

AMENDED IN SENATE JULY 9, 2001

AMENDED IN SENATE JUNE 26, 2001

AMENDED IN ASSEMBLY APRIL 23, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1329

Introduced by Assembly Member Lowenthal

February 23, 2001

An act to amend Sections 25198 and 25250.1 of, and to add Section 25250.9 to, the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1329, as amended, Lowenthal. Hazardous waste testing laboratories: used oil recycling.

(1) Under existing law, the analysis of any material required by the hazardous waste control laws is to be performed by a laboratory certified by the State Department of Health Services pursuant to the provisions regulating environmental laboratories. Until January 1, 2001, analyses performed by a laboratory pursuant to the facility's waste analysis plan that were prepared in accordance with specified regulations were exempt from those requirements, if the laboratory met specified conditions.

This bill would reenact that exemption for those analyses performed by a laboratory pursuant to the facility's waste analysis plan.

(2) Existing law requires used oil to be managed as a hazardous waste unless the used oil meets specified requirements. Existing law defines "used oil" for purposes of the provisions regulating the

handling of used oil and excludes, from the definition of “used oil” wastewater contaminated with de minimis quantities of used oil. Existing law specifies that de minimis quantities of used oil means small spills, leaks, or drippings from certain equipments during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. A violation of the laws regulating used oil is a crime.

This bill would revise the definition of used oil, for purposes of that exemption, to specify that a de minimus quantity of used oil does not include a quantity of used oil that exceeds ~~the waste discharge requirements for the publicly owned treatment works into which the wastewater will be discharged, from the time the used oil is received until the used oil is treated~~ *either the discharge limit for oil and grease applicable to the facility pursuant to the pretreatment requirements imposed by the publicly owned treatment works into which the facility discharges the wastewater or the discharge limit for oil and grease applicable to the facility pursuant to its waste discharge requirements.* The bill would also require every hazardous waste transporter who transports used oil to annually obtain a written acknowledgment and waiver from each generator of used oil for whom the transporter cannot verify certain facts regarding the recycling of used oil.

Since the bill’s new requirements concerning the management of used oil would be a crime, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25198 of the Health and Safety Code is
2 amended to read:



1 25198. (a) For purposes of this section, “state department”
2 means the State Department of Health Services.

3 (b) Except as provided in subdivision (c), the analysis of any
4 material required by this chapter shall be performed by a
5 laboratory certified by the state department pursuant to Article 3
6 (commencing with Section 100825) of Chapter 4 of Part 1 of
7 Division 101, except that laboratories previously issued a
8 certificate under this section shall be deemed certified until the
9 time that certification under Article 3 (commencing with Section
10 100825) of Chapter 4 of Part 1 of Division 101 has been either
11 granted or denied, but not beyond the expiration date shown on the
12 certificate previously issued under this section.

13 (c) The requirements of subdivision (b) shall not apply to
14 analyses performed by a laboratory pursuant to the facility’s waste
15 analysis plan, that is prepared in accordance with the regulations
16 adopted by the Department of Toxic Substances Control pursuant
17 to this chapter, if both of the following conditions are met:

18 (1) The laboratory is owned or operated by the same person
19 who owns or operates the facility at which the waste will be
20 managed, and the facility is a hazardous waste treatment, storage,
21 or disposal facility that is required to obtain a hazardous waste
22 facilities permit pursuant to Article 9 (commencing with Section
23 25200).

24 (2) The analysis is conducted for any of the following
25 purposes:

26 (A) To determine whether a facility will accept the hazardous
27 waste for transfer, storage, or treatment, as described in paragraph
28 (3) of subdivision (a) of Section 66264.13 of, and paragraph (3)
29 of subdivision (a) of Section 66265.13 of, Title 22 of the California
30 Code of Regulations, as those sections read on January 1, 2001.

31 (B) To ensure that the analysis used to determine whether a
32 facility will accept the hazardous waste for transfer, storage, or
33 treatment is accurate and up to date, as described in paragraph (4)
34 of subdivision (a) of Section 66264.13 of, and paragraph (4) of
35 subdivision (a) of Section 66265.13 of, Title 22 of the California
36 Code of Regulations, as those sections read on January 1, 2001.

