CalRecycle Responses to Comments from First Informal Workshop, Draft Proposed Used Oil Regulatory Changes
Sorted by Comment Number

Below is a matrix of written comments received in response to the May 27, 2014 Informal Workshop on Draft Proposed Used Oil Regulatory Changes.

W – Written comment

Section/ Area	Comment Number	Commenter Affiliation	First name	Last name	Summary of Comment	CalRecycle Response	Revisions Needed
General comment	W1-01	Exxon-Mobil	Charlie	Rau	Under CA Senate Bill 546 CalRecycle was to "provide any recommendations for statutory changes that may be necessary to promote increased collection and responsible management of used oil." Are these draft proposals intended to satisfy that SB 546 requirement?	The draft proposals for Used Oil Regulations presented at the workshop are intended to update the regulations to reflect new requirements such as changes in the fee structure that were introduced by SB 546. Any recommendations for statutory changes resulting from the lifecycle analysis study will be presented in the report to the legislature per PRC §48651.5(b)(2)(D).	None.
Article 6	W2-01	Humboldt Waste Management Authority (HWMA)	Carlos	Chavez	If CalRecycle wants to determine eligibility for claims, it seems improper to tie the requirement to a site's acceptance practices instead of its claims filing practices. It is only in a claim that the need for the determination occurs. The requirement should be tied to the incentive claim so it only applies to those that want eligibility and only to that material for which they are seeking it	Staff agrees, and has removed the requirement from the operator standards, leaving it only tied to the incentive claims process.	Remove DIY/on-site log requirements from Article 6.
Articles 6 and 7	W2-02	Humboldt Waste Management Authority (HWMA)	Carlos	Chavez	Also, if there are only two eligibilities being determined, it seems unnecessary to log 100% of collection activity when logging the lesser quantity can serve the same purpose since the remainder would qualify for the unlogged rate.	Staff agrees, and notes that proposal only requires that one log be maintained. If a CCC chooses to only log their DIY oil, an on-site log is not necessary. Conversely, a DIY log is not required if the site chooses to instead maintain an on-site log.	None.
Article 6	W3-01	C2: Alternative Services	Connie	Cloak	Could filters be added to the log requirement? Or at least included on any model log forms?	Staff believes that the log requirement should only require that oil volumes are tracked, since the oil incentive fee is tied only to used oil collection and not with filter collection. However, staff agrees that a model log form can include filters.	None.
Articles 6 and 7	W4-01	C2: Alternative Services	Connie	Cloak	If a CCC doesn't want to keep logs, may they just claim all oil at $0.16 and not separate DIYer oil?	Yes.	None.
Articles 6 and 7	W5-01	San Francisco Department of the Environment	Cynthia	Knowles	How will CalRecycle enforce the log requirement?	CalRecycle will enforce the log requirement by associating it with incentive claims. For sites that collect both DIY and on-site oil, CalRecycle will not be able to pay any oil incentives at the $0.40/gallon rate unless the site is maintaining a log, and will instead pay for that oil only at the lower ($0.16/gallon) incentive rate.	None.
Article 7	W5-02	San Francisco Department of the Environment	Cynthia	Knowles	Is there a requirement for logs to be submitted with the reimbursement form?	Yes, the logs will be required to be submitted with an incentive claim form.	None.
Articles 6 and 7	W5-03	San Francisco Department of the Environment	Cynthia	Knowles	If a CCC does not maintain a log, will CalRecycle depend on grantees to report this back to their grant manager?	No; the log requirement will be enforced through a reduced payment on claims that lack appropriate logs.	None.
Article 7	W6-01	Exxon-Mobil	Charlie	Rau	Could you cite the statutory basis for excluding Industrial Used Oils from the Re-refining incentive?	Please see response to W8-03 below.	
Article 6	W7-01	Humboldt	Carlos	Chavez	It seems like the log requirement will be tied to whether a site both	Staff agrees, and has removed the requirement from the operator standards, leaving it only	Remove DIY/on-

