

We have reviewed for constitutionality and legal sufficiency House Bill 1277. The bill raises substantial questions of interpretation and application that we wish to call to your attention.

The present law governing the disposal of certain used oil is found in § 8-1411.1 of the Natural Resources Article. Present subsection (f)(1) of that section bans the disposal of used oil by various means, including "incineration". Present subsection (f)(2), in turn, exempts the use of used oil "as a fuel" from the general ban in subsection (f)(1); presumably, though, any such use of used oil as a fuel would nevertheless be subject to the general air pollution controls otherwise applicable under State and federal law.

House Bill 1277 enacts a new subsection (f)(2) to provide:

"(i) A person may not dispose of or cause to be disposed of any used oil by burning unless the emissions from such burning meet federal and State air quality standards.

(ii) The provisions of subparagraph (i) do not apply to:

1. Fire departments and fire companies that burn used oil during training exercises; and

2. Owners of farmland who burn used oil to clear fields for agriculture purposes."

The bill also amends present subsection (f)(2), redesignated as subsection (f)(3), so as to except the use of used oil as a fuel only "if the used oil is generated by an electric utility company's operations and burned in its steam generating units."

Facially, the provisions of subsection (f)(1) and subsection (f)(2)(i) are inconsistent. Subsection (f)(1), broadly and without qualification, prohibits the disposal of used oil "by incineration"; this ban is not amended by House Bill 1277. New subsection (f)(2)(i) effectively repeats the same ban, but with a qualification: "unless the emissions from such burning meet federal and State air quality standards"; literally, subsection (f)(2)(i) is worded as if it were a new prohibition, not as an exception to the already existing prohibition in subsection (f)(1). Nevertheless, it seems apparent that, in enacting new subsection (f)(2)(i), the General Assembly intended to permit any disposal of used oil by incineration or burning