furnace must also have the appropriate air quality approvals.

§298.62. Notification

Burners who do not already have an EPA identification number must obtain one. Identification numbers can be obtained by sending EPA either a completed EPA form 8700-12 or a letter. The letter shall identify the burner and its owner, a contact person for the burner and type of activity.

§298.63. Rebuttable presumption

To ensure that waste oil at a waste oil burner facility has not been improperly mixed with

hazardous waste, the burner shall determine whether the waste oil managed at the facility has more than 1,000 ppm total halogens. This determination can be made by either testing the waste oil, relying upon knowledge of the material and how it was generated, or information from the waste oil processor/re-refiner supplying the waste oil. If the waste oil contains more than 1,000 ppm total halogens, there is a rebuttable presumption that the waste oil has been improperly mixed with a hazardous waste. This presumption does not apply to certain metalworking oils/fluids and certain waste oil removed from refrigeration units. The burner shall maintain for three years a record of the information or analysis used to determine the waste oil's halogen content and to rebut the presumption of improper mixing.

§298.64. Waste oil storage

In addition to the requirements of this section, waste oil burners must have a prevention, preparedness and contingency plan as well as a spill prevention plan, as provided for in Chapter 264. Also, all underground waste oil storage tanks at the facility must comply with the Department's storage tank regulations found in Chapter 245 (relating to administration of storage tank and spill prevention program).

Burners must store waste oil in tanks, containers or other units regulated under the hazardous waste regulations. Containers and aboveground tanks must be in good condition, *e.g.* structurally sound, not leaking, and be within a secondary containment system. This secondary containment system must be constructed using dikes, berms or walls and a floor, or an equivalent system. This system must prevent any released waste oil from migrating into the soils, or into the waters of the Commonwealth. Finally, all aboveground tanks, containers and field pipes conveying waste oil to underground storage tanks must be marked or labeled as waste oil.

Response to releases.

For releases not subject to the underground tank corrective action requirements of Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) the burner shall stop, contain and clean up the release of waste oil. All leaking storage tanks and containers shall be repaired or replaced.

§298.65. Tracking

Waste oil burner facilities must maintain a record of all waste oil shipments accepted by the facility. This record can take the form of a log, invoice, manifest or other shipping document. The record must identify the transporter bringing the shipment, the source of the waste oil, the quantity of waste oil accepted and the date of acceptance. This record must be maintained for at least three years.

§298.66. Notices

Before a burner accepts the first shipment of off-specification waste oil from a particular

source, the burner shall give that entity a one-time written signed certification that the burner has notified EPA of its activity and the waste oil will only be burned in an appropriate boiler or industrial furnace. This certification must be retained for three years after the burner last receives a shipment from that entity.

§298.67. Management of Waste

Burners who generate a waste from the storage or burning of waste oil must manage it in accordance with the requirements for waste derived materials in §298.10(e) (relating to applicability).

Subchapter H. Standards for waste fuel marketers.

§298.70. Applicability.

This subchapter sets forth the standards for persons who market waste oil as a fuel. It applies to anyone who directs a shipment of off-specification waste oil to a burner, or who first declares waste oil that is to be burned for energy recovery to be on-specification. Waste oil fuel marketers are a generator, transporter, processor/re-refiner or a burner and are also subject to the applicable subchapter which addresses that activity.

§298.71. Prohibitions

A waste oil marketer can only initiate shipments of off-specification waste oil to burners who have an EPA identification number, and burn the waste oil in an appropriate boiler or industrial furnace.

§298.72. On-specification waste oil fuel

A waste oil generator, transporter, processor/re-refiner or burner can make the determination that waste oil fuel is on-specification waste oil. This determination can be based upon an analysis of the waste oil or upon copies of an analysis performed by someone else or other information documenting that the waste oil is on-specification. The entity first declaring the waste oil to be on-specification must retain for three years copies of the information used to make this determination.

§298.73. Notification

All waste oil marketers must have an EPA identification number. Identification numbers can be obtained by sending to EPA a completed EPA form 8700-12 or a letter. The letter shall identify the marketer and its owner; a contact person for the marketer; and type of activity.

§298.74. Tracking

The marketer shall keep a record of all deliveries to burners. This record can take the form of a log, invoice, manifest or other shipping document. The record must identify the transporter, burner, quantity of waste oil delivered and the date of delivery. This record must be maintained for at least three years.

The entity first claiming that waste oil to be burned for energy recovery is on-specification must keep a record of each shipment of that waste oil sent to another facility. The record must include the following: identity of the receiving entity; quantity of waste oil fuel delivered; date of shipment or delivery; and a cross reference to the record of the information used to claim the waste oil is on-specification. This information must be maintained for at least three years.

§298.75. Notices

Before any person can direct a shipment of off-specification fuel to a burner, that person must obtain a one-time written and signed certification from the burner that the burner has notified EPA of its activity and the waste oil will only be burned in an appropriate boiler or industrial furnace. This certification must be retained for three years after the last shipment of off-specification waste oil is shipped to the burner.

Conforming amendments to the residual and hazardous waste regulations.

In order to implement the foregoing proposed waste oil regulations, it is necessary to make some technical amendments to the existing hazardous and residual waste regulations. These amendments primarily take one of two forms. They are either the deletion of regulations addressing issues addressed by the proposed regulations or modification of a regulation to provide the correct cross-reference.

Proposed amendments to the hazardous waste regulations (Chapters 261 and 266).

Section 261.3(h) (relating to definition of hazardous waste) will be amended to make it clear that the management of characteristically hazardous waste oil that is being recycled will be governed by the proposed waste oil regulations. Section 261.5(j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) will be deleted. This subsection allows a CESQG to mix any type of hazardous waste with waste oil and have the mixture managed as waste oil provided the mixture or the products derived from the mixture is to be burned for energy recovery. As explained above, the proposed waste oil regulations do not retain this exemption. Section 261.6(a) (relating to hazardous wastes that are being recycled) will be amended to give the new citation for the waste oil on-specification table *i.e.* §298.11(b) (relating to waste oil specification). Finally, Chapter 266 Subchapter E (relating to burning of waste oil) will be deleted. The issues addressed by this Subchapter will be fully addressed by the proposed waste oil regulations.

Proposed amendments to the existing residual waste regulations (Chapter 287).

Section 287.1 (relating to definitions) will be amended by deleting the definition for “used oil recycling”. This term is being deleted because it is unnecessary and its retention is potentially confusing. The term is not used in Chapter 287 and the activities described in the definition are included in the definition for “waste oil processing”. Section 287.2 (relating to scope) will be amended by adding a new subsection (l) which states that the management of waste oil that is being recycled is governed by Chapter 298. Section 287.51(d) (relating to scope) will be deleted. This subsection will become unnecessary and inaccurate. It states that used oil generators and collectors who market used oil are subject to §266.43. As explained above, the proposed waste oil regulations specify who is a waste oil marketer. Finally, §287.102 (relating to captive processing) will be amended by deleting the PBRs for transfer facilities that collect used oil and energy recovery facilities that burn waste oil. As explained above, these PBRs are now addressed by proposed §298.30 (relating to collection centers) and Subchapter G (relating to standards for burners of off-specification waste oil).

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a statement of the benefits of proposed amendments as well as the costs which may be imposed. It also requires a statement of the need for, and a description of, forms, reports, or other paperwork required as a result of the proposed amendments.

Benefits

The proposed waste oil regulations eliminate 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. The proposed regulations place all regulations dealing with the generation, storage, transportation, reuse and recycling of waste oil into a single chapter.

Applicable storage and transportation requirements in the current regulations are general in nature and, therefore, lack specific requirements appropriate to the management of waste oil. Management standards for the storage and transportation of storage and transportation of waste oil are patterned after the corresponding federal requirements.

To promote recycling, the proposed regulations expand existing permit-by-rule provisions for waste oil collection facilities. These facilities will be able to accept any type of waste oil, not just used oil from internal combustion engines or vehicles. In addition, this will include individuals who change the oil and filters in their personal vehicles.

