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Used Oil Law In the United States and Europe

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USED OIL LAW IN THE UNITED STATES AND EUROPE

by

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ABSTRACT

This report briefly reviews existing information on the collection and disposal of used automotive and industrial oils and on the potential health risks of improper disposal of such oils. Provisions of federal law governing disposal of used oils are analyzed. The history of federal taxation of lubricating oils is recounted, as is that of federal requirements for labeling products made from used oils. State laws regulating used oil disposal and reproceessed oil labeling are analyzed and the laws (and/or proposed laws) of several other industrialized nations governing used oil collection and disposal are described. The elements of a comprehensive program for regulating used oil collection and disposal and alternative means for implementing and funding such a program are discussed. Recent Congressional bills relating to used oils are examined.

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Will A. Irwin exercised overall responsibility for the report and wrote the first subsection of Section III, Section IV, and the first four subsections of Section V (with the exception of the last portion of the fourth subsection). Richard A. Liroff wrote the balance of the report, with the exception of the last subsection of Section II, (which was written by Ms. Mehlig). Section I was a joint effort of Messrs. Irwin and Liroff.

SECTION I

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. Used oils include waste oil as defined by section 104(m) of the Federal Water Pollution Control Act Amendments of 1972 but not animal and vegetable oils or unused mineral oil wastes, e.g., the wastes from drilling for, refining or transporting petroluem. Used oils include mineral oils and mineral oil products used in machines, motors, engines, compressors, cylinders, axles, transmissions, transformers, turbines, cable or circuit breaker insulations, spindles, and in other industrial applications.

2. Current practices of collecting and disposing of used oils in the United States are erratic and may cause public health hazards. Large quantities of used oils are disposed of in ways that cannot be accounted for.

3. The Environmental Protection Agency has jurisdiction over the disposal of used oils into waters of the United States under the Federal Water Pollution Control Act Amendments of 1972 and into ocean waters under the Marine Protection, Research, and Sanctuaries Act of 1972. It has jurisdiction over disposal by burning insofar as particulate emissions are controlled under state implementation plans to achieve ambient air quality standards under the Clean Air Act, or are controlled by new source performance standards for fossil fuel steam generators, large incinerators or Portland cement plants. It has no jurisdiction over disposal of used oils on land. EPA's existing regulatory authority does not offer comprehensive control of collection and disposal of used oils. Disposal of used oils by uncontrolled burning, by road oiling, by dumping on land, by disposal in household garbage or down the drain, or by mixing with fuel or home heating oils is not adequately controlled under present federal laws.

4. Enactment of the Excise Tax Reduction Act of 1965 deprived rerefiners of some of the tax advantages they previously enjoyed under the Internal Revenue Code. Further, the Internal Revenue Service in Revenue Ruling 68-108 interpreting the act gives virgin oil marketers a tax advantage over rerefiners which could scarcely have been intended by Congress.

5. Labeling on containers of reprocessed oil offered for sale is governed by Federal Trade Commission and state requirements for disclosure of previous use. These restrictions are the result of unethical

trade practices engaged in by rerefiners in the 1940's-1950's. The courts have upheld the concurrent regulation of container labeling by federal and state governments. Alternative labeling requirements may be preferable, if product specifications and simple testing procedures can be established. If the federal government changes its labeling requirements there is no guarantee that states will change theirs. Existing state disclosure requirements for reprocessed oils may not be found by the courts to be in conflict with, and therefore pre-empted by, the newly established federal requirements.

6. A survey of state laws for used oil management found only limited legal and regulatory effort devoted to this task. A few states have developed "used oil management" programs. Several more have used oil hauler licensing programs of varied scope and efficacy. About one-quarter of the states have oil storage regulations and almost one-half have solid waste disposal regulations applicable to used oil.

7. Petroleum product inspection laws vary considerably among the states. Approximately 25 of the 40 states having general petroleum product laws have inspection statutes which include specific references to lubricating oil quality control standards. The other 15 of the 40 have petroleum product laws with no provisions for lubricating oil or no provision for product quality inspection.

8. The Federal Republic of Germany has a law providing for comprehensive control of the collection and disposal of used oils which is funded by a special levy on the production and importation of mineral oils. Denmark has a law requiring municipalities to provide facilities for disposal of used oils. France and Italy have laws designed to encourage rerefining of used oils by reducing the tax on oil products made from them. A bill is pending in The Netherlands which would provide for national regulation of the collection and disposal of used oils. A decree is pending in France which would prohibit disposal of used oils into surface, marine or ground waters. The Commission of the European Economic Community has submitted a directive on the disposal of used oils for the approval of the Council of Ministers of the E.E.C. which, if adopted, would apply provisions similar to those existing in the Federal Republic of Germany to all member nations of the Community.

9. Comprehensive control over improper disposal of used oil involves: 1) prohibitions on discharging them into water and

limitations on depositing them on land and on burning them in other than properly equipped incinerators; 2) opportunities for persons with used oils to have them picked up or accepted by approved collectors without charge; 3) licensing and monitoring of used oil collectors and their facilities; 4) licensing and monitoring of ultimate disposers of used oil and their facilities; 5) requirements for complete record-keeping of the collection and disposal of used oils; and 6) a program of public information about how to dispose of used oil properly and why it is important to do so.

10. The means for assuring a comprehensive program of used oil collection and disposal outlined in conclusion number 9 could be implemented by: 1) interstate compacts; 2) public corporations; 3) grants-in-aid for government programs; 4) programs for licensing the sale, collection and disposal of oil products; 5) requirements that the oil industry collect and dispose of their products after use; 6) providing positive economic incentives to private entrepreneurs in used oil collection and disposal businesses.

11. Public programs for the collection and disposal of used oil could be funded by: 1) disbursements from general revenues; 2) imposing a disposal fee at the point of final purchase or disposal; 3) devoting proceeds from the existing excise tax (or a disposal fee in its stead) to a used oil disposal fund.

RECOMMENDATIONS

1. Internal Revenue Service Ruling 68-108, which is based on statutory interpretation of questionable validity, should be revised. Off-highway users of reprocessed oil should be permitted to obtain refunds on the taxes paid on the virgin component of such oils.

2. The Federal Trade Commission should consider changing its labeling requirements for reprocessed oils. If quality specifications and simple testing procedures can be established, and products can be compared on the basis of their laboratory and performance specifications, there is little purpose served by distinguishing virgin oils from reprocessed oils. Any proposal for new labeling requirements should be predicated on the establishment of quality specifications. When new federal labeling requirements based on quality specifications are established, Congress should act to pre-empt state previous use disclosure requirements.

3. States in which considerable quantities of used oils are generated should establish programs regulating the collection and disposal of used oil. Where used oil generation and disposal is only a localized problem, county or municipal programs are appropriate. Determinants of need for such a program

include clean-up costs of unregulated dumping, health risks from unregulated automotive crankcase oil burning, consumer fraud resulting from mixing of used oils with domestic virgin fuels. Elements of such programs are described in conclusion 9.

4. The federal government should establish a program of matching grants to states wishing to implement used oil collection and disposal control programs. Consonant with the "polluter pays principle," state programs should be funded with revenues from the existing federal lubricating oil excise tax or from a modified version of it. This recommendation is made with the recognition that the availability of federal grants might lead some states which have no need for such programs to establish them so as to qualify for federal aid. Despite this potential for abuse, we believe a federal grant program advisable because it will give needed assistance to existing programs while encouraging their development in states which need them but lack sufficient resources for their operation.

SECTION II

COLLECTION AND DISPOSAL OF USED OIL:

ENVIRONMENTAL HEALTH ASPECTS OF SELECTED DISPOSAL METHODS

INTRODUCTION

To properly evaluate alternative legal and administrative approaches to used oil management, it is necessary to examine the existing used oil stream. This section summarizes the existing data on collection and disposal of used oil and discusses the implications for human health of some existing disposal methods. For a thorough survey of used oil generation, collection and disposal in one state, see the Environmental Quality Systems, Inc. study of the state of Maryland for the Maryland Environmental Service and U.S. Environmental Protection Agency.[1]

DEFINITION

For purposes of this report, used oil is considered to be any mineral oil that has been refined and used. It includes principally industrial oils and automotive lubricating oils. The report does not discuss waste animal or vegetable oils that are often the by-products of food processing operations or oily wastes from crude petroleum production or from transportation of crude oil. Incidental references to the vernacular and more general term "waste oil" should be understood as used oil as defined above.

COLLECTION OF USED OIL

Used oil scavengers' collection procedures are influenced by market demand for waste oil, though the impact of demand on collection pricing is moderated in part by reported territorial and price-fixing practices among scavengers. If demand for used oil is high, a collector is provided with an incentive to collect used oil and sell it at a profit. If the price he can obtain is sufficiently high, he may even be willing to pay a waste oil generator for the privilege of collecting his oil. On the other hand, if market demand for used oil falls, collectors are less willing to provide collection services and may charge a collection fee to cover their operating costs. In low demand situations, the used oil generator is given an incentive to dump his used oil on site so as to avoid collection

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[1]Environmental Quality Systems, Inc., State of Maryland Waste Oil Recovery and Reuse Program, EPA Office of Research and Development Environmental Protection Technology Series Report EPA-670/2-74-013, January 1974.

charges, and an unscrupulous collector unable to locate a customer for his collected used oil may simply resort to depositing his collections in local dumps, down sewers, or elsewhere.

Four studies in the last seven years have addressed the matter of collection. A 1967 American Petroleum Institute study showed that of 817 service stations surveyed, 44.1 per cent sold used oils to others, 29.9 per cent had it collected at no charge, and 21.5 per cent paid to have it collected. 15.3 per cent (or 125) of the stations had experienced a change in collection procedure in the preceding two years. Of these, 104 had formerly sold their oil; 62 now had to pay for collection, 32 obtained collection at no cost, and 10 reported no collection.[2]

An A.D. Little study for Massachusetts, completed in January 1969, reported that most service station operators were having difficulty finding used oil collectors. Moreover, the service stations were beginning to be charged for used oil collections whereas formerly they were paid for their used oil. 88 per cent of service station generated automotive waste oil, and 76 per cent of industrial used oil was being collected.[3]

A 1974 Environmental Quality Systems report for Maryland reported that 25 per cent of used automotive lube generators paid for collection services, but 74 per cent paid nothing. Fifty per cent of the industries responding to a survey question on collection indicated that they paid nothing to have their used oil collected, but only 14 per cent of all the industrial respondents to the survey responded to this question.[4]

A 1973 Teknekron study summed up the general trend in collection practices by noting that in the middle 1960's collectors were paying for used oil, by 1970 they were charging for collection service, but by 1973 the price situation had returned to that of the middle 1960's.[5]

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[2]See Hearings on Water Pollution before the Subcommittee on Air and Water Pollution of the Senate Committee on Public Works, part 1, 90th Cong., 1st Sess. (August 1967), 290-302.

[3]A.D. Little, Inc., Study of Waste Oil Disposal Practices in Massachusetts, Report to Commonwealth of Massachusetts, Division of Water Pollution Control (January 1969).

[4]Supra, note 1.

[5]Teknekron, Inc. A Technical and Economic Study of Waste Oil Recovery, EPA Contract No. 68-01-1806, October 1973. Part III at 21.

DISPOSAL OF USED OIL

Existing Surveys

Little is known about the disposal of used oil in America.

The American Petroleum Institute conducted a 1966-1967 survey of 817 service stations to determine the magnitude of the problem caused by used oil disposal.[6] The survey found that while only 14 stations (1.7 per cent of those surveyed) actually dumped their used oil, 43 per cent of the stations did not know the ultimate use of the oil collected from them.

A 1968 A.D. Little study of used oil in Massachusetts found that of the 15.5 million gallons of used oil generated, all but 4.5 million were ultimately dumped into the terrestrial or aquatic environment.[7] 60 per cent of the 7.5 million gallons of automotive used oil collected was reprocessed in Massachusetts to fuel oil and about 19 per cent was used for road oiling. 41 per cent of the 2.4 million gallons of used industrial lubes collected was used as road oil and 37 per cent was locally dumped.

An analysis of used oil disposal practices by the Wisconsin Department of Natural Resources found that most Wisconsin service stations generating used oil were able to account for it.[8] The survey did not describe the disposal of oil sold over-the-counter, nor did it describe industrial lubricating oil disposal practices. The study revealed that one-third of lubricating oil drained is rerefined into lubricating oil, one-third is reused as fuel oil, one-fifth is used on farms for lubricating barn cleaners and controlling dust and weeds, and the remainder is used for road oiling or is dumped on the ground. The study did not clearly describe the percentage of the used oil reprocessed prior to its use as fuel.

A 1973 study by the General Accounting Office of 97 federal facilities in 25 states found few cases of outright dumping, though most facilities having their used oil collected were unable to account for the

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[6] Supra, note 2.

[7] Supra, note 3.

[8] Robert Ostrander and Stanton Kleinert, Drain Oil Disposal in Wisconsin, Wisconsin Department of Natural Resources Technical Bulletin No. 63, Madison, Wisconsin (1973).

ultimate fate of their oil.[9] A GAO follow-up of collectors, conducted principally by telephone, revealed that the collectors were generally using the oil for fuel, taking it to a rerefiner, or using it for dust abatement purposes.

A 1973 analysis by the General Services Administration of 97 GSA motor pools generating 32,000 gallons of used lube oil in a six-month period found that approximately 20,000 gallons of this oil were given to collectors for disposal.[10] The ultimate use of the waste oil by collectors was not indicated. 6,700 gallons were disposed to landfills, 1,300 gallons used for road oiling, and 4,200 gallons used for miscellaneous other purposes. GSA has since ordered its motor pools not to dispose of waste oil in landfills.[11]

An Army Audit Agency study of used oil disposal in FY1972 at 19 Army installations found 154,000 gallons of used oil being reprocessed and 868,000 gallons disposed of "using methods considered to be ecologically unsound."[12] Of 358,000 gallons given to contractors, 117,000 were reprocessed, and 240,000 gallons were used for road oiling and heating asphalt.

Among the instances of unsound disposal cited by the Army Audit Agency were the following:

1. At Letterkenny Army Depot, 60,000 gallons were burned in a ground level pit, thus polluting the air.

2. At Fort Bragg, 178,000 gallons of oil were disposed of in the ground or poured down storm drains. Oil appeared in streams and lakes in the vicinity of Fort Bragg.

3. At Fort Hood, 311,000 gallons of used oil were used for dust control purposes. During heavy rains, the oil washed into aquatic systems. Similar conditions were noted at

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[9]Unpublished study. Results described in telephone interview with John McNamara of GAO's Seattle office, November 6, 1973.

[10]"Survey of GSA Motor Pool Waste-oil Generation," June 25, 1973, GSA memorandum. Copy in Environmental Law Institute files.

[11]GSA recognizes that some landfills can accept used oils without environmental damage resulting. It was administratively easier, however, just to issue a blanket prohibition. Conversation with Mr. Rhodes, Motor Equipment Management Division, Federal Supply Service, GSA, August 13, 1974.

[12]"Audit of Selected Aspects of the Army's Resource Recovery Program," Audit Report NE 73-71, Northeastern District, United States Army Audit Agency, Philadelphia, Pa., January 30, 1973.

Redstone Arsenal, the Military District of Washington, the U.S. Military Academy and Fort Carson.

Most reports to date have ignored the over-the-counter market in automotive lubricating oils. Very little is known about the exact size of this market; the estimate generally quoted is 25-30 per cent of the lube motor oil market consists of sales to individuals who change their own oil.[13] If 60 per cent of the do-it-yourselfers' oil becomes used, this represents an absolute quantity of approximately 80 million gallons. The used oil generated by do-it-yourselfers may be less than 60 per cent of their virgin oil purchases if a significant proportion of these purchases is for "make-up" rather than oil-change purposes.

Only one analysis has been conducted of disposal habits of do-it-yourselfers. The Teknekron, Inc. study found that 58 per cent of the used oil was being dumped: 33 per cent into backyards, 11 per cent into sewers, 11 per cent into public dumps, and 3 per cent into empty lots.[14]

EPA Data File

EPA's Office of Hazardous Materials maintains a data bank in which discharges of used oil are listed, but only 177 entries can be found for used oil for the past five years. Most of these reported discharges are quite small in absolute magnitude and for all but three of the entries the environmental damages and clean-up costs associated with the discharges are reported to be "unknown".

The EPA figures are not comprehensive and cannot be relied upon as indicating the magnitude of the used oil dumping problem; figures for Baltimore Harbor alone, compiled by the Baltimore Port Authority, show fifteen discharges of used oil for the nine month period beginning March 1972.[15] None of these discharges, even one of 750 gallons, is listed in the EPA data bank.

The EPA listings also do not reveal reported used oil disposal incidents in the State of Vermont. Since 1970 Vermont has received

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[13]Estimate is from William Olcott, "Motor Oil Sales Flow from Stations to Mass Merchandisers," National Petroleum News (August 1971), 52-58.

[14]Supra, note 5, Part II at 27.

[15]Reprinted in State of Maryland ..., supra, note 1.

fourteen reports of the improper disposal of used oil; eleven involved improper disposal to water. The Vermont official reporting this information did not describe the quantities of oil involved but believes the reports are "no more than the tip of the iceberg."[16]

Survey of EPA Regional Administrators

In an effort to obtain additional information on used oil dumping, ELI surveyed EPA's regional administrators. They were asked to provide information on numbers of used oil disposal incidents occurring and environmental damages and clean up costs incident to them. Five regions responded, two of which (Regions VII and VIII) referred ELI to the computer file described above. Region II reported that it was sure that used oil was entering the environment through streams, sewers and illegal dumps, but it could not report any instances of sewage treatment plant fouling, water supply fouling, or ecosystem damage. Region II did report one major spill of used oil resulting from failure of a lagoon dike at a used oil rerefinery. Region III, like Region II, could not account for disposal of used oil -- "we don't know where it is going, so assume it is probably ending up in the waters of the United States" -- and, as Region II, could not cite any major problems or damages resulting from used oil dumping.

Region IV reported ten incidents in the past five years where oil has forced the closing of water treatment plants. The nature of the oil was not specified and the costs of these closings could not be estimated. A newspaper report provided by Region IV described a used oil spill whose estimated clean up cost was $5,000 to $7,000. This report too was not listed on EPA's computer.

The lack of comprehensive used oil spill reporting data in the EPA files may be a function of the division of oil spill regulation responsibility between EPA and the Coast Guard.[17]

Summary

The many studies to date of used oil disposal practices reveal considerable uncertainty as to the fate of used oils, or else provide evidence that untreated waste oil is being randomly dumped, applied as a road oil, or burned as a fuel. The environmental damages resulting from these disposal practices are of uncertain magnitude, but this uncertainty could itself be due to the inadequacy

[16]Letter to the Environmental Law Institute, December 6, 1973.

[17]Executive Order 11735.

of existing reporting systems. If the environmental damages are of sufficient potential magnitude, then better control over disposal ought to be sought.

ENVIRONMENTAL AND HEALTH CONSEQUENCES OF EXISTING DISPOSAL PRACTICES

Burning Used Automotive Crankcase Oil

Used automotive crankcase oils contain approximately one per cent lead (by weight).[18] The lead, whose source is fuel additives, migrates to the oil from gasoline in the automobile engine.

Studies of combustion of 100 per cent crankcase oil conducted for EPA by GCA Corporation reveal that 93 per cent of all the particulate emissions generated are within the superfine dust category, i.e., are smaller than ten microns.[19] 56.2 per cent of the major superfine particulate pollutants are submicron size. Lead constitutes 35 per cent of all the superfine used oil contaminants with 83.1 per cent of these particles being submicron size. Submicron size particles are of particular concern because they are deposited deeper in the respiratory tract than large particles. To be abated, these submicron size particles require high efficiency removal techniques -- fabric filters, scrubbers and, for some combustion processes, electrostatic precipitators. The extent of deployment of these highly efficient techniques varies among industries.[20]

Studies by McCrone Associates for the Association of Petroleum Rerefiners conducted at nine nationwide sites revealed that for every 10,000 gallons of used crankcase oil burned, between 400 and 720 pounds of lead oxides were produced.[21] Not all these are emitted from boiler stacks, however. Perhaps 25 per cent to 50 per cent remain inside a boiler as slag.[22]

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[18] Environmental Protection Agency, Report to the Congress: Waste Oil Study Authorized by §104(m), Pub. L. No. 92-500, April 1974 at 14.

[19] See GCA, Monthly Progress Reports Nos. 3 and 4, unpublished. Reports prepared for the Environmental Protection Agency, Contract No. 68-01-1859. See also, Waste Oil Study, id.

[20] Waste Oil Study, id. at 72.

[21] Results attached to "Association of Petroleum Rerefiners Message to Government Officials, December 27, 1970." Copy in Environmental Law Institute files.

[22] Waste Oil Study, supra, note 18, at 55.

No federal standard specific to lead has been established under the national ambient air quality standards or hazardous air pollutants sections of the Clean Air Act, sections 109 and 112 respectively. Lead concentrations are, however, subsumed within ambient air quality standards for particulate matter and within particulate emissions limitations established for certain new sources (section 111 of the Clean Air Act). The national primary ambient air quality standard established for particulate matter is 75 micrograms per cubic meter annual geometric mean and 260 micrograms per cubic meter maximum 24 hour concentration not to be exceeded more than once per year.[23]

At the state level, only Pennsylvania, Montana, and California have established ambient air quality standards for lead. The Pennsylvania and Montana standard is five micrograms per cubic meter averaged over thirty days and the California standard is 1.5 micrograms per cubic meter averaged over thirty days.[24]

The general relationship of atmospheric lead to human health can be summarized as follows: Raised levels of lead in ambient air can produce elevated levels of lead in the bloodstream. Elevated lead levels in the blood in turn may produce adverse health consequences in man. The considerable scientific controversy that exists concerning this relationship may in part explain the absence of a federal air quality standard for lead.[25] Among the key issues

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[23]40 C.F.R. Parts 50.6&50.7

[24]Pennsylvania: Pennsylvania Code Title 25, Rules and Regulations Part I, Department of Environmental Resources; subpart C, Protection of Natural Resources; Article III, Air Resources; Chapter 131, Ambient Air Quality Standards; §131.3; Adopted September 1, 1971, amended January 27, 1972; Effective March 20, 1972; Montana: Montana Administrative Code, ch. 14, subch. 1, §16.2.14(1)-S14040; California: California Administrative Code, Title 17, Public Health, part III, Air Resources, ch. 1, subch. 1, §70200.

[25]This generalization and the summary of key issues that follows is based on a review of these materials: Opening Statement, EPA Deputy Administrator John R. Quarles, Jr., Press Conference on Reducing Lead in Gasoline, November 28, 1973; "Environmental Protection Agency, EPA's Position on the Health Effects of Airborne Lead" (November 1972): "Environmental Protection Agency, EPA's Position on the Health Implications of Airborne Lead" (November 1973); the ten symposium papers published in Environmental Science and Technology, vol. 4, nos. 3 and 4 (March, April 1970). Papers were originally prepared for an American Chemical Society Symposium, Minneapolis, Minnesota, April 14-15, 1969. Also see American Petroleum Institute Medical Research Report #EA7102, "The Chronic Toxicity of Lead" (April 1971).

are the following:

1. There are many sources of lead in the human environment, the primary one being the daily diet. Disagreement exists over the proportion of the human body burden of lead that is attributable to inhalation and ingestion of lead from the air, and thus there is some debate over the importance of establishing permissible levels for lead in ambient air.

2. There is some dispute over the relationship of both body lead burden and adverse health effects to the most widely used indicator of exposure to lead, blood lead levels.

3. The linking of lead poisoning to exposure to high lead level has resulted in establishment of occupational health standards for lead. Not so clear are the consequences of long term exposure to the comparatively lower lead levels generally found in urban environments. These urban levels, while low compared to occupational health standards, are elevated when compared to suburban area levels.

4. Body burden of lead is a function of many factors, including diet and ambient lead levels. The failure to control for crucial variables, to establish control groups, and to examine those exposed to lead at a pre-exposure point in time has led to the questioning of various scientific findings linking human health to the amount of lead inhaled or ingested.

5. There may be a time lag between exposure to lead, elevation of blood lead levels, and demonstration of symptoms of lead poisoning. Uncertain temporal relationships make it difficult to determine what levels of ambient lead and what periods of exposure produce adverse health effects.

While not proposing any air quality or emission standards specific to lead, EPA has concerned itself with lead concentrations out of a need to establish a reference standard on the basis of which it could prescribe the amounts of lead additives it would permit in gasoline. EPA has authority to regulate fuel additives under section 211 of the Clean Air Act.

On the basis of its review of existing research, EPA concluded in November 1972 that it was previously in error when it believed that achievement of a 2 microgram per cubic meter air lead goal would assure a reasonably complete degree of public health protection. It concluded that "further air lead reductions below 2 micrograms per cubic meter would seem indicated" and that "every effort should, therefore, be made to reduce all preventable lead exposures,

including airborne lead, to the fullest extent possible.[26]

EPA reexamined its November 1972 position and issued another position paper in November 1973 which did not include a recommendation that a particular level of ambient lead be achieved. EPA's principal 1973 conclusions can be summarized as follows:

A small but significant fraction of the adult population has blood lead levels which are medically undesirable and should be reduced if possible. Such levels occur in a much larger proportion of urban children. Food is the largest contributer of lead to the general population with other sources including water, air, and ingested non-food items such as lead-based paint and dust. Lead from all these sources should be reduced to the degree possible. Action had already been taken to reduce the lead content of paint and actions have also been taken to substantially reduce controllable sources of lead in food. Lead in some drinking water supplies is higher than desirable and efforts should be continued to reduce this source of lead exposure. In EPA's opinion, lead in gasoline is the most important remaining source of controllable lead entering the environment. Reduction of lead in gasoline will, therefore, result in reduced exposure of man, both directly from reduction in atmospheric lead, and indirectly from reduction of lead in dirt, dust and at least to a minor extent, on and in foods.[27]

Consonant with this reasoning, EPA has issued regulations calling for the reduction of the lead content of gasoline.[28]

GCA Corporation, working under contract to EPA, estimated ground level concentrations of lead for certain applications of waste oil as a fuel and concluded that certain large users, especially utilities, could blend small percentages of low-treated or untreated used oil with their existing energy sources without necessarily adding emission control equipment.[29]

The risk to human health from the burning of automotive used oil will be reduced in the next decade as consumption of leaded gasoline declines. The Mobil Oil Corporation estimates that should used

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[26]EPA 1972 position paper, id., at VII-5.

[27]EPA 1973 position paper, supra note 25 at VIII-6 et. seq.

[28]38 Fed. Reg. 33734.

[29]GCA/Technology Division, "Waste Automotive Lubricating Oil Reuse As a Fuel," EPA Contract No. 68-01-1859, Draft Final Report July 1974 at 7.

oil burning be sanctioned by EPA, 100 million gallons of lead-containing used automotive oils will be available for this purpose.[30]

Road Oiling

Used automotive lubricating oil is often disposed of through use as road oil. Road oiling abates dusty conditions and improves road stability.

A recent EPA research project sought to ascertain the environmental impact and effectiveness of used automotive oil's use as a road oil. In brief, the researchers found that used crankcase oil was not a very effective road oil, that it washed off rapidly in heavy rain, and that high concentrations of lead were found in runoff waters.[31]

These findings have led some to question whether used automotive oil should be used as a road oil in the future. For example, a recently completed used oil study for the state of Maryland recommended that Maryland forbid use of used automotive oil for this purpose.[32]

Two characteristics of the EPA study suggest that generalizations based on it should only be made with great caution.[33] First, the road oil was applied at a rate of .45 gallons per square yard. Second, the test was conducted on clay soils of low permeability. Mr. Al Smith, Environmental Emergency Branch Chief of EPA's Region IV has indicated that most road oiling in the southeastern United States is done at a rate of .2 gallons per square yard on alluvial soils of relatively high permeability. While no research specifically designed to measure the effectiveness and environmental impact of this road oiling has been conducted, Mr. Smith argues that the road oiling is effective because it is being done on highly permeable soils. He observes that much road oiling has been done in the vicinity of Jackson and Vicksburg, Mississippi, and tests of ground water conducted in conjunction with water well drilling operations

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[30]Letter from H.S. Kelly, Mobil Oil Corporation Products Department to Mr. R.R. Wright, Jr., American Petroleum Institute, April 30, 1974. Copy in Environmental Law Institute files.

[31]Frank J. Freestone, "Runoff of Oils from Rural Roads Treated to Suppress Dust," Environmental Protection Agency, EPA-R2-72-054, October 1972.

[32]State of Maryland..., supra, note 1.

[33]This critique is based on a telephone interview of Mr. Al Smith, January 21, 1974.

in these areas reveal no elevated levels of lead or other heavy metals. To be sure, Smith observes, road oiling may not be the most judicious use of a used oil that can be burned for heat recovery or reprocessed for reuse as a lube oil, but in the absence of a market for the waste oil, its use as a road oil provides an alternative to its random dumping.

Taken together, the EPA research results and the Smith critique suggest that additional research ought to be conducted on the environmental impact and effectiveness of used lube oil use as a road oil. While use on clay roads perhaps ought to be outlawed, use on alluvial soils ought to be permitted where the oil cannot be economically collected for reprocessing purposes.

Rerefining Waste Products

Rerefining produces a variety of waste products. These include acid sludge and spent clays. Landfilling of acid sludge and spent clay is the most common disposal method and appears to be a reasonable method of disposal provided sufficient safeguards are used to protect personnel, surface and ground waters.

POTENTIAL TOXICITY AND CARCINOGENICITY OF IMPROPERLY DISPOSED USED OIL

The potential health and environmental risks posed by the improper disposal of used oils are just beginning to receive attention.[35] Chemical carcinogenesis, an area of cancer research long-neglected, is just beginning to be developed as is the little explored field of the toxicology of oil.[36] The action and impact of carcinogenic substances (i.e., how they are activated and how they affect the body) and the control of their adverse effects remain little known.

The amount of used oil disposed is not necessarily directly related

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[34] Waste Oil Study, supra, note 18 at 44.

[35] Waste Oil Study, supra, note 18, at 1-2.

[36] International Agency for Research on Cancer Monograph on the Evaluation of Carcinogenic Risk of the Chemical to Man, vol. 3, Lyon, 1973 [hereinafter cited as IARC], at 1 et seq; J.H. Milgrim, Technological Aspects of the Prevention, Control and Cleanup of Oil Spills, Energy Policy Project, Ford Foundation, presently unpublished manuscript, at 1 et seq; Science, "Chemical Carcinogenesis: A Long-Neglected Field Blossoms," March 8, 1974, vol. 183, 940-44, and "Can Potential Carcinogens be Detected More Quickly?" at 943; Dr. Sydney Siegal, National Institute of Health, Bioassay of Carcinogenesis, telephone interview January 15, 1974.

to the detrimental effects of carcinogens in that oil; a small concentration of a toxic substance does not predicate little ill effect.[37]

Levels of used oil pollution found to be "safe" in a laboratory do not usually take into account long-term biological contamination associated with the growth of cancers, nor can they account for the way in which organisms are chemically affected by carcinogens. More information is needed on dose-response levels of human beings, the effect on humans of various amounts and intensities of concentrations of carcinogenic substances.[38] Information about the cumulative effects of biological magnification, one part of the puzzle of the chemical carcinogenic potentiality of used oil, is sparse.[39] Until further research is conducted with waste oil (obtained from samples received directly from polluted waters or collection depots), its various chemicals isolated and broken down, the range of damage at different concentrations for various periods of time will never be understood.

Toxicity is a function of the chemical characteristics of a particular used oil.[40] In ascending order of toxicity the three major groups of hydrocarbons in oil are alkanes (paraffins or saturates), alkenes (found only in natural gas and cracked oil products, not crudes) and aromatics. Alkanes are light fuels; the alkenes and aromatics

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[37]Hal Snyder, U.S. Environmental Protectection Agency, Oil and Special Materials, telephone conversation January 21, 1974; D.L. Woodhouse, "The Carcinogenic Activity of Some Petroleum Fractions and Extracts," J. of Hygiene, London, vol. 48, 150, 1 et seq.

[38]IARC, supra, note 36, 12; S.F. Hedtke, "The Effects of Waste Oil on Freshwater Aquatic Life," U.S. Environmental Protection Agency, January 14, 1974, 2, 3; D.M. Martin, "Freshwater Laboratory Bioassays -- A Tool in Environmental Decisions," No. 3, Contributions from the Department of Limnology, Academy of Natural Sciences of Philadelphia, 1973, 22-25; Roya Nadeau, Environmental Protection Agency, Edison Laboratory, Region II, telephone interview, January 21, 1974; H. E. Stockinger, "Sanity in Research and Evaluation of Environmental Health," Science, vol. 174, November 12, 1971, 663-64; Dr. S. Siegal, supra, note 36.

[39]Milgrim, supra, note 36.

[40]Milgrim, supra, note 36; C. C. Twort & J. D. Fulton, "Experiments on the Nature of the Carcinogenic Agents in Mineral Oils," J. of Path. Bact., vol. 32, 1929, 149 et seq.; Woodhouse, supra, note 37, 121.

the heavier fuels. Weathering (i.e. oxidation, evaporation, dissolution and biological degradation) most readily occurs among the alkanes, which have low boiling points. For the aromatics in particular degradation is an extremely lengthy process. These weather resistant hydrocarbons then, are the most toxic carcinogenic components of oil. Moreover, it has been observed that the amount of polynuclear aromatics in lubricating oil increases after use in a motor vehicle; consequently it follows that waste oil is more toxic than unused oil.[41] Another of the possible difficulties arising from the random dumping of used oil might be particles which have settled in sediment; their degradation is exceptionally slow.[42]

The greatest number of carcinogens found in used oil are relatively unreactive chemicals such as polycyclic aromatic hydrocarbons.[43] No complete testing of used oil performed to date by either the Environmental Protection Agency laboratories or by others, has entailed a comprehensive analysis of the chemical composition of the hydrocarbons of this oil, but has dealt almost exclusively with identifying the metals and analyzing their effects. Yet, the only metal suspected of having carcinogenic effects is cadmium, while at least half a dozen or so chemical components of used oil (i.e., 3,4-benzpyrene, dibenzathracene, dibenzpyrenes) have been known to induce carcinomas.[44]

Some of the compounds in used oil may have toxic effects over a lengthy period, but no experiments have been conducted over a long enough span of time which would serve as possible indices for the extent of the damage these toxins may cause. DNA is known to be affected by carcinogens found in oil; modifications in DNA might explain the preservation of distorted biological information from the time of initial contact with a carcinogen to the time of appearance

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[41] C. P. Gross, "Third Annual Report on Gasoline Composition and Vehicle Exhaust Gas Polynuclear Aromatic Content," CRC-APRAC Project No. CAPE-6-68, Period Ending July 30, 1972; H. K. Newhall, R. E. Jentoff & P. R. Ballinger, "The Effect of Unleaded Fuel Composition on Polynuclear Aromatic Hydrocarbon Emissions," Chevron Research Company, Society of Automotive Engineers, Inc., 1973, 1.

[42] F. J. Freestone, supra, note 31, 1; Milgrim, supra, note 36.

[43] Milgrim, supra, note 36.

[44] Chem. and Industry, "Vehicle Exhausts in Relation to Public Health," Feb. 12, 1966, 290; IARC, supra note 36, Steiner, "Carcinogenicity of Multiple Chemicals Simultaneously Administered," Cancer Research, vol. 5, 632-35.

of a tumor.[45] In the case of skin tumors this latent period is between 10 and 20 per cent of the host's life span. It must be emphasized that the discussion in this paragraph relies upon data from experiments conducted with only a few kinds of oil, not with used oils.

Evidence clearly shows that the combination of oil with detergents added to counteract overt oil contamination is more toxic than used oil alone.[46] The synergistic and antagonistic reactions of the components of the used oil among themselves and with potential chemical treatments are other aspects of the chemistry of used oil which are poorly understood.[47] Acetone, sulphur and hydrochloric acid are reagents having high potential antagonistic characteristics when combined with carcinogenic chemicals in waste oil; the resulting chemicals may have enhanced toxicity.[48] Were these reactions to be carefully observed and studied over a long period of time (more than three years), the effects of the substances upon human beings and other organisms might be calculated on a long-term basis.

Additives presently used for water filtration and purification should be tested in reactions with the carcinogenic substances. Chlorine, for example, is thought to increase the potential carcinogenicity of chemicals already present in used oil (e.g., phenyls), though it purifies freshwater supplies for consumption.[49]

Continual releases of used oil in water systems may result in a buildup of sublethal carcinogenic material, the damage increasing with time.[50] Once the recovery capacity of the environment is exceeded and absorbtion is no longer possible, considerable adverse health impacts may follow.[51]

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[45] IARC, supra, note 36.

[46] J. Borneff, "Kanzerogene Substanzen in Wasser und Boden", 147 Archiv fuer Hygiene 28, 39 (1963); Hedtke, supra, note 38, 2; IARC, supra, note 36 4: Martin, supra, note 38, 42; Stockholm Report, infra, note 50, B54; Toxic Substances, The President's Council on Environmental Quality, April 1971, iv; U.S. Environmental Protection Agency Preliminary Report to Congress, April 1973 [hereinafter cited as EPA Prelim. Rep. to Cong., April 1973].

[47] Hedtke, supra, note 38, 2; Steiner, supra, note 44, 632-35; E. L. Wunder & D. Hoffman, Cancer, vol. 12, 1194-99.

[48] The Carcinogenic Action of Mineral Oils, "Introduction," Medical Research Council, London, December 1966, 4.

[49] Hedtke, supra, note 38, 2; Martin, supra, note 38, 42.

[50] Hedtke, supra, note 38, 44; W. Zimmermann, Pollution of Water and Soil by Miscellaneous Petroleum Products, at B50 (General Report No. 2, International Water Supply Congress & Exhibition, Stockholm, June 15 to 19, 1964, published by the International Water Supply Association, 34, Park Street, London W.1., England).

Studies and experiments should be conducted which seek to answer whether improper disposal of used oils contributes to an increase in the incidence of cancers and, if so, what percentage of the population is exposed.

[51] EPA Prelim. Rep. to Cong., April 1973, supra, note 46, 20; R. Nadeau, supra, note 38.

SECTION III

FEDERAL AND STATE LAWS AFFECTING

USED OIL GENERATION AND DISPOSAL

CURRENT AND POTENTIAL FEDERAL JURISDICTION

Definition of Used Oil and of Jurisdiction Analyzed

Not all oily wastes fall within the scope of the definition provided in section 104(m)(1) of the FWPCA Amendments of 1972. That section calls for a study of the general effects and potential market of "used engine, machine, cooling and similar waste oil" (emphasis added). This definition excludes animal and vegetable oils and excludes unused mineral oil wastes,e.g., the wastes from drilling for, refining, or transporting petroleum. It includes mineral oils and mineral oil products which have been used in machines, motors, engines, compressors, cylinders, axles, transmissions, transformers, turbines, cable or circuit breaker insulations, and spindles.

This analysis of federal jurisdiction over disposal of used oils within the boundaries of the United States and its territorial seas distinguishes between current and potential federal jurisdiction, i.e., laws which presently grant regulatory authority over used oil to an agency of the U.S. government and laws or bills which may do so in the future.

Current Jurisdiction Under Existing Laws

Federal Water Pollution Control Act Amendments of 1972 -- Section 311 -- The definition of oil in section 311(a)(1) includes a specific reference to "oil refuse" and is comprehensive enough to include used oil as defined above. Section 311(b)(3) prohibits the discharge of oil "into or upon the navigable waters of the United States or adjoining shorelines" in quantities determined in regulations issued by the President to be harmful. By Executive Order No. 11735, issued August 3, 1973, the President delegated the authority to issue these regulations to the Administrator of the Environmental Protection Agency. The regulations were issued in September 1970 under the predecessor provision to section 311(b)(3) and are regarded by the Agency as continuing in effect without being reissued. They provided that a discharge is harmful if it leaves a visible sheen on the receiving water, a definition which withstood judicial review in U.S. v. Boyd,[1] decided in April 1973. A discharge is defined by

[1] 3 ELR 20434

section 311(a)(2) as including spilling, leaking, pumping, emitting, emptying or dumping. A harmful discharge must be reported to the Coast Guard and is subject to a civil penalty after notice and an opportunity for a hearing.[2]

Section 311(c)(1) authorizes the President to act to arrange for the removal of any oil discharge (whether or not in harmful amounts), a power which he has delegated to the heads of federal agencies having responsibility under the National Contingency Plan. This plan is required under section 311(c)(2) for the purpose of providing for coordinated action to minimize damage from oil discharges.[3] The Council on Environmental Quality has been assigned the responsibilities of publishing and revising the plan.[4]

Section 311(j)(1) likewise authorizes the President to issue regulations establishing (1) methods for oil removal, (2) criteria for local oil removal contingency plans, and (3) procedures, methods and equipment to prevent and contain discharges of oil from watercraft or offshore facilities. The President has delegated these responsibilities to the Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating.[5] For the implementing regulations, see 40 C.F.R. Part 112.

Section 402 -- Direct discharges (i.e., not into a municipal sewer system) of used oils in quantities less than harmful for purposes of section 311 (for example, by a firm which cleans fuel oil tanks of service station interceptors, e.g., the Metropolitan Sewer Cleaning and Pumping Association of Washington, D.C.) are governed by the requirement to obtain a permit contained in section 402 of the Federal Water Pollution Control Act Amendments of 1972. (Presumably, harmful discharges of oil prohibited by section 311 would not be eligible for a permit under section 402.)

Section 301(a) proscribes the discharge of any pollutant (defined in section 502(12) as any discharge from a point source into navigable waters, arguably giving broader jurisdiction than section 311, which refers to "navigable waters of the United States") unless the discharge is authorized by a permit under section 318, 402 or 404. It is not likely that section 318, concerning permits to

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[2]Section 311(b)(5)(6).

[3]36 Fed. Reg. 16215.

[4]Exec. Order No. 11735

[5]Id.

discharge pollutants in connection with an aquaculture project, or section 404, concerning permits to discharge dredged or fill material, would be applicable. Section 402, however, would be. It authorizes the Administrator of the Environmental Protection Agency, after an opportunity for a public hearing, to issue a permit for the discharge of a pollutant or combination of pollutants "upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308 and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act." Briefly, this means that the discharger must:

(1) meet by July 1, 1977, effluent limitations which shall require application of the best practicable control technology currently available, as defined by the Administrator of the EPA pursuant to section 304(b) of the Act.[6]

(2) meet by July 1, 1977, any more stringent limitations established pursuant to state law or other federal law or regulation or required to meet water quality standards established pursuant to the Act.[7]

(3) meet by July 1, 1983, effluent limitations which shall require application of the best available technology economically achievable for a category or class of point source.[8]

(4) meet -- if discharges in compliance with the effluent limitations established in accordance with section 301(b)(2)(A) would interfere with the attainment or maintenance of water quality which will assure protection of public water supplies and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water -- effluent limitations which can reasonably be expected to contribute to the attainment or maintenance of such water quality.[9]

(5) meet -- for discharges from facilities listed by category by the Administrator of the EPA in accordance with section 306(b)(1)(A) -- federal standards of performance reflecting

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[6]Section 301(b)(1)(A).

[7]Section 301(b)(1)(C).

[8]Section 301(b)(2)(A).

[9]Section 302(a).

the greatest degree of effluent reduction determined by the Administrator to be achievable with the application of the best available demonstrated control technology, if the discharge is from a new source of that category, i.e., if construction of the facility was commenced after publication of proposed regulations by the Administrator for that category in accordance with section 306(b)(1)(B).[10]

(6) meet effluent standards or prohibitions for toxic pollutants (defined by section 502(13) listed by the Administrator of the EPA in accordance with section 307(a)(1).[11]

(7) monitor effluents as required in accordance with section 308(a)(4)(A) and permit access in accordance with section 308(a)(4)(B);

(8) comply with guidelines issued by the Administrator for determining the degradation of the waters of the territorial seas in accordance with section 403(c).

Section 313 -- Section 313 of the FWPCA Amendments of 1972 provides that all federal agencies having facilities or conducting activities which may result in the discharge of pollutants "shall comply with Federal ... requirements respecting control and abatement of pollution to the same extent as any person is subject to such requirements ..."

Discharges of oil without a permit, or in violation of its conditions, are liable to suit in accordance with section 309 or 505 of the Federal Water Pollution Control Act Amendments of 1972 and with section 17 of the Rivers and Harbors Appropriations Act of 1899, in addition to the liability to civil penalties for harmful discharges established by section 311(b)(6).

Section 208 -- Section 208(b)(3) gives the Administrator of the EPA authority to approve areawide waste treatment management plans submitted by state governors for areas which have substantial water quality control problems. These plans must include "a process to control the disposal of pollutants on land or in subsurface excavations within the area to protect ground and surface water quality.[12] The Governor must designate a waste treatment management agency for the area which the Administrator must accept unless the designated agency does not have adequate authority to implement the plan.[13]

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[10]Section 306(c).

[11]Section 307(d).

[12]Section 208(b)(2)(K).

[13]Section 208(c).

Marine Protection, Research, and Sanctuaries Act of 1972 -- Discharges of amounts of oil into territorial waters which are not prohibited as harmful under section 311(b)(3) of the Federal Water Pollution Control Act Amendments of 1972 are not covered by section 402 of the Act. Rather they are covered by the permit program established by section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972. See comment 13(iii) on revisions to 40 C.F.R. Part 125.[14] That section provides that the Administrator of the Environmental Protection Agency may issue permits for the transportation from the U.S. of material for the purpose of dumping it into ocean waters if he determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. Section 102 also directs the Administrator to establish and apply criteria for reviewing and evaluating permit applications.

Part 227 of 40 C.F.R. contains the EPA's criteria for evaluation of permit applications for ocean dumping issued under authority of Title I of Pub. L. No. 92-532. Section 227.22 provides:

> Subject to the exclusion of paragraph (h) of this section, the dumping, or transportation for dumping, of wastes containing the following materials as other than trace contaminants will not be approved by EPA.
> ...
> (d) Crude oil, fuel oil, heavy diesel oil, and lubricating oils, hydraulic fluids, and any mixtures containing these, taken on board for the purpose of dumping, insofar as these are not regulated under P.L. 92-500.

S. 3954 -- The Senate Commerce Committee has ordered its bill governing disposal of hazardous wastes, S. 3954, reported. It will be referred to the Committee on Public Works for consideration along with S. 1086. S. 3954 would establish standards for products made wholly, or in part of recycled materials, and would establish preferences in federal procurement and procurement by federal contractors for items with the highest recycled materials content where quality was substantially similar and the price substantially competitive. Further, it would govern the disposal of

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[14] 1 ELR 46304. See also, section 2 of Pub. Law No. 93-254 amending section 3(c) of the Act to provide that material includes oil (as defined in section 311 of the FWPCA) "only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping."

hazardous wastes and establish a program to end the unsafe disposal of all wastes, by joint federal action and mandated comprehensive state planning and construction. Where state plans either were inadequate or not adopted, federal override is provided, allowing the Administrator to set standards. EPA would additionally set standards to be met by mandatory state-administered permit programs governing generators and ultimate disposers of hazardous wastes. The bill would also establish a twelve member National Commission on Environmental Costs to consider the advisability of establishing a system of national disposal cost charges on all products other than consumables.

Clean Air Act -- The disposal of used oils by burning, either undiluted or combined with other fuels or matter produces emissions of particulates. Some of the particulate matter is heavy metals, principally lead. These particulate emissions are controlled under the implementation plans for achieving national primary and secondary air quality standards for particulate matter prepared by the states in accordance with section 110 of the Clean Air Act, for approval by the Administrator of the Environmental Protection Agency. If the used oils are burned by a stationary facility subject to standards of performance applicable to new sources of certain categories of sources (e.g., fossil fuel steam generators, Portland cement plants or large incinerators), under section 111 of the Act, then the particulate emissions must not exceed these standards of performance if the facility was constructed or modified after the publication date of the regulations containing the standards.[15]

Potential Additional Jurisdiction Under Existing Law or Pending Bills

Clean Air Act, Section 112 -- If the Administrator of the Environmental Protection Agency determines, as he has for mercury, beryllium and asbestos, that lead is a hazardous air pollutant, i.e., an air pollutant to which no ambient air quality standard is applicable and which may cause or contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, then the burning of used oils containing lead (e.g., crankcase drainings) will have to be conducted so as to comply with emission standards for lead adopted in accordance with section 112 (b)(1)(B).

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[15] See 40 C.F.R. §60.1.

Hazardous Waste Management Act of 1973[16] -- Section 3(4) of the Administration's bill governing the disposal of hazardous wastes on land defines hazardous wastes as "any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects." Should this bill or a modified version of it pass with this definition substantially intact it is likely that its provisions would apply to the disposal of used oils. A report to the EPA by the Battelle Institute under section 212 of the Resource Recovery Act treated some used oils as hazardous.

Toxic Substances Act[17] -- Depending on what action the conference committee takes on this bill, its provisions could apply to used oils.

Conclusion

Existing federal laws do not offer comprehensive control of used oil collection and disposal. Additional control over collection, storage and transportation is provided by some state laws, as described below, and some municipal fire prevention ordinances require service stations to have underground tanks to store used oils. Municipal ordinances usually do not apply to other enterprises which generate used oil, often in large quantities.

Disposal of used oils by uncontrolled burning, road oiling, dumping in household garbage or down household drains and municipal sewers, mixing with fuel or home heating oils , and dumping on land is inadequately controlled by existing laws. To what extent these deficiencies should be remedied by local, state or federal legislation depends upon a comparison of the benefits which would be derived (e.g., for resource conservation, environmental protection and health risk prevention) with the costs involved in implementing the controls in a particular locale.

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[16] S. 1086, H.R. 4873. The report referred to in the last sentence of this paragraph is entitled Program for the Management of Hazardous Wastes. It is the final report of the Battelle Memorial Institute's Pacific Northwest Laboratories to the Environmental Protection Agency under Contract N. 68-01-0762. For discussions of used oils see pages 133-135 and A-118.

[17] S. 426.

FEDERAL TAX TREATMENT OF THE REREFINING INDUSTRY

Tax Code Treatment of Rerefiners, 1932-1964

The tax on lubricating oil dates to 1932, when a 4 cent a gallon tax was levied as part of a broad effort to increase federal revenue during the depression. The proceeds from the tax were treated as general revenue, and were not earmarked for special use. In the revenue bill passed by the House,[18] the only lubricating oils to be taxed were those of viscosities suitable for use in internal combustion engines. However, the Senate voted to eliminate the viscosity limitations of the House bill, noting that the tax could be evaded by mixing taxfree light and heavy oils.[19] The enacted Revenue Act of 1932[20] reflected this Senate concern and imposed a tax of 4 cents per gallon to be paid by manufacturers or producers on all grades of lubricating oil. The tax was raised an additional one-half cent in 1940[21] and one and one-half cents in 1942[22] to produce revenue to finance the war effort.

The applicability of the tax to the lubricating oil products of the rerefining industry was the subject of a controversy spanning twenty-four years focused on the question of whether the rerefiners were to be treated as "manufacturers" under Internal Revenue regulations. Since only "manufacturers" were subject to the excise tax, resolution of this definitional question was of considerable interest to both the rerefiners and their competitors.

In the Revenue Act of 1932, no definition of "manufacturer" was provided, nor was there explicit exclusion of rerefined products from tax. Twelve days after the act's enactment, the first Internal Revenue regulations describing its scope were promulgated, but still

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[18] See H.R. Rep. No. 72-708 (March 8, 1932) at 35.

[19] See S. Rep. No. 72-665 (May 9, 1932) at 43.

[20] Pub. L. No. 72-154, section 601. Excise Tax on Certain Articles:

> (c) There is hereby imposed upon the following articles sold in the United States by the manufacturer or producer ... a tax at the rates hereinafter set forth, to be paid by the manufacturer, /or/ producer...:
> (1) Lubricating oils, four cents a gallon...

[21] Revenue Act of 1940, section 1650.

[22] Revenue Act of 1942, section 608.

no effort was made to define the term "manufacturer."[23] One month later, however, the regulations were amended, and included within the definition of "manufacturer" or "producer" were all reprocessors of used lubricating oil.[24] The revised regulations were amended by a Treasury Decision nine months later, in March 1933, which limited the definition of "manufacturer" or "producer" to rerefiners using one specified process which produced oil with substantially the same physical and chemical characteristics of new lubricating oil.[25] The regulations were amended yet again, in September 1934, to provide that:

"any person who cleans, renovates or refines used or waste lubricating oil by <u>any</u> method or processing which produces an oil substantially equivalent to new lubricating oil"

would be considered a "producer" or "manufacturer"[26] (emphasis added).

The Bureau of Internal Revenue seemed uncertain how to apply its changing regulations. For example, in late 1933, the reprocessed products of Super Refined Oil Company were being exempted from the tax, while the reprocessed products of Triplex Oil Refining Company and Keystone Oil Company were being taxed.[27] However, in early 1934, Triplex received a ruling that its rerefining process did not constitute it as a manufacturer or producer under the law, and in late 1934, Keystone received a refund for the taxes it had paid.[28]

By 1938, BIR was reconsidering the wisdom of attempting to tax reprocessed oil under its regulations. From the end of 1938 until late 1954, favorable rulings were given all rerefiners who applied for tax exemptions.[29] Though rerefiners were thus made exempt from paying excise tax on their end products, they had to pay tax on the virgin oil which they mixed with their reprocessed oil to upgrade it. Had they been officially treated as "manufacturers,"

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[23]Regulations 44 Relating to the Taxes on Lubricating Oil . . . Under the Revenue Act of 1932 (1932 ed.) at 8.

[24]T.D. 4339, XI-2, C.B. 446 (1932).

[25]T.D. 4362, XII-1, C.B. 380 (1933).

[26]Regulations 44 (1934 ed.) at 33; section 314.40, Internal Revenue Code of 1939.

[27]Example cited in "Memorandum: Excise Tax on Lubricating Oil," (Arlington, Virginia: Association of Petroleum Rerefiners, 1955) at 2.

[28]<u>Id.</u>

[29]<u>Id.</u>

they would have had to pay an excise tax on their end products, but they would have been able to purchase virgin oil free of tax for use in blending, for the BIR regulations stipulated that no tax would be imposed upon any material used in the manufacture or production of a taxable article.[30] A Treasury Department official familiar with the history of reprocessed oil taxation contends that the Internal Revenue Bureau declined to tax the rerefiners because it had difficulty proving that the rerefiners' product was equivalent to virgin lubricating oil.[31] The rerefiners reply, however, that the quality question was immaterial, and, that the Bureau actually declined to tax them because it knew a tax could not withstand court challenge. The rerefiners have contended that their products should be tax exempt not because they were alleged to be qualitatively inferior, but because Congress did not intend for the rerefining industry to be taxed at all.[32]

The administrative decision to forego taxing the rerefiners stimulated a series of legislative proposals to tax the rerefining industry. Between 1939 and 1949, seven such bills were introduced by four members of the House Ways and Means Committee and the Senate Finance Committee, but none were reported from committee.[33]

In late 1950, Donald O'Hara, the Assistant General Counsel of the National Petroleum Association, called to the Internal Revenue Bureau's attention the fact that a rerefiner in an FTC proceeding

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[30]Section 620, Revenue Act of 1932.

[31]In a report to a Council on Environmental Quality Task Force on Waste Oil, John Copeland of Treasury's Office of Tax Analysis wrote: ". . . Legend has it, the Bureau of Standards would not testify that reclaimed oil was the equivalent of or substantially equivalent to new oil." "Waste Oil Study" (May 25, 7-page mimeograph) at 1.

[32]Interview with V. T. Worthington, Executive Director of Association of Petroleum Rerefiners, October 23, 1973.

[33]H.R. 5133 introduced into the 76th Congress on March 20, 1939 by Rep. Disney; H.R. 6498 introduced into the 76th Congress on May 24, 1939 by Rep. Disney; H.R. 3071 introduced into the 77th Congress on February 4, 1941 by Rep. Disney; Amendment to H.R. 7378 introduced into the 77th Congress on August 3, 1942 by Sen. Guffey; H.R. 4386 introduced into the 81st Congress on June 9, 1949 by Rep. Gavin; S. 2172 introduced into the 81st Congress on June 30, 1949 by Sen. Martin; H.R. 5448 introduced into the 81st Congress on July 14, 1949 by Rep. Gavin.

had contended that the quality of his lubricating oil matched that of most premium motor oils.[34] O'Hara's implication was that the rerefiner should be taxed. The Bureau responded by noting that three unsuccessful attempts had been made to legislate an excise tax on reclaimed and rerefined oil and that it was not going to alter its position.[35]

In August 1954, O'Hara filed suit on behalf of Barkow Petroleum Company against the Commissioner of Internal Revenue. The suit sought a mandatory injunction requiring IRS to collect excise tax on reprocessed oils represented and sold as equivalent to new lubricating oils.[36]

O'Hara requested dismissal of the suit when he received a letter from the Commissioner of Internal Revenue stating that the IRS would reexamine its position on reprocessed oil and that it would, if necessary, test the issue in the courts.[37] The IRS notified the Association of Petroleum Rerefiners in March 1955 that it was going to attempt to tax reprocessed oil and that the rerefiners were welcome to test the action judicially. But after meeting with the rerefiners to discuss its proposed new policy, IRS abandoned it. Instead, in T. D. 6197, the Service changed its definition of the term "manufacturer" to give recognition to the de facto taxation situation that had existed since 1938. Its new definition provided that

> The term "manufacturer" does not include (1) a person who merely blends or mixes two or more taxable lubricating oils, (2) a person who merely cleans, renovates, or refines used or waste lubricating oil, or (3) a person who merely blends or mixes one or more taxable lubricating oils with used or waste lubricating oil which has been cleaned, renovated, or refined.[38]

These rerefiners falling within class (2) were those who had been legally subject to the excise tax on their end product, but who had never paid such a tax because the quality equivalence of their end product with virgin oil was not proved. Rerefiners in category (3) were those who continued to produce nontaxable products on whose virgin oil component an excise tax had been paid.

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[34]Reported in National Petroleum News, June 18, 1952, 44:25 at 33.

[35]Reported in National Petroleum News, July 22, 1953, 45:25 at 33. The reference to three attempts probably refers to the seven bills introduced into three Congresses. See, supra, note 33.

[36]Barkow Petroleum Company v. T. Colemen Andrews, Commissioner of Internal Revenue (D. D.C.).

[37]Petition for dismissal filed October 21, 1954 following receipt of letter from Commissioner Andrews dated October 15, 1954.

[38]T. D. 6197, Cum. Bull. 56-2, 803 (1956)

The struggle over the revenue regulations had been intense because they provided a competitive advantage in the lubricating oil market to the rerefiners. For their products made exclusively of reprocessed oil, the rerefiners were able to avoid the 6 cent a gallon tax paid by their competitors, the virgin oil marketers. For those products comprised of both virgin and reprocessed oil, if a 50-50 mix of oils is assumed the rerefiners were given a 3 cent a gallon competitive edge, for they only had to pay excise tax on that portion of their product that consisted of virgin oil. The rerefiners maintain that because their profit margin was so small, it was only through maintenance of the tax distinction between their product and virgin lubricating oil that they were able to continue operating.[39]

The Excise Tax Reduction Act of 1965

In 1964, Congress and the administration began to weigh gradual elimination of many excise taxes which had developed over the years and which were widely viewed as imposing excessive burdens on the marketplace. As part of its tax reduction program, the administration suggested complete elimination of the excise tax on lubricating oils.[40]

At hearings on the administration proposal before the House Ways and Means Committee, two speakers addressed their remarks to the proposed reduction in the lubricating oil excise tax. Rudolph Cubicciotti, representing the American Petroleum Institute and Pennsylvania Crude Oil Association, organizations comprised of the major virgin oil marketers, supported elimination of the tax.[41] Noting that lubricating oils used for non-lubricating purposes were tax-exempt, he argued that the excise tax represented a tax on use of a commodity, rather than on the commodity per se. He observed that the tax also presented an administrative burden, for certificates of tax exemption had to be maintained and processed. Furthermore, he contended that the excise tax had developed in the course of revenue emergencies which were no longer of any concern. Since the tax served no non-revenue social policy goals, he argued, it should

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[39] See text accompanying notes 42 and 46.

[40] See section 202 of the administration proposal in "Legislative History of H.R. 8371, 89th Congress, the Excise Tax Reduction Act of 1965, Public Law 89-44," House Committee on Ways and Means, 89th Congress, 1st Session at 62 [hereinafter cited as ETRA Legislative History].

[41] See Hearings on the Federal Excise Tax Structure Before the Committee on Ways and Means, U.S. House of Representatives, 88th Congress, 2nd Session, July-August, 1964 at 620-27 [hereinafter cited as ETRA Hearings].

be removed. Cubicciotti also observed that the tax was an especial burden for farmers and motorists.

The second individual speaking on the lubricating oil tax question was a representative of the Association of Petroleum Rerefiners.[42] V. T. Worthington, Executive Director of the Association, contended that the rerefining industry would be hard hit by elimination of the excise tax. He observed that the price level of rerefined products was determined in large measure by the price set for virgin lubricating products, and that the rerefiners' profit margin was so small that elimination of the 6 cent per gallon competitive edge provided by the excise tax would drive many rerefiners out of business. Worthington conceded that the reasons given for eliminating the excise tax were forceful, but for equally compelling reasons, he suggested, it should be retained. The industry, he said, performed a public service by providing an alternative to the mere dumping of used oil into the environment, an alternative that promoted resource conservation and elimination of used oil as an environmental pollutant. Worthington concluded that the excise tax status quo should be maintained, with the tax accepted as creating, in effect, a payment for the services of the industry. He noted in this context that the virgin oil producers were themselves recipients of a government subsidy, in the form of a 27.5 per cent depletion allowance.

The House Ways and Means Committee developed a statute which it believed would eliminate much of the excise tax without unduly harming the rerefiners. Section 202 of the House bill maintained the 6 cent per gallon tax on lubricating oil[43] and section 210(a) and (b) of the bill earmarked the tax proceeds for the Highway Trust Fund.[44] However, section 202 also provided for a rebate of the tax paid, when the tax was paid on lubricating oil purchased for nonhighway use. The rebate provision was to be made section 6424(a) of the Internal Revenue Code and was to read as follows:

> If lubricating oil (other than cutting oils, as defined in Section 4092(b), and other than oil which has previously been used) is used otherwise than in a highway motor vehicle, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used.[45]

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[42] Id., at 686-90.

[43] See, ETRA Legislative History, supra note 40 at 161.

[44] Id. at 177.

[45] Id. at 162.

The Ways and Means Committee expressed concern for the economic health of the rerefining industry in its report on the excise tax reduction measure:

> . . . your committee concluded that generally the lubricating oil tax was an undesirable tax to continue. However, it was recognized that to the extent that lubricating oil is used in highway motor vehicles, the tax represents an appropriate charge on the users of highways similar to the gasoline tax and the tax on tires. The revenues from the gasoline and tire taxes are presently assigned to the Highway Trust Fund. Your committee also recognized that the outright repeal of this tax might also present problems for the rerefiners of oil, who are not subject to the lubricating oil tax and whose profit margin generally is smaller than the amount of this tax. Therefore, to repeal this tax outright in many cases would drive rerefiners out of business. This would have the effect of encouraging the dumping of used oil in our streams rather than salvaging it through rerefining.
>
> Your committee's bill for the reasons indicated above in effect removes the tax on all lubricating oils except those used in highway vehicles.[46]

The Senate Finance Committee believed that the House measure did not provide adequate protection for the rerefining industry. Accordingly, it sought to maintain the excise tax on lubricating oil by striking the House bill's lubricating oil provisions. The Senate report commented:

> The House recognized that the outright repeal of this tax might present problems for the rerefiners of oil who presently are not subject to the lubricating oil tax and whose profit margin generally is smaller than the amount of this tax. The House recognized that to repeal this tax outright would drive many rerefiners out of business and it was noted that this would have the effect of encouraging the dumping of used oils in our streams rather than salvaging it through rerefining.
>
> It was pointed out to your committee that much the same type of problem exists in the case of non-highway use ... Thus, retaining the tax on lubricating oils for highway purposes alone does not completely remove the competitive problem of the rerefining industry nor remove the encouragement to dump used oil. It was for these reasons that your committee fully

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[46] Id. at 231.

> restored the present tax in the case of ... lubricating oils. Since much of this tax, as reconstituted by your committee, is not basically a highway use revenue, your committee also removed the provision in the House bill which would have allocated this revenue share for the Highway Trust Fund. As compared to present law, the changes made by your committee with respect to lubricating oil will have no effect.[47]

The tax reduction measure ultimately signed into law contained the House lubricating oil tax provisions, the Senate's serious reservations notwithstanding. The law's legislative history reveals that retention of the provisions was solely the consequence of a "log-rolling" conference committee compromise. The Senate conferees withdrew their objections to the House lubricating oil tax provisions in exchange for the House conferees' withdrawal of objections to a Senate provision providing income tax credit to farmers for taxes paid on gasoline used for farm or other nonhighway uses.[48]

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[47] Id. at 534.

