

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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4 **Solid and Hazardous Waste Commission/Hazardous Materials and**
5 **Waste Management Division**
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8 **6 CCR 1007-3**
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11 **HAZARDOUS WASTE**
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14 **Amendment of the Part 279 Standards for the Management of Used Oil.**
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17 **1) Section 279.1 is amended by revising the definition of “Petroleum refining facility” to**
18 **read as follows:**
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21 **Subpart A - Definitions**
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23 **§ 279.1 Definitions.**
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27 **Petroleum refining facility** means an establishment primarily engaged in producing gasoline,
28 ~~kerosine~~**kerosene**, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight
29 distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e.
30 facilities classified as SIC 2911).
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35 **2) Section 279.10 is amended by removing and reserving paragraph (b)(3) to read as**
36 **follows:**
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39 **Subpart B - Applicability**
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41 **§ 279.10 Applicability.**
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43 This section identifies those materials which are subject to regulation as used oil under this part. This
44 section also identifies some materials that are not subject to regulation as used oil under this part, and
45 indicates whether these materials may be subject to regulation as hazardous waste under Parts 260
46 through 268, and Part 100 of these regulations.
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48 **(a) Used oil.** EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil,
49 or sends used oil for disposal. Except as provided in § 279.11, the regulations of this part apply to used

50 oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the
51 used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of Part 261 of
52 these regulations.

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54 **(b) Mixtures of used oil and hazardous waste**

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58 ~~(3) **Reserved. Very small quantity generator hazardous waste.** Mixtures of used oil and very small~~
59 ~~quantity generator hazardous waste regulated under § 262.14 of these regulations are subject to~~
60 ~~regulation as used oil under this part.~~

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63 **3) Section 279.10 is amended by revising paragraph (i) to read as follows:**

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65
66 **Subpart B - Applicability**

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68 **§ 279.10 Applicability.**

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72 ~~(i) **Used oil containing PCBs.** In addition to the requirements of Part 279, marketers and burners of~~
73 ~~used oil who market or burn used oil containing any quantifiable level of PCBs are subject to the~~
74 ~~requirements found at 40 CFR § 761.20(e). Used oil containing PCBs (as defined at 40 CFR § 761.3) at~~
75 ~~any concentration less than 50 ppm is subject to the requirements of Part 279 unless, because of dilution,~~
76 ~~it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-~~
77 ~~containing used oil subject to the requirements of Part 279 may also be subject to the prohibitions and~~
78 ~~requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at~~
79 ~~concentrations of 50 ppm or greater is not subject to the requirements of Part 279, but is subject to~~
80 ~~regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing~~
81 ~~PCBs, unless otherwise specifically provided for in this Part 279 or 40 CFR Part 761.~~

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84 **4) Section 279.11 is amended to read as follows:**

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87 **§ 279.11 Used oil specifications.**

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89 Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or
90 other treatment, is subject to regulation under this part unless it is shown not to exceed any of the
91 allowable levels of the constituents and properties ~~in the specification~~ shown in Table 1. Once used oil
92 that is to be burned for energy recovery has been shown not to exceed any ~~specification allowable level~~
93 and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no
94 longer subject to this part.

95
96 **Table 1--Used Oil Not Exceeding Any Specification Allowable Level Shown Below Is Not**
97 **Subject to this Part When Burned for Energy Recovery{1}**

Constituent/property	Allowable level
Arsenic	5 ppm maximum.

Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 EF minimum.
Total Halogens	4,000 ppm maximum.{2}

98
99 {1} The ~~specification does~~ allowable levels do not apply to mixtures of used oil and hazardous waste
100 that continue to be regulated as hazardous waste (see § 279.10(b)).
101

102 {2} Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste
103 under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to Subpart
104 D of Part 267 of these regulations rather than this part when burned for energy recovery unless the
105 presumption of mixing can be successfully rebutted.

