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Proposed Regulation Order
Portable Outboard Marine Tanks and Components

Article 6 Portable Outboard Marine Tanks and Components

2468. Applicability

Except as provided in Section 2468.4, this article applies to any person who sells, supplies, offers for sale, advertises or manufactures for sale and use in California any of the following individually or all of the following as a complete system or any combination of the components: a portable outboard marine tank; a portable outboard marine tank cap; a portable outboard marine tank fuel hose; or a portable outboard marine tank primer bulb.

NOTE:

Authority cited: Sections 39600, 39601, 43013, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.1. Certification and Compliance Performance Standards and Test Procedures for Portable Outboard Marine Tanks and Portable Outboard Marine Tank Self Sealing Caps

- (a) Every portable outboard marine tank produced on or after January 1, 2011, and every portable outboard marine tank self-sealing cap produced on or after January 1, 2010, that is manufactured for sale, advertised for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce must be certified under the procedures in this Section 2468.1.
- (b) The criteria for obtaining certification, including all test procedures for determining certification and compliance with the standards applicable to portable outboard marine tank self-sealing caps or portable outboard marine tanks are set forth in "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components", adopted (INSERT DATE), as incorporated by reference herein.
- (c) Compliance with the Performance Standards in this Section does not exempt portable outboard marine tanks or portable outboard marine tank self-sealing caps from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the Air Resources Board test for or determine compliance with such other statutes or regulations.

2468.2. Certification and Compliance Performance Standards and Test Procedures for Portable Outboard Marine Tank Fuel Hoses and Portable Outboard Marine Tank Primer Bulbs

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- (a) Every portable outboard marine tank fuel hose produced on or after January 1, 2010, and every portable outboard marine tank primer bulb produced on or after January 1, 2011 that is manufactured for sale, advertised for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce must be certified under the procedures in this Section 2468.2.
- (b) The criteria for obtaining certification, including all test procedures for determining certification and compliance with the standards applicable to portable outboard marine tank fuel hoses and portable outboard marine tank primer bulbs are set forth in "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components", adopted (INSERT DATE), as incorporated by reference herein.
- (c) Compliance with the Performance Standards in this Section does not exempt portable marine tank fuel hoses or portable outboard marine tank primer bulbs from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the Air Resources Board test for or determine compliance with such other statutes or regulations.

2468.3 Prohibitions

- (a) Except as provided in Sections 2468.4 or 2468.5, no person may manufacture for sale, advertise for sale, sell, or offer for sale in California, or introduce, deliver, or import into California a portable outboard marine tank, portable outboard marine tank self-sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb that is subject to any of the standards in Section 2468.1 or Section 2468.2 and is either
 - (1) not certified under Section 2468.1 or Section 2468.2, as applicable; or
 - (2) certified under Section 2468.1 or Section 2468.2, as applicable but is not in compliance as determined through the applicable Performance Standard Test Procedures in Section 2468.8
- (b) Every portable outboard marine tank, portable outboard marine tank self-sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb identified in (a) is a separate violation of this Article.
- (c) The manufacturer of a portable outboard marine tank fuel hose, portable outboard marine tank self-sealing cap, portable outboard marine tank primer bulb or portable outboard marine tank that fails to meet one or more of the requirements in Section 2468.6 is subject to a separate violation of this Article for each failing unit produced.

2468.4. Exemptions

- (a) This article does not apply to any portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb manufactured and delivered to a California retail outlet prior to the dates governing the performance standards listed in "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components, adopted (INSERT DATE)."

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- (b) This article does not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb that does not comply with the Performance Standards specified in Sections 2468.1 (a) or 2468.2 (a) as long as the manufacturer or distributor can demonstrate that: (1) the portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb is intended for shipment and use outside of California; and (2) that the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb is not distributed to or within California. The exemption in this subsection (b) does not apply to portable outboard marine tanks, portable outboard marine tank self sealing caps, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulbs that are sold, supplied, or offered for sale by any person to retail outlets in California.

NOTE:

Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).
Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.5. Innovative Products

- (a) The Executive Officer may exempt a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb from one or more of the requirements of Section 2468.1 or 2468.2 if a manufacturer demonstrates by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative ROG emissions below the highest emitting representative portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb in its product category as determined from applicable testing.
- (b) For the purposes of this Section, "representative tank" or "representative cap" or "representative fuel hose" or representative "primer bulb" means a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb which, at the time of application in (c) of this Section, meets the Performance Standards specified in Sections 2468.1 (a) or Section 2468.2 (a) or the Certification Requirements specified in "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components (INSERT DATE)."
- (c) A manufacturer (applicant) must apply in writing to the Executive Officer for an innovative product exemption claimed under subsection (a). The application must include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test procedures used to generate the data. In addition, the applicant must provide any information necessary to enable the Executive Officer to establish enforceable conditions for granting the exemption. All information including

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proprietary data submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, Sections 91000-91022.

