

TITLE 65: DIVISION OF ENVIRONMENTAL QUALITY

CHAPTER 65-110

USED OIL MANAGEMENT RULES AND REGULATIONS

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**Appendix B 40 CFR Part 112 Oil
Pollution Prevention (Spill Prevention,
Control, and Countermeasures)**

**Appendix A 40 CFR Part 279 Standards
for the Management of Used Oil**

Chapter Authority: 1 CMC §§ 2646-2649; 1 CMC § 2650; 2 CMC §§ 3101-3135.

Chapter History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: For a complete history of the authority of the Division of Environmental Quality (DEQ), see the commission comment to NMIAC chapter 65-10.

Executive Order No. 2013-24, promulgated at 35 Com. Reg. 34596 (Nov. 28, 2013), established a new Bureau of Environmental and Coastal Quality. This Order reorganized the Division of Environmental Quality as a division of the Bureau of Environmental and Coastal Quality, and provided that “all rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Executive Order shall continue to be effective until revised, amended, repealed or terminated.”

Part 001 - General Provisions

§ 65-110-001 General Provision and Authority

(a) The regulations in this chapter are promulgated by the Division of Environmental Quality pursuant to 2 CMC §§ 3101 to 3134 (Commonwealth Environmental Protection Act (CEPA), 1982, PL 3-23) and the Commonwealth Environmental Amendments Act (CEAA), 1999, PL 11-103.

(b) The provisions and requirements of the Federal Standards for the Management of Used Oil, 40 Code of Federal Regulations (CFR) part 279 (2002), and as hereafter amended, are hereby adopted by reference. (See appendix A for 40 CFR part 279 outline). All persons subject to the requirements of Commonwealth Environmental Protection Act, as amended, and the regulations in this chapter shall comply with the provisions of 40 CFR part 279 except as otherwise provided by these regulations. (Full copy of the 40 CFR part 279 can be obtained at the DEQ. Copying fee required.)

(c) The provisions and requirements of the Federal Oil Pollution Prevention Regulations, 40 Code of Federal Regulations (CFR) part 112 (2002), and as hereafter amended, are hereby adopted by reference. (See appendix B for 40 CFR part 112 outline). All persons subject to the requirements of Commonwealth Environmental Protection Act as amended, and the regulations in this chapter shall comply with the provisions of 40 CFR part 112 except as otherwise provided by these regulations. (Full copy of the 40 CFR part 112 can be obtained at the DEQ. Copying fee is required.)

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-005 Purpose

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The purpose of the regulations in this chapter is to establish and ensure safe and proper management practice in the handling of the used oil from the initial point of generation to the final disposal action and to ensure the protection of the public health and welfare and the prevention of environmental contamination in the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-010 Definitions

The definitions set forth in 40 CFR part 279.1 of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference. In addition, the words and terms defined below have the meanings ascribed to them as follows:

- (a) “The Act” - means the Commonwealth Environmental Protection Act (PL 3-23) and the Commonwealth Environmental Amendments Act (PL 11-103), codified at title 2, division 3, chapter 1 of the Commonwealth Code, as amended (2 CMC §§ 3101, et seq.).
- (b) “Active Area” - means the area of the facility over which any transportation, storage, or processing of the used oil occurs.
- (c) “Unlined Ground Surface” - means any ground surface not covered by an impervious structure such as a concrete floor so as to prevent used oil being released from contaminating the ground surface and subsurface and possibly the groundwater.
- (d) “DEQ: - means the Division of Environmental Quality, within the Office of the Governor.
- (e) “Director” - means the Director of the Division of Environmental Quality.
- (f) “Do-it-yourself (DIY) Generators” - means any household do-it-yourselfer used oil generators as defined in 40 CFR § 279.1, other than a commercial used oil generator.
- (g) “Operator” - means the person who owns a facility or part of a facility that manages used oil.
- (h) “Commercial Generators” - means generators with a valid business license whose business activities or operation involves the generation of used oil on a routine basis. Also includes non-household facilities that generate used oil on a regular basis.
- (i) “Commercial Transporter” - means transporters with a valid business license whose business activities or operation involves the transportation of used oil from DIY and commercial generators, on a routine basis, to a collection center or aggregation point.

