

Decision 89 12 041 DEC 1 8 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 DALTON TRUCKING, INC. seeking )  
 exemption from rate regulation for )  
 the transportation of "Sinter Mix", )  
 "Oil Saturated Mill Scale", "D"-Fines )  
 and "Bop-Shop-Slop" and for the )  
 inclusion of these commodities on )  
 the list of commodities exempt from )  
 rate regulation as provided in )  
 Section 2 of Appendix A to )  
 D.82-06-091 as amended. )

**ORIGINAL**Application 89-08-007  
(Filed August 4, 1989)OPINION

Dalton Trucking, Inc. (applicant) requests an order to exempt the transportation of sinter mix, oil saturated mill scale, "D"-Fines, and "Bop-Shop-Slop" from rate regulation by including these four commodities in Section 2 of Appendix A to Decision (D.) 82-06-091 as amended.

Applicant is authorized to transport freight as a dump truck carrier, highway contract carrier, highway common carrier, certificated cement common carrier, specialized heavy duty carrier, and agricultural carrier.

Applicant is a carrier of general commodities, cement, and dump truck commodities in bulk. It operates a fleet of more than 110 trucks throughout southern California. A significant portion of its transportation business involves the transportation of dry bulk commodities in dump truck equipment.

The commodities to be exempted are described as follows:

1. "Sinter Mix": This commodity is a waste product of steel making consisting of tiny metallic particles which have been heated below melting temperature; it is collected

from smoke<sub>1</sub> stacks to reduce airborne pollution.

2. "Oily Waste Mill Scale": This commodity consists of the flakes produced from rolling slabs of steel, mixed with animal tallow which is used as a rust inhibitor and lubricant. This commodity cannot be rated as standard "Mill Scale".
3. "D-Fines": This commodity is produced from crushed coagulated oily waste mill scale mixed with fine steel scrap.
4. "Bop-Shop-Slop": This commodity is a waste produced in the basic oxygen process continuous casting plant.

Over the first 40 years of the operation of The Kaiser Cement Corporation steel plant at Fontana, almost 1,000,000 tons of these products were collected and discarded as waste product. With changing environmental economic considerations, it has been found that they can be recycled and disposed of as an additive for the production of cement in modern cement plants located in various High Desert locations in southern California.

Waste piles located at this plant site are the only known origin and applicant is the only known carrier of these commodities. During the past two years, and as a result of A.87-03-044, A.87-01-005, A.87-07-046, D.87-06-043, D.87-06-041, D.87-11-002, and SDD-133, SDD-132, and SDD-143, they have been transported by applicant under a Public Utilities Code § 3666 deviation from established rates found in Minimum Rate Tariff (MRT) 7-A, Item 40. While none of them is listed as a commodity subject

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1 This is apparently the same commodity which we authorized to be transported under a deviation from general freight rates in D.84430 in Application (A.) 55288 (1974) Fiske Bros. and D.82178 in A.53567 (1972) Bulk Transportation. The point of origin is also the same. In those proceedings it was termed "flue dust".

to MRT 7-A, Item 40 rates, "mill scale" is so listed; applicant reasoned that sinter mix could be transported as mill scale since both of these commodities were waste products of the steel manufacturing process from the same steel plant. Further, it reasoned that, while chemically dissimilar, there was a similarity in the creation of these commodities as a waste product and in their use as a cement additive.

In May 1989 applicant filed SDD-174 and SDD-176 to renew its deviations from MRT 7-A, Item 40, dump truck rates for the transportation of sinter mix and mill scale. In the course of processing these filings the Transportation Division staff took the position that an MRT 7-A, Item 40, deviation is inappropriate for commodities not specifically named in MRT 7-A.

Applicant consequently decided to seek an exemption. It argues that the productive recycling and/or reuse of waste materials is in public interest and should be encouraged. Higher than necessary truck rates to transport such materials have a negative impact on their potential for reuse.

To make the movement economical, applicant has developed a fronthaul-backhaul operation which has enabled these commodities to be moved at a very low transportation cost. It moves these commodities from the origin to the High Desert cement plants in southern California and has many equal and offsetting return loads.

