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**COMMENTS OF DEMENNO/KERDOON AND WORLD OIL
REGARDING USED OIL LIFE CYCLE ANALYSIS AND
THE HAZARDOUS WASTE DESIGNATION FOR USED OIL**

Thank you for the opportunity to comment on CalRecycle's Used Oil Life Cycle Analysis ("LCA"). DeMenno/Kerdoon and its affiliate, World Oil (collectively, The Company), have a vital role in recycling California's used oil. The Company is a pioneer in the vacuum distillation of used oil to create vital and environmentally beneficial products such as Marine Diesel Oil and high-grade asphalt flux.

The Company is committed to active and constructive participation in CalRecycle's LCA for used oil. To that end, we are disappointed that some are supporting the use of the LCA and Economic Assessment ("EA") as an opportunity to challenge California's environmentally protective approach to regulating used oil as a hazardous waste. The deregulation of used oil would undermine the safe management of used oil, in direct contravention to the mandate of Senate Bill 546, thereby exposing the public and the environment to unnecessary risks. For the following reasons, and as further discussed below, CalRecycle must dismiss the efforts by some to use the LCA/EA process as an avenue by which to try to eliminate California's hazardous waste designation for used oil:

- SB 546, which authorized the LCA, evinces the State Legislature's unambiguous intent that "[u]sed oil in California must be treated as a hazardous waste." The bill provides no basis for revisiting the hazardous waste designation, and efforts to do so directly contravene its mandate to promote the safe management of used oil.
- CalRecycle has no authority to remove used oil's hazardous waste designation; this determination falls within the Department of Toxic Substances Control's ("DTSC") purview. The Legislature designated used oil as a hazardous waste 25 years ago. Though the relevant statute has been amended several times, it has always retained used oil's hazardous waste designation.
- Used oil's designation as a hazardous waste has promoted its proper handling—including recycling, which has experienced a dramatic increase since used oil became subject to California's protective standards.
- The U.S. Environmental Protection Agency ("EPA") has recognized that not designating used oil as a hazardous waste may have environmental justice effects and is currently studying those effects.
- The incorporation of deregulation into the Economic Assessment threatens to overly complicate the model by introducing external variables that would expand

the scope and costs of the project. Rather than investing its limited resources in the study of a complicated, extra-jurisdictional issue, the EA's scope should be limited to those areas that fall within CalRecycle's regulatory purview.

- California consistently takes a leadership role when it comes to protecting the public and environment. Removing used oil's hazardous waste designation would erode California's leadership in this area and expose California to unnecessary environmental risks.

I. SB 546 DOES NOT AUTHORIZE A STUDY OF USED OIL'S HAZARDOUS WASTE DESIGNATION

SB 546 does not authorize the LCA to revisit the hazardous waste designation for used oil. To the contrary, SB 546's plain language, the legislative history, its purpose of promoting "the *safe* management of used oil," and used oil's longstanding designation as a hazardous waste demonstrate that SB 546 and the LCA/EA were not intended to provide a backdoor to try to eliminate California's important used oil regulations.

A. SB 546 is Specific and Narrow

SB 546 provides CalRecycle with specific direction with respect to its preparation of the LCA. It identifies with whom the agency is to consult, the scope of the study, and deadlines for delivery to the Legislature.ⁱ To the extent that the Legislature intended for the LCA to evaluate the effectiveness of existing statutory provisions, it provided narrow and specific instructions: SB 546 directs the LCA to evaluate three specific statutory provisions relating to [1] "the testing requirements established in Section 25250.29 of the Health and Safety Code, [2] the tiered fee on lubricating oil established in [Public Resources Code] Section 48650, and [3] the tiered incentive payments established in Section 48652"ⁱⁱ By contrast, the Legislature did not direct the LCA to model the impacts of removing the hazardous waste designation for used oil, and SB 546 provides no such authority. Under norms of statutory construction, "explicit direction for something in one provision, and its absence in a parallel provision, implies an intent to negate it in the second context."ⁱⁱⁱ By the plain language of the statute, the Legislature did not intend for the LCA to revisit used oil's hazardous waste designation.

B. Supported by Legislative History

SB 546's legislative history confirms this interpretation of the LCA. For instance, floor and committee analyses explicitly state that "[u]sed oil in California must be treated as a hazardous waste."^{iv} The legislative history assumes this as the baseline, a limitation within which SB 546 is bound.