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(j) “Person” - means any individual, firm, partnership, association, company, public or private corporation, and any entity or agency of the Commonwealth government or the United States of America.

(k) “Recycling” means -

- (1) Preparing used oil for reuse as a petroleum product by re-refining, reclaiming, or other means;
- (2) Using used oil as a lubricant or petroleum product instead of using petroleum product made from new oil; or
- (3) Burning used oil for energy recovery.

(l) “Re-refining” - means applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products. Process includes: settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating or polishing.

(m) “Secondary Containment” - means dikes, berms, retaining walls, floors, and/or equivalent made of a material(s) that is sufficiently impervious to contain used oil. These structures must contain all potential spills of used oil from containers or tanks, plus run-on water, until removal of the spill.

(n) “Sufficiently Impervious” - means capable of containing all spills of used oil from containers or tanks until removal of the spill.

(o) “Used Oil Management Facility” - means a facility that generates, collects, stores, burns for disposal, or processes to recycle used oil. Do-it-yourself (DIY) generators are not used oil management facilities.

(p) “Used Oil Handler” - means any person involved in the following activities, which constitute handling of used oil: transportation, burning, processing, collection, re-refining, and other like activities, except the used oil DIY generators.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In the opening paragraph, the Commission inserted a comma after “amended.” In subsection (f), the Commission changed “generators” to “generators” to correct a manifest error. The Commission placed quotation marks around terms defined.

§ 65-110-015 Applicability

The provision of 40 CFR part 279, subpart B, “Applicability,” of the Federal Standard for the Management of Used Oil, as amended, is hereby adopted by reference. In addition to the applicability and exemption provisions set forth in subpart B, the following provisions shall apply:

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(a) The requirements under these regulations apply to any facility that handles the storage, transportation, collection/aggregation, disposal, and processing of used oil.

(b) Used oil determined to be a hazardous waste shall be managed and disposed of in compliance with the requirements of the CNMI Hazardous Waste Material Regulations [NMIAC, title 65, chapter 50] and applicable federal regulations.

(c) The requirements of these regulations apply to any person, including do-it-yourself generators, who generate and/or store 55 gallons or more of used oil over any time period.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In subsection (a), the Commission changed “handle” to “handles” to correct a manifest error. In subsection (b), the Commission inserted the final period.

Part 100 - Prohibitions

§ 65-110-101 Introduction

The provision of 40 CFR § 279.12, “Prohibitions” of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference. In addition to the prohibitions set forth in § 279.12, the following provisions, set forth in this part, apply.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: This section was originally the introduction to section 5, codified at part 100. The Commission created the section titles in part 100.

The Commission changed the final colon to a period.

§ 65-110-105 Threat to Public Health or Welfare

No person shall collect, market, burn, transport, recycle, process, store, use, discharge, or dispose of used oil in any manner that may pose a threat to public health or welfare or the environment.

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-110 Used Oil Storage

Used oil shall not be stored in containers on any unlined ground surface or pits other than one with a sufficiently impervious secondary containment system, as required by the regulations in this chapter.

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(a) Containers containing used oil shall only be stored on its proper upright or standing position.

(b) Containers containing used oil shall not be stored over each other or double stacked.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-115 Underground Storage Prohibited

Used oil shall not be stored in any underground storage tank system.

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-120 Used Oil Transportation

No used oil shall be transported off-site from the generator's facility without first testing the used oil to make a hazardous waste determination. Preliminary testing to make a hazardous waste determination may be done using an EPA approved field test kit (e.g. Dexsil Clor-D-Tech Kit).

(a) Used oil bound for overseas transportation to a recycling center or disposal facility must be further analyzed for PCB contamination, halogenated compound contamination, and in accordance with 40 CFR § 279.11, using appropriate EPA approved method for used oil analysis.