Costs

Generators may be most affected by the proposed regulations. 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. These proposed regulations will allow generators to self-transport up to 55 gallons of waste oil to a collection facility without having to comply with the waste oil transportation requirements. The current residual and hazardous waste regulations impose recordkeeping requirements on waste oil generators. There will be some costs to generators from a slight increase in recordkeeping and labeling requirements. As explained above, this information is needed to enable transporters, processors/re-refiners, 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. There will be an increased cost to conditionally exempt small quantity generators of hazardous waste who also generate waste oil. These individuals will no longer be able to dispose of their hazardous waste by mixing it with their waste oil and having the mixture burned for energy recovery. Therefore, they will have some increased costs for the disposal of their hazardous waste in an environmentally responsible manner. The net cost to generators is expected to be approximately \$500,000 per year.

While waste oil management facilities could have increased costs due to the requirement to have containment systems under the proposed regulations, all permitted waste oil processing or transfer facilities possess containment systems which are expected to satisfy the proposed requirements. Operators of waste oil facilities in Pennsylvania have recognized that using a containment system is sound business practice. No other increased costs for waste oil management facilities are associated with these regulations.

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

Paperwork Requirements

For the most part, no new recordkeeping and reporting requirements have been imposed by these proposed regulations which are not required under current regulations. Generators of waste oil will be required to maintain records documenting the characteristics of the oil used, how it became waste oil, whether it was mixed with an ignitable 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.

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 have a written protocol for determining if the total halogens in waste oil exceeds 1000 ppm and, if applicable, for determining whether waste oil to be burned for energy recovery is on-specification, and maintain operating records. 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 all maintain records tracking shipments of waste oil. These analytical and record keeping requirements are mandated by EPA's used oil regulations.

Compliance Assistance

The Department's compliance assistance efforts will take two forms. The Department will prepare fact sheets to help explain how the waste oil regulations work. In addition, the Department will work with industry groups to develop workshops to explain how individuals can comply with the new standards.

G. Regulatory Review Act

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§745.1-745.15), the Department submitted a copy of the Proposed Rulemaking on March 22, 1999, to the Independent Regulatory Review Commission and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the Commission and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulation.

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. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by June 9, 1999. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by June 9, 1999. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us. The subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by June 9, 1999.

J. Public Meetings and Hearing

The Department will hold three public information meetings for the purpose of informing the public as to the purpose and contents of this proposal. The meetings will be held at 2 p.m. on the following dates and at the following locations:

- | | |
|--------------|---|
| May 11, 1999 | Department of Environmental Protection
Southcentral Regional Office
Susquehanna River Conference Room
909 Elmerton Avenue
Harrisburg, Pa. |
| May 18, 1999 | Department of Environmental Protection
Southwest Regional Office
500 Waterfront Drive
Pittsburgh, Pa. |
| May 20, 1999 | Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, Pa. |

The Environmental Quality Board will hold a public hearing for the purpose of accepting comments on this proposal. The hearing will be held at 2 p.m. on May 25, 1999, at the Department's Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA, 17110, in the Susquehanna River Conference Room.

Persons wishing to present testimony at the hearing are requested to contact Kate Coleman at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at the hearing.

James M. Seif
Chairperson

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE VII. HAZARDOUS WASTE MANAGEMENT
CHAPTER 261. CRITERIA, IDENTIFICATION AND LISTING OF HAZARDOUS WASTE
SUBCHAPTER A. GENERAL

Subchapter A - General

- Section 261.3. Definition of hazardous waste.
Section 261.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.
Section 261.6. Requirements for hazardous wastes that are recycled.

CHAPTER 266. SPECIAL STANDARDS FOR THE MANAGEMENT OF CERTAIN
HAZARDOUS WASTE ACTIVITIES

* * * * *

SUBCHAPTER E. [REQUIREMENTS FOR OIL MEETING SPECIFICATIONS WHEN
BURNED FOR ENERGY RECOVERY]

RESERVED

Subchapter E – RESERVED [Requirements for Oil Meeting Specifications when Burned for
Energy Recovery]

- [Section 266.40. Applicability.]
- [Section 266.41. Prohibitions.]
- [Section 266.42. Standards applicable to generators of waste oil burned for energy
recovery.]
- [Section 266.43. Standards applicable to marketers of waste oil burned for energy
recovery.]
- [Section 266.44. Standards applicable to burners of waste oil burned for energy recovery.]

TITLE 25. RULES AND REGULATIONS

PART I. DEPARTMENT OF ENVIRONMENTAL RESOURCES

SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IX RESIDUAL WASTE MANAGEMENT

CHAPTER 287. RESIDUAL WASTE MANAGEMENT - GENERAL PROVISIONS

Section 287.1.	Definitions
Section 287.2.	Scope.
Section 287.51.	Scope.
Section 287.102.	Permit-by-rule.

CHAPTER 298

STANDARDS FOR THE MANAGEMENT OF WASTE OIL

Subchapter A - Definitions.

Section 298.1. Definitions.

Subchapter B - Applicability.

Section 298.10. Applicability.

Section 298.11. Waste Oil Specifications.

Section 298.12. Prohibitions.

Subchapter C - Standards for Waste Oil Generators.

Section 298.20. Applicability.

Section 298.21. Hazardous Waste Mixing.

Section 298.22. Waste Oil Storage.

Section 298.23. On-site Burning in Space Heaters.

Section 298.24. Off-Site Shipments.

Section 298.25. Source Reduction/Strategy.

Section 298.26. Biennial Report.

Subchapter D - Standards for Waste Oil Collections Centers and Aggregation Points.

Section 298.30. Waste Oil Collection Centers.

Section 298.31. Waste Oil Aggregation Points Owned by the Generator.

Subchapter E. - Standards for Waste Oil Transporter and Transfer Facilities.

Section 298.40. Applicability.

Section 298.41. Restrictions on Transporters Who Are Not Also Processors or Re-Refiners.

Section 298.42. Notification.

Section 298.43. Waste Oil Transportation.

Section 298.44. Rebuttable Presumption for Waste Oil.

Section 298.45. Waste Oil Storage at Transfer Facilities.

Section 298.46. Tracking.

Section 298.47. Management of Residues.

Subchapter F - Standards for Waste Oil Processors Re-refiners.

- Section 298.50. Applicability.
- Section 298.51. Notification.
- Section 298.52. General Facility Standards.
- Section 298.53. Rebuttable Presumption for Waste Oil.
- Section 298.54. Waste Oil Management.
- Section 298.55. Analysis Plan.
- Section 298.56. Tracking.
- Section 298.57. Operating Record and Reporting.
- Section 298.58. Off-Site Shipments of Waste Oil.
- Section 298.59. Management of Waste.

Subchapter G - Standards for Waste Oil Burners Who Burn Off-Specification Waste Oil Energy Recovery.

- Section 298.60. Applicability.
- Section 298.61. Restrictions on Burning.
- Section 298.62. Notification.
- Section 298.63. Rebuttable Presumption for Waste Oil.
- Section 298.64. Waste Oil Storage.
- Section 298.65. Tracking.
- Section 298.66. Notices.
- Section 298.67. Management of Waste.

Subchapter H - Standards for Waste Oil Fuel.

- Section 298.70. Applicability.
- Section 298.71. Prohibitions.
- Section 298.72. On-Specification Waste Oil Fuel.
- Section 298.73. Notification.
- Section 298.74. Tracking.
- Section 298.75. Notices.

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE VII. HAZARDOUS WASTE MANAGEMENT
CHAPTER 261. CRITERIA, IDENTIFICATION AND LISTING OF HAZARDOUS WASTE
SUBCHAPTER A. GENERAL

* * * * *

§261.3. Definition of hazardous waste.

(h) Waste oil that is hazardous only because it exhibits any characteristic of hazardous waste under Subchapter C, which has not been mixed with a hazardous waste and which is destined to be recycled or reused in a manner that does not constitute disposal [some other manner than burning for energy recovery] is not subject to Chapters 260-266. THIS WASTE OIL IS REGULATED UNDER CHAPTER 298 (RELATING TO STANDARDS FOR THE MEANAGEMENT OF WASTE OIL).