37 (C) To determine whether the hazardous waste received at the
38 facility for transfer, storage, or treatment matches the identity of
39 the hazardous waste designated on an accompanying manifest or
40 shipping paper, as described in paragraph (5) of subdivision (a) of



1 Section 66264.13 of, and paragraph (5) of subdivision (a) of
2 Section 66265.13 of, the California Code of Regulations, as those
3 sections read on January 1, 2001.

4 (d) An analysis performed in accordance with subdivision (c)
5 is not an analysis performed for regulatory purposes within the
6 meaning of paragraph (19) of subdivision (c) of Section 100825.

7 (e) The exemption provided by subdivision (c) does not exempt
8 the analyses of waste for purposes of disposal from the
9 requirements of subdivision (b) requiring certified laboratory
10 analyses. The analyses described in subdivision (c) are not exempt
11 from any other requirement of law, regulation, or guideline
12 governing quality assurance and quality control.

13 (f) No person or public entity of the state shall contract with a
14 laboratory for environmental analyses for which certification is
15 required pursuant to this chapter, unless the laboratory holds a
16 valid certificate.

17 SEC. 2. Section 25250.1 of the Health and Safety Code is
18 amended to read:

19 25250.1. (a) As used in this article, the following terms have
20 the following meaning:

21 (1) (A) “Used oil” means any oil that has been refined from
22 crude oil, or any synthetic oil, that has been used, and, as a result
23 of use or as a consequence of extended storage, or spillage, has
24 been contaminated with physical or chemical impurities.
25 Examples of used oil are spent lubricating fluids that have been
26 removed from an engine crankcase, transmission, gearbox, or
27 differential of an automobile, bus, truck, vessel, plane, heavy
28 equipment, or machinery powered by an internal combustion
29 engine; industrial oils, including compressor, turbine, and bearing
30 oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad
31 drainings.

32 (B) “Used oil” does not include any of the following:

33 (i) Oil that has a flashpoint below 100 degrees Fahrenheit or
34 that has been mixed with hazardous waste, other than minimal
35 amounts of vehicle fuel.

36 (ii) (I) Wastewater, the discharge of which is subject to
37 regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b))
38 or 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33
39 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that



1 have eliminated the discharge of wastewater, contaminated with
2 de minimis quantities of used oil.

3 (II) For purposes of this clause, “de minimis quantities of used
4 oil” are small spills, leaks, or drippings from pumps, machinery,
5 pipes, and other similar equipment during normal operations, or
6 small amounts of oil lost to the wastewater treatment system
7 during washing or draining operations. “De minimus quantities of
8 used oil” *as that term applies to wastewater accepted by*
9 *facilities receiving wastewater from generators other than the*
10 *facility itself, does not include any quantity of used oil that exceeds*
11 ~~the waste discharge requirements imposed pursuant to Article 4~~
12 ~~(commencing with Section 13260) of Chapter 4 of Division 7 of~~
13 ~~the Water Code, for the publicly owned treatment works into~~
14 ~~which the wastewater will be discharged, from the time an offsite~~
15 ~~facility receives used oil until the used oil is subject to treatment~~
16 ~~by that offsite facility; either the discharge limit for oil and grease~~
17 ~~applicable to the facility pursuant to the pretreatment~~
18 ~~requirements imposed by the publicly owned treatment works into~~
19 ~~which the facility discharges the wastewater or the discharge limit~~
20 ~~for oil and grease applicable to the facility pursuant to its waste~~
21 ~~discharge requirements imposed pursuant to Article 4~~
22 ~~(commencing with Section 13260) of Chapter 4 of Division 7 of the~~
23 ~~Water Code.~~

24 (III) This exception does not apply if the used oil is discarded
25 as a result of abnormal manufacturing operations resulting in
26 substantial leaks, spills, or other releases or to used oil recovered
27 from wastewaters.

28 (iii) Used oil re-refining distillation bottoms that are used as
29 feedstock to manufacture asphalt products.

30 (iv) Oil that contains polychlorinated biphenyls (PCBs) at a
31 concentration of 5 ppm or greater.

32 (v) (I) Oil containing more than 1000 ppm total halogens,
33 which shall be presumed to be a hazardous waste because it has
34 been mixed with halogenated hazardous waste listed in Subpart D
35 (commencing with Section 261.30) of Part 261 of Title 40 of the
36 Code of Federal Regulations.

