

Date of Hearing: March 14, 2023

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Alex Lee, Chair

AB 407 (Chen) – As Amended March 13, 2023

SUBJECT: Hazardous waste: used oil

SUMMARY: Allows used oil to be exempt from regulation under state law, if it meets specified criteria in existing law, is not subject to regulation as a hazardous waste under federal law, and meets the criteria for exemption as a highly controlled generator of used oil.

EXISTING LAW:

- 1) Authorizes through the Hazardous Waste Control Law (HWCL) the Department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)
- 2) Authorizes DTSC to conduct inspections, conduct sampling activities, inspect and copy documents, and take photographs at sites or establishments where hazardous wastes are stored, handled, processed, treated, or disposed. (HSC § 25185)
- 3) Establishes management standards for used oil, including transportation, testing, and storage requirements. (HSC § 25250 et seq.)
- 4) Defines used oil as "any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities." (HSC § 25250.1)
- 5) Requires used oil to be managed as a hazardous waste unless it is excluded through regulation; is dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced onsite; or, it has been shown through testing by the generator to meet the requirements for exclusion within the HWCL. (HSC §25250.4)
- 6) Authorizes generators of highly controlled used oil to test their used oil once per year for the purposes of determining if the used oil is a hazardous waste, and allows generators to not have to manage their used oil as hazardous waste under certain conditions. (HSC § 25250.19)
- 7) Creates the California Oil Recycling Enhancement (CORE) Act which is designed to reduce the illegal disposal of used oil and recycle and reclaim used oil to the greatest extent possible. (Public Resources Code § 48601)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "This bill would delete the rule that the used oil not be accountable to regulation as used oil under federal law."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

Used oil generated in California: Approximately 100 million gallons of used oil are recycled in California each year. An estimated additional 14 million gallons of California used oil gets recycled out-of-state each year. DTSC's used oil program regulates the proper management of used oil through inspections and enforcement of used oil recyclers, transfer facilities, and transporters. The CORE Act implemented by CalRecycle outlines the requirements for responsible management of used oil in California to reduce the amount of illegal disposal of used oil and encourage recycling and reuse, thereby minimizing impacts on the environment.

Regulation of used oil: State law defines used oil as "any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities." Used oil includes, but is not limited to, the following: used motor oils, used industrial oils, vehicle crankcase oils, hydraulic oils, transformer oils, engine lubricating oils, compressor oils, refrigeration oils, transmission fluids, turbine oils, metalworking oils, gearbox and differential oils, bearing oils, railroad oils, gear oils, and vegetable oils used for lubrication. Waste synthetic oils that may be managed as used oil include oil derived from coal, oil shale, or polymers; water-soluble petroleum-based oils; vegetable or animal oil used as a lubricant; hydraulic fluid; and, heat transfer fluid.

Used oil does not include: antifreeze, brake fluid, other automotive wastes, fuels, and solvents. Substances which are not regulated as used oils include: oils with a flashpoint below 100°F; oils mixed with hazardous waste; wastewater containing small amounts of used oil; oily wastes that are not used oil; oily wastewaters that are not used oil; tank bottoms; used oil processing bottoms; used oil re-refining distillation bottoms; edible cooking oils; grease; oils containing 5 parts per million (ppm) polychlorinated biphenyls (PCBs) or greater; or, oils containing more than 1,000 ppm total halogens.

Management of used oil: State law requires that used oil be managed as a hazardous waste in California unless it has been recycled and is shown to meet the specifications for recycled oil in statute, or qualifies for a recycling exclusion under the law. Consumers who change their own oil must manage their used oil appropriately (e.g., by taking it to a used oil collection center and never disposing of it on land, or in water or storm drains). Consumers are allowed to transport their own used oil to a used oil collection center or to a used oil recycling facility without any permits or a hazardous waste manifest.

Under state law, businesses generating used oil and used oil collection centers are required to meet all hazardous waste generator requirements. There are specific requirements for the types of containers that used oil is stored in, and how long the used oil can be stored by the generator of the used oil. Additionally, some of the business generators of used oil are required to have secondary containment for their tanks, which is essentially a backup system designed to prevent the release and migration of wastes or accumulated liquids from the storage tank. Prior to transporting individual containers of used oil, regulations require that the generator label

shipping containers for used oil as follows: "HAZARDOUS WASTE - State and Federal Law Prohibit Improper Disposal. If found, contact the nearest police or public safety authority, or the U.S. Environmental Protection Agency."

Recent changes to used oil exemptions: AB 2928 (Chen, Chapter 440, Statutes of 2018) allowed a specified universe of used oil, generated by a "highly controlled generator" to not have to manage their used oil as a hazardous waste. Highly controlled generators are those that have their own fleet of vehicles, which they manage and maintain. However, generators of highly controlled used oil have encountered a hiccup when applying for this exemption. Since their oil would meet the definition of being regulated as used oil under federal law, they have been unable to use the exemption created in AB 2928.

This bill: AB 407 fixes the issue generators of highly controlled used oil have encountered to allow for the use of the exemption created in AB 2928. Specifically, AB 407 deletes a condition that the used oil seeking exemption under current statute cannot be regulated as a used oil under federal law. However, the used oil would not be exempt from state regulation if it is regulated as a hazardous waste under federal law. This change, consistent with the CORE Act and AB 2928, could allow for more recycling options for used oil such as re-refining the oil back into oil.

Related legislation:

- 1) AB 2928 (Chen, Chapter 440, Statutes of 2018). Authorizes generators of highly controlled used oil to test their used oil once per year for the purposes of determining if the used oil is a hazardous waste, and allows generators to not have to manage their used oil as hazardous waste under certain conditions.
- 2) SB 546 (Lowenthal, Chapter 353, Statutes of 2009). Raised the fee paid by lubricating oil manufacturers from 16 cents to 24 cents per gallon, increased the incentives paid for recycling used oil, increased the testing requirements for used oil transporters, and required that transporters be inspected annually.
- 2) AB 907 (Chesbro, 2009). Would have made a variety of changes to statutes regulating used lubricating oil, including reducing the number of used oil collectors that can apply for recycling incentives, creating a new incentive for re-refined oil, and allowing additional funding for local government oil recycling efforts. This bill was not heard on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Josh Tooker / E.S. & T.M. /