

Rulemaking Hearing Rules  
of  
Department of Environment and Conservation  
Division of Solid Waste Management

Chapter 1200-01-11  
Hazardous Waste Management

Amendments

Part 10 of subparagraph (e) of paragraph (1) of Rule 1200-01-11-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting the following so that, as amended, the part shall read as follows:

10. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule 1200-01-11-.11, provided the resultant mixture does not exhibit the characteristic of ignitability, corrosivity, or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of this rule.
  - (i) Any material derived from such non-hazardous mixture by processing, blending, or other treatment is also regulated under Rule 1200-01-11-.11(2)(a)5.
  - (ii) If the resultant mixture exhibits the characteristic of ignitability, corrosivity, or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of this rule, and if the resultant hazardous waste mixture exceeds the quantity limitations identified in this subparagraph, then it is no longer conditionally exempt under this subparagraph and is subject to regulation under Rules 1200-01-11-.03 through .10.

Authority: T.C.A. §§ 68-212-106, 68-212-107, 68-212-114, and 4-5-201 et seq.

Amendment

Subpart (iii) of part 2 of subparagraph (a) of paragraph (2) of Rule 1200-01-11-.11 Standards for the Management of Used Oil is amended by deleting it in its entirety and substituting the following so that, as amended, the subpart shall read as follows:

- (iii) Conditionally Exempt Small Quantity Generator Hazardous Waste
  - (I) In accordance with Rule 1200-01-11-.02(1)(e)10, mixtures of used oil and conditionally exempt small quantity generator hazardous waste are subject to regulation as used oil under this rule, provided the resultant mixture does not exhibit the characteristic of ignitability, corrosivity, or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of Rule 1200-01-11-.02.
  - (II) If the mixture exhibits the characteristic of ignitability, corrosivity, or reactivity, in accordance with subparagraphs (3)(b), (c) or (d) of Rule 1200-01-11-.02, then the mixture shall be managed as hazardous waste and not as used oil under this Rule.

Authority: T.C.A. §§ 68-212-106, 68-212-107, 68-212-114, and 4-5-201 et seq.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 18th day of November, 2008, and will become effective on the 1st day of February, 2009. (FS 11-25-08; DBID 3670)

### Economic Impact Statement

In October of 2007, a used oil transporter technician was severely burned and the used oil stored in the tanker was released, due to the back of the tanker being blown out, into the environment due to an ignitable mixture of used oil and hazardous waste flashing during its handling. The Department believes that, as allowed by the current regulations, conditionally exempt small quantity generator hazardous waste was placed into a used oil underground storage tank and mixed with on-site generated used oil. The resulting mixture was managed as used oil and not as hazardous waste although the resulting mixture was hazardous due to its ignitability. It is this ignitable mixture, being managed as used oil and not as hazardous waste that resulted in potentially scarring a man for life and nearly costing him his life, and damaging the environment. In spite of T.C.A. 68-211-1016(a)(2) which prohibits, among other things, collecting and storing used oil in any manner which endangers the public health or welfare, the current regulations do not contain such a clear prohibition. This regulatory amendment is designed, under the authority of T.C.A. §§ 68-212-104 and 107, to make this prohibition clear by regulating mixtures of conditionally exempt small quantities of hazardous waste and used oil as hazardous waste if it plainly endangers public health, welfare or the environment.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

There are many small businesses that generate used oil and that also generate hazardous waste in quantities of less than 220 pounds per calendar month. These types of used oil and hazardous waste generators are not required by existing regulations to notify the Department of their generating activities. Therefore, we have no reliable estimate of the number of affected small businesses. Nevertheless, this regulatory amendment is necessary in order to protect public health, welfare and the environment.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

If the conditionally exempt small quantity generator avoids adding any hazardous waste to his used oil that could result in a mixture that exhibits the characteristic ignitability, corrosivity or reactivity, then there are no additional reporting, recordkeeping or other administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers:

The probable effect is the desired effect, that conditionally exempt small quantity generator will be careful to not mix their hazardous waste with their used oil. Mixtures of

used oil and hazardous waste that are ignitable, corrosive or reactive, without this amendment, would not be effectively managed in a manner that is protective of public health, welfare or the environment.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The Department is not aware of any alternative that will achieve the protection being sought with this amendment.

- (5) A comparison of the proposed rule with any federal or state counterparts:

The current regulations are substantially equivalent to the federal regulations. The amendment will bring the regulations in line with other states that have already recognized the need to make this change.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exempting small businesses from this proposed rule is equivalent to keeping the existing rules unchanged. The amendment is necessary to protect public health, welfare and the environment and is designed to ensure that hazardous waste and used oil mixtures are appropriately managed.