[48] Id. at 811, 815. The Senate had with its amendment #7, deleted the lubricating oil provisions of the House bill. With its amendment #101, it added the gasoline tax rebate for farmers. The House agreed to the Senate addition of amendment #101, and in exchange, the Senate withdrew amendment #7 that had deleted the lubricating oil provisions. The "Statement of the Managers on the Part of the House" explains the trade as follows:

> Amendment No. 7: The bill as passed by the House continued the 6-cent-a-gallon excise tax on lubricating oil, but provided for refunds to ultimate purchasers of taxes paid with respect to such oil used for non-highway purposes. It also allocated the tax attributable to lubricating oil used for highway purposes to the highway trust fund . . .
>
> The senate amendment deleted these provisions of the House bill.
>
> The House recedes with amendments conforming to the action on amendment No. 101 . . .
>
> Amendment No. 101: Under present law, farmers and other non-highway users may obtain refunds of taxes used for farm and other off-highway purposes. Credits for such taxes are not provided. The bill as passed by the House made no change in this refund procedure. Senate Amendment No. 101 provides that the tax on gasoline used for farm use or other non-highway purposes may be credited against the farmer's or other

Post-1965 Income Tax Regulations and Revenue Rulings

The Excise Tax Reduction Act (ETRA) caused the rerefiners to lose their 3 cents per gallon competitive advantage in the nonhighway lubricating oil market. Its effects can be demonstrated in the following example:

Suppose that to a nonhighway user the net cost of both virgin oil and a 50-50 blend of virgin and reprocessed oil is $1.20. Prior to ETRA, the user would have had to pay an additional 6 cent on the virgin oil product and an additional 3 cent tax on the blended product. Other things being equal, the nonhighway user would have preferred to purchase the relatively cheaper reprocessed product. Following ETRA, the nonhighway user was eligible for a rebate on the tax paid on virgin lubricating oil. Thus, the purchase price of the 100 per cent virgin lubricating oil was reduced to its net cost of $1.20. Theoretically, the purchase price of the mixed product would also have been $1.20, if the tax was refunded on its virgin oil component. With the two products at parity, it was unlikely that a nonhighway user would be inclined to purchase a "used" product when a "new" product could be had at no additional expense.

In theory, then,the rerefiner was likely to suffer somewhat from ETRA, the good intentions of the House and Senate notwithstanding. In practice, the rerefiner was to suffer even more, for under IRS Revenue Ruling 68-108, the rerefiner and his offhighway customer were declared ineligible for rebate of the tax on the virgin oil component of blended products. The rerefiner was thus placed at a 3 cent per gallon competitive disadvantage vis-a-vis the virgin oil marketer.

In reaching the 68-108 decision, IRS argued that even though a rerefiner had "used" the virgin oil in his blending process, he had not "used" it "otherwise than in a highway motor vehicle" within the meaning of section 6424 of the Internal Revenue Code and thus he was not entitled to a rebate. IRS maintained that the type of "use" contemplated within section 6424 was:

> user's income tax liability. Under the amendment, if the excise tax on such gasoline exceeded the user's income tax liability the excess would be refunded to the user.
>
> The House recedes with an amendment which provides the same procedure for lubricating oil used for non-highway purposes.

> use of lubricating oil (previously unused) through which use the oil is consumed or rendered unfit for further use as a lubricant. In the case of blending by the rerefiner, the "new" oil is not consumed in the blending process but becomes a part of the nontaxable resultant product which the company sells to consumers who use it in non-highway vehicles.[49]

Furthermore, the nonhighway user purchasing a blend of virgin and reprocessed oil was not entitled to a rebate; for he was not using "new" (previously unused) lubricating oil within the meaning of the ETRA rebate provision, but was using the rerefiners' nontaxable product in the blending of which the virgin oil had become "used."

IRS's conclusions in 68-108 are quite questionable. First, as the statute presently reads, it is the clear intent of Congress that the lubricating oil tax in effect becomes a special fee paid by highway users to promote highway building. While one might argue that the rerefiners have an indirect interest in seeing highways built, so that more automotive lubricating oil is consumed in their use, one is hard-pressed to find any other logical nexus between the rerefiners' blending activity and highway use. Second, it could scarcely have been the intent of Congress to have railroad purchasers of blended reprocessed oil pay a tax that underwrites a highway construction subsidy for the railroad's competitors, the trucking industry.[50]

Reversal of Revenue Ruling 68-108 is suggested because, on its face, it places the rerefiners at a disadvantage in the nonhighway lubricating oil market. It permits rebate of excise taxes on virgin oil products without permitting a rebate of taxes on reprocessed products, it appears to run contrary to congressional intent, and it produces an anomolous situation in whch railroads may pay subsidies to their highway competitors.

The tax code distinctions between on- and off-highway use discussed above are summarized in Table 1. The first two rows show that no on- and off-highway use distinction existed prior to 1965. Rows 3 and 4 indicate congressional intent in enacting ETRA -- off-highway users of lubricating oils should not be taxed. The last two rows illustrate the availability of tax rebates for off-highway use under Revenue Ruling 68-108; rebates are available to off-highway users of virgin lube oil, but are denied to off-highway users of reprocessed oil.

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[49] Revenue Ruling 68-108, Cum. Bul. 68-1, 561.

[50] This argument was made in a May 18, 1966 letter from the Rerefiners' attorney to Mr. Bernard Fischgrund, Chief of IRS' Excise Tax Branch.

Table 1. LUBRICATING OIL TAX REBATES FOR OFF-HIGHWAY USE

		Rebate Availability	
		On-Highway Use	Off-Highway Use
Pre-ETRA	Virgin Oil Marketers and Their Customers	*	*
	Rerefiners and Their Customers	*	*
Post-ETRA per Congressional Intent	Virgin Oil Marketers and Their Customers	no	yes
	Rerefiners and Their Customers	no	yes
Post-ETRA per Revenue Ruling 68-108	Virgin Oil Marketers and Their Customers	no	yes
	Rerefiners and Their Customers	no	no

* No distinction was made in the pre-ETRA tax code between on- and off-highway use.

Reconsiderations of Revenue Ruling 68-108 by the Internal Revenue Service would be consonant with the requirements of the National Environmental Policy Act.[51] Section 101(b)(6) of the law declares that the federal government should improve its plans and programs to "enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." Section 103 requires federal agencies to review their policies and procedures as a first step in bringing them into conformance with the national environmental policy embodied in section 101. Further discussion of this Revenue Ruling can be found in section V of this report.

FEDERAL REPROCESSED OIL LABELING REQUIREMENTS

Federal regulations and state laws provide that labels on containers of reprocessed oil must disclose that the containers' contents have been reprocessed from previously used lubricating oils. The discussion below surveys federal requirements for reprocessed oil labeling and evaluates proposals made for their reform. State laws are detailed in the section of this report on state jurisdiction.

The Federal Trade Commission

Since 1940, the FTC has concerned itself with the trade practices of the oil reprocessing industry. In the twenty-four year period 1940-64, the Commission issued 17 orders and agreed to 26 stipulations involving individual oil reprocessors. In 1964, it promulgated a trade industry regulation applying to all oil reprocessors' marketing practices.

Early FTC Action -- Beginning in 1940, the FTC challenged reprocessors' affirmative misrepresentation of their products. Individual reprocessors were ordered, or agreed in stipulations, to end labeling as "100% Pennsylvania Oil" products made from reprocessed crankcase drainings.[52] In some cases, misrepresentation involved products whose tradenames (e.g., "Cert-o-Penn") could lead consumers to believe they were purchasing lubricating oil refined from Pennsyl-

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[51] Pub. Law No. 91-190, 42 U.S.C. §§4321 et. seq.

[52] Economy By-Products Co., Inc., Stip. No. 2920 (August 27, 1940); Mouren-Laurens Oil Co., et al, Stip. No. 3301 (December 9, 1941); Free State Oil Co., Stip. No. 3584 (December 11, 1942); In the Matter of Penn-Lab Oil Products Co., Docket No. 4524, 34 FTC 1049 (1942); In the Matter of Westville Refinery, Inc., Docket No. 4370, 36 FTC 402 (1943); In the Matter of Dabrol Products Corp. et al, Docket No. 5656, 47 FTC 791 (1950).

vania crude.[53] In addition to ordering the end of affirmative misrepresentation of products, the Commission required reprocessors to disclose that their products were made from previously used oil. The Commission, in so ordering, observed that the public had a preference for new oil and was therefore entitled to know the origin of its oil purchases.[54]

From its early cases involving both affirmative misrepresentation and non-disclosure, the Commission moved into the arena of simple non-disclosure, wherein it sought to require reprocessors to indicate on containers that their products had been reprocessed from used lubricating oils. In these cases, for which stipulations and orders were first reported in 1956, Commission staff maintained that since the public preferred virgin products to reprocessed products, any reprocessed oil container not indicating that its contents had been manufactured from previously used oil was deceptive, for in the absence of such disclosure, the public assumed that it was purchasing a virgin oil product.[55] The FTC staff argued further that, in these proceedings, the reprocessors' contentions that their products were equivalent in quality to virgin oil products were immaterial.[56] Four FTC decisions and court rulings following from them have been selected for detailed examination here, for they highlight the major issues attending oil container label regulation.

The Mohawk Case -- In the Mohawk Case,[57] the Commission staff obtained testimony from retailers and consumers to the effect that when they bought oil not labeled as "reprocessed" they assumed they were purchasing virgin oil.[58]

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[53]In one proceeding, the FTC found the tradename and corporate name alone misleading, even though there was no claim made that the product was refined from 100 per cent Pennsylvania crude. See In the Matter of Pennsylvania Oil Terminal, Inc., et al, Docket No. 5868, 48 FTC 356 (1951).

[54]Westville Refinery, supra, note 52 at 405, 406.

[55]As in all the reprocessed oil proceedings, the bases of FTC authority were sections 5(a)(1) and 5(a)(6) of the Federal Trade Commission Act, 15 U.S.C. §45(a)(1) and §46(a)(6), which declare unfair methods of competition and unfair or deceptive practices in commerce to be unlawful and which empower the Commission to prevent their use.

[56]See discussion, infra, accompanying footnotes 101-102.

[57]In the Matter of Mohawk Refining Corp. et al, Docket No. 6588, 54 FTC 1071 (1958).

[58]"Transcript of Proceedings before Hearing Examiner J. Earl Cox in the matter of Mohawk Refining Corporation," at 8, 35, 159, 197, 209, 215.

Testimony revealed consumer preference for virgin lubricating oil though purchase choice seemed more greatly influenced by price and brand name considerations.[59] Those preferring virgin lubricating oil to reprocessed lubricating oil indicated that they had no factual basis for their preference, but assumed that the virgin lubricating oil was better.[60] However, a few indicated that they would purchase reprocessed oil if it could be proved to be equivalent in quality to new oil.[61]

Mohawk's expert witnesses testified that within the industry, purchases were made on the basis of specifications of finished oil, not on the basis of feedstock source,[62] and that virgin crudes from various parts of the United States differed from one another in their lubricating quality.[63] They also indicated that virgin lubricating oil marketers, except for those selling Pennsylvania oil, did not reveal the sources of the crude feedstock they used in their lubricating oil refining processes and that the public, in its purchasing, was not interested so much in sources as it was in the finished lubricating oils' SAE and API ratings.[64]

The hearing examiner ruled against Mohawk.[65] He rejected its argument that if it was required to disclose the source of its feedstock, then marketers of virgin lubricating oil should be subject to similar disclosure requirements.[66] A cease and desist order was entered which was upheld on appeal to the Commission. The final Commission order read as follows:

> It is ordered, That respondents, Mohawk Refining Corp . . . . in connection with the offering for sale, sale and distribution of lubricating oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:
> (1) Representing, contrary to the fact, that their lubricating oil is refined or processed from other than previously used oil;

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[59] Id., at 8, 13, 142, 166, 171, 176, 188, 191, 202-03, 205, 253, 347.

[60] Id., at 14, 18, 173, 180, 191, 227.

[61] Id., at 143, 181, 192-93, 205, 217, 228.

[62] Id., at 242-54.

[63] Id., at 93-96.

[64] Id., at 256, 261, 270.

[65] Supra, note 57 at 1074.

[66] Id. at 1073.

(2) Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container . . . [67]

Mohawk appealed the FTC order to the Third Circuit U.S. Court of Appeals.[68] It contended that the FTC opinion and final order were arbitrary and capricious and lacked substantial supporting evidence; that the Commission erred in holding that failure to disclose the source of Mohawk's lubricating oil product was a violation of the Federal Trade Commission Act; and that the Commission had erred in excluding testimony from the hearing record pertaining to the selling practices of lubricating oil marketers.[69] The court unanimously upheld the FTC actions, ruling as follows: The public prefers new oil to reprocessed used oil. Though the two might be equivalent in quality, the public is being misled if it purchases used oil that it believes to be new; "the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance."[70] Labeling is therefore necessary to distinguish new oil from used oil. Furthermore, the Commission did not err in excluding expert testimony to the effect that it was industry practice not to disclose to wholesale or retail purchasers the source of motor oils, but rather to sell oil on the basis of SAE grades and API service classifications. These facts are immaterial, because the record also indicated a desire on the part of dealers and the public not to sell or buy rerefined motor oil.[71]

Double Eagle I Case — The Double Eagle I matter[72] was decided by the FTC on the same day as Mohawk, February 14, 1958, and it had the identical outcome.

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[67] Id. at 1078.

[68] Mohawk Refining Corp et al v. FTC, 263 F2d 818 (3rd Cir. Ct. 1958); 1959 Trade Cases, ¶ 69, 276.

[69] Id.

[70] Id., at ¶69, 277 citing FTC v. Algoma Lumber Co., 291 U.S. 67, 77-78 (1934).

[71] Supra, note 70 .

[72] In the Matter of Frank M. Kerran et al Doing Business as Double Eagle Refining Co., Docket No. 6432, 54 FTC 1035 (1958).

Double Eagle argued that its rerefined product was equal in quality to lubricating oil refined from virgin crude and that to label it as being made from used oil would mislead an ignorant public into believing it was a low grade product. Double Eagle contended it would be unfair to require the use of a label which would cause the public to undervalue its product and thereby decrease sales.[73] The rerefiner also contended that it performed a public service by providing proper disposal of used oil.[74]

The full Commission responded that assertions of qualitative equality were "immaterial" to its considerations, for it was solely concerned with the question of whether the public was led to purchase rerefined oil out of the mistaken belief that it was buying virgin lubricating oil.[75] The Commission added that if consumers have a preference for virgin goods, such a preference cannot be satisfied by imposing upon them an article similar to a virgin one but having a non-virgin origin.[76] The Commission added, while upholding a hearing examiner's earlier decision, that the rerefiner's "public service" argument was "without merit."[77] A cease and desist order similar to that in Mohawk was entered.

The Double Eagle Refining Company brought suit in the Tenth Circuit U.S. Court of Appeals in 1959 seeking to reverse the FTC order.[78] The court, by a 2-1 vote, sustained the FTC action. The dissenting judge based his opinion on the assumption that rerefined oil was qualitatively equivalent to oil refined from virgin crude. He reasoned as follows: Nothing can be found in the record to sustain a finding that the public prefers new lubricating oil; the one witness describing public attitudes stated that purchasers desire quality and prefer brand names.[79] Omission of feedstock source information has no relation to product quality and absent "affirmative misrepresentation" it is quality that is material in determining whether there is customer deception. The fact that a buyer desires a good oil or a brand name oil does not mean he has any interest in the oil's origin. The assumption that the public prefers virgin oil does not follow from the fact that the public seeks good oil; yet the Commission made such an assumption, and from it found

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[73] Id., at 1041.
[74] Id.
[75] Id., at 1039.
[76] Id., at 1040.
[77] Id., at 1041.
[78] Kerran et al v. FTC, 265 F.2d 2461 (10th Cir. Ct. 1959); 1959 Trade Cases, ¶69, 322.
[79] Id.

deception.[80]

Royal Oil -- The Royal Oil Corporation matter[81] was decided two months after the Mohawk and Double Eagle I matters. Prior to the filing of an FTC complaint against it, Royal Oil, a Maryland company, had been labeling its reclaimed oil as "re-processed," in compliance with a North Carolina statute.[82] The FTC staff contended that though required by North Carolina law, this label did not adequately disclose the used oil origins of the reclaimed product.[83] The FTC hearing examiner agreed and issued a cease and desist order similar to those described above.[84] The full Commission affirmed the examiner's decision, declaring that FTC action was not incompatible with state action.[85]

The Royal Oil Corporation challenged the FTC order in the Fourth Circuit U. S. Court of Appeals.[86] Royal argued that the FTC had no authority to require any disclosure beyond that required by state laws. Royal maintained that Congress had not entered this field of regulation,

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[80] Id.

[81] In the Matter of Royal Oil Corp. et al, Docket No. 6702, 54 FTC 1291 (1958).

[82] Royal Oil marketed its oil in North Carolina. Chapter 119, section 119-13.1-13.3, General Statutes of North Carolina. Section 119-13.2 reads as follows:

> Labels required on sealed containers; oil to meet minimum specifications. -- It shall be unlawful to offer for sale or sell or deliver in the State re-refined or reprocessed oil, as hereinbefore defined, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words "reprocessed oil" in letters at least one-half inch high; the name and address of the person, firm or corporation who has re-refined or re-processed said oil or placed it in the container; the Society of Automotive Engineers (S.A.E.) viscosity number, the net contents of the container expressed in U.S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each sealed container shall meet the minimum specifications as hereinbefore described for each Society of Automotive Engineers (S.A.E.) viscosity number.

[83] Supra, note 81 at 1292.

[84] Id., at 1298.

[85] Id., at 1299-1303.

[86] Royal Oil Corp. et al v. FTC, 262F.2d741 (4th Cir. Ct. 1959); 1959 Trade Cases ¶69, 234.

and thus the FTC could not nullify a valid state statute.[87]

The Fourth Circuit panel unanimously upheld the FTC action, reasoning as follows: Congress, through the Federal Trade Commission Act, gave the Commission broad authority to restrain unfair competition. Unless Congress specifically withdraws this authority, within particular areas, the Commission can restrain unfair business practices, even if these have been subject to state regulation. Furthermore, the Commission can even order halted an unfair method of competition authorized by state law.[88] The FTC action, moreover, did not deprive the company of equal protection under North Carolina law, though its interstate marketed products might be subject to stiffer disclosure restrictions than its North Carolina competitors' intrastate marketed products; intrastate competition is not subject to federal regulation even though it competes with interstate commerce, because interstate goods are in competition with intrastate goods beyond federal control. Finally, although the testimony in the record was not very strong as to possible deception of the public stemming from incomplete label disclosure, it gave some indication that deceptions might occur. This, coupled with the Commission's own observations based on expert knowledge, was sufficient evidence that the labels could be deceptive.[89]

Double Eagle II -- In 1963, the Double Eagle Company became the target of a second FTC complaint. In a resulting 1964 order[90] the full Commission decided that the company's compliance with previous full disclosure rulings was inadequate. In this instance, the Commission reversed an examiner's finding that no deception of the public had occurred.[91]

The second Commission action against Double Eagle was evidently prompted by a change in the FTC's standards of full-disclosure. While in 1958 the Commission felt that the full disclosure goal was adequately served by having a notice of previous use printed on side panels of oil containers, by 1961 the Commission decided that only front panel printing of a previous use disclosure would meet this goal. This change in standards caused the Double Eagle Company, which had altered its labeling to conform to a 1958 Commission order, to fall into non-compliance.

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87 Id.

88 Id.

89 Id., at ¶69, 235.

90 In the Matter of Double Eagle Lubricants et al, Docket no. 8589, 66 FTC 1039 (1964).

91 Id., at 1055.

In reaching its Double Eagle II decision, the Commission decided that it did not have to examine the hearing record for evidence of whether deception had been testified to, for its own visual examination of the containers involved was adequate for deciding if deception was likely to occur.92 The Commission found that it was, and issued a cease and desist order requiring front panel disclosure on Double Eagle's labels.[93]

Double Eagle petitioned the Tenth Circuit Court to review the FTC order.[94] The court upheld the Commission, noting that though many members of the public might testify that they had not been deceived, the Commission was acting within its discretion when, exercising its expert knowledge, it decided on the basis of visual inspection that Double Eagle's container labels were deceptive.[95]

Trade Regulation Ruling -- Having ruled on a number of cases involving individual reprocessors, [96] the Commission ultimately decided to

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93 Id., at 1066.

94 Id., at 1068.

94 Double Eagle Lubricants et al v. FTC, 360 F.2d 268 (10th Cir. Ct. 1965); 1965 Trade Cases ¶71,613.

95 Id., at ¶71, 614.

96 Orders: In the Matter of Salyer Refining Company, Inc. et al, Docket No. 6339, 54 FTC 1026 (1958); In the Matter of High Penn Oil Company, Inc., Docket No. 6492, 53 FTC 256 (1956); In the Matter of Deep Rock Refining Co., Docket No. 6579, 54 FTC 1123 (1958); In the Matter of Acme Refining Corp. et al, Docket No. 6581, 54 FTC 1126 (1958); In the Matter of Lincoln Oil Company et al, Docket No. 6669, 54 FTC 1080 (1958); In the Matter of Supreme Petroleum Products, Inc., Docket No. 6682, 54 FTC 1129 (1958); In the Matter of Allied Petroleum Corp., et al, Docket No. 6709, 54 FTC 1132 (1958); In the Matter of Seaboard Oil Company, et al, Docket No. 6717, 54 FTC 1135 (1958); In the Matter of Pierce Oil & Refining Company, et al, Docket No. C-80, 60 FTC 342 (1962); In the Matter of Porte Manufacturing Company, Inc., et al, Docket No. C-586 , 63 FTC 682 (1963).

Stipulations were agreed to in the following cases: Virginia Iron & Metal Company, Inc., et al, Stip. No.8785 (June 19, 1956); Pioneer Oil Company, et al, Stip. No. 8786 (June 19, 1956); Thompson Chemical Company, Stip. No. 8831 (November 6, 1956); United Oil & Grease Company, et al, Stip. No. 8834 (November 6, 1956); Jenney Manufacturing Company, Stip. No. 8835 (November 6, 1956); Quincy Oil Company, et al, Stip. No. 8841 (December 11, 1956);

establish a trade regulation rule governing sales of reprocessed oil. The regulation,[97] established after a public hearing, addressed many of the issues discussed in earlier agency decisions. In response to rerefiner assertions that they performed a public service in disposing of used oil and that their products were as good as or better than many oils produced entirely from virgin crude stock, the Commission commented:

> The value of the service rendered by this industry is not germane to this consideration, nor is the equality of reclaimed oil involved here. It is not necessary, therefore for the Commission to pass upon the relative merits of new and reclaimed oil.[98]

The Commission determined in its ruling that it constitutes an unfair method of competition and an unfair and deceptive act (1) to represent used lubricating oil as new and unused; (2) to fail to disclose clearly and conspicuously that such used lubricating oil has been previously used, and (3) to use the term "rerefined" to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use had been removed

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Pacific Oil Company, et al, Stip. No. 8852 (January 1, 1957); Three Rivers Refining Company, et al, Stip. No. 9124 (November 18 1958); Warren Oil Company, et al, Stip. No. 9218 (September 1, 1959): Christopher Oil Company, Stip. No. 9286 (May 12, 1960); State Wide Oil Company, Stip. No. 9290 (May 26, 1960); Top Oil Company, Inc., et al, Stip. No. 9369 (December 13, 1960); Searle Petroleum Company of Nebraska, et al, Stip. No. 9380 (January 12, 1961); Wynne Oil Company, et al, Stip. No. 9384 (January 31, 1961); Gurley Oil Company, et al, Stip. No. 9385 (February 7, 1961); Kincheloe Oil Company (Industrial Oil Works Company), Stip. No. 9386 (February 16, 1961); Beckett Brothers, et al, Stip. No. 9386 (February 16, 1961); Henley Oil Company, et al, Stip. No. 9434(May 25, 1961); Tulsa Refined Oil Company, et al, Stip. No. 9457 (July 13, 1961); Graham Penn Oil Company, et al, Stip. No. 9464 (July 18, 1961); R. E. Moore Company, et al, Stip. No. 9471 (August 3, 1961); Jackson Oil Products Company, et al, Stip. No. 9473 (August 23, 1961).

[97] "Trade Regulation Rule Relating to Deceptive Advertising and Labeling of Previously Used Lubricating Oil," 16 C.F.R. 406 (adopted July 28, 1964; effective September 1, 1965.)

[98] Id., slip text at 4.

by a refining process.[99]

Although the Commission contended that oil quality was not germane to its proceedings, it had nevertheless obtained information from technical experts on the quality of rerefined oils. Research submitted to the Commission disclosed that reprocessed lubricating oils were of questionable durability. It was speculated that removal in the rerefining process of some of these oils' important components produced this shortcoming.[100]

In 1971, FTC Chairman Miles Kirkpatrick made the following comments concerning reprocessed oil quality:

> Technical experts ... are convinced that actual performance capabilities of rerefined oil vary greatly in stringent requirement areas such as motor oil because of the unknown origin of the waste oil. Although the purity of rerefined oil...can possibly be controlled by laboratory

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[99] Id. Accordingly, for the purpose of preventing such unlawful practices, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of lubricating oil composed in whole or in part of previously used lubricating oil, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair and deceptive act or practice to:
(1) Represent in any manner that such used lubricating oil is new or unused; or
(2) Fail to disclose clearly and conspicuously that such used lubricating oil has been previously used, in all advertising, sales promotional material and on each front or face panel of the container. For the purpose of this rule the front or face panel means the part (or parts) of the container on which the brand name is usually featured and which is customarily exposed to the view of prospective purchasers when displayed at point of retail sales; or
(3) Use the term "re-refined," or any other word or term of similar import, to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use have been removed by a refining process.

[100] Letter to FTC dated June 5, 1964 from R. E. Streets, Chief, Power Sources Section, Chemistry and Materials Branch, Research Division, Research and Development Directorate, U.S. Army Material Command.

> specifications and testing, apparently many experts are convinced that equally important characteristics such as durability under in-use conditions cannot be determined without extensive performance testing.[101]

Kirkpatrick added that the Commission would re-examine its labeling rule when "valid, impartial scientific tests" are available indicating that rerefined used motor oil is equal in quality and performance to an acceptable grade of virgin motor oil.[102] His comments suggest that while the FTC did not officially weigh product quality in its proceedings, its action in promulgating a trade rule may have been in part motivated by a feeling that rerefined oil, though it met lab specifications, might differ in its durability characteristics from oil refined from virgin crude.

Impact of FTC Trade Regulation Action -- The rerefiners contend that the FTC trade regulation ruling hurt them economically.[103] They maintain that many middlemen marketing their products simply ceased handling them so as to avoid a relabeling burden.[104] They also contend that the labeling decision changed their competitive posiiton in the marketplace by altering retailers' shelf-stocking habits. Prior to the decision, apparently, rerefined oils competed directly with the more expensive, high quality virgin lubricating oils, but following the decision, the reprocessed products were placed in shelf locations where they competed against somewhat less expensive low quality virgin lubricating oils.[105] Little data is available either to support these contentions or to refute them.

Post-Trade Regulation FTC Action -- In 1972 the FTC began to reconsider its trade regulation ruling. The reevaluation is part of a broader study of labeling rules affecting "recycled" products.

Commission staff have met with EPA and Association of Petroleum Rerefiners (APR) representatives, and have been furnished information by the rerefiners on the quality of reprocessed oil. The staff has prepared a labeling proposal for consideration by the full Commission. It is presently undergoing review.

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[101] Letter to Congressman Charles A. Vanik, August 19, 1971, at 2.

[102] Id.

[103] See "Message to President Nixon, Members of Congress, The Federal Trade Commission, Pollution Control Agencies & Others From Association of Petroleum Rerefiners" (December 1972), at 2.

[104] Interview with V. T. Worthington, Executive Director, Association of Petroleum Rerefiners, October 23, 1973.

[105] Oral Presentation by Teknekron Inc., contractors to EPA, September 17, 1973.

Proposals for Changing Labeling Requirements -- EPA proposals -- EPA staff have suggested that FTC consider establishment of labeling guides for recycled materials.[106] Products made from recycled material with performance characteristics which are essentially comparable to those of products made from virgin materials would be treated as new and would not be required to make a prominent "new" or "recycled" disclosure. Products containing more than a specified percentage of recycled material (i.e., post-consumer waste) would be labeled as "recycled," and recycled products inferior in quality to virgin products would have to have their limitations disclosed. Previously used products subjected to little or no reprocessing would have to be labeled as "used."

The National Oil Recycling Act -- H.R. 5902 introduced by Representative Charles Vanik takes a somewhat different approach from EPA's to the labeling question.[107] Section 3(2) of the Vanik bill defines "recycled oil" as used oil which has been rerefined or otherwise processed to remove the physical and chemical contaminants acquired through use, which by itself or when blended with new oil or additives is substantially identical or superior to new oil intended for the same purposes. Section 7(a) of the bill requires that recycled oil shall be labeled as such when packaged for sale.

The EPA and Vanik proposals: An evaluation -- Under the EPA proposals, reprocessed oil would appear to fall under two labeling categories. On the one hand, for that reprocessed product equivalent in quality to new oil, no prominent source disclosure would have to be made. On the other hand, for that reprocessed product containing more than a specified percentage of recycled material (i.e., crankcase drainings, which are a post-consumer waste), then regardless of quality, a "recycled" label would be in order. As they apply to used oil, the guidelines are ambiguous -- a reprocessed product equivalent in quality to new oil yet containing more than a specified minimum percentage of reprocessed oil could fall within either of the two regulatory guidelines just described.

The Vanik bill proposals do not have the ambiguity of the proposed EPA guidelines, but they suffer from a shortcoming of another type. Vanik would label all reprocessed blends as "recycled" if they were equivalent in quality to virgin oils but his bill does not require

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[106] See Solid Waste Disposal Act Extension, Hearing before the Subcommittee on Public Health and Environment of the House Committee on Interstate and Foreign Commerce, 93rd Cong., 1st Sess., at 59.

[107] Introduced March 20, 1973, Congressman Vanik re-introduced the bil as H.R. 9338, H.R. 9339 and H.R. 9860, so as to add additional cosponsors for it in accordance with House rules.

that such blends contain more than a specified amount of reprocessed oil to qualify for this label. In addition, his bill selects high quality reprocessed oil for special labeling treatment. But unless sales of recycled oil would be assisted by this procedure, there seems to be no compelling reason to require special labeling.

The question of quality -- An alternative approach to both the Vanik and EPA proposals would be for all lubricating oil products, regardless of their feedstock source, to be subjected to engine and lab tests to determine specifications, and to have the specifications be the only labeling requirement. The matter of quality would need to be resolved in any case as a first step in determining product equivalence for purposes of labeling under both the Vanik and EPA proposals.

Considerable controversy presently exists as to whether rerefined oils are equivalent in quality to virgin lubricating oils. In question are not only equivalence in lab specifications but equivalence as well in engine performance tests. In June 1973 the rerefiners furnished the FTC with results from an Armour Research Foundation study of used oil drainings from throughout the country.[108] Armour reported that the drainings were rather uniform in composition, more uniform in composition than virgin crude oils from different geographic areas of the United States. The rerefiners assert that this finding is significant because it means that a rerefiner's feedstock is fairly uniform, thereby eliminating the need for running expensive engine performance tests to assess the quality of each batch of rerefined oil. The rerefiners also furnished the results of a 1953 survey of rerefined oils that disclosed product uniformity.

The rerefiners have always argued that their rerefined product is equivalent in quality to virgin lubricating oils, but it is unclear whether this equivalence is for lab tests or stricter engine performance tests. As noted previously, research submitted to the FTC questioned the durability of reprocessed oil.[109]

Some Defense Supply Agency procurement specifications explicitly preclude the acquisition of reprocessed oil.[110] A DSA study indicated that the primary cause for the prohibition is the lack of substantiating data of the quality of rerefined oil stocks.[111] DSA

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[108]Letter to William D. Dixon, Assistant Director, Rules & Guides, FTC, from V. T. Worthington, June 25, 1973.

[109]See text accompanying footnote 99.

[110]MIL Spec MIL-L-46152; MIL-L-2104C.

[111]"Waste Oil Recycling Study" (September 1972).

reported Bureau of Mines tests on rerefined oil (discussed further below) as indicating that many metal contaminants of waste oil can be substantially removed by rerefining, but the effect of rerefining on oil performance characteristics was unclear at the time the DSA study was prepared.[112] The DSA study concluded that the Defense Department should initiate a program to develop specifications for an automotive lubricating oil containing rerefined stocks.[113]

In March 1974 the Bureau of Mines issued the first detailed report describing the results of its rerefined lubricating oil research.[114] While the principal objective of the research has been to develop efficient methods for reclaiming used lubricating oils, secondary objectives have included development of simple laboratory tests to evaluate the quality of reclaimed lube oils and development of specification tests for both new and used oils to promote the marketability of recycled lubricating oil.

For the research conducted at its Bartlesville Energy Research Center, the Bureau acquired samples of rerefined oils from manufacturers, purchased at retail additional rerefined oils, produced by various methods its own rerefined oils, and compared all these with virgin oils. Comparisons were also made with used oils collected from the Bartlesville automobile fleet and from local service stations.

All the commercially purchased rerefined oil samples were straight mineral oils into which no additives had been blended. The researchers commented:

> Mineral oils generally will not stand the rigors of oxidation, provide protection to the engine from wear and corrosion, nor provide the lubricity required by today's modern automobile without the help of additives. Therefore, it was a disappointment that the commercially rerefined oils purchased locally did not contain most of the additives required to meet API service designations for late-model automobiles (SC, SD, or SE).

These same oils might qualify for an SAE 30 viscosity designation and might pass state-conducted viscosity tests, but the motorist purchasing such oils for his late-model automobile might endanger his warranty and risk damage to his engine.

The Bureau researchers found that the rerefined oils they tested tended to have poor lubricity and poor oxidation stability, although

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[112] Supra, note 84.

[113] Supra, note 84.

[114] Marvin Whisman et al, "Waste Lubricating Oil Research: An Investigation of Several Rerefining Methods," (Bureau of Mines Report of Investigations #RI7884, 1974).

the addition of additives tended to minimize these adverse characteristics. The researchers found that additive packages helped two samples of rerefined oil pass corrosion resistance and wear tests which they had previously failed.

While emphasis was placed on performance of rerefined oils, the performance of new oils should not be overlooked; two of the ten new oil samples failed the foam test performed and one of the ten failed a corrosion test.

A National Petroleum Inspection Program?

As indicated in the preceeding sections, some petroleum products -- both rerefined and virgin -- do not conform to a number of accepted standards of quality. In the section on state jurisdiction this will also be found to be the case, and we will note in addition that existing state petroleum product inspection programs are able only to check randomly for compliance with a few of the less telling indices of quality.

Petroleum products, e.g., lubricating oils, can be tested for performance (in stationary laboratory engines, for example) or subjected to so-called laboratory bench tests. Performance tests are expensive, however ($10,000 to $12,000 for a series of eight basic tests on a sample), so neither states nor most producers can afford to conduct them. Bench tests alone, however, are not a sufficient means for determining the quality of lubricating oils. The parameters they check, e.g., viscosity, are important but inadequate for a full analysis of the quality characteristics of a sample of oil.

Currently, lubricating oils are performance and bench-tested by independent laboratories. This is done to insure a credibility of results which would be absent if the oils were tested either by their manufacturers or the producers of the additives which are vital constituents. Often oils are put in cans without testing for compliance with the levels of quality stated on the labels.

Because the quality of many petroleum products is erratic and because most state inspection programs and non-major oil producers cannot afford to regularly perform the tests necessary to determine quality, consideration should be given to establishing a national program for periodic and random testing of those petroleum products, e.g., lubricating oils, whose deviation from standards would potentially cause serious private or public damage. Such a program could be financed from excise taxes imposed on oil products and could be conducted by the existing independent laboratories or a group of specially created public or private laboratories. It could also help reduce and spread the costs of quality control in addition to filling

a national need to assure that oils meet the requisite standards of quality.

Conclusion

While the FTC ostensibly did not take product quality and environmental impact into consideration at the time it promulgated its trade regulation ruling, law and reason require that future rulings consider both. First, sections 101 and 103 of the National Environmental Policy Act of 1969 require FTC to re-examine its action and to take its environmental impact into account.[115] Second, since under both the EPA and Vanik proposals product quality would have to be assessed, and since there is considerable variation among virgin lubricating sources, it would seem that any proposal for new labeling action should be predicated on the establishment of quality specifications. If quality specifications and simple testing procedures can be established, and products can be compared on the basis of their lab and performance specifications, it would seem that, in the absence of both intra-industry concern with feedstock source and rational consumer preferences regarding feedstock source, there would be little purpose served by distinguishing virgin oils from reprocessed oils.

Even though the FTC may act to change its labeling requirements so that a previous use disclosure is no longer required, there is no assurance that the states having previous use disclosure requirements will alter their laws to make them conform with the revised FTC guidelines.

Furthermore, there is no assurance that, because the FTC will no longer require previous use disclosure, that state statutes that require a "reprocessed" or "reclaimed" label will be ruled as invalid because they are in conflict with the FTC rules.

As the district court found in Double Eagle Lubricants v. Texas (described in the section on state labeling laws) federal law is

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[115]Pub. L. No. 91-190, 42 U.S.C. §§4321-4347. Section 101(b)(6) of the law declares that the federal government should improve its plans and programs to "enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." Section 103 requires federal agencies to review their policies and procedures as a first step in bringing them into conformance with the national environmental policy embodied in section 101.

paramount if Congress has clearly indicated an intention to pre-empt the field. No such clear statement of congressional intent is found in the FTC Act. Therefore state laws providing for regulation of unfair or deceptive practices in commerce are valid unless they conflict so much in the same area with federal law that both cannot stand. No conflict was found to exist between the phraseology and intent of the FTC guidelines and the Texas law in existence when the Double Eagle case was decided in 1965.

If FTC revises its guidelines requiring previous use disclosure, we cannot be sure that state labeling laws will definitely be ruled in conflict with the revisions. If FTC labeling rules are to be revised, Congress simultaneously should rule that it is congressional intent that in the area of previous use disclosure for recycled petroleum products, federal action shall pre-empt the field. The goal of giving the rerefiners a fairer shake in the lube oil market (if their products are of good quality) can only be served if the state previous use disclosure requirements are pre-empted through congressional action.

STATE USED OIL DISPOSAL CONTROLS

This section reports the results of an Environmental Law Institute survey of state programs that have been designed or may be used for elimination of used oil as an environmental pollutant. The survey revealed that only three states have initiated used oil management programs. A few additional states advised that they either are encouraging the reclaiming of used oil or that they are studying the problem. A large number of states have developed procedures for regulating some element of the used oil stream -- storage, transportation, or disposal on land -- but these procedures are generally applied to all hazardous or industrial wastes or to all petroleum products, and have not been designed with used oil specifically in mind. A large number of states have also enacted highly detailed oil pollution control statutes, but all these are coastal states whose primary concern appears to be spills of oil from ships and from harbor facilities.

Many of the programs which have been specifically designed for used oil management are of recent origin. So too are many of the regulatory mechanisms which may be directed at one element of the used oil stream. While operating experience with them may therefore be limited, they nevertheless represent regulatory initiatives which might be copied by other states.

State Concern with Used Oil

For analytical purposes, states have been grouped into the following categories:

1. States having "used oil management programs;"
2. States expressing concern for used oil management;
3. States having legal mechanisms which may be used to monitor or control used oil streams;
4. States having comprehensive oil pollution control statutes which provide evidence of state concern with oil pollution but which may or may not be useful in regulating used oil;
5. States whose statutes contain few provisions explicitly concerned with oil pollution.

States with Used Oil Management Programs

Maryland, Massachusetts and Vermont have begun planning used oil management programs. The three states differ in the legal basis they provide for their efforts. The Maryland and Massachusetts programs have an elaborate statutory and regulatory basis. Vermont, in contrast, has not elaborated an extensive set of either statutes or regulations for the control of oil pollution or used oil, but it has begun planning a used oil collection system. Efforts to provide for the collection and disposal of used oil are common to the three state programs, but they differ from one another in the extent to which they monitor sources of used oil. The states also differ in their reporting requirements. Maryland, for example, though it licenses sources of used oil and used oil transportation, does not provide for detailed record-keeping in its regulations. Massachusetts, in contrast, does not license service stations, but it does require used oil haulers to maintain detailed records of their pick-ups and discharges. Vermont, as noted, has not elaborated a regulatory basis for controlling used oil.

Maryland -- Maryland has enacted laws and promulgated regulations governing a broad range of oil handling activities, including storage, transportation and disposal. Areas covered include shipping, trucking, port facilities, transfer facilities and facilities generating used oils. The oil pollution control laws are found in Article 96A, section 26A *et seq.* of the Annotated Code of Maryland.

Article 96A, section 26A. permits the Department of Natural Resources to prescribe regulations for transfer, storage, separation, removal, treatment and disposal of oil and other unctuous substances. No person engaged in any commercial or industrial operation may conduct such activities without a Department of Natural Resources permit.

The remaining sections of Article 96A make it unlawful, with few exceptions, to discharge oil from ships into state waters. Discharges must be immediately reported. Ships unloading oil cargoes in Maryland must be bonded, with the bond to be forfeited to cover oil cleanup costs. The state may recover cleanup costs from any discharger with collected receipts credited to a state oil cleanup contingency fund.

Water Resources Administration Regulations 08.05.04.07 et seq. govern oil pollution control. These implement the statutory requirements for oil handling permits, for oil storage facilities, delivery vehicle operators, facilities for handling used oil, and service stations and vehicle maintenance shops. The regulations also provide, pursuant to statute, for the licensing of marine oil transfer facilities.

Maryland has been concerned with pollution attibutable to used oil for at least two years, and in conjunction with the United States Environmental Protection Agency has sponsored a study by Environmental Quality Systems, Inc. to produce a comprehensive used oil management program for the state. The recently completed report suggests that the regulations described above be rewritten to include provisions for used oil collectors' reporting to the state and maintaining detailed collection records. The report also suggests reworking the application for oil handling permits so as to more effectively meet state used oil data needs. Also recommended are controls on out-of-state shipments of used oils and development of a series of financial incentives for funding the proposed program.[116]

Administration of Maryland's used oil management program began on October 20, 1972. As of December 31, 1973, 333 oil handler permits had been issued and 848 oil tanker drivers had been certified. In addition, 126 licenses for oil transfer facilities had been issued pursuant to the oil storage licensing provisions of the Annotated Code of Maryland.

No fee is attached to permits for oil handlers or certificates for tank drivers, but statutorily established fees are collected for oil terminal facility licenses.

The regulatory program is administered by the Department of Natural Resources' Water Quality Permit Programs office. Three individuals

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[116]Edward J. Martin and Garth Gumtz, "State of Maryland Waste Oil Recovery and Reuse Program," (Environmental Protection Agency Office of Research and Development, Environmental Protection Technology Series, Report No. #PA-67012-74-013, January 1974) at 81.

assisted by one secretary process applications and conduct inspections prior to the issuance of permits. The budget for FY74 for this regulatory program is $200,000. Enforcement of permit and license requirements is one of the responsibilities of the twenty members of the Department of Natural Resources' enforcement division.

To date, Maryland's regulatory effort has focused on oil terminals and distributors, the major potential sources of polluting oil. Six hundred applications for permits are presently pending. It is estimated that 2000-3000 permits should suffice for the 4000-5000 service station operations within the state (since only one permit is required of a single party owning many stations), but the state has not yet formally notified service stations of the permit requirement.[117]

Massachusetts -- Massachusetts' oil pollution control laws are codified in Chapter 21 of the General Laws of the Commonwealth of Massachusetts, section 26 et seq. Section 27(10) generally provides for state cleanup of oil spills and provides for recovery of cleanup and environmental restoration costs from those responsible for discharges. Discharges must be reported immediately to the state.

Section 50 et seq. provides for marine oil terminal licensing, posting of bonds by vessels discharging oil cargoes, licensing of used oil collectors and of hazardous waste disposal, and recovery of double damages by individuals suffering damage from negligent discharges of petroleum.

Section 52 of the Massachusetts Clean Water Act provides for the licensing of waste oil haulers. Section 52A, added to the Massachusetts General Laws on December 7, 1973, requires service stations, marinas and retail outlets selling automotive lubricating oil to install used oil retention facilities and to accept at no charge used oil in quantities not exceeding two gallons per day from any individual showing proof of purchase from the retailer.

Control of used oil is vested within the state Water Resources Commission and Hazardous Waste Board. In early 1973, hazardous waste regulations were adopted which explicitly include within their scope the collection and disposal of used oil. The regulations declare that the recovery or recycling of wastes to useful products, with minimum production of by-product wastes, is the preferred method of dispesal.

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[117]Conversation with representative of Water Resources Administration, Maryland Department of Natural Resources, January 1974.

The regulations are intended to cover handling and disposal methods involving conveyance of hazardous wastes by truck, rail or vessel from their point of origin to an offsite disposal area. Permits for on-site accumulation of hazardous wastes by originators of such wastes (i.e., service stations, industrial companies, etc.) are not required.[118]

Regulation 1.0 states that collection and disposal of used oil is deemed to fall within the hazardous waste regulation provisions.

Regulation 3.1 provides that collection, conveyance and disposal of hazardous wastes may only be conducted under state license.

Regulation 3.4 forbids the dumping of used oil and other specified hazardous wastes into offshore state waters without state permission.

Regulation 3.5 requires segregation of wastes by classes and requires that they be stored and maintained in such a manner so that container ruptures will not cause or contribute to a condition in contravention of state water quality standards.

Regulation 4.0 identifies the several classes of hazardous materials, one of which is used oil.

Regulation 5.1 declares that insofar as feasible or practible, used oils should be reprocessed for use, or used directly in original or secondary markets where such use meets all applicable environmental standards. Alternative disposal methods such as incineration or land spreading will be permitted only if it is shown by an applicant that reprocessing or direct use is not feasible or practical and if such methods meet all applicable environmental standards. Collection of used oil intended for disposal outside the state is prohibited unless the ultimate disposal facility is approved by the U. S. Environmental Protection Agency or the appropriate state pollution control agency.

Regulation 6.0 details licensing requirements. Section 6.2 declares that licenses must be renewed annually. Section 6.3 indicates the types of information which must be provided on the license application form, including classes and approximate quantities of wastes handled, disposal methods used or to be used, and location and plan of disposal sites. Section 6.6 provides that state representatives may enter premises at reasonable times and on reasonable notice to inspect facilities, inventory, and records.

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[118]Massachusetts Water Resources Commission Division of Water Pollution Control and Hazardous Waste Board , Hazardous Waste Regulations at 1 (7 pp. mimeographed, 1973).

Section 6.9 provides that operators of vessels, trucks or other vehicles transporting hazardous wastes shall keep records of materials handled, origin, quantity and destination. Detailed logs are to be retained for one year, and monthly summaries which are not of public record are to be submitted to the state.

Regulation 7.0 provides for fines and jail terms for violators of the rules and regulations.

Massachusetts' concern with waste oil dates at least to 1968, when it funded an A. D. Little study of used oil in Massachusetts.[119] It has since contracted for additional studies, one of biological degradation of used oil sludge, and one of used oil reprocessing.[120]

The state legislature denied the Water Resources Commission's FY74 request for funds for administration of the hazardous waste management program. The request was for one full-time person for administration of the hazardous waste program and for nine additional regional engineers to conduct inspections in conjunction with this and other licensing programs. The nine additional engineers would have devoted approximately two person-years to hazardous waste-related inspections. A funding request has been made for the FY75 budget.

At present, the program is administered on a quarter-time basis by one person in the Water Resources Commission. Field inspections are conducted by fifteen regional Commission engineers who devote an estimated two person-years to hazardous waste-related inspections.

Massachusetts issues permits on an annual basis. Forty-five permits were issued last year and 35 were issued or renewed this year. A majority of these were to collectors but several were also issued to landfill operators. Massachusetts estimates that it has licensed approximately 90 per cent of the major collectors operating in the state. However, it believes that perhaps 25 septic tank pumpers having incidental industrial waste hauling operations are not yet being regulated.

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[119]"Study of Waste Oil Disposal Practices in Massachusetts -- Report to Commonwealth of Massachusetts Division of Water Pollution Control," A. D. Little Company, Report #C-70698 (January 1969).

[120]"Biological Degradation of Waste Oil Sludge," Tyco Laboratories for Massachusetts Water Resources Commission (1971); Gilford A. Chappell, "Waste Oil Reprocessing," (Esso Research and Engineering Company for Division of Water Pollution Control, Massachusetts Water Resources Commission, Project No. 72-5, January 1973).

At one time the commonwealth had hoped to establish a storage facility and laboratory at the site of an old lubricating oil plant in Braintree, Massachusetts with state and federal funds. It had been hoped that some of the necessary funds could be derived from proceeds from state motor vehicle excise taxes, but attempts to obtain such funds were defeated in the legislature.

Senate Bill No. 1659 was introduced into the Massachusetts Senate in 1973. It was not enacted.[121] It would have allocated one-fifth of one per cent of the state's motor vehicle related excise tax receipts for waste oil disposal programs. The funds would be used to pay administrative costs, including inspectors' salaries, costs of construction and operation of waste oil collection and disposal facilities, and payments for collection and transportation costs to licensed used oil collectors.

Vermont -- Vermont has begun planning a used oil program which it hopes to have operating by Spring, 1974. The program entails the establishment of collection points around the state to which used oil would be brought. The oil would then be trucked from these regional collection centers to larger, central collection facilities. The oil would then be shipped to a company in Palmer, Massachusetts for reprocessing into fuel oil. Vermont industries would be given the first opportunity to purchase the reprocessed oil.

The state has purchased ten 20,000 gallon collection tanks at a cost of one dollar per tank from the Mobil Oil Company. The tanks are in temporary storage at a Vermont National Guard camp. The state estimates that with transportation furnished by the Vermont National Guard, it will cost approximately $20,000 to set up the tanks around the state. It hopes to obtain an outside grant for the funding of this portion of the project.[122]

States Expressing Concern for Used Oil

Four states have indicated through correspondence or reports that they have some concern for used oil. This section briefly relates the information received to date.

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[121] Conversation and correspondence with representative, Water Pollution Control Division, Massachusetts Water Resources Commission, September 1973, February 1974.

[122] Telephone conversation and correspondence with representative, Vermont Agency of Environmental Conservation, December 21, 1973.

Colorado -- The Health Department's Division of Water Quality Control has a policy of encouraging reclamation of used oil, and claims this is working fairly well in metropolitan areas where quantities of used oil are sufficient to encourage economic rerefining of used oils. In rural areas, the state encourages sewage treatment plant operators to monitor possible sources of used oil, to prevent discharges to the sewer system. Disposal of small quantities of used oil in sanitary landfills is encouraged when there is no danger to ground water. Colorado has no specific regulations regarding disposal of residual oils or hazardous or toxic wastes, except in the case of subsurface disposal.[123]

Minnesota -- Minnesota encourages recycling wherever possible. A Minneapolis rerefiner accepts used crankcase oil. Disposal of used oils is accomplished also by incineration, with a state-permitted incinerator functioning in the Twin Cities area.[124]

New Jersey -- New Jersey is currently engaged in programs to determine efficient methods of used oil recovery and recycling. For this purpose, it has a member on the steering committee of a used oil study being conducted by the Council on the Environment of the City of New York.[125]

Wisconsin -- In 1971, petroleum inspectors of the Wisconsin Department of Revenue surveyed service stations' used oil disposal practices. The survey did not describe the disposal of oil sold over-the-counter, nor did it describe industrial lubricating oil disposal practices. The study revealed that one-third of lubricating oil drained is rerefined to lubricating oil, one-third is reused as fuel oil, one-fifth is used on farms for lubricating barn cleaners and controlling dust and weeds, and the remainder is used for road oiling or is dumped onto the ground on places other than sanitary landfills. Used oil use patterns were shown to be different for high population density and low population density areas. The study did not clearly describe the percentage of the used oil reprocessed prior to its use as fuel.[126]

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[123]Letter to Environmental Law Institute from Colorado Department of Health, September 14, 1973.

[124]Letter to Environmental Law Institute from Minnesota Pollution Control Agency, October 19, 1973.

[125]Letter to Environmental Law Institute from New Jersey Department of Environmental Protection, November 2, 1973.

[126]Ronald O. Ostrander and Stanton J. Kleinert, "Drain Oil Disposal in Wisconsin," (Madison, Wisconsin Department of Natural Resources, Technical Bulletin No. 63, 1973).

States Having Legal Mechanisms for Used Oil Management

Several states have legal mechanisms which can be used to regulate one portion of the used oil stream. These procedures include scavenger licensing systems, hazardous waste or solid waste disposal regulations, and surface storage regulations.

Scavenger Licensing Systems -- Eight states, in addition to Maryland and Massachusetts, have some form of liquid waste scavenger licensing system proposed or in existence.[127] The licensing systems vary considerably in their component parts. For example, Massachusetts requires monthly and Connecticut quarterly reporting of hauling data, while Maryland has no such reporting requirements. Furthermore, while California, Michigan and Massachusetts require maintenance of individual trip logs, New York and Maryland do not. Permit periods and fees also vary among the states; $25 provides a permit of indefinite length in Oklahoma, while $100 plus a per-truck fee provides a license of only one year's duration in Michigan. While many of the states require used oil generators to consign their shipments only to licensed haulers, no such requirement exists in New York. Finally, of all the states examined in detail, only California has a double signature record and only Michigan requires performance bonds of liquid waste haulers. The details of six state programs are provided below. For comparative purposes, their principal provisions, along with those of the Maryland and Massachusetts programs, are summarized in Table 2.

Michigan -- In the provisions of Act 136, Public Acts of 1969, Michigan has one of the most statutorily well-defined scavenger licensing systems.

Section 5 requires posting of a $15,000 to $30,000 surety bond with all license applications, the bond serving to indemnify the state for elimination of pollution resulting from improper disposal of industrial waste by the licensee.

Section 7(1) provides for inspection of all trucks engaged in liquid waste hauling.

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[127] Several states have the authority to establish licensing systems should they so desire. For example, Rule 200.4 of the Texas Water Quality Board indicates that the Board, from time to time and as circumstances may dictate, will establish regulations to govern the collection, handling, transportation, storage, treatment and disposal of particular types of wastes.

Table 2. SUMMARY OF STATE SCAVENGER LICENSING LAWS

State	Fee	Cumulative Reporting	Trip Records	Double Signature	Performance Bond	Disposal to Licensed Haulers Only	Permit Length
California	$10 plus truck fees	records subject to inspection	yes	yes	no	yes	1 year
Connecticut	$5	quarterly	n.a.*	n.a.	no	yes	1 year
Delaware	no	no	no	no	n.a.	n.a.	1 year
Maryland	no	no	no	no	no	no	5 year
Massachusetts	$50 (renewal $10)	monthly	yes	no	no	yes	1 year
Michigan	$100 plus truck fees	yes -- intervals, not specified	yes	no	yes	n.a.	1 year
New York	$25	annual	no	no	no	no	1 year
Oklahoma	$25	monthly	n.a.	n.a.	no	yes	indefinite

* n.a. denotes that information could not be ascertained from material provided by state.

Section 8(4) states that licensees are not to dispose of wastes onto the ground except at state approved sites, though used oil may be used for dust control. No waste is to be placed in a location where it could enter any surface or ground water.

Section 10 provides that violations of the Act's provisions are punishable by fine, jail and license revocation.

Enactment of Act 136 was prompted by approximately a dozen serious industrial waste dumping incidents in Detroit in a short period in 1969. Most of the industrial waste dumped was oil.

Industrial waste haulers must apply for annual licenses. The annual licensing fee is $100 and their waste hauling vehicles must be licensed annually at a fee of $10 apiece.

Approximately 100 industrial waste haulers and 350 vehicles have been licensed to date. Approximately 15-20 per cent of those licensed haul used oil exclusively and 50-60 per cent haul used oil along with other industrial wastes.

To date, one hauling license has been revoked. It is expected that the bond of the licensee whose license has been revoked will be forfeited to cover the costs to the state of disposing of the 100,000 gallons of industrial waste gathered by the collector. It is anticipated that the collector's $15,000 bond will not be sufficient to cover the entire cost to the state. Otherwise, the state has not claimed any performance bonds, though it has threatened to do so on "a couple of occasions." The threat of seizure has usually been sufficient to convince waste haulers to abate their pollution.

The licensing program is the responsibility of the Oil and Hazardous Materials Control Section of the Michigan Department of Natural Resources. The industrial waste program is one of several programs administered by the section. In the program's first year, oversight was by one individual on a part-time basis. One person had a full-time responsibility during the program's second year. At the present time, oversight is divided among the nine members of the section on a geographic basis. The staff commitment is equivalent approximately to two full-time administrative positions (at $15,000 each) and one secretarial position.

Record-keeping is required on the part of both industrial waste generators and industrial waste collectors. To date, review of records has been on a "spot-check" basis, though this year each of the nine staff members will begin to tabulate the records for his district as part of a comprehensive record review program.

Road oiling is one of the permitted uses of used oil. There have been about a half-dozen complaints received each summer of excessive road oiling (reports of oil in ditches and watercourses), but these are not regarded as significant. Plans are apparently underway to initiate new rerefining operations. There apparently is a trend away from road oiling towards other uses of used oil. Service stations have begun to sell their used oil.

The program is felt to be successful. Since its inception, random dumping has "totally ceased."[128]

California -- Division 7.5, Chapter 1 of the State Water Code governs transportation and disposal of liquid waste. This section was added to California's statutes in 1970 and regulations implementing it were issued in March 1972.

Liquid waste haulers must register with the state Water Resources Control Board and must provide information on planned disposal sites. The state board passes the application on to regional water quality control boards, which assure that the wastes being hauled are acceptable at the disposal sites sought for use. When the regional board approves the disposal sites, the forms are returned to the state board, which then issues stickers for applicants' vehicles. Registrants are subject to conditions, directions and orders established by the state board. Haulers must dispose of liquid waste in accordance with regional water quality control board regulations and at board-approved sites.

Registration is annual. The basic registration fee is $10, and a fee is assessed for each vehicle -- $15 for the first vehicle, $10 for the second through sixth vehicles and $5 for each remaining vehicle.

Liquid waste producers may only consign waste to registered liquid waste haulers. Hauling by non-registrants does not appear to be a problem. Registered haulers will usually report activity by non-registrants, and the non-registrants, who are generally just ignorant of the registration requirement, are then provided registration information by the state.

Haulers are required to keep trip records for each load of waste hauled, starting July 1, 1973. These forms are to be retained for one year and are to be available for state inspection. When a load is picked up at an industrial waste source, the trip record must be signed by both the generator and hauler of the waste, and when the waste is disposed, the disposal site operator must also sign the form. The state spot-checks these records.

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[128] Conversation and correspondence with representative, Oil and Hazardous Materials Control Section, Michigan Department of Natural Resources, September 1973, February 1974.

The state could not provide exact cost figures for administration of this program. At the state level, one-quarter of a professional person-year is required to administer this program, with secretarial assistance. Because the administrative burden for this program varies among regional boards, some boards may devote more time to it than others. For example, Los Angeles has over one-half of all the registered waste haulers. There are nine regional boards, and if we assume one professional administers the program in each on a quarter-time basis, assisted by a quarter-time secretary, then the total cost to the state for the program (assuming engineers' salaries of $18,000 and secretarial salaries of $8,000) is $65,000. Those responsible for administering the program also conduct inspections incident to it.

375 companies and over 1000 vehicles have been registered to date. No permits have as yet been revoked, though the state has threatened revocation on several occasions to assure compliance with registration conditions. The state could not provide any information on the proportion of the 375 registrants hauling used oil.

The state reports that it receives few reports of illegal dumping. Since the licensing program functions to inform individuals of legal disposal sites, it is felt that dumping has likely decreased because of a wider knowledge of legal disposal site availability.

These provisions do not apply to persons hauling used oil from service stations to industrial facilities for reuse. Liquid waste haulers are only required to obtain registration if liquid waste is hauled by a vehicle and is to be discarded.[129]

New York -- Section 27-0301 of New York's Environmental Conservation Law, effective January 1, 1972, provides for the registration of septic tank cleaners and industrial waste scavengers. Subpart 75-5 of the Department of Environmental Conservation's rules and regulations has been promulgated pursuant to rule-making authority granted in section 27-0301.

Permit applications must be submitted to regional departmental offices having jurisdiction over waste disposal areas to be used by applicants. Applicants must pay a $25 registration fee and must furnish information on their equipment and selected disposal sites. Each vehicle must carry a copy of the registration certificate,

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[129] Conversation and correspondence with representative, California State Water Resources Control Board, September 1973, February, 1974.

which must be presented to a state law enforcement officer upon demand. Registration numbers must be displayed on vehicle exteriors.

Registration duties at the nine regional offices are estimated to require one-quarter professional person-year and one-eighth secretarial person-year per office. Using a salary base of $17,000 (plus 25 per cent benefits) for professional staff and $8,000 for secretarial assistance, the total administrative cost of the program is approximately $57,000.

The program was established principally to control septic tank pumpers. Industrial waste management was only a secondary concern. Approximately 700 permits have been issued -- 600 to septic tank pumpers and 100 to industrial waste haulers. The state has been very successful in licensing septic tank pumpers and somewhat less successful in assuring that all industrial waste haulers are licensed. The state has found it easier to identify unlicensed septic tank pumpers than to identify unlicensed industrial waste haulers. The state believes, however, that it has succeeeded in licensing the larger industrial waste haulers, those accounting for perhaps 90 per cent of all industrial waste hauled.

Registrants are required to report annually indicating the number and types of installations emptied, the volume and nature of waste products disposed of, the place and manner in which waste was disposed, and any other information the state may require. Individual trip records are not required and the state generally does not audit the annual reports to assure their veracity.

Companies hauling their own waste for off-site disposal are not required to register under New York law, and industrial waste generators are not required to give their wastes only to licensed haulers.

Enforcement of the regulations is the responsibility of the Department's approximately 500 conservation officers, who have full police powers. The enforcement process is felt to be effective. The state has obtained "substantial" fines against unregistered septic tank cleaners and it is presently in the process of rescinding two registrations because of noncompliance with registration conditions.

Governor Malcolm Wilson, in his recent "State of the State" message, made mention of used oil management. The Department of Environmental Conservation is presently examining alternative management formulas which will be submitted for legislative consideration.[130]

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[130] Conversation with representative, Solid Waste Division, New York Department of Environmental Conservation, February 1974.

Connecticut -- Section 25-54th of Connecticut General Statutes Annotated requires those engaged in the used oil collection business to obtain permits from the state. Permits are issued annually and a fee of $5 is payable. The Commissioner of Environmental Protection must consult with those in the used oil disposal business concerning the most appropriate and best method of disposal. He must also conduct a research program relating to new and improved methods of used oil disposal.

Section 25-54th was enacted in 1969 following development of serious leaching problems from landfills where used oils had been disposed. At the present time, no landfilling of used oil is permitted. If used oil generated cannot be recycled in state, then it is shipped out of state for disposal.

Permit applicants must indicate the firms from which they plan to collect wastes, indicate the process generating the waste, the anticipated volume of waste, and the anticipated disposal method. Permittees are required to report similar information to the state on a quarterly basis.

At present, 35 waste haulers are licensed. The state could not provide administrative cost figures, but it does not appear to devote much effort to this program. The state nevertheless believes that the landfill leaching problem has been reduced in scope by over 50 per cent.

Consignment of industrial wastes to unlicensed waste haulers is forbidden. Department of Environmental Protection field personnel periodically monitor landfill records to assure that oily waste is not being landfilled. Road oiling is permitted under certain circumstances.[131]

Connecticut has not devoted any special effort to used oil disposal research and development. However, used oils are mentioned in the General Electric study for the state that provides the basis for a statewide refuse recycling program. In its report entitled "A Proposed Plan of Solid Waste Management for Connecticut," GE comments:

> Technology exists for reprocessing many waste oil types.

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[131] Conversation with representative, Water Compliance and Hazardous Substances Division, Connecticut Department of Environemtal Protection.

> License collectors and force generators to use licensed collectors through permit regulations. Collectors would be required to account for all collections and disposals identifying type and location of disposal utilized.[132]

In effect, GE recommends continuation of the existing program.

Oklahoma -- Section 505.1(b) of the Rules and Regulations of the Oklahoma Water Resources Board provides that any person hauling industrial waste for disposal purposes must secure a permit from the Board prior to undertaking such activity. Oklahoma law also makes it illegal for an industry to consign wastes to non-permitted waste haulers.

