RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 260a, 261a, 266a, 270a, 287 AND 298]

Waste Oil

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

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

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Scott Walter, Division of Municipal and Residual Waste Management, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, 14th floor, 400 Market Street, P. O. Box 8471, Harrisburg, PA 17105-8491, (717) 787-7564, or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th floor, 400 Market Street, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (http://www.dep.state.pa.us).

C. *Statutory Authority*

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

The Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.101— 6018.1003), which in section 105(a) of the SWMA (35 P. S. § 6018.105(a)) grants the Board the power and duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA.

The Clean Streams Law (CSL) (35 P. S. §§ 691.1—691.1001), which in section 5(b) of the CSL (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 section 402 of the CSL (35 P. S. § 691.402) grants the Department the authority to adopt rules and regulations requiring permits or establishing conditions under which an activity shall be conducted for any activity that creates a danger of pollution of the waters of this Commonwealth or that regulation of the activity is necessary to avoid pollution.

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P. S. §§ 4000.101—4000.1904), which in section 302 of Act 101 (53 P. S. § 4000.302) gives the Board the power and duty to adopt the regulations of the Department to accomplish the purposes and carry out the provisions of this act.

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

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

D. *Background of the Amendments*

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

These amendments also align the Department's hazardous waste management program more closely to the Federal hazardous waste management program and the Federal used oil management standards under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§ 6901—6986). On September 10, 1992, the Environmental Protection Agency (EPA) published 40 CFR Part 279 (relating to recycled used oil management standards). These regulations apply to the recycling of nonhazardous used oil and used oil that is hazardous due to a characteristic. The EPA expects all states with authorized RCRA programs to amend their programs to include these used oil recycling management standards. The Commonwealth's current authorized program does not include the EPA's recycled used oil management standards and the Department will apply for authorization of this portion of the RCRA program upon completion of these final-form waste oil recycling regulations.

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

Notice of the proposed rulemaking was published at 29 Pa.B. 1975 (April 10, 1999). The Department held three public information meetings across the State and the Board held one public hearing on May 25, 1999, at the Department's Southcentral Regional Office on the proposed rulemaking. In addition, the Board provided a

60-day public comment period on the proposed rulemaking. During the public comment period for this rulemaking, the Department received written comments from 15 individuals and groups. Two commentators presented testimony at the public hearing.

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

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

Following the public comment period, the Board and the Department considered all of the comments received in formulating the final-form regulations. The Department has prepared a comment and response document that addresses each comment on the proposed rulemaking.

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

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

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

Chapter 261a. Identification and Listing of Hazardous Waste

Section 261a.2. Definition of "solid waste."

40 CFR 261.2(c)(2)(ii) (relating to definition of "solid waste"), as incorporated by reference in § 261a.1 (relating to incorporated by reference, purpose and scope), excludes commercial chemical products listed in 40 CFR 261.33 (relating to discarded commercial chemical products, off specification species, container residues, and spill residues thereof) from being solid waste when burned for energy recovery, provided they are themselves fuel. The EPA has broadened this regulation, by policy, to include characteristically hazardous commercial fuel products. The EPA has interpreted the commercial products to include tank bottoms, fuel-water mixtures and fuel-contaminated soil from spills, which require processing before they can be used as fuel. While these materials are no longer considered solid wastes under Subtitle C of RCRA, they would be considered solid waste under the SWMA.

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

The Board has decided to modify the incorporation by reference of 40 CFR 261.2(c)(2)(ii) in new § 261a.2 to clarify that commercial chemical products, which include characteristically hazardous commercial fuel products, are not regulated as hazardous wastes, but are regulated under Chapters 287—299. The safeguards needed to provide worker safety and to protect public health and the environment can be built into the permitting process for waste oil facilities and other residual waste facilities. In addition, if these materials are to be used as fuel without processing prior to use, they may be considered coproducts under § 287.1 (relating to definitions) and not be waste.

Chapter 270a. Hazardous Waste Permit Program

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

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

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

Chapter 287. Residual Waste Management—General Provisions

Section 287.1. Definitions.

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

Section 287.2. Scope.

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

Section 287.51. Scope.

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

Chapter 298. Management of Waste Oil

Section 298.1. Definitions.

The Board received several comments on this section.

Definitions used in other regulations

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

"Aboveground storage tanks"

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

"Existing tank"

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

"New tank"

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

"Tank"

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

"Underground storage tank"

On final-form rulemaking this term was added for clarification.

"Waste oil"

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

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

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

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

"Waste oil transfer facility"

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

"Waste oil transporter"

While this Commonwealth's waste management regulations clearly distinguish waste transporters from owner/operators of waste transfer facilities, Federal used oil regulations blend the two together. This produced confusion in the proposed regulations as to when various requirements apply to transporters only, to transfer facilities only, or to both. The Board has modified the definition of "waste oil transporter" to clarify the distinction that has incorporated the use of separate terms—

waste oil transporter and waste oil transfer facility—throughout the final-form regulations. The separate terms of "transporter" and "transfer facility" are indicated as appropriate throughout the final-form regulations.

Section 298.2. Scope

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

Section 298.10. Applicability

The Board received several comments on this section.

Mixtures of listed hazardous waste and waste oil

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

Mixtures of characteristic hazardous waste and waste oil

Several commentators criticized limiting characteristic hazardous waste that can be mixed with waste oil to ignitable-only hazardous waste. While some commentators merely stated the Commonwealth should not be more stringent than the Federal used oil program, others pointed out that few, if any, characteristically hazardous wastes will be due to ignitability alone. This restriction would be especially difficult on small shops that generate limited quantities of these hazardous wastes.

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

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

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

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

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

Materials containing or otherwise contaminated with waste oil

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

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

In an effort to encourage legitimate recycling of waste oil, the final-form regulations provide reduced regulatory requirements not afforded to wastes destined for disposal or even to other wastes being recycled. These requirements include managing waste oil which exhibits characteristics of hazardous waste as a residual waste, allowing mixtures of waste oil and characteristically ignitable hazardous waste to be managed as waste oil, allowing some waste oil transfer and processing facilities to operate under a general permit for processing prior to beneficial use, and creating a permit-by-rule for waste oil collection centers. These exceptions should not be extended to wastewaters containing so little waste oil that oil cannot be recovered and recycled or reused. Many generators of oily wastewaters perform onsite oil/water separation and remove most of the waste oil prior to shipment to an off-site facility. The EPA uses the "sheen test" for wastewater; that is, if the oil can be seen on the surface and it is not from a source of de minimis quantities (40 CFR 279.10(f)), then it is regulated as used oil. It is known, through basic experimentation, that the oil necessary to produce such a sheen can be as little as one molecule thick. Such a small amount of oil could not be recovered from wastewater using the technologies employed by waste oil processors today. The final-form regulations allow facilities to take wastewater containing less than 1% oil as waste oil if they can demonstrate that they can recover marketable quantities of oil from the wastewater. The Department believes that technologies commonly employed by waste oil processors can reasonably be expected to recover oil from wastewater containing 1% oil. This standard is currently used in waste oil facility permits and has not been problematic to date. Wastewater containing lower quantities of oil than can be recovered would be classified as either residual waste or hazardous waste, depending on its characteristics. Facilities with individual transfer facility or processing permits, including facilities that primarily manage waste oil, may accept nonhazardous wastewaters provided it is authorized under their permits. Since no beneficial use is possible for the wastewaters containing insufficient oil to recover, facilities operating under general permits are not able to accept these wastewaters.

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

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

The Board has decided to retain the standard that for wastewater to be managed under Chapter 298, it must contain either 1% or more of waste oil or marketable quantities of waste oil. Since this standard is inconsistent with the de minimis quantities standard in proposed subsection (f), that standard has been deleted on final-form rulemaking.

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

Materials derived from waste oil

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

Section 298.11. Waste oil specifications.

The specification level for total halogens in the proposed rulemaking, 1,000 parts per million (ppm), generated many comments. Several commentators believe that the Commonwealth should either adopt the Federal standard of 4,000 ppm or a dual system, as suggested in the preamble to the proposed regulations, where the specification would be 4,000 ppm for industrial burners and 1,000 ppm for residential burners. On the other hand, a commentator recommended that the 1,000 ppm total halogen specification is appropriate and would eliminate the confusion between the standard for on-specification fuel oil and the standard for total halogens relating to the rebuttable presumption.

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

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

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

Section 298.12. Prohibitions.

