

Contents

Section 1.0 PURPOSE..... 1

Section 2.0 EFFECTIVE DATE 2

Section 3.0 AUTHORITY 2

Section 4.0 ADOPTION OF FEDERAL REGULATIONS (40 CFR 279)

 Subpart A Definitions 3

 Subpart B Applicability 4

 Subpart C Standards for Used Oil Generators 10

 Subpart D Standards for Used Oil Collection Centers and Aggregation Points 12

 Subpart E Standards for Used Oil Transporter and Transfer Facilities 15

 Subpart G Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery..... 23

 Subpart I Standards for Use as a Dust Suppressant and Disposal of Used oil 30

Section 5.0 ENFORCEMENT 30

Section 6.0 AMENDMENTS 34

Section 7.0 SEVERABILITY..... 34

Section 1.0 PURPOSE

1.1 The Saint Regis Mohawk Tribe (Tribe), is responsible for the health, safety, education and welfare of all community members. With respect to used oil management it has the authority, responsibility and jurisdiction to exercise sovereign rights in governing used oil management on the Saint Regis Mohawk Reservation (Reservation). These Regulations authorized by the Tribe’s Solid Waste Management Code hereby delegate to the Tribe’s Compliance Department and Environment Division authority over management of used oil through Tribal regulation to ensure the protection of Tribal member health by reducing unnecessary health risk exposures to used oil.

1.2 The Regulations establish rules and standards that apply to all used oil that is generated on tribal territory by businesses and individuals. Currently there are no specific rules, programs or regulations that govern the Tribe’s regulation of this particular solid waste.

1.3 While some businesses have voluntarily assumed responsibility for the collection of used oil, the Tribe is concerned that businesses and individuals may dispose of their used oil on

land or in landfills, sewers, drainage systems, septic tanks, surface or ground waters and elsewhere.

1.4 Among other things, the Regulations will deal with:

- (a) The cleanup of any used oil currently being stored by businesses and individuals on territory;
- (b) The use and storage of used oil by businesses and individuals on territory on a going forward basis by certifying and licensing oil collection centers, requiring reporting of used oil collection, regulation of used oil containers and tanks, regulating the transportation of used oil and, among other things, creating rules for recycling of used oil in a safe manner.

1.5 The Regulations and penalties imposed by these Regulations extend to any person within the Tribe's jurisdiction, whether licensed or not.

1.6 The Tribe's strategy is the adoption of Code of Federal Regulations, 40 CFR Part 279, a set of federal regulations for the management of used oil, which is any oil refined from crude oil or synthetic oil that has been contaminated by use. The Regulations aim to encourage recycling and prevent pollution of used oil, and they apply to different types of used oil handlers, such as generators, collection centers, processors, burners, and marketers. The Regulations also specify the allowable levels of certain constituents and properties for used oil burned for energy recovery or processed into fuel.

Section 2 EFFECTIVE DATE

2.1 These Regulations shall be effective upon their adoption by the Tribal Council.

Section 3 AUTHORITY

3.1 The Tribe has the authority to adopt these Regulations pursuant to the Tribe's Solid Waste Management Code ("SWMC") adopted originally in TCR 2002-25 and as most recently amended by TCR 2020-09.

Section 4 ADOPTION OF FEDERAL REGULATIONS (40 CFR 279)

4.1 The Tribe is adopting in its entirety the federal regulations regarding regulation of used oil disposal set forth in 40 C.F. R. Part 279.

4.2 For reference, a link to 40 C.F.R. Part 279 can be found here: [eCFR :: 40 CFR 279.22 -- Used oil storage.](#)

4.3 Set forth in this Section are 40 CFR Part 279 Subparts A through I (reserving Subpart F (Processors and Re-refiners, which may be added at a later date).

Subpart A Definitions

§ 279.1 Definitions.

Terms that are defined in §§ 260.10, 261.1, and 280.12 of this chapter have the same meanings when used in this part.

“Aboveground tank” means a tank used to store or process used oil that is not an underground storage tank as defined in § 280.12 of this chapter.

“Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

“Do-it-yourselfer used oil collection center” means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

“Existing tank” means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the jurisdiction in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either

(1) A continuous on-site installation program has begun, or

(2) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for installation of the tank to be completed within a reasonable time.

“Household “do-it-yourselfer” used oil means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.

“New tank” means a tank that will be used to store, or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the State in which the tank is located.

“Tank” means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.

“Used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

“Used oil aggregation point” means any site or facility that accepts, aggregates, and/or stores used oil

“Used oil burner” means a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a).

“Used oil collection center” means any site or facility that is registered, licensed, permitted or recognized by a state, county, municipal government to manage used oil and accepts, aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24. Used oil collection centers may also accept used oil from household do-it-yourselfers.

“Used oil generator” means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

“Used oil transfer facility” means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to § 279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

“Used oil transporter” means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.4

§ 279.10 Applicability.

This section identifies those materials which are subject to regulation as used oil under this part.

- (a) Used oil. EPA presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal.

(b) Mixtures of used oil and hazardous waste —

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in subpart D of part 261 of this chapter are subject to regulation as hazardous waste rather than as used oil under this part.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

(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 § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibit one or more of the hazardous waste characteristics identified in subpart C of part 261 of this chapter and mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C are subject to:

(i) Except as provided in paragraph (b)(2)(iii) of this section, regulation as hazardous waste under parts 260 through 266, 268, 270, and 124 of this chapter rather than as used oil under this part, if the resultant mixture exhibits any characteristics of hazardous waste identified in subpart C of part 261 of this chapter; or

(ii) Except as specified in § 279.10(b)(2)(iii) regulation as used oil under this part, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under subpart C of part 261 of this chapter.

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under § 261.21 of this chapter.

(3) Very small quantity generator hazardous waste. Mixtures of used oil and very small quantity generator hazardous waste regulated under § 262.14 of this chapter are subject to regulation as used oil under this part.

(c) Materials containing or otherwise contaminated with used oil.

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

(i) Are not used oil and thus not subject to this part, and

(ii) If applicable are subject to the hazardous waste regulations of parts 124, 260 through 266, 268, and 270 of this chapter.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this part.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this part.

(d) Mixtures of used oil with products.

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

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of subpart C of this part.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to this part, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter as provided in § 261.3(c)(2)(i) of this chapter.

(2) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this part.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to this part, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of parts 260 through 266, 268, 270, and 124 of this chapter if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this part.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this part. For purposes of this paragraph, “de minimis” quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are 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 are exempt from the requirements of this part.

(3) Used 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 the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of § 279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used 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 the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this part until it is transported ashore.

(i) Used oil containing PCBs. Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this part unless, because of dilution, it is regulated under 40 CFR part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this part may also be subject to the prohibitions and requirements found at 40 CFR part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this part, but is subject to regulation under 40 CFR part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this part or part 761 of this chapter.

§ 279.11 Used oil specifications. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this part unless it is shown not to exceed any of the allowable levels of the constituents and

properties shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any allowable level and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part.

Table 1— USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY¹

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash point	100 °F minimum.
Total halogens	4,000 ppm maximum. ²

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

¹ The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see § 279.10(b)).

² Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under § 279.10(b)(1). Such used oil is subject to subpart H of part 266 of this chapter rather than this part when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

§ 279.12 Prohibitions.

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under parts 264 or 265 of this chapter.

(b) Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in § 279.82(c).

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

(1) Industrial furnaces identified in § 260.10 of this chapter;

(2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:

(i) Industrial boilers 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) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23.

(3) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter.

Subpart C Standards for Used Oil Generators

§ 279.20 Applicability.

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household “do-it-yourselfer” used oil generators. Household “do-it-yourselfer” used oil generators are not subject to regulation under this part.

(2) Vessels. Vessels at sea or at port are not subject to this subpart. For purposes of this subpart, used 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(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this subpart once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of this subpart.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this subpart.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this part.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this part as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of § 279.24 (a) and (b), must also comply with subpart E of this part.