The permit program has been functioning for eighteen months. Seven haulers have been licensed to date and two applications are pending. The state was unable to provide cost figures for administration of this very small program.

A $25 filing fee must accompany permit applications. Permits are provided for an indefinite period. Licensees are required to report monthly sources of waste, amounts of waste collected, and disposal sites.[133]

Delaware -- Section 6023(d) of the Delaware code provides that no person may transport solid or liquid waste without a permit.

The Delaware waste oil hauler licensing program began about six years ago, in response to numerous occurrences of used oil dumping. The upsurge of dumping coincided approximately with IRS's promulgation of Revenue Ruling 68-108. Regulations for used oil hauler licensing were promulgated as water pollution control regulation No. 12 of 1968.

There is no fee charged for the annual permits. Fewer than ten are issued each year. Applicants for them must specify the number and size of their trucks and the location of their disposal site. Since there are no such disposal sites in Delaware, haulers must present a letter with their application from the out-of-state agency overseeing the disposal of their oil in other states.

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[132] General Electric Company Corporate Research and Development, "A Proposed Plan of Solid Waste Management for Connecticut," (1973) at 65.

[133] Conversation and correspondence with representative, Oklahoma Water Resources Board, September 1973, February 1974.

At the present time, Delaware imposes no recordkeeping requirements on haulers. In May 1973, public hearings were held on proposed amendments to the used oil regulation. These would have required oil distributors to maintain records of oil sales and to assume responsibility for the ultimate disposal of the used oil.

The state is presently in the process of attempting to cancel the license of one waste hauler operating in the state. Originally operating without a license, the hauler in question apparently did not paint his license number on the trucks he has operating in the state, a violation of the waste oil hauler regulations.

The present program is administered by the Water Resources section, Division of Environmental Control, Delaware Department of Natural Resources and Environmental Control. The administrative costs of this program are unknown, but as noted, the scope of the program is quite small.

The Water Resources section believes the program to be ineffective. In a survey of used oil generators 7-8 months ago, they found many unlicensed haulers operating. Many septic tank pumpers are believed to be hauling used oil. They have found considerable oil, origin unknown, in surface waters, they believe that much oil is illegally dumped on farmland, and they have learned that oil storage tanks in the state have been used as collection sites for used oil. The Division of Environmental Control has only five environmental protection officers to enforce air, water and solid waste laws, so little enforcement of the used oil hauler regulations is possible. The state believes that an effective program could be funded for $30,000-$40,000 annually.[134]

Other states' licensing systems -- Section 34A10-1.106 of South Dakota's solid waste regulations provides that hazardous and toxic wastes (those wastes that require special handling to avoid illness or injury to persons or damage to property) shall not be placed in any container for collection, transport, processing or disposal until the Department has approved the method of storage, transport, processing or disposal. Used oil is defined as a hazardous substance and toxic wastes are presently being developed.[135]

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[134]Conversation with representative, Water Resources section, Division of Environmental Control, Delaware Department of Natural Resources, July 1, 1974.

[135]Letter to Environmental Law Institute from South Dakota Department of Environmental Protection, September 21, 1973.

The Indiana Stream Pollution Control Board proposes to draft a regulation in the near future which will deal with waste haulers within the state. The regulations will include a permit program.[136]

Surface Storage Regulations -- Used oil is stored in both tanks and open settling lagoons. Any person seeking to conduct a used oil reprocessing operation in eleven states would have to receive state approval for its lagoon or tank operations. Among the states requiring permits for the operation of surface storage facilities are Idaho, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Oklahoma, and Rhode Island.[137]

Solid Waste Disposal Regulations -- Twenty-four states have developed solid waste disposal laws and regulations. These are quite diverse but usually provide that liquid or hazardous wastes may not be disposed of in solid waste landfills except when special permission is granted by the state. Among the states having such requirements are Alabama, Arkansas, Connecticut, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota,

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[136] Letter to Environmental Law Institute from Indiana State Board of Health, October 16, 1973.

[137] Idaho: Rule X, section F, Idaho Rules and Regulations for the Establishment of ... Wastewater Treatment Requirements...(adopted by Board of Environmental Community Services, June 28, 1973); Kansas: Section 65-171d, Kansas Revised Statutes; Maine: Section 545, et seq., Maine Revised Statutes Annotated; Massachusetts: Regulation 3.5 of Massachusetts Water Pollution Control and Hazardous Waste Board Hazardous Waste Regulation; Michigan: Section 323.1151 et seq., Michigan Administrative Code; Minnesota: Water Pollution Control Commission Regulation WPC Y, Relating to Storage or Keeping of Oil and Other Liquid Substances (adopted June 26, 1964); Missouri: Section 2.01 of Hazardous Materials Storage Regulations adopted by the Missouri Clean Water Commission; Nebraska: Water Quality Standards Applicable to Nebraska Waters at 3 (adopted by Nebraska Department of Environmental Control, effective June 11, 1973); New Jersey: The state review projects connected with the storage of petroleum and hazardous materials, letter to Environmental Law Institute from New Jersey Department of Environmental Protection, November 2, 1973; Oklahoma: Section 6 of Water Resources Board's Technical Release 100-1 (adopted July 25, 1972); Rhode Island: Section 4, Rhode Island Department of Health Oil Pollution Control Rules and Regulations (adopted August 12, 1957).

Tennessee, Texas, Virginia, West Virginia, and Wisconsin.[138]

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[138] Alabama: Section III, Alabama Rules and Regulations for Solid Waste Management (adopted by State Board of Health, July 19, 1972); Arkansas: Section 6(f)(cc)(8), Arkansas Solid Waste Disposal Code; Connecticut: Title 19, section 19-524(n), Connecticut General Statutes Annotated (1973 supp.); Georgia: Chapter 391-1-1, section 391-1-1-.04, Rules of the Department of Natural Resources, Environmental Protection Division (effective December 12, 1972); Idaho: Part II, section 2.19, Idaho State Board of Environmental and Community Services, Solid Waste Management Regulations and Standards (adopted June 28, 1973); Illinois: Chapter 7, part III, Rule 310(6), Illinois Pollution Control Board Solid Waste Rules and Regulations (effective July 27, 1973); Kentucky: Department of Health Regulation SW 2, part 7(8) (effective July 1, 1968); Louisiana: Chapter X, section 1052.1, 10.53.1, Louisiana State Board of Health Sanitary Code (adopted January 26, 1963); Maryland: See description in text above; Massachusetts: see description in text above; Michigan: See description in text above; also see 325.1105, section 10, Michigan Administrative Code; Nevada: Article 2, section 2.6.3. Nevada Board of Health Regulations Governing Solid Waste Management (adopted January 17, 1973); North Carolina: Section XI-H, North Carolina State Board of Health Rules and Regulations Providing Standards for Solid Waste Disposal (adopted March 11, 1971); North Dakota: Section 5.2.3, North Dakota State Department of Health Regulation No. 86; Ohio: Chapter HE-24, section HE-24-09(H), Ohio Sanitary Code; Oklahoma: Regulation 4, section 4.1.15, Rules and Regulations for the Collection and Disposal of Solid Waste and Setting Standards for Sanitary Landfills (adopted by State Board of Health, June 13, 1971) and Regulation 5.0, section 5.2 (adopted May 1973); Oregon: Chapter 340, section 62-015, Oregon Administrative Rules Compilation; South Carolina: PC-SW Regulation 2, section VIII, Department of Health and Environmental Control (adopted March 8, 1972); South Dakota: Chapter 34A10-1, section 34A10.1.115, State Department of Environmental Protection Solid Waste Rules (proposed); Tennessee: Regulation 6, section 6(c)(1)(j), Department of Public Health Regulations Governing...Solid Waste Processing and Disposal...(filed with Secretary of State, January 20, 1971); Texas: Section #-24, Department of Health Municipal Solid Waste Rules, Standards and Regulations (effective November 5, 1970); Virginia: Chapter XXVIII, part VI, Rules and Regulations of the Virginia Department of Health (effective April 1, 1971); Wisconsin: Chapter 51, section 51.07, section 51-10(3), Wisconsin Solid Waste Disposal Standards (adopted by the Wisconsin Natural Resources Board March 12, 1969).

States Having Comprehensive Oil Pollution Control Statutes

Nine states (in addition to Maryland and Massachusetts) have developed wide-ranging oil pollution control programs: Alaska, Connecticut, Florida, Maine, North Carolina, Oregon, Rhode Island, Virginia, Washington.[139] All are coastal states and the prime motivation for the development of oil pollution control laws is the prevention of oil pollution from ships and port facilities. The principal components of many laws include prohibition of oil discharges on land or in water except where such discharges have been approved by the state, controls on marine port facilities, the immediate reporting of spills, and the assessment of strict liability in the event of discharges. The laws described here are not directed specifically at used oil, but are aimed at the twin problems of accidental spillage of petroleum and the intentional dumping of oily bilge waters.

States with Few Statutory Provisions Concerned Explicitly with Oil Pollution

The states whose laws were just outlined are those which have devoted the greatest statutory concern to oil pollution. Other states have brief statutes or regulations pertaining to oil pollution, but they are not of sufficient detail to merit extended summary. Also omitted from the preceding section were state laws governing pollution control in oil fields.

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[139] Alaska: Section 46.03.740 et seq., Laws of Alaska; Connecticut: Section 25-44bb et seq., Connecticut General Statutes Annotated; Florida: Chapter 376 and section 403.088, Florida Statutes; Maine: Title 38, Subchapter 11-A, Maine Revised Statutes Annotated; North Carolina: Chapter 143, Article 53, General Statutes of North Carolina; Oregon: Sections 449.155-449.175 and section 449.993, Oregon Revised Statutes; Rhode Island: Title 46, sections 46-12-15, Rhode Island General Laws; Virginia: Article 8, sections 62.1-44.34:1 and 62.1-44.34:2 of the 1973 Amendments to the State Water Control Law; also Chapter 20, section 62.1-195 of the Code of Virginia; Washington: Sections 90.48.315 et seq., Revised Code of Washington.

All states have general prohibitions within their statutes against the discharge of polluting wastes into state waters, and all make mention of oil in their water quality standards. Many have developed oil spill contingency plans. These actions are not of sufficient importance in the used oil context to merit discussion.

STATE OIL CONTAINER LABELING LAWS

State labeling laws governing reprocessed oil can be divided into two categories:

1. Statutes specifying that purchasers of lubricating oil and other petroleum products shall not be deceived as to the nature, quality or identity of their petroleum product purchases;

2. Statutes stating that reprocessed lubricating oil must be labeled so as to disclose its previous use.

General Deception Statutes

Seventeen states presently have general petroleum product misbranding statutes.[140] As column 1 of Table 3 shows, most were enacted in the

[140] Arkansas: Title 41, section 41-1918 Arkansas Statutes 1964; Colorado: Chapter 100, section 100-2-16 Colorado Revised Statutes 1963; Connecticut: Title 14, chapter 250, section 14-342(a), Connecticut General Statutes 1958; Florida: Title 31, chapter 526, section 526.01(1), Florida Statutes Annotated 1972; Georgia: Title 73, section 73.222(A)(3) Code of Georgia; Maine: Title 10, chapter 307, section 1654 Maine Revised Statutes 1964; Maryland: Article 27, section 231(a) Annotated Code of Public General Laws of Maryland 1971; Michigan: Section 75.251(1), Michigan Compiled Laws Annotated 1968; Missouri: Title 26, chapter 414, section 414.150 Annotated Missouri Statutes; Nebraska: Chapter 66, section 66-318, Revised Statutes of Nebraska; New Jersey: Title 51, article 1, section 51:4-1, New Jersey Statutes 1970; New York: Article 26, section 391-a(1), McKinney's Consolidated Laws of New York Annotated 1968; Oklahoma: Title 52, chapter 7, section 391, Oklahoma Statutes 1969; Ohio: Title 37, section 3741.17 Ohio Revised Code annotated; South Carolina: Chapter 6, article 4, section 66-461, Code of Laws of South Carolina 1962; West Virginia: Chapter 47, article 10, section 47-10-1 West Virginia Code Annotated 1966.

Illinois once had a general deception law (chapter 104, section 15, Illinois Annotated Statutes 1935), but this was repealed in 1969.

1920's and 1930's. The provisions are fairly uniform and the Florida statute is typical:

> No person shall store, sell, offer, or expose for sale any liquid fuels, lubricating oils, greases, or other similar products in any manner whatsoever which may deceive or tend to deceive, or which has the effect of deceiving, the purchaser of said products as to the nature, quality, or quantity of the products so sold, exposed, or offered for sale.[141]

Such statutes arguably forbid sale of reprocessed oils not labeled as such; absent disclosure, purchasers of such products would likely mistake them for virgin lubricating oil.[142]

Disclosure Provisions Specific to Reprocessed Oil

Disclosure provisions specific to reprocessed oil are found in the laws of twenty states:[143] in seven states they supplement the general

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[141] Title 31, chapter 526, section 526.01(1), Florida Statutes Annotated 1972.

[142] See discussion, supra, note 68 in the text accompanying the Mohawk case.

[143] Alabama: Title 2, section 437(1)-(4), Code of Alabama (recompiled 1958); California: Division 8, chapter 7, article 4, section 20800 et seq., California Business and Professional Code; Colorado: Chapter 100, section 100-2-13, Colorado Revised Statutes 1963; Connecticut: Title 14, chapter 250, section 14-342(c), Connecticut General Statutes Annotated 1958; Florida: Title 31, chapter 526, section 526.01(2)(a)-(3), Florida Statutes Annotated 1972; Georgia: Title 73, section 73-222(4), Code of Georgia of 1933; Idaho: Title 37, section 37-2514 et seq., General Laws of Idaho Annotated 1964; Illinois: Chapter 104, section 101 et seq., Illinois Statutes Annotated (1973 pocket part); Indiana: Title 35, section 35-4016, Annotated Indiana Statutes 1969; Louisiana: Chapter 2, section 51-901, Louisiana Revised Statutes Annotated 1965; Maryland: Article 27, section 231(a), Annotated Code of Public General Laws of Maryland 1972; Massachusetts: Chapter 94, section 295F, Massachusetts General Laws Annotated 1972; Mississippi: Title 75, chapter 55, section 75-55-13 of Mississippi Code Annotated 1972; Missouri: Title 26, chapter 414, section 414.150(2), Annotated Missouri Statutes; Nevada: Section 590.060(4), Nevada Revised Statutes 1971; New Mexico: Chapter 65, section 65-6-12 et seq.; New York: Article 26, section 391-2(5), McKinney's Consolidated Laws of New York 1968; North Carolina: Chapter 1137, article 2A, section 119-13.1-13.3, General Statutes of North Carolina; Texas: Article 1106(b), Vernon's Annotated Public Code; Wisconsin: Title 16, chapter 168, section 168.14(1)-(2), Wisconsin Statutes Annotated 1957.

misbranding provisions described above while in thirteen others they stand alone.[144]

Column 2 of Table 3 traces the chronology of state labeling statutes specific to reprocessed oil. Most were enacted in the 1950's, at about the same time that the Federal Trade Commission was initiating much of its reprocessed oil regulatory action.

The state statutes are quite diverse. Table 4 (and its explanatory footnotes) summarizes their provisions. Sixteen states specify the language and lettering in which previous use disclosure must be made. Three states require previous use disclosure on containers' front panels. These latter state laws were enacted after promulgation of an FTC trade regulation ruling requiring front panel disclosure on all reprocessed oil sold in interstate commerce.

State Labeling Laws: Legal Challenges

State labeling laws have twice been challenged by oil reprocessors and have been upheld on both occasions.

In Paraco, Inc. et al v. Department of Agriculture, [145] an oil rerefiner challenged the application of California's reclaimed oil labeling requirements[146] to its product. In its complaint, Paraco argued that the California law was unconstitutional, because it was vague, uncertain and deprived the company of equal protection under the

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[144] Colorado, Connecticut, Florida, Georgia, Maryland, Missouri, New York. See notes 140 and 143 supra.

[145] 257 F.2d 981 (3rd Ct. of Appeal, Cal. 1953).

[146] Division 8, chapter 7, article 4, section 20800 et seq., California Business and Professional Code Annotated. These sections declare that:

> crankcase drainings, lube distillate or any other petroleum product shall not be sold for use as lubricating oil in an internal combustion engine unless free from water or suspended matter and possessing certain flash point ratings; that if lubricating oil sold has been previously used for lubrication of such engines, or gears or shafts attached thereto or for any lubricating use or has been rerun or filtered, redistilled or claimed the container shall be labeled "reclaimed motor oil" or "lubricating oil reclaimed" in red letters of specified type and size; that anyone who buys, sells or stores lubricating oil required to be so labeled shall keep records of purchases, sales and storage.

Table 3. CHRONOLOGY OF GENERAL AND SPECIFIC STATE OIL LABELING LEGISLATION

Period	General laws enacted	Specific laws enacted[a]
1925-1929	5	-
1930-1934	6	-
1935-1939	3	1
1940-1944	-	2
1945-1949	0	3
1950-1954	2	6
1955-1959	1	2
1960-1964	-	1
1965-1969	-	-
Date uncertain	-	5

[a]In instances where states have amended their specific labeling laws to incorporate new requirements, only the earliest enactments are included in the above chart.

law.[147] Paraco contended that because in the public mind "reclaimed" was synonomous with "inferior," the labeling requirement would unfairly demean its rerefined product that was equivalent or superior in quality to virgin lubricating oils.[148] Paraco maintained also that the labeling law, by adversely affecting its sales, "would result in the waste of a valuable asset and prevent conservation of limited underground petroleum stocks."[149]

The California Third District Court of Appeals upheld both the legality of the labeling statute and its applicability to rerefined products. The court stated that the public has a right to know what it is buying. The public's preference for virgin products might be "founded entirely upon prejudice, which, in turn is founded on ignorance;" nevertheless, because the public should not be led through the absence of labeling into buying something it does not desire, reprocessed lubricating products must be distinguished by labeling from virgin lubricating products.[150] The court, in its unanimous decision, did not address Paraco's resource conservation claims.

In Double Eagle Lubricants v. Texas,[151] the Double Eagle Refining Company sought an injunction against enforcement of Texas' labeling statute.[152] Double Eagle contended that the federal government had

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[147] Paraco, supra, note 145.

[148] Id. In this regard, it should be noted that the state could only enforce the labeling statute by checking Paraco's records, because it was impossible to determine by any test whether an oil was virgin stock or rerefined.

[149] Id.

[150] Id., at 985.

[151] 248 F. Supp. 515 (N.D. Texas, 1965).

[152] Article 1106(b) Vernon's Annotated Public Code:

> (b) No person, firm, association of persons or corporation shall sell or offer for sale as lubricating oil, any oil that has been theretofore used for purposes of lubrication, unless the said oil is sold as and labeled "Reconditioned Motor Oil." The words "Reconditioned Motor Oil" shall be plainly and legibly printed on each container, which said lettering shall be imprinted in two (2) places on the container or label in a manner that said lettering will appear both on the front and back surface of the container when displayed to the public in sale displays, and which said lettering shall be in letters of not less than three-sixteenth (3/16) of an inch in height and not less than one-sixteenth (1/16) of an inch in the width of each line used to form said letters.

Also see discussion in text accompanying notes 90-99.

Table 4. PROVISIONS OF STATE REPROCESSED OIL LABELING LAWS

State	A	B	C	D	E	F	G
Alabama		x		x			
California		x	x	x	x	x	x
Colorado		x					
Connecticut	x						
Florida			x	x			
Georgia		x		x			
Idaho		x					x
Illinois		x		x			
Indiana		x		x			
Louisiana		x		x			
Maryland	x						
Massachusetts		x					
Mississippi		x	x				
Missouri		x					
New Mexico		x			x	x	x
New York	x						
Nevada		x					
North Carolina		x				x	
Texas		x					
Wisconsin		x		x			

Code:

A Previous use disclosure required on containers. Specific words and letters not indicated.
B Previous use disclosure required on containers. Specific words and letters indicated.
C Previous use disclosure required on front panel containers.
D Previous use disclosure required in advertising.
E Record-keeping or invoice requirements.
F Minimum specification for reprocessed oil established.
G Bottle segregation required.

pre-empted the regulation of used oil labeling, so that state regulation could not be allowed to stand. Double Eagle also maintained that the Texas statute placed an undue burden on interstate commerce.

In upholding the legality of the Texas labeling law, the court reasoned as follows: in the area of federal-state jurisdiction covering the same subject matter, federal law is paramount if Congress had clearly indicated an intention to pre-empt the field.[153] No such clear statement of congressional intent is found in the Federal Trade Commission Act. Therefore, state laws providing for regulation of unfair or deceptive practices in commerce are valid unless they conflict so much in the same area with federal law that both cannot stand.[154] No conflict exists between the phraseology and intent of the Federal Trade Commission order and Texas law at issue in this case.[155] The Texas law, a valid exercise of the state's police power, is reasonable in its requirements. It incidentally affects but does not discriminate against interstate commerce.[156]

STATE PETROLEUM PRODUCT INSPECTION LAWS

Some states have extensive petroleum product inspection laws which are well-enforced, while others have good laws and slack enforcement, or no such laws at all. Approximately 25 of the 40 states having general petroleum product laws also have inspection statutes with references to lube oil quality control standards. The other 15 of the 40 have petroleum product laws with no provisions for lube oil or no provisions for product quality inspection. This legislation is sometimes found in penal codes, commerce statutes and public service commission mandates.

The lube oil inspection laws concern themselves with SAE viscosity classifications; testing generally conforms to ASTM methods. Performance tests are not conducted because of the considerable expense involved.

Alabama, California and Florida seem to have the best inspection systems. A description of their operations follows.

Alabama

Regulations providing quality control specifications for lube oils

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153 Double Eagle, supra, note 151 at 517.

154 Id. at 518.

155 Id.

156 Id. at 519.

were promulgated in 1973 by the State Board of Agriculture and Industries pursuant to statutory authority granted under Act No. 1403, Legislature of Alabama of 1971.

Each petroleum product brand marketed in Alabama must be registered annually with the state for a fee of $1. Registered products must conform to state quality specifications. In the case of lubricating oils, these standards relate solely to viscosity and sediment. To cover inspection and testing costs, fees are levied on petroleum products subject to inspection. For lubricating oils, the fee is 15 cents per gallon.

At the present time, the sampling program is not extensive; random sampling is undertaken however and complaints are investigated. The state is presently attempting to improve its inspection mechanism using the Florida system described below as a model.

As in all states conducting inspections, only bench tests are performed. Tests are conducted in accordance with ASTM methods to check conformance to SAE viscosity specifications.

California

The Petroleum Product Program lies within the jurisdiction of the Division of Measurement Standards of the Department of Agriculture. Laws relating to petroleum products date to the 1930's but quality control statutes were not enacted until 1962.

Standards for lube oils include viscosity, flash point, and water and suspended contaminants content.

The program, whose 1973 budget was $470,000, is self-financed. Each retailer of petroleum products must register annually at a cost of $2.50. Fees are also levied for the registration and testing of various petroleum products, though no registration is required of lube oil. These fees range from $50 to $100 for initial registration renewal. Samples are submitted with the registration fee.

California conducts extensive field investigations. Daily samples of virgin and rerefined lube oil, along with other petroleum products, are obtained from retail establishments throughout California and are tested in labs in Sacramento and Downey. Preliminary analyses are conducted in mobile labs.

Last year 16,000 establishments were inspected and 2,500 motor oil samples analyzed. 8,000 labeling corrections were ordered (for all products), 342 complaints investigated (15 regarding lube oil) and 188,000 gallons of petroleum products were removed from sale (of which only 12,000 were lube oil). These statistics indicate that

lube oil infractions were but a small proportion of all the violations reported, a finding consistent with information received from other states.

34 persons staff the program; 15 administrative personnel, 14 field investigators and 5 chemists. Initial equipment costs for the labs, established in 1930, were $50,000 per lab. Perhaps an additional $10,000 has been invested in new lube oil testing equipment in each lab.

Florida

A petroleum product inspection program is administered by the Florida Department of Agriculture and Consumer Services. Inspection fees and registration fees levied on certain petroleum products are paid into the general inspection trust fund in the state treasury, from which expenses incurred in administering the petroleum product inspection laws are paid. Registration and payment of an inspection fee for lube oil is not required. A recent budget for the program was $5.2 million dollars.

Limited gasoline and kerosene quality control laws have existed since 1919; the statutes were attended in 1959 to include antifreeze, brake fluid and lubricating oils. An improved inspection testing system was instituted in 1968 with computerization of the operation. When the improved inspection procedure was initiated a large proportion of the lube oils tested were found to be below SAE viscosity standards. However less than 5 per cent of the lube oil products on the market in Florida today are found to be substandard.

Routine inspection includes daily collection of field samples throughout the state. Authorized inspectors have access to all wholesale and retail petroleum product businesses. When a product is found to be mislabeled, i.e. not up to standard, a letter is sent to the offending distributor informing him of the violation and a 30 day period of stopped sale is imposed. If violations are not corrected within this period the product is confiscated and disposed of by the department. In fiscal year 1973, 2,157 different quarts of lubricants were tested; 2,062 were found to conform with inspection standards. 95 samples were found to be mislabeled and 95 lots were stop-saled.

The Division of Standards presently employs 143 persons, 41 in the lab and 102 in the field. Initial cost of the lube oil testing equipment was $30,000. A new lab is presently under construction. The estimated cost of the facility, a portion of which will be used for lube oil testing is $70,000.

SECTION IV

USED OIL DISPOSAL IN EUROPEAN NATIONS AND CANADA

INTRODUCTION

European nations, also faced with problems from the improper disposal of used oils, are developing a variety of approaches for addressing them. France and Italy encourage rerefining of waste oils by granting tax preferences for rerefined products. Two other countries, Germany and Denmark, have laws governing the collection and disposal of used oils. The Commission of the European Economic Community has proposed to the Council of Ministers of the E.E.C. a directive concerning disposal of used oils which, if adopted, would apply to all member nations of the Community. Bills are pending in France and the Netherlands to regulate the disposal of used oils.

This section describes the situations in these and other countries and the approaches for dealing with them. The policies which have emerged from these various approaches may be summarized as follows:

1. Autarchy (national self-sufficiency) in natural resource supplies: ability to satisfy at least part of demand for lubricating oils during periods of crisis in the Mideast (war, embargo, etc.).

2. Protection of the rerefining industry for social and economic reasons: job opportunities, wish not to lose capital invested in equipment.

3. Prevention of water and soil pollution from improper disposal of used oils, and of air pollution from improper burning of it.

4. Saving of foreign exchange otherwise spent for importation of foreign oil.

5. Ability of rerefineries to produce small amounts of special oils (white oils, for example) more readily than the large firms.

The section describes how these policies have been incorporated into provisions of law and how these laws have been implemented. The purpose of these descriptions is to provide points of departure for jurisdictions in the United States which choose to follow one approach or another or a combination of approaches. Those which seek to encourage rerefining of used oils by providing relief from the taxes on rerefined

products may refer to Italy and France. Those which would like a national or statewide system of collection and disposal, funded by those who use oil, may refer to the discussions of the 1968 German law, the Dutch bill and the proposed E.E.C. directive. Those which would prefer municipalities to assume the principal responsibility for used oil disposal may refer to the discussion of the Danish law and implementing regulations. In Belgium and Denmark the oil companies have made private agreements providing for used oil pick-up and disposal. Thus, the various existing ends of used oil policy and the means for attempting to reach them are outlined in this section as a basis for others to use in formulating policies (and laws to carry them out) appropriate to their circumstances.

THE FEDERAL REPUBLIC OF GERMANY

Introductory Summary

The history of used oil regulation in Germany shows that the country's policy has evolved through the following stages:

1935-1945	mandatory collection in support of a policy of autarchy
1945-1963	tax preferences and protective tariffs in order to conserve foreign exchange, support the small re-refining industry, and preserve a range of prices of certain goods
1963-1968	subsidies to the rerefining industry for the same reasons as granting tax preferences to rerefined products (above), and in order to help prevent water pollution
1968-present	industry-financed support of disposal by rerefining and incineration in order to achieve comprehensive environmental protection.

In 1964 the change from tax preferences and protective tariffs for rerefined products to a direct subsidy to rerefiners was one of form, not of substance. However, revenues spent for a direct subsidy are more apparent than revenues foregone for an indirect one, and by 1966 the attitude of the German Parliament became that the costs for disposing of used oils safely ought to be borne by those who cause the problem in the first place -- those who produce oil and those who use it.

The motive behind the 1968 Used Oil Statute was chiefly to protect water supplies from the improper disposal of used oils. But the policies of the past -- support of the rerefining industry, interest in encouraging a range of prices for petroleum goods, preference for conserving valuable resources and the money it takes to import them -- all these policies are continued by the system created by the 1968 law.

That system is fairly easy to summarize. All who import or produce certain lubricating oils (including rerefiners) in Germany pay a compensation fee of 7.50 Deutsche Mark (about $2.25) per 100 kilograms of product to the federal government in addition to the tax on mineral oils. This money goes into a special fund reserved for the support of the disposal of used oils by controlled incineration or rerefining, the two ways deemed safe by environmental and public health viewpoints in Germany.

Rerefining and incinerating enterprises under contract with the Federal Office for Trade and Industry are entitled to apply for payments to cover the costs of disposal not otherwise covered, e.g., by selling the rerefined products. Payments are made at standard rates, 12 DM for each 100 kilograms of waste oil which is rerefined, 10 DM for each 100 kilograms incinerated. It is assumed that rerefining yields 70 per cent of the used oil by weight, so the rerefiners' payments are made on the basis of figures for the weight of a month's rerefined products in the application. Incinerators are paid on the basis of how much of what they burn is oil. The Federal Office's lab analyzes the contents of special drip devices on a monthly basis and the proportion of the sample which is oil is the basis for figuring the weight of oil burned, for which payments can be made.

The obligations imposed on the disposal firms by their contracts are many. They must: 1) pick up all amounts of used oils over 200 liters in the district assigned to them; 2) do so at no charge to the user unless the oils contain more than 10 per cent foreign matter; 3) provide suitable containers for lesser amounts so they can be collected later; 4) keep records of their costs and make their books and other relevant information available to the Federal Office, or the auditors it appoints; 5) file their application for payments monthly; 6) maintain equipment specified by the Federal Office for purposes of checking their their output, the special drip devices mentioned above); 7) give notice of any rerefined products shipped to other member nations of the European Economic Community and repay any payments received for producing these products (this requirement was imposed by the E.E.C. to avoid favoring German rerefiners in violation of the Treaty of Rome); 8) give receipts for used oils collected which contain more than 10 per cent foreign matter.

Those who generate more than 500 liters of used oils containing more than 10 per cent of foreign matter (which is not picked up for free) must also keep records on how they dispose of the oil, so that it is possible to trace the chain of disposal from a source through collection to final disposition. The collectors, too, must keep similar records.

Since only lubricating oils subject to the mineral oil tax are also subject to the disposal fund compensation fee, the paperwork,

procedures and personnel for levying the fee are integrated almost completely with the payment of the mineral oil tax. This results in substantial savings of administrative costs.

The remainder of this subsection on the Federal Republic of Germany is divided into two parts: (1) explanations of some of the provisions of the 1968 Used Oil Statute and a discussion of their implementation which supplements that in Irwin & Burhenne, "A Model Waste Oil Disposal Program in the Federal Republic of Germany," 1 Ecology Law Quarterly 471 at 480-484; and (2) a history of used oil regulation and research in Germany from 1935-1968, including a legislative history of the 1968 law. Appendix D provides translations of the 1968 law and the regulations implementing it. Appendix E is a translation of the regulations implementing the 1963 law providing subsidies to rerefining enterprises. Appendix F is a pair of graphs showing motor oil sales and used oils.

Explanations of the 1968 Law and Its Implementation

The Definition of Used Oils in the 1968 Law -- It is important to understand that not everything which might fit within the general concept of "waste oil" is covered by the definition of "used oil" which may be disposed of with the assistance of the Reserve Fund in Germany. Although the terminology of petroleum products is not uniform throughout the world, either in technical literature or in commerce, it is possible to elaborate what the definition includes. This elaboration may help clarify the meaning of "used engine, machine, cooling and similar waste oil" contained in section 104(m)(1) of the Federal Water Pollution Control Act Amendment of 1972.

Section 3(2) of the Used Oil Statute provides that "used oils within the meaning of subsection 1 (which provides that those having more than 200 liters of used oils may demand their pick-up) are used mineral oils and used fluid mineral oil products [and] further[,] mineral oil-containing wastes from storage, business and transport receptacles."

Legislative History -- This definition received considerable attention in the Parliament's deliberations on the various used oil bills under consideration in 1968. The bill submitted by the government was phrased in terms of "wastes" and was designed to establish a record-keeping system to supervise the disposal of "used mineral oils and mineral oil products, further mineral oil-containing wastes from storage, business and transportation receptacles." The bill also provided that "other fluid or sludgy inflammable wastes" (e.g., solvents, ether, alcohol, benzene, lacquers, dyes) could be brought within the scope of the provisions by regulations "to the extent required for the protection of waterways." In its explanation of the bill, the government stated the definition encompassed the fluid substances

named in a 1965 report by the Battelle Institute -- oil wastes from motors, transmissions, machines, cylinders, axles, turbines, spindles, transformers, switches and cable insulation; dark oil and white oil; wastes from special gasolines and test gasolines; and from kerosene; oily bilge water; and mineral oil-containing wastes from containers, including oil and gas separators.

The government's bill was introduced in the Bundesrat. In accordance with its procedures, the Bundesrat responded with several suggestions for modifying the bill. Among the suggestions was one that the word "fluid" be inserted before the term "mineral oil products" in order to clarify what was meant (e.g., to make clear that road asphalt was not included). The government accepted this suggestion and added that the word "used" should be repeated before "fluid," so that the revised definition would read "used mineral oils and used, fluid mineral oil products, further mineral oil-containing wastes..."

In the Bundestag a bill had been introduced which defined "used oils and used oil-containing wastes" as all "lubricating oils and fluid as well as sludgy lubricating oil wastes containing a proportion of mineral oil of more than 40 per cent by weight." This definition was intended to exclude emulsions, for example, (in which the percentage of oil is usually about 10 per cent) as well as oil mixtures with large amounts of foreign substances which might be dangerous or difficult to remove. This bill provided for free pick-up of used oils and its drafters were concerned that a broader definition would unduly burden the disposal enterprises. They argued that free pick-up of mixtures containing less than 40 per cent oil was not necessary to prevent water pollution, since the water law prohibition against unauthorized discharges imposed a duty to dispose of such mixtures harmlessly, and that it would still be possible for persons having them to pay the disposal firms to pick them up. They argued further that those having a high proportion of non-oily wastes would derive an unjustified advantage (from free pick-up) over those who did not, even though all paid the same fee. (This bill provided for a fund supported by fees from those who acquire or possess lubricating oils and with whom used oils might collect.)

Later in 1968 a used oil bill drafted by the Association of German Industries was introduced which sought to define used oils as only those lubricating oils subject to the mineral oil tax (by no means all lubricating oils) and lubricating substance waste with more than 40 per cent lubricating oil by weight. Gas oil used as lubricants would have been excluded by this definition, for example.

On the recommendation of the Health Committee of the Bundestag, to which the used oils bills were referred for purposes of advising the Committee on Industry, the Committee on Industry recommended to the Bundestag that the bill be passed with the definition in the revised form in which it had come from the Bundesrat, i.e., in the form presently in the Used Oil Statute.

Definition of Mineral Oil -- An essay by K. K. Rumpf in the handbook Mineraloele und verwandte Produkte (Mineral Oils and Related Products) (1952) by Professor Dr. Carl Zerbe explains that the general concept "mineral oil" encompasses primarily petroleum, liquid condensations from natural gas, liquid or salve-like distillates or sediments of petroleum, and natural asphalt, and secondarily, distillates from lignite, bituminous slate, peat or hard coal. This description has been used by German officials to give content to the broad definition of used oils contained in section 3(2).

The definition in the law was intentionally drafted broadly in order that the law's purpose to protect water, soil and air could be realized as comprehensively as required and as economically as possible.

The obvious but crucial qualifications to add to this description is "as far as they have been used." This qualification means that petroleum, i.e., unrefined oil, is not covered by the definition since it is rarely the source of used oils. As a general rule it is products made from petroleum which are intended for use. Thus the oil from cleaning oil tankers is not covered by that part of the definition which reads "mineral oil-containing wastes from storage, business or transport receptacles," since the oil from which these wastes came was not used or intended for use. Nor does the definition cover oil wastes resulting from refining petroleum or cleaning drill rigs, drill holes, pipelines or raw oil transport containers.

Not entirely clear under this definition is when an oil is deemed ready for use. The oils used in the process of producing some lubricants could be seen as a raw material or as an end product ready for use in the production process.

The section 3(2) definition also emphasizes that mineral oil products must be fluid to be used oils. The line between fluid and solid mineral oil products was drawn to make the law practicable. Had this distinction not been made the entire range of solid bituminous substances would have been included, for example. Likewise, greases are excluded by this element of the definition.

In summary, the German law covers mineral oils, mineral oil products and wastes containing mineral oils which (1) have been used and (2) are fluid.

The Pick-Up of Amounts Less Than 200 Liters -- The Used Oil Statute provides that contractors must prepare for the later pick-up of amounts of used oils less than 200 liters, for example by leaving receptacles for persons in their districts who request them. This was provided in the law because the Parliament agreed with the experience of those who had disposed of used oil that it was inefficient to collect amounts less than 200 liters. The provision has not altogether answered the question of what those people who change their own motor oils should do with their used lube oils. Estimates in Germany vary on the number of people who actually do this: a survey conducted by the Esso Company reportedly showed that 15 per cent of all drivers changed their own oil, but officials of the Ministry of Economics estimate that only 1 per cent of all used motor oils generated in Germany results from these do-it-yourself changes.

Several cities in Germany have taken an initiative which offers one solution to the problem of preventing improper disposal in small quantities of used oil by self-changers. The City of Bonn, for example, has established four places where persons with small amounts of used oil may take it and dispose of it for free. Three of these four are open Monday through Friday from 7 a.m. to 5 p.m., and one operates during these hours on Mondays, Tuesdays, Wednesdays, and Fridays. One of them is open from Saturday morning at 8 a.m. until noon. The city has published and distributed posters informing its citizens as follows:

> To all users of oil and owners of cars: "A better quality of life" and "environmental protection" are requirements under wide discussion nowadays. They are, however, also the responsibility of the entire population.
>
> The harmless disposal of used oil belongs among the most important tasks of environmental protection. The infiltration of used oil into the sewer system endangers in the extreme our water supplies even though public opinion considers discharges of small amounts insignificant.
>
> Therefore you, too, can and must contribute to this special environmental protection. Give your used oil to the following small collection stations established by the city of Bonn:
>
> (The four locations and the times they are open are then listed).

Your used oil will be accepted without charge to you.

Your contributions to environmental protection and to your own safety costs you only a relatively small detour. It will be worth it to you for your good conscience.

One of Bonn's collection centers is near the municipal garbage incinerator. Between May and November 1971 approximately 40,000 liters of used oil was delivered here, both by private persons and commercial enterprises, in amounts up to 50 liters at one time, the maximum authorized by the city. At two of the other then-existing three facilities during the same period 400 and 500 liters respectively were delivered by private persons.

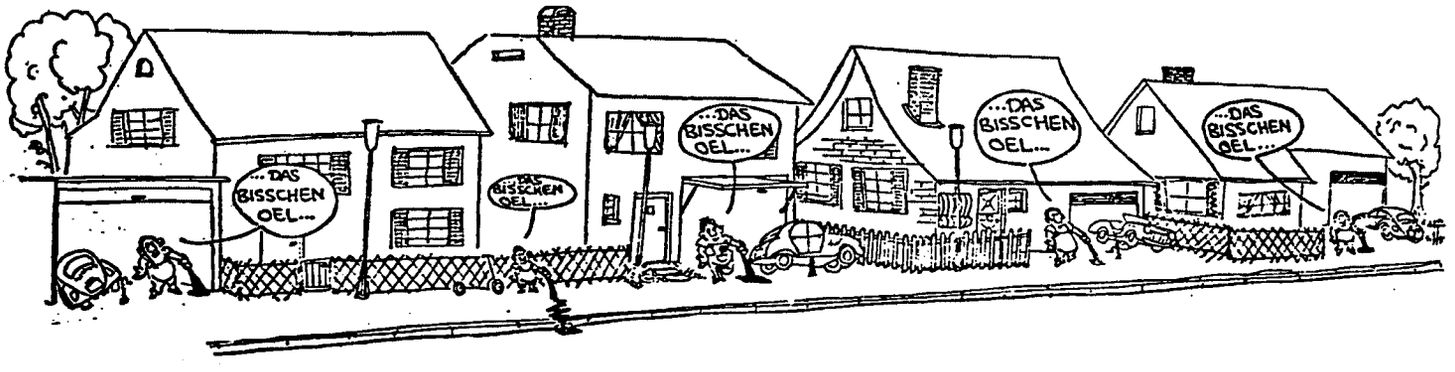
Several other German cities have developed similar programs: Kiel, Braunschweig, Augsburg, Wiesbaden, Muelheim an der Ruhr, Viersen, Witten, Würzburg, Bremerhaven.

The subject of what to do to control improper disposal by do-it-yourselfers was raised by several representatives in Parliament in written questions to the government. The representatives asked whether it might not be a good idea to amend the Used Oil Statute to provide that changes of oil could only be undertaken in gasoline stations and repair shops. The government responded that such a provision would be very difficult to enforce even with a thorough and expensive administrative effort. It would furthermore lead to the virtual elimination of less expensive lubricating oils from the market. This, the government pointed out, would chiefly affect car owners with less buying power.

The representatives also asked whether better control over improper disposal of used oil might not be achieved by limiting the sale of motor oils to only those firms designed to deal in oil and capable of handling used oils returned to them. In its answer the government pointed out that it had suggested this to representatives of the mineral oil industry in the preliminary discussion of how the Used Oil Statute should be drafted. The oil representatives indicated reluctance to accept a requirement that their dealers accept used oils other than their own. Nevertheless, the government stated, it would pursue again the possibility of persuading each gasoline station and repair shop to accept used oil whether or not in connection with the change of oils. It would also encourage other cities to adopt programs similar to Bonn's. Finally, it would talk to representatives of the department stores and discount stores which sell less expensive lubricating oils with the goal of achieving arrangements whereby these stores would make available to their customers for free the opportunity to have their oil changed at

Die Unverbesserlichen

Von Andreas Locher



WOCHENENDE. Sonntag. 2 Juni 1974

"Whaddya mean, environmental pollution??

That little bit of oil. . ."

certain places. Such stores in Germany already sell tires under an arrangement that a purchaser of them may have them installed at no cost by various service stations. One exemplary department store chain, Kaufhaus Karstadt, already enables its customers to give their used oils to its tire services.

Quality of Rerefined Petroleum Products -- In Germany there is no requirement that products made from used oils be so labeled. Except for about five to seven per cent of their products, rerefiners sell their base stocks to large wholesalers who add additives to them, package them, and market them. They are marketed by brand. These brands are tested by the auto companies who publish lists of the brands which will meet the requirements of their various engines.

Government officials in Germany are confident that the brands of rerefined oil are of the same quality as those of virgin oil and that a labeling requirement is unnecessary. They believe that such a requirement would be very damaging to the demand for such products, for psychological reasons. They point out that the large oil firms buy considerable quantities of rerefined base stocks and mix them with their virgin stocks before marketing the resulting lubricating oils.

A recently published comparison of the prices and classifications of lubricating oils by brand is reproduced below as Table 5.

Environmental Controls Governing Disposal Firms -- Environmental controls over rerefining and incinerating enterprises are imposed by state officials in Germany, either in permits to operate the business or in permits for the business to use waters. There are no national emission or effluent standards which the officials granting these permits must apply. There is also a June 1972 federal solid waste disposal law in Germany, administered, as are all such federal statutes, by state officials, which affects the firms' disposal of the end products from rerefining and incineration.

Various state officials have required almost all of the incinerating enterprises to install some kind of device to cool and clean the emissions from the burning of waste oils and other substances. Only two or three incinerating enterprises, however, have demonstrated to the Federal Office for Trade and Industry that they incur additional costs from these devices sufficient to warrant increased payments which are authorized for air pollution control measures by the payments guidelines. The Federal Office has no authority to ensure compliance with the conditions imposed by state officials in the operating permits of the disposing enterprises. If a state official

Table 5. PRICES AND CLASSIFICATIONS OF LUBRICATING OIL IN THE FEDERAL REPUBLIC OF GERMANY

Brand	Name of Oil	Viscosity	API Classification	DM/ Liter
AGIP	WOOMF. 1	10W-40	SD	7.00
AMOCO	SUPER PERMALUBE	20W-50	SD	6.90
ARAL	SUPER ELASTIC	10W-50	SE	7.00
	SUPER ELASTIC	20W-50	SE	7.00
	SUPER	10W-30	SE	6.40
	SPEZIAL	20, 30	SC	4.90
BP	SUPER VISCO-STATIC	10W-40	SE	6.60
	SUPER VISCO-STATIC	20W-50	SE	6.60
	ENERGOL HD	20W-20	SE	4.60
	ENERGOL HD	30	SE	4.60
CASTROL	GTX	10W-50	SE	7.50
	GT	20, 30	SE	5.60
ESSO	UNIFLOW	10W-50	SE	6.95
	EXTRA	10W-30	SE	6.55
	EXTRA	20W-20, 30	SD	4.85
HERTIE*	GLOBUS	20W-50	SD	2.50
JET	LTX 2050	10W-50	SE	6.40
	PREMIUM	20W-20, 30	SC	4.70
KARSTADT*	HD-SPEZIAL*	20W-50	SE	3.75
	HD-SUPER	20, 30	SE	2.50
KAUFHALLE*	HD-MOTOR-ÖL	20, 30	SC	2.25
KAUFHOF*	SUPER	20W-50	SD	3.75
MOBILOIL	SUPER	10W-50	SE	7.40
NECKERMANN*	HD-SUPER	20W-50	SD	3.00
	HD-SUPER	30	SD	2.00
QUELLE*	LANGZEIT MOTORÖL	10W-30	SC	4.25
	SPEZIAL MOTORÖL	10W-30	SC	3.25
SHELL	SUPER	10W-50	SE	6.95
	X-100	20, 30	SD	4.95
TEXACO	ULTRA	20W-50	SE	6.90
	URSA OIL E.D.	20, 30	SC	4.50
TOTAL	GTS	20W-50	SD	6.90
	SUPER	20, 30	SC	4.85
VEEDOL	SUPER	10W-40	SE	7.20
	SUPER	20W-50	SE	7.20

* These brands are sold by department stores or discount stores. All the brands on this table meet the military specification MIL-L-2104B (equivalent to API Service Classification CC).

complains to the Federal Office that it cannot achieve compliance however, the Federal Office must cease making payments to the enterprise in accordance with section 2(1) of the Used Oil Statute. So far state officials have closed only two disposal facilities, one in the City of Stuttgart and one in the Land of Hesse, for failure to comply with their environmental restrictions. Another enterprise, whose poor quality effluents came to the attention of the Federal Office, was given an extension of time by state officials with jurisdiction over it.

The rerefiners' solid wastes have come under increasingly strict controls for disposal. These wastes can be burned and neutralized and then disposed of in approved sanitary landfills. The wastes are then mixed with other wastes there. Some rerefiners have ovens which can burn their acid-clay wastes. Effective implementation of the June 1972 federal solid waste law in Germany, however, has not been achieved. Several instances of improper disposal of toxic wastes have come to public attention in the last year, culminating in a national scandal in the state of Hesse in the summer of 1973. A list of illegally disposed of substances discovered at 38 dumps in the Land of Hesse that summer, included not only oil wastes (e.g., sludges) which should have been collected for a fee under the Used Oil Statute but also wastes from some rerefiners. The public outcry at this scandal has made several state officials much stricter in controlling where rerefiners put their solid wastes, and many rerefiners are having difficulty finding acceptable disposal sites now. The federal office cooperates with state officials in this respect by requiring those enterprises suspected of improperly dumping their waste products to present along with their application for payments for disposal proof of where they have deposited their wastes, which proofs are then checked with the appropriate state officials.

Results of Implementing the Record-Keeping Requirements -- The record-keeping books required by section 6 and 7 of the Used Oil Statute should have been kept beginning January 1, 1972. No specific investigation has yet been made by the Ministry for Economic Affairs or the Federal Office for Trade and Industry of the effectiveness of these record-keeping requirements in controlling improper disposal of used oils which need not be picked up for free. But Ministry and Federal Office officials infer from the increasing amounts of used oil disposed of (while sales of lubricants remain about constant) that the record books plus increased environmental awareness are causing more non-rerefinable used oils to be burned.

Indeed, there is reason to believe that the capacity for incinerating non-rerefinable used oils is still not sufficient. As of the end of 1972 there were 19 incinerating enterprises, four of which also

performed rerefining. Their total capacity was approximately 184,000 tons. Usually an incinerating enterprise seeks a mix of used oils and other not so highly flammable wastes to burn, in a proportion of approximately 50-50, in order to keep burning temperatures and stack gas temperatures lower. Now that the incinerators have enough used oils there have not been repeated occurrences, as there were in the early days of the law's effectiveness, of large oil firms persuading their dealers to deliver their used oils to incinerating firms rather than to rerefining firms.

There is some feeling among German officials responsible for administering the Used Oil Statute that the provisions of section 6 of the law should be amended so that all persons having more than 200 liters of used oil be subject to the requirements to keep records and submit to government supervision. The provision is of course less necessary to assure proper disposal of good quality used oils than of difficult-to-dispose of waste oils, e.g., emulsions and sludges.

Not surprisingly, some states in Germany have been more conscientious in exercising their supervisory duties under sections 6 and 7 than other states. Likewise some states say they do more than they actually do. The state of Northrhine Westphalia, which includes one of Germany's most heavily industrialized areas, has been quite energetic in following the chain of disposal in accordance with the second implementing regulation (Appendix 3 of the 1972 report to the German Parliament which is Appendix D of this report.) Likewise Bavaria's efficient administrative system has performed the supervisory responsibilities of the law effectively. Rural states, in which used oil disposal is less of a problem, have not been as concerned with careful supervision in accordance with the Used Oil Statute.

The Ministry of Economics has no present plans to suggest to the Parliament that amendments be made to sections 6 and 7 of the statute concerning supervisory duties. The official chiefly responsible in the ministry feels that both state administrative capacity and the economy affected by the statute itself can be overloaded by being too perfectionist in prescribing supervisory requirements. He points out that the regulations provide that wastes with more than 5 per cent oil count toward the maximum of 500 kilograms of oil wastes which may be disposed of without keeping the records required. Practically all firms which use oil at all will arrive at that figure quickly. Experience will indicate whether it is advisable to lower the 500 kilogram figure or otherwise increase the supervisory provisions after control over the disposal of the large quantities of the emulsions and sludges works well.

Administrative Expenses of the Reserve Fund -- The administrative costs of implementing the Used Oil Statute are 1.95 per cent of the income to the reserve fund, that is, between 650,000 and 700,000 DM annually. Currently 19 persons are employed whose salaries

are paid from this fund. Many of them are involved with collecting the specimens of materials burned by the incinerators and checking them in the Federal Office's laboratory for the percentage of oil in order to determine how much oil was burned which is eligible to receive payments.

Legal challenges to the administration of the Used Oil Statute have been few. There have been some proceedings to determine whether certain goods are subject to the compensation fee or not. Recently the procedure for determining amounts of oil incinerated eligible to receive payments established by the contract between the federal office and the incinerating enterprises was upheld by a court. This was important since the contract fills many of the gaps in administration not made clear by the Used Oil Statute.

Disposal Firms' Districts, Competition and Costs -- It is important to observe that used oil disposal enterprises are distributed fairly evenly across Germany. This makes it possible for the Federal Office, in assigning enterprises mandatory collection districts, to divide the country into regions which include both metropolitan and rural areas. The Federal Office has arranged it so that every place in the country is included in the mandatory pick-up districts of at least two enterprises, in order to promote competition among the enterprises. The competition is reflected in the frequency of service which an enterprise can give to the persons possessing used oil and also in the prices it charges for picking up waste substances which are not entitled to free pick-up under the Used Oil Statute. Competition is also reflected in the amounts rerefiners are willing to pay to obtain good quality used oil in some instances. The collection of used oil itself is divided about equally between that performed by disposal firms themselves and that performed as a service for these firms by collection firms. Many rerefiners, for example, believe that it costs them less to pay for this service than it would to support a fleet of trucks and the personnel to operate them on their own.

It is difficult to compare the costs of collection and disposal among the various enterprises because they are not limited to picking up oil in their assigned mandatory pick-up districts. There are also trade-offs in costs: firms assigned large metropolitan areas, for example, find they must pay for good quality used oil, thereby offsetting their lower transportation costs due to shorter distances.

There is vigorous competition among rerefiners to get relatively clean used oil. This results in their willingness to pay for good used oil or to forego charging for the pick-up of used oil which contains more than 10 per cent foreign matter, the limit provided in the regulations above which they need not pick up without charging a fee. A practical difficulty with the 10 per cent limitation on foreign matter is that there is no simple, portable testing procedure which

collectors of used oil can use at the point of collection to determine the percentage of foreign matter.

Disposal Firms' "Uncovered Costs" for which They Receive Payments -- Section 2(1) of the Used Oil Statute states that firms amy receive continual payments for those costs not otherwise covered if they dispose of used oils without harm to water or soil and without causing air pollution. Section 2(2) No. 4 of the statute provides that the payments may not exceed the uncovered costs which arise on the average for the same kind of disposal enterprise.

There are two kinds of disposal methods which may receive payments: rerefining and incinerating. The uncovered costs of rerefining are figured as follows: the actual expenses of the business (including the costs of collection and transportation of the used oil) plus a salary for the owner of the enterprise plus 6 per cent as a return on the use of the owner's capital plus a "reasonable" profit minus revenues from the sale of the rerefined products. For incinerating enterprises uncovered costs are calculated in the same manner except there is no deduction for sales of products since there are no such products. There is no fixed percentage which is deemed a "reasonable" profit margin for these enterprises. Discussions in Germany are currently in progress about what constitutes a reasonable profit margin in public works contracts let by the government. Somewhere between 4 and 6 per cent of costs seems to be appropriate. The Federal Office for Trade and Industry may or may not follow this guideline when it is finally arrived at.

In order to determine the costs of the enterprises receiving payments the Ministry of Economics has annual audits, done by independent firms, of the books of the enterprises which perform 60 per cent of the rerefining and of the incinerating work. The results of these audits are weighted in order to arrive at average costs for each kind of disposal method. These costs obviously depend on the sizes of the mandatory collection districts assigned to the enterprises. During the audit the firms' collection costs are compared to their operating costs in order to determine whether the size of the districts are appropriate. That is, if a firm has high collection costs because its mandatory district is large but does not show reduced operating expenses as a result of economies of scale from obtaining more used oil to rerefine or burn, then the Federal Office for Trade and Industry will redefine the boundaries of its collection district to make it smaller in order that average costs for that kind of disposal method not be inflated by unnecessarily high collection costs.

Section 2(2) No. 3 states that the payment rates for individual disposal methods shall take into account and specially compensate costs caused by collection conditions of above average difficulty. This provision was intended to authorize extra payments for collection from islands and for collection by boat of oil bilge water from inland shipping.

The Compensation Fee - The goods it applies to -- Section 4 of the statute provides that the resources of the reserve fund shall be raised by a compensation fee of 7.50 DM per 100 kilograms of certain oils which are also subject to an oil tax. The following are goods for which the compensation fee must be paid: 1) lubricating oils and other heavy oils from section 27.10-C-III of the customs tariff schedule, that is, lubricating oils and other heavy oils

a) for processing by a supplementary procedure (e.g., vacuum distillation, redistillation, cracking, reforming, refining with selective solvents, polymerization, alkylization, isomerization, desulphurizing, deparafination, treating with concentrated sulphuric acid);
b) for chemical conversion by processes other than specified above;
c) for mixing by the importer with other oils or substances to make them thicker; and
d) for other uses.

Lubricating oils are defined in the customs tariff under heavy oils as oil or other preparations which, when distilled in accordance with ASTM D 86 up to 250° C, do not exceed 65 hundredths including distillation losses or with which the per centage of distillation at 250° cannot be determined by this method.

2) Gas oils for the functions described in 1)a), b) and d) above, to the extent used as lubricating oils. Gas oils are defined as those which when distilled in accordance with ASTM D 86 up to 350° C. exceed at least 85 hundredths including distillation losses.

3) Greases with their heavy oil components.

Legal characteristics of the compensation fee -- German officials emphasize that the money paid by producers or importers of lubricating oils which goes to the Used Oil Reserve Fund is neither a tax nor a user charge nor an assessment. In German law, user charges and assessments are only levied on those who benefit from the public facility or service (e.g., sewage treatment plant, waste removal) to which they must contribute. The producer of oil has no economic benefit from the resources of the Reserve Fund since payments are made to those who dispose of used oils, not to him.

The amounts paid by the oil producers are designated as a compensation fee to support a system of economic regulation. The characteristics of the fee are: that it is not intended for the revenues needed for covering the State's financial requirements, but rather for a definite purpose of economic management; that the receipts are not administered by finance officials but rather are collected in a special fund; that the collected receipts are all spent in the granting of assistance and are thus, except for the administrative expenses incurred, promptly disbursed. This last mentioned characteristic is the so-called equalization principle, i.e., the correlation between imposing burdens and granting benefits. This principle is the crucial distinguishing

factor separating these fees from taxes.

Thus, the fee is a form of self-help compelled from the industry for the benefit of the industry. The state levies the fee not for itself but only as an intermediary. It makes payments within the same circumscribed industrial sector as is subject to the fee (in this case the oil industry, in which the refineries are those burdened and the used oil disposers are those benefitted).

Such fees are based on the article of the German constitution which authorizes laws which intervene in economic life to order and manage it. They are an instrument of state control of the economy designed to equalize the market situation to the burden of a temporarily advantaged sector and to the benefit of a temporarily disadvantaged sector which function by imposing fees on the one side and granting assistance to the other side. They are most common in the agriculture and food sectors of the economy. For example, the German grain law provides for a fee which may be levied in order to generate funds to equalize freight costs (and thus grain prices) for producers distant from shipping centers.

How the level of the compensation fee was determined -- During consideration of the bill which became the 1968 law the Ministry of Economics suggested to the Parliament that it be allowed to set the level of the compensation fee by regulation. This suggestion was not acceptable, however, so Ministerialrat F. Kruse proceeded to prepare a chart predicting the resources needed for the Reserve Fund and the level of compensation fee which would be required to generate these resources.

Based on his experience in administering the subsidy paid for rerefining used oils, Kruse projected for three years the amount of consumption of lubricants, the amount of used oil which would be eligible for payments for disposal under the bill (including a 15 per cent tolerance for foreign substances and excluding the wastes from tanks and separators and the amounts of used oil reused prior to disposal). He predicted approximately 40 per cent of the lubricants consumed would become used oils and of this amount he forecast that 65 per cent would be suitable for rerefining. These percentages were based on extrapolations from data accumulated during the 1960's.

Next Kruse calculated the costs of disposal, including collection and transportation. He estimated 9 DM per 100 kilograms for the incineration and 12 DM per 100 kilograms for rerefining. He included the costs of land disposal and burning it oneself in the predicted costs for incineration since there was no way to predict how much used oil would be disposed in these ways. Costs of administration were also included. Total costs were predicted to be 39,000,000 DM in 1969, the first year of operation, 40 million DM in 1970 and 41 million DM in 1971.

To figure the basis for the proposed compensation fee it was simply necessary to take the figure for total import and production of the

lubricating oils proposed to be subject to the fee and deduct from that amount lubricating fats (5 per cent) and the oils used as raw materials (for which the fees paid would be reimbursed)(15 per cent).

It then was simply necessary to multiply this remainder by a DM amount per 100 kilograms which would result in the DM amount for total projected expenses. An original suggestion of 5 DM was seen to be too little as a result of the later decision not to subject oil used as raw materials to the fee. 5.50 DM multiplied by the estimated remainder produced figures that were only about a million DM short per year. This shortage might not actually occur, Kruse suggested, since the costs for disposal would be reduced by 1.7 million annually if payments were made for disposal of used oil with only 10 per cent foreign matter, as was planned, rather than the 15 per cent contained in the prediction. And since figures weren't available on how much greases were produced or imported, no amounts were figured as subject to the fees; in fact the actual amounts might produce as much as another 1 million DM.

Contravening these possibilities which supported a suggested fee level of 5.50 DM per 100 kilograms lubricating oils were two unknowns. One, it was not clear as of the time Kruse prepared his prediction (September 6, 1968) whether it would be possible to collect the fees for the products in inventory on January 1, 1969, the first day of the proposed bill's projected effectiveness. The other unknown was whether the reuse of used oils by those who generate them for lower lubricating functions would decline below the projected levels, as it had tended to do in the late 1960's. If so, then there would be more used oils to dispose of than predicted without corresponding resources in the Fund.

In the course of legislative deliberations, it was decided that it would be administratively much easier and less expensive if only those lubricating oils already subject to the tax on mineral oils would be subject to the used oil compensation fee. The result of this decision was that the amount of oil subject to the fee was reduced, necessitating an increase in the amount of fee per 100 kilograms. This change coupled with the one suggested by the Ministry of Health -- namely, that not only used oils from lubricating oils be disposed of with the aid of the Reserve Fund, but all wastes containing mineral oils (e.g., including heating oil sludges) -- which increased the amount of oils to be disposed of, resulted in elevating the compensation fee rate to 7.50 DM per 100 kilograms. It was later decided that this could also be applied to inventory existing on January 1, 1969, a decision which assured the result that the Reserve Fund would have a sufficient extra amount in it at the beginning of its life to enable it to operate for several years without the need to request the Parliament to increase the rate of the compensation fee.

The Interpretation of "Business" for Purposes of Record-Keeping -- Section 6 provides that commercial and other economic enterprises must keep a record book for each business in which at least 500 kilograms of used oils not entitled to free pick-up accumulate for a year. Business is interpreted not to mean the legal entity, for example, a corporation or a partnership, but rather a business unit in the sense of having its own equipment and personnel. For example, a drilling unit of a company with its own equipment and operating personnel would be a business for purposes of Section 6(1). That unit would have to keep records of used oil generated if more than 500 kilograms were not entitled to free pick-up.

Officials Responsible Under State Law for Helping Administer the 1968 Law -- Section 6 and section 7 of the statute provide respectively that an "official responsible under a state law" may either approve centralized maintenance of records or exempt one from duty to keep records and that the official responsible under state law must be furnished with certain information. These officials named are quite uniform: for enterprises under the jurisdiction of a mining official, that mining official is the official responsible under state law for purposes of the Used Oil Statute; for other businesses the official responsible under state law is the local official authorized to grant permits for the use of state waters. Occasionally these latter enterprises have building officials or county supervisors as their named responsible state officials.

These same officials responsible under state law are charged with administering fines which result from the violations of regulations which are enumerated in section 10 of the statute.

Regulations Under the 1968 Law Applicable to Inland Shipping -- Section 8(2) of the Used Oil Statute authorizes the Federal Minister for Traffic to issue regulations in agreement with the Federal Minister for Health Affairs with provisions for inland waterway transportation concerning the collection of used oil from water craft, barges, etc. There are three sets of such regulations, one for the Rhine, one for the Mosel, and one for other inland waterways, issued on August 5, 1970, June 8, 1971, and March 3, 1971, respectively. These regulations are part of amendments to general regulations implementing federal laws governing inland waterways. With respect to used oil disposal they provide that authorized collection places are those listed in an appendix as duty-bound to collect as well as those authorized to collect by state officials with jurisdiction over the waterways. The regulations also provide that it is a violation of section 10(1) No. 5 of the Used Oil Statute to intentionally or negligently keep an oil record book improperly, fail to keep the oil record book on board, or fail to deliver oil wastes or liquid inflammables including waste waters containing oil.

Legislative History of Used Oil Provisions

1934-1945 -- In 1935 a law was passed obligating all rerefineries to file reports. In conjunction with this, a duty was imposed that all used motor oils be delivered to the rerefiners. The rerefiners picked up from all gas stations and repair shops, though not from self-changers or users of small amounts or from industry (which either burned its used oils or otherwise disposed of them). This system, which was instituted as part of a policy of autarchy, also had a beneficial effect in limiting water pollution - approximately 40 per cent of the used lubricating oils generated at that time were collected and rerefined. (The Germans imposed the same requirements in Poland, Norway and the areas which are now part of the German Democratic Republic. Reportedly it still exists in these countries.)