(b) The laboratory that will conduct the used oil analysis must be certified to conduct such analysis by the appropriate state regulatory agency of the state at which the laboratory is located. In addition, the laboratory must analyze the used oil using appropriate EPA approved method for used oil analysis.

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-125 Hazardous Waste

Used oil determined to contain hazardous waste constituents shall not be disposed of by burning on-site. Used oil determined to be a hazardous waste must be managed in accordance with the applicable CNMI and federal regulations.

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-130 Violations

A person commits a violation if the person:

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- (a) Discharges used oil into a sewer, drainage system, septic tank, surface water or ground water, watercourse, or marine water;
- (b) Puts used oil in waste that is to be disposed of at any sanitary landfill or directly disposes of used oil on land;
- (c) Transports, treats, stores, disposes of, recycles, markets, burns, processes, re-refines used oil within the CNMI:
 - (1) Without first complying with the requirements of the regulations in this chapter and other local appropriate, relevant, and applicable regulations; and/or
 - (2) In violation of rules for the management of used oil under 40 CFR part 279; as adopted by reference;.
 - (3) Applies used oil to roads or land for dust suppression, weed abatement, or other similar uses;
 - (4) Violates an order of the Division to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or
 - (5) Makes any false representation in any document used for regulatory/enforcement compliance.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 200 - Used Oil Generator Notification Requirements

§ 65-110-201 Used Oil Generator Notification Requirements

The provisions of 40 CFR part 279, subpart C, “Standard for Used Oil Generators,” of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference. In addition to the standard set forth in subpart C, the following notification requirements apply:

- (a) Any person who generates 55 gallons of used oil or more at any one time shall notify DEQ within 15 days of the used oil generation. The notification process is completed by completing the form provided by DEQ. Repeat notification is not necessary. Information required will include name, physical address, telephone, volume of used oil, type of containment and description of storage facility, physical location of used oil, and rate of used oil generation. Generator shall notify DEQ within 15 days on the final disposition of his/her used oil.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: The Commission inserted the word “oil” into the titles of part 200 and this section to correct a manifest error.

Part 300 - Used Oil Storage & Spill Prevention Requirements

§ 65-110-301 Introduction

In addition to the provision of 40 CFR part 279 regarding used oil storage and spill prevention requirements, the following, as set forth in this part, shall apply.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: This section was originally the introduction to section 7, codified at part 300. The Commission created the section titles in part 300.

The Commission changed the final colon to a period.

§ 65-110-305 Requirements for Used Oil Storage

Used oil management facilities, which store 55 gallons or more of used oil, shall comply with the following provisions.

(a) Used oil shall only be contained and stored in aboveground storage tanks (AST) or single drum containers in good condition (no severe rusting, apparent structural defects, or deterioration, not leaking), and in accordance with industry standards and good engineering practice.

(b) Used oil AST or containers must have a clearly visible written label or marking that states “USED OIL ONLY” on its side(s) so as to prevent mixing of the used oil particularly with a hazardous substance.

(c) All used oil containers and/or above ground storage tanks must be constructed so that a secondary means of containment is provided. The secondary containment system must have a 110% volume capacity to hold the maximum amount of used oil allowed for storage plus 10% allowance capacity for precipitation. The system must be sufficiently impervious to spills to prevent any used oil released into the containment system from migrating out of the system onto the soil, surface water, or groundwater. The secondary containment system must also have:

- (1) A structure to protect the used oil containers from rain and solar impact
- (2) Signage placed around the perimeter of the secondary containment system indicating “Used Oil Storage Area.”

(d) The facility must have an Oil Spill Prevention and Response Plan to address spill incidents at the active area.

(e) In any given year, after the effective date of the regulations in this chapter, used oil generators shall only have a maximum of 275 gallons (or five 55-gallon drums) of used oil safely and properly stored at their facility’s active area. This requirement exempts permitted used oil collection centers, aggregation points, recycling centers, commercial disposal facilities, and commercial transporters. Only on a case-by-case basis may a

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generator be allowed to store more than 275 gallons of used oil at its facility based on justifiable reasons and authorization by the Director of the DEQ.

(f) A record of inventory (to include the time a 55-gallon drum of used oil is generated and any thereafter, analytical data for hazardous waste determination, the time and date the facility disposes of the used oil, and the name of the company or firm who collects the used oil for disposal), must be kept on file for at least a 3 year period.

(g) Any non-household activity which involves the generation of used oil shall be conducted over surfaces which are sufficiently impervious to prevent used oil spills from migrating to groundwater, surface water, or present a threat to human health and the environment.

(h) Any person transferring used oil from one container to another shall conduct the transfer in a manner that does not cause or minimizes spills. Such transfer must be conducted on a sufficiently impervious surface. Used oil shall be managed in a manner that prevents spills and release to the environment in accordance with the regulations in this chapter and standard industry best management practice, at all times.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In subsection (e), the Commission changed “collection center” to “collection centers” to correct a manifest error.

§ 65-110-310 Storage of Large Quantities or Near Waters of the United States

In addition, anyone who stores 1,320 gallons, or has the capacity to store more than 1,320 gallons of used oil, or if DEQ determines that any volume of used oil under 1,320 gallons has the potential to impact wetlands, navigable waters of the United States or adjoining shorelines, shall comply with the Federal Oil Pollution Prevention Regulations under 40 CFR part 112. (See appendix B.)

Modified, 1 CMC § 3806(f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: The Commission inserted the final period.

Part 400 - Used Oil Operation Permit Requirements

§ 65-110-401 Permits

Any persons who transport, collect or aggregate, process, or burn for disposal, used oil, shall first apply for a permit to operate at the DEQ office, prior to operation of such activity. Such person may be exempted from the permit requirement under CNMI Solid Waste Management Rules and Regulations [NMIAC, title 65, chapter 80].

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(a) Submission of the initial permit application shall be accompanied with a facility vicinity map (showing public access road, nearby public water wells, and residential areas), and a facility site map (showing facility building structures, and used oil active area). For commercial used oil operation, company business license shall be included with the permit application.

(1) Transportation Operation: A copy of the vehicle registration for the vehicle(s) used in the transportation operation must be submitted with the permit application.

(2) Burning Operation: Burner unit specification and analytical data results from the manufacture, showing test performance of the unit, must be submitted with the permit application.

(i) Burner Unit Registration Fee: Each unit burner must be registered with DEQ before it can be operated to burn used oil. A fifty-dollar, non-refundable, registration fee is required.

(ii) At any time a registered burner unit is replaced with the same unit, with exact model and performance specifications, the unit shall be registered without registration fee.

(iii) At any time a registered burner unit is replaced with a different unit, with different model and performance specifications, the unit shall be registered with registration fee.

(b) DEQ shall have 21 calendar days to review the completed permit application. Any deficiency determined in the permit application, DEQ should notify the applicant within 14 days after receipt of the application.

(c) Used oil operation permits shall be renewed, with fees, on an annual basis. Failure to renew the operation permit violates this section of this chapter.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In the opening paragraph, the Commission changed “person” to “persons” to correct a manifest error.

§ 65-110-405 Fees

Used oil operation permit fees shall be in accordance with the following fee table. Payment of fees is required at the time of submitting each permit application, and is non-refundable. Fees shall be paid by check, and made payable to DEQ.

Used Oil Operation Permit Fee Table

Operation Permit Fees

| Operation | Application Type | Initial Permit Fee | Annual Renewal Fee |
|------------------------|------------------|--------------------|--------------------|
| Burn for Disposal | Commercial | \$500 | \$300 |
| | On-site | \$250 | \$125 |
| Transportation | Commercial | \$500 | \$300 |
| Collection/Aggregation | Commercial | \$500 | \$300 |

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Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 500 - Used Oil Burning Operation Requirement

§ 65-110-501 Used Oil Operation Permit

A used oil management facility that intends to conduct on-site burning of non-hazardous used oil must first obtain a used oil operation permit from DEQ before start of operation. Request for the operation permit includes: a letter of intent, manufacture burner unit specification, manufacture performance test results, testing and burning plan, spill prevention/response plan, and a completed used oil unit burner registration form from DEQ. The Director or his designee shall determine whether a used oil management facility conducting on-site burning of non-hazardous used oil is exempt from obtaining a solid waste management permit under the CNMI Solid Waste Management Rules and Regulations [NMIAC, title 65, chapter 80].

