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AMENDED IN SENATE FEBRUARY 4, 2008
AMENDED IN SENATE AUGUST 1, 2007
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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1195

Introduced by Assembly Member Torrico
(Coauthors: Assembly Members Feuer and Hancock)
~~(Coauthor: Senator Lowenthal)~~ *Coauthors: Senators Corbett and*
Lowenthal)

February 23, 2007

An act to add Section 25250.29 to the Health and Safety Code, and to amend Sections 48623, 48624, 48631, 48651, 48652, 48653, 48655, 48660.5, 48662, and 48670 of, and to add Sections 48619.5 and 48654 to, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1195, as amended, Torrico. Recycling: used oil: incentive payments.

(1) Existing law requires the California Integrated Waste Management Board (board) to adopt a used oil recycling program, which requires

the board, among other things, to develop and implement an information and education program and to pay a recycling incentive to specified entities for the collection of used oil that is transported to a used oil recycling facility. Existing law requires the used oil recycling facility that receives the used oil to either be certified by the board or to be an out-of-state recycling facility registered with the federal Environmental Protection Agency and operating in substantial compliance with the state in which the recycling facility is located. The board is required to certify a used oil recycling facility for which the board has received an inspection report from the department. Existing law also requires the payment of a recycling incentive to an electric utility for using used lubricating oil meeting specified requirements for electrical generation. Existing law requires the board to set a recycling incentive at not less than \$0.04 per quart and authorizes the board to set an amount higher than \$0.04 if the board determines a higher amount is necessary to promote the recycling of used lubricating oil.

This bill would additionally require the information and education program to promote methods to reduce the amount of used oil generated, and the use of re-refined oil, as defined, in automotive and industrial lubricants.

The bill would require that the used lubricating oil for which a recycling incentive is paid be transported to a used oil recycling facility that is certified by the board and recycles the oil to meet the standards for recycled oil. The board would be required to certify an out-of-state used oil recycling facility that is in substantial compliance with certain federal regulations related to the management of used oil. The bill would require an out-of-state facility seeking certification to submit an annual report to the board, under penalty of perjury, thereby imposing a state-mandated local program by creating a new crime. The bill would also repeal the provision regarding payment of the recycling incentive to an electric utility and would require the board to pay a recycling incentive for any used oil that is burned or otherwise used for energy recovery only if the used oil meets the purity standards for recycled oil. The bill would establish, as of January 1, 2013, a recycling incentive of no less than \$0.045 per quart for used oil recycled into re-refined lubricating oil.

The bill would require the report submitted, as a condition for the payment of a recycling incentive, to specify the receiving certified used oil recycling facility under penalty of perjury, if the used oil was

consolidated at a used oil transfer facility, thereby imposing a state-mandated local program by creating a new crime.

The bill would require the board to provide increases to block grants to rural counties for local government-sponsored used oil collection efforts to cover the costs of testing or reduced availability of the recycling incentive caused by increases in regulatory expenses, if the public collection effort demonstrates to the board that it had incurred additional costs that could not have been avoided or lessened through the use of a commercially viable alternative transporter or recycling facility.

The bill would also make conforming changes to certain definitions.

(2) Existing law requires the board, upon the application of a certified used oil collection center or a curbside collection program, to reimburse the center or program for the additional disposal cost for used oil that is contaminated by hazardous materials in excess of that which generally occurs in normal use, which renders the used oil infeasible for recycling, and requires that the used oil be destroyed at a higher cost than the cost to recycle the used oil.

This bill would, additionally, provide reimbursement for an uncertified publicly funded used oil collection center in a small rural county.

(3) Existing law requires an entity that generates used industrial oil or a facility that accepts used oil to transport the used oil to a certified used oil facility or a registered out-of-state recycling facility.

This bill would require, except as specified, the used oil to be tested and analyzed by a laboratory accredited by the State Department of Public Health prior to shipment, to ensure the used oil meets specified criteria. The bill would require the registered hazardous waste transporter to accomplish the testing, unless the transporter can demonstrate that testing and analysis has been performed by the generator of the used oil or provide documentation that the testing will be performed by a transfer facility or a recycling facility issued a permit by the Department of Toxic Substances Control. The registered hazardous waste transporter would be required to submit to the department annually a report containing specified information regarding the out-of-state shipment of used oil. Because a violation of the requirements on used oil is a crime, this bill would create a state-mandated local program.

(4) 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.

