

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 40 CFR 273.13, 273.33, and 273.52; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under 40 CFR part 273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.

(g) Regulation of the waste or category of waste under 40 CFR part 273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

[60 FR 25542, May 11, 1995, as amended at 64 FR 36490, July 6, 1999]

**PART 278—CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS**

Sec.

278.1 Definitions.

278.2 Applicability.

278.3 Criteria for use of chat in Federally funded transportation projects.

278.4 Certification and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 6961 *et seq.*

SOURCE: 72 FR 39352, July 18, 2007, unless otherwise noted.

**§ 278.1 Definitions.**

(a) *Asphalt concrete*—a layer, or combination of layers, composed of a compacted mixture of an asphalt binder and mineral aggregate.

(b) *Chat*—waste material that was formed in the course of milling operations employed to recover lead and zinc from metal-bearing ore minerals in the Tri-State Mining District of Southwest Missouri, Southeast Kansas and Northeast Oklahoma.

(c) *Chip seal*—a material composed of aggregate placed on top of a layer of an asphalt or asphaltic liquid binder. The aggregate may be rolled into the binder.

(d) *Cold mix asphalt*—refers to an asphalt and aggregate mixture composed of binders, soaps, or other chemicals which allow its use when cold

(e) *Epoxy seal*—refers to the mixture of aggregate in epoxy binders. Epoxy seals are typically used as an anti-skid surface on bridge decking

(f) *Federal or State response action*—State or Federal response action undertaken pursuant to applicable Federal or State environmental laws and with consideration of site-specific risk assessments.

(g) *Flowable fill*—a cementitious slurry consisting of a mixture of fine aggregate or filler, water, and cementitious materials which is used primarily as a backfill in lieu of compacted earth.

(h) *Granular road base*—road base typically constructed by spreading aggregates in thin layers of 150 mm (6 inches) to 200 mm (8 inches) and compacting each layer by rolling over it with heavy compaction equipment. The aggregate base layers serve a variety of purposes, including reducing the stress applied to the sub grade layer and providing drainage for the pavement structure. The granular sub base forms the lowest (bottom) layer of the pavement structure and acts as the principal foundation for the subsequent road profile.

(i) *Hot Mix Asphalt*—a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass. Hot mix asphalt also includes hot mix asphalt sub bases and hot mix asphalt bases.

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(j) *Microsurfacing*—polymer-modified slurry seal.

(k) *Portland cement concrete (PCC)*—pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) base or sub base.

(l) *Pozzolanic*—a siliceous material which when combined with calcium hydroxide in the presence of moisture exhibits cementitious properties.

(m) *Slurry seal*—refers to a material composed of emulsified asphalt, aggregate, and mineral fillers, such as Portland cement or lime which is applied as a thin coating on top of asphalt concrete or Portland cement concrete road surfaces.

(n) *Stabilized base*—a non-asphaltic road base composed of aggregate mixed with a pozzolanic material which increases the bearing strength of the material.

(o) *Transportation construction projects*—these activities relate to the construction of roads and highways and include bases, sub bases, road surfaces, bridges, abutments, shoulders, and embankments. They are not related to any residential use.

(p) *Tri-State Mining District*—the lead-zinc mining areas of Ottawa County, Oklahoma, Cherokee County of southeast Kansas and Jasper, Newton, Lawrence, and Barry Counties of southwest Missouri.

(q) *Warm mix asphalt*—refers to a mixture of an asphalt binder with aggregate, paraffin or esterified wax, and mineral additives that allow its use at temperatures much lower than hot mix asphalt.

### § 278.2 Applicability.

These requirements apply to chat from the Tri-State Mining District used in transportation construction projects carried out, in whole or in part, using Federal funds.

### § 278.3 Criteria for use of chat in Federally funded transportation projects.

Chat can be used in transportation construction projects carried out, in whole or in part, using Federal funds if:

(a) The chat is used in hot, warm or cold mix asphalt, in slurry seal, microsurfacing, or in epoxy seal; or

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(b) The chat is used in Portland cement concrete, granular road base, flowable fill, stabilized road base or chip seal if, on a case by case basis either:

(1) Synthetic Precipitation Leaching Procedure (SPLP) tests are conducted on the proposed material using EPA SW-846 Method 1312, incorporated by reference in § 260.11 of this chapter, and the leachate testing results show that concentrations in the leachate do not exceed the National Primary Drinking Water Standards for lead and cadmium and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l; or

(2) EPA (or a State environmental Agency, if it chooses to do so) has determined, based on a site-specific risk assessment and after notice and opportunity for public comment, that the releases from the chat mixture in its proposed use will not cause an exceedance of the National Primary Drinking Water Standards for lead and cadmium in potential drinking water sources and the fresh water chronic National Recommended Water Quality Criterion for zinc of 120 µg/l in surface water; or

(c) The use of chat has been authorized pursuant to a State or Federal response action.

### § 278.4 Certification and record-keeping requirements.

(a) *Certification*. For chat used under the jurisdiction of the U.S. Department of Interior, Bureau of Indian Affairs, the EPA certification below is not applicable. In other jurisdictions, the acquirer shall:

(1) Submit a signed, written certification to the environmental regulatory agency in the State where the chat is to be used within 30 days of the date of acquisition. The certification shall contain the following:

(i) Location of origin of the chat;  
(ii) Amount of chat acquired; and  
(iii) Certification Statement: I certify under penalty of law that the chat used in this transportation project will meet EPA criteria found in § 278.3.

(2) *Transfer*. If the chat is sold or otherwise transferred to another party, the acquirer shall provide a copy of the certification to the new owner of the chat. The new owner shall submit a

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certification according to paragraph (a)(1) of this section. The new certification supersedes all previous certifications.

(3) *Recordkeeping*. The acquirer of chat, and any other person that receives the chat, will maintain copies of all of the following for three years; a copy of the certification following transmittal to the State department(s) of the environment, and, as appropriate; any SPLP testing results; or any site-specific risk assessments.

(b) [Reserved]

### PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

#### Subpart A—Definitions

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#### Subpart B—Applicability

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279.11 Used oil specifications.  
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#### Subpart C—Standards for Used Oil Generators

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279.23 On-site burning in space heaters.  
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#### Subpart D—Standards for Used Oil Collection Centers and Aggregation Points

279.30 Do-it-yourselfer used oil collection centers.  
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#### Subpart E—Standards for Used Oil Transporter and Transfer Facilities

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279.41 Restrictions on transporters who are not also processors or re-refiners.  
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#### Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

279.60 Applicability.  
279.61 Restrictions on burning.  
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279.64 Used oil storage.  
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#### Subpart H—Standards for Used Oil Fuel Marketers

279.70 Applicability.  
279.71 Prohibitions.  
279.72 On-specification used oil fuel.  
279.73 Notification.  
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#### Subpart I—Standards for Use as a Dust Suppressant and Disposal of Used Oil

279.80 Applicability.  
279.81 Disposal.  
279.82 Use as a dust suppressant.

AUTHORITY: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

SOURCE: 57 FR 41612, Sept. 10, 1992, unless otherwise noted.

#### 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