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: The Commission created the section titles in part 500. The Commission inserted a comma after the phrase “spill prevention/response plan” pursuant to 1 CMC § 3806(g).

§ 65-110-505 Performance Test

Burner unit* permitted for the first time must undergo a performance test run to demonstrate and verify its performance as specified by the manufacture specification and manufacture performance test results.

(a) The performance test run must be conducted with the DEQ present to witness the performance of the burner unit.

(b) The performance test run shall be conducted each year the permit is renewed for the burner unit.

* So in original.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-510 Hazardous Waste Determination

It is prohibited to burn or dispose of used oil that has been determined to be a hazardous waste, at any used oil management facility or other solid waste facility. Any used oil management facility engaged in the on-site burning of used oil as the means of disposal, must routinely test the used oil to determine if it is a hazardous waste and comply with 40 CFR part 279.81(b). The test results must demonstrate compliance with 40 CFR §

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279.11, used oil specification, by showing no allowable level is exceeded. In addition, the used oil must also be analyzed for PCB contamination using appropriate EPA approved method. As in § 65-110-120(b), the laboratory to conduct the used oil analysis must be certified by the state regulatory agency to conduct such analysis.

(a) A site-specific used oil-testing plan must be submitted to DEQ for approval. The testing plan should be based on the facility's used oil generation rate and burning operation schedule.

(b) Sampling guidance on the collection of representative samples for routine testing of used oil before burning for disposal may be available from DEQ.

(c) Upon adequate showing by the facility that it does not handle used oil determined to be a hazardous waste, the Director may modify testing requirements or exempt a used oil facility permitted to conduct on-site burning of used oil from the testing requirement.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-515 Control of Combustion and Emissions

Any used oil burner unit permitted to dispose of used oil on-site by combustion must have:

(a) Control of combustion air to maintain adequate temperature for efficient combustion,

(b) Containment of combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(c) Control of the emission of the combustion products.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-520 Oil from Other Generators

Used oil management facility burning used oil pursuant to an on-site burning application shall not receive used oil from other generators for disposal other than from do-it-yourself (DIY) generators.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-525 Records Required

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A record of the burning operation shall include: hazardous waste test results prior to burning, volume burned, and date and time of burning operation, and shall be maintained for at least 3 years.

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-530 Air Emission Permit Requirement

[Reserved.]

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 600 - Used Oil Transportation Requirement

§ 65-110-601 Used Oil Transportation Requirements

Used oil transporters subject to regulation under this section are required to apply for a used oil operation permit at the DEQ office, which must indicate the intended used oil transportation activities. The permit must first be obtained before any transportation activities are conducted. The provisions of 40 CFR part 279, subpart E, "Standard for Used Oil Transporter and Transfer Facilities," of the Federal Standards for the Management of Used Oil, as amended, are hereby adopted by reference. In addition, the following provisions shall apply:

(a) Ground Transportation (Public and Private Roads)

(1) Commercial used oil transporters must have a DEQ operation permit and EPA Used Oil Transporter ID number (pursuant with 40 CFR § 279.42) in order to be able to transport used oil on public roads within the CNMI.

(2) Other than DIY generators, used oil transported on public and private roads by commercial generators must use company vehicles to transport the used oil.

(3) The allowable volume of used oil to be transported on public and private roads using a regular size pickup truck (e.g. Toyota 4x4 truck or similar capacity trucks) shall not exceed one 55-gallons steel drum or a total volume of 55 gallons from individual containers.

(4) Vehicles transporting used oil on public and private roads must have the containers securely fastened to prevent free movement and to prevent spills while the vehicle is moving on the road.

(5) Spill Response

(i) Vehicles transporting used oil on public and private roads must have on board the vehicle spill response equipment/material (e.g. absorbent pads) to be used during accidental spills to minimize spill migration.