Subsection (a) states that waste oil may not be managed in surface impoundments or piles unless the units are subject to Chapter 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities) of the hazardous waste regulations. Similar language appears in §§ 298.22, 298.45, 298.54 and 298.64 (relating to waste oil storage; waste oil storage at transfer facility; waste oil management; and waste oil storage). One commentator asked whether the parenthetical portion of the statement indicates that permits will be required for surface impoundments and storage units that manage waste oil, or would the permit-by-rule requirements for generators described in § 298.20(b)(3) (relating to applicability) apply. The commentator also asked for clarification that only Subchapters I and J (pertaining to containers and tank systems) and Subchapters K and L (pertaining to surface impoundments; and waste piles) apply. The language used in the regulations closely follows the Federal regulations at 40 CFR 279 (relating to standards for the management of used oil). The parenthetical portion of this statement was included in the proposed regulation to reference the information contained in Chapter 264a and 265a. These sections should be interpreted like the Federal counterpart at 40 CFR 279.12(a) (relating to prohibitions), which requires full compliance with Subparts K and L in 40 CFR Parts 264 and 265. Storage of waste oil in surface impoundments would be considered treatment and requires a permit authorized under the hazardous waste management regulations. A permit-by-rule under this chapter does not replace the need to comply with Chapters 264a and 265a. As a practical matter, the Department is unaware of any waste oil impoundments in this Commonwealth and believes placement of waste oil in a surface impoundment would decrease recyclability of the oil. The EPA has numerous documented cases of environmental damage from the storage of waste oil in these units (see Environmental Damage from Used Oil Mismanagement, Final Draft Report, available in the docket to 57 FR 41566, December 10, 1992). The references in these regulations should be read to apply to the appropriate subparts and subchapters only. The Board is retaining the wording of the proposed regulations.

Section 298.20. Applicability.

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

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

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

Several commentators expressed concern that the generator recordkeeping requirements in the proposed regulations were overly burdensome. They viewed the proposed regulations as requiring very detailed records on waste oil, such as recording each type of oil used and process it was used in and testing results. In addition, the commentators questioned the need to retain these records for 5 years when other records need only be retained for 3 years. At the request of the ad hoc waste oil recycling companies that provided input to the Department, these minimal generator recordkeeping requirements were developed to assist waste management personnel in identifying the types of waste they collect and process or dispose. The requirements represent basic recordkeeping associated with ordinary business practices and should not be overly burdensome. The requirements are especially simple for generators whose waste oil does not contain elevated halogens and who do not mix the waste oil with hazardous waste.

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

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

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

The Board has retained the generator recordkeeping requirements in the final-form regulation. However, the Board decided to reduce the record retention requirement from 5 to 3 years. In addition, a new recordkeeping requirement has been added to correspond with the new language added in § 298.10(b)(2) that allows generators to mix some characteristically hazardous waste with waste oil. Subsection (c)(5) requires a generator to record analyses of hazardous waste characteristics for any mixtures of hazardous waste with waste oil.

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

Section 298.21. Hazardous waste mixing.

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

Section 298.22. Waste oil storage.

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

Since the Federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in this Commonwealth that is different than the Federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of 2 years, in subsection (c), to comply with the new labeling requirements. Until that time, either label may be used.

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

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

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

Section 298.23. Onsite burning in space heaters.

Of the three commentators who commented on burning oil in space heaters, two supported the regulation as proposed. The third objected for the following reasons: 1) small furnaces have unacceptable emissions when burning waste oil; 2) there will be no testing by the burners to assure mixture of waste oil with hazardous waste has not occurred; and 3) a seasonal demand will be created for those who currently recycle and process waste oil. The commentator that objected further explained that those who would be allowed to burn waste oil received directly from a generator will not be interested in purchasing waste oil other than in the colder months, and a seasonal operation would not be profitable for the waste oil companies.

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

Section 298.24. Offsite shipments.

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

Over the past few years, the Department has experienced some difficulty in keeping used oil collection sites in the used oil collection program. While there have been several reasons for this, many businesses are reluctant to collect waste oil from small generators out of fear of accepting contaminated oil. The certification requirement is an attempt to provide a level of "comfort" to collection facilities that would be absent without it. As for household DIYers, since their wastes are exempt from regulation as hazardous under 40 CFR 261.4(b)(1) (relating to exclusions), as incorporated by reference in § 261a.1, they can easily certify that they have not mixed their waste oil with hazardous waste. Even generators who are small businesses are required to determine if their wastes are hazardous (40 CFR 262.11 (relating to criteria for listing hazardous waste), as incorporated by reference under § 262a.10), so they should have enough knowledge of their wastes to be able to comply with the certification. Of course, the easiest way to ensure that the certification is accurate and that they have not mixed their waste oil with hazardous waste is to train their employees not to dump anything in their waste oil. The Board has not made changes to this requirement on final-form rulemaking. To assist generators and facilities receiving waste from generators, the Department is developing a fact sheet explaining how to prepare a certification.

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

Sections 298.25. Source reduction strategy.

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

On final-form regulations, the Board has deleted the proposed language containing the requirements for a source reduction strategy and cross referenced the source reduction strategy requirements from Chapter 287 to remove the inconsistencies and to make it clear that waste oil should be included in the same source reduction strategy developed for the generator's other residual waste. This cross reference also clarifies that source reduction strategies are not required for waste oil from automotive servicing. In developing source reduction strategies, generators might consider certain processes that can extend the useful life of oil, such as switching to a longer-lasting oil, like a synthetic, or by using additives or filtration, thereby saving the generators money and creating less waste.

Section 298.26. Biennial report.

Several comments applicable to the biennial report requirements were received. While one commentator

questioned the need for biennial reporting for waste oil that is recycled, most were concerned with inconsistencies in dates and requirements of this section compared with those found for other residual waste in § 287.52 (relating to biennial report). Commentators believed that biennial reports would be required for waste oil from automotive servicing. The Federal regulations for used oil do not require the preparation of biennial reports for used oil.

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

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

Section 298.30. Waste oil collection centers.

Three comments were received concerning waste oil collection centers. One commentator suggested an exemption be added for State and community DIYer drop-off sites. The commentator was concerned that waste oil from DIYers placed in a tank at waste oil collection centers with waste oil generated at the center could make the entire tank of waste oil hazardous. Federal law concerning hazardous waste does not exclude from regulation waste from a tank at a collection center that contains waste oil from DIYers mixed with waste oil generated at the center, since the waste oil generated at the center might be mixed with hazardous waste. However, the Department may use its enforcement discretion to allow waste oil containing high total halogens from a collection center to be managed as nonhazardous when the collection center demonstrates that the halogens were not generated at the collection center.

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

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

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

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

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

Section 298.40. Applicability.

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

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

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

The Federal rules establish a specific provision governing waste oil from electrical transformers and turbines, filtered, and returned to its original use. One commentator pointed out that, where the Federal rules allow utilities to collect and filter electrical transformer and turbine oils, and return that oil to its original use, without the need for an individual permit, the proposed regulations require an individual permit in every case.

The Board has modified subsection (c) of the final-form regulations to be compatible with the Federal rule.

Section 298.42. Notification.

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

Section 298.43. Waste oil transportation.

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

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

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

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

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

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

Section 298.45. Waste oil storage at transfer facility.

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

Several comments were received on this permit-by-rule for satellite transfer facilities. Some strongly supported the permit-by-rule. Others thought it should be expanded to include out-of-state main facilities. One commentator thought all waste oil transfer facilities should be covered by permit-by-rule and not required to obtain a permit. Finally, one commentator believed the distinction between in-State and out-of-State main facilities conflicts with the safeguards afforded under the Commerce Clause of the United States Constitution and suggested the permit-by-rule be eliminated.

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

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

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

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

Since the Federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in this Commonwealth that is different than the Federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of 2 years, in subsection (h), to comply with the new labeling requirements. Until that time, either label may be used.

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

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

Section 298.46. Tracking.

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

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

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

Section 298.50. Applicability.

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

Section 298.51. Notification.

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

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

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

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

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

Section 298.54. Waste oil management.

The proposed rulemaking incorporates closure and postclosure care requirements applicable to hazardous waste landfills where not all contaminated soil associated with the closure of aboveground waste oil storage tanks can be practicably removed. These requirements in the proposed rulemaking apply even in circumstances where the waste oil that was stored would not qualify as either a listed or characteristic hazardous waste. One commentator believes these requirements expand the scope of hazardous waste closure and postclosure obligations to aboveground storage tanks that are used to hold waste oil. The language is taken directly from the Federal used oil regulations at 40 CFR 279.54(h)(ii) (relating to used oil management). By incorporating the Federal requirements, the Board is promoting consistency between the state and Federal programs and has not changed it in the final-form regulations.

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

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

language pertaining to containers is also language that was recently adopted by the Board in the amended provisions to Chapter 299.

Since the Federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in this Commonwealth that is different than the Federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of 2 years, in subsection (f), to comply with the new labeling requirements. Until that time, either label may be used.

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

Section 298.62. Notification.

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

Section 298.64. Waste oil storage.

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

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

Since the Federal regulations require aboveground storage units and pipes to be labeled "used oil," commentators have objected to the proposed labeling regulations that require the words "waste oil." Since the term "used oil" has a statutory meaning in this Commonwealth that is different than the Federal meaning, labeling waste oil tanks and pipes "used oil" would not be correct and would be confusing. The Board does recognize that some companies may have already been using "used oil" labels and has, therefore, provided a transition scheme of 2 years, in subsection (f), to comply with the new labeling requirements. Until that time, either label may be used.

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

Section 298.73. Notification.

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

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

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

Compliance Costs

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

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

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

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

Compliance Assistance Plan

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

Paperwork Requirements

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

was not mixed with a hazardous waste. Record retention time, however, has been reduced from 5 to 3 years.