Vote: majority. 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 25250.29 is added to the Health and
2 Safety Code, to read:
3 25250.29. (a) Except as provided in paragraph (2) of
4 subdivision (b) and subdivision (g), before a load of used oil is
5 shipped to a transfer facility, recycling facility, or facility located
6 out of the state, the used oil shall be tested and analyzed by a
7 laboratory accredited by the State Department of Public Health
8 pursuant to Article 3 (commencing with Section 100825) of
9 Chapter 4 of Part 1 of Division 101, to ensure that the used oil
10 meets all of the following characteristics:
11 (1) A flashpoint above 100 degrees Fahrenheit.
12 (2) A polychlorinated biphenyls (PCB) concentration of less
13 than 5 ppm.
14 (3) A concentration of total halogens of 1000 ppm or less, unless
15 the presumption in subclause (I) of clause (v) of subparagraph (C)
16 of paragraph (1) of subdivision (a) of Section 25250.1 has been
17 rebutted pursuant to subclause (II) of clause (v) of subparagraph
18 (C) of paragraph (1) of subdivision (a) of Section 25250.1.
19 (b) The testing and analysis required pursuant to subdivision
20 (a) shall be accomplished by a registered hazardous waste
21 transporter prior to acceptance at a transfer facility, recycling
22 facility, or shipment out of the state, except the transporter is not
23 required to perform the testing and analysis if the transporter can
24 do either of the following:
25 (1) (A) Demonstrate that testing and analysis has been
26 performed by the generator of the used oil prior to shipment.
27 (B) Subparagraph (A) does not require the generator of the used
28 oil to perform the testing and analysis required by this section.
29 (2) Provide documentation that the testing will be performed
30 by a transfer facility or a recycling facility issued a permit by the
31 department pursuant to this chapter.
32 (c) (1) A transporter shall not require a used oil collection center
33 to test tanks or containers that contain only used lubricating oil or

1 oil filters accepted from the public as a condition of accepting the
2 oil for shipment.

3 (2) A transporter shall not require a generator to test used oil as
4 a condition of accepting that used oil for shipment.

5 (3) Nothing in this subdivision is intended to alter a generator's
6 responsibility to comply with regulations adopted by the
7 department that govern the operation of a generator.

8 (d) This section does not affect or limit any testing requirement
9 that the department may impose on a used oil transfer facility or
10 used oil recycling facility as a condition of a permit issued by the
11 department, including, but not limited to, any test required pursuant
12 to a facility's waste analysis plan.

13 (e) The person performing a test required by subdivision (a)
14 shall maintain records of tests performed for used oil for at least
15 three years and is subject to audit and verification by the
16 department.

17 (f) The registered hazardous waste transporter who is listed as
18 the transporter on the Uniform Hazardous Waste Manifest used
19 to ship used oil out of state shall submit a report, on or before
20 March 1 of each year, to the department, containing all of the
21 following information for the preceding year:

22 (1) Total volume of used oil shipped out of state.

23 (2) Date of each shipment of used oil out of state.

24 (3) Uniform Hazardous Waste Manifest tracking number used
25 to ship used oil out of the state.

26 (4) Volume of used oil shipped out of state listed on each
27 manifest.

28 (5) Information pertaining to the out-of-state facility to which
29 the used oil was shipped, including the facility name, facility
30 address, and facility EPA ID number.

31 (6) Signed certification that all used oil shipped out of the state
32 was analyzed and conformed to the requirements of subdivision
33 (a), including identification of the accredited laboratory utilized
34 to test and analyze the used oil shipments.

35 (7) Any other information that the department may require.

36 (g) (1) This section does not apply to a load for shipment that
37 consists exclusively of used lubricating oil accepted by a used oil
38 collection center from the public.

39 (2) This section does not require a generator to test used oil for
40 dielectric oil derived from highly refined mineral oil used in oil

1 filled electrical equipment. Nothing in this section exempts that
2 oil from any testing requirement required by any other section of
3 law.

4 (3) This section does not prohibit the transportation of used oil
5 to a facility located outside the state, or impose liability other than
6 compliance with the requirements of this section upon, or in any
7 other way affect the liability of, a generator whose used oil is
8 transported to a facility located outside the state.

9 SEC. 2. Section 48619.5 is added to the Public Resources Code,
10 to read:

11 48619.5. “Re-refined oil” means a lubricant base stock or oil
12 base that has been derived from used oil and meets all the following
13 criteria:

14 (a) Processed using a series of mechanical or chemical methods,
15 or both, including, but not limited to, vacuum distillation, followed
16 by solvent refining or hydrotreating.

17 (b) Capable for meeting the Physical and Compositional
18 Properties, in addition to the Contaminants and Toxicological
19 Properties, as defined under the American Society for Testing and
20 Materials (ASTM) D6074-99 standard.

