

December 14, 2010

Ms. Margo Reid Brown
Acting Director
CalRecycle
801 K Street, 18th Floor
Sacramento, CA 95814

Mr. Howard Levenson, Ph.D.
Assistant Director
CalRecycle
801 K Street, 18th Floor
Sacramento, CA 95814

Ms. Lisa Macumber
Deputy Director for Legislation
CalRecycle
801 K Street, 18th Floor
Sacramento, CA 95814

Dear Margo, Howard and Lisa:

Thank you so much for meeting with us, as well as with our lobbyists, Rand Martin and Deborah Mattos, on Tuesday, November 16. We really appreciated your time, felt it was a very candid meeting, and look forward to more such meetings in the future.

As we indicated at the meeting, those in attendance represented three of the nation's current five re-refiners of used oil: Evergreen (California), Bango Oil (Nevada) and Safety-Kleen (Indiana and Breslau, Canada). The other two re-refiners, Heartland Petroleum and Universal Lubricants (Kansas), as well as a European re-refiner with offices in Pennsylvania (Puralube), support the positions taken at the meeting and in this letter.

As we expressed at the meeting, we continue to believe strongly, without any posturing, that engaging in an "eco-efficiency analysis" or "economic analysis" goes beyond the authority provided for in SB 546. SB 546, in Section 13, requires CalRecycle to do three things:

(A) contract with a third-party consultant with recognized expertise in life cycle assessments to coordinate a comprehensive life cycle analysis of the used lubricating and industrial oil management process, from generation through collection, transportation, and reuse alternatives;

(B) solicit input from used oil stakeholders in defining the scope and design of the life cycle analysis, in conducting the life cycle analysis, and in issuing a draft report for public review and comment; and

(C) evaluate the positive and negative impacts of the testing requirements, the tiered fee on lubricating oil and the tiered incentive payments for re-refining included in SB 546 on used oil collection rates.

Nowhere in SB 546 does it specify that CalRecycle is to conduct an “eco-efficiency analysis” or an “economic analysis” of the used oil process or re-refining. Significantly, the evaluation of the positive and negative impacts of SB 546 on used oil collection rates is a separate item to be conducted by CalRecycle and is not included in the scope of the life cycle analysis.

With that in mind, we have the following questions for CalRecycle:

1. Does CalRecycle have any source to which it can point indicating that an “eco-efficiency analysis” or an “economic analysis” is included within the terms “life cycle assessment” or “life cycle analysis”?

We have searched broadly for definitions and descriptions of “life cycle assessment” and “life cycle analysis,” consulted with our expert advisors at Environ and concluded that the two terms are synonymous and that neither term includes or alludes to an “economic analysis”. Wikipedia, for example, says a life cycle assessment is “also known as life cycle analysis, ecobalance, and cradle-to-grave analysis. . .”¹ The U.S. EPA uses the terms interchangeably on its web site (in the attached article), and the summary of the life cycle analysis does not include an economic or eco-efficiency analysis.² The articles submitted by API’s Used Oil Task Force in its written comments to CalRecycle draw a distinction between a life cycle assessment and an eco-efficiency analysis. One article, titled “Flint Group Flexographic Products: Solvent Platemaking Eco-Efficiency Analysis,” describes the differences between a life-cycle assessment and an eco-efficiency analysis³ and another article, titled “4 types of drinking cups used on events: Life Cycle Assessment and Eco-Efficiency Analysis,” notes differences, too, including that life cycle assessments are conducted in accordance with ISO 14040 standards but there “do not exist ISO standards for eco-efficiency studies. . .”⁴

Even CalRecycle’s own web site summarizing the requirements of SB 546 uses the terms life cycle analysis and life cycle assessment interchangeably (the statutes required a third-party consultant with recognized expertise in life cycle assessments to coordinate a comprehensive life cycle analysis), and does not reference any economic

¹ See http://en.wikipedia.org/wiki/Life_cycle_assessment.

² See <http://www.epa.gov/nrmrl/lcaccess/lca101.html> and <http://www.epa.gov/nrmrl/lcaccess/pdfs/600r06060.pdf>.

³ Annex D, page 65, to API’s Used Oil Task Force comments. See <http://digital.realviewtechnologies.com/?xml=flexomag.xml&iid=18930&startpage=5&crd=36.1>

⁴ Annex F to API’s Used Oil Task Force materials. See <http://www.mech.kuleuven.be/lce2006/036.pdf>.

analysis⁵ And it is significant that CalRecycle's initial Scope of Work for the life-cycle analysis did not contemplate an economic or eco-efficiency analysis.

As a result, because life cycle assessments and life cycle analyses are synonymous, we shall refer to them as interchangeably as an "LCA" or "LCAs" in this letter.

2. Does CalRecycle have any materials from the SB 546 legislative discussions indicating that an economic analysis or eco-efficiency analysis was contemplated, or considered to be within the definition of an LCA?

As you know, Evergreen was a sponsor of SB 546 and has indicated an economic or eco-efficiency analysis was never mentioned throughout the legislative process. Also, there is nothing in the legislative history that can be construed to include an economic analysis as part of the LCA. The only issue even close to an economic analysis was the requirement, mentioned above, that CalRecycle must analyze the effect of SB 546 on used oil collection, which, as noted above, is separate and apart from the LCA. Safety-Kleen, also intimately involved in the legislative process for SB 546 and alternative legislation, and the lobbyists for both Evergreen and Safety-Kleen, have no recollection of any such economic analysis being mentioned either. The transcript of the hearing of the February 18, 2009 Strategic Policy Development Committee of the California Integrated Waste Management Board ("CIWMB") at which an LCA was first proposed, and ultimately unanimously rejected as unnecessary by the CIWMB, includes no language suggesting an economic or eco-efficiency analysis was contemplated.⁶ If you have some materials or information from the legislative process that we do not have demonstrating an economic or eco-efficiency analysis was contemplated within the LCA, we would appreciate receiving it.

