

(H. B. 3113)
(Conference)

(No. 290)

(Approved December 26, 2006)

AN ACT

To repeal Act No. 278 of September 14, 2004; to amend Act No. 172 of August 31, 1996, as amended, in its Section 2, to add a new subsection (9), and to renumber current subsections (9), (10) and (11) as (10), (11) and (12) respectively; to add a subsection (13) and to renumber current subsection (12) as (14); to add a subsection (15) and to renumber current subsections (13), (14), (15), (16), and (17) as (16), (17), (18), (19), and (20); to add a subsection (2) to Section 7, concerning labeling requirements; to amend Section 8, concerning the Environmental Protection Deposit; to amend Section 9, in order to provide that subsections (1), (2) and (3) shall be under subsection (A) and to add a subsection (B); to amend Section 11, subsections (1), (2), (3) and (6); to amend subsection (1), clause (c), and subsection (5) of Section 12; to amend Section 13, subsection (1), and to provide that the representative of the Solid Waste Authority to the Administrative Board shall chair the same, and to include two new members; and to amend clauses (h), (i), (j), and (k) of subsection (1) and subsection (2) of Section 16, concerning prohibitions and penalties.

STATEMENT OF MOTIVES

The “Act for the Proper Management of Used Oil in Puerto Rico,” Act No. 172 of August 31, 1996, as amended, has been a useful tool for addressing the problem of the inappropriate disposal of used oil in Puerto Rico. This Act and the infrastructure created thereunder have generated an increase in the recovery of this material for its proper management, while promoting its reuse and recycling. Many citizens have also gained greater awareness so as not to dispose of said material on our soils or in our bodies

of water. However, there are many others who still pollute our bodies of water by pouring oils and lubricants out into the sewer. Oils are a highly polluting product. Discarding lubricating oil into the sewer or on the ground can potentially pollute water reserves. A quart of oil is capable of affecting the taste of two hundred fifty thousand (250,000) gallons of drinking water or of creating a layer of oil which can extend to up to almost two *cuerdas* over the water surface. The amendments herein proposed to Act No. 172 intend to impose greater responsibility on public entities and on consumers in terms of their management of used oils.

Throughout the years, since said Act was promulgated, the same has been amended several times to maximize its benefits for the environment with the recovery of this material and to provide for other benefits such as allowing more time for consumers to look for their deposit and to bring used oils to the Deposit Centers, among others. One of the latest amendments approved was the one introduced by Act No. 278 of September 14, 2004, which considered, among other amendments provided, the surrendering of the Environmental Protection Deposit by importers, in order for the same to be passed intact along the entire oil management distribution chain to the consumer, in the understanding that said process would yield more benefits for everyone. However, after various deferments whereby its effectiveness was suspended and considering the possible problems for its implementation concerning said matter, repealing said legislation is deemed necessary, in view of the problems this entails, and leave the matter at that so that the deposit continues to be handled by retailers. However, we believe that other amendments to Act No. 172 of August 31, 1996, incorporated by Act No. 278, *supra*, shall yield greater benefits in the implementation of the Act, for which reason, the same are gathered as amendments.

In view of the need to amend the “Act for the Proper Management of Used Oil in Puerto Rico,” the opportunity was taken to make an analysis of the legislation and to include the introduction of additional amendments in order to maximize its benefits for the environment. One of the amendments needed precisely involves Section 8, concerning the Environmental Deposit, which established since its promulgation that the Environmental Protection Deposit to be paid by citizens would be in the amount of fifty cents (\$0.50) per quart of gallon of lubricating oil sold. This was established so as to create an incentive and encourage citizens to bring in used oil and thus recover their deposited money. However, the results of a statistical analysis conducted by the Solid Waste Authority show that, although there has been an increase in the recovery of used oil since the promulgation of said Act, the process has also hit a plateau, and less than fifty percent (50%) of the people who buy the oil bring it back for recycling, and they are not claiming their environmental deposit. This is to a great extent due to the fact that consumers prefer to lose their deposit rather than being inconvenienced by returning the oil. These used oils are necessarily being disposed of improperly into our bodies of water, to the detriment of health and the environment. To address this situation, by increasing the Environmental Protection Deposit, more people will gain awareness as to the fact that they are dealing with a highly polluting substance and that it is necessary for them to bring back the used oil.