The generators, transporters, burners and waste oil processing/rerefining 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/rerefiners 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/rerefiners are required to maintain operating records and to have a written protocol for flash point screening, for determining if the total halogens in waste oil exceeds 1,000 ppm and, if applicable, for determining whether waste oil to be burned for energy recovery is on-specification. Waste oil processors/rerefiners 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/rerefiners, burners and marketers must maintain records tracking shipments of waste oil. These analytical and recordkeeping requirements are mandated by the EPA's used oil regulations.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

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

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

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

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on April 12, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2001, and approved the final-form regulations.

J. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 29 Pa.B. 1975.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 260a, 261a, 266a, 270a, and 287 are amended by amending §§ 260a.3, 261a.5, 261a.6, 266a.100, 270a.60, 287.1, 287.51 and 287.102; by adding §§ 261a.2, 298.1, 298.2, 298.10—298.12, 298.20—298.26, 298.30, 298.31, 298.40—298.48, 298.50—298.59, 298.60—298.67 and 298.70—298.75; and by deleting §§ 266a.40—266a.44 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DAVID E. HESS,
Chairperson

(*Editor's Note*: For the text of the Independent Regulatory Review Commission document relating to this order, see 31 Pa.B. (June 2, 2001).)

Fiscal Note: (1) General Fund; (2) Implementing Year 1999-00 is $10,000; (3) 1st Succeeding Year 2000-01 is $Minimal; 2nd Succeeding year 2001-02 is $Minimal; 3rd Succeeding Year 2002-03 is $Minimal; 4th Succeeding Year 2003-04 is $Minimal; 5th Succeeding Year is 2004-05 is $Minimal; (4) Fiscal Year 1998-99 $33,123,000; Fiscal Year 1997-98 $31,139,00; Fiscal Year 1996-97 $29,469,000; (7) Environmental Program Management; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM. GENERAL

Subchapter A. GENERAL

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

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

(1) The terms "Administrator," "Regional Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and "State Director" are substituted with "Department."

(2) When referring to an operating permit or to the Federal hazardous waste program, "Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6986)," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C" is substituted with the act.

(3) "Environmental Protection Agency" or "EPA" and all names or associated acronyms are substituted with "Department" except when referring to the terms "EPA Form," "EPA Identification Number," "EPA Acknowledgment of Consent," "EPA Hazardous Waste Number," "EPA publication," "EPA publication number," "EPA Test Methods" and "EPA Guidance" including any mailing addresses associated with these terms.

(4) "Used oil" is substituted with "waste oil."

(5) "State," "authorized state," "approved state" or "approved program" is substituted with "the Commonwealth."

(6) Whenever the regulations require compliance with procedures found in 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program), compliance is accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

(7) The Commonwealth equivalent of 40 CFR Part 273 (relating to universal waste management) is found in Chapter 266b (relating to universal waste management).

(8) The Commonwealth equivalent of 40 CFR Part 279 (relating to standards for the management of used oil) is found in Chapter 298 (relating to management of waste oil).

(b) Federal regulations that are cited in this article or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

(c) References to 40 CFR Part 124 (relating to procedures for decision making) found in Federal regulations incorporated by reference are substituted with Pennsylvania procedures found in Chapter 270a.

(d) References to the "Department of Transportation" or "DOT" mean the United States Department of Transportation.

(e) The effective date for the *Code of Federal Regulations* incorporated by reference in this article is May 1, 1999. The incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 261a.2. Definition of "solid waste."

Materials that are excluded from the definition of "solid waste" in 40 CFR 261.2(c)—(e) (relating to the definition of "solid waste") shall be managed in accordance with Chapters 287—299 (relating to residual waste management).

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

(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) is replaced with Chapter 298 (relating to management of waste oil).

(b) In addition to the requirements incorporated by reference, a conditionally exempt quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

(c) A conditionally exempt small quantity generator complying with this subchapter and 40 CFR 261.5 is deemed to have a license for the transportation of those conditionally exempt small quantity generator wastes generated by the generator's own operation.

§ 261a.6. Requirements for recyclable materials.

(a) The reference to "Part 279 of this chapter" in 40 CFR 261.6(a)(4) (relating to requirements for recyclable materials) is replaced with Chapter 298 (relating to management of waste oil).

(b) 40 CFR 261.6(c) is not incorporated by reference.

(c) Instead of 40 CFR 261.6(c), owners and operators of facilities that store or treat recyclable materials are regulated under all applicable and incorporated provisions of 40 CFR Parts 264 and 265, Subparts A—L, AA, BB, CC and DD; 40 CFR Part 264 Subpart X; 40 CFR Parts 266 and 270, except as provided in 40 CFR 261.6(a).

(1) In addition, owners and operators of facilities regulated under this section are subject to the applicable provisions of:

(i) Chapter 264a and Chapter 265a, Subchapters A, B, D, E, G—J and P.

(ii) Chapter 264a, Subchapters X and DD.

(iii) Chapters 266a and 270a.

(2) Recycling processes that are not treatment are exempt from regulation except as provided in 40 CFR 261.6(d).

(3) The sizing, shaping or sorting of recyclable materials will not be considered treatment for purposes of this section.

(d) The requirements of §§ 270a.3, 264a.82, 264a.83, 265a.82 and 265a.83 do not apply to facilities or those portions of facilities that store or treat recyclable materials.

(e) References to § 279.11 in 40 CFR 261.6 are replaced with § 298.11 (relating to waste oil specifications).

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

Subchapter E. (Reserved)

§§ 266a.40—266a.44. (Reserved).

Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

§ 266a.100. Applicability.

The reference to "Part 279 of this chapter" in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with Chapter 298 (relating to management of waste oil).

CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

Subchapter F. SPECIAL FORMS OF PERMITS

§ 270a.60. Permits-by-rule.

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule): In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the conditions listed are met. The Department may require an owner or operator with a permit-by-rule under this section to apply for, and obtain, an individual permit when the facility is not in compliance with the applicable requirements or is engaged in 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.

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

(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit-by-rule, if the owner or operator complies with the following requirements:

(i) The facility treats hazardous waste generated onsite.

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

(iii) Section 264a.11 (relating to identification number and transporter license) and 40 CFR 264.11 (relating to identification number).

(iv) Chapter 264a, Subchapter D and 40 CFR Subparts C and D (relating to contingency plan and emergency procedures; permit conditions; and changes to permit).

(v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).

(vi) For the purposes of this subsection, the owner or operator of an elementary neutralization unit or wastewater treatment unit permit-by-rule facility may treat wastes generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 and 40 CFR 262.20 (relating to general requirements; and general requirements).

(vii) The Department may, under special circumstances, approve on a case-by-case basis the receipt and treatment of wastes generated offsite by a different generator for treatment at a facility regulated under this subsection without the treatment of the wastes resulting in the loss of permit-by-rule status under this subsection.

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

(i) The facility is a captive facility and the only waste treated is generated onsite.

(ii) The notification requirements of 40 CFR 264.11 (relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.

(iii) The applicable requirements of 40 CFR 262.34 (relating to accumulation).

(iv) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous by means of dilution.

(v) A generator may mix waste oil with a waste which is hazardous solely because it exhibits the toxicity characteristic for benzene, arsenic, cadmium, chromium, lead or ignitability, provided that the resultant mixture does not exhibit any characteristic of hazardous waste under 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability) and that the mixture is managed in accordance with Chapter 298, Subchapter C (relating to waste oil generators).

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit-by-rule for treatment prior to the reclamation of the spent, lead-acid batteries, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, I—L and DD and Chapter 264a, Subchapters A, B, D, E, I—L and DD.

(4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a permit-by-rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD and 40 CFR Part 262 and 264, Subparts A—E and I, J and DD.

(iii) For the purposes of this subsection, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 (relating to general requirements) and 40 CFR Part 262.20 (relating to manifest).

(iv) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subsection without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subsection.

(6) The owner or operator of a facility that treats recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F

(relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit-by-rule if the owner or operator complies with the following:

(i) The notification requirements of 40 CFR 264.11 (relating to identification number).

(ii) The applicable requirements of Chapter 264a, Subchapters A, B, D, E, I, J and DD and 40 CFR Part 264, Subparts A—D, I, J and DD.

(c) In addition to the requirements incorporated by reference:

(1) With respect to any permit-by-rule facility under subsection (b)(3)—(6), the Department may, upon written application from a person subject to these paragraphs, grant a variance from one or more specific provision of those paragraphs in accordance with this subsection.

(2) In granting a variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity results in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions. Any variance granted under this section will be at least as stringent as the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

CHAPTER 287. RESIDUAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter A. GENERAL

§ 287.1. Definitions.

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

* * * * *

Unconfined aquifer—An aquifer in which the uppermost surface is at atmospheric pressure.

Used or *reused*—A material that meets one of the following conditions:

(i) The material is employed as an ingredient, including use as an intermediate, in an industrial process to make a product. A material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials.

(ii) That material is employed in a particular function or application as an effective substitute for a commercial product.

* * * * *

Waste oil—One of the following:

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

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

* * * * *

Subchapter B. DUTIES OF GENERATORS

§ 287.51. Scope.