We have received a copy of the September 23, 2010 letter from Senator Lowenthal to CalRecycle, written after lobbyists from Demenno/Kerdoon ("DK") and the Western States Petroleum Association ("WSPA") met in Senator Lowenthal's office, in which he indicates "it is in the state's best interest to include an economist on the principal LCA team and the peer review team in order to fully consider the market and regulatory impacts of different policy options." With all due respect to Senator Lowenthal, his letter of September 23 has no force of law. He has every right to express his opinion that an economist should be included. However, we believe his letter has no singular bearing on the definition of an LCA, especially when it is contradictory to the universally accepted definition of an LCA.

Please note that we believe the concept of an LCA was first raised by WSPA with the CIWMB around January or February 2009. The issue was discussed at the CIWMB meeting on February 18, 2009, individual board members indicated another LCA was not

⁵ See <http://www.calrecycle.ca.gov/usedoil/PolicyLaw/LifeCycle.htm>.

⁶ See <http://www.calrecycle.ca.gov/archive/IWMBMtgDocs/mtgdocs/2009/02/00024376.pdf>.

necessary considering the number of studies that had been conducted on re-refining and the CIWMB unanimously voted not to pursue another LCA on re-refining. . Unsuccessful at that effort, WSPA sought and obtained the inclusion of an LCA in SB 546 at the end of August 2009 as a condition to removing its opposition to SB 546. WSPA was intimately involved in negotiations regarding the language of SB 546 requiring an LCA. If WSPA had intended an economic or eco-efficiency analysis as part of an LCA, it should have made that clear in the language of SB 546 or SB 579, the clean-up bill to SB 546, which was enacted this year.

3. Why has the inclusion of an economic or eco-efficiency analysis been resolved before the stakeholders' meeting, when none of the other issues relating to the scope of the LCA have been resolved and are pending the stakeholders' meeting in January 2011?

CalRecycle's initial SOW for the LCA practitioner did not contemplate an economic or eco-efficiency analysis. After it was issued, various members of WSPA and API's Used Oil Task Force met with CalRecycle on August 25, 2010, in which they argued an "analysis" was different than an "assessment." During that meeting, CalRecycle staff, we are told, told them the LCA "will be more than a typical LCA – to include a cost/benefit analysis."

This conclusion was reached well before any stakeholders' comments had been received by CalRecycle – in fact, it was reached well before the deadline for any stakeholders' comments, well before the receipt of any letter from Senator Lowenthal's office and certainly well before any stakeholders' meeting.

As you know, SB 546, other than requiring that there be an LCA of the used lubricating and industrial oil management process, from generation through collection, transportation, and reuse alternatives, does not specify what environmental impact is to be evaluated – i.e., greenhouse gasses emissions, resource depletion, terrestrial nitrification, acidification or toxicity, just to name a few environmental impacts sometimes analyzed in a used oil LCA. These issues have been postponed for the stakeholders' meeting. So, why did CalRecycle decide the issue of economic analysis before the stakeholders' meeting when all of the other issues relating to the scope of the LCA are pending the stakeholders' meeting?

4. In light of the above, what is the legal basis for concluding an "economic component as a complement to the environmental LCA is required" by SB 546?

We appreciate the dilemma that state agencies frequently find themselves in when seeking to execute exactly what the Legislature and the Governor may have intended and understand why you need a legal analysis to better ascertain the intent. However, given the lack of legislative history regarding an economic analysis as well as the universally accepted definition of an LCA that does not include an economic analysis, we would

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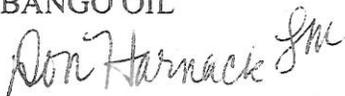
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greatly appreciate seeing the CalRecycle legal analysis that reached a different conclusion.

Again, we really appreciated the opportunity to meet with all of you last week, and we look forward to working with you on the LCA. We have serious concerns, and we have faith that together we can resolve them.

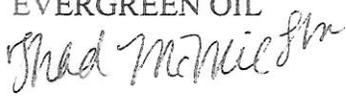
Sincerely yours,

BANGO OIL



By: Don Harnack
Sales/Marketing Manager

EVERGREEN OIL



By: Thad McNeil
Vice President, Product
Sales

SAFETY-KLEEN



By: Mark Phariss
Vice President &
Assistant General
Counsel

Cc: Ms. Shirley Willd-Wagoner
Division Chief
CalRecycle
801 K Street, 18th Floor
Sacramento, CA 95814

Senator Alan Lowenthal
State Capitol, Room 2032
Sacramento, California 95814

Mr. Michael Maloney
Regional Sales Manager
Universal Lubricants
2824 N. Ohio
P. O. Box 2920
Wichita, KS 67201

Ms. Erica N. Snedegar
Vice President of Sales and Marketing
Heartland Refinery Group
4001 E. Fifth Avenue
Columbus, OH 43219

Mr. Todd White
Executive Vice President
Puralube
435 Devon Park Drive, Building 200
Wayne, PA 10987

Mr. Rand Martin
Rose & Kindel
915 L. St. #1210
Sacramento, CA 95814

Ms. Deborah Mattos
Mattos & Associates
1015 K St. #200
Sacramento, CA 95814