- (d) Within 30 days of receipt of the exemption application the Executive Officer shall determine whether an application is complete as provided in section 60030(a), Title 17, California Code of Regulations.
- (e) Within 90 days after an application has been deemed complete, the Executive Officer will determine whether, under what conditions, and to what extent, an exemption from the requirements of Sections 2468.1 or 2468.2 will be permitted. The applicant and the Executive Officer may mutually agree to a longer time period for reaching a decision. An applicant may submit additional supporting documentation before a decision has been reached. The Executive Officer will notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from use of the product will meet the emissions reductions specified in subsection (a), and that such emissions reductions can be enforced.
- (f) In granting an innovative product exemption for a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb, the Executive Officer shall specify the test procedures for determining conformance to the conditions established. The test procedures may include criteria for reproducibility, accuracy, and laboratory procedures.
- (g) For any portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb for which an innovative product exemption has been granted pursuant to this section, the manufacturer shall notify the Executive Officer in writing at least 30 days before the manufacturer changes a product's design, delivery system, or other factors that may affect the ROG emissions during recommended usage. The manufacturer must also notify the Executive Officer within 30 days after the manufacturer learns of any information that would alter the emissions estimates submitted to the Executive Officer in support of the exemption application.
- (h) If the Performance Standards specified in Section 2468.1 or 2468.2 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this subsection (h), have no force and effect as of the effective date of the amended Performance Standards. This subsection (h) shall not apply to those innovative products which have ROG emissions less than the appropriate lowered ROG standard and for which a written notification of the product's emissions status versus the lowered ROG standard has been submitted to and approved by the Executive Officer at least 60 days before the effective date of such standard.
- (i) If the Executive Officer believes that a portable outboard marine tank, cap, fuel hose, or primer bulb for which an exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a), the Executive Officer may hold a public hearing in accordance with the procedures specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1.25, to determine if the exemption should be modified or revoked.

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NOTE:

Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.6. Administrative Requirements

(a) Each manufacturer of a portable outboard marine tank fuel hose produced on or after January 1, 2010 or portable outboard marine tank self sealing cap produced on or after January 1, 2010, or portable outboard marine tank or portable outboard marine tank primer bulb produced on or after January 1, 2011 subject to and complying with Section 2468.1 or 2468.2 must clearly display on each portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb:

- (1) a date of manufacture or representative date;
- (2) a representative code identifying the Executive Order Number issued by the Air Resources Board for the portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb.

(b) Each manufacturer subject to subsection (a) must file an explanation of both the date code and representative code with the Executive Officer no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding.

NOTE:

Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.7. Variances

(a) Any person or manufacturer who cannot comply with the requirements set forth in Section 2468.1 or Section 2468.2 due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Executive Officer for a variance. The variance application must set forth:

- (1) the specific grounds upon which the variance is sought;
- (2) the proposed date(s) by which compliance with the provisions of Section 2468.1 or Section 2468.2 will be achieved; and
- (3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

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- (b) Upon receipt of a complete variance application containing the information required in subsection (a), the Executive Officer shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in Section 2468.1 or Section 2468.2 is necessary and will be permitted. A hearing will be initiated no later than 75 days after receipt of a complete variance application. Notice of the time and place of the hearing must be sent to the applicant by certified mail not less than 30 days before the hearing. Notice of the hearing must also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such a notice, not less than 30 days before the hearing. The notice must state that the parties may, but need not, be represented by counsel at the hearing. At least 30 days before the hearing, the variance application must be made available to the public for inspection. Interested members of the public must be allowed a reasonable opportunity to testify at the hearing and their testimony must be considered.
- (c) No variance may be granted unless all of the following findings are made:
- (1) that, due to reasons beyond the reasonable control of the applicant, required compliance with Section 2468.1 or Section 2468.2 would result in extraordinary economic hardship;
 - (2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and
 - (3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.
- (d) Any variance order shall specify a final compliance date by which the requirements of Section 2468.1 or Section 2468.2 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.
- (e) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.
- (f) Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of Section 2468.1 or Section 2468.2, after holding a public hearing in accordance with the provisions of subsection (b).

NOTE:

Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).
Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and *Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.8. Performance Standard Test Procedures

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- (a) Testing to determine compliance with Section 2468.1 (a) of this article shall be performed by using the following procedures:
- (1) "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components," adopted (INSERT DATE), which is incorporated by reference herein.
 - (2) "Test Procedure 511, Diurnal Rate from Portable Outboard Marine Tanks", adopted (INSERT DATE) which is incorporated by reference herein.
- (b) Testing to determine compliance with Section 2468.2 (a) of this article shall be performed by using the following procedures:
- (1) "CP-510, Certification Procedure for Portable Outboard Marine Tanks and Components," adopted (INSERT DATE), which is incorporated by reference herein.
 - (2) "Test Procedure 512, Permeation Rate from Portable Outboard Marine Tank Fuel Hoses and Portable Outboard Marine Tank Primer Bulbs", adopted (INSERT DATE), which is incorporated by reference herein.
- (c) Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Executive Officer.
- (d) Test procedures referred to in this Article can be obtained from the California Air Resources Board, and may be available at <http://www.arb.ca.gov/omt/omt.htm>.