Post World War II Until 1963 -- After World War II, the support of collecting and rerefining used oils was continued. Lubricating oils made from used oils received a mineral tax preference of 13 DM per 100 kilograms. In addition rerefined lubricating oils were protected by provisions of the customs law: imported petroleum was subject to a duty of 12.50 DM per 100 kilograms, while the duties on imported virgin lubricating oils ranged from 12.90-22.50 DM per 100 kilograms. The duty on imported rerefined products was 25.90 DM per 100 kilograms. This latter provision was justified as necessary "to keep domestic rerefining of used oils profitable." With the support of these provisions the rerefiners - which were all small - were able to increase their collection of used oils from 37,000 to 123,000 tons between 1953 and 1963. That represented an increase of from 20 per cent to 34 per cent of the used motor oils.

Germany was obligated to dismantle these tax advantages and customs protections in accordance with an agreement to alter the provisions governing the taxation of oil which all the signatory nations of the European Economic Community accepted.

December 1963 Law Enacting Subsidies for Rerefining -- This alteration was accomplished as part of a law passed by the Parliament in December 1963 reforming several provisions concerning taxes and customs. However, on the initiative of the Finance Committee of the Bundestag, the following compensatory provision was added as an amendment to the bill prepared by the executive branch: "Enterprises located in the Federal Republic which paid taxes for lubricating oils in accordance with section 2(1) No. 1 of the Mineral Oil Tax Law in 1966, may receive, upon application, a temporary subsidy for lubricating oils (rerefined products) which they produce from used oils generated and collected in the Federal Republic and ship from their firm...The temporary subsidy for lubricating oils [which were defined as the heavy oils enumerated in the customs tariff] which are shipped from the firms in the years 1964 and 1965 is 22.90 DM per 100 kilograms." The new section provided that no subsidy

be paid for lubricating oils not subject to the Mineral Oil Tax as a result of other sections of the revised Mineral Oil Tax Law and authorized the Minister of Finance to adopt regulations governing the procedures for implementing the new section. (See Appendix E .)

In explaining the new section the Finance Committee stated that it had thoroughly discussed the business and political economy issues raised by the bill for the small enterprises currently rerefining used oils. "The existence of these firms would be threatened if their products, which are more expensive to produce, are subject to the same tax as fresh oils. If these enterprises close, a possibility is lost for the disposal of used oils which is important to our political economy."

The Finance Committee also called on the executive branch to "investigate the situation and cost structure of the field of collecting and rerefining used oil and to suggest to the Parliament by June 30, 1965 new provisions which promote the collection, rerefining or disposal of such oils in the interest of protecting waterways, ground water and soil."

Amendment of the 1963 Law in Response to E.E.C. Objections, April 1964 -- This subsidy provision provoked objections from the Commission of the European Economic Community and from the other member nations. They argued that the payment of such a subsidy for rerefined products exported from Germany was a kind of export subsidy which contravened the Treaty of Rome that is the basis for the E.E.C. The Parliament reacted promptly, in March 1964, by considering a bill which would have prohibited the export of rerefined products to member nations of the E.E.C. The Finance Committee decided, however, that rather than such a prohibition it would be consonant with the Treaty of Rome and consistent with the Committee's goals in adopting the subsidy if payments made for rerefined products which were exported to the E.E.C. nations were repaid by the rerefiner. Such a bill became law in April 1964.

The regulations adopted to implement the December 1963 subsidy provisions, as amended, are included as Appendix E of this subsection.

The first report to the Parliament by the Ministry of Economics, June 1965 -- The report called for by June 1965 was submitted punctually. Since the Parliament had already extended the subsidy provisions for another year, however, the report provided considerable information about the country's used oil situation (although not about the cost structure of collection and rerefining) but postponed any specific recommendations to the Parliament. The apparent reason for the extension and postponement was the expectation that the Commission of the European Economic Community would propose used oil regulations for all the Common Market nations.

The 1965 report was based on one prepared by the Battelle Institute in Frankfurt under contract with the Ministry of Economics. It stated that of the 750,000 tons of lubricants sold in 1963, 55 per cent was consumed so the consistency and distribution of any wastes offered were no practical threat of water or soil pollution. Of the remaining 345,000 tons, 30 per cent was re-used for other lubricating purposes without generating significant wastes, 30 per cent was burned and 33-35 per cent was collected and rerefined.

Thus, only 8-10 per cent of the lubricants not fully consumed in their first use presented - to the extent not properly disposed of on land - a continual threat to water and soil. Nevertheless, this amounted to approximately 35,000 tons a year. How much of this actually ended up in the nation's waterways could not be definitely determined, the report stated. But some indications were given by the results of an investigation conducted by the state of Northrhine-Westphalia of the pollution of the Rhine in that state. Within the boundaries of that state alone 10,000 tons of oil ended up in the Rhine. Almost all of it flowed in via the tributaries. In addition shipping on the Rhine itself contributed approximately 8,000 tons annually of used oils, comprised of up to 70 per cent fuels. This latter figure would be 3,000 tons higher but for the work of a state-supported public corporation which collected oils from the ships and took them to rerefiners. "These figures show," the report stated, "to what extent the Rhine has become a kind of collection sewer for the used oils from many individual disposal sites and to what extent the surface waters which are being increasingly used for water supply are endangered."

The Battelle report had concluded that an altogether satisfactory disposal of all used oils not heretofore collected would be practically no problem in a few years. The Ministry of Economics considered this a reasonable view, given that the rerefiners were expanding their collecting capacity with the support of the federal subsidies, that oil users were delivering more used oils or disposing of them themselves and that the states' water pollution control officials were having more success in preventing danger from used oils. The Ministry nevertheless concluded that the 35,000 tons of used oil improperly disposed of should be brought under control as quickly and completely as possible "to prevent a danger to soil and water." It also suggested a long-range goal that the federal budget should not be burdened with the costs of harmless disposal of used oil; rather, users of oil should be. In order to avoid sudden changes in the business conditions of the rerefiners, this conversion should occur gradually, beginning with a reduction in the subsidy effective January 1, 1967, the report concluded.

(The following is a summary of some of the technical information contained in the Battelle Institute's report to the Ministry).

In Germany, according to the Battelle Institute's 1965 report, somewhat more than one-half of the wastes generated by the use of lubricants and mineral oil solvents or cleaning agents collects at gas stations and repair shops. The rest is distributed among countless sources. In consistency - the most important factor in their disposal - 80-90 per cent of these used oils (including foreign matter) were liquid, 5-15 per cent were in the form of sludge, and 5-10 per cent were more or less solid. The amount of foreign matter (also important to disposal possibilities and consisting of water, metal rubbings, dust, sand, etc.) in each of these categories varied greatly. The report foresaw only a slight increase in the amount of liquid waste oils in the coming years, but more liquid/sludge wastes from cleaning oil and gas separators and tanks. There were, the report's summary concluded, no technical limits preventing harmless disposal of used oils: there are several means of disposal for each waste product. But in some cases disposal entailed high costs. Thus the most economic solution can only be determined for individual situations.

The section of the report dealing with kinds of wastes and possibilities for their disposal pointed out that only general values can be given for the characteristics (per centage of oil, water, foreign matter, additives) of each general form of waste and that in practice the wastes are mixed in countless ways in the process of collection. Therefore the choice of which of six possible disposal methods to use must depend on the circumstances of the particular case. As possible disposal methods the report listed:

1. re-use for the same or inferior purposes
   a. without prior treatment [i.e., filtering or centrifuging], or
   b. after prior treatment;
2. regenerating [i.e., distilling, refining];
3. burning
   a. without prior treatment
   b. after prior treatment, or
   c. mixed with mineral oil-containing or other wastes or products or with the help of supporting fire;
4. depositing in places where danger to water and soil is not present and where it can be done in accord with legal provisions;
5. chemical binding;
6. biological degradation in relatively short time.

The first three of these -- reuse, regeneration and burning -- without expensive pretreatment were described as technically the least problematic and economically the most promising methods. 80-90 per cent

of all mineral oil-containing wastes could be taken care of in these ways. Pretreatment before burning was also technically possible, although it did increase costs and result in small amounts of a new waste -- sludge.

Depositing was seldom seen as practical due to lack of suitable land. Chemical binding involves transforming the oily wastes into products harmless to water by means of the so-called irreversible oil binders introduced in the mid-1960's for use in controlling oil spills. This means of disposal was seen as economic under special conditions: the treated wastes could be deposited in specially prepared ditches. The possibility of employing biological degradation was described as not yet sufficiently clear from a scientific viewpoint. In principle, mixtures containing small amounts of oil are rapidly degraded where the living conditions for micro-organisms are favorable, i.e., plenty of movement of water and oxygen.

The forms of oil wastes most difficult to dispose of are sludges and unseparated emulsions from metal-working. For the former the method used chiefly is burning in special ovens, although this method has problems with charging the ovens and detoxifying the emissions. Large garbage incinerators can also accommodate oil sludges. Unseparated emulsions normally have too much water content to make burning possible without an expensive supporting fire. Separation followed by burning the oil portion is more economic.

The second report to Parliament by the Ministry of Economics, 1966 -- Further investigation by the government revealed more information, some of which modified the thrust of the 1965 report. This information was brought out in answers to several questions put by representatives in the Bundestag in August 1966 and in a supplementary report to the Parliament dated October 27, 1966.

"Is the government aware," began the representatives' series of questions, "that the collection of used oils for regeneration or disposal has not kept pace with the increased amount of oils used thus increasing the danger to soil and water?" Yes, the government answered, it was aware. Lubricants sold had increased by 106,000 tons from 1963 to 1965 to a total of 844,000 tons, while in the same period the collection of used oils increased by 34,000 tons to 157,000 tons. To the extent used oils are not properly disposed of they are a continuous danger to water and land, the government responded.

"How much are the annual amounts of used oils disposed of in uncontrolled ways," was the second question. The answer: by statistical extension of the 1963 figure of 35,000 tons, in 1964, 46,000 tons and in 1965, 51,000 tons were disposed of by unknown means.

Three days after these answers were published a bill sponsored by Rep. Dr. Schmidt and 31 fellow members of the Bundestag was introduced to extend the subsidy for two more years (until December 31, 1968) and reduce it from 22.90 DM per 100 kilograms to 19.50 DM per 100 kilograms. In their justification of the bill the sponsors stated that only by means of the subsidy to private firms was the collection and regeneration of used oils - "a task of the highest significance to our health and political economic policies" - made possible. Since the E.E.C.'s efforts to harmonize member nations' provisions had not yet been successful, it was necessary to extend the temporary provisions in order not to interrupt the firm's work the sponsors stated. The reduction in the amount of the subsidy was, based on a check of the industry's economic development, acceptable as well as desirable for budgetary reasons.

Since this bill also reflected the views of the government, the Federal Minister of Economics stated at the conclusion of his October 1966 report that detailed recommendations from the government would be superfluous. The report did provide, however, the results of the investigation into the cost structure of collecting and regenerating used oil. By way of introduction, the report reiterated the amount of used oil collected (pointing out that 38% of the motor oils sold were collected, equivalent to the per centage collected by the system established in 1935). There was also a cautionary note in the introduction. An increase in the amount of used oils used for heating was problematic for several reasons. Insurance companies would not provide protection for enterprises heating with used oil because of the increased risks of fire and explosion. Further, the Federal Minister of Labor and Social Affairs and the local building and commerce officials (who are responsible for granting permits for many new enterprises to operate) raised objections to the use of used oils for heating instead of heating oils, on similar grounds, especially if proper burning facilities were not employed.

The investigation of costs for 1964 and 1965 was complicated by the fact that the tax preference was not replaced by the subsidy until May 1, 1964, and frequently the rerefineries did not keep records in a way that distinguished between these two aspects of 1964. Nevertheless, it was evident that without the 22.90 DM subsidy there would have been losses amounting to 17.75 DM per 100 kilograms for the rerefineries in the period in 1964 after the subsidy became effective.

The weighted average prices for rerefined products declined steadily during 1964-65. In 1962 the price was 60.94 DM per 100 kilograms; in 1963, 59.43 DM; and in 1964, between May and December, 58.64 DM. A comparison of the 1963 and 1964 prices shows a possible effect of the subsidy: a sinking of the average price of .79 DM per 100 kilograms, or 1.3%. This development in prices contrasted with the contrary tendencies of the fresh oil market. While the oil firms lowered the prices of goods which were in direct competition with

rerefined products, the prices of lubricating oils in the firms' own gas stations were raised significantly.

Average net receipts for rerefined products rose 1.86 DM per 100 kilograms between May 1 and December 31, 1964. Coupled with costs reduced by .03 DM the average profit from producing rerefined products was 1.89 DM per 100 kilograms. This development meant that if the subsidy were reduced by 1.90 DM to 21 DM per 100 kilograms the domestic market would be in the same situation as when tax preferences were granted (until April 30 1964) without on the average weakening the rerefiners' capacity to compete with the large oil firms. Such a reduced subsidy would still compensate on the average for the losses which the rerefiners would experience without it: in the best situation normal expenses would result in losses of 11.60 DM per 100 kilograms; in the worst, all expenses would result in a loss of 21.25 DM per 100 kilograms. The average loss would be 17.75 DM per 100 kilograms.

The government's October 1965 report also observed that collectors of used oils, e.g., gas stations, were receiving approximately 2.20 DM per 100 kilograms in payment for their waste oils. This subsidy of collection, the report said, was not tolerable for the federal budget in the long run and offered the possibility of a further reduction of the subsidy by 1.10 DM per 100 kilograms. Too rapid a removal of the "collection premium," however, would mean that used oils would no longer be separated by kinds for collection or kept free of avoidable wastes and water and that more users would dispose of their oils in uncontrolled ways leading to enhanced water pollution. The report recommended more efforts to increase public understanding of the dangers of oil pollution for land and water as a means of promoting care in sorting and storing of oils and eventually of giving up oil without expecting to be paid for it.

The report pointed out that the answers provided by the governments of several Länder to questions from their representatives indicated that not only was the disposal of used oils not systematically supervised but also that burning them in proper facilities was not even to a starting point. On the positive side, some rerefiners had committed themselves to picking up used oils whenever possible. The report recommended publicizing these pick-up points.

An appendix to the government's report of two graphs depicting amounts of oil sold and their ultimate fate is included in appendix E to this report.

The Two-Year Extension of Subsidies for Rerefining -- The controversy over the bill -- Rep. Dr. Schmidt's bill to extend the subsidy to rerefiners for two years and reduce its amount from 22.90 to 19.50 DM per 100 kilograms was referred to the Finance Committee, (of which Schmidt

was chairman) with the Budget Committee in an advisory role. These two committees disagreed, however. The Finance Committee reported the bill favorably as drafted. The Budget Committee, on the other hand, pointed out that the proposed 1967 budget contained no provision to cover the 26 million DM in expenditures which the bill would occasion. Further, the committee thought the amount was too much to be justified by keeping in business 20 middling firms with a total of 1,000 employees. As for the argument that the bill would contribute to water pollution control, that field was under the jurisdiction of the Länder and it was improper to burden the federal budget with expenditures for that purpose. The Budget Committee recommended to the Finance Committee that the bill be rejected and reported thus to the full Bundestag.

These contradictory reports caused the Bundestag to refer the bill back to the two committees for further deliberations.

The Finance Committee informed the Budget Committee that it was in sympathy with the tendency to eliminate subsidies, but that here an exception was in order. The subsidy only became necessary because the change in the tax preference for rerefined products and the customs duty on fresh oils had been required. It was also important for reasons of water pollution control. The Budget Committee was requested to support the bill in spite of some difficulties with where in the budget the expenditures would be covered.

The Budget Committee responded that the bill violated the principle that each person who caused water pollution was responsible to undertake control at his own expense. The Budget Committee wanted a phasing out of the subsidy, to be replaced by increasing the price of fresh oil to cover the costs of used oil collection and disposal. It voted to recommend to the Finance Committee that the subsidy be reduced from 22.90 DM per 100 kilograms to 17 DM per 100 kilograms for 1967 and 14 DM per 100 kilograms in 1968 (instead of to 19.50 for both years as the bill provided). For this amount the budget could cover the bill's expenses.

Reluctantly, but in order not to lose the whole bill, the Finance Committee decided to follow the Budget Committee's recommendations and to urge expeditious study of the problems involved, including the E.E.C.'s harmonizing efforts, so that a permanent approach could be adopted as soon as possible.

The debate on the bill in the Bundestag, which runs nine printed pages, was not without rancor. It was essentially a debate between the two committees. Finance argued that Budget's suggestion would save a mere three million DM. Budget said that many rerefiners operated efficiently enough that they didn't need more subsidy than would cover the average losses of 17.75 DM per 100 kilograms. Finance replied that some needed more, some needed less and the end result would be the same if one wished to make subsidy payments based on the

individual situations of each of twenty-odd rerefiners. It appeared that the government's proposed budget had not contained an entry to cover the extension of the subsidy its report supported because the Budget Division of the Ministry of Finance disagreed with the government position and had left the entry out intentionally. (The Division had likewise approached the Budget Committee in opposition to the Finance Committee's bill). Throughout the debate it was clear that all parties agreed that a permanent solution was urgently needed. One of the reasons it had proposed a reduction to 14 DM per 100 kilograms in 1968, Budget said, was to add an element of financial pressure toward achieving a solution. To this Finance answered that there was a strong risk several rerefineries would close, thereby reducing the amount of used oil collected and increasing the danger to public health.

The upshot was that the bill passed the Bundestag in the form suggested by the Budget Committee. The upper house, however, the Bundesrat, shared the views of the Finance Committee and requested a conference committee. The conference committee recommended the subsidy be extended for two years but reduced to 19.50 DM per 100 kilograms rerefined product, i.e., the original bill. The conference committee's recommendation was approved in both the Bundestag and the Bundesrat. The bill was signed into law in May 1967, effective retroactively to January 1, 1967.

The Third Report to the Parliament by the Ministry of Economics, April 1968 -- One of the August 1966 questions to the government posed by Rep. Dr. Schmidt and his colleagues requested it to update the February 1965 Battelle Institute report on the causes, sources and whereabouts of mineral oil-containing wastes "with the goal of reviewing and more closely determining for what reasons, in what kinds of uses, and how much used oils are not collected or properly disposed of." This question also requested the government to present the Parliament with suggestions for improving the situation when the results of the renewed investigation were available.

The Ministry of Economics, in concert with the Ministry of Health, presented this third report on April 5, 1968. The government's covering memorandum to the Parliament highlighted three conclusions to be drawn from the second round of research:

1) the frequently-suggested supposition that as a result of technical developments and sinking demand for lubricants the amounts of used oils would steadily decline was false: from 1963 to 1966 the amounts of used oils generated had increased by 35,000 tons to a total of approximately 370,000 tons and by 1970, 400,000 tons was anticipated;

2) by 1966 50,000 tons less used oil were burned or reused by industry than in 1963, perhaps because of stricter application of air pollution provisions. On the other hand, rerefining of collected used oils increased by 60,000 tons;

3) the amounts of used oils disposed of in uncontrolled ways increased by 6,000 tons to 39,000 tons. The question "why do these amounts exist and from what kinds of uses do they come" couldn't be answered, the report stated, despite specific questioning in more than 150 interviews, although for the most part they seemed attributable to oil emulsions (discharged into sewers) whose proper disposal was freighted with heavy costs, especially for small and medium sized businesses. The reasons for dumping used oils on land or discharging them into water ways were a) avoidance of the costs of collection and proper disposal, b) negligence and c) inadequate knowledge of proper procedures.

Fifty per cent of the 369,000 tons of used oils in 1966 were generated by traffic (45% from automobiles, 1% from trains and 4% from inland shipping). Thirty-five per cent came from industrial, commercial and craft industry sources, another 12% from the agricultural sector. Wastes from cleaning oil tanks and oil or gas separators amounted to 2% and 1% respectively. While, in 1963, Battelle estimated that 30% of the used oils were reused , 35% rerefined and 30% incinerated or burned for heat, these percentages for 1966 were 20%, 49% and 20% respectively. The dumping or discharging of the 39,000 tons constituted approximately 11% of the disposal, up 1% from 1963.

As mentioned, most of this 39,000 tons of used oil (4.6 per cent of all lubricants consumed) was in the form of water-soluble oil emulsions discharged to sewers by small and medium sized metal working plants without proper facilities. Improper disposal by do-it-yourself automobile oil changers, at construction sites and from inland ships could not be determined. Oily sludges and solid wastes normally found their way to public garbage dumps along with other industrial wastes. It was clear, according to the 1968 Battelle report, that primarily those oil wastes whose proper disposal is expensive or difficult or both are dumped on land or in water. Only large firms could afford to separate the oil from their used emulsions, for example, or centrifuge the oil from metal shavings.

The report included the results of a questionnaire requested by the Ministry. Gas stations and automotive repair shops were asked whether, if they had to pay to have their used oils collected from them, they could charge drivers .10 DM per liter of drained oil at the time of changing their oil. Industrial and commercial plants were asked if they would dispose of used oil themselves or continue to give it to collectors if it would cost .10 DM to dispose of each liter of oily

wastes. The gas stations and repair shops replied that to directly pass the costs of used oil disposal on to drivers was out of the question. They feared the loss of customers. Approximately 5 per cent stated that if such a regulation were adopted they would absorb the costs themselves. Even those who said they would continue to deliver their used oils for disposal assumed that a system which charged the user of oil for its pick up would lead to an increase in uncontrolled disposal of used oils. The breakdown of industrial and commercial response to what they would do if it cost .10 DM per liter to dispose of used oils:

-continue to deliver-	45%
-burn in an incinerator-	25%
-heat with it-	10%
-burn it in open-	10%
-re-use it until consumed-	5%
-dispose of it themselves by undefined means-	5%

The 1968 report concluded with a few predictions of trends in used oil generation and disposal. Consumption of lubricants had increased from 700,000 tons in 1963 to 845,000 in 1966. This rate of increase was not expected to continue, however, because of improvements in the quality of oil (longer intervals between changes), improved sealing (reducing leaks) and machine construction, and closer supervision of the use of lubricants by businesses. By 1970, Battelle estimated, 900,000 tons of lubricants would be sold. Taking the same per centage as 1966 of oil totally consumed in use (58%), approximately 380,000 tons of used oils would be generated in 1970, excluding the wastes from cleaning tanks and separators. Battelle foresaw an increase of these latter wastes since its questionnaire indicated that 25 per cent of all industrial and commercial plants had never cleaned their tanks or separators. Municipalities, furthermore, were making efforts to provide for more cleaning and for the disposal of the resulting wastes.

Developments in disposal would depend on the factors influencing each of the disposal methods. As of the time of the 1968 report, 82 per cent of the businesses polled said they had no problem disposing of their oily wastes. Whether this figure could continue depended on developments. Reuse of oils, for example, was hindered by the fact that tax-favored transformer oils could not be used where other higher-taxed oils would be. On the other hand reuse would increase as the difference between the price of new oils and the costs of collecting and pretreating used oils increased. Rerefining had increased 46 per cent between 1963 and 1966 (during a period when oil sales had increased 14 per cent), but predictions about whether this trend would continue were not possible due to the uncertainty of whether the subsidy payments

would be continued. Incineration or burning of used oils for heat was still too expensive (60-180 DM per ton) for most firms to consider this disposal method. More garbage incinerators were being constructed although even present capacity to burn used oils was not being utilized. The number of firms burning used oils for heat had declined since 1963, even though they had to pay no heating oil tax. Disposal of emulsions remained a problem, particularly for the small firms which couldn't afford devices to separate the oil from the water.

Three Bills Prepared in 1968 Concerning Used Oil Disposal -- In anticipation of the December 1968 expiration of the subsidy payment provisions, representatives of the federal ministries of economics and health began to collaborate with a special committee of the Landerarbeitsgemeinschaft Wasser, an "interstate" working group for water matters, late in 1967. Concurrently Representative Dr. Schmidt and his colleagues in the Interparlamentarische Arbeitsgemeinschaft, a kind of legislative council made up of representatives from all parties elected to state and federal parliaments, were working on a bill. The government sent its draft bill to the Bundesrat in June 1968 for its advisory comments prior to introducing it in the Bundestag. Rep. Dr. Schmidt's bill was introduced directly into the Bundestag in the same month and referred to the Committee for Economics and Commercial Affairs. The government's bill was forwarded to the Bundestag in September along with the Bundesrat's comments and the response of the government to the comments. In October, a bill prepared by the Association of German Industries was introduced by several representatives. The government's bill and the Association's bill were referred to the same committee in late October.

The government's bill -- This bill provided that all industrial and commercial enterprises where 500 kilograms or more of used mineral oils or mineral oil products or wastes would be generated annually and enterprises collecting such wastes would keep record books indicating kind, amoung and whereabouts of such wastes. It also provided that enterprises collecting oily wastes from others would not be licensed. A license was to be denied if the applicant could not demonstrate that he or someone to whom he would transfer the wastes could reuse, regenerate or dispose of them in a way that would cause no concern for water pollution. It was also to be denied if the applicant's proposed facilities or means of collection posed a threat of water pollution or if facts supported the assumption that the applicant or the manager of the personnel of the business was not sufficiently reliable. Conditions designed to protect waterways could be attached to a license and, once granted, the license could be revoked if these conditions were broken or if any of the reasons for denying the application subsequently appeared. The bill also provided that any person holding

a license or keeping a record book was required to provide to authorized officials all information needed to implement the law, especially concerning the supervision of the ultimate disposal of the wastes. The officials responsible for implementing the law would be named by the Länder. A special provision was included in the bill exempting shipping from the foregoing and authorizing regulations to be promulgated governing collection of oily wastes from ships at certain intervals and places. The bill concluded with provisions declaring penalties for revealing trade secrets learned in implementing the bill and for violating any of the duties set forth in it.

The explanation accompanying the government's bill promptly conceded that the bill contained no provision for financial support of harmless disposal by regeneration, incineration or otherwise, since there were no resources in the federal budget after 1968. Without these subsidies the government could not say how the problem of proper disposal was to be solved economically. The explanation stated that the purpose of the bill was to protect the waterways from pollution, since even a small amount of oil could make a surface or underground water supply unusable. The existing legal regime - the municipalities' sewer ordinances prescribing the disposal of oil; the industrial code authorizing conditions in the operating permits of businesses to prevent discharges of used oils; the water law's provisions authorizing officials to take action to halt discharges which are or may be polluting - offered recourse only against individual cases of pollution by businesses which generate them and no possibility to prevent collection techniques which threaten water pollution. The bill was designed to remedy these deficiencies.

The Bundesrat's first comment to the government on its draft bill was that it should investigate whether and to what extent its bill should be changed in light of Rep. Dr. Schmidt's bill or perhaps simply combined with it. "The commercial regulation foreseen in the draft bill should be supplemented by a financial regulation which provides payments for the harmless disposal of mineral oil-containing wastes and these provisions should take effect, if possible, at the same time." The Bundesrat suggested that businesses with small branches be allowed to apply for permission to keep the record books centrally so long as the necessary supervision of disposal was not hindered. The Bundesrat also suggested that it was not necessary to require enterprises collecting used oils from others to be licensed. Collectors had been in business without being licensed since 1935 and no difficulties were known which would justify the requirement of a personal license. The licensing requirement would involve an administrative burden and was contrary to the government's announced policy, enacted into law in the industrial code, that as few businesses as possible be regulated by licensing. The combination of record-keeping and the government's power to obtain information from those keeping records should be sufficient means to the bill's end of assuring that used oils be properly disposed of so as not to pose a threat of water pollution. Instead, suggested the Bundesrat,

one should simply be required to give notice that he collects and the government be authorized to order him to take measures to prevent water pollution or to prohibit him from collecting if he proves unreliable.

The government's response to the Bundesrat readily accepted the suggestion that it investigate aligning its bill with Rep. Dr. Schmidt's but disagreed with the suggestion that licensing collectors was unnecessary, particularly in light of the forthcoming expiration of the subsidy payments to rerefiners. A final decision would be made after the suggested investigation, the government concluded.

Representative Dr. Schmidt's bill -- Rep. Dr. Schmidt's bill was essentially what is now contained in the first four sections of the Law Concerning Measures to Assure the Disposal of Used Oils, a title taken from his bill. It provided for the creation of a reserve fund for the purpose of enabling payments to compensate the uncovered costs of firms disposing of used oils by harmless means. The fund was to be supported by an assessment on producers of 5 DM per 100 kilograms of lubricating oils. Pick-up of oil in amounts more than 200 liters was to be free. The bill provided that if used oils could be rerefined, that means of disposal should be preferred.

Since this bill - along with the committee's report - shows the most about what the Parliament had in mind in establishing this new system, it is important to relate its legislative history in some detail.

The explanation accompanying Rep. Dr. Schmidt's bill stated in its introduction that the subsidies in force until the end of December 1968 had been enacted for the threefold purpose of protecting waterways, encouraging a supply of lower-priced oil and supporting the rerefining industry. Since without these subsidies the rerefining firms couldn't exist, a new law was required so that the approximately 180,000 tons of used oils collected from nearly 280,000 sources would not be disposed of in an uncontrolled manner.

The premise [of the bill] is that the lubricating oil producing and using sector should solve the problem of waste oil disposal itself. Because of the strongly divergent interests of the parties an approach based on voluntary cooperation would not assure the required protection of the general public. Therefore a public arrangement should be created to intercede between those having used oils and the firms which dispose of them. The costs of used oil disposal should be borne by those who cause them by paying an assessment. This assessment constitutes no additional financial burden; rather it only reflects the costs which in any event occur from the use of lubricating oil. The assessments would support a capable network of firms who would have to pick up used oils subject to the assessment.

The bill's first section is identical to section 1(1)-(2) of the present law. The purpose was to create a special fund solely for the purposes of the law. Administration of the fund was assigned to an existing federal agency to avoid the costs of creating a new administrative organization. The costs of administration were specifically to be drawn from the fund in order not to burden the general budget.

Section 2 provided that payments could be made to commercial enterprises for costs they could not cover in disposing of used oils without damage to water, soil or air. In which cases firms disposed of oil without damage would be determined by regulations promulgated by the Minister of Economics. The bill's section 2 also provided that payments would be made in accordance with guidelines which were to fulfill certain legislative requirements. Most of the enumerated requirements were eventually incorporated in section 2(2), with the exception of the one providing that "rerefinable used oils shall be rerefined to the extent economically and technically reasonable." The present law's section 2(3) is verbatim what was in the bill's section 2(3).

The bill's explanation pointed out that the provisions of section 2 extended financial support of used oil disposal to other methods than rerefining. The regulations were designed to establish "binding standards" for what constituted harmless disposal. Of special significance was the explanation of the payments: The payments should not compensate the individual costs, not covered by profits, of collecting and harmlessly disposing of used oil, but rather the costs determined to be average for a kind of disposal method. If individual losses were compensated there would be no incentive for a firm using a certain disposal method to improve its efficiency. Furthermore, the administration of the fund would be overburdened if it could not work with generally applicable payment rates instead of concerning itself with the situations of individual firms. Thus, firms working at unfavorable above-average costs will not receive payments which assure their existence. Likewise only uncovered costs specifically from collecting and disposing of used oils were to be compensated, not costs from other branches of a firm. The bill's sponsors recognized that the payments would compensate to varying degrees the costs arising from varying collection and disposal circumstances, but suggested this could be equalized by considering carefully the distances assigned for mandatory free pick-up.

Section 3 of the Schmidt bill provided that pick-up of more than 200 liters would be free and preparation for pick-up of lesser amounts was required. But it defined the used oils to be picked-up as all lubricating oils and fluid or sludgy wastes with more than 40 per cent oil by weight. (See the discussion of this suggested definition under the section entitled "Definition of Used Oils" (p. 87 above.)

provided that only used oils subject to the assessment would be picked up for free. The pick-up of other substances would be in accordance with fee schedules filed with the federal agency administering the fund.

Section 4 was the funding provision for the fund created by section 1. It provided that those who produced or possessed lubricating oils or substances containing them and with whom used oils would be generated would pay a charge of 5 DM per 100 kilograms of the lubricating oils enumerated in section 27.10 C-III of the customs tariff schedule. This suggestion was based on the analogous and familiar concept in German water law that those benefitted by a public service should pay the assessments which support it. Since only those oils assessed would be collected gratuitously under section 3 of the bill, assessing only lubricating oils meant that heating oil, wastes or bilge oils would not be included. The rate of 5 DM per 100 kilograms was estimated "based on experience to date."

According to section 5 the assessment was to become due when oil was shipped from the firm or cleared customs after import. Levying the assessment on those who had used oil not only would cost more administratively but would give them reason to dispose of used oils improperly in order to avoid the assessment. The bill's sponsors pointed out that from the standpoint of the fund it made no difference who bore the weight of the assessment, but that "in accordance with experience it would follow the laws of the market and be passed on to the last user. The extent to which producers and importers were called on to make payments was based on a benefit to them from the fund which existed even if not mentioned explicitly, namely that the fund solves the problem of used oil disposal which is in fact caused by putting a dangerous good on the market. In addition reasonable considerations of the public interest indicate that any additional burden is neither inappropriate or intolerable."

Representative Stein's bill (Association of German Industries) -- The bill introduced in October 1968 by Rep. Stein and colleagues on behalf of the Association of German Industries paralleled Rep. Dr. Schmidt's bill in many respects and also incorporated sections of the government's bill. This bill offered three principal differences from the others: 1) it suggested that used oil be defined as only the lubricating oils from section 27.10-C-III of the customs tariff which have been used; 2) it suggested that payment rates be equal according to kind of used oil disposed of rather than kind of disposal method used; and 3) it suggested levying the assessment for used oils on gas stations and other enterprises required (by the bill) to keep records of the amounts of used oil generated if more than 500 kilograms annually, rather than on the producers or importers of fresh oil.

The Committee's Report on the 1968 Used Oil Statute -- The report of Rep. Opitz on behalf of the committee for Economics and Commercial Affairs refers to the reservations with which Parliament enacted the existing subsidy provisions and reports that the Budget Committee did not even respond to an inquiry whether the subsidy could be extended for a short time in order to avoid incurring the additional administrative expenses of converting to a new system which was likely to be replaced soon by one adopted by the European Economic Community.

The report indicated that the government had conferred with Rep. Dr. Schmidt and his colleagues and that all agreed, as did the Committee, that merely requiring possessors of used oils to keep records of their disposal would not be sufficient.

> What must be achieved is to assure that the disposal of used oils is accomplished without additional water and air pollution. If one possessor were burdened alone and directly with the cost of disposal a greater part of the used oils collected until now would be disposed of uncontrolled. Therefore the Committee has followed...[Rep. Dr. Schmidt's] bill to the extent that at the point of bringing fresh oil on the market there should be a fee for the harmless disposal of used oil.

The report stated it had decided in favor or fee at this level rather than the level suggested by the Association for reasons of administrative ease and efficiency, of having a procedure which would assure maximum protection of water quality, and of having a system which would not be difficult to coordinate with the forthcoming European Economic Community regulation.

The report enumerated other decisions the Committee made on the alternatives before it. Since the principal goal of the act was to assure disposal of used oil in order to protect water, chiefly ground water, the Committee could not agree with Rep. Dr. Schmidt and his colleagues that rerefining used oil should be treated preferentially. "On the contrary, the Committee believes that over the long run a strong price competition must develop between the individual methods of disposal in order that the payments and the compensation fee may be kept low." The Committee decided to limit the compensation fee to the lubricating oils subject to the mineral oil tax, in order that the administration of the fee could be based on the already existing tax procedures. But the definition of the used oils to be collected free of charge was not limited to the oils subject to the fee. Instead, a provision was added that used oils with more than a certain amount of wastes would not have to be gratuitously picked up.

As general observations the Committee noted that the payments should encourage the trend to disposal facilities with larger capacities in order to make possible continued observation of the air pollution from the disposal firms. It also stated that means for disposal of other wastes should not be prejudged in the light of the used oil statute. This law provides special measures to deal with the special dangers posed for water by used oil.

In its discussion of the individual provisions of the bill it reported, the Committee explained some of the other changes it made in the bills it considered. In section 2 the Committee added language authorizing public corporations and other non-commercial enterprises as a means of enabling facilities set up by municipal cooperatives, for example, to qualify if they disposed of oil properly. Although it dropped the language in Rep. Dr. Schmidt's bill specifically providing it, the Committee indicated in its discussion of section 2 that payments would be made to those who held contracts with the Federal Office for Trade and Industry obligating them to fulfill conditions derived from the Minister of Economics' guidelines in order to receive payments. Not included in a contractor's obligations, however, would be pumping out tanks, separators or ship bilges.

In its discussion of section 3 the Committee explained why it had followed the government's characterization of the means for funding the reserve fund rather than the suggestions contained in the bills proposed by Rep. Dr. Schmidt or Rep. Stein. Assessments implied a benefit to those assessed, it pointed out, and there is not a complete identity between those liable and those gaining the benefits from pick-up. (For a more complete description of the nature of the funding system, see the discussion of the Legal Characteristics of the Compensation Fee). The government's characterization of a "compensation fee" makes it clear that what is involved is a self-help mechanism operating within the oil producing and using sector of the economy.

The bills introduced by the representatives had included provisions authorizing payments to industrial firms which disposed of used oil harmlessly itself. The Committee decided not to follow this suggestion because: 1) the Committee on Health had argued persuasively that it was important to concentrate used oil disposal in large facilities, for health reasons; 2) the overall effectiveness of the system would not be able to be evaluated; and 3) the compensation fee would have to be raised significantly.

The Committee limited the record-keeping called for by section 6 to those persons having more than 500 kilograms of used oils which would not have to picked up for free in the belief that free pick up would remove any reason for people to dispose of their oils improperly. This would also limit the burden of keeping and checking records to about 20 per cent of all used oils generated, e.g., emulsions.

The Committee on Industry and Commercial Affairs received two of the three bills concerning used oil disposal on October 23, 1968. It gave them priority review "in recognition of the special urgency of establishing a system for used oils, above all for reasons of public health" and filed its report on November 29, 1968. The bill, as reported by the Committee, was passed by the Bundestag and forwarded to the Bundesrat on December 6, 1968. The Bundesrat passed the bill in the same form and it became law December 23, 1968.

DENMARK

Approximately 27,000 tons of used oils are generated annually in Denmark. The major part of them are burned for heating, by greenhouses. Disposal of used oils has been by private entities, without governmental subsidy, and the Danish government has no desire to change this nor to favor one means of disposal over another.

In May 1972, however, the Folketing enacted a law designed to promote more thorough collection of used oils (and of the 20,000 tons of chemical wastes generated annually). The previously existing water and health law prohibitions on the disposal of used oils in a manner causing water, air or soil pollution proved difficult to apply.

The basic scheme adopted by Denmark's May 1972 law for the control of waste oil pollution consists of establishing waste oil delivery points, arranged on a local level, to which waste oil can be delivered for final disposal. Local governments are required by law to provide such facilities either individually or in common with neighboring localities. Waste oil as defined by the law is any oil which is intended for a use other than a use for which it is suited and, conversely, disposal is the use of the oil for a purpose other than one for which it is suited. In testing for suitability, consideration is given to whether the use is more polluting than the normal use of the original product.

Although the law requires all persons to store, transport and dispose of waste oil in a safe and non-polluting manner, commercial enterprises which generate less than 300 liters of used lubricating oil per year are exempt from the duty to deliver to the public disposal facility. Enterprises which do deliver are required to give reports to the locality giving the nature, composition and volume of the used oils. Persons required by law to deliver used oil to the public collection points may be charged a fee set by the locality based on the cost of the collection and disposal program. Persons not required to deliver (individuals, non-commercial sources and businesses producing less than 300 liters of waste lubricating oils annually) have the right to deliver their used oils for free.

As an alternative to the basic disposal program offered by the locality, an enterprise subject to the reporting and delivery requirements may be exempted from the delivery obligation if it can estabish that its oil is being disposed of in a safe manner, which is usually delivery to facilities having the capability to reprocess or destroy the used oil.

Fines and imprisonment are authorized for violations of the law or regulations. The law does not currently apply to Greenland or the Faerø Islands but can be put into effect by the Minister for Greenland or by royal decree, respectively. It is anticipated that the law will soon be extended to other waste products, especially chemicals, as technology for disposal improves.

The notification and delivery obligation enters into force only when the municipal authorities have established a station for the receipt of used oil; this is still not the case in a number of municipalities. In Copenhagen, for example, persons and garages must bring their used oils to collection sites. It is accepted free of charge if it contains less than five per cent water. Oils with higher proportions of water are picked up for fees which cover the costs of transportation and treatment. These wastes are shipped by train to a plant in Nyborg where they are heated to evaporate some of the water and then burnt. The plant belongs to a company formed cooperatively by municipalities and its costs are paid by the municipalities using its services. Municipalities are obligated to provide incinerating and disposal facilities, and most take advantage of the cooperative facility.

In at least one case the exemption provisions have been utilized by an industry trade association. Two trade groups of the petroleum industry have made an arrangement for the pick-up of used lubricating oil at gas stations and work shops operated by customers of their members. When a station has a full storage tank it notifies its supplier, who in turn arranges for a tank truck to pick up the used oil and deliver it to one of two refineries, depending on the part of the country. The service is free and apparently is financed by the value of the rerefinable lubricating oils.

The provision exempting enterprises which use less than 300 liters of fresh oil annually from the notification duty was chiefly designed for small agricultural enterprises and a number of haulage contractors, and results in less administration in the municipalities in connection with a number of minor pollution sources. The government is examining its effect to determine whether too many small amounts of used oils are outside the scope of the act. There is less risk of this in Denmark than in some countries since it is quite unusual for people to service their own automobiles.

The Danish scheme carefully keeps the government out of the specific technology of disposal, limiting its role rather to enforcement of the duty to dispose of the used oil in a safe, non-polluting manner, and to provide for facilities so that everyone has a simple and convenient method available for disposal of the oil.

EUROPEAN ECONOMIC COMMUNITY

The Commission of the European Economic Community has been promoting a harmonization of the member nations' laws on the taxation of oil and the disposal of used oil since 1963. The department concerned with dismantling impediments to free and equal competitive conditions among the member nations has sought to coordinate the various kinds of legal provisions affecting used oil disposal in E.E.C. countries:

tax preferences for products from rerefined oil in Italy and France; tax preferences, then subsidies, now specially-funded compensation for rerefineries in the Federal Republic of Germany (compensation for incineration in the FRG now too); prohibitions; or simply no regulations at all, in several countries.

The Commission became involved when the Netherlands objected after the Federal Republic of Germany enacted a law, effective January 1, 1964, granting a subsidy of 22.90 DM per 100 kilograms ($5.725/ 100 kg.) of rerefined oils. This subsidy, which replaced a tax preference of DM 15/100 kg. rerefined products, would distort competition and discourage trade between the member nations of the E.E.C. argued the Netherlands. The Commission's initial investigation revealed that France and Italy granted tax preferences for rerefined products (with the same effect as the German subsidy) and that the Netherlands itself did not in practice collect the oil tax applicable to the products of rerefineries. The discussions and information generated by the Commission over the next few years indicated that a satisfactory solution would be difficult without more technical data.

As a result, in October 1966 the representatives of the member nations agreeed that a technical person should be asked to prepare a report. J. J. Hopmans, former director of the Netherlands National Institute of Wastewater Treatment, was granted a contract to report on the current technical possibilities of disposing of used oil without water pollution, the costs, advantages and disadvantages of these possibilities, and their effect on the competition in the lubricating oils market. The report was presented in April 1968 and contained recommendations for a Common Market-wide means of regulating the collection and disposal of used oil.

Hopmans suggested that all forms of direct state support for rerefininng and burning enterprises (whether via tax preferences or subsidies) be abolished, that regional organizations be created with the task of collecting and supervising the harmless disposal of used oil and the by-products resulting from its rerefinement, and that the costs of these organizations be covered by the introduction of an assessment on lubricating substances which become used oil (an "oil penny"). Hopmans recognized that this suggested framework would have to be worked out in light of the existing legal, technical, administrative and geographical situations. He suggested that levying the assessment on lubricating substances in conjunction with the taxes on these oil products would be the easiest and cheapest.

He considered that the collection organizations should be public corporations, like the West German Bilgenentwaesserungsverband, with bylaws setting forth duties, powers, organization and procedures. Their boards of directors should include, in addition to government officials from the responsible departments, representatives of all

interests concerned with used oil -- rerefiners, those who burn used oils, the large oil firms, used oil collectors, industries that produce significant amounts of used oils -- as a means of promoting cooperation. Their staffs should include mechanics and chemists experienced in oil production who could advise possessors and collectors of used oils when questions or problems arose. So that the organizations and their advice would be trusted, they should not, Hopmans suggested, be given any powers to enforce or punish. Rather they should help solve problems peacefully and refer recalcitrant persons to the proper state authorities.

For some reason the Commission did not forward any recommendations on used oil to the Council after the report was submitted, perhaps because its chief executives decided that the distortion of competition in the market wasn't so serious, perhaps in part because the staff person who had been chiefly concerned about waste oil left the Commission shortly after the Hopmans report was submitted. The Commission wrote that "discussions were held with national experts in the light of this report in 1968, but unfortunately failed to open the way towards this Community solution because the Member States did not all attach the same importance to waste oil disposal and difference fairly widely on the appropriate arrangements."

Several inquiries were sent to the Commission by members of the European Parliament in 1970, '71 and '73 concerning the announced harmonization of member nations' regulation of used oil disposal and the alleged inequities resulting from the delay in its realization. As a result of these promptings and the initiatives taken recently by several of the member nations, the Commission in 1973 once again retained Mr. Hopmans to prepare a report which would include the countries not members of the Common Market in 1968 and which would be more from the perspective of environmental protection than relieving market distortions. The Commission also convened a committee of experts on used oils from each of the member nations to advise it during the process of preparing a proposed market-wide regulation of the area. The committee of experts met first in May 1973 and again in November 1973. At its first meeting the members agreed upon an exhaustive questionnaire (see Appendix H) to be answered by each of the member nations and agreed to discuss the answers to it at the next meeting as a basis for developing a market-wide policy.

The Commission submitted its proposal for a directive on the disposal of used oils to the Council of the European Communities in March, 1974. It did so because, according to a March 5, 1973 decision of the Council, a member nation may proceed with its own legislative or administrative environmental initiatives if the Commission has not produced a proposed Community measure on the subject within seven months of being notified of the initiative by a member nation

and the Council has not acted on the Commission's proposal within five months of receiving it. In September 1973, France notified the Commission of a proposed decree governing the disposal of used oil, and the Netherlands notified the Commission of its bill shortly thereafter.

The Commission's March 1974 proposed directive (see Appendix I for the text of the provisions and an accompanying explanation) would require member states to "take all possible measures to ensure that the disposal of waste oils shall be carried out by recycling (regeneration and/or combustion)." They would have to take all necessary measures to prohibit (1) discharge of used oils into surface or ground waters, canals and coastal waters; (2) depositing of used oils -- or residues from reprocessing them -- on soil; and (3) any used oil processing which results in emissions of air pollutants in excess of the minimum achievable under the state of the art. E.E.C. memebers would have to ensure the collection and safe disposal of used oils. Where these activities are not possible at a profit, the member nations would have to assign zones to collection and disposal enterprises in which they would be required to pick up the used oils. All collection and/or disposal enterprises would have to obtain permits to conduct business after an inspection of their facilities and would have to conduct their operations to avoid avoidable air, water and soil pollution. Persons unable to dispose of their used oil by recycling or without violating the prohibitions enumerated above would have to store them for pick-up by licensed disposal firms; used oils with more than a specified amount of impurities would have to be stored separately. Anyone storing more than 200 liters of used oils a year, as well as all collection and disposal firms, would have to keep records of the quantity, quality, origin and location of the used oils and also of the dates of their delivery and receipt. Collection and disposal firms would have to submit information concerning their operations to government officials and these officials in turn would be obligated to inspect the firms for compliance with the conditions of their permits.

Firms assigned by officials to pick up and dispose of used oils under unprofitable circumstances would be paid a "nonfiscal indemnity" for services rendered which would offset the annual costs to each firm not covered but in fact incurred and thus assure the firms a reasonable margin of profit. The amount of costs to be considered in calculating the indemnity would not exceed the average costs of all firms engaged in the same activities under similar conditions in the member nation involved. To implement the 'polluter pays principle,' the indemnities would be financed by a charge levied on products which become used oil at the time of delivery of these products for consumption.

Member states would have eighteen months after the adoption of the directive to enact the necessary laws and regulation. Collection and disposal firms existing at the time of the directive's adoption would have three years from that date of adoption to comply with the laws of its nation.

According to the terms of the E.E.C.'s March 5, 1973 Information agreement, the Council had until August 5, 1974 (five months after receiving the Commission's proposed directive) to act on the directive. After this France may proceed to adopt its draft decree and Holland may enact its bill (both described in subsequent sections). Other member nations, e.g. Ireland, are deferring work on establishing used oil disposal control programs until the outcome of the Commission's proposed directive is clear.

THE NETHERLANDS

The Second House of the Netherlands' Parliament is currently considering a bill concerning chemical wastes and containing several special provisions on the collection and disposal of used oil. The bill was prepared by the Ministry of Social Affairs and Public Health after considering the report of a specially appointed used oil study group.

Description of Used Oil Disposal Situation

The study group was created in 1970 with J.J. Hopmans as chairman. Its report, issued in 1971, suggested that an organization be established which would collect, transport and treat used oil and would be supported by revenues from a tax on fresh lubricating oil. This report was followed in mid-1972 by a report of the chemical wastes study group. These reports, combined with an intensifying concern over the noxious effects of uncontrolled disposal of chemical and oil wastes, caused Minister Kruisinga to decide to introduce a separate bill governing this subject. The previously introduced bill designed to prevent soil pollution, which addressed both waste disposal and soil, would better be divided, since waste disposal presents primarily organizational questions while protection of the soil depends on prohibitions based on decisions concerning local land use.

The used oil study group found that an estimated 204,000 tons of lubricating, transformer and hydraulic oils were consumed annually in the Netherlands, of which approximately one-half became used oil wastes. They found that approximately 80 per cent of the used oils were collected by the one rerefiner and ten private freight firms with a total of about 40 tank trucks. These firms cover a large part of the country and pay about .02 Guilder ($.006) per liter of used lubricating or hydraulic oil. Normally they sell the oil to horticultural firms in the Westland, brick manufacturers and grass-drying firms for heating oil; rerefiners also are purchasers. Before selling it they usually filter it into tanks and let the sediment settle. If the price of

fuel oil is low or storage capacity is full, less than the normal 80 per cent of the used oils is collected.

On the large rivers the oil companies have established a certain number of collection and separation facilities to handle the used oil generated by river boats. After the water is separated the oil is sold to the collecting firms.

Provisions of the Bill

Used oils are defined as lubricating mineral oils or mineral oils for hydraulic systems which are rendered unfit for the use for which they were originally designed, either as a result of mixing with other substances or otherwise. The definition does not include oil emulsions or oil from cleaning tankers.

The bill prohibits disposing of used oils in or on the ground with or without containers. (Discharge into surface waters is proscribed by the country's water law.)

The bill also prohibits transferring used oils to other than a person holding a license to collect used oils or a license to collect and then keep, treat, transform or destroy them. The government attempts to keep a balance between the number of collectors and reprocessors and to limit the number of persons who may collect. Effectiveness is the main criterion for deciding whether or not to grant a license. Effectiveness will be strictly adhered to, since commerce in used oil fluctuates according to prices of fresh lubricating and fuel oils, quality and quantity of supply, transportation distances, etc. A potential new market exists for used oil which has been heated to 60° C to vaporize water and lighter petroleum elements, power generating plants.

One who transfers used oil to an approved person must notify the Minister of Health and Environmental Protection and other designated agencies of the date of the transaction, the name and address of the recipient, the nature, composition and quantity of the oils transferred, the means and place of delivery, and the name and address of any third party employed to convey the oil to the recipient. The approved license-holding recipient is likewise required to convey reciprocal information about each transaction.

Collection of used oils may only be done by one holding a license and the license is only valid for the zone described in it. (Approximately 15 such zones are envisioned in the Netherlands. Some may overlap to encourage competition between collection enterprises.) A collector must pick up the oils from the area designated in his license (which may be coextensive with his zone) without charge.

The pick-up requirement is necessary because collectors may not wish to pick up small amounts or oils that are poor quality or too distant. The collection licenses would be written so that together the entire country would be covered by areas of required pick-up. Less than a specified minimum would not have to be picked up. The collector's license may require him to deliver the used oil to a designated place for treatment, transformation, destruction, etc., in order to assure a source of supply of used oils to a destination. The license may also stipulate that an approved fee may be charged for oil pick-up under certain circumstances.

Keeping, treating, transforming or destroying used oils transferred by another person likewise may not be done without a license. This license, too, is valid only for oils originating in a defined zone or coming from designated collectors, and the license holder must accept these oils. The main idea of the system for collection and reprocessing is to harmonize supply and demand of used oil on a national basis.

The bill contains several provisions governing the procedures for applying for, granting and losing a license. The bill also prohibits importing used oil into the Netherlands except to an authorized collector or reprocesser.

An Advisory Commission for Used Oil is foreseen to advise the Minister of Health and Environment on the implementation of the law. There may be as many as eleven members of the commission, who serve at the pleasure of the minister, and they must be chosen from people whose activities consist of producing, selling or using mineral lubricating oils or oils for hydraulic systems or of eliminating used oils. The members serve three year renewable terms and are aided by an executive secretary appointed by the minister. The minister may also establish an office for the commission and the commission may have the assistance of experts. The commission is to be consulted on the granting of licenses, formation of zones, and other policy matters.

The bill provides that the Minister may grant an equitable indemnity to a license holder who suffers expenses it would be unreasonable to let him bear alone and for which he cannot be otherwise reasonably compensated, e.g., the imposition of much stricter conditions than in the original license, or the withdrawal of a license for reasons — e.g., organizational efficiency — not attributable to its holder. Indemnities would also be paid to one currently in business whose application for a license to collect or reprocess were denied not because he was operating improperly or without a permit required by other laws, but because there would be too many license holders for an effective organization if the application were granted.

So far as used oil is concerned, implementation of the bill -- including compensation of license holders when, due to fluctuations in the price of fuel, the costs of collection and transportation exceed the receipts for the used oils -- will be financed by an "oil penny" levied on all lubricating oils and oils for hydraulic systems placed on the market in the Netherlands. This means of financing was chosen because it was believed that if those having used oils had to pay for pick-up they would be discouraged from saving them and thorough collection would correspondingly be hampered. Likewise it was judged unfair to charge users of oil a fee based on the amount of used oil generated or to charge a fee to collectors or reprocessors having financial difficulties. Since it seemed impossible to calculate directly how much the price of new lubricating and hydraulic oils would have to be increased to cover the future costs, it was decided to impose an assessment comparable to Germany. Such an assessment will have the result that those who generate the used oil bear the extra costs of their adequate collection and disposal, since the assessment will be included in establishing the prices of these products. The law will be administered by officials appointed by the Minister of Health and Environment. In addition, local officials may exercise some supervisory functions. These officials will be authorized to inspect and copy books, inspect transport vehicles and their cargo, enter places where there is a reasonable likelihood of finding used oils, take samples of these oils and run tests on them. Persons dealing with used oils are required to cooperate with the officials responsible for administering the law and officials are obligated to keep trade secrets secret.

The bill concludes with provisions prescribing offenses and penalties and allows a period of transition for those already engaged in the activities requiring a license to apply for one.

Evaluation of Policy Alternatives

The explanation accompanying the government's bill discusses two alternative means for disposal of used oil -- incinerating and rerefining -- from both an environmental and an economic standpoint. The environmental discussion points out that, when used as a fuel, used oil produces less sulphur dioxide than regular fuel oil but currently produces traces of gasoline additives, including up to .3 per cent lead. Rerefining, on the other hand, "produces wastes that are extremely difficult to treat, especially acid sludge." The Dutch government concluded that although both disposal methods entail certain amounts of environmental pollution, on balance incineration had fewer disadvantages "provided that the fire is properly controlled (and smokestacks are sufficiently high) or that the used oils are blended with normal fuel in large installations." While "at the present moment, incineration enjoys a slight preference," the explanation pointed out,

"nevertheless both methods of disposal permit the attainment of the main objective, which is to avoid water and soil pollution by the direct pouring of lubricating oils and oils for hydraulic systems on the ground, into sewers, or into surface waters."

The economic analysis was quite straight-forward. For many years 80-85 per cent of the used oils collected in the Netherlands has been burned as fuel. The amount of water and impurities which must be removed depends entirely on the kind of incinerating device used, but in general fuel from used oil is considered practically equal in quality to normal fuel oil. Unlike Germany, Italy and France, which support the rerefining of used oils in one way or the other, the Netherlands has never subsidized the collection or disposal of used oil. Indeed, effective January 1, 1973, the exemption for rerefined oil products from the oil tax of 14 Guilders ($4.34) per ton was abolished, thereby adding to the cost of rerefined products. "The increase in costs that has resulted has hurt the rerefining industry to such a degree that it is not impossible that it will have to cease its activities," the bill's explanation states.

Since buyers prefer new products, rerefined lubricating oils bring lower prices, and most rerefining enterprises are not profitable and require either subsidy or tax preferences to stay in business. Without some form of support, the explanation states, "it is impossible to regenerate lubricating oil in a way consistent with environmental protection." In Germany rerefiners are paid the equivalent of 120 Guilders ($37.20) per ton of used oil rerefined. Assuming the need to create a rerefining industry with a capacity of 20,000 tons of rerefined products in the Netherlands, the subsidy would have to amount to 3.5 million Guilders ($108.5 million). (The one remaining rerefiner in the Netherlands has estimated that about half this amount would be required to support a profitable service.)

"In comparing the cost of the incineration method with that of the regeneration method, we conclude that it is not justifiable from an economic standpoint to alter the present situation by putting the accent on regeneration as in other European Economic Community countries. An additional argument supporting incineration is that, according to a recent survey, the present and future demand for lubricating and hydraulic oils intended for use as a fuel is greater than supply (on the condition that the price of this fuel is lower by several points that the price of normal fuel oil)."

FRANCE

Used Oil Disposal Situation

In France the Société pour le Remassage et la Régénération des Huiles Usagées (SRRHU) — the Company for the Collection and Rerefining of

Used Oils -- is a private company (with headquarters in Asnières near Paris and with close ties to the Fuel Department of the Ministry for Trade and Industry) which carries out most of the collection and disposal of used oils. The oil firms and the rerefineries each hold half the company's shares. These firms and the rerefineries have an agreement that SRRHU will not deliver to rerefiners more than 50,000 tons of the used oils it collects. The rest is to be delivered to the firms for burning. This agreement was designed to check the growth of rerefining by limiting the amount of rerefined oil. Since it was reached, however, other rerefiners not associated with SRRHU have come into existence and established their own systems of collection, so that the country is now served by three or four systems. SRRHU reportedly collects 70 per cent of the total collected and disposed of. It has depots at eight locations in France.

In 1971 approximately 800,000 tons of oil were used. Of the used oils resulting, 104,000 tons were rerefined, 23,000 tons were burned by rerefineries, and 60,000 tons were reused by their users. The total rerefining capacity for that year was 288,000 tons, the capacity for incinerating (without heat recovery) was 32,000 tons.

Possessers of used oils are not legally required to give them to disposal companies nor are companies required to accept whatever is offered them. Rerefining of used oils is encouraged by exempting rerefined oils from the 270 FF ($54.50) tax per ton of oil. This exemption is tantamount to a subsidy of 195 FF ($39.30) per ton of used oil. Altogether (collection costs, etc.) it costs 150-200 FF ($30.30-$40.30) to produce a ton of rerefined oil in France. (Comparative costs for other disposal methods are 60 FF ($12.12) per ton burned with heat recovery, 40 FF ($8.90) per ton burned by a refinery, and 150-180 FF ($30.30-$36.35) per ton incinerated without heat recovery.) This tax preference benefits the purchasers of rerefined oils. They pay 400-450 FF ($131.30-$141.40) per ton of new oil sold by the refineries.

The tax preference is based on a combination of policies: protection of rerefining businesses; prevention of pollution and possible explosions or fire from improper disposal; and providing at least partially for the demand for lubricating oils during times of crisis by regenerating used oils. In addition, it is argued in France (as it is in Italy) that since products made from new oil are taxed, it is unfair to tax those made from rerefined oil; taxing rerefined products would logically violate the legal principle of non bis in idem. This point of view, however, is rejected by others on the basis of tax principles.

Existing Legal Controls Applicable to Used Oil Disposal

In France there is a law, passed November 22, 1956, requiring that all used oils be regenerated and that all rerefiners be approved by the Oil Department. Although this law has never been repealed, French officials declared in May 1973 that it was null and of no practical effect.

There is also an administrative decree No. 73-278 of February 23, 1973, requiring permits to discharge wastes directly or indirectly into surface, ground or marine waters. The exemption for wastes of "negligible toxicity" in this decree would not apply to discharges of used oils. It is unclear, as a matter of French administrative law, whether this decree supersedes Article 80 of the Departmental Sanitary Regulations as amended November 9, 1972, by the Ministry of Public Health. Article 80 prohibits the disposal into the sea, watercourses, lakes, canals or into river banks or alluvial planes of all used materials, all putrescible wastes (animal or vegetable) and all liquid or solid substances (toxic or inflammable) which may constitute a source of disease, impart a poor taste or odor to the water, or cause a fire or explosion.

In addition to these administrative regulations there are criminal provisions scattered in various laws which are broadly interpreted both by judges and by administrators. These are:

1. Article 434-1 of the Code Rural, which restricts the discharge into watercourses of substances which kill fish or reduce their food supply, their ability to reproduce, or their value as food;

2. Article 28 of the Code du Domaine Publique Fluvial (Public Inland River and Canal System Code), which prohibits discharging unhealthy substances into rivers or their beds or banks;

3. Article 12 of the Reglement de Police des Cours D'eau Non Domainiaux (Non-inland Waterway Enforcement Regulations), which prohibits discharging, disposing or allowing the discharge, directly or indirectly, onto riverbeds of materials, wastes or liquids (1) which could cause disruptions to the free flow of the water, (2) which are infected or deleterious,or could compromise public health;

4. Article L.47 of the Code de la Santé Publique (Public Health Code), which provides for the punishment of anyone who, by negligence or carelessness, allows the introduction of any material into wells, fountains, cisterns, conduits,

or reservoirs of water supplies which could harm health;

5. Article 40 of Law No. 64-1245 of December 16, 1964, which prohibits all discharges of wastes or wastewaters into wells.

Disposing of used oils on land, especially dumps, requires a prior permit from the mayor of the town in which the disposal is foreseen. This is required by a regulation of April 25, 1963 applying Article 3 of decree No. 52461 of April 13, 1962 which governs various means of using land. In some cases such disposal also requires a permit or authorization from the prefect of the department involved.

Discharges of used oils into public sewers is clearly prohibited by departmental health regulations, e.g., Article 30-3 of the Règlement Sanitaire Departmental et de la Région de Paris and by Article 3-3 of Appendix A of the July 7, 1980 Circulaire Relative à l'Assainissement des Agglomérations et a la Protection Sanitaire des Milieux Récepteurs (Circular Regarding the Purification of Dumps and the Maintenance of Sanitary Landfills).

Proposed Decree Specific to Used Oil Disposal

In December 1972 a committee consisting of representatives of the ministries of industry, finance and environment was formed to propose a plan for reforming the collection and disposal of used oils in France. Several plans were discussed, all of them based on rerefining; but the committee ceased its work without adopting any proposal. It did, however, agree that any future law should prohibit the discharge of used oils, establish the responsibilities of possessers, users and disposers, and create a system of subsidies differentiated according to the kind of disposal, as in Germany.

In July 1973, however, the Ministry for the Protection of Nature and Environment issued a draft decree which simply prohibits the discharge of new or used oils or lubricants into surface, ground or marine waters and lists the 15 kinds of oil which are included in the prohibition. The decree is based on Articles 2 and 6 of the French water law of December 16, 1964 (which authorize decrees determining the conditions for regulating or prohibiting direct and indirect discharges, drainage, disposal and deposit of water or matter and, in general, of anything capable of impairing the quality of surface waters, ground waters or territorial maritime waters), and on decrees No. 67-1094 and No. 70-871 supplementing that act. The draft decree authorizes exceptions to the prohibition for used oils or lubricants in emulsions or solutions and provides that joint orders of the interested ministries would fix the limits not to be exceeded by each type of discharge. Such orders may determine what measures users must

take for storing used oils or lubricants. The decree would be effective six months after its publication.

The draft decree has been submitted to the Commission of the European Economic Community in accordance with the Information Agreement procedures agreed upon in accepting the Community's environmental program.

ITALY

Large refineries in Italy are subject to a system of permits governing their operations. Some of them are authorized to regenerate used oils. There are about twenty firms which rerefine (with a total capacity of 350,000 tons), all but two of which are located in the northern industrial provinces. In 1972 approximately 146,000 tons of used oils were generated, as compared to 90,000 in 1966. Of this amount, 107,000 tons were rerefined. Some large companies are authorized to rerefine their own used oils, too.