(2)

(i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with subpart F of this part.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewaters;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to § 279.10(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to § 279.23.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of § 279.23, must also comply with subpart G of this part.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part.

(5) Generators who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.21 Hazardous waste mixing.

(a) Mixtures of used oil and hazardous waste must be managed in accordance with § 279.10(b).

(b) The rebuttable presumption for used oil of § 279.10(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of § 279.10(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units.

Subpart D Standards for Used Oil Collection Centers and Aggregation Points

§ 279.22 Used oil storage.

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this Subpart. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps:

(1) Stop the release;

- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.24 Off-site shipments.

Except as provided in paragraphs (a) through (c) of this section, generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

- (1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
- (2) The generator transports no more than 55 gallons of used oil at any time; and
- (3) The generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state/county/municipal government to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

- (1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
- (2) The generator transports no more than 55 gallons of used oil at any time; and
- (3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by

the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a “tolling arrangement”) must indicate:

- (1) The type of used oil and the frequency of shipments;
- (2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and
- (3) That reclaimed oil will be returned to the generator.

§ 279.30 Do-it-yourselfer used oil collection centers.

(a) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) DIY used oil collection center requirements. Owners or operators of all DIY used oil collection centers must comply with the generator standards in subpart C of this part.

§ 279.31 Used oil collection centers.

(a) Applicability. This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under subpart C of this part who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of § 279.24(a). Used oil collection centers may also accept used oil from household do-it-yourselfers.

(b) Used oil collection center requirements. Owners or operators of all used oil collection centers must:

- (1) Comply with the generator standards in subpart C of this part; and
- (2) Be registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil.

§ 279.32 Used oil aggregation points owned by the generator.

(a) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point

in shipments of no more than 55 gallons under the provisions of § 279.24(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points must comply with the generator standards in subpart C of this part.

Subpart E Standards for Used Oil Transporter and Transfer Facilities

§ 279.40 Applicability.

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, this subpart applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.

(1) This subpart does not apply to on-site transportation.

(2) This subpart does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in § 279.24(a).

(3) This subpart does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in § 279.24(b).

(4) This subpart does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this part. Except as provided in paragraphs (a)(1) through (a)(3) of this section, this subpart does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States.

(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in § 261.7 of this chapter prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of §

279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil must also comply with subpart C of this part;

(2) Transporters who process or re-refine used oil, except as provided in § 279.41, must also comply with subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and

(5) Transporters who dispose of used oil, including the use of used oil as a dust suppressant, must also comply with subpart I of this part.

§ 279.41 Restrictions on transporters who are not also processors or re-refiners.

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in subpart F of this part.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in subpart F of this part.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in subpart F of this part.

§ 279.42 Notification.

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12 (To obtain ordering information for EPA Form 8700–12 call RCRA/Superfund Hotline at 1–800–424–9346 or 703–920–9810); or

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

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);

(vi) Location of all transfer facilities at which used oil is stored;

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

§ 279.43 Used oil transportation.

(a) Deliveries. A used oil transporter must deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility who has obtained an EPA identification number;

(3) An off-specification used oil burner facility who has obtained an EPA identification number; or

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

(b) DOT Requirements. Used oil transporters must comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 must comply with all applicable regulations in 49 CFR parts 171 through 180.

(c) Used oil discharges.

(1) In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(2) If a discharge of used oil occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.

(3) An air, rail, highway, or water transporter who has discharged used oil must:

(i) Give notice, if required by 49 CFR 171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(ii) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

(4) A water transporter who has discharged used oil must give notice as required by 33 CFR 153.203.

(5) A transporter must clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

§ 279.44 Rebuttable presumption for used oil.

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), the used oil transporter must determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter must make this determination by:

(1) Testing the used oil; or

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

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

(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 § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the transporter for at least 3 years.

§ 279.45 Used oil storage at transfer facilities.

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil transporters are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(d) Secondary containment for containers. Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or

(iii) An equivalent secondary containment system.

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

(e) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

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

(f) Secondary containment for new aboveground tanks. New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

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

(g) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."