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

(b) A person or municipality that generates more than 2,200 pounds of residual waste per generating location in any single month in the previous year shall comply with § 287.54 (relating to chemical analysis of waste). The Department may waive or modify this requirement for individual types of waste that are generated in quantities of less than 2,200 pounds per month per generating location.

(c) Sections 287.52—287.54 (relating to biennial report; source reduction strategy; and chemical analysis of waste) do not apply to the following:

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

(2) Persons or municipalities that create waste from a spill, release, fire, accident or other unplanned event.

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

§ 287.102. Permit-by-rule.

* * * * *

(d) *Incinerator*. A residual waste incinerator located at the generation site shall be deemed to have a residual waste permit under this article if, in addition to the requirements of subsection (a), it processes waste that is generated solely by the operator, processing occurs at the same production facility where some or all of the waste is generated and it meets one of the following:

(1) The facility is not required to obtain a permit under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and the regulations promulgated thereunder.

(2) The facility has a capacity of less than 500 pounds per hour and is permitted under the Air Pollution Control Act.

(3) 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) *Beneficial use.* The beneficial use of residual waste which the Department has approved, in writing, prior to July 4, 1992, shall be deemed to have a residual waste processing or disposal permit if the person or municipality uses the residual waste in accordance with the terms and conditions of the written approval and the Department has not revoked the approval. The expiration date for permits issued pursuant to this subsection is July 4, 2002, unless a specific permit term is written as a condition of the prior written approval.

(f) *Mechanical processing facility*. A facility for the processing of residual waste only by mechanical or manual sizing or separation for prompt reuse shall be deemed to have a residual waste processing permit-by-rule if it meets the requirements of subsection (a) and 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 waste and the facility. A noncaptive processing facility that separates waste oil and water does not qualify for a permit-by-rule. A facility for the processing of waste tires may be deemed to have a residual waste permit by rule under this paragraph if the following are met in addition to the requirements in this subsection and in subsection (a):

(1) The mechanical or manual sizing or separation is conducted solely for the purpose of remediating an existing tire pile.

(2) The mechanical or manual sizing or separation is part of a remediation plan that has been approved by the Department.

(3) No additional tires are brought to the site.

(4) The processed tires are promptly removed for offsite reuse or disposal.

(g) *Container processing facility*. A facility that processes, by cleaning or rinsing, empty containers for refill and reuse shall be deemed to have a residual waste processing permit if the containers are reused for their originally intended purpose, the facility meets the requirements of subsection (a), any rinsate or containers not reused are managed in accordance with the applicable waste management regulations and the operator of the facility submits 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 waste and the facility.

(h) *Empty drum reconditioning*. A facility that processes, by cleaning or rinsing, empty drums for reconditioning and reuse shall be deemed to have a residual waste processing permit-by-rule if it meets the requirements of subsection (a) and submits a written notice to the Department that includes the name, address and the phone number of the facility, the individual responsible for operating the facility and a description of the waste and the facility.

(i) *Temporary storage of residual waste at a hazardous waste transfer facility*. A facility that receives and temporarily stores residual waste at a hazardous waste transfer facility and that facilitates the transportation or transfer of that waste to a processing or disposal facility shall be deemed to have a residual waste processing permit under this article if, in addition to the requirements in subsection (a), the following are met:

(1) The residual waste is stored in accordance with the hazardous waste transfer facility requirements in 40 CFR 263.12 (relating to transfer facility requirements) as incorporated by reference in § 263a.10 (relating to incorporation by reference and scope) and modified in § 263a.12 (relating to transfer facility requirements). The management of residual waste shall be included in the PPC plan submitted under § 263a.12.

(2) Residual waste may not be stored unless there is secondary containment around the containers.

(3) The residual waste remains in its original container and is not mixed with other waste.

(4) The containers that store residual waste are clearly labeled with the words "residual waste."

(5) Residual waste is stored separately from hazardous waste.

(6) Nonputrescible residual waste is stored in accordance with the time periods specified in § 263a.12(1). Putrescible residual waste may not be stored for more than 24 hours.

(7) The bond required under § 263a.32 (relating to bonding) includes coverage for the processing of residual waste.

(8) 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.

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

CHAPTER 298. MANAGEMENT OF WASTE OIL

Subch.

Subchapter A. GENERAL

Sec.

§ 298.1. Definitions.

Terms defined in §§ 260a.1 and 260a.10 (relating to incorporation by reference, purpose, scope and applicability; and definitions) that are not defined in § 287.1 (relating to definitions) have the same meanings when used in this chapter. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Aboveground storage tank—A tank used to store or process waste oil that is not an underground storage tank.

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

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.

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

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

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

Underground storage tank—An underground storage tank as defined in § 245.1 (relating to definitions).

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

Waste oil burner—A facility where waste oil not meeting the specification requirements in § 298.11 (relating to waste oil specifications) is burned for energy recovery in devices identified in § 298.61(a) (relating to restrictions on burning).

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

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

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

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

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

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

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

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

Waste oil transporter—A person who transports waste oil and a person who collects waste oil from more than one generator and transports the collected oil. Transportation may include consolidation or aggregation of loads of waste oil on the vehicle or in transportation containers. Transporters may conduct incidental waste oil separation that occurs in the normal course of waste oil transportation—for example, settling and water separation.

§ 298.2. Scope.

(a) This chapter specifies general procedures and rules for persons or municipalities who generate, manage or handle waste oil that is being recycled.

(b) Waste oil that is being recycled shall be managed in accordance with this chapter.

Subchapter B. APPLICABILITY

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

§ 298.10. Applicability.

(a) *Waste oil.* It is presumed that waste oil is to be recycled unless a waste oil handler disposes of waste oil, or sends waste oil for disposal. Except as provided in § 298.11 (relating to waste oil specifications), this chapter applies to waste oil and to materials identified in this section as being subject to regulation as waste oil whether or not the waste oil or material exhibits any characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope).

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

(1) *Listed hazardous waste.*

(i) *Mixtures of waste oil.* Mixtures of waste oil and hazardous waste that are listed in 40 CFR Part 261, Subpart D (relating to lists of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope), are subject to regulation as hazardous waste under Chapters 260a—266a and Chapter 270a rather than as waste oil under this chapter.

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

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

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

(2) *Characteristic hazardous waste.* A mixture of waste oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in 40

CFR Part 261, Subpart C (relating to characteristics of hazardous waste), incorporated by reference in § 261a.1, and mixtures of waste oil and hazardous waste that is listed in 40 CFR Part 261, Subpart D (relating to lists of hazardous waste), incorporated by reference in § 261a.1, solely because it exhibits one or more of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste), incorporated by reference in § 261a.1, are subject to:

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

(ii) Regulation as waste oil under this chapter if the mixture is of waste oil and a waste which is hazardous waste, mixed in accordance with § 270a.60(b)(2) (relating to permit-by-rule) or in accordance with a permitted hazardous waste treatment facility, and if the waste is hazardous solely because it exhibits the toxicity characteristic for benzene, arsenic, cadmium, chromium or lead or ignitability, provided that the resultant mixture does not exhibit any characteristic of hazardous waste identified under 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) except as specified in subparagraph (iii).

(iii) Regulation as waste oil under this chapter if the mixture is of waste oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability—for example, ignitable-only mineral spirits—if the resultant mixture does not exhibit the characteristic of ignitability under 40 CFR 261.21 (relating to characteristic of ignitability), incorporated by reference at § 261a.1. The hazardous waste, as well as the mixing of waste oil with a waste that is hazardous solely because it exhibits the characteristic of ignitability, shall be managed in accordance with this chapter.

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

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

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

(ii) Are subject to regulation under Articles VII and VIII (relating to hazardous waste management; and municipal waste management) or this article.

(2) Materials containing or otherwise contaminated with waste oil that are burned for energy recovery are subject to regulation as waste oil under this chapter when burned at an industrial furnace or boiler.

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

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

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

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

(d) *Mixtures of waste oil with products.*

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

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

(e) *Materials derived from waste oil.*

(1) A material reclaimed from waste oil that is used beneficially and is not burned for energy recovery or used in a manner constituting disposal—for example, rerefined lubricants—may not be subject to this title if the Department determines that the material is no longer a waste in accordance with § 287.7 (relating to determination that a material is no longer a waste).

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

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

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

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

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

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

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

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

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

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

(5) Waste oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from this chapter. This exemption does not extend to waste oil which is intentionally

introduced into a hydrocarbon recovery system—for example, by pouring collected waste oil into the waste water treatment system.

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

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

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

§ 298.11. Waste oil specifications.

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

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

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

Constituent/Property	*Allowable Levels*
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100°F minimum
Total halogens	1,000 ppm maximum for residential and commercial uses and 4,000 maximum for industrial uses.

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

§ 298.12. Prohibitions.

(a) *Surface impoundment prohibition*. Waste oil may not be managed in surface impoundments or waste piles unless the units are subject to Chapter 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

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

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

(1) An industrial furnace identified in 40 CFR 260.10 (relating to definitions), incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability).

