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Mr. James Black
Excise Taxes Section

March 13, 1992

Janet Vining
Tax Counsel

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This is in response to your January 23, 1992 memorandum concerning a possible inconsistency between two sections of the Oil Spill Prevention and Response Act.

Specifically, Government Code Section 8670.48(e) requires every operator of a pipeline to pay an oil spill response fee for each barrel of crude oil transported out of the state by pipeline. However, the oil spill response fee is imposed on exported crude oil only when the total cumulative year-to-date barrels of crude oil transported outside the state by all fee payers by vessel or pipeline exceeds 6 percent by volume of the total barrels of crude oil and petroleum products subject to the oil response fee under Sections 8670.48(a), (b), and (c) for the prior calendar year.

In addition, Revenue and Taxation Code Section 46101 requires that every person who operates a pipeline across, under, or through marine waters pursuant to Government Code Section 8670.2 shall register with the Board. Section 8670.2 sets forth Legislative findings that the billions of gallons of crude oil and petroleum products that are transported across and through the marine waters of the state each year pose a significant threat to the environment from spills into marine waters.

You question whether a company like Pipeline Company (), which transports crude oil out of state by pipeline, but not through marine waters, is required to be registered with the Board. For the following reasons, I conclude that Pipeline Company is not required to register with the Board, but may nonetheless be subject to the oil spill response fee.

A company that transports crude oil out of state by pipeline, but not through marine waters, is not required to register with the Board or pay the administration and prevention fee. However, the company is required to file a response fee return and pay the response fee if the conditions of Gov. Code Section 8670.48(b) are met (year-to-date cumulative barrels of oil transported out of state by all fee payers by vessel or pipeline exceeds a total barrels of crude oil and petroleum products prior to the year).

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Section 8670.48(e) clearly imposes a fee, under certain circumstances, on every operator of a pipeline for each barrel of crude oil transported out of the state by pipeline. The circumstances under which this fee is imposed are set forth in Section 8670.48(g). I note that, while Section 8670.48(b) imposes the oil spill response fee on pipeline operators based on the number of barrels of petroleum products transported into the state by means of a pipeline operating across, under, or through the marine waters of the state, Section 8670.48(e) simply refers to barrels of crude oil "transported out of the state by pipeline", with no mention of the pipeline operating across, under, or through marine waters. Based on the principles of statutory interpretation, we must assume that the Legislature intended this different language to have a different result, i.e., that the fee imposed by Section 8670.48(e) could be imposed on crude oil transported out of state by means of a pipeline even if the pipeline did not travel through marine waters.

Government Code Section 8670.3(m) defines "pipeline" broadly to mean "any pipeline used at any time to transport oil". [redacted] operates a pipeline that comes within the Section 8670.3(m) definition. In addition, that pipeline is used to transport crude oil out of the state, thus bringing it within the scope of Section 8670.48(e). Therefore, if the condition described in Section 8670.48(g) is met, [redacted] will be liable for the oil spill response fee, based on the barrels of crude oil it transports out of the state by pipeline.

You are correct in stating that Revenue and Taxation Code Section 46101 does not require [redacted] to register with the Board, since that section only applies to persons who operate pipelines across, under, or through marine waters. However, the fact that [redacted] does not have to register pursuant to Section 46101 does not mean that the Board cannot require [redacted] to provide certain information. "Feepayer" is defined in Revenue and Taxation Code Section 46013 to mean "any person who may be liable for the payment of a fee imposed by either Section 8670.40 or 8670.48 of the Government Code." As discussed above, [redacted] may be liable for the fee imposed by Section 8670.48, and is thus a "feepayer".

Revenue and Taxation Code Section 46151(c) requires each "feepayer" to provide an annual information return, in the form prescribed by the Board, showing the information required to be reported by Section 8670.48 of the Government Code, as well as any other information that the Board determines is necessary for it to administer the oil spill fees. Since [redacted] is a feepayer, the Board may require it to file the annual information return.

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The difficulty presented by the language of Section 46101 is that a company like _____, which exports crude oil by means of a pipeline, but not through marine waters, does not have an affirmative duty to register with the Board, and the Board may therefore have difficulty identifying such pipeline operators. However, this does not diminish the responsibility of the operators of such pipelines to pay the fee imposed by Section 8670.48(e).

As you requested, I have written to _____ explaining the current application of the oil spill response fee. A copy of that letter is attached.

Please let me know if you have any questions or if I can be of further assistance.

JV:wk
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Attachment

cc: Mr. E. V. Anderson
Mr. Ed King
Mr. Monte Williams
Mr. Doug Shepard
Mr. S. Abel
Mr. Bill Kimsey
Mr. Lawrence Augusta
(all w/attach.)