C. Purpose to Increase Safety

One of SB 546's main purposes was to increase safety in the handling of used oil. SB 546 requires testing of used lubricating oil by a "registered hazardous waste transporter" before it is shipped.^v This is obviously inconsistent with the notion that SB 546 authorizes a reevaluation of used oil's designation as hazardous waste. Indeed, the LCA is specifically called for to "further promote the safe management of used oil"^{vi} Removing used oil's hazardous waste

designation, and the environmental protections that come with it, would undermine—not promote—public safety.

D. Legislature Would Have Made Reversal Clear

In 1986, the Legislature designated used oil as hazardous waste, finding that “significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the water, land, and air, and endanger the public health, safety, and welfare.”^{vii} The Legislature also found that recycling used oil would conserve irreplaceable resources, and protect the environment, public health, safety, and welfare.^{viii}

Hence, to promote the safe management of oil, California purposely designated it as hazardous waste.^{ix} Since then, this designation (Health & Safety Code Section 25250.4) has been amended numerous times, and each time the Legislature left the classification of used oil as hazardous waste. In enacting this provision, California sent a clear message that used oil should be classified as hazardous waste. After 25 years, if the Legislature intended to reconsider its prior policy determination, it would have done so expressly, and probably would have expressed misgivings about the wisdom of its earlier determination. SB 546 contains no hint of any such misgivings.

II. DTSC REGULATES USED OIL

The proper agency to undertake a study of the hazardous waste designation for used oil is DTSC. The Resource Conservation and Recovery Act (“RCRA”) regulations impose management requirements affecting the storage, transportation, burning, processing, and re-refining of used oil.^x The U.S. EPA authorizes DTSC to carry out the RCRA program in California.

Since becoming the sole RCRA-authorized California state agency in 1991, DTSC has implemented the Hazardous Waste Control Law (“HWCL”) as the exclusive set of hazardous waste handling requirements in this state.^{xi} DTSC ensures compliance with these statutes by issuing permits, inspecting facilities, and registering hazardous waste transporters. DTSC’s primary goal for these facilities is to ensure that they are safely managed so no harm is done to the general public and the environment through an accidental release of a hazardous waste or material.

DTSC oversees permitting, inspection, compliance, and corrective action programs to ensure that people who manage hazardous waste follow state and federal requirements. Facilities that treat, store, and dispose of hazardous waste, including used oil, receive their permits from DTSC. It also oversees hazardous waste generation, transportation, and recycling. In short, DTSC is responsible for monitoring all aspects of hazardous waste, from its generation to ultimate disposal.

A. DTSC Regulates; CalRecycle Implements the Recycling Program

While DTSC is the sole California state agency authorized to *regulate* hazardous waste, including used oil, the scope of CalRecycle’s jurisdiction relative to used oil is narrow and limited to its recycling. Generally, CalRecycle was created to bring together the state’s recycling

and waste management programs. Specific to used oil, the program created by the California Oil Recycling Enhancement (“CORE”) Act of 1992 includes a recycling incentive system, grants and contracts, educational programs. CalRecycle does not have jurisdiction to regulate used oil as hazardous waste; that jurisdiction is *reserved exclusively* for DTSC.

B. Silence Speaks Volumes

Notably, the CORE Act was enacted after the creation of DTSC and after sole authority over hazardous material regulation was vested in DTSC. If the Legislature had intended to divest or share this authority, the language of the CORE Act surely would have indicated as much. The statutes are notably silent to this effect, however, while acknowledging in definitions that a “‘used oil recycling facility’ means a facility that is issued a hazardous waste facilities permit.”^{xii}

III. THE DESIGNATION OF USED OIL AS A HAZARDOUS WASTE HAS PROMOTED ITS PROPER HANDLING AND DISPOSAL

Used oil used to be a major pollution problem in California, particularly with regard to waters.^{xiii} Its regulation as a hazardous waste has promoted its proper handling, disposal, and recycling—greatly reducing this source of pollution.