(h) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

(1) Stop the release;

- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

§ 279.46 Tracking.

(a) Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:

- (1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
- (2) The EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
- (3) The quantity of used oil accepted;
- (4) The date of acceptance; and
- (5)
 - (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.
 - (ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery must include:

- (1) The name and address of the receiving facility or transporter;
- (2) The EPA identification number of the receiving facility or transporter;
- (3) The quantity of used oil delivered;

(4) The date of delivery;

(5)

(i) Except as provided in paragraph (b)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters must maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) Record retention. The records described in paragraphs (a), (b), and (c) of this section must be maintained for at least three years

§ 279.47 Management of residues.

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in § 279.10(e).

[Subpart F – Standards for Use oil Processors and Re-Refiners *[RESERVED]*]

Subpart G Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

§ 279.60 Applicability.

(a) General. The requirements of this subpart apply to used oil burners except as specified in paragraphs (a)(1) and (a)(2) of this section. A used oil burner is a facility where used oil not meeting the specification requirements in § 279.11 is burned for energy recovery in devices identified in § 279.61(a). Facilities burning used oil for energy recovery under the following conditions are not subject to this Subpart:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of § 279.23; or

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(b) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this part as indicated below.

- (1) Burners who generate used oil must also comply with subpart C of this part;
- (2) Burners who transport used oil must also comply with subpart E of this part;
- (3) Except as provided in § 279.61(b), burners who process or re-refine used oil must also comply with subpart F of this part;
- (4) Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in § 279.11 must also comply with subpart H of this part; and
- (5) Burners who dispose of used oil, including the use of used oil as a dust suppressant, must comply with subpart I of this part.

(c) Specification fuel. This subpart does not apply to persons burning used oil that meets the used oil fuel specification of § 279.11, provided that the burner complies with the requirements of subpart H of this part

§ 279.61 Restrictions on burning.

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

- (1) Industrial furnaces identified in § 260.10 of this chapter;
- (2) Boilers, as defined in § 260.10 of this chapter, that are identified as follows:
 - (i) Industrial boilers 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) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
 - (iii) Used oil-fired space heaters provided that the burner meets the provisions of § 279.23; or

(3) Hazardous waste incinerators subject to regulation under subpart O of parts 264 or 265 of this chapter.

(b)

(1) With the following exception, used oil burners may not process used oil unless they also comply with the requirements of subpart F of this part.

(2) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

§ 279.62 Notification.

(a) Identification numbers. Used oil burners which have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the Regional Administrator of their used oil activity by submitting either:

(1) A completed EPA Form 8700–12 (To obtain EPA Form 8700–12 call RCRA/Superfund Hotline at 1–800–424–9346 or 703–920–9810); or

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

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

§ 279.63 Rebuttable presumption for used oil.

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of § 279.10(b)(1)(ii), a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner must determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

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

(3) If the used oil has been received from a processor/re-refiner subject to regulation under subpart F of this part, using information provided by the processor/re-refiner.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

(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 § 279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section must be maintained by the burner for at least 3 years. [57 FR 41612, Sept. 10, 1992, as amended at 59 FR 10560, Mar. 4, 1994; 70 FR 34591, June 14, 2005; 71 FR 40280, July 14, 2006]

§ 279.64 Used oil storage.

Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this subpart. Used oil burners are also subject to the Underground Storage Tank (40 CFR part 280) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.

(b) Condition of units. Containers and aboveground tanks used to store oil at burner facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks).

(c) Secondary containment for containers. Containers used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.

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

(d) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

(iii) An equivalent secondary containment system.

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

(e) Secondary containment for new aboveground tanks. New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

(i) Dikes, berms or retaining walls; and

(ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

(iii) An equivalent secondary containment system.

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

(f) Labels.

(1) Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

(g) Response to releases. Upon the detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a burner must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

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

§ 279.65 Tracking.

(a) Acceptance. Used oil burners must keep a record of each used 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 must include the following information:

- (1) The name and address of the transporter who delivered the used oil to the burner;
- (2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;
- (3) The EPA identification number of the transporter who delivered the used oil to the burner;
- (4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent to the burner;
- (5) The quantity of used oil accepted; and
- (6) The date of acceptance.