37 (II) A person may rebut the presumption specified in subclause
38 (I) by demonstrating that the used oil does not contain hazardous
39 waste, including, but not limited to, in the manner specified in
40 subclause (III).



1 (III) The presumption specified in subclause (I) is rebutted if
2 it is demonstrated that the used oil that is the source of total
3 halogens at a concentration of more than 1000 ppm is solely either
4 household waste, as defined in Section 261.4(b)(1) of Title 40 of
5 the Code of Federal Regulations, or is collected from conditionally
6 exempt small quantity generators, as defined in Section 261.5 of
7 Title 40 of the Code of Federal Regulations. Nothing in this
8 subclause authorizes any person to violate the prohibition
9 specified in Section 25250.7.

10 (2) “Board” means the California Integrated Waste
11 Management Board.

12 (3) (A) “Recycled oil” means any oil that meets all of the
13 following requirements specified in clauses (i) to (iii), inclusive:

14 (i) Is produced either solely from used oil, or is produced solely
15 from used oil that has been mixed with one or more contaminated
16 petroleum products or oily wastes, other than wastes listed as
17 hazardous under the federal act, provided that if the resultant
18 mixture is subject to regulation as a hazardous waste under
19 paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the
20 Code of Federal Regulations, the mixture is managed as a
21 hazardous waste in accordance with all applicable hazardous
22 waste regulations, and the recycled oil produced from the mixture
23 is not subject to regulation as a hazardous waste under paragraph
24 (2) of subsection (b) of Section 279.10 of Title 40 of the Code of
25 Federal Regulations. If the oily wastes with which the used oil is
26 mixed were recovered from a unit treating hazardous wastes that
27 are not oily wastes, these recovered oily wastes are not excluded
28 from being considered as oily wastes for purposes of this section
29 or Section 25250.7.

30 (ii) The recycled oil meets one of the following requirements:

31 (I) The recycled oil is produced by a generator lawfully
32 recycling its oil.

33 (II) The recycled oil is produced at a used oil recycling facility
34 that is authorized to operate pursuant to Section 25200 or 25200.5
35 solely by means of one or more processes specifically authorized
36 by the department. The department may not authorize a used oil
37 recycling facility to use a process in which used oil is mixed with
38 one or more contaminated petroleum products or oily wastes
39 unless the department determines that the process to be authorized
40 for mixing used oil with those products or wastes will not



1 substantially contribute to the achievement of compliance with the
2 specifications of subparagraph (B).

3 (III) The recycled oil is produced in another state, and the used
4 oil recycling facility where the recycled oil is produced, and the
5 process by which the recycled oil is produced, are authorized by
6 the agency authorized to implement the federal act in that state.

7 (iii) Has been prepared for reuse and meets all of the following
8 standards:

9 (I) The oil meets the standards of purity set forth in
10 subparagraph (B).

11 (II) If the oil was produced by a generator lawfully recycling
12 its oil or the oil is lawfully produced in another state, the oil is not
13 hazardous pursuant to the criteria adopted by the department
14 pursuant to Section 25141 for any characteristic or constituent
15 other than those listed in subparagraph (B).

16 (III) The oil is not mixed with any waste listed as a hazardous
17 waste in Part 261 (commencing with Section 261.1) of Chapter 1
18 of Title 40 of the Code of Federal Regulations.

19 (IV) The oil is not subject to regulation as a hazardous waste
20 under the federal act.

21 (V) If the oil was produced lawfully at a used oil recycling
22 facility in this state, the oil is not hazardous pursuant to any
23 characteristic or constituent for which the department has made the
24 finding required by subparagraph (B) of paragraph (2) of
25 subdivision (a) of Section 25250.19, except for one of the
26 characteristics or constituents identified in the standards of purity
27 set forth in subparagraph (B).

28 (B) The following standards of purity are in effect for recycled
29 oil, in liquid form, unless the department, by regulation,
30 establishes more stringent standards:

31 (i) Flashpoint: minimum standards set by the American Society
32 for Testing and Materials for the recycled products. However,
33 recycled oil to be burned for energy recovery shall have a
34 minimum flashpoint of 100 degrees Fahrenheit.

35 (ii) Total lead: 50 mg/kg or less.

36 (iii) Total arsenic: 5 mg/kg or less.