21 (c) Processed into a material that has a quality level suitable for
22 use in a finished lubricant.

23 SEC. 3. Section 48623 of the Public Resources Code is
24 amended to read:

25 48623. “Used oil hauler” means a hazardous waste transporter
26 registered pursuant to Chapter 6.5 (commencing with Section
27 25100) of Division 20 of the Health and Safety Code who
28 transports used oil to a used oil recycling facility certified pursuant
29 to Article 7 (commencing with Section 48660), to a used oil storage
30 facility, or to a used oil transfer facility.

31 SEC. 4. Section 48624 of the Public Resources Code is
32 amended to read:

33 48624. “Used oil recycling facility” means a facility that
34 produces recycled oil, as defined in Section 25250.1 of the Health
35 and Safety Code, and is eligible for certification pursuant to Section
36 48662.

37 SEC. 5. Section 48631 of the Public Resources Code is
38 amended to read:

39 48631. The used oil recycling program shall include, but is not
40 limited to, the following:

1 (a) A recycling incentive system as described in Article 6
2 (commencing with Section 48650).

3 (b) Grants or loans, as specified in Section 48632.

4 (c) Development and implementation of an information and
5 education program to promote alternatives to the illegal disposal
6 of used oil, methods to reduce the amount of used oil generated,
7 and the use of re-refined oil in automotive and industrial lubricants.

8 (d) A reporting, monitoring, and enforcement program to ensure
9 that all statutes and regulations relating to used oil are properly
10 carried out.

11 SEC. 6. Section 48651 of the Public Resources Code is
12 amended to read:

13 48651. (a) The board shall pay a recycling incentive to every
14 industrial generator, curbside collection program, and certified
15 used oil collection center, for used lubricating oil collected from
16 the public, or generated by the certified used oil collection center
17 or the industrial generator, and transported by a used oil hauler to
18 a used oil recycling facility certified in accordance with Section
19 48662 that recycles the oil to meet the standards for recycled oil,
20 as defined in Section 25250.1 of the Health and Safety Code.

21 (b) A person or entity that generates used industrial oil or a used
22 oil storage facility or a used oil transfer facility that accepts used
23 oil shall cause that oil to be transported by a used oil hauler to a
24 certified used oil recycling facility or an out-of-state recycling
25 facility operating in substantial compliance with Part 279 of Title
26 40 of the Code of Federal Regulations and with applicable
27 regulatory standards of the state in which the recycling facility is
28 located.

29 (c) The board shall pay a recycling incentive pursuant to
30 subdivision (a) for any used oil that is burned or otherwise used
31 for energy recovery only if the used oil meets the purity standards
32 for recycled oil specified in subparagraph (B) of paragraph (3) of
33 subdivision (a) of Section 25250.1 of the Health and Safety Code.

34 SEC. 7. Section 48652 of the Public Resources Code is
35 amended to read:

36 48652. The board shall set the recycling incentive amount at
37 not less than four cents (\$0.04) per quart. The amount may be set
38 at an amount higher than four cents (\$0.04) if the board determines
39 that a higher amount is necessary to promote recycling of used
40 lubricating oil and sufficient funds are available in the fund. On

1 and after January 1, 2013, the recycling incentive shall be no less
2 than four and one-half cents (\$0.045) per quart of used oil recycled
3 into re-refined lubricating oil as defined in Section 48619.5. The
4 board shall not change the amount of the recycling incentive until
5 at least one year has passed since the amount was last set. The
6 board shall continue providing recycling incentives to certified
7 used oil collection centers at the previous rate for one month after
8 setting the recycling incentive at a different rate. The board shall
9 not raise the recycling incentive amount unless it finds that the
10 raise will not adversely affect funding required pursuant to Sections
11 48631, 48653, and 48660.5.

12 SEC. 8. Section 48653 of the Public Resources Code is
13 amended to read:

14 48653. The board shall deposit all amounts paid pursuant to
15 Section 48650 by manufacturers, civil penalties, or fines paid
16 pursuant to this chapter, and all other revenues received pursuant
17 to this chapter into the California Used Oil Recycling Fund, which
18 is hereby created in the State Treasury. Notwithstanding Section
19 13340 of the Government Code, the money in the fund is to be
20 appropriated solely as follows:

21 (a) Continuously appropriated to the board for expenditure for
22 the following purposes:

- 23 (1) To pay recycling incentives pursuant to Section 48651.
- 24 (2) To provide a reserve for contingencies, as may be available
25 after making other payments required by this section, in an amount
26 not to exceed one million dollars (\$1,000,000).
- 27 (3) To make block grants for the implementation of local used
28 oil collection programs adopted pursuant to Article 10
29 (commencing with Section 48690) to cities, based on the city's
30 population, and counties, based on the population of the
31 unincorporated area of the county, in a total annual amount equal
32 to ten million dollars (\$10,000,000) or half of the amount which
33 remains in the fund after the expenditures are made pursuant to
34 paragraphs (1) to (3), inclusive, and subdivision (b), whichever
35 amount is greater, multiplied by the fraction equal to the population
36 of cities and counties which are eligible for block grants pursuant
37 to Section 48690, divided by the population of the state. The board
38 shall use the latest population estimates of the state generated by
39 the Population Research Unit of the Department of Finance in
40 making the calculations required by this paragraph.

