

State Authorization and Used Oil Recycled Through Some Other Means Than Burning For Energy Recovery

In a state where the 40 CFR Part 279 used oil management standards are not in effect, how does Federal EPA regulate generators who recycle their used oil by sending it to be re-refined?

In states where Part 279 is not in effect, EPA does not regulate used oil that is recycled in some manner other than by being burned for energy recovery, including re-refining. On November 29, 1985 (50 FR 49164), EPA established regulations for recycled used oil that is burned for energy recovery (Part 266, Subpart E). At the same time, the Agency exempted characteristic used oil from regulation if it was recycled through some other means than burning for energy recovery (261.6(a)(3)(iii)).

On September 10, 1992 (57 FR 41566), the Agency established a new program in Part 279 expanding the regulation of used oil recycling activities to include other methods than burning for energy recovery. The Agency also repealed 261.6(a)(3)(iii), and replaced it with a new provision that exempts recycled used oil from the requirements of Parts 260 through 268 and subjects it to Part 279 (261.6(a)(4)). Since Part 279 has been treated similar to regulations promulgated under the authority of a non-HSWA statutory requirement, the Part 279 regulations are only in effect in unauthorized states and states with EPA-approved programs.

Unlike the newer Part 279 regulations, the Part 266, Subpart E and 261.6(a)(3)(iii) regulatory program was effective in all states, regardless of the state's authorization status. Although the Agency repealed Part 266, Subpart E, when it promulgated Part 279, in states that have not modified their state program to adopt Part 279, the pre-1992 exemption for used oil recycled through some other means than burning for energy recovery may still apply. In these states, generators who recycle used oil through methods that do not involve burning for energy recovery, including re-refining, are not regulated.

Finally, states may have additional used oil regulations. Regardless of the effective status of the federal regulations in Part 279 and Part 266, Subpart E, used oil handlers should refer to their appropriate state agency for any further used oil regulatory requirements.