(ii) Any spills that occur while transporting used oil on public and private roads must be reported to DEQ immediately.

(b) Overseas Transportation

Used oil transporters shipping used oil overseas must comply with the Federal DOT (Hazardous Material Transportation ACT, HMTA) regulation, 49 CFR parts 171 to 190

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and the DEQ Hazardous Material Management Regulations [NMIAC, title 65, chapter 50]. DEQ and the local US Coast Guard representative must be notified 30 days prior to the used oil leaving the CNMI seaport for proper container inspection.

(1) As in subsection (a)(1), used oil transporters must have a used oil operation permit and EPA Used Oil Transporter ID (pursuant with 40 CFR § 279.42) in order to be able to transport used oil overseas.

(2) As in § 65-110-120(a), used oil analysis must be conducted and data results provided to DEQ before the used oil is allowed to be shipped off-island.

(3) Used oil transporters must complete a DEQ used oil manifest for each shipment of used oil. DEQ must be provided the completed manifest before shipment can take place.

(4) DEQ must be notified in writing 30 days in advance before a shipment of used oil leaves the CNMI seaport. The notification letter must include a consent letter from the facility or company receiving the used oil shipment for recycling or disposal.

(5) Transporters must maintain all used oil shipping records for at least 3 years.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In subsection (b)(5), the Commission changed “record” to “records” to correct a manifest error.

Part 700 - Used Oil Collection Centers and Aggregation Point Standard

§ 65-110-701 Used Oil Collection Centers and Aggregation Point Standard

The provisions of 40 CFR part 279, subpart D, “Standard for Used Oil Collection Centers and Aggregation Points,” of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 800 - Used Oil Processors and Re-refiners Standard

§ 65-110-801 Used Oil Processors and Re-refiners Standard

The provisions of the 40 CFR part 279, subpart F, “Standard for Used Oil Processors and Re-refiners,” of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 900 - Used Oil Fuel Marketers Standard

§ 65-110-901 Used Oil Fuel Marketers Standard

The provisions of 40 CFR part 279, subpart H, “Standard for Used Oil Fuel Marketer,” of the Federal Standard for the Management of Used Oil, as amended, are hereby adopted by reference.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 1000 - Remediation Requirements

§ 65-110-1001 Spill Response Plan; Spill Remediation

Used oil management facility must have in place a spill response plan ready to implement on site in the event of a used oil spill. In the case where a used oil spill is not immediately addressed by a facility and, as a result, has caused contamination to the soil, groundwater, and surface water, the facility must prepare and submit to DEQ the following requirements:

(a) Site Investigation Plan (SIP): The SIP must clearly describe how the facility plans to conduct its investigation to characterize the contaminated area in order to determine and implement the appropriate cleanup action. The SIP must include a sampling and analysis plan (SAP), which describes the appropriate sampling approach and analysis methods selected to address the various media (soil, groundwater, surface water, etc) impacted by the used oil spill. The SIP must be submitted to DEQ for its review within 15 days after the discovery of a contaminated site. DEQ will have 15 days to review the plan and submit any comments before implementation.

(1) The SAP must include the name of the laboratory company, physical address, phone number, a laboratory certification number issued by the state regulatory agency, name of the certifying state regulatory agency, physical address, and phone number;

(2) The SAP must also include a quality assurance and quality control (QA/QC) plan.

(b) After a successful implementation of the SIP, the facility shall have 15 days to prepare and submit to DEQ a remedial action plan (RAP), which describes how the site will be effectively cleaned up. The plan must also include a verification-sampling plan to validate that the remedial action goals and objectives of the cleanup are successfully achieved. DEQ will have 15 days to review the RAP for comments before implementation.

(1) The RAP must also include a quality assurance and quality control (QA/QC) plan for the verification sample data results.

(2) Upon successful implementation of the RAP for the cleanup, the facility shall prepare, and submit to DEQ for review and approval, a closure report justifying the completion of the cleanup and deeming the site clean. DEQ shall provide a written response to the facility on the closure report 15 days after the date of submittal.