(b) Record retention. The records described in paragraph (a) of this section must be maintained for at least three years.

§ 279.66 Notices.

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner must provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

- (1) The burner has notified EPA stating the location and general description of his used oil management activities; and
- (2) The burner will burn the used oil only in an industrial furnace or boiler identified in § 279.61(a).

(b) Certification retention. The certification described in paragraph (a) of this section must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

§ 279.67 Management of residues.

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in § 279.10(e).

Subpart H Standards for Used Oil Fuel Marketers - Reserved

Subpart I Standards for Use as a Dust Suppressant and Disposal of Used oil

§ 279.80 Applicability.

The requirements of this subpart apply to all used oils that cannot be recycled and are therefore being disposed.

§ 279.81 Disposal.

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of parts 260 through 266, 268, 270 and 124 of this chapter.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with the requirements of parts 257 and 258 of this chapter.

§ 279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited,

Section 5.0: Enforcement and Administrative Procedures

5.1 Enforcement Policy

It is the policy of the Tribe to encourage informal, practical, result-oriented resolution of alleged violations of these Regulations. The Tribe will take those actions as are necessary to prevent damage to the Tribe's natural resources, health, safety and welfare. It is also the policy of the Tribe, consistent with the principles of due process, to provide effective procedures for the enforcement of these Regulations that allow a party notice and an opportunity to be heard.

5.2 Enforcement Agencies

The Tribe's Environment Division and Compliance Department shall be jointly responsible for the administration and enforcement of these Regulations. The Tribal Compliance Department shall have primary responsibility for day-to-day monitoring and inspection of regulated activities under these Regulations. The Tribal Environmental Division shall have primary responsibility for technical assistance regarding any activities or violations that impact the environment. (Collectively these two agencies shall be referred to as the "Tribal Compliance Office" or "Office").

5.3 NOTICE OF VIOLATION; CEASE AND DESIST ORDERS

If the Office finds that, after an investigation, a violation of any provision of these Regulations, including regulations and permits issued hereunder, has occurred or is occurring the Office shall promptly notify, in writing, the alleged violator of the nature of the violation.

5.3.1 In the case of an apparent violation of these Regulations, the Office is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation and, if the apparent violation occurred on property owned by a person other than the alleged violator, a Notice of Violation shall also be issued to the landowner.

5.3.2 In the case of a continuing violation or a threatened violation, the Office is authorized to issue a Cease and Desist Order to prevent the violation from continuing or occurring.

5.3.3 Failure to comply with a Cease and Desist Order shall constitute a violation of the Regulations. Both a Notice of Violation and a Cease and Desist Order may be issued for a single incident. A Notice of Violation will include a Summons to appear before the Office for an enforcement hearing at a specified time and date, and shall advise the alleged violator that failure to appear may result in the imposition of civil penalties.

5.3.4 If a Cease and Desist Order is issued without an accompanying Notice of Violation, the Order will inform the recipient that failure to comply with the Order will constitute a violation per se of the Regulations and will result in the issuance of a Notice of Violation and may result in the imposition of civil penalties.

5.4 INFORMAL CONFERENCES

The Office shall afford the person apparently responsible for the violation, the landowner, or his or her representative, reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to undertaking further enforcement action unless the Office determines that there is a risk of imminent environmental damage to a Tribal resource or adverse impact upon the health, safety and welfare of Tribal members and others in neighboring communities. Informal conferences may be used at any stage in the enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter already pending before the Office or the Tribal Court.

5.5 REPORTS REQUIRED

5.5.1 The Office shall keep written records of the date and place of the informal conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action. All written records shall be maintained in accordance with Tribal records and document retention laws and policies.