NOTE:

*Authority cited: Sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).
Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017 and 43018, Health and Safety Code; and Western Oil and Gas Ass'n. Vv. Orange County Pollution Control District, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).*

2468.9. Enforcement

- (a) If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the State of California a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb that does not comply with the requirements set forth in this article, he or she may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb in the State of California pursuant to Section 43017 of the Health and Safety Code. The Executive Officer may also assess penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code and revoke any Executive Order(s) issued for the non-compliant portable outboard marine tank, cap, fuel hose, or primer bulb.

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- (b) Before seeking remedial action against any manufacturer, distributor, or retailer the Executive Officer will consider any information provided by the manufacturer, distributor, or retailer.

NOTE:

Authority: Sections 39600, 39601, 43013, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2468.10. Definitions

- (a) The definitions in Section 1900(b), Title 13 of the California Code of Regulations apply with the following additions:
- (1) "Above Deck Fuel Tank" has the same meaning as portable outboard marine tank.
 - (2) "Assembly Clamps" means a clamping device used to secure a fuel hose to a connector.
 - (3) "Automatically Closes and Seals" means contains fuel and fuel vapor with no measurable emission rate excluding emissions associated from wetted surfaces that occur only as a result from connecting or disconnecting components.
 - (4) "Component" means any device used in conjunction with a portable outboard marine tank to supply fuel to an outboard engine.
 - (5) "Connector" means any device used to connect fuel hose to an outboard engine and/or portable outboard marine tank.
 - (6) "Consumer" means the first person who in good faith purchases a new portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb for purposes other than resale, including but not limited to personal, family, household, or institutional use.
 - (7) "Distributor" means any person to whom a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb is sold or supplied for the purposes of resale or distribution in commerce. Manufacturers, retailers, and consumers are not distributors.
 - (8) "Diurnal Rate" means the process rate by which fuel molecules evaporate through openings and permeate through materials as measured using "Test Procedure 511, Diurnal Rate from Portable Outboard Marine Tanks".
 - (9) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her designee.

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- (10) "Fuel" means all fuels subject to any provision of Title 13, California Code of Regulations, Chapter 5, Standards for Motor Vehicle Fuels, Sections 2250 - 2298, except for Sections 2292.5, 2292.6, and 2292.7.
- (11) "Manufacturer" means any person who imports, manufactures, assembles, packages, repackages, or re-labels a portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose, or portable outboard marine tank primer bulb.
- (12) "Nominal Capacity" means the volume indicated by the portable outboard marine tank manufacturer that represents the maximum recommended filling level of a portable outboard marine tank.
- (13) "Outboard Engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.
- (14) "Permeation Rate" means the process rate by which fuel molecules penetrate a material and migrate to ambient air as measured using "Test Procedure 512, Permeation Rate from Portable Outboard Marine Tank Fuel Hoses and Primer Bulbs".
- (15) "Person" has the same meaning as defined in Health and Safety Code Section 39047.
- (16) "Portable Outboard Marine Tank" means any container with a nominal capacity of thirty (30) gallons or less that is designed, used, sold, advertised or offered for sale for supplying fuel to an outboard engine. Portable outboard marine tanks do not include fuel tanks designed exclusively for permanent installation in a specific marine vessel.
- (17) "Portable Outboard Marine Tank Cap" means a removable cap that allows for filling a portable outboard marine tank with fuel and may include a manually operated or automatic vent.
- (18) "Portable Outboard Marine Tank Fuel Hose" means fuel hose used to transfer fuel from a portable outboard marine tank to an outboard engine.
- (19) "Portable Outboard Marine Tank Primer Bulb" means a device used to siphon fuel from a portable outboard marine tank through a portable outboard marine tank fuel hose to an outboard engine.
- (20) "Portable Outboard Marine Tank Self Sealing Cap" means a cap outfitted with a device that is actuated by positive or negative pressure without user intervention that contains fuel and fuel vapors inside a portable outboard marine tank during normal use.
- (21) "Portable Outboard Marine Tank System" means any combination of portable outboard marine tank, portable outboard marine tank self sealing cap, portable outboard marine tank fuel hose or portable outboard marine tank primer bulb sold as a complete package.

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- (22) "Product Category" means the applicable category that best describes the product with respect to its nominal capacity, material construction, and diurnal or permeation rate, as applicable, as determined by the Executive Officer at the time certification is requested.
- (23) "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (24) "Retail Outlet" means any establishment at which a portable outboard marine tank, cap, fuel hose, or primer bulb are sold, supplied, or offered for sale.
- (25) "ROG" (Reactive Organic Gas) means a reactive chemical gas, composed of hydrocarbons that may contribute to the formation of smog. ROG is sometimes referred to as Non-Methane Organic Compounds (NMOC's).

NOTE:

Authority: Sections 39600, 39601, 43013, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

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