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AB-2928 Hazardous waste: used oil. (2017-2018)

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Assembly Bill No. 2928

CHAPTER 440

An act to amend Section 25250.19 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2928, Chen. Hazardous waste: used oil.

Existing law, as part of the hazardous waste control laws, authorizes the Department of Toxic Substances Control to regulate the disposal of hazardous waste, including used oil. Existing law exempts used oil from regulation by the department if the used oil meets the requirements for recycled oil or meets other specified conditions, including that the used oil is not hazardous waste pursuant to criteria adopted by the department. Existing law requires a generator of used oil to test and certify that the used oil meets the conditions for exemption from regulation before transportation from the generator location. A violation of the hazardous waste control laws is a crime.

This bill would provide that the testing of used oil from a generator of highly controlled used oil, as defined, is required only once per year for the purpose of determining whether the used oil is hazardous waste for purposes of the exemption from regulation. The bill would authorize a generator of highly controlled used oil to use the results of that test and any prior tests of the same kind to certify that the used oil is not hazardous waste, as specified. The bill would require a generator of highly controlled used oil to include a signed certification statement with each shipment of that oil that the generator claims is exempt from regulation. The bill would require the generator to maintain with the certification statement records of the tests on which the certification is based and would make the records subject to audit and verification by the Department of Toxic Substances Control, the unified program agency, or the Department of Resources Recycling and Recovery. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or an

equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, both of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods remove or reduce the constituents or characteristics from the wastes accepted by the facility.

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the Department of Resources Recycling and Recovery. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) (1) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the Department of Resources Recycling and Recovery.

(2) Testing to determine if the condition in subparagraph (B) of paragraph (1) of subdivision (b) of Section 25250.1 is met shall not be required for dielectric fluid, derived from highly refined petroleum mineral oil, from oil-filled electrical equipment if the generator of the dielectric fluid has certified based on prior test results that the dielectric fluid from similar equipment subject to similar operating conditions did not exhibit the characteristic of toxicity as set forth in Section 66261.24 of Title 22 of the California Code of Regulations. A certification statement shall accompany each shipment of used oil that the generator claims is exempted. Records of prior tests on which the certification is based shall be maintained with the certification by the generator and are subject to audit and verification by the department, the unified program agency, or the Department of Resources Recycling and Recovery.

(3) (A) Used oil from a generator of highly controlled used oil is required to be tested only once per year for the purpose of determining whether the used oil meets the condition in subparagraph (B) of paragraph (1) of subdivision (b) of Section 25250.1. A generator may use the results of that test and any prior tests of the same kind to certify that the used oil meets the condition in subparagraph (B) of paragraph (1) of subdivision (b) of Section 25250.1 and does not exhibit any other characteristic of a hazardous waste pursuant to Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations, or any successor regulations. A generator shall include a signed certification statement with each shipment of used oil that the generator claims is exempt from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1. The generator shall maintain with the certification statement records of the tests on which the certification is based, which shall be subject to audit and verification by the department, the unified program agency, or the Department of Resources Recycling and Recovery.

(B) For purposes of this paragraph, "generator of highly controlled used oil" or "generator" means a generator of used oil for whom all of the following apply:

- (i) The generator services, repairs, and maintains equipment owned and operated only by the generator.
- (ii) The generator does not derive revenue from the activities described in clause (i).
- (iii) The used oil is generated from the generator's equipment and that equipment is of similar types that are used under similar operating conditions.
- (iv) The generator does not use or store halogenated solvents, or any products containing halogenated solvents, in the same location at the site at which the used oil is generated or stored.
- (v) The generator provides a signed certification statement at the time that the generator notifies the department pursuant to subdivision (c) of Section 25250.1 stating that the statements in clauses (i) to (iv), inclusive, are true and that the generator employs management practices that prevent halogenated solvents and polychlorinated biphenyls from coming into contact with, or commingling with, the used oil for which an exemption is claimed pursuant to paragraph (1) of subdivision (b) of Section 25250.1.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the Department of Resources Recycling and Recovery.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of a characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to a penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

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