[Burning waste oil that exhibits any characteristic of hazardous waste is not subject to Chapters 260-265, unless otherwise specified in Chapter 266, Subchapters D and E.]

* * * * *

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

* * * * *

[(j) If a conditionally exempt small quantity generator's wastes are mixed with waste oil, the mixture is subject to Chapter 266, Subchapter E (relating to waste oil burned for energy

recovery), if it is destined to be burned for energy recovery. A material produced from such a mixture by processing, blending or other treatment is also so regulated if it is destined to be burned for energy recovery.]

§261.6. Requirements for hazardous wastes that are recycled.

(a) *General.*

* * * * *

(2) The following hazardous wastes are subject to Chapter 266 (relating to special standards for the management of certain hazardous waste activities).

* * * * *

[(iv) Waste oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under Chapter 264, Subchapter O or Chapter 265, Subchapter O.]

[(v) iv) Hazardous wastes reclaimed on the site at which they were generated.

* * * * *

CHAPTER 266. SPECIAL STANDARDS FOR THE MANAGEMENT OF CERTAIN
HAZARDOUS WASTE ACTIVITIES

* * * * *

*(Editor's Note: The Environmental Quality Board is proposing to delete this section in its
entirety and reserve it.)*

SUBCHAPTER E. RESERVED [REQUIREMENTS FOR OIL MEETING SPECIFICATIONS
WHEN BURNED FOR ENERGY RECOVERY]

Chapter 287. Residual Waste Management - General Provisions

Subchapter A. General.

§287.1. Definitions

* * * * *

[Used oil recycling - preparing used oil for reuse as a petroleum product or petroleum product substitute by refining, re-refining, 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.]

* * * * *

§287.2. Scope

* * * * *

(1) WASTE OIL THAT IS BEING RECYCLED SHALL BE MANAGED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 298 (RELATING TO STANDARDS FOR THE MANAGEMENT OF WASTE OIL).

Subchapter B. Duties of Generators.

§287.51. Scope

* * * * *

[(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) *Incinerator.* * * *

[(f) e) *Beneficial use.* * * *

[(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 §12.1.

(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) *Mechanical processing facility.* * * *

[(i) g) *Container processing facility.* * * *

([j] h) *Empty drum reconditioning. * * **

(Editor's Note: The following Chapter is new. It has been printed in regular type to enhance readability.)

Chapter 298

Standards for the Management of Waste Oil

Subchapter A. Definitions.

§298.1. Definitions

Terms that are defined in §§260.2 (relating to definitions), and 245.12 (relating to definitions) of this title have the same meanings when used in this chapter.

Aboveground tank – A tank used to store or process waste oil that is not an underground storage tank as defined in §245.12 of this title.

Container – Any 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 either:

- (1) A continuous on-site installation program has begun.
- (2) 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).

Re-refining 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 – Any stationary device, designed to contain an accumulation of waste oil which is constructed primarily of non-earthen or non-wooden materials, (for example, concrete, steel, plastic) which provides structural support.

Waste oil – Either:

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

(2) Any 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 – Any 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 is burned for energy recovery in devices identified in §298.61(a).

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

Waste oil fuel marketer – Any person who conducts either of the following activities:

(1) Directs a shipment of off-specification waste oil from their 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 set forth in §298.11 of this part.

Waste oil generator – Any person, by site, whose act or process produces waste oil or whose act first causes waste oil to become subject to regulation.

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 re-refining.

Waste oil processor/re-refiner – A facility that processes waste oil.

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

Waste oil transporter – Any person who transports waste oil, any 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 may consolidate or aggregate loads of waste oil for purposes of transportation but, with the following exception, may not process waste oil. Transporters may conduct incidental waste oil processing operations 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.

Subchapter B. Applicability.

§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, the regulations of this chapter apply 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 Subchapter C (relating to characteristics of hazardous waste) of Chapter 261 (relating to criteria, identification and listing of hazardous waste) of this title.

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

(1) Listed hazardous waste.

(i) Mixtures of waste oil and hazardous waste that are listed in Subchapter D (relating to lists of hazardous waste) of Chapter 261 (relating to criteria, identification and listing of hazardous waste) of this title are subject to regulation as hazardous waste under Chapters 260 through 266, and Chapter 270 of this title 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. Persons 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(e) (relating to appendices) of this title. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954,

Pittsburgh, PA 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, pursuant to §261.4(6) (relating to exclusions) 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), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other 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 does apply to waste oils contaminated with CFCs that have been mixed with waste oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixtures of waste oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristic identified in Subchapter C of Chapter 261 of this title and mixtures of waste oil and hazardous waste that is listed in Subchapter D of this title solely because it exhibits one or more of the characteristics of hazardous waste identified in Subchapter C are subject to:

(i) Except as provided in subparagraph (b)(2)(ii) of this section, regulation as hazardous waste under Chapters 260 through 270 of this title, rather than as waste oil under this Chapter.

(ii) 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), provided that the resultant mixture does not exhibit the characteristic of ignitability under §261.21 (relating to characteristic of ignitability). 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, must be managed in accordance with Chapters 260 through 270 of this title.

(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 such 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 Articles VI (relating to hazardous waste), VII (relating to municipal waste), or VIII (relating to residual waste) of this title.

(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.

(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 subsections (c)(2) and (f), wastewater contaminated with waste oil is managed under this Chapter if it is demonstrated that either:

(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 (d)(2), mixtures of waste oil and fuels or other

fuel products are subject to regulation as waste oil under this Chapter.

(2) Mixtures of waste oil and diesel fuel mixed on-site by the generator of the waste oil for use in the generator's own vehicles are not subject to this Chapter once the waste oil and diesel fuel have been mixed. Prior to mixing, the waste oil is subject to the requirements of Subchapter C (relating to standards for waste oil generators) of this Chapter.

(e) *Materials derived from waste oil.*

(1) Materials that are reclaimed from waste oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are not a waste subject to regulations under this Title. 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.

(2) Materials produced from waste oil that are burned for energy recovery (for example, waste oil fuels) are subject to regulation as waste oil under this Chapter.

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

(i) Not waste oil and thus are not subject to this Chapter.

(ii) Are a waste subject to regulation under Articles VII (relating to hazardous waste) or IX (relating to residual waste) of this title.

(4) Waste oil re-refining distillation bottoms that are used by the re-refiner 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 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have

eliminated the discharge of wastewater), contaminated with *de minimis* quantities of waste oil are not subject to the requirements of 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 will 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) 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 the requirements of this Chapter. Waste oil is subject to the requirements of this Chapter prior to the mixing of waste oil with crude oil or natural gas liquids.

(2) Mixtures of waste oil and crude oil or natural gas liquids containing less than 1% waste oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from regulation 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 the requirements of this Chapter provided that the waste oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the waste oil is subject to the requirements of 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 the requirements of 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 the requirements of 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 the requirements of 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 the requirements of this Chapter.

(h) *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) *Waste oil containing PCBs.* In addition to the requirements of this Chapter marketers and burners of waste oil who market waste oil containing a quantifiable level of PCBs are subject to the requirements found at 40 CFR §761.20(e).

§298.11. Waste oil specifications

(a) For 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 must have at least 8,000 BTUs per pound.

(b) Waste oil burned for energy recovery and any fuel produced from waste oil by waste oil

processing, blending, or other treatment is subject to regulation under 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 (relating to on-specification waste oil fuel), 298.73 (relating to notification), and 298.74(b) (relating to 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

¹The specification does 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 shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Chapter 264 or 265 of this Chapter.

(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) Industrial furnaces identified in §260.2 of this title.

(2) Boilers, as defined in §260.2 of this title, that are identified as either of the following:

(i) Industrial boilers 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) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(iii) Waste oil-fired space heaters provided that the burner meets the provisions of §298.23.