Another important matter to be addressed is the need for the Department of the Treasury to establish a method for the issue of licenses to lubricating oil manufacturers and importers, with the endorsement of the Environmental Quality Board. This measure is taken to prevent the unreported importation or manufacture of lubricating oils, which leads to the

mismanagement of this polluting substance and the evasion of the payment of the Used Oil Disposal and Environmental Protection Fee. This situation has the consequence of leaving us with even less resources for the management and recovery of used oil.

Another necessary amendment is to have the Solid Waste Authority chair the Administrative Board. This is due to the fact that, since the promulgation of the “Act for the Proper Management of Used Oil in Puerto Rico,” the Authority has played a very aggressive role in the prevention of improper disposal of used oils on our soils, bodies of water and unauthorized places. Furthermore, the Authority has worked untiringly in the implementation and education. For all these reasons, the Authority has been more directly involved with the entire framework and process of the Act, for which reason we believe that it would be the best suited entity to chair the Administrative Board on used oil, not without continuing to have the participation of the Department of Natural Resources.

On the other hand, in discharging its functions of implementing and educating all citizens, the Solid Waste Authority uses funds appropriated thereto by the Used Oil Disposal Fee charged on the importation of oil and the unclaimed deposits. However, in addition to the foregoing, the Authority could diversify the use of those funds in other projects and research studies relative to the proper management of solid waste, such as projects to reuse cooking oils, or on other aspects relative to its ministerial duties under its Organic Act, the Act for the Reduction and Recycling of Solid Waste in Puerto Rico, and the Act for the Proper Management of Used Oil in Puerto Rico. To that effect, it is necessary to amend the law in order for the Authority to maximize the use of the funds it is appropriated.

Lastly, the fines and penalties are hereby revised, in order to establish a greater deterrent and thus prevent noncompliance with or violations of the Act.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Act No. 278 of September 14, 2004, is hereby repealed.

Section 2.—Section 2 of Act No. 172 of August 31, 1996, as amended, is hereby amended to add a new subsection (9) and renumber current subsections (9), (10), and (11) as (10), (11), and (12) respectively, to add a subsection (13) and renumber current subsection (12) as (14), and to add a subsection (15) and renumber current subsections (13), (14), (15), (16), and (17) as (16), (17), (18), (19), and (20), to read as follows:

“Section 2.—Definitions.—

The following words or terms whenever used or referred to in this Act, shall have the meaning stated hereinbelow, unless it is otherwise clearly indicated in the context:

1. ...

...

9. Importer – Any person who receives or brings into Puerto Rico lubricating oil or used lubricant from abroad, for his/her use, for industrial use, for reselling, whether as a consignee or through a shipping agent or any other intermediary.

10. ...

11. ...

12. ...

13. License – A certification conferred by the Commonwealth through the Department of the Treasury, whereby a person is authorized to import lubricating oils for his/her use, for industrial use, or for reselling, or

to manufacture lubricating oils within the jurisdiction of the government of Puerto Rico.

14. ...

15. Lubricating Oil Manufacturer – A person located in Puerto Rico who manufactures lubricating oil from oil bases or refines used oil to produce lubricating oil.

16. ...

17. ...

18. ...

19. ...

20. ...”

Section 3.—A subsection 2 is hereby added to Section 7 of Act No. 172 of August 31, 1996, as amended, to read as follows:

“1. ...

2. All lubricating oil retailers, not later than six (6) months following the promulgation of this Act, shall post a permanent sign in their establishment which is visible to the public and legible from outside, indicating that they have a collection center or that they participate, after so agreed, in a community collection center, and shall indicate the location of the center.”

Section 4.—Section 8 of Act No. 172 of August 31, 1996, as amended, is hereby amended to read as follows:

“Section 8.—Environmental Protection Deposit.—

Every person engaged in the retail sale of lubricating oil shall collect a deposit of one (1) dollar for each quart (1/4) of lubricating oil sold in his/her place of business. The buyer shall return the used oil to any authorized collection center within a ninety (90)-day period, where he/she will be asked

for a voucher or purchase receipt, which shall indicate the number of quarts (1/4) of oil purchased, as well as the amount of the deposit posted. It shall be the responsibility of the collection center to certify on the original voucher or purchase receipt, through a stamp or official seal, that the oil used was duly accepted. Said certification shall include the approximate amount of oil accepted, as well as the date of its receipt. The buyer shall recover his/her deposit upon taking the certified receipt to the establishment where he/she purchased the oil within a one hundred and twenty (12[*sic*])-day period as of the date of purchase. The retailer shall return to the Department of the Treasury the deposits that have not been claimed by consumers within ninety (90) days. The imposition, collection, and administration of the Environmental Protection Deposit shall be governed by the regulations promulgated by the Department of the Treasury to such effect.