Italian law does not provide an obligation to collect or burn used oils, but there is a law promoting the regeneration of used oils (No. 1852, of December 31, 1962). Originally dictated by industrial and economic considerations, the law now also supports environmental goals. Italy wished to protect the rerefining industry and the employment opportunities it provides (620 in 1972) and to have freedom from dependence on supplies of oil from the middle eastern countries in times of crisis. The tax on products made from used oils is only 25 per cent of that levied on products made from new oils. The preference amounts to 8,300-11,750 Lire per kilogram ($153.40-$194.00 per ton), depending on the quality of the rerefined product. This is the same kind of subsidy that is granted in France although the protection of products made from used oils in relation to new oils is 2.5 times as great as in France or Germany. Companies authorized to rerefine their own oils (e.g. power plants for transformer oils) are exempt from even the 25 per cent tax on oil products if the rerefining meets legal specifications dealing with decantation, filtration and dessication If the process doesn't meet specifications the products are taxable. The cost of obtaining the equipment to make the treatment adequate may discourage some plants from embarking on rerefining with the result that their oils may be improperly disposed of.

Used oil is delivered to the rerefineries by jobbers who collect it at depots. These depots purchase the used oil from two sources: from industrial concerns (e.g. from steel and iron mills, railroads) in large quantities and from small collecting companies who pick it up from garages, repair shops, etc.

The cost to rerefiners of delivered used oils is about 50-55 Lire per kilogram ($8.30-9.10 per 1,000 kg.) due to the high cost of transportation and about 40 Lire per kilogram ($6.60 per 1,000 kg.) at service stations and garages. (These expenses also help explain the concentration of rerefining firms in the industrial portions of the country.) The cost of additives is about 12 Lire per kilogram ($1.98 per 1,000 kg.); of the tax, 31 Lire per kilogram ($5.12 per 1,000 kg.); and of labor and administration, 40 Lire per kilogram ($6.60 per 1,000 kg.). The total cost of rerefining used oils is thus about 162-169 Lire per kilogram ($26.75 - $27.88 per 1,000 kg.).

There is in Italy no administrative structure charged with checking the disposal of used oils. Control falls within the jurisdiction of local administrative and health officials responsible for enforcing anti-pollution laws, which statutes provide an emission limit of .15 ppm of sulfur dioxide calculated on an average over a 24 hour period. In special zones (Milan and Torino) burning of matter with more than 1.1 per cent sulfur is prohibited. The bill concerning pollution of domestic waterways contains the following water quality standards: 2 milligrams per liter of mechanically separable hydrocarbons; .2 milligrams per liter of phenols; 25 BOD_5; and pH from 6-8. No more than 10 ppm of hydrocarbons are allowed in marine waters.

The high price of rerefinable oils means that little used oil is burned. Although Italian officials believe burning is more expensive and has negative fiscal consequences, this means in turn that facilities for burning nonrefinable used oils (oil sludges, for example) do not exist. Some companies which produced emulsions (e.g. auto manufacturers) used to burn them in their power stations but are now installing separators. Approximately 20 per cent of the total lubricating oil market in Italy is occupied by rerefined oils. Wholesale prices for rerefined oils are about 35 per cent less than new oils (for SAE 30, for example).

Within the Ministry of Industry, there is a permanent Industry-Ecology Commission studying the problem of waste disposal in general and the possibilities of restructuring the system of used oil disposal in particular.

UNITED KINGDOM

There are approximately thirty private waste collection firms in the United Kingdom and about nine disposal firms. These firms operate independently or in collaboration and either (1) reprocess used lube oils into base stocks, marketable lubricants, fuels for energy or incineration supplements, or (2) eliminate them by incineration, or (3) deposit them on controlled dumps. There are six major rerefiners

in the United Kingdom, five in England and Wales and one in Scotland. Rerefined oils receive a tax exemption of £ 2.46 ($5.90) per ton on the grounds that the tax has already been paid on virgin lube oil. Including special rerefining (i.e., of segregated used oils for return to their source) the rerefineries handle approximately 10 to 12 per cent of available used oil.

The other main disposers of used oils are large commercial firms which consume oil (as well as transportation and electric power generating firms); they either reprocess, burn as fuel, or incinerate the used lube oil on site. Finally, local authorities provide a limited number of collection points for non-recoverable materials as well as controlled dumps, established under the Civic Amenities Act of 1967.

The balance of used oils -- approximately 15 per cent of the total -- is unaccounted for and largely originates from do-it-yourself (DIY) motor oil changers who have purchased lubricating oil from supermarkets. The figure for DIY waste oil disposal is thought to be roughly 10 million gallons annually and likely to increase.

There are no laws specifically dealing with used oil disposal in the United Kingdom but there are several which are applicable to the control of improper disposal. Section 27 (1)(a) of the Public Health Act of 1936 proscribes the discharge of oil and petroleum products into public sewers or drains leading to them, and section 27(3)(c) of that Act authorizes local authorities to make by-laws prohibiting the deposit of liquid matter (including used oils) in containers for household refuse. The Public Health (Drainage of Trade Premises) Act of 1937 as amended by the Public Health Act of 1961 (Part V) authorizes the discharge of effluents from trade premises into public sewers under conditions imposed by local authorities. Section 59 of the Public Health Act of 1961 (Part V), for example, authorizes conditions calling for the elimination of any constituent of an effluent which would injure sewers or make treatment of sewage difficult. The Water Act of 1945, section 18, authorizes statutory water suppliers to make bylaws to protect surface or ground water from pollution by proscribing certain behavior in defined geographical areas. Section 2(a) of the Rivers (Prevention of Pollution) Act of 1951 makes criminal causing or knowingly permitting any poisonous, noxious or polluting matter to enter a stream. Section 7 of that act requires the consent of a river board for any new or altered discharge of sewage or trade effluent to a stream; section 1 of the Rivers (Prevention of Pollution) Act of 1961 requires consent of a river board for pre-1951 discharges; and section 1 of the Clean Rivers (Estuaries and Tidal Waters) Act of 1960 extends section 7 of the 1951 act to all estuaries and tidal waters. Section 2 of the Prevention of Oil Pollution Act of 1971 proscribes the discharge of oil or mixtures containing oil from vessels or places on land into the territorial

sea surrounding the United Kingdom and into all other waters, including inland waters, which are within the seaward limits of the territorial waters and are navigable by sea-going ships. Section 68 of the Water Resources Act of 1963 authorizes river authorities to construct public works to prevent pollution of reservoirs owned by the authority or aquifers from which it may abstract water.

The disposal of used oils on land is governed by the new Deposit of Poisonous Wastes Act of 1972. This law requires a person planning to deposit poisonous wastes to give at least three days' prior notice of intention to municipal and river authority officials in the jurisdiction(s) where the waste originates and will be deposited. It is an offense under this statute, punishable by a fine of £400 and imprisonment for six months, to deposit any waste in such a way that it would subject people or animals to material risk of death, injury or impairment of health or threaten the pollution or contamination of a surface or underground water supply. A set of regulations exempts certain substances from the notification requirement, although these regulations do not excuse a violation. Waste produced in the course of cleaning an intercepting device designed to prevent the release of oil or grease is exempt.

The Department of the Environment formed a Working Group on the Disposal of Awkward Household Wastes, whose report has just been published. Chapter 5 deals with "sump oil", and suggests, "Disposal into surface water drains invariably results in some pollution of local ditch or stream and disposal into sewers could interfere with sewage processes. Disposal via the dustbin is unacceptable and on to land undesirable. None of these methods should be used." Instead, it urged that, "used sump oil can be reclaimed for re-use as a lubricant or fuel or as a fuel; any remainder should be incinerated. The reclamation industry require minimum pickup loads of 500/600 gallons at central collection points. Such collection facilities should be set up at civic amenity sites and at some local garages. Suitable containers are needed to encourage motorists to return the used sump oil to these collection points." To ease the motorists' task, prototype cans have been produced which are designed not only to contain new oil but to accept the oil drained from the sump. Further, the Working Group reported the design of an automatic sump plug aimed at simplifying the process of draining the oil.

CANADA

Up to 80 million gallons of used oil are generated annually in Canada, of which only about 5-6 million gallons are being rerefined into useful products with an economic value. Rather, most contaminated oils are applied to road surfaces as a dust suppressant, blended with fuel for burning, or discharged as waste into sewers. A serious

impediment to widespread and profitable rerefining is a Canadian federal tax which causes recycled oil to be uncompetitive with virgin oils.

Legal provisions governing collection, storage, use and disposal of used oil are few and nowhere comprehensive. Only six of the ten provinces have laws which even impliedly touch upon the disposal or reuse of contaminated oils, and many of these are more aimed at reducing fire hazards from the storage of volatile, flammable liquids than they are to abating the environmental threats posed by dumping of oily wastes.

Federal authority to regulate the dumping of deleterious substances into Canadian waters arises under the Fisheries Act of 1970, sections 33 and 34 of which make it an offense to:

> cause or knowingly permit to pass into, or put or knowingly permit to put chemical substances or any other deleterious substance of kind in any water frequented by fish or that flows into such water.

Oily bilge wastes from commercial shipping are regulated through the Oil Pollution Prevention Regulations (71-495) under the Canada Shipping Act of 1970. Record-keeping is mandated, so that the ships' logs will reflect each instance that a tanker cleans its cargo tanks, discharges water ballast from uncleaned cargo tanks, discharges oily bilge waters in port or on the high seas, or accidentally spills an oil cargo.

Provincial Legislation and Regulation

The Province of Alberta requires the use of gasoline, oil, grease and grit interceptors on the waste outlets of all public garages, under the Department of Labour Act, Regulation 127-71. These interceptors must be able to handle "all grease or oil likely to flow into the outlets under normal conditions."

British Columbia regulates from a fire prevention viewpoint, under its Fire Marshal Act. "No person shall supply for use or use any crankcase oil as oil fuel in any oil burner;" "crankcase oil means any waste oil used in the engine or crankcase of any motor-vehicle." Further, no service station operator may permit any inflammable liquids or crankcase oil to flow into a public sewer, septic tank or cesspool. Where used oils are kept on service station premises they must be stored in steel drums with screwplugs kept closed, and not more than two fifty gallon drums are permitted on premises at any one time. The regulations also contain specifications, not yet mandatory, for underground outside storage tanks.

Regulations are being drafted in Newfoundland under the Waste Material

(Disposal) Act of 1973 (S.N. 1973, No. 82), which would require prior approval for all phases of a waste management system via licensing, submission of plans, specifications and payment of fees by the occupier of premises whose wastes are collected. Dumping or disposing of wastes other than in the approved manner is forbidden. The regulations distinguish between "handled liquid industrial waste," and a subset called, "handling waste," which requires special precautions because of its toxicity, radioactivity, volatility, flammability, explosiveness, or disease-carrier characteristics.

The Province of Ontario regulates used oil by the Gasoline Handling Act of 1969 and its Gasoline Handling Code, which cover gasoline, allied petroleum products, wax and asphalt. Annual license fees and approval of all equipment used in handling the substances are required. Handling includes storing, transporting, distributing, and transferring the products into the fuel tank of a motor vehicle, motor boat, or other water craft, or into a container. By Regulation 824 (August 1973) under the Waste Management Act, the Province employs a system of standards and certificates to control hauled liquid industrial wastes other than sewage, and their collection. Therefore, all road oilers and other collectors of used oil must be separately licensed under both Ontario statutes.

Quebec's Regulation of the Disposal of Chemical and Combustible Materials was promulgated under the Public Health Act, and remains in force under the Public Health Protection Act (S.Q. 1972, Chap. 42). Chemical waste is defined to include "oils, hydrocarbons, solvents..." and the treatment works covered are those which incinerate, recyle, destroy, convert or transform chemical waste. Authority extends to site approval, storage tank specifications, treatment works specifications, and record-keeping for all wastes received. There are presently six licensed collectors in the Province, and about "sixteen firms dealing with waste oil pick-up and road oiling in the Montreal area." Superseding regulations are envisioned under the Environmental Quality Act of 1972 (S.Q. 1972, Chap. 49) which would specifically include used lubricants in the Act's ban on the deposit of waste in any place other than a site for the storage or elimination or an approved waste treatment plant. There is also the Petroleum Products Trade Act, covering the storage, handling, and transport of petroleum products other than liquified gas. It requires that used petroleum wastes be gathered in a vented tank or closed container buried outside the building involved. Where closed containers are employed, statutes govern their specifications. A hydrocarbon separator shall be used in draining outside service bays, and petroleum wastes shall be regularly removed to tanks or closed containers to avoid overflow into a sewer.

Saskatchewan has no specific laws or regulations governing used oil treatment, but relevant regulations could be promulgated under both the Public Health Act (R.S.S. 1965, Chap. 251) and the Water Resources Management Act of 1972 (S.S. 1972, Chap. 146). Dumping of oil in a sanitary landfill other than the two specific sites in Saskatoon and Regina approved by the Minister of the Environment is prohibited.

Municipal Controls

Four municipalities have specific by-laws limiting the dumping of used oil in municipal treatment systems. Corner Brook, NF protects its storm and sanitary sewers against all waste hydrocarbons. Ottowa, ONT, the national capital, sets an upper limit on fat, oil or grease to be put into its sewers, and requires the use of grease, oil and sand interceptors. Edmonton, ALB sets a less stringent limit for its sewers but requires interceptors on private property for garages, service stations and carwashes, at the property owners' expense. Toronto, ONT has a dual-level standard, allowing ten times the level of fat, oil and grease in its sanitary sewers that is permitted in its storm sewers. Storm sewers are further protected by a requirement that interceptors be used, and by an upper limit of biochemical oxygen demand (BOD).

While there are regulatory actions on behalf of all three levels of Canadian government, it is apparent that there is no uniform national program to collect and reprocess waste or used oil. A recent report of Environment Canada recommends six objectives for such legislation and regulation: a) waste oil be stored in properly designed containers, b) collection only by authorized collectors who keep detailed records, c) strict licensing of ultimate disposers, end-users, and reprocessors, d) maximum discharge levels for disposal by sanitary sewers, e) a flat ban on disposal by storm sewer, and f) strict control over disposal on land.

BELGIUM

There are no special provisions governing the collection and disposal of used oils nor any subsidies for rerefining. The problem is dealt with under the existing laws controlling air and water pollution. The 1950 law concerning the protection of surface waters requires plants to apply to the minister of public health for authorization to discharge waste water and to specify the characteristics of the waste water they propose to discharge. The discharge of oil matter is not authorized.

There are no rerefineries in Belgium. The disposal of used oils has been accomplished by private entities approved by public autorities, but in a scattered fashion according to local economics.

A working group consisting of representatives of the government and the Belgian Petroleum Federation was formed to discuss how to arrange for disposal of used oils. The Federation proposed the creation of an autonomous non-profit organization charged with collecting and disposal of used oils. The government has accepted this proposal.

Beginning in 1974 the organization is to collect oils from large users (e.g., garages and industries); it may be that oil distributors will be required to offer their clients facilities for returning their used oils so they can be collected regularly. The organization would probably dispose of the used oils by incineration in special furnaces enabling energy recovery or by reprocessing them, subject to government health requirements, and existing laws concerning air and water pollution. A duty would be imposed on users to furnish their oils to the collection organization. The organization's budget would mainly be financed by user charges; and as well by revenues generated from the sales of the collected used oils and contributions from participating oil companies.

SECTION V

ALTERNATIVE INSTITUTIONAL APPROACHES TO USED OIL DISPOSAL CONTROL

INTRODUCTION

Defining alternative legal approaches to used oil control requires identifying the attendant problems and the effective technically, legally, administratively and economically feasible means for addressing them.

This section will state these potential problems generally; discuss what means could address them effectively; suggest several alternative approaches which could employ these means; analyze the federal-state-local relations, the advantages and disadvantages of, and the possible legislative vehicles for each alternative approach; and propose possibilities for funding the alternatives.

THE PRINCIPAL PROBLEMS

There are two principal difficulties in controlling disposal of used oil. First, unknown amounts of lubricating oil are being used once and then discarded. Second, many means of disposing of used oils may be causing unnecessary air, water and soil pollution. The amount of oil wasted is not insignificant. For example, although it might not be economically efficient to collect and reuse it all, the estimated 9-12 million gallons of used lubricating oils generated but not collected in Maryland in 1972 is more than half of the total amount of lubricating oils used annually in Switzerland, a country with approximately one and one-half times the area and population of Maryland. The environmental and public health effects of present disposal methods have not been quantified yet, but especially in metropolitan areas it is widely assumed that used oils are an important component of the untreated and potentially harmful waste stream. This assumption is accepted for purposes of the following discussion, in the absence of more definitive information on the fate of used oils.

ADDRESSING THE PROBLEMS: ELEMENTS OF CONTROL

A review of existing programs to control collection and disposal of used oils in the U.S. and abroad indicates that the following elements offer effective means for achieving comprehensive control.

1. Discharging used oils into surface, ground or marine waters should be prohibited. Depositing used oils on land should be carefully controlled: some may be biologically degraded by proper distribution, others may be deposited in suitably

designed and equipped landfills. Where soil conditions are appropriate and other disposal methods uneconomical, use of used oils as road oils may be permissible, but such use should be carefully monitored to avoid contamination of surface and ground waters. Burning of used oils in a manner which limits particulate emissions is acceptable, but burning automotive crankcase oils should only be permitted where emission of heavy metal or other particulates does not pose a threat to human health. For administrative simplicity, this might require a prohibition on burning automotive crankcase oils except when they have been pretreated to remove lead and other contaminants.

Ideally, used oils should be reused. Whether they are reused only once, by burning for recovery of their heat value, or many times by reprocessing for reuse as lube oil, will in the absence of health concerns largely be a matter of economics. Local economic circumstances may dictate, in the absence of health concerns, that they merely be discarded in landfills, if their collection is uneconomical.

Prohibitions against dumping are necessary to discourage such wasteful and potentially harmful practices as dumping of used oils down household drains, into sewers and onto empty lots.

2. Persons or companies having more than specified minimum amounts (e.g., 50 gallons) of "clean" used oils should either be able to give them to authorized collection centers or have an approved collector pick them up without charge.

   Disposing of severely contaminated used oils is costly -- an alternative in such cases is to charge for picking up or accepting such wastes. Likewise it is usually uneconomical to collect less than certain minimum amounts. What the minimum is depends upon the costs of collection and the cost/revenue resulting from alternative waste oil uses. Approximately fifty gallons is the minimum amount in Germany.

   If a person or company has to pay to have his used oils picked up he is tempted to dispose of them "for free" by dumping them somewhere. Likewise, if it is much less convenient to have them picked up or to give them to a proper collector, the same temptation will exist. For persons having less than the specified minimum of used oils, either municipalities should establish collection centers where they can be deposited for free or sales outlets for oil products should be required to accept them without charge.

3. If persons are to be able to give their used oils away or have them picked up, then there needs to be a corresponding capacity

to either accept or collect them on a regular basis. These collectors or collection stations should be reliable. That is, they must have enough safe facilities to perform their functions and enough at stake to prevent them from disposing of the used oils improperly once collected. In many jurisdictions they must obtain a permit to do business based on a demonstration that their facilities are adequate. In some jurisdictions one may only give his used oils to a licensed collector.

4. Just as it is important that collection methods and facilities be approved, so it is important that the means of "ultimate" disposal of used oils be carefully controlled.

   There are many possibilities for disposal: incineration, burning for heat, rerefining, reprocessing prior to reuse, among others; which of these possibilities is preferred or acceptable varies from place to place with varying circumstances. Whichever ones are acceptable must be carried out properly, however. For this reason, these operations should also be subject to supervision.

5. The best means for assuring compliance by collectors and disposers with the conditions of their doing business is that they maintain records of the transactions involved -- date, name, amount and kind of oil collected or transferred to a disposer, means of disposal, etc.

6. Compliance must also be checked by government officials and those subject to this supervision must make available the information the officials need to perform their functions. Proprietary information must be kept secret by these officials.

7. Those who violate the requirements outlined above must be liable to criminal sanctions and equitable relief must be available to remedy the violations. Some jurisdictions have provisions that holders of licenses will lose them for serious or repeated violations.

8. Many people do not know how to dispose of their used oils properly, nor why it is important to do so. A public information program to explain the reasons and means for proper disposal is vital.

ALTERNATIVE INSTITUTIONAL APPROACHES FOR IMPLEMENTATION

There are several alternative approaches which could implement the means discussed above for assuring comprehensive waste oil collection and disposal.

A. Interstate compacts
B. Public corporations
C. Grants-in-aid for government programs
D. Permits to sell, collect and dispose of oil products
E. Regulations requiring the oil industry to collect and dispose of their used products
F. Positive economic incentives for private entrepreneurs

Interstate Compacts

Article I, section 10 of the U.S. Constitution provides that no state may enter into any agreement or compact with another state without the consent of Congress. With such consent, of course, states can and have entered into agreements designed to facilitate regional solutions to various kinds of problems. These agreements may also include the federal government as a party: the compact creating the Delaware River Basin Commission does this.

Bills containing the language of the proposed agreement and authorizing the governor to enter into the agreement must be enacted by each prospective state party. If the agreement also affects the political balance of the federal system, as many do, then it must likewise gain the formal consent of Congress before becoming effective. Examples of well-known and relatively effective agencies created by interstate compacts, in addition to the Delaware River Basin Commission, are the Port Authority of New York and New Jersey and the Ohio River Valley Sanitary Commission (ORSANCO).

There are several issues which must be considered in working out an effective compact. Should the powers of the agency created be research and advisory only, or should they include rule-making and enforcement powers? Should the federal government be represented as a party, an observer, or not at all? What should be the membership of the agency and what kind of political constituency should it have? Should it be the agency staff or state personnel who implement decisions? How are jurisdictional conflicts to be resolved? How can adequate financing of the agency's programs be assured? To what extent can the agency modify existing legal obligations?

The advantages and disadvantages of interstate compacts depend in large measure on the decisions reached on these issues in the process of negotiating the terms of the compact. One obvious advantage of compacts is that they allow for regional approaches to regional problems. Since the generation of waste oils is heaviest in conurbations like those along the eastern coast of the United States, compacts creating waste oil collection and disposal agencies to carry out the functions discussed above might be effective approaches in

those areas. A disadvantage of compacts is that they normally take several years to enact: first there are elaborate preparations and negotiations of a draft compact, then as many state legislatures as there are prospective state parties must enact bills authorizing the state to participate, then the Congress, too, must approve the compact.

Public Corporations

States have inherent power to create corporations which may operate within their territories. The Congress has the power to create corporations when they are necessary to carry out any of the powers of the federal government enumerated in the Constitution, e.g., the power to regulate commerce among the states.

A public corporation is one created by and subject to the control of a legislature to carry out purposes connected with the public good in the administration of government. Public support or revenues and properties,and public control are the distinguishing marks of a public corporation. The whole interest must belong to the government. Towns, cities and counties are familiar public corporations on the state level. The Federal Deposit Insurance Corporation, the U.S. Postal Service, and the Tennessee Valley Authority are well-known federal corporations. So are AMTRAK and Comsat.

Public corporations may be organized to accomplish much more limited tasks, however. In Germany, for example, the "bilge water drainage association" (Bilgenentwaesserungsverband) has more than half a dozen boats equipped to pump out Rhine-going vessels, separate the water from the oils and store the oils on board until they are pumped out to a rerefinery in Duisburg, Germany. Ninety per cent of the difference between the revenues for the products the rerefinery makes from these bilge water oils and the expenses of collection and rerefining is borne by the German states riparian to the Rhine in proportion to their population, and ten per cent is borne by the association of Rhine shippers, the water works on the Rhine and the government of the Netherlands (since Dutch boats are also serviced).

Public corporations could be created to carry out the collection and disposal purposes described above by either state legislatures or by the Congress. Public corporations created by Congress could be made responsible for regions which cross state boundaries. The advantages of creating new institutions to carry out specific missions are the enthusiasm and energy which may characterize the beginnings of a new project. But this zealousness can lead after a time to the institution becoming more interested in empire-building or defending its prerogatives. Public corporations also tend to limit the entrance of private entrepreneurs into the activity for which the corporation is responsible. There are potential jurisdictional

conflicts between federal public corporations and related state programs in the area, and vice versa.

Grants-in-Aid

Grants-in-aid from one level of government to another in support of national or state programs are quite common. Title II of the Federal Water Pollution Control Act Amendments of 1972 provides for federal grants to any state, municipality, or intermunicipal or interstate agency for the construction of publicly owned sewage treatment works, and there are state laws providing for grants to municipalities which supplement the federal share (75 per cent). Similarly, section 105(a)(1)(A) of the Clean Air Act authorizes grants to air pollution control agencies of up to two-thirds of the cost of developing (or of up to one-half of the cost of maintaining) programs for the prevention and control of air pollution. Higher fractions of cost support are authorized for programs to control air pollution in areas containing two or more municipalities (section 105(a)(1)(B)).

These examples indicate the choices to be made in designing a project grant program: (1) what levels of government the granting government should deal with (federal, state, local, regional, interstate); (2) whether and to what extent the grants should be matching; (3) how the resources should be allocated among potential recipients; and (4) what the administrative relationships should be between grantor and grantee governments. Grants from one level or government to support programs of another level are also often conditioned on the fulfillment of specified criteria. Whether grants supporting waste oil collection and disposal programs should be conditioned upon compliance with criteria would be decided on the basis of the relationship between the governments involved and the scope of the program proposed.

Grants-in-aid can encourage grantee governments to undertake programs they would not have felt able to do alone. On the other hand they can seduce a government into choosing to spend money for something for which a supplementary grant is available rather than for something more needed. Grants often have conditions which cause difficulties for the organization of state governments (e.g., the requirement that a single state agency control the program). On the other hand, these conditions often make the difference between effective and inefficient use of the grant money. Indeed, it may be said that the more conditions are imposed to assure the grant money is properly used, the less attractive the grant becomes. The intergovernmental relations between grantor and grantee depend almost entirely on the conditions which are specified and the means agreed upon for measuring performances under the grants. Too often the goals of grants are

lost sight of in the process of building up administrative structures for obtaining and distributing them.

Permit Programs

A common way of regulating business is to require those wishing to engage in it to obtain permits and to impose conditions requiring desired behavior. Maryland, for example, has instituted a system of permits which must be obtained by drivers of oil tanker trucks, owners of oil terminal facilities, and service station operators. A bill recently introduced into the Parliament in Holland would require that used oils only be collected and disposed of by licensed persons. In this way the government hopes to weed out unreliable operators. Record-keeping requirements could be imposed as conditions to permits, as could requirements for providing facilities for the collection and storage of used oils.

Permit programs could be established by state or federal legislation. Strictly federal permits are normally limited to fields pre-empted by the federal government, e.g., regulation of nuclear power plants, or placing materials in navigable waters. A recent trend, evident in the Federal Water Pollution Control Amendments of 1972, is to establish federal permit programs which can be administered by states which comply with the substantive and procedural aspects of the program. Such a system has been proposed for the regulation of hazardous wastes in S.3954 and could be applied to used oils. Since disposal of used oils is largely a problem in urban areas, however, permit programs would seem more appropriately enacted by the states affected.

Permit programs offer great flexibility, but this flexibility itself has been criticized as leaving too much discretion with functionaries often willing to compromise in order to avoid conflict. This discretion can be limited by careful drafting of the statute delegating authority to administer permits, but legislative supervision of the administration of the program is advisable. One possible means of exercising this supervision is to require submission of periodic reports to the legislature by those responsible for administering the program.

Another difficulty with permit programs is that permit provision preparation is usually separated from permit enforcement. In Maryland, for example, the oil handlers permits are granted by the water quality permit office but are enforced by the general enforcement personnel. This procedure in general, presents several potential difficulties. Permits are often prepared by persons ignorant of the requisites of a readily enforceable document. The enforcement staff is often ignorant of the background of the provisions of the permit's conditions and may not appreciate the rationale supporting the particular provisions.

A comprehensive permit program for all those who generate, collect and dispose of used oils would involve a substantial investment of time and personnel to administer and enforce. A permit program merely for collectors and disposers of waste oil would be less administratively burdensome, though perhaps less effective. For such a program, random checks might be made of known used oil sources to assure that collections had been made by licensed haulers. For such purposes, used oil sources would have to keep records of used oil generated and delivered to haulers. Known sources might also be checked by review of oil hauler records.

Oil Industry's Internal Collection and Disposal

Since the oil industry has the means for distributing its products, by pipeline, rail, and tanker trucks, the industry could supplement these means with equipment to collect used oil products and return them to facilities at their refineries for reprocessing.

The oil industry itself takes care of collecting and disposing of used oils in several European countries. In France the large oil firms and the rerefiners have created a private company to collect waste oils countrywide. 50,000 tons collected by this company are delivered to the rerefiners, the rest is delivered to the firms' own refineries where it is burned. The Belgian petroleum association, too, has created an autonomous organization to collect used oils from garages, industries and other large users. This organization is also responsible for disposing of these oils, either by incineration or rerefining, in installations approved by government health officials. In Denmark the rerefineries and the association of oil companies have entered into an agreement whereby the companies' contractors collect used oils from garages and deliver them to the refineries.

Each of these arrangements has been worked out in conjunction with government officials to coordinate with their programs and policies. Comparable arrangements in the United States would likewise have to take into account local circumstances and local, state and federal waste disposal programs. The feasibility of cooperative arrangements between governments and the oil industry needs consideration such as establishing municipal collection points from which companies could collect.

An advantage of requiring the oil industry to manage the collection and disposal of its used products is that it would permit use of an existing system of distribution. Since this system is not by any means entirely integrated, however, there would have to be substantial adjustments made to "reverse" the flow of oil products. A disadvantage of such a requirement is that it would conflict with the system of collecting used oils as it presently exists, unless arrange-

ments could be made for collaboration, perhaps on a contract basis. It would reduce the used oils available to rerefiners. Oil industry representatives have raised the serious possibility that such a requirement would have to be accompanied by legislation providing a special exception to the antitrust laws for these activities. If so, this, and the structure of the industry itself indicate that this alternative would most appropriately be accomplished by special federal legislation. In considering this legislation Congress could determine whether or not federal pre-emption was advisable to avoid potential conflicts with subsequent state enactments.

Positive Economic Incentives to Private Entrepreneurs

The catalogue of positive incentive mechanisms adopted by the federal government to encourage private enterprise to engage in desired activity includes favorable tax treatement, preferential procurement treatment, and credit subsidies. These are discussed below.

Federal Taxation Policies -- The Excise Tax Reduction Act of 1965 -- A return to the pre-1965 lube oil excise tax structure would restore the tax differential rerefiners enjoyed in the off-highway market prior to enactment of ETRA. Excise taxes are repressive in nature. In recent years they have been reduced or eliminated except when their receipts have been earmarked for special purposes. In these latter cases they have come to be considered user fees. Excise taxes functioning as user fees include those taxes whose receipts are funneled into the Highway Trust Fund, Land and Water Conservation Fund, and the Airport and Airways Development Fund. Here, the excise tax would cease to be a highway user fee, but instead a device to encourage rerefining.

Return to the pre-ETRA lube oil excise tax structure and payment of the proceeds of the tax into the general fund,would thus be contrary to the policy trend toward dedicated funds. However, such a return might be justified if it would be an effective means of assisting the rerefiners.

Restoration of the pre-ETRA tax system would hopefully draw new capital into the waste oil reprocessing market and provide existing rerefiners with sufficient profits to invest in new equipment and processes. Uncertainties in the petroleum marketplace make it difficult, however, to predict with any assurance that return to the pre-ETRA tax structure would achieve these goals. However, since the administrative adjustments required would not be of great magnitude, entailing principally a minor change in exemption procedures, and since there would be a net revenue benefit to the United States treasury, EPA may wish to recommend reversion to the pre-1965 lube oil excise tax structure. Such a recommendation would be consonant

with the Senate's 1965 position in defense of this system; as noted previously, the Senate abandoned its opposition to revision of the lube oil excise tax system not so much becasue it believed ETRA's provisions to be superior, but because it was willing to accede to them in exchange for the House's acceding to tax provisions of the Senate version of ETRA.

Congressional proposals for lube oil excise tax reform -- Several bills introduced into the 93rd Congress seek to modify the existing lubricating oil excise tax system as a means of providing assistance to the rerefining industry.

H.R. 5902, the National Oil Recycling Act, was introduced by Congressman Vanik on March 20, 1973. Identical to H.R. 5902 and with a total of 31 co-sponsors are Congressman Vanik's H.R. 9338 and H.R. 9339 (both introduced July 17, 1973), and H.R. 9860 (introduced August 2, 1973). Taxation provisions are only a small portion of the bills. They amend sections 4091 and 4093 of the Internal Revenue Code and repeal section 6424 and cross-references to it. (See the section on taxation of lube oil for discussion of these sections.) The lubricating oil excise tax is extended to cutting and hydraulic oils and the off-highway use credit is eliminated. Recycled oils may be sold tax-free.

H.R. 10888, introduced by Congressman Fulton on October 12, 1973, and Senator Thurmond's S. 409, introduced January 16, 1973, contain provisions similar to those of Congressman Vanik's H.R. 5902.

H.R. 4421, introduced by Congressman Vigorito on February 20, 1973, revises section 4091 so as to exclude rerefined oils from the definition of the lubricating oils subject to taxation. This provision, as similar provisions in the bills described above, would make statutory the existing regulatory provisions providing for the tax-free sale of reprocessed oil or blends of reprocessed and virgin oil. H.R. 4421 also amends section 6424 to override IRS's decision in Revenue Ruling 68-108; it provides that the use of virgin oil in rerefined oil is to be considered as a use of oil otherwise than in a highway motor vehicle, thereby providing for rebate of the tax paid on the oil.

Federal Procurement Action -- An additional means of assisting the rerefining industry might be mandated government procurement of its products. While government lubricating oil purchases comprise but a very small percentage of the lubricating oil market, establishment of closed loop rerefining systems could provide a boost to the rerefining industry and might provide an incentive for entry into the market of new entrepreneurs with new technologies. The mechanics of developing a closed loop system for procurement of rerefined oil

products have been described in the Teknekron report to EPA.[1]

Ample precedent exists for government procurement action to assist technologies that promote environmental protection goals. Section 212 of the Clean Air Act of 1970 provides for government procurement of low-emission vehicles, even if they cost up to 200 per cent more than higher emission vehicles for which they have been substituted. A federal Low-Emission Vehicle Certification Board certifies low-emission vehicles including among its certification criteria safety, performance, reliability, serviceability, noise level, maintenance costs, and fuel availability. For the purpose of permitting agencies to pay premium prices for low-emission vehicles, $5 million is authorized for the extra payments for fiscal year 1971 and $25 million for each of the two suceeding fiscal years.

Similar procurement provisions are found in section 15 of the Noise Control Act of 1972. A Low-Noise Emission Product Advisory Committee can be established by the EPA Administrator to assist him in the certification of low-noise-emission products. Low-noise emission products are to be given preference in procurement. To fund the premium price procurement policy, $1 million is authorized for expenditure in fiscal year 1973 and $2 million for each of the succeeding fiscal years.

If the federal government were to participate in closed loop systems, it might realize a net savings in both reduced lube oil purchases and lower waste oil disposal costs. Of course, the federal government would want to guarantee that it was obtaining oil that met its chemical and performance specifications. Chemical and engine tests would be required to assure that specifications are met, and it is desirable to conduct such tests in any case so that oils can be labeled as to quality in conformance with new FTC guidelines regarding the labeling of reycled goods.

Credit -- Government assistance to the rerefining industry could also take the form of extensions of credit. Low interest loans, by means of which existing or prospective rerefiners could obtain capital at an interest rate below prevailing market interest rates would provide one type of subsidy. A second would be a government loan guarantee, in which the federal government guarantees a private

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[1] A Technical and Economic Study of Waste Oil Recovery -- Part III: Economic, Technical and Institutional Barriers to Waste Oil Recovery, EPA Contract No. 68-01-1806, October 1973.

sector creditor that if a rerefiner should default on payments of interest or principal, the government will pay the loan as surety.

Federal credit subsidies can be found in many sectors of the economy. In the area of commerce and economic development, one can identify small business loans, small business investment company loans and economic opportunity loans. Rerefiners or those seeking entry to the rerefining business could be encouraged to seek loans through existing programs, or the federal government could establish a special loan fund to encourage rerefining. Capital for the fund could be derived from the lubricating oil excise tax.

The principal problem associated with such credit subsidies is that there is no assurance that they will be effective. One cannot predict whether private entrepreneurs will respond to the loan opportunity, and there is no way of knowing what the default rate on such loans might be.

FEDERAL FUNDING OPTIONS FOR USED OIL PROGRAMS -- SOURCES OF REVENUE

Revenue for funding collection and disposal of waste oil may be derived from existing federal or state or local tax revenue or from the collection of special disposal fees. A funding system should be easy to administer and require users of oil to pay the cost of its disposal. Among the possible funding options are the following:

Disbursements from General Revenues

Under this option, the federal government could devote a share of general revenues to a waste oil program. The principal argument against this particular option is that it imposes the cost of waste oil collection and disposal on all taxpayers, rather than on the user of lubricating oil. Since it is more fair to impose these costs on those who cause them and there are feasible means to do so, these means will be the focus of this discussion.

Impose a Disposal Fee at the Point of Final Purchase or Disposal

Under this option, a disposal charge would be imposed at the point of ultimate purchase or at the point of ultimate disposal. Imposing a charge at the point of ultimate disposal would tend to encourage clandestine means of disposal in order to avoid the charge and would necessitate a highly developed regulatory system in which all disposal is controlled and in which all or most oil transactions are recorded. Imposing a charge at the point of ultimate purchase might be a preferable alternative, but because so many outlets sell lubricating oils, the administrative requirements of such a system would be considerable. While on the basis of equity these options are superior to the funding of a waste oil program through general revenues,

their attendant administrative problems do not recommend them.

Devote Proceeds from the Existing Excise Tax or a Variant of it to a Used Oil Disposal Fund

It could be argued that proceeds from the existing lubricating oil excise tax or from a pre-ETRA lube oil excise tax system or some variant thereof should be credited to a waste oil disposal fund instead of the Highway Trust Fund. This would convert the excise tax from a highway user fee to a lubricating oil user fee. While the fee would be assessed on the manufacturer or producer, it is assumed that the cost of the fee would be passed on to the ultimate user of the oil. One objection to this proposal might be that a constellation of interests might develop about a waste oil fund seeking to perpetuate it after it is no longer needed. This is one criticism that has been made of the Highway Trust Fund, although one usually does not hear it made of other trust funds.

Table 6 summarizes key lubricating oil excise tax data for the last five fiscal years. The data indicate that while gross receipts from the lubricating oil excise tax are now 25 per cent higher than they were five years ago, receipts for each year have constantly represented less than 2 per cent of the gross revenues provided the Highway Trust Fund by automotive excise taxes. Cash refunds of the lubricating oil tax have remained at a constant $2 million while income tax credits granted have ranged from $15 million to $19 million. The refunds and credits granted each year have represented from 16 per cent to 23 per cent of the gross lubricating oil excise tax receipts. Should it be decided that the approximately $80 million in net receipts is too large a sum to devote to abating the problems associated with existing waste oil collection and disposal practices, then it might be desirable to earmark only a portion of these receipts for a waste oil disposal fund.

Appendix A of this report outlines the procedures for administering the lubricating oil excise tax and describes the large numbers of exemptions and credits that are available under the existing lubricating oil excise tax system. Using the existing system for waste oil disposal purposes would be a simple administrative matter involving a minor bookkeeping change. However, because of the various exemptions and credits the present system provides, some generators of waste oil would bear an undue share of the waste oil disposal cost while others would not bear their fair share of the costs of disposal. For example, a business enterprise purchasing lubricating oil and using it in highway vehicles would pay the lubricating oil tax while a state purchasing oil for its own use in highway vehicles would be exempt from it. However, the state, like the business enterprise, would be generating waste oils having disposal costs.

Table 6. LUBRICATING OIL EXCISE TAX RECEIPTS AND REBATES AND THEIR RELATIONSHIP TO THE HIGHWAY TRUST FUND

FISCAL YEAR	(1) GROSS LUBE OIL EXCISE TAX RECEIPTS	(2) CASH REFUNDS OF LUBE OIL EXCISE TAX	(3) INCOME TAX REFUNDS FOR LUBE OIL EXCISE TAX	(4) TOTAL LUBE OIL EXCISE TAX REFUNDS AND CREDITS	(5) REFUNDS & CREDITS: GROSS LUBE TAX RECEIPTS (%)[c]	(6) GROSS RECEIPTS TO HTF FROM AUTOMOTIVE EXCISE TAXES	(7) GROSS LUBE TAX RECEIPTS: GROSS HTF RECEIPTS (%)[d]
1973	$103,000,094	$2,000,000	$17,000,000	$19,000,000	18	$5,695,000,000[a]	1.8
1972	95,474,000	2,000,000	16,000,000	18,000,000	19	5,635,000,000	1.7
1971	88,185,000	2,000,000	19,000,000	20,000,000[b]	23	5,664,000,000	1.6
1970	94,521,000	2,000,000	13,000,000	15,000,000	16	5,353,627,000	1.8
1969	82,842,000	2,000,000	13,000,000	15,000,000	18	4,637,176,000	1.8

Notes:

a. Figure for 1973 Highway Trust Fund receipts is a net sum.

b. Sum represents total of original figures added and rounded to nearest million dollars.

c. Represents total in column 4 divided by total in column 1, multiplied by 100.

d. Represents total in column 1 divided by total in column 6, multiplied by 100.

Sources: Annual Report of Commissioner of Internal Revenue for 1972, 1971; Internal Revenue Service, "Internal Revenue Collections of Excise Taxes." Telephone conversations with personnel of Treasury Department, Public Affairs Office and IRS Excise Tax Branch. Highway Trust Fund figures for Fiscal Years 1973, 1972, and 1971 were furnished by the Highway Users Federation Public Affairs Office.

If some waste oil disposal program funded by the excise tax was established which provided free pick-up of waste oils, the excise taxes paid by the business enterprise would be used to provide free pick-up for the state's waste oils. Similarly, since cutting oils are exempt from the present lubricating oil tax, the business enterprise would also be subsidizing the collection of waste cutting oils from industrial operations of others.

One might reduce the inequities somewhat by modifying the existing system of exemptions and credits thereby providing a closer relationship between generation of waste oils and payment of disposal fees. One means of doing this would be by eliminating the distinction between on and off-highway uses and basing exemptions on whether particular uses of lubricating oils result in generation of waste oils. This would require a moderate overhaul of the existing lubricating oil excise tax system and would be achieved in large measure by those congressional proposals which in effect call for a return, in somewhat modified form, to the pre-ETRA excise tax system. These proposals, however, do not assign the tax proceeds to a special waste oil fund, but merely extend the tax's application and eliminate the credit for off-highway use.

It does not seem that it would be especially burdensome to make administrative judgements on the "waste-potential" of lubricating oils. Revenue Ruling 70-55, lists four categories of oils which are seldom used as lubricants (within the meaning of section 48.4091-6 of the IRS regulations) and which may therefore be sold tax-free. Category 1 consists of 32 "non-recovered process aids."[2] These oils do not become part of finished products, are not reused and are lost or discarded as a function of the process. Category 2 consists of 13 surface coating oils that are applied to the surface of other substances, are not reused or recovered, but remain on the surface of the substances to which they are applied. Category 3 consists of 45 oils that become an integral part of finished products that are not lubricants and are not used for lubricating purposes. Category 4 consists of 17 oils performing physical or mechanical functions other than lubrication that are not included in any of the preceding groups.

Under a revised tax system in which general revenue taxation (or assessment of an oil disposal user fee) was based on waste generation, the oils in categories 2 and 3 would clearly remain tax-exempt, while administrative decisions would have to be made concerning continuation of the exemptions for oils in categories 1 and 4.

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[2] 1970 Int. Rev. Bull. No 5 at 17.

An alternative proposal would be to tax all sales of lubricating oils providing no exemptions whatsoever. This would simplify administration of the excise tax, for IRS auditors would no longer have to check exemption certificates and rebate claims. This would also mean imposing a fee on state government purchases, to which constitutional objections could be raised. However, the courts might well be willing to hold that an imposition of a user fee on a state by the federal government does not constitute federal taxation of a state. States presently pay aviation-related excise taxes into the Airport and Airway Development Fund and their obligation to make such payments has thus far been upheld in the courts.[3]

---

[3]The Airport and Airway Revenue Act of 1970 is Title II of Public Law No. 91-258, the Airport and Airway Development Act of 1970. The Development Act establishes an airport and airway development fund, analogous to the Highway Trust Fund, whose revenues would be devoted to airport and airway development. The Airport and Airway Revenue Act amends the Internal Revenue Code so as to earmark revenue from airline transportation and fuel excise taxes for the newly established trust fund. Simultaneously, the Revenue Act eliminates a wide range of excise tax exemptions. Among these are the exemptions which the federal government and state and local governments had enjoyed pursuant to sections 4292 and 4293 of the Internal Revenue Code.

The Committee on Ways and Means, in its report on the Revenue Act, stated:

> Present law provides a series of exemptions from the tax on transportation of persons by air. These include exemptions: ...(5) for transportation furnished to the United States (at the discretion of the Secretary of the Treasury) and to State and local governments;...
>
> The exemptions for transportation furnished to State and local governments, the United States, and nonprofit organizations are terminated...It did not seem appropriate to continue special exemptions to those governmental and educational organizations since this tax is now generally viewed as a user charge. In this situation there would appear to be no reason why these governmental and educational organizations should not pay for their share of the use of the airway facilities. (H.R. Rep. No. 91-601 at 45-46. See also S. Rep. No. 91-706 at 18.)

The Committee had noted earlier:

> Under this legislation a better future is promised because a trust fund will be established and there will be a direct

A principal objection to removing all exemptions would be that users of oil which do not create disposal problems would be paying a user fee to underwrite disposal of other oil users' waste oil. For example, certain oils (such as those used in paper processing) are consumed in use. These are presently exempt from taxation because they are lubricating oils seldom used for lubricating purposes. Under a lubricating oil disposal fee system allowing no exemptions, users of paper processing oils would begin to pay a fee which they formerly did not pay, and the proceeds would be used to dispose of waste oils from operations other than their own.

> relationship between the use of the system and the money generated to meet the needs required by the users. It is fitting that the primary financial burden will be assumed by the direct users. [H.R. Rep. No. 91-601 at 3.]

The State of Texas challenged the new law on constitutional grounds, alleging that it should continue to be exempt from the airport transportation excise tax. However, the federal government's right to levy this user charge on Texas was upheld by the U.S. District Court for the Western District of Texas and by the 5th Circuit Court of Appeals (State of Texas v. U.S., 73 USTC A16, 085, 30 AFTR 2d 72-5930). The pertinent portions of the district court decision follow:

> The airway user charge is not a tax in the traditional sense, but instead is a charge for services rendered and represents a quid pro quo, and as such, is outside the scope of the doctrine of implied intergovernmental tax immunity. New York v. United States, 326 U.S. 572 (1946); Head Money Cases 112 U.S. 581 (1884); Packet v. Keokuk, 95 U.S. 80 (1877).
>
> Nothing in the historical basis of dual sovereignty underlying the principle of State immunity from federal taxation requires that the States continue to receive the benefit of airway facilities and services actually used by the States but furnished by the federal government without bearing their equitable share of the costs incurred in providing those particular benefits. Even employees of the federal government must pay the air transportation charge. No logical reason exists why all users of the air transportation system should not pay their fair share of such costs.

Discard the Existing Excise Tax and Establish a Disposal Fee

Under this option, the existing excise tax system would be repealed and a disposal fee would be established. The principal difference between this proposal and some of the proposals described above is that under this option, the disposal fee would be set at a level where the proceeds from it would suffice to "solve" the waste oil collection and disposal "problem," whereas under the preceding proposals, the disposal fee would be at the level of the existing excise tax, 6 cents per gallon.

Establishment of an oil disposal fee in lieu of the existing lubricating oil excise tax system shares many of the administrative problems of some of the options previously discussed. But more importantly, it requires an estimate of the appropriate fee level. The precedent for establishing a lubricating oil disposal fee comes from West Germany, but there, because of previous experience with rerefining industry subsidies, the West German government had some idea at the outset what the approximate level of the disposal fee should be. In the United States, we have no such subsidy experience and no one really knows at what level a disposal fee should be set.

Summary -- Funding Options

A variety of funding options have been reviewed and none is found to be simultaneously simple to administer and completely equitable. It would appear though that minimal administrative costs would be incurred and the greatest equity would be achieved by devoting all or part of the proceeds of a revised lubricating oil excise tax to a disposal fund while at the same time eliminating certain of the existing rebate and exemption provisions (e.g. credits and rebates for off-highway use and exemptions for sales to state and local government for their own use and sales to certain nonprofit educational organizations).

AN ANALYSIS OF CONGRESSIONAL PROPOSALS FOR USED OIL MANAGEMENT

H.R. 5902

Congressman Vanik's "National Oil Recycling Act,", H.R. 5902, was introduced on March 20, 1973, and was referred to the Ways and Means Committee. It restores the Internal Revenue Code lubricating oil tax provisions, with slight changes, to their pre-1965 form. The principal differences between the H.R. 5902 tax provisions and those predating ETRA are provisions in the bill doubling the tax on cutting oils from 3 cents to 6 cents per gallon and extending the excise tax to hydraulic oils. H.R. 5902 furthermore makes statutory the exemption from excise taxes of reprocessed oils (but not their

virgin components), which is the scheme devised in T.D. 6197.[4]

The National Oil Recycling Act would require federal officials to encourage the use of recycled oil by: (a) procuring recycled rather than new oils when the former are available at a price competitive with the latter; (b) requiring federal contractors to use recycled oils in performing contracts when such oils are available at competitive price; (c) assisting and encouraging development of performance standards, specifications and testing procedures to facilitate the comparison of new and recycled oil; and (d) educating the public as to the merits of recycled oil.

State regulation of recycled oil or used oil disposal would be pre-empted if it were stricter than federal regulations. States are urged to encourage the use of recycled oil and they become eligible for federal grants if: (a) they adopt laws, regulations and administrative machinery which provide for a permit program for used oil collectors and reprocessors; (b) they use competitively priced recycled oil in lieu of new oil for state functions and require its use for contract work; (c) they regulate retail sales of automotive oils not covered by the retail sales provisions described below; (d) they prohibit the use of used oils as fuel oil and for road oiling unless it has been processed to meet minimum standards for such uses established by federal and state pollution laws; and (3) they educate the public as to the merits of recycled oil.

The Vanik bill would require all recycled oil to be labeled as "recycled" and all new and recycled oil to bear the inscription that "it is in the national interest to recycle this product after use." The bill orders the EPA Administrator to promulgate regulations requiring all oil containers to bear labels relating to the proper disposal of their contents.

H.R. 5902 provides in addition that automotive oil packaged for self-service retail sale be sold in reusable containers for which a 10 cent deposit is collected, refundable upon return of the container, either empty or full of used oil. All persons engaged in the sale of automotive oils would have to maintain used oil collection facilities on their premises to be serviced by used oil collectors. Further, no person could enter into a restrictive contract, the purpose of which is to discourage the recycling of used oil.

Users of more than 100 gallons of industrial oil per year would have

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[4]For discussion of T.D. 6197, see section III of this report, above footnote 38.

records of the quantities and types of oil purchased, consumed and disposed of. Records must also be maintained by used oil collectors and used oil recyclers.

Criminal penalties and civil fines are provided for violation of the law. The EPA Administrator would have to report to Congress each year on oil sales, oil recycling, the environmental impact of used oil, and problems of the oil recycling industry. The bill would authorize him to seek required licensing of any patent right which is necessary to achieve the Act's purposes.

Finally, the bill authorizes $25 million per year for grants to state waste oil programs, and $10 million per year for the four fiscal years beginning with FY74 for development of new processes and technology for the recycling of used oil. EPA is to administer these funds. $5 million is also authorized for each of these four fiscal years for development of standards and testing methods to facilitate the comparison of recycled with new oil, to be administered by the Commerce Department. The technology development and testing funds could also be used by EPA and the Commerce Department for work by their own personnel.

Evaluation of the Vanik Bill

The Vanik bill provisions pertaining to container labeling and lube oil taxation were mentioned in previous sections of this report. It is by no means certain that requiring a "recycled" label will benefit reprocessed oil sales, nor is it certain that federal mandating of such labeling will automatically preempt state labeling requirements. Elimination of the arbitrary Revenue Ruling 68-108 is desirable; because of present reprocessable used oil scarcities, however, it is uncertain whether restoration of pre-ETRA tax advantages enjoyed in the off-highway lube oil market will have a significantly beneficial economic impact on the rerefining industry.

The requirement that federal contractors use recycled oil when performing contracts might bolster the reprocessed oil market, but on the other hand, it may not be seriously enforced by federal agencies. Support of state programs is a good idea, but no justification has been provided for the $35 million annual authorization. Furthermore, to ensure that states do not establish such programs merely as a means of obtaining additional federal financial aid, grants ought to be provided only on a much larger conditional basis.

It may be desirable to add to the state program requirements a provision that states demonstrate that they have the resources to enforce their used oil regulations. It may also be wise to modify the oil reprocessing requirements so that unprocessed waste oil may be used as a fuel where stationary sources have installed efficient

emission control technology.

Finally, the provision outlawing contracts which restrict oil recycling may make unlawful major oil company franchise agreements according to which dealers may market only the oil companies' products. If the companies do not market recycled oil, such contracts might be construed to be in violation of the restrictive contracts provision of H.R. 5902.

Revision of the Vanik Bill

Congressman Vanik's staff expects to work on revisions to his bill with the hope of introducing a new version prior to adjournment of the 93rd Congress. It is uncertain what changes will be made at the present time. The staff is likely to concur with the labeling provisions of S. 3625 described below and will reconsider H.R. 5902's resealable container and grant provisions. The staff expects the new version to be somewhat less directed towards rerefining.

S. 3625

S. 3625 was introduced on June 11, 1974 and referred to the Committee on Public Works for later referral to the Senate Finance Committee. It was introduced by Senator Domenici for himself, Senators Stafford, McClure, Randolph and Baker. Like the Vanik Bill, it is titled the "National Oil Recycling Act". It does not contain the Vanik bill provisions governing returnable deposit containers for oil, nor those requiring oil retailers to maintain used oil collection facilities. It also differs from the Vanik bill in that it does not specify that reprocessed oil must be labeled as "recycled." Rather, it vests broad labeling authority in the EPA Administrator, and once this authority is exercised, FTC regulations and state and local laws requiring "previously used" or "reprocessed" labeling are no longer to have effect. Further, the Vanik proposal envisages private citizens, not necessarily having damage claims, being able to sue to compel the authorities to enforce the law. In the later Senate version, this provision for private attorneys general is dropped. In other respects, S. 3625 and H.R. 5902 are similar. While the labeling provisions of the Senate bill are arguably superior, it unfortunately does not contain H.R. 5902's requirement that oil retailers provide used oil deposit facilities.

CONCLUSION

The Vanik and Domenici bills reflect Congressional belief that federal and state action on the used oil issues is desirable. In evaluating these bills, as well as the other suggestions in this section it should be remembered that problems associated with used oil disposal vary in their magnitude. What may be an appropriate response for one state may not be appropriate for another, and even

within states, approaches for one region may not be appropriate for another. Choice of the appropriate response will be a function of health and economic considerations. While there is the danger of states doing too little to manage used oil flow, there may also be a problem of states doing too much - dictating end uses for used oil - or means for controlling its disposal - whose economic costs are not justified by the health or environmental risks avoided and the resources conserved.

APPENDIX A

A SUMMARY OF TAX CODE PROVISIONS PERTAINING TO PAYMENT OF MANUFACTURERS' EXCISE TAXES ON LUBRICATING OILS

Provisions of the Internal Revenue Code provide for payment of an excise tax of 6 cents per gallon by manufacturers or producers of lubricating oil. No such tax is payable on imports of lubricating oil.

Lubricating oils are exempt from taxation if they are cutting oils, reclaimed oils, or oils seldom used for lubricating purposes. Also exempt from the tax are certain sales from one manufacturer to another, sales to state and local governments, sales for export, sales for use on some vessels and aircraft, and sales to certain educational organizations. Tax-exempt sales can usually be made when exemption certificates are provided to a manufacturer by a lubricating oil purchaser. These certificates may be printed by the concerned parties following a format provided by the Internal Revenue Service in its regulations.

Refunds of taxes paid may be obtained by purchasers of lubricating oils used otherwise than in a highway vehicle. Refunds may take the form either of direct payments or credits against income taxes owed.

A summary of the principal sections of the Internal Revenue Code and regulations pertaining to lubricating oils follows:

Section 4091 of the Code imposes a 6 cents per gallon tax on lubricating oils to be paid by the manufacturer or the producer.

Under section 48.4091-6 of the IRS regulations, sale of lubricating oil seldom used for lube purposes, or sale of lube oil for resale for non-lube oil purposes, may be tax-free. For a sale to be tax-free, a manufacturer must obtain an exemption certificate from the purchaser, and a purchaser purchasing lube oil for resale must obtain such a certificate from the second purchaser of the oil.

The exemption certificates which are filed are retained by the manufacturers. When sales are frequent of lube oil seldom used for lube purposes, one certificate covering an entire year's orders will be acceptable. Otherwise, one must be completed for each order. Manufacturers have a duty to ascertain the validity of a certificate.

Oils sold tax-free under the provisions of regulation 48.4091-6 do not qualify for tax refunds or credits against income tax available under sections 39(a)(3) and 6424 of the Internal Revenue Code. How-

ever, if oil on which tax has been paid is used for non-lube purposes, the ultimate purchaser may file a claim for credit under section 39(a)(3) or refund under section 6424.

Cutting oils may be sold tax-free. This may be done following any of the three procedures described in T.I.R. 784 (December 8, 1965) and Revenue Procedure 66-52, 1966-2 Cum. Bull. 1263. First, when oil is sold in containers smaller than five gallons which bear labels indicating that their contents are for use only in cutting and machining operations, when advertising for the oil indicates this, and when the oil is sold for such use or for resale for such use. Second, oil may be sold in bulk tax-free when the IRS Commissioner has determined that an oil is suitable only for cutting uses. Third, a purchaser may obtain a cutting oil exemption certificate, specifying that his oil purchase is to be used for cutting purposes. The cutting oil certification procedure is similar to the certification procedure of section 48.4091-6 for sales of lubricants seldom used for lubricating purposes.

Section 48.4093-1 of the regulations provides that sales of lubricating oil by one manufacturer to another manufacturer for resale may be on a tax-free basis, provided that both manufacturer and purchaser have registered with the District Director of Internal Revenue. For subsequent tax-collection purposes, the purchaser of oil made tax-free under the provisions of this section is considered to be the manufacturer of the oil so purchased.

Section 6424 of the Internal Revenue Code provides that the ultimate purchaser of lubricating oil (other than cutting or previously used oils) used otherwise than in a highway vehicle, may obtain a 6 cents per gallon payment from the government. Under the provisions of section 39(a)(3) of the Code, this ultimate purchaser may claim this as a credit against his income tax. Alternatively, if the amount claimed exceeds $1000 for the first, second or third quarter of the year, he may file a claim for the amount prior to the last day of the quarter following the quarter in which the claimed refund exceeds $1000.

IRS form 843 is used to make a quarterly claim. For a yearly claim, IRS form 4136 is attached to the income tax form filed by the claimant -- form 1040, 1120, 1120-S or 1065. The individual seeking a refund indicates the number of gallons of lube oil purchased, and multiplies this by 6 cents to obtain the total for the credit sought. The taxpayer must also list the general purposes for which the oil has been used. Section 6424(d)(2) of the Code provides that witnesses and books may be examined to determine the validity of credit claims.

Those exempt from income tax do not claim a credit against their income tax, but obtain direct refunds. No amount is payable under section 6424 for oils which have been used off the highway but which have been sold tax-free.

Section 4218 of the Code provides that if an individual manufacturer produces lubricating oil and uses it otherwise than in a taxable item, then he pays tax on it equivalent to the tax payable were he to sell it. However, if sale of the oil to another purchaser for a particular (e.g., non-lubricating) use would be tax-exempt, when the manufacturer uses the oil in such a non-taxable manner himself, he is not liable for tax.

Section 4221 of the Code provides that sales of lube oil are tax-exempt if the lube oil:

1. is for use by a purchaser for further manufacture, or for resale by the purchaser to a second purchaser for use by the second purchaser in manufacture;

2. is for export, or for resale by a purchaser to a second purchaser for export;

3. is for use by a purchaser as a supply for vessels or aircraft (though the definition of vessels and aircraft is restrictive);

4. is to a state or local government for its exclusive use;

5. is to a non-profit educational organization holding a Code section 501(a) exemption.

Generally speaking, exemption certificates are required for tax-exempt sales in categories 1, 3 and 4 above. For export sales, proof of export must be shown to obtain exemption. For sales to section 501(a) tax exempt education organizations, the organizations and the manufacturers must be registered with the Internal Revenue Service.

WRA-ACP-01
11/72

Appendix B

State of Maryland
Water Resources Administration
Annapolis, Md. 21401

APPLICATION
FOR OIL HANDLER'S PERMIT
(As required by Water Resources Regulation 4.02)

INSTRUCTIONS TO APPLICANT:

Fill out this application form completely, providing all information requested; insert "not applicable" or "not available", with explanation as necessary, where such comment is appropriate. Attach maps, additional information sheets, as necessary.

1. Name of Company or Facility: _____

_____

2. Mailing Address: _____

_____

3. Location of Oil Handling Operations (Map must be attached): _____

_____

Municipality, or Nearest Town: _____

County: _____

4. Nearest Body of Water:

☐ Body of Water - Name _____

☐ Storm Drain(s) - Location(s) _____

5. Type of Facility:

☐ Marine Oil Transfer Facility
☐ Oil Storage Facility
☐ Oil Delivery By Truck Tank or By Transport
☐ Oil Transfer Facility
☐ Facility for the Handling of Used Oil
☐ Garage ☐ Service Station
☐ Other Oil Handling Facility;
Specify _____

6. Method(s) of Product Transfer:

☐ Boat ☐ Barge ☐ Ship ☐ Truck ☐ Pipeline ☐ Rail

☐ Other; specify: _____

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7. Product/Waste Oil Storage (* 1 Barrel = 42.0 U.S. gal. liquid measure)

PRODUCT	ABOVE-GROUND		BELOW-GROUND	
	# Tanks	Total capacity in barrels*	# Tanks	Total capacity in barrels*
Gasoline				
Kerosene				
Jet Fuel				
Diesel Oil				
#2 Oil				
#4 Oil				
#5 Oil				
#6 Oil				
Total (for products)				
Waste Oil				
Total (for Waste Oil)				

8. Plan for Containment & Cleanup of Spills or Leaks:

☐ Included in Facility's Containment and Clean-up Plan

☐ Included in Operations Manual (for marine oil transfer facilities)

Such plan: ☐ Previously submitted; date: _____

☐ Submitted herewith

☐ In preparation; to be submitted by _____ (Date)

9. Identification of all drains from building, facility or property that contain or may contain oil:

☐ Sketch or plan attached

☐ Sketch or plan previously submitted with application for Discharge Permit; Application #_____; date: _____

☐ Sketch or plan is in preparation; will be submitted by _____ (Date)

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10. Complete Description of Method for Disposal of Waste Oil: _____

_____

_____

_____

11. Company/Facility Owned By: Operated By:

_____ _____

_____ _____

_____ _____

Application is hereby made to the State of Maryland, Water Resources Administration for an Oil Handler's Permit for the operations and activities described above. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, this information is true, complete, and accurate. I understand that the inclusion of any false or misleading information or the exclusion of required information in this application, may cause the Administration after due notice and hearing to revoke or suspend any license or permit issued. Failure to notify the Administration of oil spills or leaks regardless of size shall also be cause for revocation or suspension.

_____
Name of Company or Facility

_____
Signature of Applicant or Agent

_____ _____
Date Name of Applicant or Agent
(Print or Type)

_____
Title of Applicant or Agent

PS-218

Attachment I

COMMONWEALTH OF MASSACHUSETTS
HAZARDOUS WASTE BOARD
DIVISION OF WATER POLLUTION CONTROL
100 CAMBRIDGE STREET
BOSTON, MASSACHUSETTS 02202

FY_____
Permit No._____
Expires_____

License Application - Hazardous Waste Collection and Disposal (G.L., C. 21, s. 57-58)
(Submit application in duplicate and signed by owner or authorized official.)