(3) Hazardous waste incinerators subject to regulation under Subchapter O (relating to incinerators) of Chapters 264 (relating to new and existing hazardous waste management facilities applying for a permit) or 265 (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) of this title.

Subchapter C. Standards for waste oil generators.

§298.20. Applicability

(a) *General.* Except as provided in paragraphs (1) through (4), this Subchapter applies to all waste oil generators. A waste oil generator is any 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.* Household "do-it yourselfer" waste oil generators are not subject to regulation under this Chapter.

(2) *Vessels.* Vessels at sea or at port are 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(s) removing or accepting waste oil from the vessel are co-generators 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 co-generators may decide among them which party will fulfill the requirements of this Subchapter.

(3) *Diesel fuel.* Mixtures of waste oil and diesel fuel mixed by the generator of the waste oil for use in the generator's own vehicles are 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 the requirements of this Subchapter.

(4) *Farmers.* Farmers who generate an average of 25 gallons per month or less of waste oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this Chapter.

(b) *Other applicable provisions.* Waste oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this Chapter as indicated in paragraphs (1) through (8):

(1) Waste oil generators who transport waste oil, except under the self-transport provisions of §298.24 (a) and (b), must also comply with Subchapter E (relating to standards for waste oil transporter and transfer facilities) of this Chapter.

(2) Except as provided in paragraphs (3) and (4), waste oil generators who process or re-refine waste oil must also comply with Subchapter F (relating to standards for waste oil processors/re-refiners) of this Chapter.

(3) Waste oil generators who perform the following activities are deemed to have a solid waste management permit-by-rule for the processing of waste oil provided that the waste oil is generated on-site and is not being sent off-site to a burner of on-specification or off-specification waste oil fuel. The Department may require a generator, who is conducting one of the activities listed below pursuant to a permit-by-rule, to apply for, and obtain, a permit in accordance with the requirements of Chapter 287 (relating to residual waste management - general provisions), 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 must also meet the following requirements:

(A) Remaining waste is managed under the act and the regulations promulgated thereunder.

(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 on-site to make the wastewater acceptable for discharge. For this activity to be authorized by a permit-by-rule, the generator must also meet the following requirements:

(A) The facility is a captive facility and the only waste oil treated is generated on-site or on an interconnected adjacent site which was previously part of an integrated facility.

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

(C) The facility meets the requirements of §§264.11, 264.14, 264.15, 264.73, 264.75, 264.77 and the applicable provisions in Chapter 264, Subchapters C and D as well as Chapter 265, Subchapter Q.

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

(A) Waste remaining from the filter process is managed under the act and the regulations promulgated thereunder.

(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 pursuant to §298.23. For this activity to be authorized by a permit-by-rule, the generator must also meet the following requirements:

(A) Waste remaining from the filter process is managed under the act and the regulations promulgated thereunder.

(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) Waste oil generators are not processors when they are 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 off-site to a burner of on- or off-specification waste oil fuel.

(5) Waste oil generators who burn off-specification waste oil for energy recovery, except under the on-site space heater provisions of §298.23, must also comply with Subchapter G of this Chapter.

(6) Waste oil generators who direct shipments of off-specification waste oil from their facility to a waste oil burner, or first claim that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications set forth in §298.11 must also comply with

Subchapter H of this Chapter.

(7) Waste oil generators must dispose of waste oil in accordance with the requirements of Articles VII (relating to hazardous waste) or IX (relating to residual waste) of this title.

(c) Recordkeeping - The generator is required to maintain, for five (5) years, the following:

(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) of this Chapter if the waste oil contains more than 1,000 parts per million total halogens.

(5) The type and quantity of any hazardous waste that is hazardous solely due to the characteristic of ignitability which, pursuant to §298.10(b)(2)(ii) (relating to applicability) of this Chapter, has been mixed with waste oil.

§298.21. Hazardous waste mixing

(a) Mixtures of waste oil and hazardous waste must be managed in accordance with §298.10(b).

(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 thus must 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).

§298.22. Waste oil storage

(a) *Storage units.* Waste oil generators shall not store waste oil in units other than tanks, containers, or units subject to regulation under Chapters 264 or 265 of this title.

(b) *Condition of units.* Containers and aboveground tanks used to store waste oil at generator facilities must meet the following requirements:

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

(2) Not leak.

(c) *Labels.* Aboveground storage units and pipes are to be labeled as follows:

(1) Containers and aboveground tanks used to store waste oil at generator facilities must be labeled or marked clearly with the words "waste oil".

(2) Fill pipes used to transfer waste oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "waste oil".

(d) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to the requirements of Chapter 245 (relating to administration of the storage tank and spill prevention program), Subchapter D of this title which has occurred after ____ (Editor's note: the

blank refers to the effective date of adoption of this proposal) a generator must 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.

(e) In addition, waste oil generators are subject to all applicable spill prevention, control and countermeasures of Chapter 265 (relating to interim status standards for hazardous waste management facilities and permit program for new and existing hazardous waste management facilities) Subchapters C and D (relating to preparedness and prevention and preparedness, prevention and contingency plan and emergency procedures) Waste oil generators are also subject to the underground storage tank (Chapter 245) standards for waste oil stored in underground tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§298.23. On-site burning in space heaters

Generators are deemed to have a solid waste management permit-by-rule to burn waste oil in waste oil-fired space heaters provided that the following apply:

- (1) The heater burns only waste oil that the owner or operator generates or waste oil received from household do-it-yourself 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. Off-site shipments

Except as provided in paragraphs (1) through (3), generators must ensure that their waste oil is transported only by transporters who have obtained identification numbers. The generator must provide the transporter with a certification that, except as provided for in §298.10(b)(2)(ii) (relating to mixtures of waste oil and characteristically hazardous waste), 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 provided that 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) of this Chapter if the facility is located within Pennsylvania.

(B) Registered, licensed, permitted, or recognized by a state/county/municipal

government to manage waste oil if the facility is located outside Pennsylvania.

(iv) The generator must 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.*

Generators may transport, without an identification number, waste oil that is generated at the generator's site to an aggregation point provided that 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 and/or operated by the same generator.

(3) *Tolling arrangements.* Waste oil generators 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 pursuant to which reclaimed oil is returned by the waste oil processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") must indicate the following:

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

(ii) That the vehicle used to transport the waste oil to the waste oil processing/re-refining facility and to deliver recycled waste oil back to the generator is owned and operated by the waste oil processor/re-refiner.

(iii) That reclaimed oil will be returned to the generator.

§298.25. Source Reduction Strategy

(a) Waste oil generators subject to this Subchapter shall prepare a Source Reduction Strategy in accordance with this section. 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 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, shall quantify the projected reduction in weight or toxicity of waste to be achieved by each method or procedure, and shall 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 any 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:

(1) Who 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 purpose due to the presence of chemical or physical impurities or loss of original properties.

(2) Who generate annually no more than 12,000 kilograms of residual waste and waste oil subject to regulation under 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 of each odd numbered year after ___ (Editors note: the blank refers to the effective date of adoption of this proposal) waste oil generators subject to this Subchapter shall file a

report with the Department.

(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 was the waste oil processed at the site of generation.

(ii) Whether and to what extent was the waste oil shipped off site for processing/re-refining.

(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 three 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/refiner, 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:

(1) Who 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 purpose due to the presence of chemical or physical impurities or loss of original properties.

(2) Who generate annually no more than 12,000 kilograms of residual waste and waste oil subject to regulation under this chapter.

Subchapter D. Standards for Waste Oil Collection Centers and Aggregation Points

§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 of this Chapter who bring waste

oil to the collection center in shipments of no more than 55 gallons under the provisions of §298.24(a) (relating to off-site 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 must 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 non profit organization.

(2) Not blend oil for offsite reuse.

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

(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 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, and/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 the provisions of §298.24(b) (relating to off-site 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/operator of an aggregation point may operate the aggregation point pursuant to a permit-by-rule. The Department may require the owner/operator of an aggregation point operated pursuant to 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/operator must:

- (1) Comply with the generator standards in Subchapter C of this Chapter.
- (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.