The unclaimed deposits shall be administered by the Department of the Treasury as stated hereinafter. Fifty (50) percent of said unclaimed deposits shall be distributed among the agencies in charge of the education concerning this Act and its implementation and supervision, as follows: the Environmental Quality Board, twenty-two point five (22.5) percent, the Department of the Treasury, sixteen (16) percent, and the Solid Waste Authority, eleven point five (11.5) percent; the remaining fifty (50) percent shall be transferred and deposited, in equal parts, in the Environmental Emergencies Fund and in the Fund for Land Acquisition and Conservation, as provided in subsection 2 of Section 12 of this Act.

The Solid Waste Authority may use fifty percent (50%) of the unclaimed deposits appropriated and to be appropriated to the same to defray costs and expenses which are reasonably necessary to comply with its

ministerial duties under this Act, Act No. 70 of June 23, 1978, and Act No. 70 of September 18, 1992, as respectively amended.

The Secretary of the Treasury is hereby empowered to impose administrative sanctions and fines for infractions of this Section or the regulations approved thereunder, which shall not exceed five thousand (5,000) dollars for each infraction, it being understood that each infraction shall be deemed as a separate violation. The Secretary of the Treasury is also empowered to impose the corresponding surcharges and interest on any amount received on account of the environmental protection deposit which has not been remitted on time or which is for a lesser amount than that which should have been remitted.”

Section 5.—Section 9 of Act No. 172 of August 31, 1996, as amended, is hereby amended in order to provide that subsections (1), (2), and (3) shall be under subsection (A) and that a subsection (B) shall be added, to read as follows:

“Section 9.—Carrier Certification and Importer’s License.—

A. Carrier Certification

(1) The Board shall promulgate the regulations needed to require the certification of any carrier that transports used oil.

(2) The certification regulations promulgated by the Environmental Quality Board shall ensure that all used oil carriers know and comply with all the federal and Commonwealth regulations, standards, and procedures for the management of used oil. The regulations for the certification of carriers shall, as a minimum, establish the following requirements:

- a) The registration of carriers;
- b) Annual reports;

- c) Manifest;
- d) Evidence of absolute knowledge and compliance with all the laws and regulations applicable to the transportation of used oil;
- e) Proof of adequate insurance against liability for damages that could be caused in the process of transporting used oil following the regulations for such purposes in Sections 29 and 30 of the Motor Carriers Act of 1980.

(3) The Environmental Quality Board shall publish twice (2) a year, in three newspapers of the greatest circulation in Puerto Rico, a list of used oil carriers certified by said agency, and shall make that list available to the public at all times.

B. Importer and Manufacturer License

(1) All importers and manufacturers shall be certified by a license issued by the Department of the Treasury, whereby they are accredited as *bona fide* entities to conduct business in Puerto Rico, after having been endorsed by the Environmental Quality Board for the management of used lubricants and oils.

(2) All importers and manufacturers who sell or re-sell lubricating oil shall, by June 30 of every year, file an application for a license with the Department of the Treasury. The sum of one thousand (1,000) dollars shall be paid annually for said license. Entities that use lubricating oils for personal use and whose purposes are not commercial shall be exempted from paying for this license, but they are not exempted from being registered with the Department of the Treasury.

(3) The requirements for issuing a license and completing the application shall be promulgated by the Department of the Treasury in its regulations, which shall include the endorsement of the Environmental Quality Board.

(4) All importers and manufacturers shall make the pertinent arrangements to renew their license within sixty (60) days before its expiration date with the Department of the Treasury, with the endorsement of the Environmental Quality Board.”

