

applicability of the used oil management standards to mixtures to be burned for energy recovery. Therefore, today's rule amends § 261.5(j) as it should have been amended in 1992 to reflect the greater scope of Part 279 and to eliminate any potential ambiguity over the applicability of the used oil management standards to mixtures of CESQG wastes and used oil to be recycled. This amendment does not impose additional regulatory requirements on this category of CESQG waste. These wastes have been and continue to be regulated under 40 CFR 279.10(b)(3).

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The comment stated that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil should only be regulated as used oil if it is to be recycled by burning for energy recovery. This comment opens up the merits of the original rule (§ 279.10(b)(3)) and that is not the intent of today's final rule. Today's final rule intends only to make certain conforming changes to § 261.5(j) to correctly reflect EPA's original intent in the September 10, 1992 Part 279 used oil management standards rule. EPA addressed the merits of the original rule in that previous rulemaking and EPA is not reopening that issue in this final rule. Even if EPA were to reopen this issue in today's rulemaking and to address the merits of this issue, EPA would come to the same conclusion as it did in the previous rulemaking. EPA is not aware of any reason for distinguishing used oil being burned for energy recovery from used oil being recycled in other ways, and the commenter did not provide any. Notwithstanding this clarification of the federal regulations, the state may regulate mixtures of CESQG waste and used oil more stringently than the federal used oil management program.

C. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's rule amends 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The preamble to the November 29, 1985 rule (50 FR 49164 at 49189) clearly describes the agency's intent to only track on-specification used oil that is to be burned for energy recovery one step beyond the initial marketer. When these recordkeeping requirements were

recodified at 40 CFR 279.74(b) (57 FR 41566, September 10, 1992), the regulations required that a marketer must keep a record of each shipment of used oil to an on-specification used oil burner. However, the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification might choose not to market the used oil directly to an on-specification used oil burner (*i.e.* a non-industrial oil burner). Instead, the on-specification used oil might be marketed to a fuel oil distributor for subsequent sale as fuel oil. In this situation, § 279.74(b) could be interpreted to require the initial marketer of the on-specification used oil to keep a record of all subsequent shipments of that used oil until the on-specification used oil reaches a used oil burner. Today's rule clarifies that the initial marketer of on-specification used oil must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The initial marketer need not keep a record of any subsequent transfers of this used oil. For example, the initial marketer would need to keep a record of a shipment of on-specification used oil to a fuel oil distributor, but the initial marketer would not need to keep records of shipments of this used oil from the fuel oil distributor to fuel oil burners or other fuel oil distributors.

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The commenter was concerned that the proposed amendment does not require tracking of used oil that meets the used oil fuel specification to the point to which it is burned for energy recovery, and thus does not provide adequate protection. The Agency disagrees with this comment. This comment opens up the merits of the original November 29, 1985 rule and that is not the intent of today's rule. As with the issue above discussing mixtures of CESQG waste and used oil, the Agency is not reopening the merits of this issue, because the Agency addressed the merits of this issue in the preamble to the November 29, 1985 rule (50 FR 49164 at 49189). Today's amendment does not represent a change in the requirements, but only clarifies the Agency's intent that only the initial marketer of on-specification used oil must keep a record of each shipment of used oil to the facility to which it delivers the used oil. In the September 23, 1991 supplemental notice of proposed rulemaking (56 FR 48000), EPA did not propose to change the tracking requirements or the

management requirements, originally promulgated in 1985 for used oil that meets the used oil fuel specification. In drafting the 1992 rule, EPA only intended to recodify the tracking requirements from the now superseded Part 266. It has always been the Agency's position that used oil that is to be burned for energy recovery that meets the used oil fuel specification is a commodity that will be properly handled like any other fuel. The Agency has always intended that used oil that is to be burned for energy recovery only be regulated under the Used Oil Management Standards until it has been determined to meet the used oil fuel specification. Once it has been determined to meet the fuel specification and the marketer complies with 40 CFR 279.72, 279.73, and 279.74(b), the used oil is no longer regulated by the Used Oil Management Standards. If the used oil is not burned for energy recovery and is recycled by other means or disposed, it is regulated as used oil under the Used Oil Management Standards. Even if the Agency were to address the merits of this issue, we would continue to take the position as we are taking in today's amendment, because, for the reasons discussed above, the Agency believes that the tracking requirements would provide adequate protection. The commenter has provided no new information or arguments that would lead us to change this long-standing position. Notwithstanding this clarification of the federal regulations, a state may regulate used oil more stringently than the federal used oil management program.

III. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal