

## MEMORANDUM

**To:** Emily Wang**Date:** June 24, 2014**From:****Ron Darbee, Staff Counsel**

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle)

**Subject: ELIGIBILITY OF INDUSTRIAL OIL FOR REREFINING INCENTIVE**Question Presented

Is rerefined oil produced from used industrial oil eligible for the rerefined oil incentive found in Public Resources Code section 48651.5?

Brief Answer

No. The rerefined oil incentive is only payable on rerefined oil produced from used lubricating oil.

Statutory Background

The California Oil Recycling Enhancement (CORE) Act<sup>1</sup> lays out a number of fee and incentive structures designed to promote environmentally sound management of used oil and to increase recycling of used oil in California. The Act lays out how fees are assessed and creates rules for CalRecycle to make incentive payments, award grants, and issue contracts to further these goals.

Throughout the CORE Act, a distinction is made between lubricating and industrial oils. Lubricating oil, defined in PRC section 48618, is oil used in an internal combustion engine in a vehicle or machine. Industrial oil, defined in PRC section 48616, is compressor, turbine, or bearing oil, hydraulic oil, metal-working oil, or refrigeration oil; essentially any oil other than that used in internal combustion engines.

The distinction between lubricating and industrial oils is critical because industrial oil is excluded from many of the provisions of the CORE Act. Most importantly, the fee paid by oil manufacturers is assessed only on lubricating oil.<sup>2</sup> Aside from a de minimus amount of money collected in civil penalties and fines, this fee is the only source of revenue for the California Used Oil Recycling Fund.<sup>3</sup> All of the CORE Act's incentives and payments are ultimately paid from the fee collected on the sale of lubricating oil.

The CORE Act does contain provisions that apply to industrial oil. Oil manufacturers are required to report their monthly sales volumes of industrial oil,<sup>4</sup> used oil haulers are required to report how much industrial oil that they haul,<sup>5</sup> and used oil recycling facilities are required to report how much industrial oil they recycle.<sup>6</sup> CalRecycle is required to report on sales and the recycling rate of industrial oil<sup>7</sup> and

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<sup>1</sup> PRC sections 48600-48691.

<sup>2</sup> PRC section 48650.

<sup>3</sup> PRC section 48653.

<sup>4</sup> PRC section 48671.

<sup>5</sup> PRC section 48672.

<sup>6</sup> PRC section 48673.

was required to include industrial oil in its life-cycle analysis of used oil management.<sup>8</sup> The provisions of the CORE Act relating to industrial oil are primarily reporting provisions and are all provisions that apply to both lubricating oil and industrial oil.

Conversely, many of the CORE Act's provisions apply to lubricating oil exclusively. In addition to the fee paid by oil manufacturers applying only to lubricating oil,<sup>9</sup> the recycling incentive for used oil is paid only for the recycling of used lubricating oil.<sup>10</sup> Payments are made to Local Used Oil Collection Programs based upon the program's ability to provide for the collection of used lubricating oil<sup>11</sup> and CalRecycle only requires certified used oil collection centers to accept used lubricating oil.<sup>12</sup> Finally, CalRecycle can issue grants and contracts to provide recycling opportunities for used lubricating oil, to explore product developments and advancements in lubricating oil to extend its life, and promote the manufacture of rerefined lubricating oil.<sup>13</sup>

The rerefining incentive payments are controlled by PRC section 48651.5(a). The purpose of the payments is to "promote the recycling of used lubricating oil into rerefined oil" but the statute is silent on the matter of lubricating or industrial oil when it states "[CalRecycle] shall pay a rerefining incentive ... for rerefined oil produced from used oil."<sup>14</sup>

### Analysis

The distinction between lubricating oil and industrial oil is consistent throughout the CORE Act – the management of lubricating oil drives the fee structure and incentives while industrial oil is only included for purposes of reporting. None of the funds in the California Used Oil Recycling Fund are attributable to industrial oil sales and all incentives paid are payable only for the recycling and management of lubricating oil.

The rerefining incentive statute<sup>15</sup> itself makes clear that its purpose is to "promote the recycling of used lubricating oil" while saying nothing about industrial oil. This is consistent with the overall function of the various parts of the CORE Act. Paying the rerefining incentive on only used lubricating oil is consistent with the intent of PRC section 48651.5 and with the general principles of the CORE Act.

While the ambiguous language was added to PRC section 48651.5 via an amendment,<sup>16</sup> there is nothing in the legislative history to suggest that the language was intended to add industrial oil to the incentive structure. The final text, with the amended language underlined is "Effective January 1, 2013, the board [CalRecycle], with regard to promoting the recycling of used lubricating oil into rerefined oil, shall pay a rerefining incentive pursuant to subdivision (b) of Section 48652 to a recycling facility for rerefined oil produced from used oil if all of the following conditions are met..."<sup>17</sup>

The legislative analysis contains no mention of industrial oil at all. However, the analysis does refer to the CORE Act's mandate to "advance certain developments in lubricating oil including but not limited to oil recycling, collection, research, testing, and rerefining."<sup>18</sup> Furthermore, the amending bill makes

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<sup>7</sup> PRC section 48676.

<sup>8</sup> PRC section 48651.5(b).

<sup>9</sup> PRC section 48650.

<sup>10</sup> PRC section 48651.

<sup>11</sup> PRC section 48691.

<sup>12</sup> PRC section 48660.

<sup>13</sup> PRC section 48632.

<sup>14</sup> PRC section 48651.5.

<sup>15</sup> PRC section 48651.5(a).

<sup>16</sup> Sen. Bill No. 579 (2009-2010 Reg. Sess.) § 6.

<sup>17</sup> PRC section 48651.5(a).

<sup>18</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, August 27, 2010 analysis of Sen. Bill No. 579 (2009-2010 Reg. Sess.) as amended August 20, 2010.

several technical changes to the sections regulating used oil recycling facilities.<sup>19</sup> The language amended to PRC section 48651.5 seems to exist to clarify that the rerefining incentive is paid to recycling facilities, and not to address what types of used oil the incentive is paid for.

In addition, the fee paid by lubricating oil manufacturers under PRC section 48650 is an environmental regulatory fee, not a general tax under Article XII A, section 3 of the California Constitution. The fee is charged only on lubricating oil sales and is spent on incentives and regulatory programs that encourage the proper management and recycling of used lubricating oil. An expansion of the CORE Act's incentives to used industrial oil would call into question the status of the fee itself and whether it could be considered a tax.

### Conclusion

The text of the CORE Act and the legislative history suggest that the rerefining incentive is intended to be paid only on rerefined oil generated from used lubricating oil. The textual ambiguity in Public Resources Code section 48651.5(a) should be clarified through regulations at the earliest possible opportunity.

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<sup>19</sup> See generally Sen. Bill No. 579 (2009-2010 Reg. Sess.) § 6.