Section 6.—Subsections 1, 2, 3, and 6 of Section 11 of Act No. 172 of August 31, 1996, as amended, are hereby amended to read as follows:

“Section 11.—Used Oil Disposal and Environmental Protection Fee.—

1. Any natural or juridical wholesaler of lubricating oil, and/or any natural or juridical person who imports or introduces lubricating oil into Puerto Rico, or who manufactures or refines lubricating oil on the Island, shall be subject to the payment of a fee of twenty-five cents (.25) per quart of lubricating oil or a fee of sixty cents (.60) per gallon of bulk or semi-bulk lubricating oil, whether imported, made or re-refined in Puerto Rico. The fee provided in this Section is in addition to any other fee, tax or duty already established by other laws of Puerto Rico.

In the case of lubricating oil imported, manufactured, or sold in Puerto Rico in bulk or semi-bulk, and that having paid the fee corresponding to said type of container, is then repackaged by the importer, manufacturer, refiner or any other person in containers of less than fifty-five (55) gallons to be resold in Puerto Rico, the importer, manufacturer, refiner, or the person who made the sale, as the case may be, shall be responsible for paying the difference between the fee corresponding to fifty-five (55) gallon containers

or more (bulk or semi-bulk) and the fee corresponding to containers of less than fifty-five (55) gallons.

2. The fees provided in subsection 1 of this Section shall be paid by the importer at the arrival of the product in Puerto Rico and, in the case of manufacturers or refiners, shall be paid by these before the product is distributed or sold at retail. The Department of the Treasury shall establish a register of all persons who import, produce, or sell lubricating oil at wholesale prices.

3. Every importer, manufacturer, refiner, seller, or distributor of lubricating oil shall pass on to his/her client or purchaser the exact increase in the price of the lubricating oil resulting from the imposition of said fee.

4. ...

5. ...

6. The Department of the Treasury shall assign and deposit the fees collected under this Section to the Used Oil Collection and Management Fund established under this Act.

7. ...

8. ...”

Section 7.—Subsection (1), clause (c), and subsection (5) of Section 12 of Act No. 172 of August 31, 1996, as amended, are hereby amended to read as follows:

“Section 12.—Used Oil Collection and Management Fund.—

1. A Used Oil Collection and Management Fund is hereby created which shall be nourished by the Oil Disposal Fee collected for oil manufactured, imported and/or re-refined in Puerto Rico and for all used oil introduced in Puerto Rico for its final disposal that is not recycled through

re-refining or retrieval of energy, if it has not paid the fee as lubricating oil when imported. Said Fund shall be used as described hereinbelow:

a. ...

c. A maximum of zero point five (0.5) percent shall be allotted to the Solid Waste Authority to cover expenses inherent to the administration and operation of the Administrative Board according to its duties, as provided in this Act.

d. ...

5. All the monies of the Used Oil Collection and Management Fund shall be deposited in a special account in the Department of the Treasury which shall annually certify to the Administrative Board, on or before August 31, the balance of said fund to June 30 and the income and expenditures of the same during the fiscal year ending on said date. The disbursements shall be approved by the Administrative Board and shall be made pursuant to the regulations adopted by the Department of the Treasury.”

Section 8.—Subsection (1) of Section 13 of Act No. 172 of August 31, 1996, as amended, is hereby amended to read as follows:

“Section 13.—Administrative Board.—

1. An Administrative Board is hereby created in the Department of Natural and Environmental Resources, which shall be composed of the Executive Director of the Solid Waste Authority and chaired by him/her or by an officer designated by him/her, the Secretary of the Department of Natural and Environmental Resources or an officer designated by him/her, the Chairperson of the Environmental Quality Board or an officer designated by him/her, the Secretary of the Treasury or an officer designated by him/her, the Secretary of the Department of Consumer Affairs or an officer

designated by him/her, the President of the Public Service Commission, the President of the Puerto Rico Auto Mechanics and Technicians Association, the President of the Gasoline Retailers Association or his/her authorized representative, and three (3) representatives from the private sector, of which one shall be an importer or manufacturer of lubricating oil, one shall be from the business sector that retails lubricating oil, and one shall be a representative from the used oil carrying and/or disposal industry, who shall be appointed by the Chairperson of the Environmental Quality Board every three (3) years. The private sector representatives, including that from the Gasoline Retailers Association and that from the Auto Mechanics and Technicians Association to be selected, shall prove their compliance with all applicable requirements stipulated in this Act. The representative of the used oil carrying and/or disposal industry shall be certified by the Environmental Quality Board, and shall have complied with all applicable environmental norms and with any other requirement stipulated in this Act. The three (3) representatives of the private sector to the Board shall be selected by draw from among interested and qualified persons.”