(2) A boiler, as defined in 40 CFR 260.10, incorporated by reference in § 260a.1, that is identified as one of the following:

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

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

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

(3) A hazardous waste incinerator subject to 40 CFR Part 264, Subpart O (relating to incinerators), incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), or Chapter 265a.

Subchapter C. WASTE OIL GENERATORS

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

§ 298.20. Applicability.

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

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

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

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

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

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

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

(2) Except as provided in paragraphs (3) and (4), a waste oil generator who processes or rerefines waste oil shall also comply with Subchapter F (relating to waste oil processing/refining facilities).

(3) A waste oil generator who performs the following activities is deemed to have a solid waste management permit-by-rule for the captive processing of waste oil provided that the waste oil is not being sent offsite to a burner of on-specification or off-specification waste oil fuel and provided that the generator submits a written notice to the Department that includes the name, address and telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility. The Department may require a generator, who is conducting one of the activities in subparagraphs (i)—(iv) under a permit-by-rule, to apply for, and obtain, a permit in accordance with Chapters 287and 297 (relating to residual waste management—general provisions; incinerators and other processing facilities), or take other appropriate action, when the generator is not in compliance with the requirements for the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

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

(A) Remaining waste is managed under the act.

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

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

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

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

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

(C) The facility meets the requirements of 40 CFR 264.11, 264.14, 264.15, 264.73, 264.75 and 264.77 all of which are incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference).

(D) The generator shall maintain, in a readily accessible place at the facility, a copy of a preparedness prevention and contingency (PPC) plan that is consistent with the Department's most recent guidelines for development and implementation of PPC plans.

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

(A) Waste remaining from the filter process is managed under the act.

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

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

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

(A) Waste remaining from the filter process is managed under the act.

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

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

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

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

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

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

(8) A material managed in accordance with this section and that is not burned for energy recovery or used in a manner constituting disposal may not be subject to regulation under this title if the Department determines that the material is no longer a waste in accordance with § 287.7 (relating to determination that a material is no longer a waste).

(c) *Recordkeeping*. The generator is required to maintain, for 3 years, the following records:

(1) The type of oil used.

(2) A description of the process that generates the waste oil.

(3) A record of the tests used to determine if the waste oil contains more than 1,000 parts per million total halogens.

(4) A record of the information used to rebut the presumption in § 298.10(b)(1)(ii) (relating to applicability) if the waste oil contains more than 1,000 parts per million total halogens.

(5) The type and quantity of any hazardous waste generated and the analyses of hazardous waste characteristics for any mixtures of hazardous waste with waste oil.

§ 298.21. Hazardous waste mixing.

(a) A mixture of waste oil and hazardous waste shall be managed in accordance with § 298.10(b) (relating to applicability).

(b) The rebuttable presumption for waste oil of § 298.10(b)(1)(ii) applies to waste oil managed by generators. Under the rebuttable presumption for waste oil of § 298.10(b)(1)(ii), waste oil containing greater than 1,000 parts per million total halogens is presumed to be a hazardous waste and shall be managed as hazardous waste and not as waste oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain waste oils removed from refrigeration units, as provided for in § 298.10(b)(1)(ii)(A) and (B).

(c) A generator shall perform a hazardous waste determination on any hazardous waste generated prior to mixing with waste oil and on the resultant mixture.

(d) If a generator rebuts the presumption in accordance with § 298.10(b)(1)(ii), the generator shall provide all information used to rebut the presumption to the transporter.

§ 298.22. Waste oil storage.

(a) *Storage units.* A waste oil generator may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

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

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

(2) *Not leaking (no visible leaks).*

(c) *Labels.*

(1) Except as provided in paragraphs (2) and (3), a container or aboveground storage tank used to store waste oil at generator facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001.

(2) Containers or aboveground storage tanks which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(3) Containers used in transportation may be labeled or marked with the words "used oil," instead of "waste oil," or the words required by a receiving state if the containers and vehicles are destined for recycling or disposal outside of this Commonwealth. If a person accepts waste oil from or delivers waste oil to a generator, transfer facility, or processor/rerefiner in this Commonwealth in a container used in transportation, paragraph (1) or (2) shall be met.

(4) Fill pipes used to transfer waste oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001. Fill pipes which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(d) *Additional requirements for storage tanks.* Storage tanks used to store waste oil shall be designed and operated in accordance with § 299.122(b) and (c) (relating to storage tanks). For existing aboveground storage tanks, an alternative design to secondary containment may be demonstrated where the tank meets the ground.

(e) *Additional requirements for containers.* The total container height of a group of containers may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which ensures access for purposes of inspection, containment and remedial action with emergency vehicles and equipment.

(f) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after June 2, 2001, a generator shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

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

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

(g) *Additional requirements.* In addition to the requirements of this subchapter, a waste oil generator shall maintain, in a readily accessible place at the facility, a copy of a preparedness, prevention and contingency (PPC) plan that is consistent with the Department's most recent guidelines for development and implementation of PPC plans. Waste oil generators are subject to the applicable spill prevention, control and countermeasures (40 CFR Part 112 (relating to oil pollution prevention)) in addition to the requirements of this subchapter. Waste oil generators are also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground storage tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.23. Onsite burning in space heaters.

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

(1) The heater burns only waste oil that the owner or operator generates or waste oil received from household do-it-yourselfer waste oil generators.

(2) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.

(3) The combustion gases from the heater are vented to the ambient air.

§ 298.24. Offsite shipments.

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

(1) *Self-transportation of small amounts to approved collection centers.* Generators may transport, without an

identification number, waste oil that is generated at the generator's site and waste oil collected from household do-it-yourselfers to a waste oil collection center if the following apply:

(i) The generator transports the waste oil in a vehicle owned by the generator or owned by an employe 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 waste oil collection centers and aggregation points) if the facility is located within this Commonwealth.

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

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

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

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

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

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

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

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

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

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

§ 298.25. Source reduction strategy.

A waste oil generator subject to this subchapter shall prepare a source reduction strategy in accordance with §§ 287.51, 287.53 and 287.54 (relating to scope; source reduction strategy; and chemical analysis of waste).

§ 298.26. Biennial report.

By March 1 of each odd numbered year a waste oil generator subject to this subchapter shall file a biennial report with the Department in accordance with §§ 287.51, 287.52 and 287.55 (relating to scope; biennial report; and retained recordkeeping).

Subchapter D. WASTE OIL COLLECTION CENTERS AND AGGREGATION POINTS

Sec.
298.30. Waste oil collection centers.
298.31. Waste oil aggregation points owned by the generator.

§ 298.30. Waste oil collection centers.

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

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

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

(2) Not blend oil for offsite reuse.

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

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

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

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

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

(8) Have a procedure for ensuring that items in paragraph (6) are not collected at the facility and that if waste oil collected at the facility contains more than 1,000 parts per million total halogens it is due to the household do-it yourselfer waste oil collected by the facility.

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

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

(b) *Permit-by-rule for waste oil aggregation points*. The owner or operator of an aggregation point may operate the aggregation point under a permit-by-rule. The Department may require the owner or operator of an aggregation point operated under a permit-by-rule to

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

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

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

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

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

(5) Submit a written notice to the Department that includes the name, address and the telephone number of the facility, the individual responsible for operating the facility and a brief description of the facility.

Subchapter E. WASTE OIL TRANSPORTER AND TRANSFER FACILITIES

Sec.

§ 298.40. Applicability.

(a) *General.* Except as provided in paragraphs (1)—(4), this subchapter applies to all waste oil transporters and transfer facilities.

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

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

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

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

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

(c) *Trucks used to transport hazardous waste.* Unless trucks previously used to transport hazardous waste are emptied as described in 40 CFR 261.7 (relating to residues of hazardous waste in empty containers) incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope), and modified in § 261a.7 (relating to residues of hazardous waste in empty containers) prior to transporting waste oil, the waste oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under § 298.10(b)(2) (relating to applicability), the hazardous waste/waste oil mixture is determined not to exhibit the characteristic of ignitability.

(d) *Other applicable provisions.* A waste oil transporter or transfer facility that conducts the following activities is also subject to other applicable provisions of this chapter as indicated in paragraphs (1)—(5):

(1) A transporter or transfer facility that generates waste oil shall also comply with Subchapter C (relating to waste oil generators).

(2) A transporter or transfer facilty that processes or rerefines waste oil, except as provided in § 298.41 (relating to restrictions on transporters and transfer facilities who are not also processors or rerefiners), shall also comply with Subchapter F (relating to waste oil processing/refining facilities).

(3) A transporter or transfer facility that burns off-specification waste oil for energy recovery shall also comply with Subchapter G (relating to waste oil burners who burn off-specification waste oil for energy recovery).

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

(5) A transporter or transfer facility shall dispose of waste oil in accordance with Article VII or IX (relating to hazardous waste management; and residual waste management).

§ 298.41. Restrictions on transporters and transfer facilities who are not also processors or rerefiners.

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

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

(c) A transporter or transfer facility managing waste oil that is removed from oil bearing electrical transformers

and turbines and filtered by the transporter in the course of loading or unloading waste oil or at a transfer facility authorized under § 298.45 (relating to waste oil storage at transfer facility) prior to being returned to its original use is not subject to the waste oil processor/rerefiner requirements in Subchapter F.