37 (iv) Total chromium: 10 mg/kg or less.

38 (v) Total cadmium: 2 mg/kg or less.

39 (vi) Total halogens: 3000 mg/kg or less. However, recycled oil
40 shall be demonstrated by testing to contain not more than 1000



1 mg/kg total halogens listed in Appendix VIII of Part 261
2 (commencing with Section 261.1) of Title 40 of Chapter 1 of the
3 Code of Federal Regulations.

4 (vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

5 (C) Compliance with the specifications of subparagraph (B) or
6 with the requirements of clauses (iv) and (v) of subparagraph (B)
7 of paragraph (1) shall not be met by blending or diluting used oil
8 with crude or virgin oil, or with a contaminated petroleum product
9 or oily waste, except as provided in subclause (II) of clause (ii) of
10 subparagraph (A), and shall be determined in accordance with the
11 procedures for identification and listing of hazardous waste
12 adopted in regulations by the department. Persons authorized by
13 the department to recycle oil shall maintain records of volumes and
14 characteristics of incoming used oil and outgoing recycled oil and
15 documentation concerning the recycling technology utilized to
16 demonstrate to the satisfaction of the department or other
17 enforcement agencies that the recycling has been achieved in
18 compliance with this subdivision.

19 (D) This paragraph does not apply to oil that is to be disposed
20 of or used in a manner constituting disposal.

21 (4) “Used oil recycling facility” means a facility that
22 reprocesses or re-refines used oil.

23 (5) “Used oil storage facility” means a storage facility, as
24 defined in subdivision (b) of Section 25123.3, that stores used oil.

25 (6) “Used oil transfer facility” means a transfer facility, as
26 defined in subdivision (a) of Section 25123.3, that either stores
27 used oil for periods greater than six days, or greater than 10 days
28 for transfer facilities in areas zoned industrial by the local planning
29 agency, or that transfers used oil from one container to another.

30 (7) (A) For purposes of this section and Section 25250.7 only,
31 “contaminated petroleum product” means a product that meets all
32 of the following conditions:

33 (i) It is a hydrocarbon product whose original intended purpose
34 was to be used as a fuel, lubricant, or solvent.

35 (ii) It has not been used for its original intended purpose.

36 (iii) It is not listed in Subpart D (commencing with Section
37 261.30) of Part 261 of Chapter 1 of Title 40 of the Code of Federal
38 Regulations.

39 (iv) It has not been mixed with a hazardous waste other than
40 another contaminated petroleum product.



1 (B) Nothing in this section or Section 25250.7 shall be
2 construed to affect the exemptions in Section 25250.3, or to
3 subject contaminated petroleum products that are not hazardous
4 waste to any requirements of this chapter.

5 (b) Unless otherwise specified, used oil that meets either of the
6 following conditions is not subject to regulation by the
7 department:

8 (1) The used oil has not been treated by the generator of the
9 used oil, the generator claims the used oil is exempt from
10 regulation by the department, and the used oil meets all of the
11 following conditions:

12 (A) The used oil meets the standards set forth in subparagraph
13 (B) of paragraph (3) of subdivision (a).

14 (B) The used oil is not hazardous pursuant to the criteria
15 adopted by the department pursuant to Section 25141 for any
16 characteristic or constituent other than those listed in
17 subparagraph (B) of paragraph (3) of subdivision (a).

18 (C) The used oil is not mixed with any waste listed as a
19 hazardous waste in Part 261 (commencing with Section 261.1) of
20 Chapter 1 of Title 40 of the Code of Federal Regulations.

21 (D) The used oil is not subject to regulation as either hazardous
22 waste or used oil under the federal act.

23 (E) The generator of the used oil has complied with the
24 notification requirements of subdivision (c) and the testing and
25 recordkeeping requirements of Section 25250.19.

26 (F) The used oil is not disposed of or used in a manner
27 constituting disposal.

28 (2) The used oil meets all the requirements for recycled oil
29 specified in paragraph (3) of subdivision (a), the requirements of
30 subdivision (c), and the requirements of Section 25250.19.