1 (4) For expenditures pursuant to Section 48656.

2 (b) The money in the fund may be expended by the board for
3 the administration of this chapter and by the department for
4 inspections and reports pursuant to Section 48661, only upon
5 appropriation by the Legislature in the annual Budget Act.

6 (c) The money in the fund may be transferred to the Farm and
7 Ranch Solid Waste Cleanup and Abatement Account in the General
8 Fund, upon appropriation by the Legislature in the annual Budget
9 Act, to pay the costs associated with implementing and operating
10 the Farm and Ranch Solid Waste Cleanup and Abatement Grant
11 Program established pursuant to Chapter 2.5 (commencing with
12 Section 48100).

13 (d) Appropriations to the board to pay the costs necessary to
14 administer this chapter, including implementation of the reporting,
15 monitoring, and enforcement program pursuant to subdivision (d)
16 of Section 48631, shall not exceed three million dollars
17 (\$3,000,000) annually.

18 (e) The Legislature hereby finds and declares its intent that the
19 sum of three hundred fifty thousand dollars (\$350,000) should be
20 annually appropriated from the California Used Oil Recycling
21 Fund in the annual Budget Act to the board, commencing with
22 fiscal year 1996–97, for the purposes of Section 48655.

23 SEC. 9. Section 48654 is added to the Public Resources Code,
24 to read:

25 48654. (a) It is the intent of the Legislature in enacting this
26 chapter that local government sponsored used motor oil collection
27 programs in rural counties continue to operate and be funded to
28 maintain or expand their existing collection efforts. As such,
29 funding should be increased according to increased costs due to
30 the imposition of new requirements under this chapter enacted in
31 Assembly Bill 1195 of the 2007–08 Regular Session of the
32 Legislature.

33 (b) (1) The board shall provide increases to block grants to
34 rural counties for local government sponsored collection efforts
35 to cover additional costs of testing or reduced availability of the
36 recycling incentive caused by increased regulatory expenses
37 pursuant to changes to Section 25250.29 of the Health and Safety
38 Code, and Sections ~~48619.19~~, 48623, 48631, 48632, 48633, 48651,
39 48662, and 48670 enacted in Assembly Bill 1195 of the 2007–08
40 Regular Session of the Legislature.

1 (2) To qualify for the increases, the public collection effort shall
2 demonstrate to the board that it had incurred additional costs and
3 that these costs could not have been avoided or lessened through
4 the use of a commercially viable alternative transporter or recycling
5 facilities that are in compliance with this chapter.

6 (c) The increases to block grants provided by this section shall
7 have the same funding priority as the block grants provided
8 pursuant to paragraph (3) of subdivision (a) of Section 48653.

9 SEC. 10. Section 48655 of the Public Resources Code is
10 amended to read:

11 48655. The board may enter into a contract with the department
12 that will utilize the resources of the department to provide for
13 greater investigation and enforcement efforts for used lubricating
14 oil transporter, handling and storage, and transfer facility
15 operations. The department shall assist the board in developing
16 the used oil program and providing assistance to local governments
17 in removing barriers to the establishment of used oil collection
18 programs.

19 SEC. 11. Section 48660.5 of the Public Resources Code is
20 amended to read:

21 48660.5. (a) If the board finds that a shipment of used oil from
22 a certified used oil collection center or a curbside collection
23 program or an uncertified publicly funded used oil collection center
24 in a small rural county is contaminated by hazardous materials in
25 excess of that which generally occurs in normal use, which renders
26 the used oil infeasible for recycling, and requires that the used oil
27 be destroyed at a substantially higher cost than the cost generally
28 to recycle used oil, the board shall, upon application by the used
29 oil collection center or curbside collection program, reimburse the
30 center or program for the additional disposal cost, subject to the
31 eligibility requirements of subdivision (b), except as provided in
32 subdivision (c).