Subchapter E. Standards for waste oil transporter and transfer facilities.

§298.40. Applicability

(a) *General.* Except as provided in paragraphs (1) through (4), this Subchapter applies to all waste oil transporters.

(1) This Subchapter does not apply to on-site transportation.

(2) This Subchapter does not apply to generators who transport shipments of waste oil totaling 55 gallons or less from the generator to a waste oil collection center as specified in §298.24(a).

(3) This Subchapter does not apply to generators who transport 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, processor/re-refiner, or burner subject to the requirements of this Chapter. Except as provided in subsections (a)(1) through (a)(3) of this section, this Subchapter does, however, 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.* Transporters who import waste oil into or export waste oil out of Pennsylvania are subject to the requirements of this Subchapter from the time the waste oil enters and until the time it exits Pennsylvania.

(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) of this title prior to transporting waste oil, the waste oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of §298.10(b)(2) (relating to applicability) of this Chapter, the hazardous waste/waste oil mixture is determined not to exhibit the characteristic of ignitability.

(d) *Other applicable provisions.* Waste oil transporters who conduct the following activities are also subject to other applicable provisions of this Chapter as indicated in subsections (d)(1) through (d)(5) of this section:

(1) Transporters who generate waste oil must also comply with Subchapter C of this Chapter.

(2) Transporters who process or re-refine waste oil, except as provided in §298.41, must also comply with Subchapter F of this Chapter.

(3) Transporters who burn off-specification waste oil for energy recovery must also comply with Subchapter G of this Chapter.

(4) Transporters who direct shipments of off-specification waste oil from their facility to a waste oil burner or first claim that waste oil that is to be burned for energy recovery meets the

waste oil fuel specifications set forth in §298.11 must also comply with Subchapter H of this Chapter.

(5) Transporters must dispose of waste oil in accordance with the requirements of Articles VII (relating to hazardous waste) or IX (relating to residual waste) of this title.

§298.41. Restrictions on transporters who are not also processors or re-refiners

(a) Waste oil transporters 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. However, except as provided in subsections (b) and (c) of this section, waste oil transporters may not process waste oil unless they also comply with the requirements for processors/re-refiners in Subchapter F of this Chapter.

(b) Transporters 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/re-refiner requirements in Subchapter F of this Chapter.

(c) Transporters of waste oil that is removed from oil bearing electrical transformers and turbines and filtered at a transfer facility authorized under §298.45 (relating to waste oil storage at transfer facilities) prior to being returned to its original use are not subject to the waste oil processor/re-refiner requirements in Subchapter F of this Chapter.

§298.42. Notification

(a) *Identification numbers.* Waste oil transporters must have an identification number.

(b) *Mechanics of notification.* A waste oil transporter who has not received an identification number may obtain one by notifying the EPA Region III Administrator of their 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 1-800-424-9346 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) Transporter company name;
- (ii) Owner of the transporter company;
- (iii) Mailing address for the transporter;
- (iv) Name and telephone number for the transporter point of contact;
- (v) Type of transport activity (for example, transport only, transport and transfer facility, transfer facility only);
- (vi) Location of all transfer facilities at which waste oil is stored;
- (vii) Name and telephone number for a contact at each transfer facility.

§298.43. Waste oil transportation

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

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

(2) An oil waste oil processing/re-refining 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.

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

(c) *Waste oil discharges.*

(1) In the event of a discharge of waste oil during transportation, the transporter must 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).

(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 must do the following:

(i) Give notice if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675).

(ii) Report in writing as required by 49 CFR §171.16 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 must give notice as required by 33 CFR §153.203.

(5) A transporter must clean up any waste oil discharged that occurs during transportation or take such action as may be 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

(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 must 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.

(b) The transporter must make this 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 Subchapter D (relating to lists of hazardous waste) of Chapter 261 of this title. 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(e) (relating to appendices). EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 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 pursuant to §261.4(6) (relating to exclusions) 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), to reclaim metalworking oils fluids. The presumption does apply to metalworking oils/fluids if such 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) Record retention. Records of analyses conducted or information used to comply with (a), (b), and (c) of this section must be maintained by the transporter for at least 3 years.

§298.45. Waste oil storage at transfer facilities

(a) *Applicability.* This section applies to waste oil transfer facilities. Waste oil transfer facilities are transportation related facilities 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), owners/operators of transfer facilities shall obtain a permit issued pursuant to Chapter 287 (relating to residual waste management-general provisions).

(2) General permits are only available for the following types of waste oil transfer facilities:

(i) The owner/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 yourself waste oil generator.

(ii) The owner/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) Owners/operators of waste oil transfer facilities operating pursuant to a general permit for activities other than those described above may continue to operate their facilities pursuant to the general permit for the term of the permit. At the end of the permit term, this general

permit shall not be renewable. The owner/operator of the transfer facility may only continue to operate the facility if the owner/operator has obtained an individual permit issued pursuant to Chapter 287 (relating to residual waste management – general provisions).

(4) The owner/operator of a waste oil transfer facility is deemed to have a permit-by-rule provided 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 subsections (b) or (c) of §298.41 (relating to restrictions on transporters) occur at the facility.

(iv) The waste oil collected at the transfer facility is destined for a waste oil transfer or waste oil processing/re-refining facility located in Pennsylvania which is permitted by the same person who owns/operates the waste oil transfer facility.

(v) The owner/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/re-refining facility.

(vi) The owner/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) A copy of the protocol for satisfying the requirements of §298.44 (relating to rebuttable presumption) shall be maintained at the facility.

(6) The Department may require the owner/operator of a waste oil transfer facility operating pursuant to the permit-by-rule in paragraph (4) to apply for, and obtain, a permit in accordance with the requirements of Chapter 287 (relating to residual waste management - general provisions), 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.* Owners or operators of waste oil transfer facilities may not store waste oil in units other than tanks, containers, or units subject to regulation under Chapters 264 or 265 of this title.

(d) *Condition of units.* Containers and aboveground tanks used to store waste oil at transfer facilities must meet the following requirements:

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

(2) Not leak.

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

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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.* Existing aboveground tanks used to store waste oil at transfer facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls. The floor must 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, must 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.

(g) *Secondary containment for new aboveground tanks.* New aboveground tanks used to

store waste oil at transfer facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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.

(h) *Labels.*

(1) Containers and aboveground tanks used to store waste oil at transfer facilities must be labeled or marked clearly with the words "waste oil".

(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".

(i) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to the requirements of Chapter 245 (relating to administration of the storage tank and spill prevention program) 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/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release.

(2) Contain the release 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) *Additional requirements.* In addition to the requirements of this Subchapter, waste oil transporters are subject to the requirements of Chapter 264 Subchapters C and D (relating to preparedness, prevention and contingency and emergency procedures), waste oil transporters are also subject to the underground storage tank (Chapter 245) standards for waste oil stored in underground tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§298.46. Tracking

(a) *Acceptance.* Waste oil transporters must keep a record of each waste oil shipment accepted for transport. Records for each shipment must include the following:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the waste oil for transport.

(2) The identification number (if applicable) of the generator, transporter, or processor/re-refiner 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 or processor/re-refiner who provided the waste oil for transport, dated upon receipt of the waste oil. However, intermediate rail transporters are not required to sign the record of acceptance.

(b) *Deliveries.* Waste oil transporters must keep a record of each shipment of waste oil that

is delivered to another waste oil transporter, or to a waste oil burner, processor/re-refiner, or disposal facility. Records of each delivery must 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. However, intermediate rail transporters are not required to sign the record of delivery.

(6) Intermediate rail transporters are not required to sign the record of delivery.

(c) *Exports of waste oil.* Waste oil transporters must maintain the records described in subsections (b)(1) through (b)(4) of this section for each shipment of waste oil exported to any foreign country.

(d) *Record retention.* The records described in subsections (a), (b), and (c) of this section must be maintained for at least three years.

§298.47. Management of wastes

Transporters who generate wastes from the storage or transport of waste oil must manage the wastes as specified in §298.10(e).