A. Human-Health Concerns Related to Used Oil

The Office of Environmental Health Hazard Assessment (“OEHAA”) explains some of the human-health concerns related to used oil:^{xiv}

Used crankcase oil contains, in addition to the complex mixture of hydrocarbons and additives present in the formulated product, contaminants associated with its use as an engine lubricant. Sources of contamination include additive breakdown products (e.g., metals); engine “blow-by” (i.e., material which leaks from the engine combustion chamber into the crankcase where the oil resides); burnt oil, metal particles from engine wear; and incomplete products of combustion of gasoline (U.S. EPA, 1984). Used oil contains small amounts of arsenic, cadmium, chromium, lead and nickel. These substances have been shown to produce acute and chronic toxicity in aquatic organisms at extremely low levels (U.S. EPA, 2000a). In addition, these substances have been associated with a wide range of toxic effects in humans, including death following ingestion of large doses, cancer, and skin irritation.

OEHHA describes the danger to our waters: “[c]ertain constituents of used oil, notably the PAHs [polycyclic aromatic hydrocarbons] and metals, have a tendency to accumulate in sediments and enter into the food chain.”^{xv}

B. Positive Effects of Regulation

California's decision to regulate used oil as a hazardous material has promoted oil being collected and recycled into useful products. Indeed, according to OEHHA, in 2004 "about 58 percent of the 150 million gallons of lubricating oil sold in California was recycled."^{xvi} In states in which used oil is not regulated as a hazardous waste, used oil is often just burned as fuel in industrial furnaces and boilers.^{xvii}

As an advantage, this classification allows for better tracking of the used oil volumes relative to other states precisely because it is subjected to tighter regulation, and it offers a higher degree of environmental protection.^{xviii} Before California managed used oil as a hazardous waste, there were numerous locations with extensive pollution related to improper used oil handling; since California began managing used oil as a hazardous waste, no such locations have been observed.^{xix}

The classification as a hazardous waste made it illegal to dispose of used oil in sewer and drain systems, bodies of water, the landfill, or by burning for fuel.^{xx} It also defined purity standards for recycled oil and reclassified used oil as a hazardous waste material.^{xxi} As part of the permitting and certification process to be able to accept used oil as hazardous waste, a facility must submit documentation and go through a public comment period.^{xxii}

Over the last three decades, the volumes of collected used oil reported to the State have increased from 37.9 Mgal to 115.3 Mgal in 2006.^{xxiii} While the volume of oil sales has also increased during that time period, the fact that the percentage of used oil collected has generally increased over a similar period illustrates the effectiveness of the State's Used Oil Program, which includes its designation as a hazardous waste.^{xxiv}

C. Negative Effect of Deregulation

Deregulation would set back this success story and undermine the investments made that have enabled California to realize its policy goals.

IV. THE FEDERAL GOVERNMENT IS ANALYZING THE ENVIRONMENTAL JUSTICE IMPACTS OF ITS RULES ON USED OIL

RCRA does not generally regulate used oil as a hazardous waste.^{xxv} But that may change as the EPA becomes more aware of the environmental and social impacts of this decision. In its Draft Environmental Justice Methodology for the Definition of Solid Waste Final Rule, the EPA proposes to study the environmental justice effects of RCRA exemptions—including the exemption for used oil specifically.^{xxvi} Driving this study is a recognition that RCRA exemptions may have disproportionate impacts on minority and disadvantaged communities.

So, while the EPA has not begun formal rulemaking to regulate used oil as a hazardous waste, that is one possible outcome of the study. California should not be moving backward on environmental protection in this area at just the time when the federal government is recognizing the potential risks, including environmental justice risks, of not regulating used oil as a hazardous waste.

V. ECONOMIC ASSESSMENT

Adding the hazardous waste designation to the list of topics in the EA would be a significant expansion of the LCA/EA's scope—a considerable effort and expense that is not justified. To assess the economic impacts of removing the designation, it would be necessary to investigate the cost savings to various industry participants resulting from the relaxation of technical requirements for waste handling and storage. Then the analysis would need to identify the uses of used oil that would be allowed but are not currently permitted before it could opine on the impact on the price of used oil and the incidence of the change in regulation.

In addition, the EA should account for environmental externalities. Removal of the hazardous waste designation might result in more soil and water contamination from the handling, storage and new uses of used oil. After measuring the incremental contamination, the EA would need to place a value on it.

In sum, adding the hazardous waste designation to the LCA/EA would significantly increase the costs and efforts associated with the study. Since CalRecycle cannot change the hazardous waste designation, this effort and expense is unjustified and would only detract from the other topics that the LCA/EA should analyze.