§ 298.42. Notification.

(a) *Identification numbers*. A waste oil transporter or transfer facility shall have an EPA identification number.

(b) *Mechanics of notification*. A waste oil transporter or transfer facility that has not received an identification number may obtain one by notifying the EPA Region III Administrator of its waste oil activity by submitting one of the following:

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

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

(i) The transporter or transfer facility company name.

(ii) The owner of the transporter or transfer facility company.

(iii) The mailing address for the transporter or transfer facility.

(iv) The name and telephone number for the transporter or transfer facility point of contact.

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

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

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

§ 298.43. Waste oil transportation.

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

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

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

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

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

(5) A waste oil transfer facility that has obtained an identification number.

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

(c) *Waste oil discharges*.

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

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

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

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

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

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

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

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

(a) To ensure that waste oil is not a hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), the waste oil transporter and the transfer facility shall determine whether the total halogen content of waste oil being transported or stored at a transfer facility is above or below 1,000 parts per million. The waste oil transporter shall make the determination at the generator's location, prior to loading on the transportation vehicle. The waste oil transfer facility shall make the determination prior to the unloading of a transportation vehicle at the transfer facility.

(b) The transporter and transfer facility shall make this total halogen determination by:

(1) Testing the waste oil.

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

(c) If the waste oil contains greater than or equal to 1,000 parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR Part 261, Subpart D (relating to lists of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope). The owner or operator may rebut the presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from SW-846, current edition, to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in 40 CFR Part 261, Appendix VIII (relating to hazardous constituents), incorporated by reference in § 261a.1. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the

halogenated constituents are from wastes generated by households and therefore under 40 CFR 261.4(b)(1) (relating to exclusions), incorporated by reference in § 261a.1 are excluded from regulation as a hazardous waste.

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

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

(d) The owner or operator of a waste oil transfer facility shall test waste oil for flash point or shall request approval from the Department for an alternative method to screen waste oil for the purposes of detecting adulteration of waste oil and providing a safety measure in determining the potential for a waste oil to initiate a fire during storage and processing.

(e) Records of analyses conducted or information used to comply with subsections (a)—(d) shall be maintained by the transporter and transfer facility for at least 3 years.

§ 298.45. Waste oil storage at transfer facility.

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

(b) *Permits*.

(1) The owners or operators of a transfer facility shall obtain a permit issued under Chapters 287 and 293 (relating to residual waste management—general provisions; and transfer facilities for residual waste).

(2) A general permit is only available if all of the following are met:

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

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

(A) Consolidates/aggregates waste oil.

(B) Conducts incidental waste oil processing operations that occur in the normal course of waste oil transportation or in a single consolidation tank.

(3) The owners or operators of a waste oil transfer facility authorized prior to June 2, 2001 by a general permit issued prior to June 2, 2001, may continue to operate the facility under the general permit for the term of the permit. At the end of the permit term, this general permit is not renewable. The owner or operator of the transfer facility may only continue to operate the facility after the term has expired on the general permit if the owner or operator has obtained an individual permit issued under Chapters 287 and 293.

(4) A copy of the protocol for satisfying the requirements of § 298.44 (relating to rebuttable presumption for waste oil and flashpoint screening) shall be maintained at a facility operating under paragraph (2) or (3).

(c) *Storage units*. The owner or operator of a waste oil transfer facility may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

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

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

(2) *Not leaking (no visible leaks)*.

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

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

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

(ii) An equivalent secondary containment system.

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

(f) *Additional requirements for containers*. The total container height of a group of containers may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which ensures access for purposes of inspection, containment and remedial action with emergency vehicles and equipment.

(g) *Additional requirements for storage tanks*. Storage tanks used to store waste oil shall be designed and operated in accordance with § 299.122(b) (relating to storage tanks). For existing aboveground storage tanks, an alternative design to secondary containment may be demonstrated where the tank meets the ground.

(h) *Labels*.

(1) Except as provided in paragraphs (2) and (3), a container or aboveground tank used to store waste oil at transfer facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001.

(2) Containers or aboveground storage tanks which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(3) Containers used in transportation may be labeled or marked with the words "used oil," instead of "waste oil," or the words required by a receiving state if the containers and vehicles are destined for recycling or disposal outside of this Commonwealth. If a person accepts waste oil from or delivers waste oil to a generator, transfer facility, or processor/rerefiner in this Commonwealth in a container used in transportation, paragraph (1) or (2) shall be met.

(4) Fill pipes used to transfer waste oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001. Fill pipes which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(i) *Response to releases*. Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after June 2, 2001, the owner or operator of a transfer facility shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

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

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

(j) *Additional requirements*. In addition to the requirements of this subchapter, a waste oil transfer facility is subject to §§ 293.109 and 293.241—293.243. Waste oil transfer facilities are subject to all applicable spill prevention, control and countermeasures (40 CFR Part 112 (relating to oil pollution prevention)). In addition to the requirements of this subchapter. A waste oil transfer facility is also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground storage tanks whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.46. Tracking.

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

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

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

(3) The quantity of waste oil accepted.

(4) The date of acceptance.

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

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

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

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

(3) The quantity of waste oil delivered.

(4) The date of delivery.

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

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

(c) *Exports of waste oil*. Waste oil transporters and transfer facilities must maintain the records described in subsection (b)(1)—(4) for each shipment of waste oil exported to a foreign country.

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

§ 298.47. Management of wastes.

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

§ 298.48. Signs on vehicles.

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

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

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

(b) Transportation vehicles may be labeled or marked with the words "used oil," instead of "waste oil," or the words required by a receiving state if the vehicles are destined for recycling or disposal outside of this Commonwealth. If a person accepts waste oil from or delivers waste oil to a generator, transfer facility, or processor/rerefiner in this Commonwealth in a transportation vehicle, the following shall be met:

(1) Except as provided in paragraph (2), the transportation vehicle shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001.

(2) Transportation vehicles that are marked or labeled "used oil" on December 2, 2001, shall be marked or labeled with the words "waste oil" by no later than June 2, 2003.

Subchapter F. WASTE OIL PROCESSING/REFINING FACILITIES

Sec.

§ 298.50. Applicability.

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

(1) A transporter or transfer facility that conducts incidental waste oil processing operations that occur during the normal course of transportation as provided in § 298.41 (relating to restrictions on transporters and transfer facilities who are not also processors or rerefiners).

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

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

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

(2) A processors/rerefiner who transports waste oil shall also comply with Subchapter E (relating to waste oil transporter and transfer facilities).

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

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

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

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

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

(c) *Permits*.

(1) The owner or operator of a waste oil processing facility shall obtain a permit issued under Chapters 287 and 297 (relating to residual waste management—general provisions; and incinerators and other processing facilities).

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

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

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

(3) The owner or operator of a facility authorized prior to June 2, 2001, by a waste oil processing/rerefining general permit issued prior to June 2, 2001, may continue to operate its facility under the general permit for the permit term. At the end of the permit term, this general permit is not renewable. The owner or operator of the waste oil processing/rerefining facility after the term has expired on the general permit may only continue to operate the facility if the owner or operator has obtained an individual permit issued under Chapters 287 and 297.

§ 298.51. Notification.

(a) *Identification numbers*. A waste oil processor or rerefiner who has not previously obtained an identification number shall comply with 40 CFR 264.11 (relating to identification number), incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), and modified in § 264a.11 (relating to identification number and transporter license) and obtain an EPA identification number.

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

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

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

(i) The processor or rerefiner company name.

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

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

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

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

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

§ 298.52. General facility standards.

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

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

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

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

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

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

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

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

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

(i) Whenever waste oil is being poured, mixed, spread or otherwise handled, the personnel involved in the

operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required in paragraph (2).

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

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

(6) *Arrangements with local authorities.*

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

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

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

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

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

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

(b) *Contingency plan and emergency procedures.* Owners and operators of waste oil processing and rerefining facilities shall comply with the following requirements:

(1) *Purpose and implementation of contingency plan.*

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

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

(2) *Content of contingency plan.*

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

(ii) If the owner or operator has already complied with 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; and contingency plan and emergency procedures), incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), and modified in § 264a.56 (relating to emergency procedures) or has already prepared some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate waste oil management provisions that are sufficient to comply with this chapter.

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

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

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

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

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

(i) Maintained at the facility.

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

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

(i) Applicable regulations are revised.

(ii) The plan fails in an emergency.

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

(iv) The list of emergency coordinators changes.

(v) The list of emergency equipment changes.

(5) *Emergency coordinator.* At all times, there shall be at least one employe either on the facility premises or on call—for example, available to respond to an emergency by reaching the facility within a short period of time—with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, the operations and activities at the

facility, the location and characteristic of waste oil handled, the location of all records within the facility and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) *Emergency procedures.*

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

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

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

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

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

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

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

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

(1) The name and telephone number of reporter.

(2) The name and address of the facility.

(3) The time and type of incident-for example, release or fire.

(4) The name and quantity of materials involved, to the extent known.