§298.48. Signs on vehicles

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 six inches in height. The required information shall be clearly visible and easily readable.

Subchapter F. Standards for waste oil processing/re-refining facilities.

§298.50. Applicability

(a) *General.* Except as provided in this subsection, the requirements of this subchapter apply to owners and operators of waste oil processing/re-refining facilities. This subchapter does not apply to:

(1) Transporters that conduct incidental waste oil processing operations that occur during the normal course of transportation as provided in §298.41 (relating to restrictions on transporters who are not also processors or re-refiners).

(2) Burners that conduct 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.* Waste oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this Chapter as indicated in paragraphs (1) through (5) of this section.

(1) Processors/re-refiners who generate waste oil must also comply with

Subchapter C (relating to standards for waste oil generators) of this Chapter.

(2) Processors/re-refiners who transport waste oil must also comply with Subchapter E (relating to standards for waste oil transporter and transport facilities) of this Chapter.

(3) Except as provided in subparagraphs (i) and (ii), processors/re-refiners who burn off-specification waste oil for energy recovery must also comply with Subchapter G of this Chapter. Processor/re-refiners burning waste oil for energy recovery under the following conditions are not subject to Subchapter G of this Chapter:

(i) The waste oil is burned in an on-site space heater that meets the requirements of §298.23 (relating to on-site 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) Processors/re-refiners who direct shipments of off-specification waste oil from their facility to a waste oil burner or first claim that waste oil that is to be burned for energy recovery meets the waste oil fuel specifications set forth in §298.11 (relating to waste oil specifications) must also comply with Subchapter H of this part; and

(5) Processors/re-refiners must dispose of waste oil in accordance with the requirements of Articles VII (relating to hazardous waste) or IX (relating to residual waste) of this title.

(c) Permits.

(1) Owners/operators of waste oil processing facilities shall obtain a permit issued pursuant to Chapter 287 (relating to residual waste management).

(2) General permits are only available for the following types of waste oil

processing/re-refining facilities:

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

(ii) A waste oil processor/re-refiner that reclaims waste oil pursuant to toll arrangements as specified in §298.24(c) (relating to off-site shipments).

(3) Owner/operators of a facility authorized by a general permit for waste oil processing/re-refining activities other than those identified above may continue to operate their facilities pursuant to the general permit for the permit term. At the end of the permit term, this general permit shall not be renewable. The owner/operator of the waste oil processing/re-refining facility may only continue to operate the facility if the owner/operator has obtained an individual permit issued pursuant to Chapter 287 (relating to residual waste management).

§298.51. Notification

(a) *Identification numbers.* Waste oil processors and re-refiners who have not previously obtained an identification number must comply with §264.11 (relating to identification numbers) and obtain an identification number.

(b) *Mechanics of notification.* A waste oil processor or re-refiner 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 1-800-424-9346 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) Processor or re-refiner company name;
- (ii) Owner of the processor or re-refiner company;
- (iii) Mailing address for the processor or re-refiner;
- (iv) Name and telephone number for the processor or re-refiner point of contact;
- (v) Type of waste oil activity (for example, process only, process and re-refine); and
- (vi) Location of the processor or re-refiner facility.

§298.52. General facility standards

(a) *Preparedness and prevention.* Owners and operators of waste oil processors and re-refiners facilities must comply with the following requirements:

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

(2) Required equipment. All facilities must 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) through (iv) of this section:

(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) 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. All facility communications or alarm systems, fire protection equipment, spill control equipment and decontamination equipment, where required, must 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, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subsection (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee must 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 such a device is not required in subsection (a)(2) of this section.

(5) Required aisle space. The owner or operator must 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 must 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) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(b) *Contingency plan and emergency procedures.* Owners and operators of waste oil processors and re-refiners facilities must comply with the following requirements:

(1) Purpose and implementation of contingency plan.

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

(ii) The provisions of the plan must 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 must describe the actions facility personnel must take to comply with paragraphs (1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of waste oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already complied with the requirements of Chapter 264 Subchapters C and D (relating to preparedness, prevention and contingency plans and 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 the requirements of this Chapter.

(iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to subsections (a)(6) of this section.

(iv) The plan must list names, addresses, and office and home phone numbers of all persons qualified to act as emergency coordinator, as described in paragraph (5), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(v) The plan must 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), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) 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 all revisions to the plan must 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 must 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 must be at least one employee 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 must be thoroughly familiar with all aspects of the facility's contingency plan, all 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 must 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) must immediately do the following:

(A) Activate internal facility alarms or communication systems, where 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 must immediately identify the character, exact source, amount and real extent of any released materials he/she may do this by observation or review of facility records of manifests and, if necessary, by chemical analysts.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire or explosion. This assessment must 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 of 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, he/she must report his/hers findings as follows:

(A) If his/hers assessment indicated that evacuation of local areas may be advisable, he/she must immediately notify the appropriate departmental office of emergency response, the appropriate local authorities. He/she must be available to help appropriate officials decide whether local areas should be evacuated.

(B) He/she must immediately notify either the government official designated as the on-scene coordinator for the geographical area in the applicable regional contingency plan under 40 CFR Part 1510 CFR or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

(1) Name and telephone number of reporter.

- (2) Name and address of facility.
- (3) Time and type of incident (for example, release, fire).
- (4) Name and quantity of material(s) 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 must 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 must include, where 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 must 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 must 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 must ensure that, in the affected area(s) 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) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator must 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 area(s) of the facility.

(ix) The owner or operator must 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, he/she must submit a written report on the incident to the Department. The report must include the following:

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

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

(C) Date, time, and type of incident (for example, fire, explosion).

(D) Name and quantity of material(s) involved.

(E) The extent of injuries, if any.

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

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

§298.53. Rebuttable presumption for waste oil

(a) To ensure that waste oil managed at a waste oil processing/re-refining facility is not hazardous waste under the rebuttable presumption of §298.10(b)(1)(ii), the owner or operator of a waste oil waste oil processing/re-refining facility must determine whether the total halogen content of waste oil managed at the facility is above or below 1,000 parts per million.

(b) The owner or operator must make this 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. 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(e) (relating to appendices). EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 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 pursuant to §261.4(6) (relating to exclusions) 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 such 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.

§298.54. Waste oil management

(a) *Management units.* Waste oil processor/re-refiners are subject to the requirements of Chapter 264 (relating to new and existing hazardous waste management facilities applying for a permit) Subchapters C and D (relating to preparedness, prevention and contingency (PPC) and emergency procedures) of this title, in addition to the requirements of this Subchapter. Waste oil processors/re-refiners are also subject to the underground storage tank (Chapter 245) standards for waste oil stored in underground tanks whether or not the waste oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

(b) *Condition of units.* Containers and aboveground tanks used to store or process waste oil at waste oil processing and re-refining facilities must meet the following conditions:

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

(2) Not leak.

(c) *Secondary containment for containers.* Containers used to store or process waste oil at waste oil processing and re-refining facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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 tanks.* Existing aboveground tanks used to store or process waste oil at waste oil processing and re-refining facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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.

(e) *Secondary containment for new aboveground tanks.* New aboveground tanks used to store or process waste oil at waste oil processing and re-refining facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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) *Labels.*

(1) Containers and aboveground tanks used to store or process waste oil at waste oil processing and re-refining facilities must be labeled or marked clearly with the words "waste oil".

(2) Fill pipes used to transfer waste oil into underground storage tanks at waste oil processing and re-refining facilities must be labeled or marked clearly with the words "waste oil".

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to the requirements of Chapter 245 (relating to administration of the storage tank and spill prevention program), Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) of this title which has occurred after ____ (Editor's note: the blank refers to the effective date of adoption of this proposal). An owner/operator must 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 tanks. Owners and operators who store or process waste oil in aboveground tanks must comply with the following requirements:

(i) At closure of a tank system, the owner or operator must 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) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (§265.310 of this Title).

(2) Containers. Owners and operators who store waste oil in containers must comply with the following requirements:

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

(ii) The owner or operator must 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 261 of this Title.