VI. CALIFORNIA DOES NOT STAND ALONE—AND EVEN IF CALIFORNIA DID, IT STILL ACHIEVES A BETTER ENVIRONMENTAL OUTCOME

A. Regulated by Other States

California does not stand alone in treating used oil with heightened scrutiny. All states regulate oil in some manner, and a number of states have enacted regulations that are stricter than federal requirements, including the areas of registration, permitting, recordkeeping, reporting, and recycling. For instance, in Massachusetts, a state with a history of regulating used oil as hazardous, any petroleum product, when spilled, discarded, abandoned or otherwise released to the environment, is listed hazardous waste.^{xxvii}

B. Regulated by Other Countries

Other countries also regulate used oil as a hazardous waste. For example, in Germany, used oil is treated as a hazardous waste, and the designation has been anything but a barrier. With the designation in place, 94% of used oil is recovered. Consumers in Germany exhibit a high level of interest in recycling.^{xxviii}

C. California Is a Leader

California always has been a leader in promoting a safe environment, forging ahead of other states and the federal government. That other states do not designate used oil as a hazardous waste is no reason for California to embrace deregulation. Rather, California should continue to lead the nation in protecting the environment and human health with sound, forward-looking regulations.

VII. CLOSING

In closing, we appreciate the opportunity to provide these comments, and look forward to working on this important initiative. We have been participating and will continue to participate in the stakeholder session on this issue, as we believe frequent engagement with the stakeholder community is important.

Yours sincerely,

WORLD OIL CORP.

Christine E. Mirabel

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- i Pub. Res. Code, § 48651.5, subd. (b).
ii Pub. Res. Code, § 48651.5, subd. (b)(1)(C), (D).
iii *See, e.g., Wildlife Alive v. Chickering*, 18 Cal. 3d 190 (Cal. 1976) (using the doctrine to conclude that CEQA applies to the Fish and Game Commission).
iv *See, e.g., Senate Rules Committee, Bill Analysis; SB 546*, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0501-0550/sb_546_cfa_20090916_144834_sen_floor.html.
v Health & Saf. Code, § 25250.29.
vi Pub. Res. Code, § 48651.5, subd. (b)(1).
vii Health & Saf. Code, § 25250(a).
viii Health & Saf. Code, § 25250(b).
ix Health & Saf. Code, § 25250.4.
x 40 C.F.R. § 279.
xi *See* Health & Saf. Code, Division 20, Chapter 6.5.
xii Pub. Res. Code, § 48624.
xiii *See, e.g., Levin, Superfunds not Super Fast at Toxic Cleanup*, L.A. Times (April 18, 1985) part. 9, p. 1 [“‘The problem with used oil is it’s never (just) used oil,’ said Jim Smith, bond enforcement manager for the Southern California section of the health department’s toxic substances control division.”]; *Stewart, Killed at Plant; Dead Man’s Dairy Spurs D.A. Probe*, L.A. Times (April 17, 1985) part 2, p. 1 [describing investigation after accident at disposal facility where “highly combustible materials that were labeled as ‘used oil’ or ‘diesel’ to avoid filing a hazardous substance manifest with state authorities”].
xiv Office of Environmental Health Hazard Assessment, *Characterization of Used Oil in Stormwater Runoff in California* (Sept. 2006) at p. 3.
xv *Id.* at p. 5.
xvi *Id.* at p. iii.
xvii *See, e.g., Vermont Department of Environmental Conservation, Environmental Fact Sheet – Burning Used Oil Fuel*, available at http://www.anr.state.vt.us/dec/ead/sbcap/pdf/fs_usedoilburning_wm.pdf.
xviii Contractor’s Report to the Board: *Improving Used Oil Recycling in California*, produced by Lawrence Livermore National Laboratory (May 2008) at 27.
xix *Id.* (Jim Ennis, personal communication, April 9, 2008).
xx *Id.* at 42.
xxi *Id.*
xxii *Id.* at 20.
xxiii *Id.* at 11.
xxiv *Id.*
xxv *See, e.g., 40 C.F.R., § 279.10*

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- xxvi Environmental Protection Agency, Draft Environmental Justice Methodology for the Definition of Solid Waste Final Rule (Jan. 13, 2009) at pp. v, 21-22.
- xxvii 310 CMR 30.131.
- xxviii “Study of Used Motor Oil Recycling in Eleven Selected Countries” by the Used Oil Working Group, November 1997, API.