106 Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR §
107 761.20(e).
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109

110 **5) Section 279.22 is amended by revising paragraph (d) to read as follows:**

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112 **§ 279.22 Used oil storage.**

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116 (d) **Response to releases.** Upon detection of a release of used oil to the environment that is not subject
117 to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of
118 these regulations, a generator must perform the following cleanup steps:
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123 **6) Section 279.44 is amended by revising paragraph (c)(2) to read as follows:**

124
125 **§ 279.44 Rebuttable presumption for used oil.**

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128
129 (c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a
130 hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of
131 Part 261 of these regulations. The owner or operator may rebut the presumption by demonstrating that
132 the used oil does not contain hazardous waste (for example, by showing that the used oil does not
133 contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part
134 261 of these regulations).
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138 (2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons
139 (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable
140 presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from
141 sources other than refrigeration units.
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143 **7) Section 279.45 is amended by revising paragraph (h) to read as follows:**

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145 **§ 279.45 Used oil storage at transfer facilities.**

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149 (h) **Response to releases.** Upon detection of a release of used oil to the environment that is not subject
150 to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of
151 these regulations, the owner/operator of a transfer facility must perform the following cleanup steps:

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156 **8) Section 279.52 is amended by revising paragraph (b)(6)(ii) to read as follows:**

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158
159 **§ 279.52 General facility standards.**

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161 *****

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163 (b) **Contingency plan and emergency procedures.** Owners and operators of used oil processing
164 and re refining facilities must comply with the following requirements:

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166 *****

167
168 **(6) Emergency procedures.**

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170 *****

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172 (ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately
173 identify the character, exact source, amount, and areal extent of any released materials. He/she
174 may do this by observation or review of facility records or manifests and, if necessary, by chemical
175 analysisanalyses.

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177 *****

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180 **9) Section 279.54 is amended by revising paragraph (g) to read as follows:**

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182 **§ 279.54 Used oil management.**

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186 (g) **Response to releases.** Upon detection of a release of used oil to the environment that is not subject
187 to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of
188 these regulations, an owner/operator must perform the following cleanup steps:

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193 **10) Section 279.55 is amended by revising paragraph (b)(2)(i)(B) to read as follows:**

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§ 279.55 Analysis plan.

(b) **On specification used oil fuel in § 279.72.** At a minimum, the plan must specify the following if § 279.72 is applicable:

- (1) Whether sample analyses or other information will be used to make this determination;
- (2) If sample analyses are used to make this determination:
 - (i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - (A) One of the sampling methods in Appendix I of Part 261 of these regulations; or
 - (B) A method shown to be equivalent under § 260.20 and § 260.21 of these regulations;
 - (ii) Whether used oil will be sampled and analyzed prior to or after any processing/re refining;

11) Section 279.64 is amended by revising paragraph (g) to read as follows:

§ 279.64 Used oil storage.

(g) **Response to releases.** Upon detection of a release of used oil to the environment that is not subject to the requirements of 40 CFR Part 280, Subpart F, and which has occurred after the effective date of these regulations, a burner must perform the following cleanup steps:

12) Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

(b) **On specification used oil delivery.** A generator, transporter, processor/re refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil-an-on specification-used-oil-burner. Records for each shipment must include the following information:

13) Section 8.93 (Statement of Basis for the Rulemaking Hearing of February 19, 2019) is added to Part 8 of the Regulations to read as follows:

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Statement of Basis and Purpose
Rulemaking Hearing of February 19, 2019

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8.93 Basis and Purpose.

These amendments to 6 CCR 1007-3, Part 279 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

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Amendment of the Part 279 Standards for the Management of Used Oil

These amendments revise sections 279.1, 279.10, 279.11, 279.22, 279.44, 279.45, 279.52, 279.54 279.55, 279. 64, and 279.74 of Colorado's Part 279 Standards for the Management of Use Oil.