(i) *Additional requirements.* In addition to the requirements of this subchapter, waste oil processor/re-refiners are subject to the requirements of Chapter 264 (relating to new and existing hazardous waste management facilities applying for a permit), Subchapters C and D (relating to preparedness, prevention and contingency and emergency procedures) of this title. In addition to the requirements of this subchapter waste oil processors/re-refiners are also subject to the underground storage tank (Chapter 245) standards for waste oil stored in underground 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

Owners or operators of waste oil processing and re-refining facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of §298.53 and, if applicable, §298.72. The owner or operator must keep the plan at the facility.

(1) Rebuttable presumption for waste oil in §298.53. At minimum, the plan must 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 Appendix I of Chapter 261 of this title.

(II) A method shown to be equivalent under §260.21 of this title.

(B) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site.

(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 must specify the following if §298.72 is applicable:

(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 Appendix I of Chapter 261 (relating to criteria, identification and listing of hazardous waste) of this title.

(II) A method shown to be equivalent under §260.21 (relating to requests for determination of equivalent testing or analytical methods) of this title.

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

(C) The frequency of sampling to be performed and whether the analysis will be performed on-site or off-site.

(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.* Waste oil processors/re-refiners must keep a record of each waste oil shipment accepted for waste oil processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

(1) The name and address of the transporter who delivered the waste oil to the processor/re-refiner.

(2) The name and address of the generator or processor/re-refiner from whom the waste oil was sent for waste oil processing/re-refining.

(3) The identification number of the transporter who delivered the waste oil to the processor/re-refiner.

(4) The identification number (if applicable) of the generator or processor/re-refiner from whom the waste oil was sent for waste oil processing/re-refining.

(5) The quantity of waste oil accepted.

(6) The date of acceptance.

(b) *Delivery.* Waste oil processor/re-refiners must keep a record of each shipment of waste oil that is shipped to a waste oil burner, processor/re-refiner, 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 must include the following information:

(1) The name and address of the transporter who delivers the waste oil to the burner, processor/re-refiner or disposal facility.

(2) The name and address of the burner, processor/re-refiner or disposal facility who

will receive the waste oil.

(3) The identification number of the transporter who delivers the waste oil to the burner, processor/re-refiner or disposal facility.

(4) The identification number of the burner, processor/re-refiner, 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) must be maintained for at least three years.

§298.57. Operating record and reporting

(a) *Operating record.*

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

(2) The following information must 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 contingency plan and emergency procedures).

(b) *Reporting.* A waste oil processor/re-refiner must 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/re-refiner.
- (2) The calendar year covered by the report.
- (3) The quantities of waste oil accepted for waste oil processing/re-refining and the manner in which the waste oil is processed/re-refined, including the specific processes employed.

§298.58. Off-site shipments of waste oil

Waste oil processors/re-refiners who initiate shipments of waste oil off-site must ship the waste oil using a waste oil transporter who has obtained an identification number.

§298.59. Management of waste

Owners and operators of waste oil processing/re-refining facilities who generate waste from the storage, waste oil processing, or re-refining of waste oil must manage the wastes from their operations as specified in §298.10(e) (relating to materials derived from waste oil).

Subchapter G. Standards for waste oil burners who burn off-specification waste oil for energy recovery.

§298.60. Applicability

(a) *General.* The requirements of this Subchapter apply 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 the requirements of 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 on-site space heater under the provisions of §298.23 (relating to on-site burning in space heaters).

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

(b) *Other applicable provisions.* Waste oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this Chapter as indicated below.

(1) Burners who generate waste oil must also comply with Subchapter C of this Chapter.

(2) Burners who transport waste oil must also comply with Subchapter E of this Chapter.

(3) Except as provided in §298.61(b), burners who process or re-refine waste oil must also comply with Subchapter F of this Chapter.

(4) Burners who direct shipments of off-specification waste oil from their facility to a waste oil burner or first claim that waste oil that is to be burned for energy recovery meets the waste

oil fuel specifications set forth in §298.11 must also comply with Subchapter H of this Chapter.

(5) Burners must dispose of waste oil in accordance with the requirements of Articles VII (relating to hazardous waste) or IX (relating to residual waste) of this title.

(c) *Specification fuel.* This Subchapter does not apply to persons burning waste oil that meets the waste oil fuel specification of §298.11, provided that the burner complies with the requirements of Subchapter H of this Chapter.

§298.61. Restrictions on burning

(a) Off-specification waste oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in §260.1 (relating to definitions) of this title.

(2) Boilers, as defined in §260.1 of this title that are identified as follows:

(i) Industrial boilers 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) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(iii) Waste oil-fired space heaters provided that the burner meets the provisions of §298.23 (relating to on-site burning in space heaters).

(1) Hazardous waste incinerators subject to regulation under Subchapter O of Chapter 264 or 265 of this title.

(b) Any person burning waste oil in a boiler or industrial furnace specified in paragraphs (1)

or (2) must 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), waste oil burners may not process waste oil unless they also comply with the requirements of Subchapter F of this Chapter.

(d) Waste oil burners 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.* Waste oil burners which have not previously complied with the notification requirements of §264.11 and §265.11 (relating to identification numbers) must comply with these requirements and obtain an 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 1-800-424-9346 or 703-920-9810).

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

- (i) Burner company name.
- (ii) Owner of the burner company.
- (iii) Mailing address for the burner.
- (iv) Name and telephone number for the burner point of contact.
- (v) Type of waste oil activity.
- (vi) 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), a waste oil burner must 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 must 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/refiner subject to regulation under Subchapter F of this Chapter, using information provided by the processor/re-refiner.

(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. 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(e) (relating to appendices). EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 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, pursuant to §261.4(6) (relating to exclusions) 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), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such 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 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) Record retention. Records of analyses conducted or information used to comply with subsections (a), (b), and (c) of this section must be maintained by the burner for at least 3 years.

§298.64. Waste oil storage

(a) *Storage units.* Waste oil burners may not store waste oil in units other than tanks, containers, or units subject to regulation under Chapters 264 or 265 of this title.

(b) *Condition of units.* Containers and aboveground tanks used to store oil at burner facilities

must meet the following conditions:

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

(2) Not leak.

(c) *Secondary containment for containers.* Containers used to store waste oil at burner facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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 tanks.* Existing aboveground tanks used to store waste oil at burner facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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.

(e) *Secondary containment for existing aboveground tanks.* New aboveground tanks used to store waste oil at burner facilities must be equipped with a secondary containment system.

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

(i) Dikes, berms or retaining walls and a floor. The floor must 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, must 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) *Labels.*

(1) Containers and aboveground tanks used to store waste oil at burner facilities must be labeled or marked clearly with the words "waste oil."

(2) Fill pipes used to transfer waste oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "waste oil."

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to the requirements of Chapter 245 (relating to administration of the storage tank and spill prevention program) Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) of this title which has occurred after ___ (Editor's note: the effective date of the regulations), a burner must 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.

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

(h) In addition to the requirements of this subchapter, waste oil processor/re-refiners are subject to the requirements of Chapter 264 Subchapters C and D (relating to preparedness, prevention and contingency and emergency procedures) in addition to the requirements of this subchapter. Waste oil burners are also subject to the underground storage tank (Chapter 245) standards for waste oil stored in underground tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§298.65. Tracking

(a) *Acceptance.* Waste oil burners must 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 must 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 or processor/re-refiner 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 or processor/re-refiner 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) must be maintained for at least three years.

§298.66. Notices

(a) *Certification.* Before a burner accepts the first shipment of off-specification waste oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying the following:

(1) The burner has notified EPA stating the location and general description of his/hers 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) of this section must be maintained for three years from the date the burner last receives shipment of off-specification waste oil from that generator, transporter, or processor/re-refiner.

§298.67. Management of waste

Burners who generate waste from the storage or burning of waste oil must manage the waste as specified in §298.10(e) (relating to materials derived from waste oil).

Subchapter H. Standards for Waste Oil Fuel Marketers.