1. Name of Firm_____
2. Address of Firm_____
3. Person to Contact in Emergencies_____Tel._____
4. Type of Hazardous Waste Operation (Check applicable spaces)

   _____Conveyance of Hazardous Wastes

   _____Operation of Storage Facility

   _____Operation of Disposal Facility

5. Classes of Hazardous Wastes Handled (Check applicable spaces)

   _____Waste Oils _____Toxic Metal & Plating Wastes

   _____Solvents & Chlor. Oils _____Explosives, Reactive Metals

   _____Hazardous, Chemical, Biological and Radioactive Wastes

6. Attach a tabulation of the class(es) of wastes and approximate annual quantities handled or disposed of in the usual course of your business.
7. Attach a description of the disposal method(s) being used or to be used for each class of waste.
8. State the location and capacity of all storage and/or disposal facilities owned, operated or controlled by your firm. State the location of specific disposal sites proposed to be utilized. (attach sheets as required)
9. Attach a list of trucks, vessels or other vehicles owned, operated or controlled by your firm for the handling and conveyance of hazardous wastes. (description/license or ident. no.)

_____ _____
Type Name of Applicant Signature & Title of Applicant

_____
_____
Address of Applicant

- -

(For Issuing Office Use Only)

Approved subject to current rules and regulations and to conditions listed below.

Conditions:

_____
Director, Division of Water
Pollution Control

Attachment II

COMMONWEALTH OF MASSACHUSETTS

HAZARDOUS WASTE BOARD

DIVISION OF WATER POLLUTION CONTROL

MONTHLY OPERATION REPORT - LICENSED HAZARDOUS WASTE COLLECTOR

Name of Company _____

Address _____

Permit No. _____ Month-Year _____

CLASS
A - Waste Oil
B - Solvents & Chlor. Oil
C - Toxic Metal etc.
D - Explosives etc.
E - Hazardous, Chemical, Biological and Radioactive Wastes

PICK-UP MATERIAL DESCRIPTION			DELIVERY MATERIAL DESCRIPTION		
1) Class (See Legend)	Quantity	Units	2) Class	Quantity	Units

NOTE: 1) Include class subdivision (crankcase oil, fuel oil, trichlor, MEK, etc.) if significant and appropriate.

2) Account for any shrinkage of Materials delivered (i.e., non-hazardous aqueous waste or sludge separated from hazardous waste).

Return Completed Form To: Massachusetts Division of Water Pollution Control, Room 1901
100 Cambridge Street, Boston, Massachusetts 02202

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES

LIQUID INDUSTRIAL WASTE REMOVAL RECORD

COMPANY NAME
ADDRESS
CITY, STATE & ZIP

LICENSED HAULER NAME	DATE	SOURCE OF WASTE (TYPE OF PROCESS)	DESCRIPTION OF WASTE	QUANTITY (LIST BY TYPES)	LOCATION & METHOD OF DISPOSAL	DETAILS OF SPILLS (AMOUNT, PERSON NOTIFIED, ETC.)

SEPARATE RECORD REQUIRED FOR EACH LOAD

R-4564

LIQUID INDUSTRIAL WASTE
REMOVAL RECORD

_____ 19 ___

COMPANY NAME	W.R.C. LICENSE NO.	VEHICLE LICENSE NO.

DRIVERS NAME	DATE	SOURCE OF WASTE		DESCRIPTION OF WASTE	QUANTITY (LIST BY TYPES)	DISPOSAL		DETAILS OF SPILLS (AMOUNT, PERSON NOTIFIED, ETC.)
		COMPANY	LOCATION			METHOD	LOCATION	

MAIL TO: BUREAU OF WATER MANAGEMENT
8th FLOOR - MASON BLDG.
LANSING, MICHIGAN - 48926

WHITE COPY — WATER RESOURCES COMMISSION
PINK COPY — HAULERS
YELLOW COPY — TRUCK COPY

R-4520
REV.4/73

CALIFORNIA LIQUID WASTE HAULER RECORD
STATE WATER RESOURCES CONTROL BOARD

PRODUCER OF LIQUID WASTE

Name (print or type): _____

Pick up Address _____
(Number) (Street) (City)

Type of process which produced wastes: _____
(Examples: metal plating, equipment cleaning, chemical formulation, etc.)

I certify that the described waste was delivered to the licensed hauler named below for legal disposal at the site indicated

_____
Signature of Producer or Authorized Agent and Title

Date _____
Pickup Time _____ AM
_____ PM

CHECK TYPE OF LIQUID WASTE:

		Quantity (Circle one) gallons or barrels
1. Acid Solution	☐	_____
2. Alkaline Solution	☐	_____
3. Pesticides	☐	_____
4. Etching Solution	☐	_____
5. Spent Plating Solution	☐	_____
6. Catalyst	☐	_____
7. Brine	☐	_____
8. Emulsion	☐	_____
9. Tetra Ethyl Lead Sludge	☐	_____
10. Toxic Tank Bottom Sediment	☐	_____
11. Other Toxic Solutions: (Name): _____ _____	☐	_____
12. Chemical Fertilizer	☐	_____
13. Chemical Toilet Wastes	☐	_____
14. Cannery Waste	☐	_____
15. Oil	☐	_____
16. Grease	☐	_____
17. Non-toxic Rotary Drilling Mud	☐	_____
18. Acetylene Sludge	☐	_____
19. Paint Sludge	☐	_____
20. Asphalt Sludge	☐	_____
21. Latex Waste	☐	_____
22. Tile Glaze Waste	☐	_____
23. Lime Soda Water	☐	_____
24. Solvent	☐	_____
25. Non-toxic Mud and Water	☐	_____
26. Other Non-toxic Solutions: (Name): _____ _____	☐	_____

HAULER

Name (print or type) _____

Business Address _____
(Number) (Street) (City)

I certify that the described waste was hauled by me in a vehicle with a valid liquid waste hauler registration certificate to the disposal facility named below and was accepted

State Waste Hauler's Registration No.: _____
Local Business License Truck Tag No. (if applicable): _____

_____
Signature of Hauler or Authorized Agent and Title

DISPOSAL FACILITY

Name (print or type) _____

Site Address _____

I certify that the hauler above delivered the described liquid waste to this disposal facility and it was an acceptable material under the terms of the RWQCB Discharge Requirements and local regulations

Site Operator shall indicate identification code for the manner and location of Group 1 Waste Disposal at the Facility: (The listing of identification code is only required for Group 1 Waste Disposal. Instructions on how to specify this code have been forwarded to each Class I and Class II-1 disposal site in California.)

Treatment or Recovery Process _____ Pond _____ Spreading Area _____ Landfill Area _____ Other _____

IF WASTE IS HELD FOR DISPOSAL ELSEWHERE, SPECIFY FINAL LOCATION _____

_____
Signature of Waste Disposal Facility Operator or Authorized Agent and Title

*FAILURE TO MAINTAIN RECORDS AS REQUIRED BY SECTION 2440 OF CHAPTER 3, TITLE 23 OF THE CALIFORNIA ADMINISTRATIVE CODE, MAY RESULT IN REVOCATION OF REGISTRATION.

IN APPLICABLE AREAS OF LOS ANGELES COUNTY, THE ORIGINAL OF THIS CERTIFICATE MUST BE FORWARDED PROMPTLY TO THE DEPARTMENT OF COUNTY ENGINEER.

REGISTRATION NO._____

State of California
The Resources Agency

STATE WATER RESOURCES CONTROL BOARD

APPLICATION FOR REGISTRATION AS A LIQUID WASTE HAULER

(This application must be typewritten or legibly written in ink and all sections must be completed)

A. Full name of applicant_____

B. Principal business address_____
(Record form location)

_____ Telephone_____

C. Mailing Address_____

D. Other Addresses from which liquid waste hauling business is conducted:

_____

_____

E. Residence address of applicant_____

If a partnership, names and addresses of all partners:

Names of Partners	Business Address	Residence Address
1.		
2.		
3.		

F. Name of person signing application_____

Position or authority (senior partner, corporate officer, etc.):

_____

I certify that the statements on all pages of this application are true and correct to the best of my knowledge and belief.

Date signed_____ Signature_____

DO NOT USE THIS SPACE

Fees enclosed:

Registration fee $ 10.00
Vehicle fees
(from page 3) _____

Total $

WRCB 202(12/17/70)

175

PROPOSED OPERATIONS AS A LIQUID WASTE HAULER

G. If regulated by the California Public Utilities Commission, state whether regulated as a contract carrier or otherwise, and give general description of area where authorized to operate.

_____

_____

H. Proposed disposal sites:

Code No.	Describe Location of Site	Owner	Address
1.			
2.			
3.			
4.			

I. Check types of liquid waste which are expected to be hauled and identify by code number the sites where the wastes will be disposed.

1. Acid Solution _____
2. Alkaline Solution _____
3. Pesticides _____
4. Etching Solution _____
5. Spent Plating Solution _____
6. Catalyst _____
7. Brine _____
8. Emulsion _____
9. Tetra Ethyl Lead Sludge _____
10. Toxic Tank Bottom Sediment _____
11. Other Toxic Solutions:
(Name): _____
_____
12. Chemical Fertilizer _____
13. Chemical Toilet Wastes _____
14. Cannery Waste _____
15. Oil _____
16. Grease _____
17. Non-toxic Rotary Drilling Mud _____
18. Acetylene Sludge _____
19. Paint Sludge _____
20. Asphalt Sludge _____
21. Latex Waste _____
22. Tile Glaze Waste _____
23. Lime Soda Water _____
24. Solvent _____
25. Non-toxic Mud and Water _____
26. Other Non-toxic Solutions:
(Name): _____
_____

J. Proposed delivery by hauler to another person for disposal (including delivery to a community sewer system):

Name of Other Person	Address
1.	
2.	
3.	
4.	

VEHICLES TO BE REGISTERED FOR
HAULING LIQUID WASTE

K. Each vehicle used, or to be used, to haul liquid waste. Fill in all columns.

	Type of Vehicle (Specify: Truck, Tank Truck, Tank Trailer, Trailer, Other)	Motor Vehicle License Number	Earliest Month Vehicle Is To Be Used in Current Year	Fee (see table in Instructions)	Do Not Use This Column
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

DO NOT USE THIS SPACE

Total $_____
(forward to page 1, bottom, right-hand corner)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SEPTIC TANK CLEANER & INDUSTRIAL WASTE COLLECTOR CERTIFICATE OF REGISTRATION

Registration No.	Vehicle License No.

THIS IS TO CERTIFY THAT:

Name of Registrant	Name of Business

Address	City	State	Zip Code

having complied with the provisions of Conservation Law, §9-0101, is hereby authorized to engage in or carry on the business of septic tank cleaning or waste collecting within the State of New York in the manner described on the application.

This certificate of registration will expire on the last day of _____, 19___, and is subject to revocation. Certificates are not transferable.

In witness whereof, the Department of Environmental Conservation has caused the certificate of registration to be executed on this _____ day of _____, 19___.

By _____
New York State Department of Environmental Conservation Representative

LANDS AND RECEIVING STATIONS APPROVED FOR DISPOSAL

CONDITIONS:

Instructions

(References are to the Internal Revenue Code)

1. General rule.—Tax-free sales under sections 4063(a)(6), 4063(a)(7), 4063(b), 4083, 4093, and 4221 may be made only if the manufacturer, first purchaser, and second purchaser have registered. Persons subject to tax under sections 4081 (Gasoline) and 4091 (Lubricating Oil) are required to register before incurring any excise tax liability.

2. Who may register.—Any person who qualifies as a:

a. Manufacturer of articles,

b. Vendee purchasing articles (other than tires or inner tubes) for his use in further manufacture or for resale to a vendee who will so use the articles,

c. Vendee purchasing tires or inner tubes for his use on or in connection with the sale of another article he manufactures provided he is to sell the other article (taxable or nontaxable) for any of the tax-free purposes indicated in section 4221 except for use, or for resale for use, in further manufacture,

d. Vendee with a place of business in the United States purchasing articles for export or for resale to a second purchaser for export,

e. Vendee purchasing articles for use as supplies for vessels or aircraft,

f. Nonprofit educational organization,

g. Vendee purchasing bicycle tires or tubes for use in his manufacture of new bicycles,

Page 2

h. Vendee purchasing gasoline for nonfuel purposes as a material to be used by him in the manufacture of another article,

i. Vendee purchasing buses for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations,

j. Producer of gasoline (including a wholesale distributor) who purchases gasoline, or a manufacturer or producer of lubricating oil who purchases lubricating oil for resale,

k. State or local government,

l. Vendee purchasing trash containers, or

m. Vendee purchasing local transit buses.

3. Prior registration.—If a District Director has issued you a Certificate of Registry that is still in effect, you need not register again unless notified to do so.

4. Exceptions to the requirements for registration.—

a. The District of Columbia, a State, or its political subdivision purchasing articles directly from the manufacturer for its exclusive use may, but is not required to, register.*

b. In the case of sales for export or for resale for export where the first purchaser or the second purchaser is located in a foreign country or a possession of the United States, such purchaser is not required to register.*

c. In the case of sales for use as supplies for vessels or aircraft where prescribed exemption certificates are furnished to the manufacturer by the purchaser, registration is not required.*

d. The registration requirements do not apply to purchases and sales by the United States.

5. How to register.—Obtain Form 637 from any Internal Revenue Service office and file it in duplicate. If the application is accepted, the original will be validated by the District Director and returned as your Certificate of Registry.

6. Where to register.—File Form 637 with the District Director of Internal Revenue for the district in which your principal place of business is located. If you have no principal place of business in the United States, file with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225.

7. Additional information to be submitted by vendees.—In addition to the information on the application, vendees should submit information showing the types of tax-free purchases they intend to make. This information should include:

a. Types of products involved in the case of a vendee purchasing for resale and the reason for resale,

b. If a vendee is a nonprofit educational organization (other than a school activity of a church), the date of the determination letter holding it to be exempt from Federal income tax,

c. In the case of a vendee purchasing supplies for vessels or aircraft, state:

(1) Name of vessel or make, model, and serial number of aircraft,

*Tax-free sales in such cases must be made in accordance with the procedure provided under applicable regulations.

(Continued on page 4)

Form **637**
(Rev. July 1973)
Department of the Treasury
Internal Revenue Service

Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code

This Application Should Also Be Used by Producers and Importers of Gasoline and Manufacturers of Lubricating Oil

For District Director's Use Only

No.

Please type or print

Name of individual, corporation, partnership, association, etc.	Social Security or Employer Identification Number
Name under which business is operated	Will you be required to file Form 720? ☐ Yes ☐ No
Business address (Number and street)	File this application in duplicate with your District Director of Internal Revenue. See the instructions on pages 2 and 4.
City, State, and ZIP code	

Application is hereby made for a Certificate of Registry in the name(s) indicated above. The applicant is a:

☐ Manufacturer ☐ Producer ☐ Importer ☐ Wholesaler ☐ Jobber ☐ Selling or ☐ Purchasing (specify type of product) ▶ _____

☐ Retailer ☐ Other (specify) ▶ _____

The applicant affirms that use of articles purchased or sold tax-free is to be for the exempt purposes specified in the applicable provisions of the law and regulations and understands that misuse of this certificate will lead to its revocation and/or the penalties provided by law.

See item 2 on page 2 and check applicable letter(s). I qualify as a:

☐ a, ☐ b, ☐ c, ☐ d, ☐ e, ☐ f, ☐ g, ☐ h, ☐ i, ☐ j, ☐ k, ☐ l, ☐ m, and/or ☐ n (other—specify) ▶

Under the penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true, correct, and complete.

Signature _____ Title _____ Date _____

District Director's Validation

A certificate of registry for the above applicant is approved and issued under the number shown.

_____ By _____ Date _____

District Director of Internal Revenue

Instructions (Continued)

(2) Type of business engaged in with the vessel or aircraft, and

(3) Name of country in which civil aircraft is registered.

d. In the case of a vendee purchasing for further manufacture, the articles purchased for this purpose and the end product.

8. Producers or importers of gasoline and manufacturers of lubricating oil.—Every producer or importer of gasoline and every manufacturer of lubricating oil subject to tax under sections 4081 or 4091 must make application for registry on Form 637 as required by section 4101.

The application must contain in addition to the information required on Form 637 the following information:

a. A statement as to whether the applicant is a refiner, compounder, blender, or actual producer of gasoline; whether he is an importer of gasoline; whether he is a dealer selling exclusively to producers of gasoline; whether he is a wholesale distributor of gasoline; and whether he is a manufacturer of lubricating oil,

b. A description of the equipment and facilities maintained for the production of gasoline or lubricating oil,

c. A description of the equipment and methods actually employed in such production,

d. The ingredients or materials used,

e. In the case of a refiner, compounder, blender, or actual producer of gasoline, the percentage which his sales, if any, of gasoline produced by him is expected to bear to his total sales of gasoline,

f. In the case of a wholesale distributor of gasoline, a description of the storage facilities maintained by the distributor, and the percentage which his bulk sales of gasoline is expected to bear to his total sales of gasoline, and

g. In the case of a manufacturer of lubricating oil, the percentage which his sales of lubricating oil produced by him is expected to bear to his total sales of lubricating oil.

9. Definitions.—

a. *Articles.*—All references to "articles" are to those taxable under Chapter 32 of the Code unless otherwise indicated.

b. *Manufacturer.*—This term includes a producer or importer of an article, but not an importer of lubricating oil.

c. *Export.*—Includes shipment to a possession of the United States.

d. *Supplies for vessels or aircraft.*—Means fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation; vessels employed in the fisheries or in the whaling business; or vessels actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. The term "vessels" includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions. The term "vessels of war of the United States or of any foreign nation" includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces. In the case of civil aircraft registered in a foreign country, that country must allow a substantially similar exemption for civil aircraft registered in the United States.

e. *Nonprofit educational organization.*—This term means an organization exempt from income tax under section 501(a) of the Code, whose primary function is the presentation of formal instruction, and which normally maintains a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term also includes a school operated as an activity of a church or other organization described in section 501(c)(3) of the Code, which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

f. *Use in further manufacture.*—An article shall be treated as sold for use in further manufacture if:

(1) The article (other than an article referred to in (2) below) is sold for the purchaser's use as material in the manufacture or production of, or as a component part of, another article (taxable under Chapter 32) he is to manufacture or produce, or

(2) In the case of a part or accessory taxable under section 4061(b), the article is sold for the purchaser's use as material in the manufacture or production of, or as a component part of, another article (taxable or nontaxable) he is to manufacture or produce.

10. Use of registration.—Use of the registry number and the evidence and records required to substantiate tax-free sales and purchases must be in accordance with applicable regulations.

U.S. GOVERNMENT PRINTING OFFICE : 1973—O-478-151

Form **637**
(Rev. July 1973)
Department of the Treasury
Internal Revenue Service

Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code

This Application Should Also Be Used by Producers and Importers of Gasoline and Manufacturers of Lubricating Oil

For District Director's Use Only

No.

Please type or print

Name of individual, corporation, partnership, association, etc.

Social Security or Employer Identification Number

Name under which business is operated

Will you be required to file Form 720? . ☐ Yes ☐ No

Business address (Number and street)

File this application in duplicate with your District Director of Internal Revenue. See the instructions on pages 2 and 4.

City, State, and ZIP code

Application is hereby made for a Certificate of Registry in the name(s) indicated above. The applicant is a:

☐ Manufacturer ☐ Producer ☐ Importer ☐ Wholesaler ☐ Jobber ☐ Selling or ☐ Purchasing (specify type of product) ▶ _____

☐ Retailer ☐ Other (specify) ▶ _____

The applicant affirms that use of articles purchased or sold tax-free is to be for the exempt purposes specified in the applicable provisions of the law and regulations and understands that misuse of this certificate will lead to its revocation and/or the penalties provided by law.

See item 2 on page 2 and check applicable letter(s). I qualify as a:

☐ a, ☐ b, ☐ c, ☐ d, ☐ e, ☐ f, ☐ g, ☐ h, ☐ i, ☐ j, ☐ k, ☐ l, ☐ m, and/or ☐ n (other—specify) ▶

Under the penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true, correct, and complete.

Signature _____ Title _____ Date _____

District Director's Validation

A certificate of registry for the above applicant is approved and issued under the number shown.

_____ By _____ Date _____

District Director of Internal Revenue

Form **4136**

Department of the Treasury
Internal Revenue Service

Computation of Credit for Federal Tax on Gasoline, Special Fuels, and Lubricating Oil

Attach this form to your income tax return for calendar year 1973

or other taxable year beginning ..... , 1973, ending ..... , 19 .....

1973

Name (as shown on page 1 of your income tax return) | Identifying number

Part I

Type of Use	Gasoline, Diesel Fuel and Special Motor Fuels: Number of Gallons Used (A)	Rate of Tax (B)	Column (A) Multiplied by Column (B) (C)	Lubricating Oil: Number of Gallons Used (D)	Rate of Tax (E)	Column (D) Multiplied by Column (E) (F)
1 Nonhighway:						
a. Farm (for farming purposes)		.02 }* .04 }	$		.06	$
b. Motorboat		.02			.06	
c. Other (specify)		.02 }* .04 }			.06	
2 Local transit system. (See instruction E.3.)		.02				
3 Aircraft					.06	
4 Totals			$			$

Part II

Type of Use	Aviation Fuels: Fuels Other Than Gasoline (Example, Jet Fuel) Number of Gallons Used (A)	Gasoline Number of Gallons Used (B)	Rate of Tax (C)	Column (A) or (B) Multiplied by Column (C) (D)
5 a. Farm (for farming purposes)			.07	$
			.04 }* .07 }	
b. Aviation (only applicable to commercial use as defined in instruction F.4.(c))			.04 }* .07 }	
			.07	
6 Total				$
7 Total income tax credit claimed (sum of line 4, columns (C) and (F) and line 6, column (D))				$

***Rate of Tax (per gallon used)**

Type of Use	Gasoline (Nonaviation use)	Diesel Fuel and Special Motor Fuel	Aviation Fuel Gasoline
Farm (farming purposes)	4¢	2¢ or 4¢ whatever paid	4¢ or 7¢ whatever paid
Other	2¢	2¢ or 4¢ whatever paid	
Aviation (only applicable to commercial use as defined in instruction F.4.(c))			4¢ or 7¢ whatever paid

Instructions

A. Who May File.—Any individual, estate, trust, or corporation, including a small business corporation and domestic international sales corporation, claiming credit for Federal excise tax on the number of gallons of gasoline, special fuels, and lubricating oil used must file this form. It should be attached to the income tax return.

Partnerships are not required to file this form because the credit for Federal excise tax on gasoline, special fuels, and lubricating oil used is claimed by the partners. However, partnerships must attach a statement to their returns, Form 1065, showing the allocation to the partners of the number of gallons of gasoline, special fuels, and lubricating oil used by type of use as shown above.

Special refund provisions are available if the credit for any of the first three quarters of your taxable year amounts to $1,000 or more. (See Instruction C.)

B. Time for Filing a Claim for Credit.—An income tax credit will be allowed if claimed within the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable years.

C. Quarterly Tax Refund of $1,000 or More.—For any of the first three quarters of your taxable year, a claim, Form 843, may be filed for refund of tax of $1,000 or more for: (a) gasoline used (except, on the farm for farming purposes), (b) lubricating oil used, or (c) special fuels used (except, on the farm for farming purposes) during a calendar quarter. However, no claim will be allowed unless filed on or before the last day of the following quarter. A claim for gasoline, special fuels, and lubricating oil should provide separate computations as in the format shown above. (If you prefer, you may use the above schedule instead of your own statement to show the separate computations.)

D. What Lubricating Oil to Include.—An income tax credit may be claimed for lubricating oil (other than cutting oils and used oil) that is used otherwise than in a highway motor vehicle. Cutting oils are those oils sold for use on metals in cutting and machining operations (including forging, drawing, rolling, shearing, punching, and stamping). Examples of uses of lubricating oil otherwise than in a highway motor vehicle are oiling plant machinery and lubricating vehicles other than highway motor vehicles, such as aircraft, bulldozers, power shovels, farm tractors, etc.

(Continued on back)

Instructions (Continued)

Do not include oil (a) used in a highway motor vehicle, such as a truck, even if it is operated off the highway, (b) sold free of the Federal excise tax on lubricating oil, such as transformer or insulating oil, certain motor fuel additives, crude neatsfoot oil, castor oil, or oils purchased excise-tax-free by use of an exemption certificate, or (c) for which a refund has been claimed on a timely filed Form 843 for any of the first three quarters of your taxable year. (See Instruction C.)

E. What Gasoline to Include.

1. *Farm for Farming Purposes.*—An income tax credit may be claimed for Federal excise tax on gasoline used for farming purposes on a farm that must be a trade or business located in the United States.

The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farm, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards.

Gasoline shall be treated as used for farming purposes only if used by the owner, tenant, or operator of a farm in connection with—

(a) cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, fur-bearing animals and wildlife. If the gasoline usage is by other than the owner, tenant, or operator of the farm (for example, a custom operator), the owner, tenant, or operator shall be treated as the user and ultimate purchaser of the gasoline;

(b) handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if the owner, tenant, or operator produced more than half the commodity he so treated during the period for which the claim is filed;

(c) planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market, incidental to farming operations; or

(d) operating, managing, conserving, improving, or maintaining the farm and its tools and equipment.

Do not include gasoline used (1) off the farm, such as on the highway to transport livestock, feed, crops, or equipment; (2) in processing, packaging, freezing, or canning operations; (3) for personal or other nonfarming purposes; or (4) on the farm of another person, even though used for farming purposes.

In many instances a vehicle will be used both on the farm for farming purposes and for nonfarming purposes. In such cases an allocation of the gasoline used must be made in arriving at the total gallons of gasoline used on the farm for farming purposes.

2. *Nonhighway Uses.*—Gasoline is regarded as having been used for a nonhighway purpose if used otherwise than as fuel in a highway vehicle which, (1) at the time of such use, is registered or required to be registered for highway use under the laws of any State or foreign country, or (2) in the case of a highway vehicle owned by the United States, is used on the highway.

Do not include gasoline used for which a refund has been claimed on a timely filed Form 843 for any of the first three quarters of your taxable year. (See Instruction C.)

3. *Local Transit Systems.*—This relates to gasoline used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes. The ultimate purchaser of the gasoline may claim a credit of 2 cents for each gallon of gasoline so used. The amount to be entered as "Number of Gallons Used" on line 2, column A is determined by multiplying—

(a) the total number of gallons used in connection with the total passenger fare revenue from scheduled service during the quarter by;

(b) the percentage the ultimate purchaser's commuter fare revenue was of his total passenger fare revenue, both kinds of revenue being from scheduled service during the quarter. (Note—To justify a claim for credit this percentage must be at least 60 percent.)

Commuter fare revenue means revenue attributable to fares from the transportation of persons and attributable to—(a) amounts not exceeding 60 cents paid for transportation, (b) amounts paid for commutation or season tickets for single trips of less than 30 miles, or (c) amounts paid for commutation tickets for 1 month or less.

Local transit systems must attach a statement with the information required under section 6421 of the Internal Revenue Code and its Regulations in making claim for refund or credit.

Do not include gasoline used for which a refund has been claimed on a timely filed Form 843 for any of the first three quarters of your taxable year. (See Instruction C.)

F. What Special Fuels to Include.

1. *Farm for Farming Purposes.*—An income tax credit may be claimed for Federal excise tax imposed on those fuels defined under paragraphs 4(a), (b), and (c), and which are used on a farm for farming purposes within the meaning of Instruction E.1.

2. *Local Transit Systems.*—This applies to those fuels defined under paragraphs 4(a) and (b), and which are used by the purchaser during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes. (See Instruction E.3., above, to figure the "Number of gallons used.")

Do not include special fuels used for which a refund has been claimed on a timely filed Form 843 for any of the first three quarters of your taxable year. (See Instruction C.)

3. *Nontaxable Uses.*—This relates to those fuels defined under paragraphs 4(a), (b), and (c), which the purchaser uses for a purpose taxable at a lower rate than the purpose for which it was sold, uses for a nontaxable purpose, or resells. The purchaser may claim a credit for the tax on the sale of the fuel to him, but if he uses the fuel he must reduce that amount by the tax applicable for such use under section 4041 of the Code.

Do not include special fuels used for which a refund has been claimed on a timely filed Form 843 for any of the first three quarters of your taxable year. (See Instruction C.)

4. *Definitions.*

(a) Diesel Fuel.—Any liquid (other than any product taxable as gasoline under section 4081 of the Code) that is:

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle; or

(ii) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid under (i) above.

(b) Special Motor Fuels.—These fuels are benzol, benzene, naphtha, liquefied petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 of the Code or paragraph 4(a) above) that is:

(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat, for use as a fuel in such motor vehicle or motorboat; or

(ii) used by any person as a fuel in a motor vehicle or motorboat, unless there was a taxable sale of such liquid under (i) above.

(c) Aviation Fuel.—Any liquid (for example, jet fuel) other than any product taxable under section 4081 of the Code, on which there is imposed a tax of 7 cents a gallon, and gasoline taxable under section 4081 of the Code on which there is imposed a tax of 3 cents a gallon that is:

(i) sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in other than commercial aviation; or

(ii) used by any person as a fuel in an aircraft in other than commercial aviation, unless there was a taxable sale of such liquid under (i) above.

Commercial aviation means any use of an aircraft in a business of transporting persons or property for compensation or hire by air. This term does not include any use of an aircraft, in a business described in the previous sentence, which is properly allocable to any transportation exempt from the taxes imposed on the transportation of persons or property by air by reason of: (a) the aircraft having a maximum certified takeoff weight of 6,000 pounds or less and not operated on an established line, or (b) a member of an affiliated group is the owner or lessee of an aircraft which is not available for hire by persons who are not members of such group.

G. Additional Information.—Internal Revenue Service Publications 225, Farmer's Tax Guide, and 378, Federal Fuel Tax Credit or Refund for Nonhighway and Transit Users, are available free at your Internal Revenue Service office.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1973—O-500-285

E.I.#25-1231452

Form **720**
(Rev. Feb. 1973)
Department of the Treasury
Internal Revenue Service

Quarterly Federal Excise Tax Return

Part I

1. Total tax. *(Before making entries in items 1 to 9, compute your total tax in Part II below.)* . . . . .
2. Adjustments. *(See instructions. Attach statement explaining adjustments.)* . . . . .
3. Tax as adjusted. *(Item 1 plus or minus item 2.)* . . . . .

4. (a) Record of Tax Liability. *(See instructions on page 4.)*

Period		Amount of Liability	(b) Record of Federal Tax Deposits: Date of deposit	(b) Record of Federal Tax Deposits: Amount
First Month	1st–15th day			
	16th–last day			
	Total for month			
Second Month	1st–15th day			
	16th–last day			
	Total for month			
Third Month	1st–15th day			
	16th–last day			
	Total for month			
(c) Total Liability for Quarter				

(d) Final deposit made for quarter (see note under item 7) . . . . .
(e) Total deposits for quarter (including final deposit made for quarter) . . . . .

5. Overpayment from previous quarter . . . . . →
6. Total deposits (item 4(e) plus item 5) . . . . . →
7. Undeposited taxes due *(item 3 less item 6; this should be $100 or less)*. Pay to Internal Revenue Service . . . →
   Note: If undeposited taxes due at the end of the quarter are more than $100, the entire balance must be deposited. This deposit must be entered in the deposit schedule above in item 4(d).
8. If item 6 is more than item 3, enter excess here ▶ $ and check if you want it: ☐ applied to your next return, or ☐ refunded to you.
9. If not liable for returns in succeeding quarters, write "FINAL" here ▶ and return this form to your Internal Revenue Service Center.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.

Signature Title (Owner, etc.) Date

Part II

Facilities and Services	Rate	Tax	IRS No.
Toll telephone service Teletypewriter exchange service Local telephone service	9%		22
Transportation of persons by air	8%		26
Use of international air travel facilities	$3.00 per person		27
Transportation of property by air	5%		28
Policies issued by foreign insurers	(*)		30
Manufacturers			
Truck, bus, and trailer chassis and bodies; tractors	10%		33
Parts or accessories for trucks, etc.	8%		48
Fishing rods, etc., and artificial lures, etc.	10%		41
Pistols and revolvers	10%		32
Firearms	11%		46
Shells and cartridges	11%		49

Products and Commodities	Rate	Tax	IRS No.
Sugar	(*)		60
Diesel fuel and special motor fuels	(*)		61
Gasoline (manufacturers tax)	4¢ gal.		62
Fuel used in noncommercial aviation: Fuel other than gasoline	7¢ gal.		69
Fuel used in noncommercial aviation: Gasoline (retailers tax)	3¢ gal.		14
Lubricating oil	6¢ gal.		63
Tires: highway vehicle type	10¢ lb.		66
Tires: laminated	1¢ lb.		
Tires: other	5¢ lb.		
Inner tubes	10¢ lb.		67
Tread rubber (camelback)	5¢ lb.		68
TOTAL TAX (Enter in Item 1 above)			

*See *instructions on page 2.*

Your name, address, employer identification number, and calendar quarter of return. (If not correctly printed, please change.) ▶

Quarter ending

Employer identification number

T	
FF	
FD	
FP	
I	
T	

Please return this form to your Internal Revenue Service Center
(See last item of instructions, "Where to File")

Form **720** (Rev. 2–73)

Instructions

Additional information on excise taxes is contained in IRS Publication 510 available free from any Internal Revenue office.

Name, address, and employer identification number.—After you first file Form 720, a preaddressed return will be mailed to you every three months. Please use the preaddressed form. If it is lost, request another. Unless already shown on the preaddressed form, enter at the right of the space provided for the taxpayer's name, the ending month and year of the calendar quarter for which the return is filed. If you must use a non-preaddressed form, type or print your name, address, and employer identification number exactly as shown on previous returns. Do not use an employer identification number assigned to a prior owner.

You must file a return for each quarter whether or not you incurred any liability. If you have no tax to report, enter "None" in item 3.

Adjustments.—Generally, an adjustment may be allowed for all the taxes reported on Form 720 to correct mathematical errors or to adjust payments of tax on transactions, charges, or processing that are entitled to be made tax free.

Enter in item 2 the total of any adjustments claimed. If you claim an adjustment, attach a statement explaining the basis for it and state that you have the required supporting evidence. You must identify the IRS Numbers being adjusted, and the amount of adjustment claimed for each.

You may claim a refund on Form 843 (but adjustment may not be allowed on Form 720) to recover tax paid with respect to sugar exported, or any manufactured sugar or article manufactured therefrom, used as or in the production of livestock feed, for the distillation of alcohol, or for the production of alcohol (other than alcohol produced for human food consumption).

Exemptions.—Some transactions involving sales of taxable articles, payment for services and facilities, and the sale, processing, or use of products or commodities are exempt from tax. As an illustration, certain exemptions are provided for export transactions and for transactions involving States, political subdivisions, and certain nonprofit educational organizations.

Records.—Keep on file at your principal place of business or some other convenient location, duplicate copies of your return and accurate records and accounts of all transactions. They must contain sufficient information to indicate whether the correct amount of tax has been computed and paid. Also, keep records and information in support of all adjustments claimed and all exemptions. In the case of most taxes reportable on Form 720, keep your records at least four years from the date: (1) the tax becomes due, (2) the tax is paid, (3) an adjustment is claimed, or (4) a claim for refund is filed, whichever is later. If required, your records must be available for inspection by the Internal Revenue Service.

Penalties and Interest

Avoid penalties and interest by correctly filing, depositing and paying tax when due.

The law provides a penalty of from 5 percent to 25 percent of the tax for late filing unless reasonable cause is shown for the delay. If you are late filing a return or depositing tax, send a full explanation with the return. Penalties are provided for willful failure to collect and pay tax, keep records, file returns, and for filing false or fraudulent returns.

Penalties are also provided for late payment of tax and for not depositing the proper amount of tax when due. Neither penalty applies if you can show reasonable cause for failure to pay or deposit when due.

Taxes not deposited when due.—The penalty for failure to make deposits when due is 5 percent of the amount of the underpayment, without regard to how long the underpayment continues.

Taxes not paid when due.—The penalty for failure to pay taxes when due is ½ of 1 percent of the unpaid amount for each month or part of a month it remains unpaid—up to 25 percent of the unpaid amount. The penalty applies to any unpaid tax shown on a return. It also applies to any portion of additional tax shown on a bill if it is not paid within 10 days from the date of the bill. This penalty is in addition to the 6 percent interest charge on late payments.

Facilities and Services

Policies issued by foreign insurers.—The rates of tax not shown on the face of the form are:

(1) Casualty insurance and indemnity bonds.—Four cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond.

(2) Life insurance, sickness and accident policies, and annuity contracts.—One cent on each dollar or fractional part thereof, of the premium paid on the policy of life, sickness or accident insurance, or annuity contract.

(3) Reinsurance.—One cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under *(1)* or *(2)*.

Manufacturers

These taxes apply to the sale or use by the manufacturer, producer, or importer of the articles listed.

Basis for tax and adjustments.—Generally, the tax is computed on the price for which the taxable article is sold or leased. If a taxable article is sold or leased under a conditional sales contract, installment payment contract, or chattel mortgage arrangement, compute and pay tax on each payment received during the quarter covered by the return. For exclusion from the sale price of finance charges, and local advertising charges, consult your District Director. Consult him also on special rules that apply to the lease of any article.

If charges for transportation, delivery, insurance, and installation are included in the manufacturer's sale price, you may adjust the price by deducting the actual amount paid or incurred for such expenses. For the circumstances under which adjustments may be made and about the evidence required to support such adjustments, consult your District Director or the applicable regulations. Adjustment of the manufacturer's sale price may also be made for discounts, rebates, and other similar allowances granted to the purchaser. But such discounts, etc., may not be anticipated. Adjustments may only be made if the purchaser has taken advantage of the discount, etc., before the return is required to be filed.

If the adjustments are made or the required evidence is obtained after the return is filed, the amount of tax involved may be considered an overpayment and you may then take a credit for that amount on a later return, or file a refund claim.

Tax shall be computed on a price established by the Commissioner of Internal Revenue if an article is sold by the manufacturer or producer at retail, on consignment, or otherwise than through an arm's-length transaction at less than the fair market price, or if the article is used by the manufacturer or producer in a manner subject to tax.

Products and Commodities

These taxes apply to the manufacture of manufactured sugar; the retail sale or use of diesel fuel, special motor fuels and fuel used in noncommercial aviation; the sale of gasoline, tread rubber, or the sale or lease of tires or inner tubes, by their manufacturer, producer, or importer; and the sale of lubricating oils by their manufacturer or producer.

The rates of tax not shown on the face of the form are as follows:

Manufactured sugar.—On all manufactured sugar, 0.53 cent per pound of the total sugars therein.

Diesel fuel and special motor fuels:

(a) Four cents a gallon if sold for use or used as a fuel in a highway vehicle, except that the tax is 2 cents a gallon if sold for use or used in a highway vehicle (A) which, at the time of sale or use, is not registered and is not required to be registered for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is not used on the highway.

(b) If fuel is sold subject to tax at the 2 cents a gallon rate, an additional tax of 2 cents a gallon is imposed on the user if the fuel is used in a highway vehicle (A) which, at the time of use, is registered or is required to be registered for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway.

(c) Two cents a gallon on special motor fuels sold for use or used as a fuel in a motor boat or other vehicle that is not a highway vehicle.

A tax is imposed on aviation fuel sold for use or used in noncommercial aviation. The retailers tax on aviation gasoline is in addition to the manufacturers tax. If fuel was taxed on its sale as a special motor fuel but subsequently it is used as aviation fuel, the tax on the user would be the difference between the 7¢ rate and the 4¢ or 2¢ rate previously paid on the sale of the fuel to the user.

(Instructions continued on page 4.)

Instructions (Continued)

Depositary Method of Payment

If you are liable in any calendar quarter for more than $.00 of excise taxes, you are required to make semimonthly, monthly or quarterly deposits with an authorized commercial bank depositary or a Federal Reserve bank, in accordance with specific instructions below.

If you are liable for $100 or less of taxes for a calendar quarter (or your total liability for a calendar quarter, less any deposits for the quarter, is $100 or less), you must either pay the taxes with your quarterly return or deposit them with an authorized commercial bank or Federal Reserve bank.

Deposit Requirements

Record of deposits and liabilities.—If you are required to make semimonthly deposits, as discussed below, you must also record your semimonthly tax liabilities in item 4, unless you come within the exceptions discussed in the section below headed "Important Notes." If you come within these exceptions, or are liable only for monthly deposits, you may record your liabilities in the monthly totals.

Monthly deposits.—If you are liable in any month (except the last month of a calendar quarter), for more than $100 of taxes reportable on Form 720 and you are not required to make semimonthly deposits, you must deposit the amount on or before the last day of the next month. In the case of transportation and communications taxes, the tax computed on the basis of amounts billed (communications) or tickets sold (transportation) for a monthly period is considered as collected during the succeeding monthly period.

Semimonthly deposits.—If you had more than $2,000 in excise tax liability for any month of a calendar quarter, you must deposit taxes for the following calendar quarter (regardless of amount) on a semimonthly basis as follows:

(A) If the amount is for transportation or communications taxes and the tax is computed on the basis of amounts billed (communications) or tickets sold (transportation), the tax computed for a semimonthly period is considered as collected during the second succeeding semimonthly period. Deposit such amount within three banking days after the close of the semimonthly period for which it was collected. A "semimonthly period" means the first 15 days of a calendar month or that part of the month after the 15th day.

(B) If the amount is for tax on sugar manufactured in the United States or on policies issued by foreign insurers, deposit it:

a. On or before the first day of the next month if the tax is for the first semimonthly period of a month, or

b. On or before the 15th day of the next month if the tax is for the second semimonthly period of a month.

(C) If the amount is for taxes other than those described above in (A) or (B), deposit it on or before the ninth day following the semimonthly period for which it is reportable.

You meet the semimonthly deposit requirements if the amount you deposit for the semimonthly period is:

1. Not less than 90% of the total tax collected during (or reportable for) the semimonthly period,
2. Not less than 45% of the total tax collected during (or reportable for) the month,
3. Not less than 50% of the total tax collected during (or reportable for) the second preceding month (first preceding month for transportation and communications taxes), or
4. For manufacturer's and retailer's taxes only—in the case of an amount you deposit for the second semimonthly period in the month, when added to the deposit for the first semimonthly period, not less than 90% of the total taxes reportable for the month.

In addition, if the semimonthly period is in either of the first two months of the quarter, you must deposit the underpayment for the month by the following date:

(a) The first day of the second month following such month in the case of tax on sugar and foreign insurance policies;

(b) The ninth day of the second month following such month in the case of manufacturer's and retailer's taxes, and

(c) The last day of the following month in the case of transportation or communications taxes.

Important Notes:

(1) If you use options 2, 3, or 4 to meet semimonthly deposit requirements, you may not be required to keep books and records (except as to deposits) on a semimonthly basis or record your tax liability on a semimonthly basis in item 4. (See Sec. 48.6302 (c)–1 and Sec. 49.6302(c)–1 of the Regulations.)

(2) You may not use options 2 or 3 if you collect more than 75 percent of the transportation or communications taxes or if you incur more than 75 percent of the monthly liability for other taxes in the first semimonthly period in each month.

Quarterly deposits.—If your excise tax liability for a quarter (reduced by any monthly or semimonthly deposits for the quarter) is more than $100, you must deposit the unpaid balance on or before the last day of the first month following the quarter. If however, the unpaid balance is for communications or transportation taxes only, deposit the unpaid balance on or before the last day of the second month following the quarter. You may make deposits of $100 or less, but are not required to do so.

This provision does not extend the time for depositing the taxes for the last semimonthly period of the quarter, nor relieve you of penalties for failure to make other required timely deposits.

Federal Tax Deposit Form 504.—You must deposit all excise taxes reportable on Form 720, in an authorized commercial bank or a Federal Reserve Bank, with Federal Tax Deposit Form 504, unless the total liability for any calendar quarter less the amount of taxes previously deposited, is $100 or less. If you are paying a tax for the first time or need additional forms, contact the District Director or the Director of a Service Center (see "Where to File" below) in time to make required deposits. Any tax due and not deposited must accompany the return.

Overpayment.—If you deposited more than the correct amount of taxes for a quarter, you may elect to have the overpayment applied to your next return or refunded to you. Show the appropriate amount in the space provided in item 8. Any amount you elect to have applied to your next return should be entered in item 5 of your next return.

When to File

A return must be filed for each quarter of the calendar year as follows:

Quarter covered	All excise taxes other than trans. and comm. due on or before	Trans. and comm. due on or before
January, February, March	April 30	May 31
April, May, June	July 31	August 31
July, August, September	October 31	November 30
October, November, December	January 31	February 28

For all excise taxes other than those on transportation and communications, you are allowed an additional 10 days for filing your return if it shows timely deposits in full payment of the taxes due for the quarter.

Where to File

If your principal business, office or agency, or legal residence in the case of an individual, is located in	Use this address
New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester	Internal Revenue Service Center 1040 Waverly Avenue Holtsville, N.Y. 11799
New York (all other counties), Connecticut, Maine, Massachusettts, New Hampshire, Rhode Island, Vermont	Internal Revenue Service Center 310 Lowell Street Andover, Mass. 01812
District of Columbia, Delaware, Maryland, Pennsylvania	Internal Revenue Service Center 11601 Roosevelt Boulevard Philadelphia, Pa. 19155
Alabama, Florida, Georgia, Mississippi, South Carolina	Internal Revenue Service Center 4800 Buford Highway Chamblee, Georgia 30006
Michigan, Ohio	Internal Revenue Service Center Cincinnati, Ohio 45298
Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	Internal Revenue Service Center 3651 S. Interregional Hwy. Austin, Texas 78740
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Internal Revenue Service Center 1160 West 1200 South St. Ogden, Utah 84405
Illinois, Iowa, Missouri, Wisconsin	Internal Revenue Service Center 2306 E. Bannister Road Kansas City, Mo. 64170
California, Hawaii	Internal Revenue Service Center 5045 East Butler Avenue Fresno, California 93730
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	Internal Revenue Service Center 3131 Democrat Road Memphis, Tennessee 38110

If you have no legal residence, principal place of business or principal office or agency in any Internal Revenue district, file your return with the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155.

☆ U.S. GOVERNMENT PRINTING OFFICE : 1973—O-500-297 48-0627165

Form **843**
(Rev. July 1973)
Department of the Treasury
Internal Revenue Service

Claim

Director's Stamp
(Date received)

For Internal Revenue Service Use Only

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to income, estate or gift taxes).

Please print or type

Name of taxpayer or purchaser of stamps

Number and street

City or town, State, and ZIP code

Fill in applicable items—Use attachments if necessary

a. Your social security number | Spouse's number, if joint return | b. Employer identification number (if any)

c. Internal Revenue Service office where return (if any) was filed

d. Name and address shown on return, if different from above

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From ....., 19....., to ....., 19..... | f. Kind of tax

g. Amount of assessment
$ | Dates of payment

h. Date stamps were purchased from Government | i. Amount to be refunded (If income tax, complete computation below)
$ | j. Amount to be abated (not applicable to income, estate, or gift taxes)
$

k. The claimant believes that this claim should be allowed for the following reasons:

Computation of Income Tax Refund	Income Tax
1 Tax withheld	
2 Estimated tax paid	
3 Tax paid with original return	
4 Any additional income tax paid	
5 Total tax paid (add lines 1–4)	
6 Less: Your computation of correct tax	
7 Amount of overpayment	
8 Amount previously refunded	
9 Net overpayment (enter in item i above)	

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Signed .....

Dated ....., 19..... .....

See instructions on reverse. Form **843** (Rev. 7–73)

Instructions

1. Form 1040X or Form 1120X may be used to amend an individual or corporation income tax return. The Internal Revenue Service prefers that they be used rather than Form 843, since these forms are designed to expedite processing.

2. The reasons for filing this claim must be set forth in detail under item k.

3. If a joint income tax return was filed for the year for which this claim is filed, social security numbers of both husband and wife should be entered and each must sign this claim even though only one had income. If the taxpayer has been assigned an employer identification number, it also must be entered.

4. The claim may be made by an agent of the taxpayer, but the original or a true copy of a power of attorney must accompany the claim.

5. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or similar evidence must be attached to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

6. Where the taxpayer is a corporation, the officer having authority to sign for the corporation should place his signature and title on this claim.

7. If a claim is for excess social security (FICA) tax withheld as a result of having more than one employer during a calendar year, include the names and addresses of your employers, and the amount of wages received and FICA employee tax withheld by each, as part of your explanation in item k. Do not claim tax withheld if you have claimed the excess withholding on your individual income tax return.

Where to File

Certain claims relating to alcohol and tobacco taxes should be filed with the Regional Director, Bureau of Alcohol, Tobacco and Firearms. See the regulations pertaining to the particular alcohol or tobacco tax. Otherwise, file your claim with the Internal Revenue Service Center where you filed your return.

FOR INTERNAL REVENUE SERVICE USE ONLY

Transcript of Claimant's Account

(Complete only as to miscellaneous excise taxes and alcohol, tobacco, and certain other excise taxes imposed under subtitles D and E, Internal Revenue Code.)

The following is a transcript of the record of this office covering the liability that is the subject of this claim.

A—Assessed Taxes

Taxable Period and Class of Tax (a)	Document Locator No. (b)	Reference and Date (c)	Amount Assessed (d)	Paid, Abated, or Credited: Date or Sched. No. (e)	Paid, Abated, or Credited: Amount (f)	Paid, Abated, or Credited: PD. AB. CR. (g)	Remarks (h)

B—Purchase of Stamps

To Whom Sold or Issued (i)	Kind (j)	Number (k)	Denomination (l)	Date of Sale (m)	Amount (n)	If Special Tax Stamp, State: Document Locator No. (o)	If Special Tax Stamp, State: Period Commencing (p)

Prepared by (initials) | Date | Office

E.I. # 25-1231452

☆ U.S. GOVERNMENT PRINTING OFFICE : 1973—O-500-259

Appendix D

Report of the Federal Government

on the

Activity of the Reserve Fund In Accordance with the Used Oil Statute

and especially on the

Possibilities of a Reduction in the

Continual Payments and the Compensation Fee

Submitted April 5, 1972, by the

Federal Minister for Economics & Finance

to the Presidents of the Houses of the German Parliament

German Parliament
6th Session
Printed Item VI/3312

Table of Contents

(Appendix 12 is omitted.)

A. Assignment of the Statute

Section 2(4) of the Law Concerning Measures for Assuring the Disposal of Used Oil (Used Oil Statute) of 23 December 1968 (Appendix 1) contains the following assignments: "The federal government is to report to the Parliament by the 31st of March of every third year, for the first time prior to 31 March 1972, on the activity of the Reserve Fund, [and] especially on the possibilities of a reduction in the continual payments (Section 1) and in the compensation fee (Section 4 (2)).

B. Activity of the Reserve Fund

The legal bases for the activity of the Reserve Fund are, in addition to the statute:

---- The First Regulation and the Second Regulation for Implementing the Used Oil Statute, dated 21 January 1969 and 2 December 1971 (Appendices 2 and 3);

---- The Guidelines concerning Granting of Continual Payments in accordance with the Used Oil Statute, dated 21 January 1969 (Appendix 4);

---- The First Revision, the Second Revision and the Third Revision of the Guidelines, dated 10 February 1969, 5 August 1970 and 14 October 1971 (Appendices 5, 6 and 7); and

---- The Statement concerning the Levying of the Compensation Fee, dated 30 December, 1968, and the Statement concerning the Collaboration of the Customs Offices in the Implementation of the Used Oil Statute, dated 13 January 1969 (Appendices 8 and 9).

In addition, the Federal Office for Trade and Industry (BAW), which is responsible for administering the Reserve Fund, has issued the following notices:

---- Notice concerning Applications for Continual Payments in accordance with the Used Oil Statute, dated 24 February 1969 (Appendix 10); and

---- Notice concerning the Establishment of the Mandatory Pick-up Districts and the attached price lists in accordance with the Used Oil Statute, dated 25 November 1969 and 7 June 1971 (Appendices 11 and 12).

The contractual relations between the Federal Office and the individual recipients of payments are based on a model contract (Appendix 13).

1. The Development of Quantities in the Used Oil Field

In connection with evaluating the general situation in the used oil field, the federal government has already provided the Parliament the following reports concerning the quantitative developments:

---- The Investigation concerning the Kind, Amount and Whereabouts of mineral oil-containing wastes in

the Federal Republid of Germany (printed item IV/3724, dated 30 June 1965); and

---- Investigation concerning the Cause, Scope, Origin and Whereabouts of mineral oil-containing wastes in the Federal Republic of Germany (printed item V/2830, dated 5 April 1968).

These investigations have proven worthwhile. Therefore, the federal government has likewise in this case provided for an "Investigation concerning the Cause, Scope, Origin and Whereabouts of Mineral Oil-Containing Wastes in the Federal Republic of Germany" (Appendix 14). It relates to the year 1969, the first year in which the Used Oil Statute was in effect. In considering already known facts and in refining the methods of investigation, the report includes kinds of sources of used oil which could not be taken into account in the earlier reports. These include above all used oils with high proportions of foreign matter, such as oil-water mixtures and emulsions from the commercial sector as well as oil sludges from storage tanks and oil separators. For these reasons, a direct comparison of the attached investigation with the earlier works is hardly possible. A comparison would also provide little evidence because prior to 1969 other systems of financial support of used oil disposal existed which influenced the resulting amounts of used oil differently.

Considering the results established for 1969 and extrapolating them to 1970 and 1971, the following statements and conclusions are possible:

a. Use of Lubricating Materials and Used Oil Generation

The use of lubricating materials and the generation of used oil have developed as follows in the years 1969-1971 (in thousands of tons):

TABLE 1

Year	Domestic Use of Lubricating Materials	Generation of Used Oils[2] Mineral Oil Without Foreign Matter	Foreign Matter	Total
1969	976	560	1,640	2,200
1970	1,087	620	1,810	2,430
1971	1,081[1]	650	1,910	2,560
(1)	(2)	(3)	(4)	(5)

1 preliminary
2 for 1970 and 1971, based on extrapolation from 1969

The 1971 total of used oil of approximately 2.5 million tons consists to a great extent -- namely about 1.9 million tons -- of water, sand and sludge. This is typical for a great many industrial used oils and residues from tanks and oil separators.

b. Generation and Disposal of Used Oils (Without Foreign Matter)

The disposal of used oil has developed with the support of the Reserve Fund as follows (in thousands of tons):

TABLE 2

Year	Reprocessed	Incinerated	Change
1	2	3	4
1969	172 (191[1])	6	-
1970	203	30	+ 31%
1971	220	63	+ 21%

1 This number from the accompanying report (Appendix 14) inadvertently includes foreign matter.

This overview shows the considerable increase in the amounts of used oil harmlessly disposed of and thereby underlines the significance of the Reserve Fund. The increase in the amounts of used oil disposed of with the support of the Reserve Fund indicates that the enterprises which dispose of used oil are continually expanding. This is necessary as well -- also for the fields of collecting and transporting used oil -- in order that the technical situation can effectively accommodate the demands depicted in Section B.1.a. [of this report].

The following table shows the amounts of used oil disposed of with the support of the Reserve Fund as well as by industry for heating, burning, depositing or reusing as lubricants. The contrast between the amount of used oil generated and the amount of used oil whose whereabouts are unknown (Column 5) is especially interesting (in hundreds of tons):

TABLE 3

Used Oil Disposed Of

Year	Used Oil Generated	With Support of Reserve Fund	By Industry	Whereabouts Unknown
1	2	3	4	5
1969	560	178(191[1])	270	92[1]
1970	620[2]	233	300[2]	87
1971	650[2]	283	310[2]	57

1 See the note to Table 2; the "mystery number" in Column 5 taken from the report (Appendix 14) remains intact.
2 Extrapolated for 1970 and 1971 on the basis of 1969.

Since used oil disposal is increasing more rapidly than the generation of used oil, a remarkable decrease is evident for 1971 in comparison to 1969 in the amounts of used oil which are disposed of in unknown ways. Nevertheless, a problematical point remains: the 57,000 tons given for 1971 as the "mystery number" represent, when one considers the typically high proportions of water, sludge and other foreign matter, a total amount of 400,000 to 600,000 tons of used oil/foreign matter mixtures. It will require substantially more effort, especially by thorough checking on the part of state officials of the used oil record books (Appendix 3) which must be kept as of 1 January 1972, to improve the effectiveness of the Used Oil Statute.

If one fixes the figures given in the previous tables for 1969 at 100, the following results:

TABLE 4

Used Oil Disposed Of

Year	Used Oil Generated	With Support of Reserve Fund	By Industry	Whereabouts Unknown
1	2	3	4	5
1969	100	100	100	100
1970	111	131	111	95
1971	116	159	115	62

This overview brings together the important results of Tables 1 and 3. The rows of numbers show especially clearly that:

---- Used oil disposal is increasing more rapidly than used oil generation; and

---- Accordingly less used oil than before is disposed of in unknown ways.

It should be noted that Tables 1 and 3 give in part calculated results for the years 1970 and 1971. The figures for used oil generated and for the "mystery number" (Column 5 in Tables 3 and 4) take into consideration only incompletely the time lags between the sale of lubricating oil, its use, the generation of used oil, and its disposal. Just between the time of domestic sale of lubricating oil from the refinery and the time of the oil change in cars a span of six months is quite possible; this postponement of phases is taken into account in the extrapolations. This in no way undermines the discernible basic trend - namely, that the rate of increase of used oil disposal intended by support from the Reserve Fund is far higher than the rate of increase in the use of lubricating oils even given very favorable market conditions.

c. Development of Amounts in the Future

The amounts of used oils generated in the future will depend not least on:

---- What degree of competition obtains between the disposal enterprises within their assigned mandatory districts and outside of them;

---- The ability of the disposal enterprises to adjust their locations to existing conditions; and

---- How the duty existing since 1 January 1972 to keep used oil record books operates on the spread of used oil with high proportions of foreign matter.

Appendix 15 contains an overview of the current locations of the disposal enterprises.

Appendix 16 and 17 show the mandatory districts assigned to the disposal enterprises. The overlapping of many of the districts is clear. This increases the competition among the disposal enterprises, causes continual adjustment of costs and reflects thereby the requirement of the Used Oil Statute to keep the resources of the Reserve Fund "as low as possible".

2. Development of Receipts and Expenditures

The receipts, expenditures and resources of the Reserve Fund have developed as follows, from 1969 to 1971:

(Figures in Million DM)

	Year	1969	1970	1971
1.	Status of the Reserve Fund on January 1	-	19.5	26.3
2.	Receipts [from the Compensation Fee]	39.2	42.0	41.7
3.	Available Amount	39.2	61.5	68.0
4.	Expenditures [in the form of payments]	19.7	35.2	43.7
5.	Status of the Reserve Fund on December 31	19.5	26.3	24.4

This overview shows that the receipts to the Reserve Fund have on the average of the three years increased only slightly while the expenditures have increased markedly and indeed exceeded receipts in 1971. The increase in expenditures was the highest for payments to incinerating enterprises. The balance of the Reserve Fund at year's end at approximately one-half of the year's receipts made a smooth arrangement of the Fund's functions possible and permitted the establishment of the [continual] payment rates independently from a yearly balance between receipts and expenditures.

C. Possibilities of a Reduction of the Continual Payments

1. Kinds of Used Oil Disposal and Rates of Payments

In accordance with Section 2(1) and (2) of the Used Oil Statute, the kinds of disposal of used oil were determined by regulation (see section 1(1) of the Implementing Regulation, Appendix 2) and the rates of the [continual] payments were fixed by guidelines (see Part IV A of the Guidelines, Appendix 4, and the Third Revision of the Guidelines, Appendix 7).

Accordingly, the following resulted:

Kind of Used Oil Disposal	Amount of Payment Per 100 Kilograms Used Oil	Number of Active Enterprises, 6/71[1]
1. Reprocessing Used Oil into		
a) Lubricating Oil	12 DM	16
b) Other Reprocessed Products	Maximum 12 DM	9
		16[2]
2. Incinerating Used Oil		
a) Without economic use	10 DM	15
b) With economic use	Maximum 10 DM	3
Supplement for abatement of emissions	Maximum 2.60 DM	
		17[2]
	TOTAL	28[2]

1 See Notice of 7 June 1971, Appendix 12.

2 Some duplication, since several enterprises perform multiple functions.

The rates of the [continual] payments were established on the basis of cost analyses. In 1971, further thorough analyses of the expenses and net proceeds of a series of payment recipients in the years 1969 and 1970 were carried out. The results are reported on below, separated according to reprocessing enterprises and incinerating enterprises.

2. Reprocessing Enterprises

The examination of the expenses and proceeds for 1969 and 1970 covered seven reprocessing enterprises. Two of the enterprises investigated suffered significant losses during the period, in part due to unusual circumstances outside their businesses. The following statements therefore are limited to the five remaining enterprises who represent the following proportion of the amounts of used oil reprocessed with the support of the Reserve Fund:

1969 -- 55 per cent
1970 -- 59 per cent

This constitutes a sufficient degree of representativeness.

The analyses were in part difficult because the existing documents were not always sufficient to enable the necessary discriminating investigation. The analysts used the firms' gains and losses figures as a point of departure. Non-business and irregular entries were separated from expenses and revenues. Further, it was necessary to distinguish, both for expenses and proceeds, the payments area from the non-payments area.

a. Expenses

In order to obtain comparable costs, depreciation, interest and salaries calculated according to uniform criteria were considered. Special depreciation allowances were discounted and the shorter periods of depreciation were extended for periods which were deemed appropriate. Calculated interest rates were figured only from the firms; owned capital at 6.5 per cent because of the difficulty of determining the capital needed for the business; outside capital interest rates were considered at their actual levels. Of the taxes dependent on profits, the commercial income tax was included in the computation of expenses.

The investigation shows that expenses per unit (of used oil) varied among the recipients of payments. If the lowest rate of expenses in each year is fixed as 100, then the highest rate was about 190. This difference, however, is closely related to the extent of the refinement of the reprocessed products. It should, therefore, only be judged in connection with the differing revenues from the sale of these products.

A comparison of costs per unit for 1969 with those of 1970 shows, (with averages weighted for the five enterprises) practically no change. By contrast, the picture of the expenses per unit -- taken individually -- for their procurement of used oil (collection and transport) is unfavorable: these rose approximately 10 per cent.

These results enable no clear statement about how the costs per unit have developed since 1970 or how they will develop further in the near future. The rise in the costs of personnel and investments is well-known. On the other hand, there are indications that by better use of the facilities and in part by converting to larger capacities for reprocessing economics of scale can be realized.

b. Revenues

1.) Revenues from Reprocessed Products (Without Payments)

The average revenues from the sale of reprocessed products varied widely among the five enterprises: if the lowest value for 1970 was 100, then the highest value for that year was almost 300. Mostly this reflects, similar to the costs, the varying degree of refinement of the reprocessed products. The higher costs attributable to further reprocessing show a fairly close correlation with the respective higher revenues. It follows that for the period of the investigation both an improved and a simpler reprocessing were economically justified.

The weighted average revenues from reprocessed products dropped approximately 8 per cent from 1969 to 1970. The index for the prices of industrial producers' lubricating oil (reprocessors produce lubricating oils for the most part) rose 1 per cent in the same time. These contrasting developments indicate that the drop in prices and revenues is largely due to changes in kinds of products. The further development of revenues from reprocessed products will be influenced both by future improvements in reprocessing and by the development of prices in the lubricating oil market.

2.) Revenues from Transport and Burning Uses (Without Payments)

Used oil disposal enterprises may charge a fee for the amounts of foreign matter in excess of the permissible 10 per cent, in accordance with a price list filed with the Federal Office for Trade and Industry (see Section 3(4) of the statute and the 25 November 1969 Notice, Appendix 11, applicable during the period of the investigation). Since this foreign matter limit is often exceeded in the used oils to be picked up, this source of revenues could become quite significant. Until now, however, there were no means to determine and measure the foreign matter reliably, quickly and inexpensively at the site of the used oil.

On the average, for the reprocessing enterprises checked, fees for the disposal of the foreign matter in excess of 10 per cent and for

the corresponding transportation were only occasionally charged.

In the future, the reprocessing firms and the incinerating firms will have to concern themselves intensively to open this source of income. It is hoped that the record books due to be kept since 1 January 1972 on the generation and the transfer or disposal of used oils will contribute to this. Finally, it remains to be observed that used oils with high proportions of foreign matter can often only be reprocessed at disproportionate cost and are many times cheaper to burn.

3.) Uncovered Costs (Without Payments)

The "uncovered costs" arising from the difference between the expenses and the revenues of reprocessed products and from the transportation and burning uses (see section 2(2)(4) of the statute) rose in absolute terms for all five firms between 1969 and 1970. This is primarly attributable to the increased amounts of used oil regenerated. In addition, the increase of uncovered costs per unit cost worked out to average 10 per cent. If one takes the lowest value of uncovered costs per unit cost in each year as 100, the highest value in both years was less than 150. The range is thus not usuaually wide.