With the exception of the revisions to section 279.10, these amendments consist mainly of corrections to minor typographical and technical errors that exist in the Part 279 regulations. The more substantive changes to section 279.10 include the following:

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1) **Amendment of Section 279.10(i) – Applicability of the Used Oil Management Standards to PCB contaminated used oil.**

Paragraph (i) of section 279.10 is being amended to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. The amendment clarifies that used oil that contains less than 50 ppm of PCBs is generally subject to regulation under the RCRA used oil management standards. However, the amendment notes that the Toxic Substances Control Act (TSCA) prohibition against the dilution of PCB concentrations below regulatory thresholds (40 CFR 761.1(b)(5)) applies to the dilution of PCB-containing used oil. Used oil, therefore, that contains, or contained prior to dilution, 50 ppm or greater of PCBs is not subject to regulation under the RCRA used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil.

2) **Removal of Section 279.10(b)(3) – Mixtures of used oil and very small quantity generator hazardous waste.**

The Division is removing the provision at § 279.10(b)(3) to clarify the state's intent to be more stringent than the federal requirements regarding the management of mixtures of used oil and listed hazardous waste from very small quantity generators (VSQGs) of hazardous waste.

Pursuant to the federal provisions of §§ 262.13(f)(iii) and 279.10(b)(3), mixtures of VSQG listed hazardous waste and used oil are exempt from regulation under the hazardous waste management regulations, and may be managed as used oil under the used oil management standards of 40 CFR Part 279.

The Division believes that VSQG generated mixtures of used oil and listed hazardous waste should be managed in accordance with the same requirements applicable to mixtures of used oil and listed hazardous waste generated by small quantity generators and large quantity generators. Allowing VSQG generated mixtures of used oil and listed hazardous waste to be managed as used oil makes compliance assurance difficult and significantly reduces a VSQG's incentive to minimize the amount of listed hazardous waste it generates, and may also lead to management of the waste in a manner that is not protective of human health and the environment.

297 In adopting state analogs to the federal hazardous waste generator improvements rule on May
298 15, 2018, Colorado included more stringent language in § 262.13(f) regarding VSQG mixtures of
299 used oil and hazardous waste.

300
301 Pursuant to the requirements of 6 CCR 1007-3, § 262.13(f)(iii), if a VSQG's characteristic
302 hazardous wastes are mixed with used oil, and the resulting mixture does not exhibit any
303 hazardous waste characteristic, the mixture is subject to the Part 279 used oil regulations. Any
304 material produced from such a mixture by processing, blending, or other treatment is also
305 regulated under the Part 279 regulations. However, pursuant to 6 CCR 1007-3, § 262.13(f)(iv), if
306 a VSQG mixes any hazardous waste listed in subpart D of Part 261 of the Colorado Hazardous
307 Waste Regulations (6 CCR 1007-3) with used oil, the resultant mixture is a newly generated listed
308 hazardous waste and must be managed as hazardous waste. The VSQG must count both the
309 resultant mixture amount plus all other hazardous waste generated in the calendar month to
310 determine whether the total quantity exceeds the very small quantity generator calendar month
311 quantity limits identified in the definition of generator categories found in § 260.10 of these
312 regulations. If so, to remain exempt from the permitting, interim status, and operating standards,
313 the very small quantity generator must meet the conditions for exemption applicable to either a
314 small quantity generator or a large quantity generator. The very small quantity generator must
315 also comply with the applicable independent requirements for either a small quantity generator or
316 a large quantity generator.

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318 In its adoption of the hazardous waste generator improvements rule, Colorado inadvertently failed
319 to amend § 279.10(b)(3) to be consistent with the more stringent provisions of § 262.13(f), and to
320 include a discussion of this more stringent provision in the Statement of Basis and Purpose for
321 the May 18, 2018 rulemaking.

322
323 This amendment removing the provision at § 279.10(b)(3) clarifies the state's intent pursuant to §
324 262.13(f)(iv) to be more stringent than the federal requirements regarding the management of
325 VSQG mixtures of used oil and hazardous waste.

326
327 This Basis and Purpose incorporates by reference the applicable portions of the preamble
328 language for the EPA regulations as published in the Federal Register at 68 FR 44659-44665,
329 July 30, 2003 regarding the amendment of Section 279.10(i).