§298.70. Applicability

(a) Any 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 their 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 set forth 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 who transport waste oil received only from waste oil generators, unless the waste oil generator or waste oil transporter directs a shipment of off-specification waste oil from their facility to a waste oil burner. However, waste oil processors/re-refiners 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 who direct shipments of off-specification waste oil to waste oil processor/re-refiners 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 Re-refiners.
- (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 processor/re-refiner, or waste oil burner may determine that waste oil that is to be burned for energy recovery meets the fuel specifications of §298.11 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 processor/re-refiner, 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 must keep copies of analyses of the waste oil (or other information used to make the determination) for three years.

§298.73. Notification

(a) *Identification numbers.* A waste oil fuel marketer subject to the requirements of this Subchapter who has not previously obtained an identification number must comply with these requirements and obtain an identification number.

(b) A marketer who has not received an identification number may obtain one by notifying the EPA Regional Administrator of their 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 should include the following information:

(i) Marketer company name.

(ii) Owner of the marketer.

(iii) Mailing address for the marketer.

(iv) Name and telephone number for the marketer point of contact.

(v) 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.* Any 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 must 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, processor/re-refiner, 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) must keep a record of each shipment of waste oil to the facility to which it delivers the waste oil. Records for each shipment must 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) must be maintained for at least three years.

§298.75. Notices

(a) *Certification.* Before a waste oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification waste oil fuel to a burner, he/she must 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) of this section must be maintained for three years from the date the last shipment of off-specification waste oil is shipped to the burner.



Pennsylvania Department of Environmental Protection

**Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
March 22, 1999**

The Secretary

717-787-2814

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown II
Harrisburg, PA 17101

RE: Proposed Rulemaking: Waste Oil Amendments (#7-342)

Dear Bob:

Enclosed is a copy of a proposed regulation for review and comment by the Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on April 10, 1999, with a 60-day public comment period. Three public information meetings and one public hearing have been scheduled as indicated on the enclosed public notice. This proposal was approved by the Environmental Quality Board (EQB) on February 16, 1999.

The proposed amendments align DEP's hazardous waste program more closely to the federal program for the management of used oil (40 CFR Part 279). The proposal also creates a new Chapter 298 to consolidate all waste oil recycling requirements into a single chapter. Existing provisions reside in both the hazardous waste regulations in Chapters 260-262 and 266 and the residual waste regulations in Chapters 287 and 299.

To assist in the development of this proposal, DEP convened the Waste Oil Stakeholders Group, an ad hoc group of waste oil processors, transporters, and representatives from the Associated Petroleum Industries of Pennsylvania. In addition, the Solid Waste Advisory Committee (SWAC) was briefed on the proposal in November 1997 and reviewed and supported a draft of the proposal in January 1998.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Act provides that the Commission may, within ten days after the expiration of the Committee review period, notify the agency of any objections to the proposed regulation. The Department will consider any comments or suggestions received by the Commission, together with Committee and other public comments prior to final adoption.

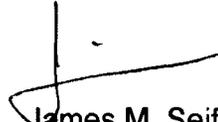
Mr. Robert E. Nyce

- 2 -

March 22, 1999

For additional information, please contact Sharon Freeman, Regulatory Coordinator, at 783-1303.

Sincerely,



James M. Seif
Secretary

Enclosures

May 20, 1999

Department of Environmental Protection
Southeast Regional Office
Suite 6010, Lee Park
555 North Lane
Conshohocken, Pa.

EQB Public Hearing

The EQB will hold one public hearing to accept comments on the proposed amendments. The hearing will be held at 2:00 p.m. as follows:

May 25, 1999

Department of Environmental Protection
Southcentral Regional Office
Susquehanna River Conference Room A
909 Elmerton Avenue
Harrisburg, Pa.

Persons wishing to present testimony at the hearing are requested to contact Kate Coleman at the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness and one designated witness for each organization. Witnesses are requested to submit three written copies of their testimony to the hearing chairperson.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Kate Coleman at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how their needs may be accommodated.

In lieu of or in addition to presenting oral testimony at the hearing, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: 15th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301). Comments must be received by June 9, 1999. Comments received by facsimile will not be accepted. Electronic comments may be submitted to RegComments@dep.state.pa.us. In addition to written or electronic comments, interested persons may submit a summary of their comments to the EQB. The summary cannot exceed one page in length and must also be received by June 9, 1999. The one-page summary will be provided to each member of the EQB in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

Copies of this regulatory proposal may be obtained from Scott Walters, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, Department of Environmental Protection, P.O. Box 8471, Harrisburg, PA 17105-8471, (717) 787-7381, or e-mail at Walters.Scott@dep.state.pa.us. This proposal is also available on DEP's Website at <http://www.dep.state.pa.us> (choose *Public Participation/Proposals Open for Comment*).

JAMES M. SEIF
Secretary and Chairman

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
NOTICE OF PUBLIC MEETINGS AND PUBLIC HEARING

Proposed Waste Oil Amendments

Notice is hereby given by the Department of Environmental Protection (DEP) and the Environmental Quality Board (EQB) of three DEP public information meetings and one EQB public hearing on proposed amendments to Pennsylvania's waste oil regulations. The amendments are proposed as a result of the Regulatory Basics Initiative (RBI). The RBI began in August 1995 with DEP's review of existing regulations to determine those which were more stringent than federal law and regulations, those which lacked clarity, and those which imposed disproportionate costs on the regulated community.

The proposed amendments align DEP's hazardous waste program more closely to the federal program for the management of used oil (40 CFR Part 279). The proposal also creates a new Chapter 298 to consolidate all waste oil recycling requirements into a single chapter. Existing provisions reside in both the hazardous waste regulations in Chapters 260-262 and 266 and the residual waste regulations in Chapters 287 and 299.

New Chapter 298 addresses the generation, collection, transportation, processing/re-refining and burning for energy recovery of waste oil that is a residual waste or a hazardous waste solely because it exhibits a hazardous characteristic. Among the provisions of this proposal are containment and labeling requirements; elimination of the exemption established by the Pennsylvania Used Oil Recycling Act for businesses that generate waste lubricating oils from internal combustion engines or vehicles; and a requirement for generators to maintain records and to perform a source reduction strategy for continued exemption. In addition, the current permit-by-rule (PBR) for used oil transfer facilities is broadened for waste oil collection facilities, and a PBR is added to allow generators with several sites to take their waste to an aggregation point owned and operated by the generator. The proposal also limits the types of facilities that can obtain a general permit. The broad exemption for conditionally-exempt small quantity generators (CESQGs) to mix waste oil and any type of hazardous waste, provided the waste oil or a derivative of it will be burned as a fuel, has been deleted. The proposal replaces the exemption with a provision applicable to all generators that hazardous waste which is hazardous solely on the basis of the characteristic of ignitability may mix this waste with their waste oil, provided the resulting mixture is no longer ignitable.

Public Information Meetings

DEP will hold three public information meetings to discuss the proposed amendments and answer questions. No formal record of questions or comments will be kept at these meetings. The meetings will be held at 2:00 p.m. as follows:

- | | |
|--------------|---|
| May 11, 1999 | Department of Environmental Protection
Southcentral Regional Office
Susquehanna River Conference Room A
909 Elmerton Avenue
Harrisburg, Pa. |
| May 18, 1999 | Department of Environmental Protection
Southwest Regional Office
Waterfront Room B
500 Waterfront Drive
Pittsburgh, Pa. |

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

99 MAR 22 PM 4:07

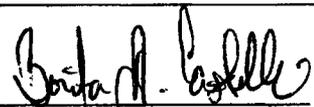
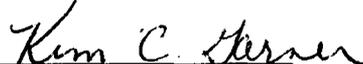
INDEPENDENT REGULATORY
REVIEW COMMISSION

I.D. NUMBER: 7-342
SUBJECT: Waste Oil Regulations
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- X Proposed Regulation
- 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/22/99		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-22-99		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3/22/99		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
3/22/99		* LEGISLATIVE REFERENCE BUREAU

March 11, 1999