4.) Revenues from Payments

The amount of payment for used oil reprocessed into lubricating oil was fixed at 12 DM per 100 kilograms of used oil, as mentioned above. The same rate was also paid to enterprises which produced reprocessed products other than lubricating oil, since the special cost investigation for this area in no case revealed lower uncovered costs.

c. The Profit Situation

The balance of these expenses and revenues (including continual payments) resulted in a profit for all five firms in each of the years checked: it sank, by weighted average, approximately 1 DM per 100 kilogram used oil from 1969 to 1970. In retrospect, the question arises whether the returns on investment realized lay in the realm of the reasonable. In this context one should consider:

---- The 6.5 per cent interest on owned capital figured in the costs is for the period of

the investigation less than the return which could have been obtained from the capital market without any risk. The risk based on the capital invested is not to be equated with zero, in spite of the payment provisions, as is made clear by the losses of the two reprocessing firms not included in the check. This risk must, therefore be figured in with the profits.

---- The producer compensation figured in the cost is based only on the salary for the labor of a leading employee, but does not incorporate the entrepreneurial efforts which go beyond this. In this connection, it should be mentioned that during the course of the investigation three enterprises ceased their reprocessing activities.

With a view to these considerations, the profits revealed by the investigation are not unreasonably high.

No clear statement can be made concerning the future development of the profit situation for the reprocessing firms. A reduction of payment rates for the reprocessing firms can thus not be recommended yet.

3. Incinerating Enterprises

While reprocessing firms have been in operation for several decades, incinerating enterprises are a young sector with only a few years' business experience. The number of enterprises in this field has developed as follows:

	Increase	Decrease	Number on 12/31
1969	9	-	9
1970	3	-	12
1971	8	3	17

Four enterprises were checked. Since incinerating enterprises for the most part started up in 1969, data for a full year were not available until the business year 1970. In 1970, the four firms checked handled 62 per cent of the used oil harmlessly incinerated with support of payments. The check is thus representative according to quantities.

A well broken down cost analysis was available from only one incinerating enterprise. Otherwise, largely the same problems existed as with the reprocessing firms and they were resolved in the same way. The distinction between the payment and non-payment aspects (of the businesses) was more significant since the enterprises checked burn considerable quantities of substances other than used oil.

a. Costs

Calculated costs and commercial taxes -- with one exception -- were figured in the cost analysis in the same way as for the reprocessing firms. The division of costs between payments and non-payments aspects led for one business only to a determination of an upper and a lower limit. Besides, the differences in the technical construction of the incinerating enterprises checked allow a comparison only with reservations. Therefore, this report does not give comparative figures for the range of costs. Since the investigation only applies to 1970, no statement is possible concerning the development of costs. It is hoped that the strong increase in incinerating used oil will contribute to a better use of the capacity of the incinerating enterprises, and thus to a reduction of the costs per unit.

b. Revenues

Only one of the enterprises checked gained benefits from the productive use of used oil incineration. The amounts of these benefits can so far only be described by a highest and lowest amount. Further developments should be judged with caution because of the special technical problems associated with productive incineration.

Revenues from transportation and burning uses for the foreign material exceeding the 10 per cent limit have come in varying degrees, but altogether to a small extent. The problems here are similar to those of the reprocessing firms. (See section C.2.b.2.).above.

If one takes the amount of uncovered costs in relation to the amounts of used oil eligible for payments in the most effective firm as 100, the highest amount is 220. This wide range of uncovered costs per unit results in part from the upper and lower limits of the one firm mentioned above (section 3.a.). A comparison with the significantly smaller range of the uncovered costs of the reprocessors shows in addition that the results of the investigation to determine the average values for the incinerating enterprises are of only limited use.

The revenues from payments amounted to 8.50 to 10 DM per 100 kilograms of used oil. The additional payment for abatement of emissions of up to 2.60 DM per 100 kilograms did not exist during the period of the investigation (see the Third Revision to the Guidelines, Appendix 7).

c. The Profit Situation

The balance of the expenses and revenues for the two enterprises to which no alternative calculation applied resulted in a profit. For one of the firms for which an alternative calculation was used, the figures always showed a loss; for the other, in good conditions a profit, in unfavorable conditions a loss. On the average all four firms always had a profit. In the most effective alternatives, the profit was not far removed from that achieved by the reprocessing firms in 1970. The profit for the unfavorable alternatives was indeed very slight. Considerations in evaluating these profits similar to those discussed above for the reprocessing enterprises are relevant. (See section C.2.c.) The payments to date can therefore in no way be described as too high; rather in individual cases they were in relation to costs somewhat low.

A prediction about future profit developments encounters severe difficulties at the outset because of the sharply differing results of the year 1970. Further, it must be considered that the incinerating enterprises cannot cover cost increases in the payments-eligible aspect of their activities by increasing the prices of their products as the reprocessing firms can. Based on this situation, a reduction of the payment rates is at this time out of the question.

4. Conclusion

Investigations of the reprocessing and incinerating firms have shown that the existing payment rates are not too high. But they also show that the costs and revenues were not always sufficiently analysed and that the division between payments and non-payments aspects had to be estimated to a greater extent than technically proper. Wishes likewise remained unfulfilled in obtaining accurate quantitative data.

As yet it cannot be clearly predicted whether in the foreseeable future a reduction or continuation of the payment rates -- or indeed an increase -- is required. Contrary trends exist in the development of costs, namely, on the one hand increases in personnel and investment costs and on the other hand, possible reduction of specific costs by improving processes and fuller use of facilities. Besides, there are uncertainties in the development of revenues, both from the sale of reprocessed products and from burning. The federal government will, therefore, undertake further investigations and hold the recipients of payments to differentiated accounting and quantitative record-keeping.

D. Possibilities of a Reduction of the Compensation Fee

The overview of the development of the receipts and disbursements of the Reserve Fund (see B. 2.) showed that already by 1971 the receipts were insufficient to cover the disbursements for that year. Even considering only the current situation, a reduction of the compensation fee is therefore not possible.

Regarding the amount of the fund as approximately one-half the yearly receipts, it could be thought that the compensation fee could be at least temporarily reduced. It must be observed in this connection that according to experience so far, only a slow increase in receipts can be anticipated given an unchanged compensation fee rate. But disbursements, not only in this year, but also in future years, will increase to a greater degree. The generally enhanced environmental awareness will presumably give rise to more possessors of used oil requesting the pick-up of their oil. Further, the federal government intends to enhance the environmental awareness of oil users in cooperation with the mineral oil industry. In addition, the environmental restrictions on used oil enterprises will increase and lead to an increased burden of costs (see Appendix 7). To this must be added the expectation based on the introduction of the record books on 1 January 1972 (Appendix 3) that increasing amounts of used oil, particularly with high foreign matter content, will be disposed of harmlessly. Finally, it cannot be assumed that the further cost and revenue investigations mentioned in section c.4. will not indicate that an increase in payment rates is unavoidable. In consideration of all this, the balance in the Reserve Fund is by no means too high, but rather simply required to assure a continuing development of the harmless disposal of used oil. Thus, even a temporary reduction of the compensation fee cannot be considered.

E. Overall Conclusion

The investigation has shown:

1. The Used Oil Statute has proved itself splendidly. The amount of used oil disposed of in environmentally harmless manners has risen steadily since the law went into effect.

2. The excess of income over against expenditures from the Reserve Fund, which arose in the initial period of the law's effectiveness, has not increased. Rather, for the year 1971 a reduction in the Fund's reserves is apparent already. The reasons are:

   a. decreases in income;

   b. higher expenditures as a result of significant increases in the amount of used oil disposed of.

3. A reduction of the continual payments is not possible. On the contrary, to the extent that used oils are burned the payment rate should be increased. Otherwise a disposal of used oil consistent with the air quality standards cannot be achieved.

4. For these reasons it is not possible to suggest a reduction in the compensation fee of 7.50 DM per 100 kilograms of lubricating oil.

Appendix 1

(The notes in the margins by some sections of the law refer to appendices containing regulations implementing those sections.)

Law Concerning Measures to Assure the Disposal of Used Oil (Used Oil Statute)

23 December 1968 (Bundesgesetzblatt I, page 1419)

The Federal Parliament has passed the following law:

Part One: The Economical Assurance of Used Oil Disposal

§ 1 Reserve Fund

(1) To assure the economical disposal of used oil, a special federal fund is created with the name "Reserve Fund for Assuring Disposal of Used Oil" (Reserve Fund).

(2) The Federal Office for Trade and Industry (Federal Office) is responsible for administering the Reserve Fund. The costs of administration are to be paid from the fund.

(3) The fund may otherwise only be used for payments according to §2(1) of this law.

See Apps. 4-7, p. 221-223

§ 2 Purpose

(1) Trade and other economic enterprises as well as public-law juristic persons located within the jurisdiction of the law which dispose of waste oils collected from others according to § 3(3)

See App. 2, p. 214

may receive continual payments for those costs not

See App. 10, pp. 232-34

otherwise covered, if the waste oils are disposed of without harm to waters or soil and if air pollution, from which the general public and the neighborhood should be protected, does not arise. The Federal Minister for Economic Affairs, with the agreement of the Federal Minister for Health Affairs and in consideration of economic factors, shall determine by regulations what disposal methods, including regeneration, and what minimum level of continual payments may be used.

See Apps. 4-7, p. 221

(2) The payments will be made by the Federal Office according to guidelines established by the Federal Minister for Economic Affairs. These guidelines should especially insure that:

See App. 11, p. 234

1. the recipients of the payments obligate themselves to collect the used oils according to §3 in districts determined by the Federal Office or to prepare for later pick-up;

2. collection and transportation costs are part of the disposal costs;
3. in the payment rates for the individual disposal methods, the costs caused by collection conditions of above-average difficulty shall be specially compensated;
4. the payments at most correspond to the unincluded costs which on the average arise for an enterprise of the same kind;
5. payments for regenerated oil products made from used oils (re-refined products) are to be paid back insofar as the products are exported to other member nations of the European Economic Community;
6. the requirements of the Reserve Fund are to be kept as low as possible under the previous principles.

(3) The payment rates established by the guidelines shall remain unchanged for the first two years after this law becomes effective; thereafter they may be changed yearly at the beginning of a calendar month after six months prior notice.

(4) The Federal Government shall report to the Federal Parliament on the activity of the Reserve Fund by the 31st of March of every third year, for the first time on March 31, 1972, especially on the possibilities of a reduction of the continual payments (§ 2(1)) and the compensation fee (§ 4 (2)).

§ 3 Collection of Used Oil

(1) Those within the area of validity of this law who posess used oils may require of the Federal Office that:

1. their used oils be collected in quantities over 200 liters, insofar as the necessary facilities for the collection and harmless disposal of used oil exist;

See Apps. 4-7, p. 221

2. for amounts less than 200 liters, later collection will be provided for.

(2) Used Oils within the meaning of § 3 (1) are used mineral oils and used liquid mineral oil products as well as wastes from storage business and transporting receptacles containing mineral oil.

See App. 2, pp. 214-216

(3) Used oils shall be collected free of charge according to § 3 (1). The Federal Minister for Economic Affairs is empowered to issue regulations concerning:

1. the identification and measurement of the collected materials;
2. the permissible proportion of foreign substances, which may not exceed fifteen per cent.

See App. 11, pp. 234-236

(4) Quantities of foreign substances in excess of the permissible proportion (§ 3 (3) Number 2) shall be picked up for a fee. The fee shall correspond to the price list filed with the Federal Office by enterprises obligated to collect used oils.

See Apps. 4-7, p. 223

(5) Those possessing used oils remain liable for harm caused by failure to notify others of foreign substances in the waste oils.

See App. 8, p. 225

§ 4 The Compensation Fee

(1) The Reserve Fund shall be supported by a compensation fee.

See App. 2, p. 216

(2) The following dutiable goods:

1. lubricating oils from Number 27.10 - C - III of the customs tariff schedule;
2. gas oils from Number 27.10 - C - I of the customs tariff schedule, to the extent they are used as lubricating oils;
3. greases with their heavy oil components;

are all subject to the compensation fee insofar as they are subject to the oil tax according to the Oil Tax Law and other Laws of 10 August 1967 (I Bundesgesetzblatt 877). The compensation fee amounts to 7.50 Deutsche Mark per 100 kilograms of dutiable goods. The Federal Minister for Economic Affairs is empowered to reduce the compensation fee rate by regulation to the extent that the requirements of the Reserve Fund allow.

(3) The liability for the compensation fee arises when the oil tax liability for the dutiable goods becomes unconditional.

(4) The compensation fee is payable by the person liable for the oil tax.

(5) If dutiable goods are witheld or withdrawn from customs supervision the compensation fee is due immediately. Otherwise the person liable for the compensation fee must pay the amount which has accrued during the course of a calendar month no later than the 10th of the second month following without being requested to do so.

See App. 2, pp. 216-218

(6) The compensation fee is collected by the Federal Office. The Federal Minister for Economic

Affairs is empowered to issue by regulation the required provisions concerning the levying and collection of the compensation fee. Customs officials shall provide the Federal Office with the information necessary for the administration of the compensation fee and shall make the required documents available to the Federal Office.

See App. 9, pp. 229-32

§ 5 Information

(1) The person liable for the compensation fee must furnish the Federal Office the information and documents needed for the implementation of this law and the regulations issued under it.

(2) Employees and agents of the Federal Office and employees of the customs administration are authorized within the scope of § 5(1) to check dutiable goods, to enter property, business installations and offices, the living quarters of the person required to furnish information, to make inspections and tests there and examine business records of the person required to furnish information. The basic right of Article 13 of the Constitution concerning the inviolability of a residence is to this extent limited.

(3) The person required to furnish information may refuse to do so for questions whose answers would expose himself or one of the relatives listed in § 383 (1) Numbers 1-3 of the Civil Procedure Law to the danger of criminal prosecution or a proceeding under the Law Concerning Violations of Regulations.

See App. 2, p. 217

(4) If a person required to provide information refuses to furnish information or relevant documents according to § 5 (1), the Federal Office may establish the conclusions necessary for determining the compensation tax by way of estimates.

Part Two: Supervising the Location of Used Oil

§ 6 The Duty to Keep Records

(1) Trade and other economic enterprises must keep a record book for each business in which at least 500 kilograms of used oils within the meaning of § 6(2) accumulate or in which a yearly accumulation of waste oils of this amount may be reckoned with. The same applies to trade and other economic enterprises which accept at least this amount yearly of used oils of this kind. The official responsible under state law may upon application

1. approve centralized maintenance of records in a main office if the supervision of the whereabouts of the used oils will not be thereby disadvantaged;

See App. 11, pp. 234-35 -----

2. relieve one of the duty to keep a record book if, because of its nature and management, the enterprise can be adequately supervised without a record book.

(2) Used oils within the meaning of this provision are those substances named in § 3(2), insofar as

1. their collection is not required under § 3(1);
2. they are mixed with foreign substances whose amounts exceed the permissible proportion under § 3(3) Number 2.

See App. 3, pp. 217-21 -----

(3) The kind, amount and whereabouts of the used oils are to be continually entered in the record book. The details concerning the set-up and keeping of the record book, the retaining of receipts and the periods of safekeeping of the records shall be governed by regulations issued by the Federal Minister for Health Affairs in cooperation with the Federal Minister of Economic Affairs.

§ 7 Supervision

(1) Trade and other economic enterprises as well as public law juristic persons which accumulate used oils within the meaning of § 3(2) or accept waste oils of this kind must upon request furnish the official responsible under state law the information required to supervise the whereabouts of the used oils. § 5 (3) applies accordingly.

(2) The persons commissioned by the responsible official with gathering information are authorized within the scope of § 7 (1) to enter property, installations, and business offices and, for the prevention of imminent danger to public safety and order, also the living quarters of the person required to furnish information, to make tests and inspections there, to take samples, and to examine the business records of the person required to furnish information. The basic right of Article 13 of the Constitution concerning the inviolability of a residence is to this extent limited.

See App. 3, p. 218 -----

(3) Record books and receipts under § 6 must be presented or delivered upon request to responsible officials for examination.

(4) The information and documents obtained under § 7 (1), (2), and (3) may not be used in a tax proceeding, a criminal proceeding involving a tax offense or a fine proceeding involving a tax violation. The provisions of §§ 175, 179, 188(1) and 189 of the Federal Tax Law concerning the duties to assist and give notice to the financial authorities do not apply to this extent.

§ 8 Exceptions

(1) §§ 6 and 7 of this law do not apply

1. to lake and river transport businesses;
2. to the Federal Railways and the Federal Post Office;
3. to federal installations which serve sovereign purposes and do not fall within § 8(1) Number 2.

(2) The Federal Minister for Traffic is empowered, in agreement with the Federal Minister for Health Affairs, to issue regulations with provisions for lake and river transport concerning the collection of the used oils named in § 3 (2) from watercraft and floating installations, in particular concerning

1. the duty to deliver used oils at specific intervals to an enterprise obligated to collect (§ 3) or to a collection place approved by a responsible official;
2. the record of delivery and the safekeeping of these records; and
3. the supervision of the collection and delivery of the used oils.

(3) The International Treaty on the Prevention of the Pollution of the Sea by Oil of 1954 as well as the legal provisions promulgated in accordance with the Law Concerning the International Treaty on the Prevention of the Pollution of the Sea by Oil of 1954 of 21 March 1954 (II Bundesgesetzblatt 379) remain undisturbed.

Part Three: Penalty and Fine Provisions

§ 9 Breach of Professional Secrecy

(1) Anyone who reveals without authorization another's secret, especially a trade or business secret, which became known to him in his capacity as employee or agent of one of the officials assigned a duty on the basis of this law will be punished by imprisonment up to one year or a fine or both.

(2) If the perpetrator acts for money or with the intention to enrich himself or another or to injure another, the penalty may be up to two years' imprisonment; in addition a fine may be imposed. These punishments also apply to one who converts another's secret, especially a trade or business secret, which became known to him under the conditions of § 9 (1), into money without authorization.

(3) The crime will only be prosecuted upon application of the party injured.

§ 10 Imposition of Fines

(1) It is a violation of a regulation intentionally or negligently to

1. fail to keep a record book, contrary to § 6(1);
2. fail to furnish information or fail to furnish it correctly, completely or timely, contrary to § 7(1);
3. refuse to permit tests, inspections, the examination of business records or the taking of samples, contrary to § 7(2);
4. fail to present or deliver record books or receipts, contrary to § 7 (3); or
5. contravene a regulation issued on the basis of § 6(3) or § 8(2), if it imposes a fine governed by this section on particular acts or omissions.

See App. 3, p. 218

(2) A violation of regulations may be punished with a fine of up to 10,000 Deutsche Mark.

Part Four: Transition and Concluding Provisions

See App. 8, p. 226

§ 11 Transition Provisions

(1) Dutiable goods (§ 4(2)) for which the oil tax became unconditional before this law became effective are subject to the compensation fee with the exception of those which are in the hands of consumers, service stations or auto repair shops. The fee liability arises when the law becomes effective. The person who is liable for the fee is the possessor of the goods. For goods en route the liability transfers to the recipient with the transfer of ownership.

(2) The person liable for the fee must declare the dutiable goods to the Federal Office in writing within four weeks after this law becomes effective. Payment of the fee is due without request four weeks

after the declaration; for goods not properly declared it is due at the expiration of the declaration period.

See App. 2, p. 216

See App. 3, p. 218

-----§ 12 Validity in the State of Berlin

This law is valid according to § 13(1) of the Third Transition Law of 4 January 1952 (I Bundesgesetzblatt 1) in the State of Berlin also. Regulations issued on the basis of this law are valid in the State of Berlin according to § 14 of the Third Transition Law.

§ 13 Effectiveness of the Law

(1) § 3(1), (2), (3) Sentence 1, and (4) become effective 1 July 1969. § 6(1) becomes effective on the first day of the calendar year following the publication of the regulations based on § 6(3).

(2) Otherwise this law becomes effective on 1 January 1969.

Appendix 2

Regulation to Implement the Used Oil Statute
21 January 1969 (Bundesgesetzblatt I, page 89)

On the basis of Section 3(3) and Section 4(6) of the Statute to Assure the Disposal of Used Oil (Used Oil Statute) of 23 December 1968 (Bundesgesetzblatt I, page 1419) the Federal Minister for Economics, and on the basis of Section 2(1) of the Statute the Federal Minister for Economics with the agreement of the Federal Minister of Health Affairs, promulgates the following:

Part 1

Means of Disposal & Minimum Amounts

Section 1.

(1) Disposal methods for which [continual] payments may be paid are
1. reprocessing used oil into
   a) lubricating oils or
   b) other reprocessed products, [and]
2. incinerating used oil
   a) without productive use or
   b) with productive use

of the energy resulting from the burning if officially approved facilities for this exist or it is otherwise assured that the used oil is disposed of in accordance with the conditions of Section 2(1), sentence 1 of the Used Oil Statute. Officially approved facilities are equivalent to those indicated in accordance with Section 16(4) of the Industrial Code.
(2) For a temporary period until 31 December 1970 payments may be made in individual cases for depositing used oil, if the conditions of sentence 1 of Section 1 (1) are fulfilled.

Section 2.

The minimum amount for which payments may be paid is 2,000 tons of used oil disposed of per calendar year. This does not apply if the minimum amount is not achieved due to special circumstances which the operator of the business could not avoid.

Part 2

Determining and Measuring Materials Picked Up

Section 3.

(1) For used oil reprocessing the amount of used oil picked up will be figured on the basis of the amount of reprocessed products on the basis of a 70 per cent yield.
(2) For used oil incinerating the amount of used oil picked up

including the allowable proportion of foreign matter (section 4) will be determined by continual determinations by the Federal Office. The incinerating facilities must be equipped with the necessary technical devices for this. The Federal Office may authorize representatives to determine the amounts of used oil.
(3) So long as payments are made for depositing used oil (section 1(2)), section 3(2) applies analogously. The Federal Office will cooperate with the appropriate official.

Section 4.

Used oil may not contain more than 10 per cent foreign matter (non-mineral oil substances). The amount of the permissible proportion of foreign matter will be reconsidered annually. The non-mineral oil substances existing when mineral oil is produced [e.g., additives] are not foreign matter.

Part 3

Levying and Collecting the Compensation Fee

Section 5.

Those who are liable to pay the compensation fee must keep special records of the goods described in section 4(2) of the Used Oil Statute. This does not apply when the amount of goods subject to the fee can be determined without difficulty from the records kept for purposes of the mineral oil tax law.

Section 6.

(1) Those liable to pay the compensation fee must inform the federal office of the amount of goods for which a fee liability has accrued each month on prescribed forms by the 15th of the following month. The notice is to be sent with the notice for purposes of determining the mineral oil tax to the customs office responsible for the latter.
(2) The deadline in section 6(1) does not apply when the liability for the compensation fee arises from the importation of tax-liable goods subject to the fee.
(3) The Federal Office determines the amount of the compensation fee due.
(4) If a check reveals that one liable to pay the fee has not correctly reported the amount of tax-liable goods subject to the fee, the Federal Office will issue a correction order.

Section 7.

If one liable to pay the fee is in arrears with his payment, the balance is to be charged interest at the rate of three per cent more than the rate for federal loans of the German Federal Bank.

Accumulated credit interests are to be paid specially.

Section 8.

(1) The provisions of the federal execution statute are applicable to the collection of the fee.

(2) For estimating the bases of determining the compensation fee (Section 5(4) of the Used Oil Statute) the provisions of the Reich Taxation Ordinance on estimating tax bases apply analogously.

Section 9.

The fee will not be collected for goods subject to the fee for which the mineral oil tax liability has been excused, refunded or compensated. If the mineral oil tax liability is deferred, the same applies to the compensation fee liability.

Part 4

Concluding Provisions

Section 10.

This regulation is effective in the Land of Berlin in accordance with Section 14 of the Third Transition Law of 4 January 1952 in connection with Section 12 of the Used Oil Statute.

Section 11.

This regulation is effective on the day after its publication.

Appendix 3

Second Regulation to Implement the Used Oil Statute
2 December 1971 (Bundesgesetzblatt I, page 1939)

Based on section 6(3) sentence 2 of the Used Oil Statute of 23 December 1968 (Bundesgesetzblatt I, page 1419) the following is promulgated in agreement with the Federal Minister of Economics and Finance:

Section 1. Establishment of a Record Book; Person Responsible

(1) Industrial and other commercial enterprises shall, for each business in which used mineral oils, used fluid mineral oil products or mineral oil-containing substances with a mineral oil content of more than four per cent (used oils) are generated from storage, operating or transportation sources in an amount more than 500 kilograms per year or in which an annual accumulation of this amount is anticipated, appoint a person responsible to keep the record book in the event the owner of the enterprise does not keep it himself. This does not apply for used oils with which less than 10 per cent foreign matter are mixed and whose pick-up is required in accordance with section 3(1) of the Used Oil Statute.

(2) Section 1(1) sentence 1 applies also to industrial and other commercial enterprises which accept used oils in an amount of at least 500 kilograms a year; however, it applies to enterprises required to pick up in accordance with section 3 of the Used Oil Statute only to the extent that used oils with more than 10 per cent foreign matter are picked up.

Section 2. Form of the Record Book and Entries

(1) The record book must be such that it can be presented or turned over to an authorized official in accordance with section 7(3) of the Used Oil Statute.

(2) All entries must be permanent and in the German language and script. An original entry may not be made illegible nor may any changes be made which leave uncertain whether they were made by the original entry or later.

(3) The entries may also be made in the form of an organized storage on data equipment. If data is stored it must be possible to print it out at any time, in order to fulfill the requirement of Section 2(1). Section 2(2) applies analogously.

Section 3. Time and contents of Entries

(1) In cases under section 1(1), the required information according to Appendix 1 [of this regulation] must be entered in the record book immediately after the generation, transfer or disposal of the used oils.

(2) In cases under section 1(2), the required information according to Appendix 2 [of this regulation] must be entered immediately after

the acceptance, transfer or disposal of the used oils.

Section 4. Safekeeping of the Record Books
The record books must be kept safe for three years after the day of the last entry in them.

Section 5. Retention and Safekeeping of Documents
(1) Documents concerning the transfer of used oil are to be kept by the accepting and the transferring enterprises insofar as they must keep record books.
(2) The documents are to be kept safe as long as the record books in which the data called for by section 3 must be kept.

Section 6. Violations of Regulations
One violates a regulation, in the sense of section 10(1) No. 5 of the Used Oil Statute, if he intentionally or negligently:

1. does not appoint a person responsible for keeping the record book, contrary to section 1;
2. makes an entry not in the prescribed form, contrary to section 2(2)-(4);
3. does not immediately enter the required information in the record book, contrary to section 3;
4. does not keep a record safe, contrary to section 4; [and]
5. does not retain or keep safe documents, contrary to section 5.

Section 7. Berlin Clause
This regulation is effective in the Land of Berlin in accordance with Section 14 of the Third Transition Law of 4 January 1952 (Bundesgesetzblatt I, page 1) in connection with section 12 of the Used Oil Statute.

Section 8. Effective Date
This regulation is effective January 1, 1972.

Sample for Record Book for Possessors of Used Oils
(in accordance with section 3(1) of the Second
Regulation to Implement the Used Oil Statute)

Appendix
1 of the
Pegulation

Muster
für
Nachweisbuch der Altölbesitzer
(§ 3 Abs. 1 der Zweiten Verordnung zur Durchführung des Altölgesetzes)

Anfall der Altöle used generation of oils			Weitergabe der Altöle transfer of used oils						Eigenbeseitigung disposal by own means				
Menge in Litern	Davon Fremdstoffe in Litern	Datum mit Bestätigung des Verantwortlichen	an abnahmepflichtiges Unternehmen		an nicht abnahmepflichtiges Unternehmen		lfd. Nr. des Annahmescheins; Beleg	Datum mit Bestätigung des Verantwortlichen	Verbrennung Menge in Litern	Sonstige Beseitigung other disposal			Datum mit Bestätigung des Verantwortlichen
			Menge in Litern	Firma	Menge in Litern	Firma				Menge in Litern	Art	Ort	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
amounts in liters	of col. 1, amt. of foreign matter in liters	date, with confirmation of the person responsible	to enterprise required to pick up amts in liters	firm name	to enterprise not required to pick up amts in liters	firm name	no.of slip showing acceptance document	date, with confirmation of the person responsible	burning amts in liters	amts in ltrs	kind	place	date with confirmation of the person responsible

Appendix 2
of the Regulation

Sample for Record Book for Person Picking Up Used Oils
(in accordance with section 3(2) of the Second
Regulation to Implement the Used Oil Statute)

Muster
für
Nachweisbuch der Altölabholer
(§ 3 Abs. 2 der Zweiten Verordnung zur Durchführung des Altölgesetzes)

Übernahme der Altöle acceptance of used oils				Weitergabe der Altöle transfer of used oils			Beseitigung der Altöle disposal of used oils					
lfd. Nr. des Annahmescheins; Beleg	Menge in Litern	von Firma	Datum mit Bestätigung des Verantwortlichen	Menge in Litern	an Firma	Datum mit Bestätigung des Verantwortlichen	Aufarbeitung Menge in Litern	Verbrennung Menge in Litern	Sonstige Beseitigung other disposal Menge in Litern	Art	Ort	Datum mit Bestätigung des Verantwortlichen
1	2	3	4	5	6	7	8	9	10	11	12	13
number of the slip showing acceptance	amt in liters	from firm name	date, with confirmation of the person responsible	amt in ltrs.	to firm name	date with confirmation of the person responsible	re-processing amt in ltrs	burning amt in ltrs	amt in ltrs	kind	place	date with confirmation of the person responsible

Appendices 4-7

Guidelines Concerning Granting of Continual Payments in Accordance with the Used Oil Statute and Revisions 1-3 of the Guidelines

21 January 1969 (Bundesanzeiger No. 22, 1 February 1969, page 1)

I. Basic Principles

In making continual payments the goals named in section 2 of the Law Concerning Measures to Assure the Disposal of Used Oil (the Used Oil Statute) are to be observed. A frugal and correct use of the resources of the reserve fund is especially to be attended to.

II. Conditions

(1) Payments may be made upon application of industrial and other commercial enterprises as well as juristic persons if they fulfill the conditions of section 2(1) sentence 1 of the Used Oil Statute in connection with the Regulation to Implement the Used Oil Statute of 21 January 1969 (Bundesgesetzblatt I, page 89). This includes the requirement that they guarantee the proper collection and transport of used oils. Further, those who file applications must obligate themselves in writing with the Federal Office for trade and industry (Federal Office) to

(a) pick up all used oil generated in a region designated by the Federal Office (section 3(2) of the Used Oil Statute) or prepare for a later pick up as well as to make available the necessary collection, transportation and disposal facilities within a time specified by the Federal Office, [and]

(b) grant the Federal Minister for Economics and the Federal Office or its authorized representative a right to information about and investigation into (which may be exercised on the spot or at the place of the person conducting the investigation) facts and papers which are related to making payments and further to provide the necessary information and to permit the examination of papers, which are to be kept ready in the proper condition.

(2) Payments may only be made for the disposal of used oil generated within the Federal Republic. Used oils which originate from German and foreign ships in German harbors as well as from ships of the German Navy, from German free ports, and from foreign forces stationed inland are generated within the Federal Republic.

(3) Payments may not be made if and to the extent rerefined products from used oils are exported into a member nation of the European Economic Community. Payments already made are to be paid back to the Federal Office immediately.

The applicant must obligate himself to the Federal Office to give notice of the export of rerefined products to a member nation of the European Economic Community immediately and to include the following notice in the bill or delivery slip for the sale of rerefined products: "For the production of this product a payment was made

in accordance with section 2(1) of the Law Concerning Measures to Assure the Disposal of Used Oil (Used Oil Statute) of 23 December 1968. In the case of export to a member state of the European Economic Community the payment is to be repaid to the Federal Office for Trade and Industry, Frankfurt am Main."

III. Procedure for Application

(1) Applications for continual payments are to be submitted in duplicate to the Federal Office by the fifteenth of each month for the amounts of used oil disposed of in the preceding calendar month, using the prescribed form.

(2) The following documents must accompany the first application:

(a) a copy or photocopy of the official authorization (approval, permit, concession) for the facility for disposal of used oil as well as changes in the authorization and a description of the collection and transport facilities as well as of the disposal facilities insofar as this is not contained in the official authorization. If an official approval has not been granted then a certificate of the official responsible for the approval must be presented that disposal of used oils is assured in accordance with section 2(1), sentence 1 of the Used Oil Statute and section 1, sentence 1 of the implementation regulations [of 21 January 1969]. The Federal Office may establish a deadline for this presentation. The Federal Office will deal with the responsible official in this matter. If notice of the facility was to be given in accordance with section 16(4) of the Industrial Code a confirmation of the official responsible for the filing of this notice must be presented.

(b) the price list in effect on 30 June 1969 in accordance with section 3(4), sentence 2 of the Used Oil Statute; the list is to be corrected for changes in price.

(c) a written declaration that the applicant undertakes the obligations prescribed in section II and submits to the conditions of section V.

IV. Establishing the Payments

A.

The amount of the payment is determined by the Federal Office in a grant decision to compensate uncovered costs of disposal, including the costs of collection and transportation.

(1) The payment for 100 kilograms of used oils is

(a) for lubricating oil from No. 27.10-C-III of the customs tariff including not more than five per cent by weight of other added substance (for example, additives) which is rerefined. is shipped from the producing business and is not intended for

purposes of heating: 12 DM*
(b) for incineration, 10 DM.
If additional public assistance, especially lost payments and tax relief for other than trade cycle and structural policy reasons, is made, these payment amounts are to be reduced accordingly.
(2) To the extent that used oil is rerefined into products other than lubricating oil the demonstrated uncovered costs will be compensated, at not more than 12 DM for 100 kilograms used oil, until the completion of the necessary cost investigations.
(3) Number 2 applies analogously for
(a) used oils whose burning produces energy which is used productively,
(b) the depositing of used oil.
The payment amounts at most to 10 DM per 100 kilograms, used oil.
(4) The costs of air pollution abatement for the incineration of used oil will to the extent the abatement facilities reflects current technology, be compensated to the extent proved at not more than 2.60 DM per 100 kilograms of used oil, until the conclusion of the necessary cost investigations.**
(5) (a) The record is to be kept by a comparison of costs and receipts which can be confirmed by suitable auditing offices. The Federal Office may reserve the right to audit.
(b) If the records are delayed by special circumstances not explained by the applicant the Federal Office may reduce by up to 85 per cent the highest payment rates per 100 kilograms used oil specified in numbers 2 and 3.

B.

(1) Additional costs which arise due to collection conditions of above average difficulty in the districts designated by the Federal Office will be compensated to the extent proved. A.5(a) applies accordingly.
(2) To the extent that no fee was charged for the pick-up of used oil before 1 January 1969 it may be assumed that no collection conditions of above average difficulty existed.

* [This formulation was substituted retroactively for the previous one by the First Amendment of the guidelines on February 10, 1969. The previous formulation read: "for lubricating oil from No. 27.10-C-III of the customs tariff, rerefined containing not more than five per cent by weight of other added substances (for example, additives), shipped from the producing business and not intended for heating: 12 DM"]

** [This paragraph 4 was added on October 14, 1971 by the Third Amendment of the Guidelines.]

C.

The turnover tax paid by the recipient of payments for payments received will be repaid to the extent proved.*

D.

If the recipient of payments is also obligated to pay the compensation fee the Federal Office will set off the payments to be made against the compensation fee owed.

V. Revocation

The Federal Office may revoke grant decisions when and to the extent
(1) they were made on the basis of incorrect figures,
(2) one of the conditions for making payments did not exist or later expired,
(3) the payments recipient did not fulfill obligations in accordance with the Used Oil Statute or in accordance with those undertaken with the Federal Office.
To the extent grant decisions are revoked the amounts [of payments] are to be repaid. The amount to be repaid is charged annual interest from the time of payment to the time of repayment at a rate two per cent higher than that of the German Federal Bank for loans.
If the recipient of payments falls behind in his repayments the remaining amount is charged annual interest at a rate three per cent higher than the rate of the German Federal Bank for loans. Accumulated credit costs are to be paid specially.

* [This sentence was introduced by the Second Amendment to the Guidelines on August 5, 1970 and was retroactive to January 1, 1969.]

Appendix 8

Statement of the Federal Minister for Economics to the Federal Office for Trade and Industry Concerning Levying the Compensation Fee under the Used Oil Statute

30 December 1969 (Bundesanzeiger No. 12, 18 January 1969, page 2)

The Law Concerning Measures to Assure the Disposal of Used Oil (Used Oil Statute) of 23 December 1968 has been published in the Bundesgesetzblatt I, on page 1419. The implementing regulations required by sections 2, 3 and 4 of the statute are being prepared.

For the timely information of those liable to pay the compensation fee I am transmitting the accompanying model for payment of the compensation fee in accordance with section 4 of the Used Oil Statute. After discussion with those liable to pay the fee it will be decided whether central publication of this notification form would be advisable.

By way of elaboration I refer to the following:

I. IN RE: SECTION 4 OF THE STATUTE

(a) The person liable shall give notice on the accompanying form by the fifteenth of the following month of all goods for which fee liability has arisen in a calendar month. This notice is to be transmitted to the customs office responsible for the business along with the notice for determining mineral oil tax liability. If the firm is permitted to file and pay its mineral oil tax at a central office this also applies for the compensation fee.
(b) The Federal Office for Trade and Industry can, in agreement with the central customs office for the business of the person liable for the compensation fees, permit those enterprises which fulfill the conditions for filing notice of tax liability centrally (central compilation of amounts and bookkeeping with data processing facilities) to give notice only for goods subject to the fee, if auditing is not made more difficult thereby, until approval of central tax notification.

The Federal Office may for a transition period extend the deadline for notification until the twenty-fifth of the month. In all cases the fee liability is to be paid to the Federal Office for Trade and Industry by the tenth of the second month following the month in which it arises.

II. IN RE: SECTION 11 OF THE STATUTE

(a) The model form is likewise applicable for the notification of goods existing on the 31st of December 1968 at midnight for which the

compensation fee is to be paid. The notification is, however, to be sent directly to the Federal Office for Trade and Industry.
(b) A person liable for the fee may summarize in one notification all goods which he possesses at the time the law became effective and for which a compensation fee is to be paid if the situation can later be checked with the assistance of documents existing at his place of business. This notification is to be accompanied by a list of all places of storage to which this single notification applies.
(c) To simplify the determination of the proportion of taxable heavy oil in lubricating oils I agree that the heavy oil proportion for all existing lubricating substances be assumed to be 90 per cent of its own weight; the compensation fee in these cases amounts to 6.75 DM per 100 kilograms of the actual weight of the lubricating substances.
(d) For materials in containers whose contents is given in liters it may be assumed in figuring the actual weight that there is a ratio of mass to weight of .9.
(e) The deadline for notifying and paying the compensation fee may be determined from section 11(2) of the law.

III.

I have sent a copy of this statement with its appendix to the Federal Minister of Finance with the request that he inform customs authorities accordingly. The statement with its appendix will be published in one of the next issues of the Federal Customs Gazette as well as in the Ministerial Notices of the Federal Ministry for Economics.
The concerned business associations have been informed.

To

The Federal Office for Trade and Industry
6 Frankfurt
via Customs Office _____

_____ Stamp for Receipt of the Customs Office
_____ Section and Number of Notice Entry Book

_____
Name, Date and Signature of Official

Notice for Payment of Compensation Fee

I/we give notice of the goods liable for a compensation fee which are listed in the following excerpt from the Notice of Goods for the Determination of Mineral Oil Tax, for which the mineral oil tax became unconditional during the month of _____, 19___, for the fixing of that compensation fee in accordance with section 4 of the Law Concerning Measures to Assure the Disposal of Used Oil. I/we apply simultaneously for

---- the refund of compensation fees paid for goods I/we have taken back in my/our firm

---- the refund of compensation fees paid for the portion of heavy oils in lubricants which have been exported or sold to an exporter.

Kind of goods	Amount in kg.	The compensation fee is to be paid for (kg.)
Gas oils for lubricating purposes; taken back in firm	_____	_____
Lubricating oils; taken back in firm	_____	_____
Heavy oil portion in lubricants	_____	
exported or sold to exporter	_____	_____
	Sum	_____ kg.

The compensation fee amounts to _____ DM;
in words _____ DM.

I/We know that this amount is to be sent unsolicited by the 10th of _____, 19___, to the Federal Office for Trade and Industry, Account Deutsche Bank, Frankfurt, No. 91/5900, "Waste Oil Reserve Fund."

_____ _____
Place and Date Firm and Signature

Checked by the Customs Office for
Correspondence with Tax Notice _____
Date, Name and Signature of Official

The compensation fee is determined to be _____ DM.
Book No. _____

Appendix 9

Statement of the Federal Minister of Finance Concerning the Collaboration of Customs Offices in the Implementation of the Used Oil Statute

13 January 1969 (Bundesanzeiger No. 12, 19 January 1969, page 1)

I.

The temporary subsidy for the production of lubricating oils from used oils in accordance with Article 8 of the Law Concerning the Amendment of Taxes on Mineral Oil of 20 December 1963 (Bundesgesetzblatt I, page 995) expired on 31 December 1968. Assistance will only be granted still for those amounts of lubricating oils which left their place of production before 31 December 1968.

II.

On 1 January 1969, the Law Concerning Measures to Assure the Disposal of Used Oil (Used Oil Statute) of 23 December 1968 (Bundesgesetzblatt I, page 1419) became effective. In accordance with section 4(2) No. 1-3 the following are subject to a special compensation fee of 7.50 DM per 100 kilograms:
(1) lubricating oils from No. 27.10-C-III of the customs tariff;
(2) gas oils from No. 27.10-C-I of the customs tariffs which are used as lubricating substances; and
(3) the heavy oil portion of lubricating oils.

This compensation fee goes to a Reserve Fund which is administered by the Federal Office for Trade and Industry. The resources of this fund are earmarked for financing the disposal measures foreseen in the law. Sections 4 and 5 of the law provide for cooperation of the customs administration. The law requires the customs administration to provide the Federal Office for Trade and Industry with the information necessary for the levying of the compensation fee and to place the necessary documents at its disposal.

With respect to the law and its implementation I make the following observations:

1. Coordinating the Assessment Procedure with the Procedure of the Mineral Oil Tax

The provisions on the incidence of the compensation fee liability, the person liable and the notification of the fee liability are conformed to the respective provisions for the mineral oil tax. The compensation fee arises whenever the mineral oil tax liability is unconditional for goods subject to the fee. This simplifies the levying of the compensation fee, especially in the area in which the customs office is cooperating.

2. Notification for Levying the Compensation Fee

One liable to pay the compensation fee, who is also liable to pay

mineral oil tax, must submit a special notification form for payment of the compensation fee to the customs office responsible for him. The new form for giving notice of [mineral oil] tax liability contains an information section in which the mineral oils are to be notified by kind and amount which are subject to the compensation fee. This section will be useful for later checking. Firms for which central notifying and payment of mineral oil tax is approved should also notify the central customs office responsible for the area in which their place of business is located of the liable goods subject to the compensation fee.

3. Handling of the Notification by Customs Offices

The customs office responsible for receiving notification of [mineral oil] tax takes the form entitled Notice for Payment of Compensation Fee with the tax notification, stamps the receipt of this notice in the tax notification and checks the correspondence with the information of the tax notification. It certifies on the form for notifying the liability for the compensation fee the correspondence of the notified amounts, notes on it the place in the books of the mineral oil tax of the tax notification, collects the notices for liability to pay compensation fee with the mineral oil tax notification book and sends them at the end of the month to the Federal Office for Trade and Industry. The dispatch of these forms is to be noted on the tax notification forms or in the comments column of the mineral oil tax notification book.

The procedure is similar when notification is given of the import of mineral oils for taxation. In agreement with the Minister of Economics no notice need be given for payment of the compensation fee, for imports for which the fees are levied, according to the group rates according to Section 148 of the General Customs Ordinance.

4. Establishment and Payment of the Compensation Fee

The Federal Office for Trade and Industry establishes the compensation fee after receipt of the notices. The one liable shall send the amount due to the Federal Office for Trade and Industry by the tenth of the second month following the month in which the liability arose.

5. Checking the Notices

The official responsible for checking the mineral oil tax notifications will also check whether the one liable for the compensation fee has entered all mineral oils in the information section of the tax notice for which he is also liable for compensation fee. A special check is not necessary if the amounts notified for tax liability correspond with the amounts notified for the compensation fee. If the check reveals that the notified amounts for compensation fee are not correct and the one liable agrees with the amounts established by the check, the mistake may be corrected in the next notice. If the person liable has not yet paid the fee he may correct the current notice. In other cases, especially the discovery of a negligent or intentional shortage of the compensation fee or an intended percentage profit, the results of the check are to be sent

to the Federal Office for Trade and Industry for a supplemental assessment of the compensation fee. Penal measures by the customs administration are not appropriate because the compensation fee is not a tax in the sense of the tax ordinances.

6. Levying the Compensation Fee Outside the Notice Procedure

If a decision of liability to pay mineral oil tax is reached outside the normal procedures which covers oils also subject to the compensation fee a copy of this decision is to be sent to the Federal Office for Trade and Industry for purposes of levying the compensation fee. The transmittal shall be concurrent with the decision. I, however, agree with the Federal Minister for Economics that the sending of a copy of the tax decision is not necessary when a double taxation is involved or when mineral oil is exported or is not used for lubricating purposes under the Used Oil Statute.

7. Excuse, Refund, and Compensation of the Compensation Fee

The regulations for implementing the Used Oil Statute will provide that the compensation fee shall not be levied on goods for which the mineral oil tax is excused, refunded or compensated.

The amount of goods subject to the fee for which repayment in accordance with Section 10, sentence 1 of the mineral oil tax law, perhaps in conjunction with section 37(3) of the Mineral Oil Tax Implementation Ordinance, is involved can be deducted in the notice for payment of the compensation fee just as in the tax notification. The same procedure is to be followed when the compensation of the mineral oil tax in accordance with section 11 of the Mineral Oil Tax Law (in conjunction with Section 39 of the Mineral Oil Tax Implementation Ordinance) is applied for.

8. Later Levying of the Compensation Fee in Accordance with Section 11 of the Used Oil Statute

The notice for payment of the compensation fee on goods liable for the fee at the time when the law became effective is to be sent to the Federal Office for Trade and Industry. This office will send these notifications to the responsible customs offices if a check is deemed necessary.

III.

Some difficulties in implementation are to be expected. In consideration of the goals of the statute, I request in these early days that compliance not be grudging.

In the event that there is no reason to do so before hand I request that you inform me of your experience by 1 September 1969. Specifically I request that you state what costs the customs administration has incurred from the responsibilities assigned it by this statute.

Appendix 10

Notice Concerning Applications for Continual Payments in Accordance With the Used Oil Statute

24 February 1969 (Bundesanzeiger No. 39, 26 February 1969, page 2)

The Federal Office for Trade and Industry gives notice that application for continual payments in accordance with the Used Oil Statute of 23 December 1968 (Bundesgesetzblatt I, page 1419) are to be submitted in duplicate on the following printed form:

To the
Federal Office for Trade and Industry
6000 Frankfurt am Main
Post Office Box 3931

Application

for the Grant of a Payment in accordance with section 2(2) of the Used Oil Statute of 23 December 1968 (Bundesgesetzblatt I, page 1419) for Rerefining

1. Name (legal form) and Address of the Firm
2. For which month is this application made?
3. Total used oils rerefined (actual weight in kilograms)
4. Amount of total used oils (in 3) not generated in the Federal Republic
5. a) Amount of lubricating oils from Number 27.10-C-III of the customs tariff rerefined, including the actual added other substances up to five per cent by weight (for example, additives), which were shipped from the place of their production and which are not intended for heating purposes. _____ kg.

   Of which _____% weight other substances _____ kg.
   b) Other kinds of rerefined products (e.g., lubricants) shipped from the place of production (if different sorts, show separately)
   _____kg.
   _____kg.
6. Amount of total rerefined products (in 5) exported to member nations of the European Economic Community
   _____kg.
7. Amount of used oils eligible for payments (divide the amount from 5a by .7)
   _____ kg. _____kg.
   _____ kg. _____kg.
8. Less payments applied for for the same month at 7.50/100 kg.
   _____kg. _____DM

9. Amount of payment _____ DM
10. Are additional means of public assistance granted (e.g., payments, tax relief)?

Yes ____ No ____

If yes, please explain.

11. How much are the uncovered monthly costs for rerefining to other mineral oil products than lubricating oils?
12. Attached as appendices are:
    a) Proof of the official authorization for the facility, (if not already submitted);
    b) Description of the collection and transport facilities as well as the disposal facilities, (to the extent not contained in the official authorization or not already presented);
    c) Price lists in accordance with section III,2.b of the Guidelines (or price alterations);
    d) Comparison of costs and receipts under questions 10 and 11, certified by a suitable auditing firm (publicly certified business analyst, or bonded auditor);
    e) Declaration of obligations in accordance with section II and V of the Guidelines

I certify the completeness and accuracy of the information in this application and its appendices, especially in the correspondence of the figures in 5a and 5b with those given the customs office for purposes of the mineral oil tax.

I am aware of the consequences of any conduct to the contrary.

_____, the _____ of _____ 19____
(place)

_____
Signature

Bank
Account Number
Appendices:

Appendix 11

Notice Concerning the Establishment of Mandatory Pick-up Districts and Attached Price Lists in Accordance with the Used Oil Statute

25 November 1969 (Bundesanzeiger No. 223, 2 December 1969, page 1)

The mandatory districts in accordance with section 2(2) No. 1 of the Used Oil Statute of 23 December 1968 in conjunction with section II, No. 1 (a) of the Guidelines Concerning the Granting of Continual Payments in Accordance with the Used Oil Statute of 21 January 1969 are established as set forth in Appendix 1.

The firms named are obligated to pick up all used oils. They may fulfill this obligation by employing a reliable collection firm.

Used oils within the meaning of section 3(2) of the Used Oil Statute are used fluid substances derived from mineral oils which may only contain those foreign substances which are generated by normal use.

In accordance with section 3(5) of the Used Oil Statute a person possessing used oil is liable for damages caused by foreign substances which are not revealed.

Pick-up and disposal of used oils with a permissible maximum limit of ten per cent foreign substances is free. For foreign substances in excess of ten per cent the disposal firm may require a fee in accordance with its price list filed with the Federal Office for Trade and Industry (section 3(4) of the Used Oil Statute).

In Appendix 2 the current price lists are published. These prices are net prices.

The disposal firms must when picking up used oils use a receipt certificate (section 6(2) of the Used Oil Statute) on which kind, amount, and, if appropriate, fee for the used oils picked up is certified by the person possessing the used oil, the collector and the disposal firm. A copy of the receipt certificate remains with the possessor of used oils.

If an agreement concerning the amount of foreign matter to be picked up for a fee cannot be reached by the collector and the possessor of used oils a determination can be made by the Federal Office for Trade and Industry on the basis of samples mailed in. The costs for this are to be borne by the person whose estimate deviated more from the result of the test.

Reference is made to the conditions of acceptance of the disposal enterprises. These are to be observed insofar as they do not restrict their undertaken obligations.

[Appendix 1 of this Notice contains a list in two columns of the firm, with address and telephone number, in the left-hand column and the area of its mandatory pick-up region described in the right-hand column, sometimes by naming a state, sometimes by naming areas bounded by highways or governmental jurisdictions or both.]

[Appendix 2 is in two parts. Part A is fees of each firm for the collection of foreign substances in excess of ten per cent to be burned. This price list names the firms followed by entries for each firm in five columns. The columns list the DM fee per unit (either tons or cubic meters) of water, solvents, solid substances, or other foreign matter. No price figures are given in the column for other foreign matter, presumably because the price would be set by agreement according to what substance was involved. Part B of Appendix 2 contains fees for transportation for each of the firms. The fees are normally given in DM per ton or ton per kilometer. Different fees are charged for regular and rapid service pick-up and, under each of these columns, for pick-up from within fifty kilometers and from over fifty kilometers. The firms also charge a fee for containers in some cases.]

[This notice has been amended and re-issued three times: on 7 June 1971, on 15 June 1972 and on 27 August 1973. The purpose of these amendments is to give notice of changed mandatory district boundary lines, additions or deletions from the list of firms, and changes in the firms' price lists.

The June 7, 1971 version of the Notice was published as Appendix 12 to this report but is not included in this translation because it is not different in substance from the above.]

Appendix 13

Contract

between the

Federal Office for Trade and Industry, Frankfurt am Main, Bockenheimer Landstrasse 38/40 (hereafter "BAW")

as Administrator of the Reserve Fund in accordance with section 1 of the Law Concerning Measures to Assure the Disposal of Waste Oil of 23 December 1968

and the

Firm _____

PICK-UP; PREPARATION FOR PICK-UP

Section 1.

(1) The firm is obligated to pick up, in amounts of more than 200 liters, and to dispose of harmlessly, used oils, namely used mineral oils, used fluid mineral oil products, and mineral oil-containing wastes from storage, business and transport receptacles, which are generated in places which lie within the region established in section 3 of this contract.

(2) The firm is obligated to prepare for the later pick-up of amounts of used oils less than 200 liters by setting up suitable containers.

(3) The firm may employ third persons to pick up the used oils. It must answer for their activities as well as for its own.

Section 2.

(1) The firm is obligated to pick up the used oils for free insofar as they do not exceed the permissible proportion of foreign matter set forth in the current version of section 4 of the Implementating Regulations of 21 January 1969.

(2) The firm is obligated to pick up the foreign matter in excess of the permissible proportion in accordance with the current conditions of the price list on file with BAW.

(3) If the firm neglects any of the obligations undertaken in sections 1 and 2, it declares itself ready to indemnify the resulting damages. In addition the BAW is authorized to exclude the firm from continual payments if repeated neglect of the obligations undertaken threatens the goal of the law's provisions.

Section 3.

(1) The region in which the firm undertakes the duty to pick up the substances described in section 1 of this contract is established as follows:

(2) The firm is aware that the BAW does not guarantee the firm exclusive rights within this region.

Section 4 .

The firm is obligated, to the extent BAW deems it required, to set up or change equipment for purposes of technical control of the disposal facilities. The records of technical measurement results are to be retained by the firm and to be made available to BAW upon request.

PAYMENTS: APPLICATIONS, NOTICES

Section 5.

(1) Applications for payments are to be presented by the firm by the 15th of each month in duplicate on the form provided by BAW for the amounts of used oils disposed of in the preceeding calendar month.

(2) The firm is obligated to immediately give notice to BAW of the export of rerefined products to member nations of the European Economic Community.

(3) If payments have already been made for rerefined products which have been exported to an E.E.C. member nation they are to be immediately repaid to BAW by the firm. The requirement to repay may not be avoided by set-off.

(4) The firm is obligated to give BAW notice of additional public assistance, especially lost payments from federal, state or local funds and tax exemptions granted for other than trade cycle or structural policy reasons.

DECISIONS TO GRANT

Section 6.

(1) BAW establishes the amount of payments, in accordance with section 4 of the current Guidelines and in consideration of this contract, in a Decision to Grant, insofar as resources exist. BAW will inform the firm when it is clear the resources of the fund will be exhausted.

(2). If a grant decision corresponds to an application it is effective immediately. If it varies from the contents of the application it is effective upon receipt by BAW of the firm's written declaration of acceptance. Disputes over the amount of the payments do not affect the obligations undertaken.

(3) The parties are agreed that the costs of collection, transport and disposal of the used oils are satisfied by the rates of payment.

PROCEDURE FOR INCINERATION

Section 7.

(1) The parties are agreed that the procedure for determining the proportion of mineral oil in the samples taken from incinerated used oils is established by BAW. BAW is authorized, after hearing

those interested in the implementation of the law, to change the procedure in the light of new discoveries.
(2) The firm will install suitable measuring and sampling devices, approved by BAW, for purposes of determining the amounts of disposed of used oils at places in its facilities established by BAW.
(3) The parties are agreed that the amount of used oils incinerated is determined on the basis of the amount of oil in the liquid samples.
(4) The parties are further agreed that no claims against BAW for compensation arise if measuring or sampling devices fail. BAW will, however, take measures so that the firm may, under the supervision of BAW, repair the disruption on the first working day after informing BAW of it.
(5) If seals are broken or other circumstances are established which render the accuracy of measurements dubious to BAW, the right to receive payments is lost without regard to fault.

DELIVERY CERTIFICATES

Section 8.
(1) The firm is obligated to use delivery certificates when picking up used oils (section 6(2) of the law) on which kind, amount and, if appropriate, fee of the oils picked up are certified by the possessor, the collector and the firm.
(2) The firm is further obligated to have these delivery certificates available for BAW for the appropriate control period.

GENERAL CONDITIONS

Section 9.
(1) The Federal Minister for Economics, the BAW and their representatives have, in accordance with the general principles of administrative and budgetary law, an unrestricted right to information about and inspection of facts and papers relevant to the granting and payment of payments. The firm is obligated to provide the required information and to submit to the inspection of papers. The right to information and inspection may be exercised at the place of the firm or at the place of the investigating office.
(2) The firm is obligated to keep orderly books which enable the determination of costs, especially uncovered costs.
(3) The firm is obligated, in reprocessing used oils into rerefined products, to keep comprehensible records which show the amounts of "other substances" added to the rerefined products (section IV(A)(1)(a) of the Guidelines, Bundesanzeiger No. 39, 26 February 1969, in the current edition).
(4) The firm agrees that the BAW or its representatives may make unexpected checks of its facilities at any time.
Section 10.
(1) The grant decision may be revoked when and to the extent that
    (a) the payment was authorized or paid on the basis of incorrect information;
    (b) the applicant does not allow an investigation or infor-

mation is withheld, delayed, incomplete or incorrect;

(c) the preconditions for the granting of a payment, did not exist or later expired

(2) Payments made are to be repaid to the extent that the grant decision is revoked.

Section 11.

(1) The amount to be repaid is charged annual interest from the time of payment to the time of repayment at a rate two per cent higher than that of the German Federal Bank for loans.

(2) If the recipient of payments falls behind in his repayments the remaining amount is charged annual interest at a rate three per cent higher than that of the German Federal Bank for loans.

Section 12.

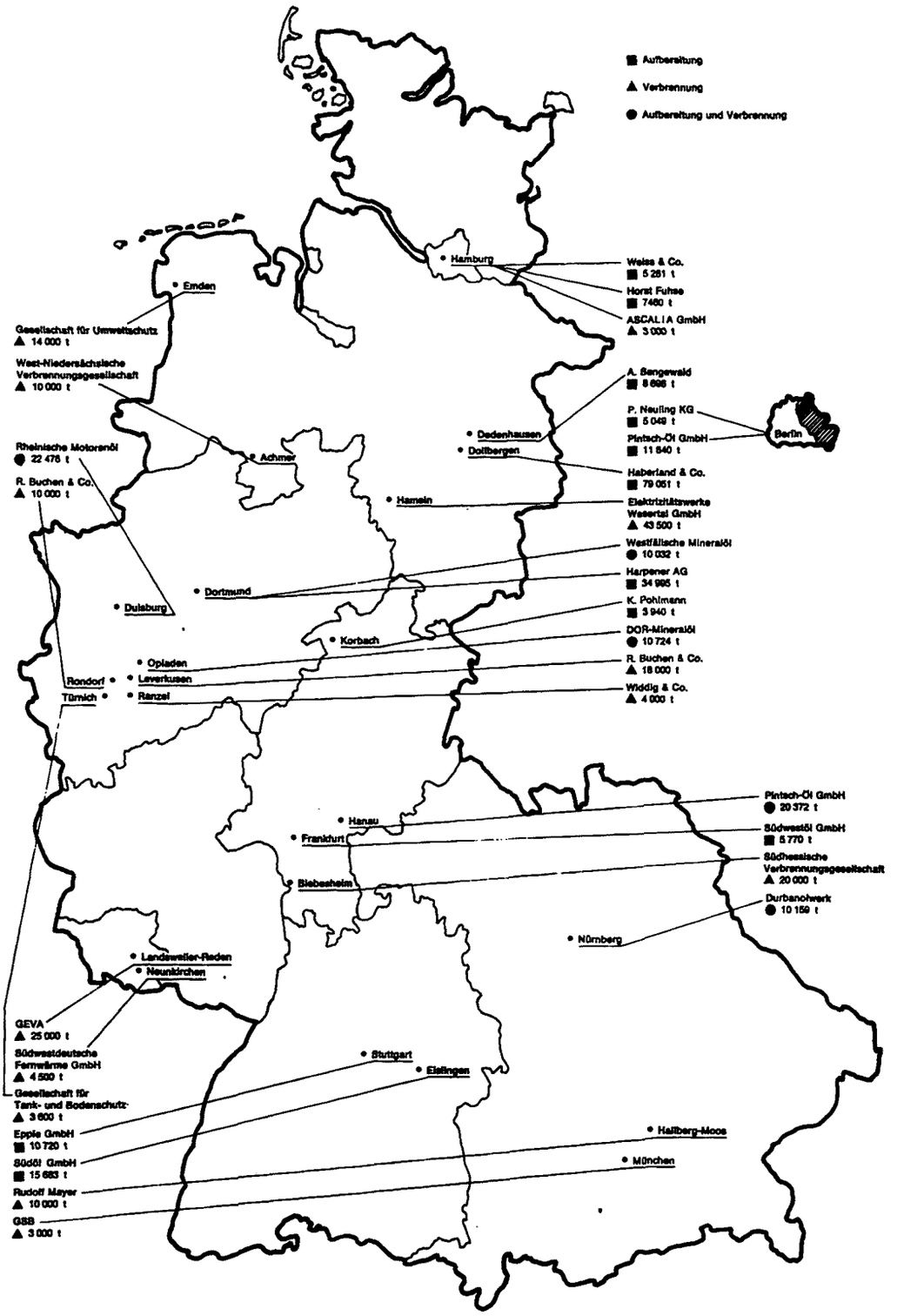
(1) Alterations of this contract must be in writing to be effective.

(2) In disputes over the amounts of used oils, the results of an arbitration analysis by _____ is binding. The resulting costs are borne by the party whose figure was the further from the results of the arbitration analysis.