If the commodities in question cannot be transported under a deviation from MRT 7-A, applicant contends that the most expedient manner to ensure that these waste products are recycled is to exempt them. Applicant alleges:

1. The productive recycling and/or reuse of waste material is in the public interest and should be encouraged;
2. California is in a crisis of serious proportion in disposing of waste;
3. The subject materials (sinter mix, Bop-Shop-Slop, D-Fines, and oil saturated mill

scale) have been in waste stockpiles for up to 40 years and, absent some productive use, would have burdened waste disposal facilities;

4. Applicant and its customers have found a use for the material provided it can be transported at low rates in conjunction with return movements of regulated commodities by applicant;
5. Applicant is the only known carrier of the commodities and the old Kaiser Steel Corporation mill in Fontana is the only known origin of the commodities;
6. Applicant and its customers need the rate flexibility which negotiated rates will allow;
7. The low value of the commodities will not allow the assessment of regulated rates which are not premised upon the close backhaul-fronthaul relationship which applicant has developed;
8. Applicant needs immediate relief since its present extension of its MRT 7-A deviations will expire in November 1989 and the material will lose its marketability at full regulated rates;
9. The subject transportation has a significant positive effect on the environment in that waste material is disposed of and consumed in the manufacture of a necessary product, cement; and
10. No detrimental or adverse impact can result to any other carrier or shipper as the result of the exemption of these materials.

There have been no protests after publication on August 9, 1989 in the Commission's Daily Transportation Calendar. Transportation Division staff believes that, with the exception of oil saturated mill scale, the commodities may be

adequately identified by a generic description and should be exempt from rate regulation.

According to Transportation Division staff, oil saturated mill scale should not be exempt unless mill scale comprises less than 50% of a truckload shipment. Shipments of material containing more than 50% mill scale should be subject to the rates provided in MRT 7-A. Transportation Division staff believes that oil saturated mill scale is not a "related waste product" in that oil is added only for convenient disposal. Richard C. Wood, administrative manager of applicant, agreed with staff's position; applicant supports the following language for inclusion in Section 2 of the Commission's publication entitled Commodities and Geographic Areas Exempt From Rate Regulation:

Iron-bearing waste byproducts; subject to Note 18. ✓

(Section 4 - Explanatory Notes): ✓

18. With or without animal tallow residue, transported in bulk in dump truck equipment; exemption will not apply on commodities for which minimum rates are provided except when such commodities comprise less than 50% of truckload shipment volume.

Transportation Division staff's original language limited the exemption to waste from steel mills. Transportation Division staff has subsequently recommended that this limitation be eliminated, as needlessly restrictive. Applicant has no objection.

Findings of Fact

1. Iron-bearing waste products can be disposed of by including the product in cement if subject to low rates.
2. Such disposal is environmentally sound and in the public interest.
3. No hearing is necessary.

4. Since the order provides rate relief it should be effective today.

Conclusions of Law

1. Sinter mix, oil saturated waste mill scale, D-Fines, and Bop-Shop-Slop, and other waste products of similar composition should be classed as a single commodity.

2. The commodity described in the order should be exempt from rate regulation, subject to the 50% volume limitation.

ORDER

IT IS ORDERED that:

1. The document "Commodities and Geographic Areas Exempt From Rate Regulation" is amended by incorporating Second Revised Page 4-A and Second Revised Page 14-A, attached, to become effective 21 days after today.

2. The Executive Director shall serve copies of Second Revised Page 4-A and Second Revised Page 14-A of "Commodities and Geographic Areas Exempt From Rate Regulation" on all highway common and contract carriers.

This order is effective today.

Dated DEC 18 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Wesley Franklin*

- 6 - WESLEY FRANKLIN, Acting Executive Director

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## COMMODITIES AND GEOGRAPHIC AREAS EXEMPT FROM RATE REGULATION

## SECTION 2--LIST OF COMMODITIES EXEMPT FROM RATE REGULATION (continued)

Grain, as described under the heading "Grain Group" (89000) in the Governing Classification; Subject to Notes 11, 12, and 13.

Grain products, as described under the heading "Grain Products Group" (89300) in the Governing Classification, when such products are not prepared for human consumption; Subject to Notes 11, 12, and 13.

Hay, in machine pressed bales; Subject to Note 11.

Hops.

Houses, which have been disengaged from their foundations, or sections thereof and integral parts or contents when the contents are transported within the houses.

Hulls, almond, including shells and other waste from the hulling and shelling of almonds, not processed for use as animal or poultry feed.

Ice Cream-Mix, unflavored; Subject to Notes 1, 2, 3, and 4.

Insecticides, agricultural; Subject to Notes 1, 2, and 3.

\*Iron-bearing waste byproducts; Subject to Note 18.

Iron, Scrap.

Jewelry transported from or to wholesale houses in packages weighing 10 pounds or less; Subject to Notes 1, 2, and 3.

Lime, common; Subject to Notes 1, 2, 3, and 5.

Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles (the terms "tank trucks, tank trailers, tank semitrailers" include truck, trailer or semitrailer with carrier or shipper provided collapsible tank or bags 20 feet or more in length, 2,000 gallons or more in capacity and 20,000 pounds or more weight carrying capacity). For description of commodities in liquid, see Note 9. This exemption does not apply to commodities in semiplastic form or commodities in suspension in liquids when such transportation is incidental to the construction, operation or maintenance of oil or gas wells, geothermal steam wells, oil pipe lines or oil storage facilities and when the transportation is performed in vacuum or pump tank vehicles.

Livestock, other than ordinary livestock.

Logs (wood).

Lottery tickets, equipment, materials and supplies used in the conduct of games of chance, for the State of California, restricted to shipments weighing no more than 500 pounds in the aggregate from one consignor to one consignee at one time.

\*Addition, Decision.

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ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,  
SAN FRANCISCO, CALIFORNIA.

Correction

## COMMODITIES AND GEOGRAPHIC AREAS EXEMPT FROM RATE REGULATION

## SECTION 4--EXPLANATORY NOTES (concluded)

14. feed, animal or poultry, subject to Notes 11, 12, and 13, viz. (Numbers within parentheses immediately following commodities shown below refer to such commodities as they are described in the corresponding item numbers of the Governing Classification, except as to packing requirements and form in which the commodity is shipped.):

Alfalfa, chopped and pressed into cubes or pellets, air-dry or otherwise dried;

Feed, as described in Items 66700 through 67480 and 67520 through 67882 ("Feed Group") of the Governing Classification, other than liquid, not frozen;

Grit, processed from rock, subject to Note 4.

Grit, processed from shell;

Hulls, cottonseed (54410);

Hulls, sunflower seed (179980);

Hulls, NOI, whole or ground;

Hulls or Shells; cocoa bean, ground or not ground;

Limestone, crushed or ground, feed grade, subject to Note 4;

Meal, feather;

Mineral Mixtures containing Calcium Carbonate, Copperas, Epsom Salts, Crude Salt (feed grade), Sulphate of Soda, Glauber's Salts, Sulphur or Potassium Iodide, with or without not in excess of 10% by weight or other unnamed ingredients, subject to Note 16;

Nut hulls or shells, NOI (175460);

Pomace;

Urea (47220).

15. When shipment is in packages or in containers not exceeding 40 cubic feet capacity, exemption applies only when shipper certifies on the shipping document covering the transportation that the shell marl is being shipped for use as a fertilizer (Subject to Notes 1, 2, and 3).

16. In connection with Mineral Mixtures containing Crude Salt (feed grade), shipper must enter the following notation on the bill of lading or shipping document:

"Crude Salt (feed grade) to be used only for animal feed."

If the shipper fails or declines to make such notation in writing, the exemption will not apply.

17. Exemption does not apply to transportation for which rates are provided in Minimum Rate Tariffs 7-A and 17-A.
- \*18. With or without animal tallow residue, transported in bulk in dump-truck equipment; exemption will not apply on commodities for which minimum rates are provided except when such commodities comprise less than 50% of truckload shipment volume.

\*Addition, Decision.

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According to Transportation Division staff, oil saturated mill scale should not be exempt unless mill scale comprises less than 50% of a truckload shipment. Shipments of material containing more than 50% mill scale should be subject to the rates provided in MRT 7-A. Transportation Division staff believes that oil saturated mill scale is not a "related waste product" in that oil is added only for convenient disposal. Richard C. Wood, administrative manager of applicant, agreed with staff's position; applicant supports the following language for inclusion in Section 2 of the Commission's publication entitled Commodities and Geographic Areas Exempt From Rate Regulation:

Iron-bearing waste byproducts; subject to Note 14.

(Section 4 - Explanatory Notes):

14. With or without animal tallow residue, transported in bulk in dump truck equipment; exemption will not apply on commodities for which minimum rates are provided except when such commodities comprise less than 50% of truckload shipment volume.

Transportation Division staff's original language limited the exemption to waste from steel mills. Transportation Division staff has subsequently recommended that this limitation be eliminated, as needlessly restrictive. Applicant has no objection.

#### Findings of Fact

1. Iron-bearing waste products can be disposed of by including the product in cement if subject to low rates.
2. Such disposal is environmentally sound and in the public interest.
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2. The commodity described in the order should be exempt from rate regulation, subject to the 50% volume limitation.

ORDER

IT IS ORDERED that:

1. Iron-bearing waste products with or without animal tallow residue transported in bulk in dump truck equipment shall be added to Section 2 of Commodities and Geographic Areas Exempt From Rate Regulation subject to a limitation that the exemption shall not apply to commodities for which minimum rates are provided when such commodities comprise less than 50% of truckload shipment volume.

2. The Executive Director shall serve copies of the amended page of Commodities and Geographic Areas Exempt From Rate Regulation on all highway common and contract carriers.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.