5.6 ENFORCEMENT HEARINGS

5.6.1 If the alleged violator and the Office are unable to resolve the matter via an informal conference, the Office is authorized to initiate a formal hearing under rules established by the Office. In such a hearing the Office shall present its evidence establishing that the person(s) charged has (have) committed a violation of the Regulations. Any person so charged shall be entitled, at his or her own expense, to be represented by an attorney or other representative at the formal hearing and present evidence therein.

5.6.2 The Office shall have the burden of proving that a violation of the Regulations has occurred and that the person charged is responsible for this violation. The evidence used may be documentary in nature and need not comply strictly with the Tribe's Rules of Evidence.

5.6.3 The Office shall find that a violation of the Regulations has occurred if, after weighing evidence presented by all parties, it finds that the charges are supported by substantial evidence.

5.6.4 Within thirty (30) days after a hearing before the Office has concluded, the Office shall issue a written decision setting forth its findings of fact and conclusions of law. If the Office determines that a violation has occurred and that the person(s) charged is (are) responsible for the violation, the Office's decision shall include an Enforcement Order in accordance with the Section below.

5.7 ENFORCEMENT ORDER; PENALTIES; CORRECTIVE ACTION

5.7.2 An Enforcement Order shall direct any person(s) found to have committed a violation of the Regulations to take corrective action that the Office deems appropriate under the circumstances. An Enforcement Order may impose civil penalties in accordance with a schedule of civil penalties prescribed by the Office. Costs of remediation may be recovered by the Office and shall be deposited into a fund established for remediation activities. Alternatively, an Enforcement Order may impose civil penalties in the event that a person found to have committed a violation of the Regulations does not take corrective action in accordance with the Order within a prescribed period of time. If such a failure to act occurs, an appropriate department or agency of the Tribal government may take the necessary corrective action, in which case the amount of any civil penalty, and related costs, shall be increased by twice the amount of the cost incurred by the Tribal department or agency in taking the

corrective action. An Enforcement Order shall constitute a final decision subject to appeal to the Tribal Court.

5.7.3 Notwithstanding any other provision of the Regulations, if the Office determines that a person's noncompliance presents an imminent and substantial threat to the Tribe's public health, welfare or environment, and the Office determines, in consultation with the Tribe's Office of General Counsel, that it is not practicable to assure prompt protection of the Tribe's public health, welfare or environment through an administrative enforcement action, the Office may issue an emergency order as necessary to protect the Tribe's public health, welfare or environment. Any emergency order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days. An emergency order issued under this sub-section shall constitute a final decision subject to appeal to the Tribal Court.

5.7.4 Failure of any person to comply with an Enforcement Order will result in an immediate revocation of any permit held by the party. In order to obtain a reinstatement of such permit, the person(s) against whom the Enforcement Order was issued must first demonstrate compliance with the Order and pay all outstanding penalties, and then petition for reinstatement of the permit with the Office.

5.8 JUDICIAL ENFORCEMENT

The Saint Regis Mohawk Tribal Court shall have jurisdiction over all final decisions issued by the Office under this Chapter and shall follow, where applicable, the Tribe's Rules of Civil Procedure.

5.8.1 The Office, after consultation with the Tribe's Office of General Counsel, may file an action in Tribal Court pursuant to this Chapter for:

(i) a temporary restraining order;

(ii) a preliminary injunction;

(iii) a permanent injunction;

(iv) any other relief provided by law, including the assessment and recovery of civil penalties and clean up and administrative costs associated with the enforcement of the Regulations.

5.8.2 The Office may seek the above-named relief in any of the following instances:

(i) when a person or entity has violated, or is in violation of, any provision of the Regulations, including but not limited to a regulation, permit or order issued pursuant to these Regulations;

(ii) when a person submits false information under the Regulations; or

(iii) when a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Tribe, in which case the Office shall pursue injunctive relief but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs (i) and (ii) above.

Section 6.0 AMENDMENTS

6.1 Amendments to this Regulation may be adopted by Tribal Council Resolution. and supporting documentation must be submitted in writing.

Section 7.0 SEVERABILITY

7.1 In the event that any provision of this Regulation shall be found or declared to be invalid, the remaining provisions of this Regulation shall be unaffected thereby, and shall remain in full force and effect.