



Linda S. Adams
Acting Secretary for
Environmental Protection



Department of Toxic Substances Control

Deborah O. Raphael, Director
700 Heinz Avenue
Berkeley, California 94710-2721



Edmund G. Brown Jr.
Governor

May 26, 2010

USPS AND ELECTRONIC MAIL

Stephen Brown
Society of Automotive Engineers (SAE) International
2599 Croffhill Drive
Auburn Hills, Michigan 48326-3518
(248)485-6103
scb-sae@att.net

REQUEST FOR FORMAL OPINION ON CALIFORNIA HEALTH AND SAFETY CODE ARTICLE 13.5 "MOTOR VEHICLE BRAKE FRICTION MATERIALS"

Dear Mr. Brown:

Thank you for your interest in California Health and Safety Code Article 13.5. Your continued cooperation is essential in the Department of Toxic Substances Control's (DTSC) interpretation and enforcement of this Article. Your questions to DTSC were numerous, yet you indicated that you would prefer this information early as to guide your organization. Therefore a partial summary is included below.

You have asked how California Health and Safety Code section 25250.50 (f) defines "motor vehicle" and whether that definition includes trailers. All trailers, including tractor trailers and boat trailers, are captured by the definition of "vehicle" under the California Vehicle Code § 670. The term "motor vehicle" used in Health and Safety Code § 25250.50 (f) is defined using the definition in Vehicle Code § 670. Therefore, the term "motor vehicle" in Health and Safety Code § 25250.50 (f) includes trailers. Some trailers may be exempt if they meet the specific exemption requirements set forth in Health and Safety Code § 25250.55.

Regarding the restrictions of elemental copper in Health and Safety Code §§25250.52 and §25250.53 you inquired: for purposes of determining the total weight of brake friction material, does the statutory language exclude the backing layer, and further does the statutory language restrict the copper content to elemental copper only. The language of the code section should be construed in

a way that follows legislative intent and supports the new policy of the State of California. For these reasons, the applicable text of the Health and Safety Code should be properly interpreted to 1) include only the friction materials when calculating the percentage of copper by weight and 2) construe the term “copper” to mean all forms of copper including elemental copper and copper compounds.

With regards to whether the provisions of Health and Safety Code, Division 20, Chapter 6.5, Article 9.2, for cost reimbursement apply to the fee required under Health and Safety Code § 25250.54 (j), the short answer is “no.” The provisions of Health and Safety Code, Division 20, Chapter 6.5, Article 9.2, only apply to certain enumerated sections of the Health and Safety Code. The provisions of Health and Safety Code §§ 25250.50 et seq. are not contained in this list of sections of the Health and Safety Code subject to cost reimbursement.

You inquired as to whether the application extension fee assessed by DTSC under Health and Safety Code § 25250.54 (j) includes staff time for DTSC, State Air Resources Board, State Water Resources Control Board, Cal/EPA Secretary, and travel expenses for the Advisory Board and state agency’s staff. Health and Safety Code § 25250.54(j) requires DTSC to assess a fee for the extension application that will cover the “actual costs” of implementing Health and Safety Code § 25250.54. The implementation of § 25250.54 includes all the processes, consultations, evaluations and determinations set forth in that section. DTSC may use its own billing system to capture its costs in staff hours and overhead costs. The most efficient way for DTSC to reimburse other state entities for the costs they incur in these processes is through an interagency agreement. This interagency agreement may also extend to reimbursement for travel by members of other state agencies.

You inquired about the effects of Proposition 26 on the Health and Safety Code § 25250.54(j.) Proposition 26 does apply to Health and Safety Code § 25250.54(j.) because the Senate Bill was signed within the period specifically covered by Proposition 26. However, because the fee in Health and Safety Code § 25250.54(j) covers the cost of a specific benefit conferred on the applicant equivalent to the reasonable costs of the State in processing the applicant’s request it falls squarely within the exemption listed by California Constitution, Article XIII A, section 3 (b)(1). Therefore Proposition 26 applies to, but does not affect, Health and Safety Code § 25250.54(j.)

Thank you for your interest in the new motor vehicle brake friction material legislation. DTSC will address the remainder of your questions shortly. If you have questions or concerns about this letter or its contents please do not hesitate to call.

Very truly yours,

Stephanie C. Lai

CC
Evelia Rodriguez
Senior Hazardous Substance Engineer
Pollution Prevention and Green Technology
1101 "I" Street
Sacramento, CA 95812-0806

Suzanne Davis
Senior Hazardous Substance Engineer
Pollution Prevention and Green Technology
1101 "I" Street
Sacramento, CA 95812-0806