33 (b) A used oil collection center or curbside collection program
34 is eligible for reimbursement only if it demonstrates to the
35 satisfaction of the board all of the following:

36 (1) The center or program has established procedures to ensure
37 that the used oil it generates and accepts from the public will not
38 be mixed with other hazardous wastes, especially halogenated and
39 polychlorinated biphenyl contaminated wastes. These procedures
40 shall include, but not be limited to, instructing the public and

1 employees that used oil shall not be mixed with other hazardous
2 waste. The board shall not require a center or program to test used
3 oil received from the public as part of these procedures.

4 (2) The shipment contains not more than five gallons or pounds
5 of contaminants combined, based on the contaminant
6 concentrations and the total volume or weight of the shipment.

7 (c) In any calendar year, a used oil collection center or curbside
8 collection program shall be reimbursed for not more than one
9 shipment and for not more than five thousand dollars (\$5,000) in
10 disposal costs for halogen-contaminated or more than the actual
11 net additional costs of disposing of polychlorinated biphenyl
12 contaminated wastes, subject to the availability of funds pursuant
13 to Section 48656.

14 SEC. 12. Section 48662 of the Public Resources Code is
15 amended to read:

16 48662. The board shall certify or recertify a used oil recycling
17 facility that meets either of the following requirements:

18 (a) (1) The used oil recycling facility is located in this state and
19 the board has received a report from the department pursuant to
20 Section 48661, unless the board determines that the facility is
21 engaged in a repeating or recurring pattern of noncompliance that
22 poses a significant threat to public health and safety or the
23 environment.

24 (2) If the board denies certification to a facility subject to this
25 subdivision the board may subsequently certify the facility if it
26 determines that the facility meets the standards for certification.

27 (b) (1) The used oil recycling facility is an out-of-state facility
28 and the board receives a report from the department that the
29 out-of-state facility has demonstrated to the satisfaction of the
30 department that the facility substantially meets the requirements
31 set forth in Part 279 of Title 40 of the Code of Federal Regulations.

32 (2) ~~An out-of-state used oil facility that seeks certification shall
33 annually certify, in writing to the board, conformance with the
34 standards specified in paragraph (1), under penalty of perjury.
35 annually certify, in writing to the board, under penalty of perjury,
36 that the facility substantially meets the requirements set forth in
37 Part 279 (commencing with Section 279.1) of Title 40 of the Code
38 of Federal Regulations.~~

39 (3) *Paragraphs (1) and (2) do not require the department to*
40 *inspect or prohibit the department from inspecting an out-of-state*

1 *facility to determine whether the department is satisfied that the*
2 *facility substantially meets the requirements set forth in Part 279*
3 *(commencing with Section 279.1) of Title 40 of the Code of Federal*
4 *Regulations.*

5 *(4) As a condition of demonstrating compliance pursuant to*
6 *paragraph (1), a facility shall enter into an agreement with the*
7 *department pursuant to Section 25201.9 of the Health and Safety*
8 *Code to pay the department's full expenses for conducting the*
9 *review and any inspection costs the department may incur in*
10 *determining whether the facility substantially meets the*
11 *requirements set forth in Part 279 (commencing with Section 279.1)*
12 *of Title 40 of the Code of Federal Regulations.*

13 SEC. 13. Section 48670 of the Public Resources Code is
14 amended to read:

15 48670. (a) To be eligible for payment of a recycling incentive,
16 an industrial generator of used lubricating oil, a used oil collection
17 center, or a curbside collection program shall report to the board,
18 for each quarter, the amount of lubricating oil purchased and the
19 amount of used lubricating oil that is transported to a used oil
20 recycling facility that is certified pursuant to Section 48662, to a
21 used oil storage facility, or to a used oil transfer facility.

22 (b) (1) The reports shall be submitted on or before the 45th day
23 following each quarter, in the form and manner which the board
24 may prescribe, and shall include copies of manifests or modified
25 manifest receipts from used oil haulers.

26 (2) The copies of manifests or modified manifest receipts
27 required by paragraph (1) shall be signed by the generator of the
28 used oil and shall specify the receiving used oil recycling facility
29 that is certified by the board pursuant to Section 48662.

30 (3) If the used oil was consolidated at a used oil transfer facility,
31 the report shall also include a written certification, under penalty
32 of perjury, provided by the used oil transfer facility, specifying
33 the certified used oil recycling facility that received the oil.

34 (c) The board may delegate to the executive officer of the board
35 the authority to accept reports submitted after the 45th day and to
36 reduce, eliminate, or approve the amount of incentive fee to be
37 paid due to the late submission of the report. The board may
38 provide, by regulation, for a longer reporting period for industrial
39 generators that generate less than 1,000 gallons of used oil
40 annually.

1 SEC. 14. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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