(c) Sampling and Analysis Plan:

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(1) Sampling and analysis plan shall be prepared for all sampling activities, including verification sampling, which are part of the investigation and remedial actions unless otherwise directed by the Director and except for emergency. The level of detail required in a sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plan shall be submitted to DEQ for review and approval.

(2) The sampling and analysis plan shall specify procedures which ensure that the sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to ensure proper planning and implementation of sampling activities shall be included. Reference to standard protocols or procedures manuals may be used provided the information referenced is readily available to DEQ.

(d) All remediation documents must be maintained for at least three years.

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: The Commission created the section titles in part 1000.

§ 65-110-1005 Other Applicable Laws

In addition to clean up under this part, the DEQ may determine that remedial action may be necessary under other relevant, applicable and appropriate laws and regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 1100 - Polychlorinated Biphenyls (PCB)

§ 65-110-1101 Polychlorinated Biphenyls

Per 40 CFR § 279.11 (table 1), the rule for burning of used oil containing PCBs shall be as in 40 CFR § 761.20(e).

Modified, 1 CMC § 3806(f).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 1200 - Public Participation

[Reserved.]

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Part 1300 - Enforcement Authority and Procedures

§ 65-110-1301 Penalties for Violation

The Director of DEQ is authorized to impose the following penalties and remedies for violation of the CNMI Used Oil Management Regulations.

- (a) **Enforcement and Remedies:** The Director shall enforce the Act, the regulations in this chapter, and any permit or order issued hereunder, pursuant to and in accordance with the authority in 2 CMC § 3131, as amended.
- (b) **Civil Penalties:** The Director may assess civil penalties in accordance with 2 CMC § 3131, as amended.
- (c) **Criminal Penalties:** Any person, who knowingly and willfully commits any act in violation of the Act, the regulations in this chapter, or any permit issued thereunder, may be subject to criminal penalties as set forth in 2 CMC § 3131(c), as amended.
- (d) The Director may suspend, modify, or revoke any permit, license, registration or certification issued by DEQ for violation of the Acts, the regulations in this chapter and any permit or license issued pursuant to these regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: The Commission created the section title.

§ 65-110-1305 Procedures for Issuance of Orders

- (a) In accordance with 2 CMC § 3131, if the Director has reason to believe a violation of the provisions of the Act, the regulations in this chapter, and/or the terms of any permit issued pursuant to the Act and these regulations has occurred or is occurring, the Director may issue any necessary order to enforce the Act, regulations and/or permit terms. Such order shall be signed by the Director or his authorized representative and shall provide notice of the facts constituting the violation, penalties that may be imposed, corrective actions and/or mitigating measures required, and timeframe in which to take corrective action and/or mitigating measures.
- (b) If any person subject to an order issued pursuant to subsection (a) fails to comply with the order, the Director may issue an administrative order or other such order imposing penalties as provided by 2 CMC § 3131(c). The order shall state the facts constituting the violation, the sections of the Act, regulations or permit involved, the proposed penalty including any permit suspension, revocation, or modification, and monetary penalties including any penalty for cost of corrective action taken by the Division. The order shall also provide notice of the opportunity to request a hearing. Such order shall be personally served or served by certified mail, return receipt, on persons subject to the penalties in the order.

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(c) Any person subject to an order imposing penalties pursuant to subsection (b), may request, in writing, a hearing before the Director or his/her designee. Request for a hearing shall be served upon the Division within seven calendar days from the date the order is received. Failure to request a hearing within seven calendar days shall constitute a waiver of the right to a hearing and the Division may take the necessary action to enforce the order.

(d) Persons subject to orders issued pursuant to the Act and the regulations in this chapter may also request an informal settlement conference. An informal settlement conference shall not affect the person's obligation to file a timely request for hearing. If a settlement is reached the parties shall forward a proposed consent order for the approval of the Director.

(e) Procedures for hearings shall be conducted in accordance with the Administrative Procedure Act (APA), 1 CMC §§ 9101, et seq., and as follows:

(1) The Director shall serve notice of the hearing in accordance with APA § 9109(a) at least ten calendar days before the scheduled hearing date.