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		Waste Management Authority (HWMA)			accepts DIY oil and generates oil. The log requirement should be triggered by the incentives rates claimed, not the oil acceptance/generation.	tied to the incentive claims process.	site log requirements from Article 6.
Article 3.1	W8-01	Western States Petroleum Association (WSPA)	Dawn	Koepke	With regard to the new article contemplated for "Lubricating Oil Sellers," we believe it is important to provide clarity regarding who is considered a "lubricating oil seller." More specifically, the Department should consider providing an explicit definition of who is considered a seller for the purposes of this section. While the draft regulatory concepts contemplate application to an entity that sells 100 gallons or more, this could potentially encompass everyone in the supply chain from manufacturers to retailers. For example, would a mom-and-pop convenience store at a fuel station be required to comply with the requirements of this section? Is selling 100 gallons to a distributor versus a consumer treated the same under the proposal?	CalRecycle staff agrees that a definition for "Lubricating Oil Seller" should be considered, and has proposed a definition of: "an entity that sells lubricating oil in California." Article 3.2 for "Lubricating Oil Sellers" is intended to aid CalRecycle auditing functions, particularly to help confirm that a fee was paid on oil for which a refund claim is being made. Since refund claims can be made by both distributors and consumers, but are not generally submitted for small volumes of oil, CalRecycle staff is proposing a volume limit on this requirement.	New definition for "Lubricating Oil Seller"
Article 3	W8-02	Western States Petroleum Association (WSPA)	Dawn	Koepke	Secondly, of great concern is the lack of confidential business information (CBI) protection for lubricating and industrial oil sales volume data required to be provided by manufacturers under Article 3(3). The regulated community is willing to share the full range of confidential information with the state's regulatory authorities as required in order to enable them to exercise their responsibilities under the Used Oil Recycling Regulations, but failure to protect the information which is widely considered trade secret data is unnecessary and inappropriate. In this regard, WSPA recommends that CalRecycle incorporate the following principles related to CBI in the regulations: 1) information requested by CalRecycle that has already been determined by the Department or another agency to be CBI must also be protected under any revisions to the Used Oil Recycling Regulation and 2) intellectual property is not compromised and competitive harm is not caused. The ability to protect certain information from competitors is essential to defending the competitive position of companies in the marketplace. In this regard, we urge the Department to explicitly provide that manufacturer sales volume data required to be provided to the Department in compliance with the regulation be explicitly afforded confidential business protection as provided for under California law.	Staff notes that Section 18619.4 of the existing regulations describes how CalRecycle will handle proprietary information that is submitted, and specifically cites sales data on the list of information that may be considered exempt from public disclosure. Furthermore, as indicated by PRC §48650.2, CalRecycle collects all fees "pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code)." Section 55381(b) of the Revenue and Taxation Code states that it is unlawful to "make known, in any manner whatsoever, the business affairs, operations, or any other information pertaining to a feepayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision." Therefore, under the Revenue and Taxation Code, sales data would be considered protected information.	None.
	W8-03	Western States Petroleum Association (WSPA)	Dawn	Koepke	Concerning the third issue, we understand that the draft informal regulatory revision concepts for the used oil program would restrict the re-refined oil incentive to re-refined base stock produced from used "lubricating oil" and not from used "industrial oil." As you know, California defines "lubricating oils" more narrowly than industry – meaning, for California, any oil which is intended for use in the	CalRecycle's Used Oil Program has always been focused on lubricating oil and not industrial oil. All fees and incentive payments associated with the program have been specific to lubricating oil, and therefore staff maintains that the same distinction should be applied to the rerefined oil incentive. For a more detailed Legal analysis of the rerefined oil incentive's applicability to industrial oil,	None.

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					crankcase, transmission, gearbox, or differential of machinery powered by an internal combustion engine. Industry associations and the widely-known lubricant industry consultant, Kline (who were utilized by CalRecycle in recent work required by CA Senate Bill 546), are among those who define "lubricants" also to include hydraulic, turbine, compressor, process, and other oils that provide lubrication in industrial machinery. Other jurisdictions such as New York define "lubricating oils" under State Code Section 360-14.2(a)(4) to mean "all oil suitable for use as a lubricant, or sold for use as a lubricant." More significantly, SB 546 requires CalRecycle to "provide any recommendations for statutory changes that may be necessary to promote increased collection and responsible management of used oil' pursuant to results from a "life cycle analysis of the used lubricating and industrial oil management process, from generation through collection, transportation, and reuse alternatives." Also, CalRecycle in its "Preliminary Findings Report – Used Oil Life Cycle Analysis Project, 2013" indicated that "Used oil is generated when lubricating or industrial oil leaves its intended use phase in a collectable form." That same report described scenarios that could lead to increased used industrial oil collection rates. Further, we believe that used lubricating oils (CA definition) and used industrial oils can be comingled in used oil collection and processing systems – a situation that was arguably anticipated in the wording of the SB 546 requirements. Therefore, we are concerned that there could be unintended and counterproductive impacts of a systematic exclusion in the current draft regulations from the re-refining incentive for base stocks produced from used industrial oils.	please see the memorandum titled "ELIGIBILITY OF INDUSTRIAL OIL FOR REREFINING INCENTIVE".	