31 (c) Used oil recycling facilities and generators lawfully
32 recycling their own used oil that are the first to claim that recycled
33 oil meets the requirements specified in paragraph (2) of
34 subdivision (b) shall maintain an operating log and copies of
35 certification forms, as specified in Section 25250.19. Any person
36 who generates used oil, and who claims that the used oil is exempt
37 from regulation pursuant to paragraph (1) of subdivision (b), shall
38 notify the department, in writing, of that claim and shall comply
39 with the testing and recordkeeping requirements of Section
40 25250.19 prior to its reuse. In any action to enforce this article, the



1 burden is on the generator or recycling facility, whichever first
2 claimed that the used oil or recycled oil meets the standards and
3 criteria, and on the transporter or the user of the used oil or recycled
4 oil, whichever has possession, to prove that the oil meets those
5 standards and criteria.

6 (d) Used oil shall be managed in accordance with the
7 requirements of this chapter and any additional applicable
8 requirements of Part 279 (commencing with Section 279.1) of
9 Chapter 1 of Title 40 of the Code of Federal Regulations.

10 SEC. 3. Section 25250.9 is added to the Health and Safety
11 Code, to read:

12 25250.9. (a) A hazardous waste transporter who transports
13 used oil shall annually obtain a written acknowledgment and
14 waiver, signed by both the generator and the transporter, in the
15 form specified in subdivision (b) from each generator of used oil
16 for whom the transporter transports that used oil, if the transporter
17 cannot verify that the used oil has been transported to a facility ~~that~~
18 ~~does not either itself produce recycled oil, as defined in paragraph~~
19 ~~(3) of subdivision (a) of Section 25250.1, or that does not ensure~~
20 ~~that the used oil is transported to another facility that produces~~
21 ~~recycled oil, as defined in paragraph (3) of subdivision (a) of~~
22 ~~Section 25250.1. that meets both of the following criteria:~~

23 (1) *The facility ensures that the used oil is produced, either by*
24 *itself or by another facility, into recycled oil, as defined in*
25 *paragraph (3) of subdivision (a) of Section 25250.1.*

26 (2) *The facility, and any subsequent facility to which the used*
27 *oil is transported prior to being certified as having been produced*
28 *into recycled oil, is required to meet the requirements applicable*
29 *to hazardous waste facilities pursuant to the federal act.*

30 (b) The written acknowledgment and waiver required by
31 subdivision (a) shall read as follows:

32



1 ACKNOWLEDGMENT THAT USED OIL WILL NOT BE RECYCLED
2 WAIVER OF EXEMPTION FROM MANIFEST FEE

3
4 _____ (used oil generator) hereby acknowledges that _____
5 (used oil transporter) cannot verify that the used oil *it* is transporting for
6 us is being produced into recycled oil *or that the used oil is being*
7 *transported only to facilities that are required to meet all of the*
8 *requirements applicable to hazardous waste facilities under federal law.*

9 _____ (used oil transporter) hereby waives its right to claim the exemption
10 from the hazardous waste manifest fee provided by subparagraph (A) of
11 paragraph (3) of subdivision (c) of Section 25205.15 of the Health and
12 Safety Code, for any shipment of used oil that the transporter has not
13 verified as having been transported to a ~~facility that does not either itself~~
14 ~~produce recycled oil, as defined in Section 25250.1 of the Health and~~
15 ~~Safety Code, or that does not ensure that the used oil is transported to~~
16 ~~another facility that produces recycled oil as defined in Section 25250.1~~
17 ~~of the Health and Safety Code.~~ *facility that ensures that the used oil is*
18 *produced, either by itself or by another facility, into recycled oil, as*
19 *defined in paragraph (3) of subdivision (a) of Section 25250.1.*

20
21 Executed this date of _____
22 Authorized officer of _____ (used oil generator)
23 Authorized officer of _____ (used oil transporter)
24

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 SEC. 5. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety
36 within the meaning of Article IV of the Constitution and shall go
37 into immediate effect. The facts constituting the necessity are:

38 In order to reenact a narrowly crafted exemption from
39 laboratory certification requirements as soon as possible that
40 allowed certain routine analyses to be performed at an in-house



1 laboratory at a hazardous waste facility, recognizing that it is
2 impractical for hazardous waste facilities to send samples of
3 materials that are awaiting processing at the facility out to a
4 certified lab and then wait days for results, and to eliminate sham
5 oil recycling and thereby better protecting the public health and
6 safety and the environment, it is necessary that this act take effect
7 immediately.

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