(2) The alleged violator or "respondent" shall submit a written response to the order at least five calendar days before the hearing. The response shall clearly and directly admit, deny, or explain all the factual allegations contained in the order. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The respondent shall also state

(i) The circumstances or arguments which are alleged to constitute the grounds for defense, and

(ii) The facts which respondent intends to place at issue.

(iii) Failure to admit, deny, or explain any material factual allegation contained in the order may be deemed an admission of the allegation.

(3) The Director or his designee will preside over the hearing. The officer presiding at the hearing shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record of the hearing. The type of record made shall be at the discretion of the presiding officer. Evidence presented at the hearing need not conform with the prescribed rules of evidence, but may be limited by the presiding officer in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. In accordance with 1 CMC § 9109, a party may present his/her case by oral or documentary evidence and may be represented by counsel at the hearing.

(4) The officer presiding at the hearing shall issue a written decision within twenty-one calendar days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.

(5) Except as provided in subsection (e)(6), the decision of the Director or presiding officer shall be final. In accordance with the APA, 1 CMC § 9112, an appeal from the final decision shall be to the Commonwealth Superior Court within thirty calendar days following issuance of the final agency decision.

(6) If the presiding officer is not the Director or other Division official, the decision may be appealed to, or may be reviewed on motion, by the Director in accordance with the APA, 1 CMC § 9110. A written notice of appeal or motion for review shall be

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submitted to the Division within seven calendar days of the date the decision is issued. Appeal or review by the Director shall be in accordance with the procedures set forth in 1 CMC § 9110 pursuant to a schedule agreed upon by the parties and the Director. The decision of the Director following review or appeal shall be considered final agency action for purposes of judicial review. In the event there is no appeal or motion for review of the original decision of the presiding officer, the presiding officer's decision shall be considered final agency action as of the date issued for purposes of judicial review. An appeal from the final decision shall be to the Commonwealth Superior Court within thirty calendar days following the date the final decision is issued.

(7) For filing deadline purposes, counting of the days shall start on the day after issuance or receipt (whichever is specified) of an order or decision. If any filing date falls on a Saturday, Sunday, or Commonwealth holiday, the filing deadline shall be extended to the next working day.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: In subsection (e), the Commission changed "Procedures" to "Procedure" to correct a manifest error.

Part 1400 - Miscellaneous Provisions

§ 65-110-1401 Severability

Should any provision of the regulations in this chapter or its application to any person or circumstance be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining portion of the regulations and/or the application of the affected provision to other persons or circumstance shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

§ 65-110-1405 Effective Date

The regulations in this chapter will take effect 10 days after notice of adoption is published in the Commonwealth Register. All used oil management facilities are required to be in compliance with these regulations within six-month period after the effective date of these regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

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Appendix A **40 CFR Part 279**

Standards for the Management of Used Oil

[See Commission Comment]

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: Appendix A to the original regulation provided the table of contents for 40 C.F.R. Part 279 as of August 7, 2003. See 25 Com. Reg. at 20958 (Aug. 22, 2003). In section 65-110-001, the DEQ expressed its clear intent to incorporate this part of the Code of Federal Regulations as amended from time to time. As the 2003 version of the Table of Contents may no longer be accurate, the Commission has omitted this Appendix.

Appendix B **40 CFR Part 112**

Oil Pollution Prevention (Spill Prevention, Control, and Countermeasures)

[See Commission Comment]

History: Adopted 25 Com. Reg. 20936 (Aug. 22, 2003); Proposed 25 Com. Reg. 19962 (Jan. 31, 2003).

Commission Comment: Appendix B to the original regulation provided the table of contents for 40 C.F.R. Part 112 as of August 7, 2003. See 25 Com. Reg. at 20962 (Aug. 22, 2003). In section 65-110-001, the DEQ expressed its clear intent to incorporate this part of the Code of Federal Regulations as amended from time to time. As the 2003 version of the Table of Contents may no longer be accurate, the Commission has omitted this Appendix.