Section 9.—Clauses (h), (i), (j), and (k) are hereby added to subsection (1), and subsection (2) is amended in Section 16 of Act No. 172 of August 31, 1996, as amended, to read as follows:

“1. No person shall:

a. ...

h. Transport used oil in amounts greater than those determined by the Board; operate a used oil collection center; or operate a used oil storage, burning or processing facility without an operating permit issued by the Board.

i. Submit false information to collect moneys from the Used Oil Collection and Management Fund when under the obligation to submit a manifest under this Act.

j. Sell at retail or change any lubricating oil if he/she does not have a collection center or is not participating in the operation of a community collection center, as established in Section 6 of this Act.

k. Import or manufacture lubricating oil if he/she does not have an importer's or a manufacturer's license issued by the Department of the Treasury with the endorsement of the Environmental Quality Board.

2. Penalties

Any person who violates any provision of this Act shall be guilty of a misdemeanor and if found guilty, shall be imposed a fine of not less than five hundred (500) dollars nor greater than five thousand (5,000) dollars per violation, being it understood that each day that the violation persists shall be deemed as a separate violation. At the discretion of the Court, a penalty of community service related to the handling of used oil may be imposed in addition to the above penalties.

The Environmental Quality Board is hereby authorized to impose administrative sanctions and fines for violations to its regulations or to orders issued by that agency. The administrative fines shall not exceed twenty-five thousand (25,000) dollars for each violation, being it understood that each day that the violation persists shall be deemed as a separate violation. In case the Board determines that contempt has been incurred in the commission or continuation of acts for which an administrative fine has already been imposed, or in the commission or continuation of acts in violation of this Act and its regulations, or contempt in failing to comply

with any order or resolution issued, the Board, in the exercise of its discretion, may impose an additional administrative fine of up to a maximum of fifty thousand (50,000) dollars for any of the acts herein indicated. The procedures for the implementation of these fines shall be governed by the provisions of the 'Uniform Administrative Procedures Act,' Act No. 70 of August 12, 1988, as amended.

Should the Environmental Quality Board take an administrative action against any person who violates this Act and the regulations created hereunder, its primary jurisdiction shall prevail, and the General Court of Justice shall defer the original trying of the case to this forum.

Recurrence in the violations indicated heretofore or in those cases in which the violation causes serious damages to the environment, the Environmental Quality Board shall also refer the case to the Department of Justice for criminal prosecution, and the Court may impose a fine not to be of less than ten thousand (10,000) dollars or may be subject to a penalty of not less than one (1) year no greater than five (5) years, or both penalties, at the discretion of the Court.”

Defaulting or delinquency in the payment of the fine issued administratively or by the Court within a period of thirty (30) days after the same is final and binding shall be constituted into a lien for the total amount of the debt on any license issued by the Department of the Treasury and on the municipal license issued by the Government of Puerto Rico or the Municipality to which the business corresponds, and said license may not be renewed by the debtor if he/she does not pay the fine or establishes a payment plan with the Environmental Quality Board or the Department of the Treasury if the fine was issued by the latter. The Department of the Treasury or the Board shall notify the Municipality where the business or

persons who have fines or penalties under this Act for the corresponding action.”

Section 10.—This Act shall take effect January 1, 2007.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 290 (H.B. 3113) (Conference) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to repeal Act No. 278 of September 14, 2004; to amend Act No. 172 of August 31, 1996, as amended, in its Section 2, to add a new subsection (9), and to renumber current subsections (9), (10) and (11) as (10), (11) and (12) respectively; to add a subsection (13) and to renumber current subsection (12) as (14); to add a subsection (15) and to renumber current subsections (13), (14), (15), (16), and (17) as (16), (17), (18), (19), and (20); to add a subsection (2) to Section 7, concerning labeling requirements; to amend Section 8, concerning the Environmental Protection Deposit; etc.,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 30th of April of 2007.

Francisco J. Domenech
Director