Done at Frankfurt am Main the _____

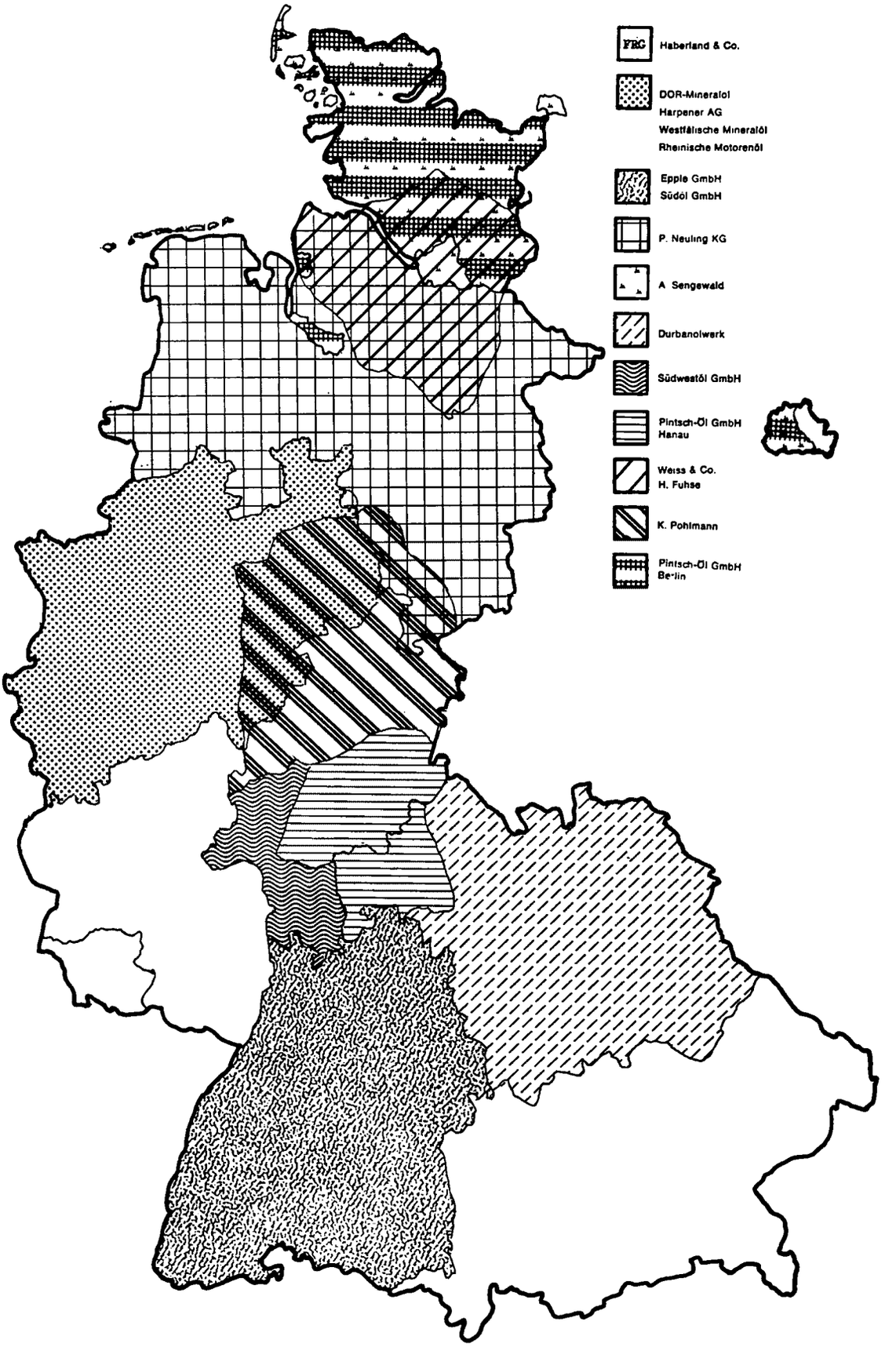
Appendix 15

Locations of Used Oil Disposal Facilities in the Federal Republic of Germany

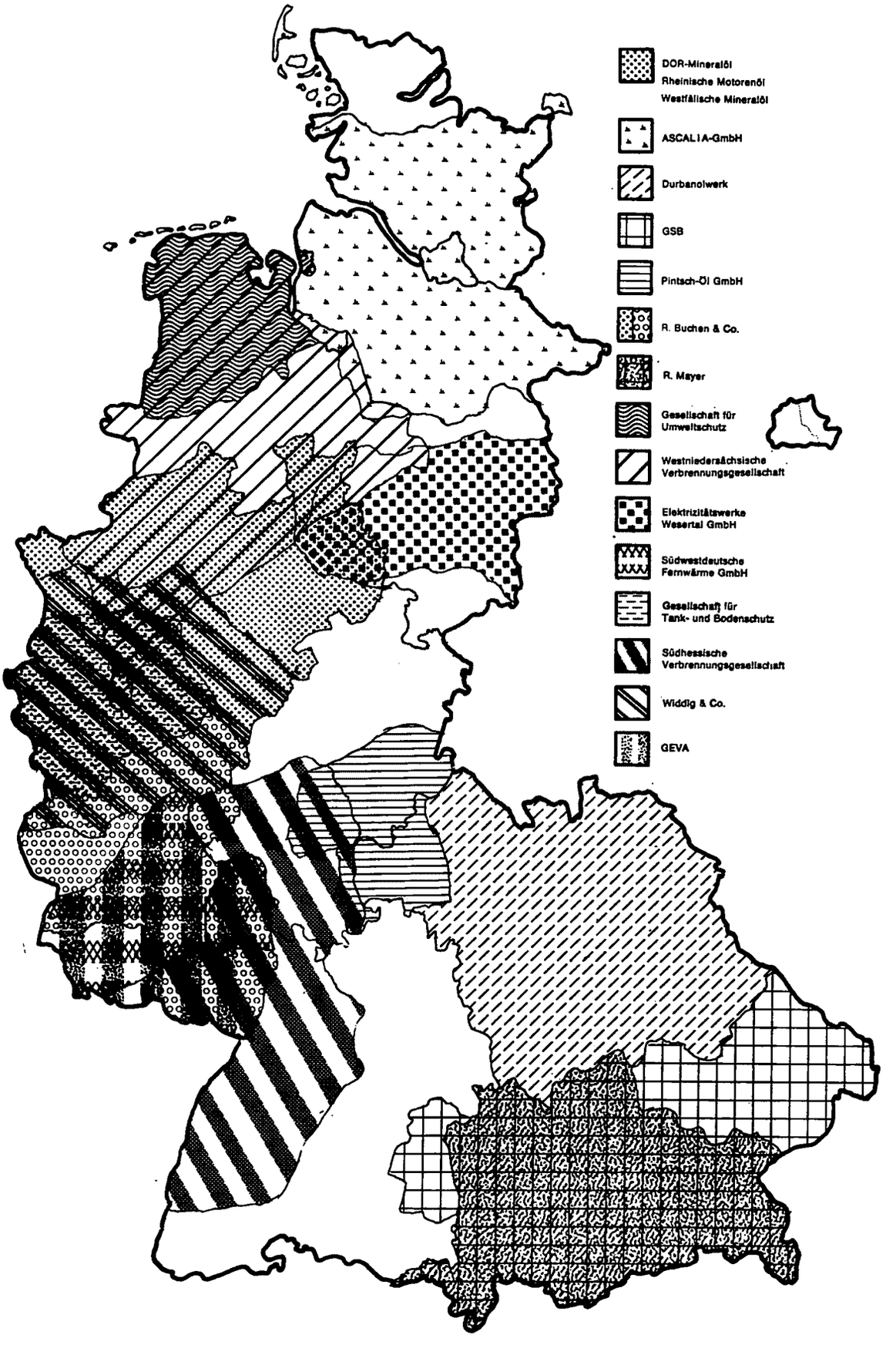


Appendix 16

Mandatory Pick-up Districts for Rerefining Firms



Appendix 17
Mandatory Pick-up Districts for Incinerating Firms



Appendix E

Regulations Concerning the Granting of Temporary Subsidies for the Production of Lubricating Oils from Used Oils (Rerefined Products)

23 April 1964 (Bundesgesetzblatt I, page 293)

On the basis of Article 8, section 6 of the Law Concerning the Amendment of Taxes on Mineral Oil of 20 December 1963, amended by the Law to Amend the Law Concerning the Amendment of Taxes on Mineral Oil of 16 April 1964, the following regulations are promulgated.

Section 1: Certification of Right to Subsidy

(1) The temporary subsidy in accordance with Article 8 of the Law Concerning the Amendment of Taxes on Mineral Oil may only be approved when the right to the subsidy has been certified.

(2) Certification is to be applied for in duplicate within two months of the effective date of this regulation.

(3) The central customs office responsible for the location of the enterprise is responsible for the certification.

(4) The application shall include (1) name and purpose of the enterprise, (2) owner of the enterprise, (3) name of the person responsible for the management of the enterprise, (4) weight of the lubricating oil taxed in 1962 in accordance with Section 2(1) No. 1(g) of the Mineral Oil Tax Law, (5) weight of rerefined products produced in 1962 and sold in 1962 and (6) capacity of the enterprise for producing rerefined products.

(5) The information required in paragraph (4) (4)-(6) shall be substantiated at the request of the central customs office.

(6) If the deadline named in subsection (2) is missed without fault an extension may be granted.

(7) The certification is to be given in writing. Thereupon the one entitled to receive the subsidy shall acknowledge that (1) he must keep the records described in section 3, (2) he must label rerefined products in accordance with section 5, and (3) he must repay subsidies improperly paid out.

Section 2: Revocation of the Recognition

The certification shall be revoked if the conditions for its granting did not exist or later expired.

Section 3: Record Books

(1) The one entitled to subsidies must keep records of (1) the amounts of used oil processed, separated according to used oils generated and collected in the Federal Republic and other used oils, (2) the weight of the lubricating oils produced from used oils generated and collected in the Federal Republic, (3) the weight of lubricating oils produced from other used oils, (4) kind and weight of the substances added to the lubricating oils designated under (2) by the producing firm and (5) the day of shipment from the producing firm of the lubricating oils designated in (2).

(2) If the information required in subsection (1) is apparent entirely or in part from records already kept on the basis of other legal provisions then the records required by subsection (1) are to that extent not required.

Section 4: Granting of the Temporary Subsidy

(1) The temporary subsidy will be granted upon application for the amount of lubricating oils shipped from the producing firm in a month. The application is to be submitted in duplicate by the fifteenth of the month following to the central customs office specified by section 1, subsection 3. The application shall certify that the lubricating oils shipped from the producing firm were produced in that firm from used oils generated and collected in the Federal Republic.

(2) The central customs office determines the amount of the temporary subsidy on the basis of the extent to which it is justified and the proof required in section 3 is furnished.

(3) The central customs office sets off the temporary subsidy against the mineral oil tax to be paid by the applicant by the twenty-fifth of the second month following the shipment. In the case of section 6(1), sentence 2 of the Mineral Oil Tax Law of 1964 the subsidy is to be set off against the mineral oil tax due by the fifteenth of the second month following the shipment and, to the extent that it exceeds the tax liability, with the mineral oil tax due on the fifth of the third month following the shipment.

(4) If the mineral oil tax liability is not sufficient in accordance with subsection (3) the amount of subsidy in excess of the tax liability is to be paid.

(5) If the deadline named in subsection (1) is missed without fault an extension may be granted.

Section 5: Duty to Label

The labeling required by Article 8, section 4, sentence 1 of the Law Concerning the Amendment of Taxes on Mineral Oil must be by printing on the bill or delivery slip. The printing must read as follows: "For this product a subsidy was paid in accordance with Article 8 of the Law Concerning amendment of the Taxes on Mineral Oil of 21 December 1963, amended by the Law to Amend the Law Concerning Amendment of Taxes on Mineral Oil of April 16, 1964. Upon export to member nations of the European Economic Community the amount of 22.90 DM per 100 kilograms is to be repaid to the federal government in accordance with Article 8, section 3 of the law."

Section 6: Investigations

(1) The central customs office specified by section 1(3) may undertake investigations of the enterprise in order to determine whether the conditions for receiving a subsidy exist or have existed. For these investigations the one entitled to the subsidy is required to present documents relevant to the temporary subsidy; he is further obligated upon request to provide information. The federal auditing office is entitled to the same rights of investigation.

(2) If rerefined products are exported to the member nations of the European Economic Community the customs administration may undertake investigation of the exporter to determine whether temporary subsidies were paid for the exported rerefined products. For this investigation the exporter must present documents related to the rerefined products and must provide information upon request. The federal auditing office is entitled to the same rights of investigation.

(3) For public entities and personal corporations the individuals accorded representative status by law, contract or bylaws are to fulfill the duties of subsections (1) or (2).

(4) A person obligated to provide information may refuse to provide information to those questions whose answers would subject he himself or one of the employees listed in section 383(1) No. 1-3 of the Civil Procedure Law to the risk of criminal prosecution or a proceeding in accordance with the Law Concerning Violations of Regulations.

Section 7: Validity in Berlin

This regulation is also effective in the state of Berlin in accordance with Section 14 of the Third Transition Law of 4 January 1952 in conjunction with Article 14 of the Law Concerning Amendment of Taxes on Mineral Oil.

Section 8: Effective Date

This ordinance is effective on the day after its publication.

First Statement of the Minister of Finance to Supplement the Regulations Concerning the Granting of Temporary Subsidies for the Production of Lubricating Oils from Used Oils (Rerefined Products) of 23 April 1964

29 April 1964 (Bundeszollblatt, page 328)

I offer the following comments on the implementation of the above-named regulations:

(1) Article 8 of the Law Concerning Amendment of the Taxes on Mineral Oil of 20 December 1963 was amended by the Law to Amend the Law Concerning the Amendment of Taxes on Mineral Oil of April 16, 1964. In accordance with these amendments no temporary subsidies are paid for exports of rerefined products to member nations of the European Economic Community and temporary subsidies paid are to be repaid in these cases. The recipient of temporary subsidies -- that is, the producer -- is subject to the notification requirement of section 5 of the Regulations.

(2) "Taxed" within the meaning of Article 8, subsection 1, sentence 1 of the Law Concerning the Amendment of Taxes on Mineral Oils includes those lubricating oils which were subject only to a conditional tax liability in the year 1962. That is, an enterprise which for example in 1962 only shipped rerefined products from its firm upon order is likewise entitled to receive subsidy payments.

(3) Used oils which originated from German and foreign ships in German harbors as well as from ships from free ports and from the occupying forces count as generated within the Federal Republic.

(4) Use of rerefined products by a producer himself or the use of rerefined products to produce other products in that same firm is not entitled to subsidies. The temporary subsidy is expressly linked with shipment from the producing firm. As is for example evident from section 3 of the Mineral Oil Tax Law of 1964 this factual situation [shipment] does not include use within a firm.

(5) Untaxed rerefined products or those shipped from the producing firm upon order are likewise eligible for the subsidy.

(6) Lubricating oils in accordance with Article 8, section 1, sentence 2 of the Law Concerning the Amendment of Taxes on Mineral Oils are only eligible for subsidy if they are rerefined products, as is evident from Article 8, section 1, sentence 1 of the law. A product is still as a whole a rerefined product if in addition to rerefined substances per se other substances (for example, additives) up to a maximum of five per cent by weight are included. If a product has more than five per cent by weight of other substances it is as a whole no longer a rerefined product and is therefore as a whole not entitled to subsidy

payments. Mixing of other substances outside the producing firm does not influence the eligibility for subsidy since only the condition and amount of the product at the moment of shipment from the producing firm are controlling.

(7) Because of the small number of enterprises eligible for payment and the provisional limitation to two years of the temporary subsidy I am providing for a central printing of the forms for applying for certification of subsidy rights and for grants, as well as for the record books.

(8) The central customs office shall request an investigation of applications for payments by the auditing official responsible for the firm of the applicant.

(9) The official of the auditing service certifies the result of his investigation on the application and returns it to the central customs office.

(10) The central customs office determines the amount of the temporary subsidy and requests the financial officer to pay the applicant by way of his customs account. If the tax notices of the person entitled to subsidy are submitted to a customs office the central customs office shall send the payment request to the cashier's office of the customs office which establishes the set-off.

(11) The temporary subsidy is to be booked under Chapter 6002, Title 994. The budget funds are deemed to have been appropriated.

(12) Legal disputes are subject to the provisions of the Administrative Court Regulations of January 21, 1960. The form giving information about legal procedures is printed in the Federal Customs Gazette of 1960 at page 658.

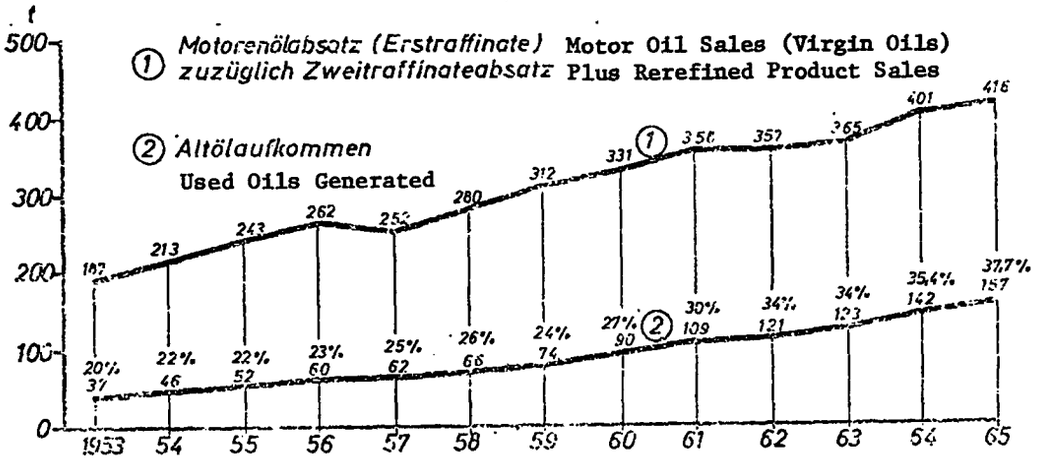
(13) For the execution of repayments the provisions of the Administrative Execution Law of April 27, 1953 apply.

(14) I request to be informed concerning issues of controversy of larger significance. By November 1 of each year the central customs offices inform the upper financial administration, and by December 1 of each year the upper financial administration informs me about issues of controversy, special expenses, difficulties, and the experience with investigations. I request that the number of firms entitled to receive subsidy also be given. In the report filed on December 1, 1964, the amount of payments paid between May 1 and September 30, 1964 are to be indicated and in the report for December 1, 1965 the amount of payments between October 1, 1964 to September 30, 1965 are to be given.

Appendix F

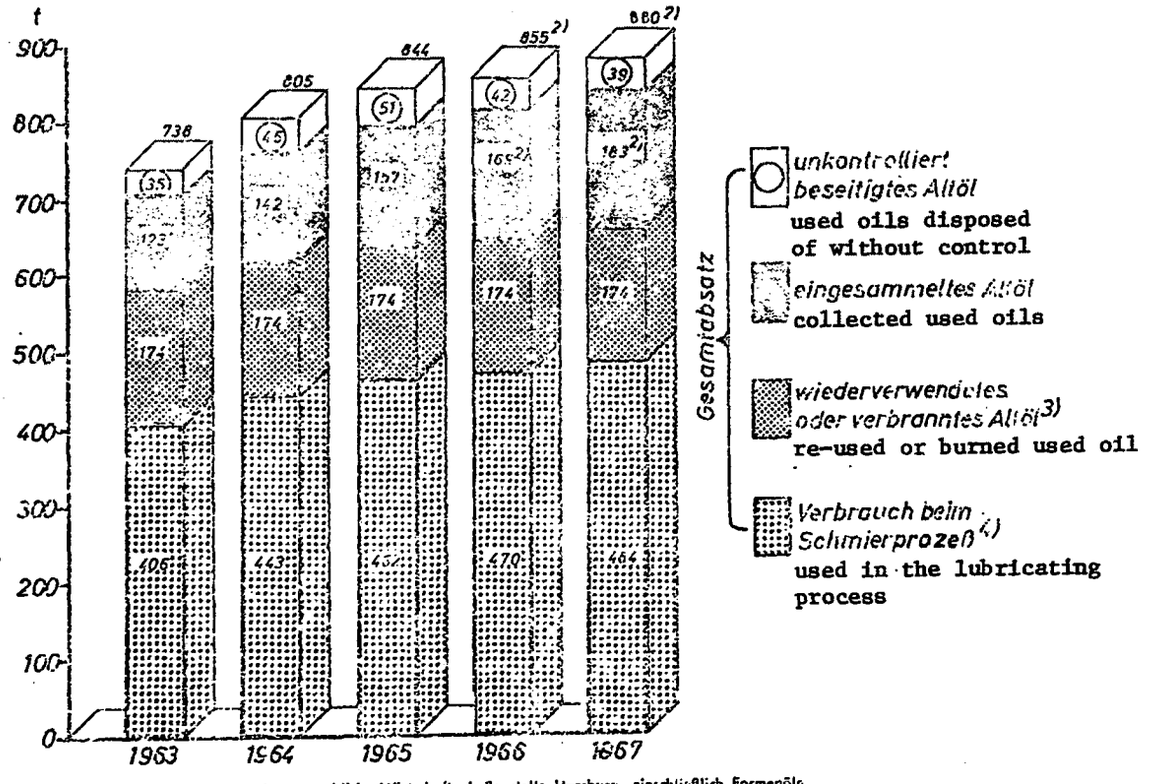
Motor Oil Sales and Used Oils Generated, 1953–1965

Motorenölabsatz und Altölaufkommen 1953 bis 1965
in 1000 tons



Sales and Uses of Lubricating Oils and Used Oil Disposal, 1963–1967

Schmierstoffabsatz [1], -verbrauch und Altölbeseitigung 1963 bis 1967
in 1000 tons



1) nach Angaben des Bundesamtes für gewerbliche Wirtschaft, Außenstelle Hamburg, einschließlich Formenöle, Vaseline und unversteuerter Zweitraffinate
2) Schätzung des Fachverbandes
3) vorsorglich Beibehaltung des Status 1963
4) 55 % der Gesamtmenge

Footnotes: 1) from figures of the Federal Office of Trade & Industry, Hamburg
2) estimates of the rerefiners association
3) assuming continuation of the 1963 situation
4) 55% of the total amounts

Appendix G

Danish Waste Oil Law and Accompanying Materials

Act No. 178 of 24 May 1972 on Removal, etc., of Waste Oils and Chemicals

Section 1 -- To prevent pollution the Minister for Environmental Protection or his designated representative may issue regulations on the storage, transport, and removal of waste products, which result from commercial or other use of petroleum or chemicals (waste of oils or chemicals).

Subsection 2 -- In rules made pursuant to section 1 a duty can be imposed on a person producing waste oil and chemicals to give notice to the municipal council and to deliver the waste in a way approved by the municipal council. In such rules the municipal council can be required to make arrangements to ensure that waste oils can be delivered according to specified guidelines. The authorities can be required to assure compliance with the rules.

Subsection 3 -- In rules made pursuant to section 1 a person who delivers the waste products can be required to give further information about the nature, the amount, and the composition of the waste delivered. The authorities may be given authority to make spot checks of the accuracy of the information given. Such information is to be treated confidentially.

Subsection 4 -- The municipal council may impose fees for the receipt of waste oils. The Minister for Environmental Protection may establish detailed rules concerning fees.

Subsection 5 -- In the case of Greenland, the minister for Greeland or his authorized representative may make rules as set forth in subsections 1-4, in order to prevent pollution.

Section 2 -- Rules issued pursuant to section 1 may specify punishment by fine or imprisonment.

Subsection 2 -- Violations by corporations or commercial companies, etc., can result in fines imposed on the associations themselves.

Section 3 -- This law does not apply to the Faerø Islands but can be applied to them by royal proclamation.

General Explanation of the Bill on Removal, etc., of Waste Oils and Chemicals

1. The disposal of waste oil occurs to certain extent by being emptied into a drain, or by being mixed in with ordinary waste which is placed in a dump. The Environmental council's review of waste water conditions and the handling of waste in Denmark shows that many municipalities have no knowledge of what is involved with such substances.

Emptying of such substances, either in sewers or directly into the ground can cause pollution of both ground and surface waters and similarly their introduction into a treatment facility can hamper its functioning, eventually bringing it to a standstill. The burning of oil or chemical waste will often add particulate pollutants to the atmosphere with consequent air pollution which can then reach land or water.

2. The reason that oil and chemical wastes are handled as described above is, in particular, that there exist only to a limited extent facilities which can safely dispose of these substances, and that the existing regulations for handling these substances are not particularly effective.

As a step in the solution of these problems, the League of municipalities, Copenhagen and Fredriksberg municipalities, and Danske Gasvaerkers Tjaerekompagni created a company "Kommunekemi" to receive and dispose in a safe manner first waste oil and later chemical wastes. Also, initiatives for the establishment of disposal facilities can be expected. In connection with the creation of "Kommunekemi" receiving stations will be established. It is also intended that individuals will have access to deliver different forms of oil and chemical waste to these receiving stations. Such delivery will be free, on the assumption that the individual cases involve modest quantities.

Since there now exist, or can be anticipated, safe handling facilities for a number of the described substances, revision of the regulations to make them effective has become timely, and hence the preparation of the preceding draft legislation.

The proposal's central provisions are that it allows the Minister of Environmental Protection to require that every person, whether commercial enterprise or individual, who produces waste oil, to take care that it is disposed in a safe manner, and that the municipal councils can be required to take care of the establishing of ordinances regarding such disposal. The minister's authority to adopt regulations encompasses the storage, transport and disposal of waste products.

The proposed law will first be used for waste oil (see the attached draft Notice Concerning the Disposal of Waste Oil) but, as technology is available, and with appropriate modifications, it will also be used for chemical wastes. It can be anticipated that a Notice will be put

out within a year concerning the disposal of solvents.

As far as waste oil is concerned, the Notice distinguishes between commercial operations, and others.

Section 2 of the Notice lays down that everyone, private person or businessman, who stores, transports or disposes of waste oil is responsible for ensuring that pollution does not occur thereby, and the municipal council can establish regulations to secure safe storage and collection of waste oil (section 2(2)).

The Notice's principal provisions, however, sections 3, 4 and 5(2), deal only with commercial operations.

For these the following apply:

Each commercial enterprise producing waste oil must notify the municipal council of that fact.

A person or enterprise which comes under the duty to notify must deliver the waste in conformance with an ordinance adopted by the municipal council.

The municipal council can grant an exemption from these rules if it is proved that the waste oil is being disposed of in another, safe manner.

Moreover, operations which use less than 300 liters per year of lubricating oil are exempt from the notification and delivery obligations. This exempts the smaller agricultural and trucking enterprises, as well as equivalent enterprises. The exemption does not exempt these enterprises from the duty to ensure that they do not cause pollution of air or land, etc., and the municipal council can establish more detailed regulations applicable to the exempted categories.

The municipal council must (section 5(1)) see to it that an ordinance is established but the particular ordinance to be adopted is left to the council, so long as it is a proper ordinance, and as mentioned, individual enterprises are not required to use the system established by the council if in the particular case it is proved that the waste is disposed of in another safe manner.

The notification mentioned in section 3 will in many cases consist of notification that the enterprise concerned uses oil of a certain type and that it is disposed of in a certain manner. On the basis of such information the council can relatively easily tell whether the disposal is safe.

As set forth in section 1(1) of the Notice every use of oil other than that for which oil of that sort is suited, is disposal within the meaning

of the law, and therefore is subject to the provisions of the Notice. In judging whether products of a particular sort are suited for a particular use, special weight will be placed on whether the use results in more pollution of the surroundings than when the product is used for purposes for which it is normally intended, e.g., lube oil for lubrication, gas for motor fuel, etc. Thus used lube oil will not be suited for burning in open pits, or in furnaces which are not specially equipped for that purpose, while delivery of such oil to an enterprise which rerefines the oil will normally be a "suited" use, and the notification and associated delivery duty do not apply to such cases.

As mentioned, the draft law encompasses both individuals, and public and private enterprises which produce waste of the type dealth with. The proposal does not apply to ships, since that area is already covered by other regulations, and since a number of Danish ships only visit Danish harbors annually or less frequently. On the other hand, such receiving stations as are established in Danish harbors will come under the law.

The proposed law does not imply a monopoly for any facility since the only requirement is that the disposal occur in a safe manner.

It is expected that the draft Notice which has been referred to will be put into effect in the second half of 1972, but the rules on the duty to notify and to deliver waste oil only go into effect at a time established by the municipality. Thus these rules can be put into effect when the municipality has prepared a disposal arrangement. Since it may be desirable for the municipality to find out about the quantities of oil involved before the disposal arrangements are made obligatory, sections 3 and 4 can be put into effect by the council independently of each other. Thus the disclosure arrangements of section 3 can serve both planning functions and control functions.

The question of which authority shall exercise supervision under section 1(2) of the law and section 7(1) of the Notice has not yet been determined since the answer to this question will depend on the structure of future anti-pollution efforts. These considerations will be decided before the Notice goes into effect. It is established by section 7(2) of the Notice that all decisions by the municipal council pursuant to the Notice can be brought before the Ministry of Environmental Protection.

3. The proposal does not entail expense directly from the state. The direct expenses for society -- as long as the fees for the handling of the different types and quantities of waste are not in effect -- can not be calculated.

4. The proposal has been discussed with the industrial council, the agriculture council, the petroleum trade organization, the league of municipalities, the county council association, and Copenhagen and

Fredriksberg, who have expressed a positive position towards cooperation in the solution of oil and chemical waste problems.

Notice No. 455 of 17 October 1972 on Removal, etc., of Waste Oils

Pursuant to sections 1 and 2 of Act No. 178 of 24 May 1972, on removal, etc., of waste oils and chemicals the following rules are established:

Section 1 -- "Waste oil" means, in this notice, supplies of petroleum products such as petrol, diesel oil, kerosene, fuel oil, and lubricating oil which are not intended to be used for a purpose for which the products of their type are suited.

Subsection 2 -- "Removal" in this notice means treatment, destruction, including combustion, or final depositing of waste oils.

Section 2 -- Any person who stores, transports or removes waste oils is responsible for ensuring that no pollution of the air, the earth, the ground water or the surface water, including the sea will thusly occur.

Subsection 2 -- The municipal council may establish rules to ensure the safe storage and collection of waste oils.

Section 3 -- Any person producing waste oil due to marketing or any other commercial activity, must so notify the municipal council.

Subsection 2 -- Exempt from the obligation to give notice according to section 3(1) are firms whose annual consumption of lubricating oil does not exceed 300 litres, unless waste oils are produced by the firm due to processing or commercial use of other petroleum products.

Subsection 3 -- Notification pursuant to section 3(1) shall contain information as to the nature and quantity of the waste oils.

Section 4 -- It is incumbent upon the person subject to the duty of notifying according to section 3 to deliver waste oils for removal through an arrangement made by the municipal council pursuant to section 5.

Subsection 2 -- On application the municipal council shall grant an exemption from the obligation to deliver according to section 1, where it has been proved by the person producing the waste oil that this is being removed in a proper way on the initiative of the person concerned, cf. section 2.

Section 5 -- The municipal council must see to it that an arrangement is made by which the receipt, the storage and removal of waste oils will take place in a safe manner, cf. section 2.

Subsection 2 -- The municipal council may set fees for the receipt of waste oil, delivered according to section 4(1), to cover the expenses of the municipal council for storage, transport, and removal of the waste.

Section 6 -- The municipal council shall monitor compliance with the provisions of sections 2, 3 and 4, and is authorized to spot check the correctness of the information given.

Subsection 2 -- Any person who delivers waste oils for disposal is, upon request, to give such additional information as might be necessary to ensure their safe disposal, including information on the composition of the waste delivered.

Subsection 3 -- Information which public authorities receive in pursuance of this notice is to be treated confidentially.

Section 7 -- Supervision of the administration of the local authority according to this notice is being attended to by the Agency of Environmental Protection in the case of the Copenhagen and Frederiksberg municipalities, and by the county council in the case of the remaining municipalities.

Subsection 2 -- The decisions of the local authority pursuant to this notice can be appealed to the Agency of Environmental Protection within 4 weeks after notice of the decision has been given to the person concerned.

Subsection 3 -- Decisions of the environmental management pursuant to subsection 2 can be presented to the Minister for Environmental Protection within 4 weeks after decision has been given to the person concerned.

Section 8 -- Breach of sections 3, 4(1) and 6(2) or of the rules laid down pursuant to section 2(2) can result in punishment by fine or imprisonment.

Subsection 2 -- For breaches committed by corporations, commercial companies, etc., the company will be subject to a fine.

Section 9 -- The rules of this notice will not apply to waste oils on board vessels.

Section 10 -- This notice will come into force on 1 November 1972.

Subsection 2 -- The duty to give notice according to section 3 will not be effective until a date to be set by the local authority by public notice. This also applies to the obligation to deliver according to section 4.

The Ministry of Environmental Protection, 17 October 1972.

Bulletin Concerning the Notice on the Disposal, etc., of Waste Oil

(To all county councils, town councils, health commissioners, police chiefs and medical officers.)

Included herewith are a number of copies of the announcement by the Ministry for Environmental Protection dated 17 October 1972 on the disposal of waste oil.

The aim of the Notice is to ensure that waste oil is not disposed in such a manner that pollution of air, land, ground waters or surface waters occurs. It is not intended to get involved in the processes which accomplish the safe disposal of such wastes, but merely to assure that such waste does not reach waters or the earth, with resulting pollution, or is not burnt in such a manner that unacceptable air pollution results.

What is Waste Oil? -- "Oil waste" as used in section 1 of the Notice means stocks of petroleum products which are not intended to be used for purposes for which products of their sort are suited. Since the Notice deals only with waste products, petroleum products which have some sales value, and which in practice amount to a step in normal processing or use are not affected by the Notice. That the product shall be suited for use for a particular purpose means, nevertheless, that the use must be able to occur without resulting in unacceptable pollution.

Oil waste, in the meaning of the Notice, therefore exists when an operation has on hand a stock of petroleum which it cannot exchange in the normal course of business, and for which the operation itself cannot find any proper use within its own activities.

How Shall Waste Oil be Disposed? -- As a step in the efforts to prevent pollution by waste oil, it has been found necessary to provide those who have waste oil with the opportunity to rid themselves of waste oil in a safe manner. The municipalities are therefore required to put into effect an ordinance which gives those who have waste oil the right to deliver this according to the rules outline below.

The obligation to inform and deliver -- While everyone shall have the right to deliver waste oil, the duty so to do is only imposed on those who by processing or other commercial activity produce waste oil. Besides the duty to deliver waste oil stands a duty on these commercial activities to inform the localities that their activities produce waste oil. This last mentioned duty is intended to aid the localities in the preparation of and control by systems for the disposal of waste oil. Exempted from the informational and delivery duties, however, are those commercial enterprises which only use lubricating oil, and only in quantities not exceeding 300 liters per year.

Exemption from the duty to deliver -- By section 4(2) of the Notice, the town council shall grant an exception to the duty to deliver if the possessor of the waste oil certifies that such oil is disposed of at his own facilities in a proper manner.

As provided by section 1(2), disposal can take place by treatment, destruction, including burning, or final depositing of the waste oil. For disposal to be considered proper, it is a prerequisite that the methods involved can be used without the occurrence, or chance of later occurrence, of unacceptable air, ground, ground water, or surface water pollution, including the ocean. Final depositing of waste oil, because of its very nature, can only be regarded as a proper disposal in exceptional cases. In order to grant an exemption from the duty to deliver, it must be generally required that the waste oil be delivered to establishments which are made for and possess special equipment for the processing or destruction of waste oil.

In order that an exemption from the duty to deliver can be granted it must similarly be certified that the transportation of the waste oil can also take place in all foreseeable circumstances without pollution.

The Practical Implementation of the Ordinance -- The National Communities Association, in cooperation with Copenhagen and Fredriksberg Communes, will develop a form for the use of firms giving notice in conformance with section 3(1) of the Notice, as well as a form which can be used to request exemption from the duty to deliver with respect to section 4(2) of the Notice.

The problems surrounding the disposal of waste oil can to a certain extent be compared to other waste problems, for instance the disposal of refuse. It has therefore been found appropriate to leave to the municipalities themselves to prepare a disposal arrangement. As a help to the municipalities, a proposed ordinance has been attached to this cirkulaereskrivelse. A regulation of this sort can be adopted by the municipal council to be effective in the community. The contents must be adapted to local conditions. Such a regulation must contain the rules which the municipal council will require enterprises to follow.

It is the duty of the municipal council to ensure the safe handling and transport of collected waste oil, as well as the safe further processing of waste oil, for example, by contracts with enterprises which can undertake and accomplish the final disposal of waste oil. The arrangement implies that the municipalities themselves must ensure the establishment of receiving stations, either within their own territory, or in common with other communes. In establishing such stations, attention must be given to the possibility of the further transport and delivery of the waste products to enterprises which can take care of disposal.

Fees -- Section 5(2) of the Notice allows the municipal council to establish fees for the receiving of waste oil delivered according to

section 4(1), to cover the community's expenses in storage, transport and disposal of the waste. The reference to section 4(1) implies that fees can be required only for waste which is subject to the duty to deliver, and that other waste is to be received by the community without fee.

Supervision and Prosecution -- Pursuant to section 7(1), except for Copenhagen and Fredriksberg, the county council will supervise the municipal council's administration. In this connection, the county council must ensure that each municipality adopts a satisfactory arrangement which, to the extent practical, is coordinated with arrangements in other communities, for example, by the setting up of common receiving stations, or through common transport arrangements.

The municipal council's decisions pursuant to the Notice can be brought before the environmental council within four weeks of receipt of notice of decision by the concerned party.

Implementation -- With reference to implementation, it should be noted that the Notice itself, by its coming into effect, creates a duty on all who store, transport or dispose of waste oil to ensure that they do not thereby cause pollution of the air, ground, ground or surface waters, including the sea, and the municipal council is required immediately to oversee the compliance with this duty. The duty to report stocks and production of waste oil as well as to deliver such oil as a step in an arrangement adopted by the municipality takes effect when the council, by public announcement, has set a time for its effectiveness. The ministry of environmental quality emphasizes that the establishment of municipal collection ordinances must be hastened, and the environmental council expects later to receive information, through the county councils, as to when the arrangements established by the municipalities are put into operation.

The Environmental Council, 17 October 1972.

Suggested Regulation for the Disposal, etc., of Waste Oil in Municipality

Pursuant to section 2(2) and section 5 of the Notice of the Ministry of Environmental Protection dated 17 October 1972, it is hereby established:

Section 1 -- Waste oil, by which is meant stocks of petroleum products such as gas, diesel oil, heating oil and lubricating oil which are not intended to be used in a way for which products of that sort are suited, (see section 1 of the Notice) must not be poured into sewers or other waste water facilities, nor may they be placed on the ground or buried in it, but shall be stored in tight containers which are so placed that leaks in the container can be readily observed. The containers shall be placed a safe distance from drinking water wells and sources. Placement in buried containers may only take place in conformity with the guidelines in Notice No. 67 of 29 February 1970 on the supervision of oil storage.

Subsection 2 -- The containers referred to in section 1(1) shall be placed in such a location, and in such a manner that emptying for disposal can easily take place.

Section 2 -- It is incumbent on each person having waste oil to ensure the disposal of waste oil in such a manner that pollution of air, earth, ground waters or surface waters, including the ocean, does not occur.

Section 3 -- Each person who is included in the duty to report established by section 3 of the Notice shall participate in the disposal arrangements established by a more detailed regulation, unless the municipal council has granted an exemption pursuant to section 4(2) of the Notice. Those affected are required to pay the fee set by the municipal council for participation each time.

Section 4 -- Each person who is not affected by the duty to notify has the right to deliver waste oil to the receiving station established by the municipality, without fee.

Section 5 -- (First Alternative) Waste oil which is required to be delivered shall be delivered to a place designated by the municipality.

(Second Alternative) The municipality shall pick up waste oil which is required to be delivered at the enterprise, unless the enterprise, with the approval of the municipal council, itself takes care of its delivery to a receiving station designated by the municiaplity.

Section 6 -- It is incumbent on everyone who delivers waste oil to the municipality to inform, on specially prepared forms or in some other manner, about the composition of the waste oil and anything else which is necessary to ensure the safe disposal of the oil.

Section 7 -- The municipal council will establish by separate regulation the fees for receiving oil which is required to be delivered. The fee will be set per unit of waste oil, and will be set taking into account the costs of final disposal of oil of that particular sort and composition.

Section 8 -- The disclosure and delivery duties under sections 3 and 4 of the Notice will take effect respectively the _____ and the _____.

Section 9 -- This regulation shall take effect the _____.

Copenhagen, 15 May 1973

Agreement of the Oil Trade Associations for Free Pick-up of Used Lubricating Oils

To: Member Firms:

Subject: Disposal of waste automobile lubricating oil arranged by the trade

The answers which we have received from member firms to our communication of 29 March 1973 shows full support for the above mentioned arrangement, and the quantity of waste auto lubricating oil which members have reported is sufficient for the program to be put into effect.

Therefore the collection of waste auto lubricating oil will begin on 1 June 1973 from gas stations and auto repair shops on Sjaelland, Jylland, Fyn and islands having bridge connections with the named areas.

The following trucking firms will undertake the pick up of the waste oil:

East of Storebaelt	West of Storebaelt
Larsen & Jakobsen Truckers	Knud Nyborg, Trucker
Kastrup	Give

They will deliver the waste oil to, respectively, the Esso Refinery in Kalundborg, and the Shell Refinery in Fredericia.

Orders for pick up shall be given by your customers at the place where they normally order the lubricating oil, and from there be passed on, including the volume involved, to the above named truckers by mail or phone. The trucker will accomplish the pick up within a maximum of 14 days from receipt of the order. We ask that you please send us a list, with address and telephone numbers, of the places where lubricating oil can be ordered from your firm.

With a view to introducing your customers to the pick up arrangement, we include a sample letter, together with a list of the practical conditions which must be observed. We ask that you have each of your customers who take part in the arrangement indicate their consent to the conditions by signing the conditions and returning them.

We urge that you have your salesmen, in the course of their daily business, see to it that as many of your customers, within the named categories, as possible participate in the arrangement so that we can attain a result from this project of the Trade which is satisfactory to all parties.

Yours truly,

Mineralolie Brancheforeningen Oliebranchens Faellesrepraesentation

To: Our Customers:

Subject: Disposal of waste automobile lubricating oil arranged by the Trade

As you undoubtedly know, the Ministry for Environmental Protection has ordered that all waste oil shall be disposed of in a safe manner. The local authorities shall designate collection points where waste oil shall be delivered. Use of waste oil as fuel in oil burners will probably be foreclosed as a result of new regulations dealing with the maximum allowable emissions of particulate matter from chimneys which the Housing Ministry will issue in the near future.

As a convenience for you, the Oliebrachens Faellesprepresentation and the Mineralolie Brancheforeningen have organised a free nationwide waste oil pick up service which can solve your waste oil problems in the safest and simplest manner.

This collection system takes effect on 1 June of this year and provides that waste oil will be picked up at your premises when you make a request to our office. The pick up will be accomplished by tank trucks which are equipped to pump oil from your waste oil tanks, or from drums. East of Storebaelt, pick up will be managed by the trucking firm of Larsen & Jakobsen; west of Storebaelt, by the trucking firm of Knud Nyborg.

The collected waste oil will be delivered respectively to the Esso Refinery in Kalundborg and the Shell Refinery in Fredericia. The safest disposal method is thereby assured, and at the same time the oil is placed in the resource cycle in a safe manner.

The detailed conditions to enable the system to operate safely and satisfactorily for all parties are set forth in the accompanying enclosure. These conditions must be observed exactly, and as an affirmation that this will happen, you are requested to return a signed copy of the conditions.

We hope that this offer interests you, and we ask that you send in your notice of participation as soon as possible.

Conditions for the free pick up of waste automobile lubricating oil arranged by the Trade:

1. Waste oil must contain only used automotive lubricating oils and not other waste products such as chemicals, solvents, emulsifying cleaners, antifreeze, particulate matter (gravel, sand or cotton waste) or gasoline from gasoline separators.

2. Industrial lubricating oils will not be picked up.

3. There will be spot testing of the waste oil which is received.

4. The waste oil will be picked up in tank trucks by pumping from tanks or 1/1 lube oil drums. The drums themselves are not taken back, and the same drums must be used from one time to the next.

5. The waste oil container or drums must be easily accessible to the truck and placed as near as possible to an established road or yard.

6. The minimum quantity of waste oil which will be picked up at any place at any one time is 1000 liters.

7. The waste oil will be picked up without charge to you, but nothing will be paid you for the oil.

8. Orders for the pick up of waste oil will be given to your usual supplier of lubricating oil. Pick up will occur within 14 days.

The undersigned wishes to participate in the arrangement on the foregoing conditions.

Appendix H

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Brussels, 22 June 1973

Environment and Consumer
Protection Service

Directorate-General for
Internal Market

QUESTIONNAIRE

on the disposal of waste oils in the Member States of the European Communities

Please fill in and return this questionnaire, if possible, before 10 September 1973.

I. INTRODUCTION

This questionnaire has been drawn up by the Commission for two purposes. Firstly, as a means of obtaining the fullest possible information regarding quantities of waste oil and their pollution effect and secondly to take stock of current and contemplated laws in the Member States; this information is required in order to try to find more efficient means of waste-oil disposal in the Community. The Member States are requested to reply as fully as possible, even if are estimates given.

II. TECHNICAL AND ECONOMIC ASPECTS

1. Total consumption of lubricants, per category (tonnes)(1)

	Engine and compressor oils	Other lubricating oils	Spindle and textile oils	Metal treatment oils	Transformer and hydraulic transmission oils	Others (to be specified)
1969						
1970						
1971						
1972						

2. Production of lubricants, per category (tonnes)

1969						
1970						
1971						
1972						

3. Imports and exports of lubricants and reclaimed oil per country (tonnes)

	Within the Community				Outside the Community			
	Lubricants		Reclaimed oils		Lubricant		Reclaimed oils	
	IMP	EXP	IMP	EXP	IMP	EXP	IMP	EXP
1969								
1970								
1971								
1972								

4. Total quantity of waste oils (tonnes)

	1969	1970	1971	1972
Put into final storage (2)				
Collected				
Reclaimed by the trade				
Reused by industrial consumers				
Incinerated				
Burnt with utilisation of energy				
Disposed of without supervision				

5. Firms specialising in the waste-oil disposal

	Number of firms			capacity (tonnes)			Manpower	
	1970	1971	1972	1970	1971	1972	1970	1971
- firms engaged in collecting waste oil								
- firms engaged in reclaiming waste oil								
- firms engaged in incinerating waste oil								
- firms engaged in burning waste oil (using additional energy)								

6. Estimate of user firms disposing of their own waste oil (by incineration or reclaiming or burning)

	Number of firms	Capacity (tonnes)	Manpower
1970			
1971			
1972			

	1969	1970	1971	1972
7. Average cost of collection (per tonne)				
of reclaiming				
of incineration				
of burning				

(1) Waste oils should include emulsions

(2) i.e. stored under supervision; if possible, show seperately liquid waste oil and solid residues left after reclaiming operation.

8. Organisation of waste-oil disposal as regards collection, reclaiming, incineration and burning

   - public, private or mixed systems .....

     .....

   - direct subsidy and/or tax concession .....

     .....

   - degree of organisation (comprehensive, or collection only, and/or incineration, and/or reclaiming and/or burning)

     .....

     .....

9. Assessment of different technical processes for waste-oil disposal

   - from the economic point of view .....

     .....

   - from the point of view of improved environmental protection

     .....

     .....

10. Technical methods of waste-oil disposal other than reclaiming, incineration or burning:

    - in use .....

      .....

    - under study (specify research and study contracts) .....

      .....

11. Probable trend of waste-oil supplies

    .....

    .....

12. Possible openings for growth in the oil reclaiming industry and of a potential market for these reclaimed products (specify the categories of customer concerned)

    .....

    .....

13. Average prices paid by reclaimers to collectors for waste oils

    1971 .....

    1972 .....

14. Average prices paid to petrol pump attendants and garage owners for waste oils

    1971 .....

    1972 .....

15. Average selling price to the consumer per tonne of lubricating oil

	1969	1970	1971	1972
New oils				
reclaimed oils				

III. LEGAL DATA

A. Summary of laws, regulations and administrative provisions relating to the disposal of waste oils, including the nature, date, purpose and territorial scope thereof

(All generally and directly applicable provisions should be included, e.g. constitutional provisions, international conventions and law derived therefrom, laws, orders, decrees and local regulations. Explanatory memoranda or official commentaries thereon should be mentioned where possible, as should any relevant, important judicial decisions.)

B. List of regulations on the following subjects:

Definition and scope

16. Concept of

a) waste oils .....

.....

b) safe disposal (e.g., without harmful effects on water, air or the soil)

.....

.....

17. Aims of provisions relating to waste-oil disposal as part of the control of water, air and soil pollution; degree of protection (e.g. preventive or reparative measures relating to a dangers, damage pollution, etc.)

a) protection of the environment .....

.....

b) economic aims .....

.....

c) other goals .....

.....

18. Product categories covered (e.g. engine oils, lubrificating oils, textile oils, metal treatment oils, transformer oils, emulsions, etc.)

.....

.....

Various stages of intervention in waste-oil disposal, as part of context of the control of water, air and soil pollution

19. Production of lubricants .....
.....

20. Collection of waste oils

a) Procurement .....
.....

b) Transport .....
.....

c) Storage .....
.....

21. Treatment of waste oils

a) Destruction (incineration, burning) .....
.....

b) Recycling (regeneration) .....
.....

c) Dispersion (in water, air and soil) .....
.....

Machinery for intervention

22. Depending on the nature of the body intervening

a) Private .....
.....

b) Public .....
.....

c) Mixed .....
.....

23. Depending on the extent of the intervention

a) Information .....
.....

b) Incentives .....
.....

Authorization procedures

24. Establishment or modification of lubricant production plants

.....

.....

25. Establishment or modification of waste oil collecting undertakings

.....

.....

26. Establishment or modification of waste oil treatment undertakings

.....

.....

Supervision and control procedures applicable to holders or users of waste oils

27. Obligations in request of information, declarations, etc.

a) to the authorities (central and/or local) .....

.....

b) to the interventing bodies (public, private) .....

.....

28. Supervision of holders, users, etc.

(e.g. periodic checking of records, inspection of depots) .....

.....

Financing arrangements

29. Special provisions governing the defrayment of costs in connection with the disposal of waste oils:

a) Defrayment of expenses by the polluter (principle of "making the polluter pay"):

- levies .....
- taxes .....

b) State intervention

- granting of funds .....
- granting of credits .....
- granting of loans .....
- granting of other forms of aid (subsidies) .....

.....

c) Intervention through a Fund

- direct costs .....
- overhead costs (research, inspection) .....

.....

30. Systems of charges and levies

a) reference values for determining charges or levies .....

.....

b) collection procedures .....

.....

31. Objectives of and procedures for the use of funds .....

.....

32. Special provisions concerning other economic or financial aspects in connection with the waste-oil disposal

.....

.....

Price regulations

33.a) Rules relating to the prices of services required under the various systems of waste-oil disposal

.....

.....

34.b) Rules relating to the prices of products .....

.....

Liability in the event of damage or loss resulting from breach of an obligation laid down in the regulations on waste-oil disposal

35. Obligation to make good (irrespective of whether the party concerned is directly responsible or not) financial damage or loss suffered as a result of water, air and soil pollution

a) On the part of the undertaking holdung waste oil .....

.....

b) On the part of the undertaking ("body") responsiblo for collecting or treating waste oils

.....

.....

c) On the part of the State or other organization (Fund, etc.) .....

.....

36. Rights of third parties or associations to institute proceedings .....

.....

Infringements and penalties for failure to comply with the regulations

37. Cases of infringement

a) water,air and soil pollution producing noxious effects

.....

.....

b) other acts related to provisions on anti-pollution measures in respect of water, air and the soil (failure to comply with the regulations on the manufacture or holdung of lubricants or, alternatively, failure to comply with the regulations on the collection and treatment of waste oil)

.....

.....

38. Santions

a) Pecuniary (fines; withholding of subsidies) .....

.....

b) Penal (prison sentences) .....

.....

c) administrative (compulsory closure of the plant or enforcement without court order; compulsory restoration of sites)

.....

.....

Special provisions relating to international considerations

39. Non-application, of the law generally, to products intended for export

.....

.....

40. Specific regulations governing frontier areas

.....

.....

Miscellaneous

41. Official digests, periodic reports on data relating to waste-oil disposal

.....

.....

42. Connection between the provisions on waste oil disposal and the provisions relating to anti-pollution measures in respect of water, air and the soil

.....

.....

C. Practical implementation of the regulations at national level

With a view to ensuring that the regulations which you were asked to enumerated in subsection III/B may be more readily understandable, please state what has been learnt from the practical implementation of the aforesaid regulations. In addition, particulars should be provided on the results obtained and their political and legal implications, by reference - if appropriate — to the official publications covering the area concerned.....

.....

D. Summary of draft regulations relating to waste-oil disposal including explanatory memoranda, official commentaries, etc.

It would be desirable if, in listing these regulations, the national authorities could adhere as closely as possible to the same subject breakdown as that employed in subsection III/B.

.....

.....

Appendix I

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 334 Final
Brussels, 20 March 1974

PROPOSAL FOR A

DIRECTIVE ON THE DISPOSAL OF WASTE OILS

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

This draft directive forms part of the Communities' action programme for the protection of the environment of November 22nd, 1973 (c.f. O.J. No. C 112, December 20th, 1973). This programme stresses the priority attached to the disposal of waste oils. In accordance with the Information Agreement of 5th March, 1973 concerning the possible harmonization of urgent measures related to the protection of the environment throughout the Community*), moreover, the French and Dutch governments sent the Commission legislative proposals relating, inter alia, to the disposal of waste oils. The Commission informed the French and Dutch governments of its intention to submit a draft directive on this subject to Council within the timetable fixed by the Information Agreement.

The pollution of soil and water by waste oils poses a problem which has become acute due to growing industrialization, urbanization, and the continued development of transport facilities. In addition, certain treatments of waste oils create new sources of pollution, especially air pollution.

There has been a steady increase in the quantity of waste oils and in particular of emulsions, a large part of which are disposed of without controls (c.f. annex).

The extent and urgency of the problem is underlined by the fact that sometimes as much as 20 - 60% of all waste oils are disposed of without any control in some Member States; the resulting water pollution would account for approximately 20% of all industrial pollution according to some estimates.

Thus one of the main objectives of this draft directive is to ensure effective protection of water, air and soil against the harmful effects caused by the discharge, deposit and traatment of these oils.

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*) O.J. C 9, March 15th, 1973.

It should also be noted that recycling of waste oils whether as lubricants or as a source of energy is very worthwhile economically. Thus Article 2 of the directive is in favour of it and against their destruction.

Moreover, the national legislation and regulations in force throughout the Community relating to this matter leave certain lacunae which are harmful to the environment.

Finally, there are basic differences to be found amongst the existing or proposed national provisions relating to the field of covered by this proposal.

In Germany and Denmark, there is very detailed and complete legislation which provides for a system of collection and finance, thus ensuring the safe disposal of waste oils. In the Federal Republic of Germany, by the law of December 23rd, 1968, laying down the measures to ensure the disposal of waste oils (Gesetz über Maßnahmen zur Sicherung der Altölbeseitigung) a fund has been created, intended to cover the costs which are not covered, during the waste oil disposal operations. This fund is financed by a charge levied when lubricants are delivered for consumption. In the Netherlands a draft law on chemical wastes and waste oils would set up a comprehensive system comparable to that which already exists in the Federal Republic of Germany (a system of collection and disposal with charges and indemnities to cover uncovered wastes). In Great Britain, legislation controls disposal of polluting wastes, and in particular of waste oils. In France there is a draft decree which would regulate the discharge of lubricants or oil. In France and in Italy, recycled oils are taxed at a lower rate in order to ensure the safe disposal of waste oils and to encourage their reuse. In the other countries there is neither legislation nor proposed legislation specifically concerned with waste oils, but in certain cases, general legislation protects water and air against pollution.

These differences may lead to financial charges differing from one Member State, from one sector, from one firm,to another within the Community, and thus could create barriers to the proper functionning of the common market and distort competition.

The draft directive which follows, based on article 100 of the Treaty of the EEC, is intendedto harmonize legislation, and to thus create a coherent system of legal provisions applicable in all Member States.

The Commission has also consulted, before drafting the present proposal, a working group of national experts whose task was to study the problems posed by the disposal of waste oils. This group met four times.

II. COMMENTS ON SPECIFIC ARTICLES

Article 1

The definition selected for waste oils is intended to make the directive's field of application as wide as possible, but also to avoid too large differences of interpretation. Emulsions and certain residues are expressly mentioned because their disposal poses special technical and economic problems.

Article 2

Regeneration and combustion of waste oils are the methods of disposal least harmful to the environment. Thus their use should be encouraged as much as possible. The simple destruction of waste oils no longer seems to be allowed.

Article 3

In order to achieve the disposal of waste oils without damage to the environment, considerable restrictions must be created up to and including the prohibition of any discharge and deposit, in order to protect internal and costal waters, soil and air.

Article 4

It is essential that the Member States ensure, by appropriate means, the collection and disposal of waste oils.

Article 5

In order to guarantee that the collection and disposal of waste oils is in fact made, one or several firms, properly authorized, can under certain conditions be required to carry out these operations. It is, in fact, one result of the particular technical and economic problems associated with the collection and/or the disposal of waste oils, that these operations are not always economically viable. To deal with these cases, a duty to collect is provided.

The actual form which the compulsory collection and disposal of waste oils takes shall be left to the competent authorities to determine; if need be, they can set up zones within which a duty to collect comes into effect. Since the duty to collect is needed only to solve certain special cases

it is not necessary to create a corresponding right for the holders to have their products collected.

Article 6

The granting of an authorization shall certify that the firms which are involved in the collection and/or elimination of waste oils have the appropriate facilities.

Articles 7, 8, 9, 10

These articles complete the set of provisions concerning the acts prohibited in law and the disposal system.

Articles 11, 12

The control mechanisms provided are necessary in order to give effect to the prohibitions and the disposal system.

Article 13

The collection and disposal of waste oils can in general be done without the intervention of the State.

This hypothesis is valid only when the firms which collect or dispose of waste oils can make a profit or at least cover their costs. Since in particular circumstances this is not possible and since certain firms may be required to carry out these operations, compensation for services rendered is provided.

In order to avoid too wide a discretionary margin in granting these indemnities to the firms, sufficiently precise and flexible criteria have been set up, which can respond to particular circumstances. The compensation will be determined according to costs which are not covered,but in fact occuring allowing for a reasonable profit margin.Measures of fiscal nature (eg. tax exemptions) would not allow for variations in compensation according to the region or firm and are therefore excluded.

Article 14

Only the creation of a charge imposed on the delivery for consumption of new or re-refined products allows for application of the pollutor pays principle in this matter.

Delivery for consumption can be defined as, when the product in question leaves the producing firm in order to be sold or used, when it is used within such an establishment, or when it is imported.

III. CONSULTATION WITH THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE

The opinion of these two institutions, pursuant to article 100 paragraph 2, is required.

A N N E X

TABLE

An approximate estimate of quantities of lubricating oils consumed, total amd per capita, of quantities of used and waste oils which are disposed without controls, in total and in percentages for each Member State. The figures are for 1972 and measured in 1000 tons.

1	Consumption of lubricating oils 2	Number of inhabitants in millions 3	Consumption by inhabitant in l/a 4	Quantity of waste oil 5	Id. as a proportion of the total 6	Quantity disposed without controls 7	Id. % 8
1. Germany	1081	58.6	18.5	520	48	57+	8.2
2. France	834	48.9	17	458	55	120	26
3. Italy	548	51.6	10.5	275	50	134	48.5
4. United Kingdom	1295	52.3	25	650	50	85	13
5. Ireland	35	4.4	8	17.5	50	?	?
6. Denmark	90	4.8	19	45	50	?	?
7. Belgium	?	9.5	?	?	?	?	?
8. Luxemburg	11.3	0.3	37.5	0.6	50	0.6	100
9. Netherlands	209	12.3	16.5	105	50	45	43
10. Total:	4103.3			2071.1		441.6	

The percentage of recovery is therefore about 50 %; according to information received, only about 1 million tons of waste oils is actually recycled, thus 1 million tons is lost as energy or as lubricants, with obvious consequences for the environment and for a comprehensive fuel supply policy.

+) These figures are only valid for 1971.

DRAFT COUNCIL DIRECTIVE
ON THE DISPOSAL OF WASTE OILS

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD to the Treaty establishing the European Economic Community, and in particular article 100 thereof,

HAVING REGARD to the proposal from the Commission,

HAVING REGARD to the Opinion of the European Parliament,

HAVING REGARD to the Opinion of the Economic and Social Committee,

WHEREAS national legislation concerning the treatment, discharge, deposit and collection of waste oils differs from one Member State to another, and that these differences constitute barriers to trade within the Community and thereby directly affect the functionning of the Commun Market;

WHEREAS all provisions relating to the disposal of waste oils should have as one of their essential objectives, the protection of the environment against the harmful effects caused by the discharge, deposit and treatment of these oils;

WHEREAS the reuse of waste oils can make a large contribution to energy supply policy;

WHEREAS the Community's action programme for the protection of the environment approved jointly by the Council of the European Communities and the representatives of the governments of the Member States meeting in the Council in the declaration of November 22nd, 1973[+)] underlines the importance of the problem of the disposal of waste oils without harmful effects upon the environment;

[+)] O.J. C 112, 20/12/1973.

WHEREAS the quantity of waste oils and in particular of emulsions has continued to grow rapidly in all Member States;

WHEREAS a efficient and coherent system of treatment for waste oils, which will neither create barriers to intercommunity trade nor affect competition, should apply to all products, even those which are composed only in part of oil and should provide for their safe treatment under economically feasible conditions;

WHEREAS such system should regulate the treatment, discharge, deposit and collection of waste oils and provide a procedure for the authorization of firms which collect or dispose of these oils and also under certain circumstances set up a compulsory system for collection and disposal of these oils and create accordingly suitable inspection procedures;

WHEREAS in those cases where certain firms will be required to collect and dispose of these oils, that part of their costs arising from these activities not covered by their revenues, should be compensated for by indemnities, the latter being financed by a charge on new or re-refined oils;

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purpose of the application of this directive, the term "waste oils" shall be taken to mean any semi-solid or liquid used product totally or partially composed of mineral or synthetic oils, including the oily residues from cisterns and emulsions.

Article 2

The Member States shallt take all possible measures to ensure that the disposal of waste oils shall be carried out by recycling (regeneration and/or combustion).

Article 3

The Member States shall take all necessary measures to ensure the prohibition of

1. the discharge of waste oils into internal surface waters, underground water, coastal waters and canals;
2. the deposit and discharge of waste oils which has harmful effects on the soil, and any uncontrolled discharge of residues which result from the processing of waste oils;
3. any processing of waste oils causing air pollution which exceeds the minimum compatible with the state of the art.

Article 4

The Member States shall take all necessary measures to ensure the collection and safe dispcsal of waste oils.

Article 5

The Member States shall take all necessary measures to ensure that, in the case where these operations are not profitable, one or several enterprises referred to in the following article shall carry out the collection and/or disposal of the products offered to them by the holders in the zone which is assigned to them by the competent authorities.

Article 6

Any firm which collects and/or disposes of waste oils must obtain a permit to do so; this will be granted after examination of installations and will impose conditions required by the existing level of the state of the art.

Article 7

Whosoever has a supply of waste oils which he cannot eliminate himself pursuant to the provisions laid down according to articles 2 and 3 must keep it at the disposal of the firm or firms referred to in article 5.

Article 8

The holders of waste oils containing impurities, which are in excess of a certain percentage fixed by the competent authorities according to the category and volume of the product, must stock them seperately.

Article 9

The firms which collect and/or dispose of waste oils must do so in such a way that there will be no avoidable risk to water, air ar soil.

Article 10

Any firm which holds, collects and/or disposes of a quantity of more than 200 litres of waste oils a year must keep a record of their quantity, quality, origin and location, and also of their assignment and receipt, recording the dates of the last two transactions.

Article 11

Any firm which disposes of waste oils must forward to the competent authorities, on request, any information concerning such disposals or on the deposit of waste oils or residues thereof.

Article 12

The firms referred to in article 6 which hold or dispose of waste oils shall be regularly inspected by the competent authorities, particularly as regards their compliance with the conditions of their authorization.

Article 13

The Member States will grant to all firms which, pursuant to article 5, have an obligation to collect and/or dispose of waste oils, a nonfiscal indemnity, which shall represent a payment for services rendered.

This indemnity should not exceed what is necessary to offset the annual costs to each firm which are not covered and are incurred in fact, and to assure them a reasonable profit margin.

The amount of costs to be considered in the calculation of the indemnity should not exceed the average costs of all firms engaged in the same activities, under similar conditions, in the Member State under consideration.

Article 14

The indemnities will be financed by a charge, imposed at the time of the delivery for consumption of products which after use are transformed into waste oils.

Article 15

The Member States will regularly convey to the Commission information concerning their technical expertise and the results deriving from the application of the provisions pursuant to this directive.

The Commission shall send a summary of all information received to the other Member States.

Article 16

Every three years the Member States shall draw up a report on the situation relating to the disposal of waste oils in their respective countries. These reports will be sent to the Commission.

Article 17

Member States shall put into force the measures needed in order to comply with this directive within eighteen months of its notification, and shall forthwith inform the Commission thereof.

Article 18

The provisions adopted by the Member States pursuant to this directive can be progressively applied to the firms referred to in article 6, existing at the time of the directive's adoption, within three years of the notification referred to in article 17.

Article 19

Member States shall ensure that the texts of the national laws and provisions which they adopt in relation to this directive shall be communicated to the Commission.

Article 20

This directive is addressed to the Member States.

Done at

4. Title and Subtitle Used Oil Law in the United States and Europe	5. Report Date July 1974 6.
7. Author(s) William A. Irwin and Richard A. Liroff	8. Performing Organization Rept. No.
9. Performing Organization Name and Address Environmental Law Institute 1346 Connecticut Avenue, N.W. Washington, DC 20036	10. Project/Task/Work Unit No. TDT315-24ACN-04 1B1030-51A0K-03 11. Contract/Grant No. 68-01-2203
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15. Supplementary Notes

Environmental Protection Agency report no. EPA-600/5-74-025, July 1974

16. Abstracts

This report briefly reviews existing information on the collection and disposal of used automotive and industrial oils and on the potential health risks of improper disposal of such oils. Provisions of federal law governing disposal of used oils are analyzed. The history of federal taxation of lubricating oils is recounted, as is that of federal requirements for labeling products made from used oils. State laws regulating used oil disposal and reprocessed oil labeling are analyzed and the laws (and/or proposed laws) of several other industrialized nations governing used oil collection and disposal are described. The elements of a comprehensive program for regulating used oil collection and disposal and alternative means for implementing and funding such a program are discussed. Recent Congressional bills relating to used oils are examined.

17. Key Words and Document Analysis. 17a. Descriptors

* Environment, air environment, aquatic environment

* Oil, oil pollution, oil wastes

* Legal aspects, jurisdiction, vegatation

17b. Identifiers/Open-Ended Terms

17c. COSATI Field/Group

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