(5) The extent of injuries, if any.

(6) The possible hazards to human health, or the environment, outside the facility.

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

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

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

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

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

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

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

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

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

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

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

(D) The name and quantity of materials involved.

(E) The extent of injuries, if any.

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

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

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

(a) To ensure that waste oil managed at a waste oil processing/rerefining facility is not hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), the owner or operator of a waste oil processing/rerefining facility shall determine whether the total halogen content of waste oil managed at the facility is above or below 1,000 parts per million. The waste oil processing/rerefining facility shall make the determination prior to the unloading of a transportation vehicle at the processing/rerefining facility.

(b) The owner or operator shall make this total halogen determination by either:

(1) Testing the waste oil.

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

(c) Waste oil containing more than 1,000 parts per million total halogens, is presumed to be a hazardous

waste because it has been mixed with halogenated hazardous waste listed in 40 CFR Part 261, Subpart D (relating to lists of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope). Persons may rebut this presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from the current edition of SW-846 to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in 40 CFR Part 251, Appendix VIII (relating to hazardous constituents), incorporated by reference in § 261a.1. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and therefore under 40 CFR 261.4(b)(1) (relating to exclusions), incorporated by reference in § 261a.1 are excluded from regulation as hazardous waste.

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

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

(d) The owner or operator of a waste oil processing/refining facility shall test waste oil for flash point or shall request approval from the Department for an alternative method to screen waste oil for the purposes of detecting adulteration of waste oil and providing a safety measure in determining the potential for a waste oil to initiate a fire during storage and processing.

§ 298.54. Waste oil management.

(a) *Management units.* Waste oil processor/rerefiners may not store waste oil in units other than tanks, containers, or units subject to regulation under Chapters 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

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

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

(2) *Not leaking (no visible leaks).*

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

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

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

(ii) An equivalent secondary containment system.

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

(d) *Additional requirements for containers.* The total container height of a group of containers may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which ensures access for purposes of inspection, containment and remedial action with emergency vehicles and equipment.

(e) *Additional requirements for storage tanks.* Storage tanks used to store waste oil shall be designed and operated in accordance with § 299.122(b) (relating to storage tanks). For existing aboveground storage tanks, an alternative design to secondary containment may be demonstrated where the tank meets the ground.

(f) *Labels.*

(1) Except as provided in paragraphs (2) and (3), a container or aboveground tank used to store waste oil at processing and rerefining facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001.

(2) Containers or aboveground storage tanks which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(3) Containers used in transportation may be labeled or marked with the words "used oil," instead of "waste oil," or the words required by a receiving state if the containers and vehicles are destined for recycling or disposal outside of this Commonwealth. If a person accepts waste oil from or delivers waste oil to a generator, transfer facility, or processor/rerefiner in pennsylvania in a container used in transportation, paragraph (1) or (2) shall be met.

(4) Fill pipes used to transfer waste oil into underground storage tanks at processing or rerefining facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001. Fill pipes which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after June 2, 2001. An owner or operator shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

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

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

(h) *Closure.*

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

(i) At closure of a tank system, the owner or operator shall remove or decontaminate waste oil residues in tanks, contaminated containment system components, contaminated soils and structures and equipment contaminated with waste oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in subsection (i)(1)(i), the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to hazardous waste landfills. (See 40 CFR 265.310 (relating to closure and post-closure care), incorporated by reference in § 265a.1 (relating to incorporation by reference, purpose, scope and applicability).

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

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

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

(iii) *Additional requirements.* In addition to the requirements of this subchapter, waste oil processor/rerefiners are subject to all applicable spill prevention, control and countermeasures (40 CFR Part 112), 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; and contingency plan and emergency procedures), incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), and modified in § 264a.56 (relating to emergency procedures). In addition to the requirements of this subchapter, a waste oil processor/rerefiner is also subject to the underground storage tank standards in Chapter 245 (relating to administration of the storage tank and spill prevention program) for waste oil stored in underground storage tanks whether or not the waste oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subchapter.

§ 298.55. Analysis plan.

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

(1) *Rebuttable presumption for waste oil and flash point screening in § 298.53.* At a minimum, the plan shall specify the following:

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

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

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

(I) One of the sampling methods in 40 CFR Part 261, Appendix I (relating to representative sampling methods) incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope).

(II) A method shown to be equivalent under 40 CFR 260.20 and 260.21 (relating to general; and petitions for equivalent testing or analytical methods), incorporated by reference in § 260a.1 (relating to incorporated by reference, purpose, scope and applicablity).

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

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

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

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

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

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

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

(I) One of the sampling methods in 40 CFR Part 261, Appendix I, incorporated by reference in § 261a.1.

(II) A method shown to be equivalent under 40 CFR 260.20 and 260.21 incorporated by reference in § 260a.1.

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

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

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

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

§ 298.56. Tracking.

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

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

(2) The name and address of the generator, transfer facility or processor/rerefiner from whom the waste oil was sent for waste oil processing/rerefining.

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

(4) The identification number (if applicable) of the generator, transfer facility or processor/rerefiner from whom the waste oil was sent for waste oil processing/rerefining.

(5) The quantity of waste oil accepted.

(6) The date of acceptance.

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

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

(2) the name and address of the burner, processor/ rerefiner, transfer facility or disposal facility who will receive the waste oil.

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

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

(5) The quantity of waste oil shipped.

(6) The date of shipment.

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

§ 298.57. Operating record and reporting.

(a) *Operating record*.

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

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

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

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

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

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

(2) The calendar year covered by the report.

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

§ 298.58. Offsite shipments of waste oil.

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

§ 298.59. Management of waste.

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

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

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

§ 298.60. Applicability.

(a) *General*. This subchapter applies to waste oil burners except as specified in paragraphs (1) and (2). A waste oil burner is a facility where waste oil not meeting the specification requirements in § 298.11 (relating to waste oil specifications) is burned for energy recovery in devices identified in § 298.61(a) (relating to restrictions on burning). A waste oil burner who complies with this subchapter is deemed to have a solid waste permit for the burning of that waste oil. The Department may require a waste oil burner subject to permit-by-rule to apply for, and obtain, an individual or general permit, or take other appropriate action, when the waste oil burner is not in compliance with the requirements for the permit-by-rule or is conducting an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth. Facilities burning waste oil for energy recovery under one or more of the following conditions are not subject to this subchapter:

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

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

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

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

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

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

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

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

(c) *Specification fuel*. This subchapter does not apply to a person burning waste oil that meets the waste oil fuel specification of § 298.11, if the burner complies with Subchapter H.

§ 298.61. Restrictions on burning.

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

(1) An industrial furnace identified in 40 CFR 260.10 (relating to definitions), incorporated by reference in § 260a.1 (relating to incorporation by reference, purpose, scope and applicability).

(2) A boiler, as defined in 40 CFR 260.10, incorporated by reference in § 260a.1 that is identified as follows:

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

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

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

(3) A hazardous waste incinerator subject to 40 CFR Part 264, Subpart O (relating to incinerators), incorporated in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), or 40 CFR Part 265, Subpart O (relating to incinerator), incorporated by reference in § 265a.1 (relating to incorporation by reference, purpose, scope and applicability).

(b) A person burning waste oil in a boiler or industrial furnace specified in paragraph (1) or (2) shall have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality, or written approval from the Bureau of Air Quality if the fuel is burned in Allegheny or Philadelphia counties if Allegheny or Philadelphia county is issued first.

(c) Except as provided in subsection (d), a waste oil burner may not process waste oil unless it also complies with the requirements of Subchapter F (relating to waste oil processing/refining facilities).

(d) A waste oil burner may aggregate off-specification waste oil with virgin oil or on-specification waste oil for purposes of burning, but may not aggregate for purposes of producing on-specification waste oil.

§ 298.62. Notification.

(a) *Identification numbers*. A waste oil burner which has not previously complied with the notification requirements of 40 CFR 264.11 (relating to identification number), incorporated by reference in § 264a.1 (relating to incorporation by reference, purpose, scope and reference), and 40 CFR 265.11 (relating to identification number), incorporated by reference in § 265a.1 (relating to incorporation by reference, purpose, scope and applicability), shall comply with these requirements and obtain an EPA identification number.

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

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

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

(i) The burner company name.

(ii) The owner of the burner company.

(iii) The mailing address for the burner.

(iv) The name and telephone number for the burner point of contact.

(v) The type of waste oil activity.

(vi) The location of the burner facility.

§ 298.63. Rebuttable presumption for waste oil.

(a) To ensure that waste oil managed at a waste oil burner facility is not hazardous waste under the rebuttable presumption of § 298.10(b)(1)(ii) (relating to applicability), a waste oil burner shall determine whether the total halogen content of waste oil managed at the facility is above or below 1,000 parts per million.

(b) The waste oil burner shall determine if the waste oil contains above or below 1,000 parts per million total halogens by one of the following:

(1) Testing the waste oil.

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

(3) If the waste oil has been received from a processor/rerefiner subject to regulation under Subchapter F (relating to waste oil processing/rerefining facilities), using information provided by the processor/rerefiner.

