

-- notwithstanding subsection (f)(1) -- as long as the resultant emissions meet federal and State air quality standards.

The retention without amendments of subsection (f)(1), however, creates some additional confusion over the effects of new subsection (f)(2)(ii) and amended subsection (f)(3). As indicated above, the net effect of subsection (f)(2)(i), when read together with subsection (f)(1), is to permit the disposal of used oil by burning under certain circumstances. Subsection (f)(2)(ii), in turn, specifically excepts from the provisions of subsection (f)(2)(i) certain burning of used oil by fire departments and owners of farmland. In so doing, the bill can be read as excepting these persons from the permissive aspects of subsection (f)(2)(ii), thus subjecting fire departments and farmland owners once again to the general ban found in subsection (f)(1) -- prohibiting the burning of used oil even if federal and State emissions standards are met. Such a result, however, is not described or reflected in the title to House Bill 1277 and, therefore, could not be given effect.

Another, and perhaps more likely, reading -- one that is at least consistent with the bill's title -- is that fire departments and farmland owners are to be exempt from the ban imposed by subsection (f)(2)(ii) and, in effect, permitted to burn used oil even if the emissions from such burning do not meet federal and State air quality standards. This interpretation, however, does not account for the retention, in subsection (f)(1), of the general unqualified ban against disposing used oil by "incineration"; moreover, this interpretation would run afoul of the Supremacy Clause, as discussed below.

The effect of the amendment to subsection (f)(3) is, if anything, even more unclear. It is possible to read subsection (f)(1) and subsection (f)(3) together as effectively banning the use of used oil as a fuel by all persons, except certain utilities, even if such use comports with air quality standards: subsection (f)(3), as originally enacted, is an exception to subsection (f)(1); by narrowing that exception to apply only to certain utilities, the bill effectively places all other users of used oil as a fuel under the unqualified prohibition of subsection (f)(1). If so read, the effect of the bill would be (i) to generally permit any person to "dispose" of used oil "by burning" so long as no violation of air quality standards occur, but (ii) to preclude such disposal if, in the course of burning the used oil, the oil is also being used "as a fuel." Whether that distinction was intended is unclear. Moreover, the resultant blanket prohibition against the use by nonutilities of used oil as a fuel, even if that use complies with air quality standards, is not at all described or reflected in the bill's title.