



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

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re. SB 546: Economic Overlay to the Used Oil Life Cycle Assessment

Dear Don, Thad, and Mark:

Thank you for your letter dated December 14, 2010, regarding your concerns associated with the implementation of SB 546, particularly the inclusion of an economic overlay to the Life Cycle Assessment (LCA). We appreciated the opportunity to discuss these issues in detail when we met with you on November 16, 2010. I am also pleased to see that you will be attending our public stakeholder meeting on January 20-21, 2011 and am confident that this initial meeting is designed in a manner that will provide for robust stakeholder input. CalRecycle is committed to continuing this open dialogue with stakeholders throughout the course of the project.

Your December 14, letter posed four interrelated questions, the last of which asks for CalRecycle's legal basis for concluding that an economic component to the environmental LCA is required by SB 546. In response to that request, my answer incorporates the legal analysis on this issue prepared by our counsel.



First, for various public contracting reasons, the economic analysis will not be a task within the LCA; it will be developed separately in coordination and conjunction with the LCA. I appreciate that this distinction does not change the concerns or questions you raise, nor does it change the reasons for our decision. Our determination that an economic overlay to the LCA is required by SB 546, Section 13 (also cited herein as Public Resources Code (PRC) § 48651.5(b)(1)) is based on the rules of statutory construction.

Whether an economic component is appropriate in this case is governed by the legislative intent of Section 13. Legislative intent is fundamental to statutory construction. All other rules of statutory construction are subject to this controlling principle. Where the legislature has expressly declared its intent the courts must accept its declaration using the plain meaning of the statutory words, reading the words in context, and considering the nature and purpose of the enactment¹.

PRC § 48651.5(b)(1) expressly states its legislative intent as follows: to review the changes in policy and program enacted in SB 546². This intent is clear and well founded, for SB 546 is a sweeping bill which modifies every article within the California Oil Recycling Enhancement Act (Act). SB 546 adds, amends, or deletes 25 code sections, many of which have direct or indirect economic consequences on the used lubricating and industrial oil management process, from generation through collection, transportation, and reuse alternatives, all of which are important parameters of the LCA. For example, Article 6. *Financial Provisions* contains seven SB 546 changes, including changes to the rerefined base lubricant fee in PRC § 48650 and changes to the incentive payments discussed in PRC § 48652³.

Statutory ambiguity is a prerequisite to the use of extrinsic construction aids⁴. The fact that parties with competing interests express differing opinions about the meaning of statutory language does not make the statute ambiguous. The Legislature is presumed to have meant what it said; if the language is clear it must be given its plain meaning⁵. In such cases resorting to extrinsic aids, including legislative discussions, transcripts of a disbanded board or secondary publications, to second guess the Legislature's plain meaning would be improper. As discussed above, the meaning of the language in Section 13 is clear, therefore, CalRecycle did not rely on extrinsic aids to determine whether an economic overlay is appropriate, nor does it offer any here.

In conclusion, there is nothing in Section 13 that precludes an economic overlay to the LCA, and your letter cites no authority prohibiting same, as indeed none exists. Therefore, there is no compelling

¹ 58 California Jurisprudence (Cal Jur) 3rd, Statutes §§ 90, 91, 92.

² PRC § 48651.5(b)(1) also cites the further promotion of the safe management of used oil as an additional Legislative intent, however, because this issue is not relevant to whether or not PRC § 48651.5(b)(1) authorizes an economic overlay to the LCA it is not relevant to this discussion.

³ PRC §§ 48650 and 48652 impact the Act's policy and programs well beyond the used oil collection rate evaluations required by PRC § 48651.5(b)(1)(C).

⁴ 58 Cal Jur 3rd, Statutes §§ 90, 91, 92, 94.

⁵ 58 Cal Jur 3rd, Statutes §§ 90, 91, 92, 94.

reason to deny the Legislature information pertinent to its express intent; conversely, statutory rules of construction and common sense require providing this information. Accordingly, after consideration of these facts and input received from its stakeholders during several public meetings last year and in additional associated discussions with stakeholders, CalRecycle determined that an economic overlay to the LCA is necessary and required by Section 13. CalRecycle reported this determination to stakeholders at its October 2010 public meeting.

As I have told other stakeholders as well, CalRecycle is acutely aware of the conflicting stakeholder opinions on how to best proceed with this important project. This first stakeholder meeting is oriented to obtain stakeholder input and, where feasible, consensus on how to do this. At the same time, CalRecycle is ultimately responsible for fulfilling the requirements of SB 546 and reporting to the Legislature. The CalRecycle program staff responsible for this project have been and will continue to be in constant consultation with our Legal and Legislative Offices to ensure that we properly fulfill these requirements.

Once again, thank you for your comments. I hope this further clarifies the discussion we held with you in November. I look forward to further discussion on January 20-21.

Sincerely,



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