(c) Waste oil containing more than 1,000 parts per million total halogens, is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed under 40 CFR Part 261, Subpart D (relating to lists of hazardous waste), incorporated by reference in § 261a.1 (relating to incorporation by reference, purpose and scope). A person may rebut this presumption by demonstrating that the waste oil does not contain hazardous waste. For example, by using an analytical method from the current edition of SW-846 to show that the waste oil does not contain significant concentrations of halogenated hazardous constituents identified in 40 CFR Part 261, Appendix VIII (relating to hazardous constituents), incorporated by reference in § 261a.1. EPA publication SW-846, current edition, is available from the Government Printing Office, Superintendent of Documents, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800 (Document number 955-001-00000-1). Another way of rebutting this presumption is to demonstrate that the halogenated constituents are from wastes generated by households and, therefore, under 40 CFR 261.4(b)(1) (relating to exclusions), incorporated by reference in § 261a.1 are excluded from regulation as hazardous waste.

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

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

(d) *Record retention*. Records of analyses conducted or information used to comply with subsections (a)—(c) shall be maintained by the burner for at least 3 years.

§ 298.64. Waste oil storage.

(a) *Storage units.* A waste oil burner may not store waste oil in units other than tanks, containers or units subject to regulation under Chapter 264a or 265a (relating to owners and operators of hazardous waste treatment, storage and disposal facilities; and interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities).

(b) *Condition of units.* Containers and aboveground storage tanks used to store oil at burner facilities shall meet the following conditions:

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

(2) *Not leaking (no visible leaks).*

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

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

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

(ii) An equivalent secondary containment system.

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

(d) *Additional requirements for containers.* The total container height of a group of containers may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which ensures access for purposes of inspection, containment and remedial action with emergency vehicles and equipment.

(e) *Additional requirements for storage tanks.* Storage tanks used to store waste oil shall be designed and operated in accordance with § 299.122(b) (relating to storage tanks). For existing aboveground storage tanks, an alternative design to secondary containment may be demonstrated where the tank meets the ground.

(f) *Labels.*

(1) Except as provided in paragraph (2), a container or aboveground tank used to store waste oil at burner facilities shall be labeled or marked clearly with the words and "waste oil" by no later than December 2, 2001.

(2) Containers or aboveground storage tanks which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(3) Fill pipes used to transfer waste oil into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "waste oil" by no later than December 2, 2001. Fill pipes which are labeled or marked with the words "used oil" on June 2, 2001, shall be labeled or marked with the words "waste oil" by no later than June 2, 2003.

(g) *Response to releases.* Upon detection of a release of waste oil to the environment not subject to Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) which has occurred after June 2, 2001, a burner shall perform the following cleanup steps:

(1) Stop the release.

(2) Contain the released waste oil.

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

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

(h) In addition to the requirements of this subchapter, a waste oil burner shall maintain, in a readily accessible place at the facility, a copy of a preparedness, prevention and contingency (PPC) plan that is consistent with the Department's most recent guidelines for development and implementation of PPC plans. Waste oil burners are subject to all applicable spill prevention, control and countermeasures (40 CFR Part 112 (relating to oil pollution prevention)) in addition to the requirements of this subchapter. A waste oil burner is also subject to the underground storage tank standards for waste oil stored in underground storage tanks in Chapter 245 (relating to administration of the storage tank and spill prevention program) whether or not the waste oil exhibits any characteristics of hazardous waste.

§ 298.65. Tracking.

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

(1) The name and address of the transporter who delivered the waste oil to the burner.

(2) The name and address of the generator, transfer facility or processor/rerefiner from whom the waste oil was sent to the burner.

(3) The identification number of the transporter who delivered the waste oil to the burner.

(4) The identification number (if applicable) of the generator, transfer facility or processor/rerefiner from whom the waste oil was sent to the burner.

(5) The quantity of waste oil accepted.

(6) The date of acceptance.

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

§ 298.66. Notices.

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

(1) The burner has notified EPA stating the location and general description of its waste oil management activities.

(2) The burner will burn the waste oil only in an industrial furnace or boiler identified in § 298.61(a) (relating to restrictions on burning).

(b) *Certification retention.* The certification described in subsection (a) shall be maintained for 3 years from the

date the burner last receives shipment of off-specification waste oil from that generator, transporter, transfer facility or processor/rerefiner.

§ 298.67. Management of waste.

A burner who generates waste from the storage or burning of waste oil shall manage the waste as specified in § 298.10(e) (relating to applicability).

Subchapter H. WASTE OIL FUEL MARKETERS

Sec.
298.70. Applicability.
298.71. Prohibitions.
298.72. On-specification waste oil fuel.
298.73. Notification.
298.74. Tracking.
298.75. Notices.

§ 298.70. Applicability.

(a) A person who conducts one of the following activities is subject to the requirements of this subchapter:

(1) Directs a shipment of off-specification waste oil from its facility to a waste oil burner.

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

(b) The following persons are not marketers subject to this subchapter:

(1) Waste oil generators, waste oil transporters and waste oil transfer facilities who transport waste oil received only from waste oil generators, unless the waste oil generator, waste oil transporter or waste oil transfer facility directs a shipment of off-specification waste oil from its facility to a waste oil burner. However, waste oil processors/rerefiners who burn some waste oil fuel for purposes of waste oil processing are considered to be burning incidentally to waste oil processing. Thus, waste oil generators, waste oil transporters and waste oil transfer facilities who direct shipments of off-specification waste oil to waste oil processors/rerefiners who incidentally burn waste oil are not marketers subject to this subchapter.

(2) Persons who direct shipments of on-specification waste oil and who are not the first person to claim the oil meets the waste oil fuel specifications of § 298.11.

(c) Any person subject to the requirements of this subchapter shall also comply with one of the following:

(1) Subchapter C (relating to waste oil generators).

(2) Subchapter E (relating to waste oil transporters and transfer facilities).

(3) Subchapter F (relating to waste oil processing/rerefining facilities).

(4) Subchapter G (relating to waste oil burners who burn off-specification waste oil for energy recovery).

§ 298.71. Prohibitions.

A waste oil fuel marketer may initiate a shipment of off-specification waste oil only to a waste oil burner which:

(1) Has an identification number.

(2) Burns the waste oil in an industrial furnace or boiler identified in § 298.61(a) (relating to restrictions on burning).

§ 298.72. On-specification waste oil fuel.

(a) *Analysis of waste oil fuel*. A waste oil generator, waste oil transporter, waste oil transfer facility, waste oil processor/rerefiner or waste oil burner may determine that waste oil that is to be burned for energy recovery meets the fuel specifications of § 298.11 (relating to waste oil specifications) by performing analyses or obtaining copies of analyses or other information documenting that the waste oil fuel meets the specifications.

(b) *Record retention*. A waste oil generator, waste oil transporter, waste oil transfer facility, waste oil processor/rerefiner or waste oil burner who first claims that waste oil that is to be burned for energy recovery meets the specifications for waste oil fuel under § 298.11 shall keep copies of analyses of the waste oil (or other information used to make the determination) for 3 years.

§ 298.73. Notification.

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

(b) A marketer who has not received an identification number may obtain one by notifying the EPA Regional Administrator of its waste oil activity by submitting one of the following:

(1) A completed EPA form 8700-12.

(2) A letter requesting an identification number. The letter shall include the following information:

(i) The marketer company name.

(ii) The owner of the marketer.

(iii) The mailing address for the marketer.

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

(v) The type of waste oil activity (for example, generator directing shipments of off-specification waste oil to a burner).

§ 298.74. Tracking.

(a) *Off-specification waste oil delivery*. A waste oil marketer who directs a shipment of off-specification waste oil to a burner must keep a record of each shipment of waste oil to a burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the waste oil to the burner.

(2) The name and address of the burner who will receive the waste oil.

(3) The identification number of the transporter who delivers the waste oil to the burner.

(4) The identification number of the burner.

(5) The quantity of waste oil shipped.

(6) The date of shipment.

(b) *On-specification waste oil delivery*. A generator, transporter, transfer facility, processor/rerefiner or burner who first claims that waste oil that is to be burned for energy recovery meets the fuel specifications under § 298.11 (relating to waste oil specifications) shall keep a record of each shipment of waste oil to the facility to which it delivers the waste oil. Records for each shipment shall include the following information:

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

(2) The quantity of waste oil fuel delivered.

(3) The date of shipment or delivery.

(4) A cross reference to the record of waste oil analysis or other information used to make the determination that the oil meets the specification as required under § 298.72(a) (relating to on-specification waste oil fuel).

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

§ 298.75. Notices.

(a) *Certification*. Before a waste oil generator, transporter, transfer facility or processor/rerefiner directs the first shipment of off-specification waste oil fuel to a burner, it shall obtain a one-time written and signed notice from the burner certifying the following:

(1) That the burner has notified EPA stating the location and general description of waste oil management activities.

(2) That the burner will burn the off-specification waste oil only in an industrial furnace or boiler identified in § 298.61(a) (relating to restrictions on burning).

(b) *Certification retention*. The certification described in subsection (a) shall be maintained for 3 years from the date the last shipment of off-specification waste oil is shipped to the burner.

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