

*New waste generator fee
Health and Safety Code 25250.55
25250.24(b)
Used oil exemption*

M e m o r a n d u m

To : Lori Giorgi - MIC:57
Environmental Fees Division

Date: March 7, 1995

From : Janet Vining
Legal Division

Subject: Bilge Water and the Definition of "Used Oil"

You recently asked for an opinion concerning the application of the newly-amended definition of "used oil" in Health and Safety Code Section 25250.1(a) to bilge water removed from ships. For the reasons set forth below, we conclude that contaminated bilge water no longer falls within the definition of "used oil".

Health and Safety Code Section 25250.24(b) provides an exemption from the hazardous waste generator fee for used oil which is removed from a motor vehicle and subsequently recycled by a permitted recycler. A definition of "used oil" is set forth in Section 25250.1(a). In an April 28, 1989 letter to ., Dave Willis, the Deputy Director of the Toxic Substances Control Division of the Department of Health Services (the precursor to DTSC) concluded that used oil which is removed from the bilge of a ship and subsequently recycled qualifies for the exemption from the generator fee set forth in Section 25250.24(b). In subsequent meetings, DTSC staff clarified its position that used oil which is removed from bilge water during the treatment of that water and subsequently recycled is not subject to the generator fee.

Effective January 1, 1995, Chapter 1154 of the Statutes of 1994 (AB 3582) amended the definition of "used oil" in Section 25250.1(a) to exclude

Waste water, the discharge of which is subject to regulation under either Section 307(b) or 402 of the Clean Water Act, including waste waters at facilities which have eliminated the discharge of waste water, contaminated with de minimis quantities of used oil. For purposes of this subparagraph, "de minimis quantities of used oil" are small spills, leaks, or

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drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the waste water treatment system during washing or draining operations... (Section 25250.1(a)(1)(B)(ii))

Section 307(a) of the Clean Water Act (33 U.S.C. § 1317) mandates the publication of a list of toxic pollutants which are regulated under the Act. Each toxic pollutant is subject to effluent limitations. Section 402 (33 U.S.C. § 1342) authorizes the federal government to issue permits for the discharge of pollutants. Section 402(b) (33 U.S.C. § 1342(b)) allows a state to administer its own permit program for discharges into navigable waters within its jurisdiction. Pursuant to such authorization, California issues National Pollutant Discharge Elimination System ("NPDES") permits. The permits are issued by regional water quality control boards and are required for any waste discharge that could affect water.

If bilge water comes within the list of toxic pollutants described in Section 307(a)(1) of the Clean Water Act, it is subject to discharge permit requirements, and is therefore no longer included within the definition of "used oil" in Section 25250.1(a). Consequently, such bilge water would not be exempt from the hazardous waste generator fee under Section 24250.24(b).

Methods for determining whether specific pollutants are regulated under the Clean Water Act are set forth in the Code of Federal Regulations (see, for example, 40 C.F.R. §§ 104.1, et seq., 129.1, et seq., and 136.1, et seq.). However, we can also contact the Water Resources Control Board to determine whether a taxpayer has a discharge permit, and, if so, whether the discharge permit covers bilge water. I spoke with a staff person at the San Francisco Bay Regional Water Quality Control Board who indicated that he was aware of discharge permits that covered bilge water. He also suggested that we contact John Youngerman (657-1013) at the Water Resources Control Board concerning the master list of discharge permit holders.

Health and Safety Code Section 25205.5(e)(2) exempts from the generator fee any aqueous waste treated in a treatment unit operating pursuant to permit-by-regulation. However, Section 25205.5(e)(2) clarifies that hazardous waste generated by such a treatment unit is hazardous waste for purposes of the

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treated on-site by a transportable treatment unit or fixed treatment unit operating pursuant to permit-by-regulation is exempt, but the hazardous waste residue or effluent of the treatment process is subject to the generator fee, unless another exemption applies.

Please contact me if you have any questions or require additional assistance concerning this matter.

Janet Vining

JV:wk

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