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## California Avgas Suit

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The other day, as I was trying to get a couple of lead balance weights to stick to the rear wheel of my motorcycle, I should have said a silent prayer. Not to get them to stick, but in gratitude for living in Florida where we can still touch lead. I guess that's no longer true in California, judging by this week's news that the California-based Center for Environmental Health is going after refiners and FBOs in that state, claiming they're polluting water with lead from avgas.

So what does this mean, exactly? It's impossible to say because we don't know where the CEH action will actually go. Further, there could be jurisdictional and standing issues with the FAA, which guards its aviation territory and doesn't take local challenges lying down. Or the state attorney general could preempt CEH with its own filing. CEH is an organization that appears to work, at least partially, by forcing businesses and agencies to comply with California's Proposition 65 under threat of legal action. Unfortunately, our friends in California wrote into their broad-based environmental laws what can best be described as a shakedown clause. If there's a monetary settlement after proof of damages, the complainant gets a piece of the action. Furthermore, most of the burden of proof--and the expenses--lie with the accused entities, not the plaintiff.

You can easily see how the legislature may have meant well by this, in a sort of power-to-the-people way that would give the masses some leverage against powerful interests. (Think of Erin Brokovich.) Or maybe the trial lawyers lobby wrote the bill. Either way, like everything else, it can have unintended consequences.

As this potential skirmish gets underway, CEH is aware of the EPA's pressure on the aviation fuel industry through emerging lead emissions standards. It seems unaware that the industry has teamed up with the FAA to formulate a plan to move toward unleaded fuel, with an announcement on that process expected later this year. CEH's action came out of left field and caught everyone by surprise. It seems unlikely to have any short-term effect on the FAA ARC committee's deliberations. I just don't see how that process is going to be accelerated, however much I might like it to be.

My worry is for some of the smaller businesses who could be named in these suits. Chevron, Exxon, Phillips and Shell are big boys who can take care of themselves. But for FBOs, the legal fee clock starts ticking the instant they pick up the phone for the first consultation. CEH does have to provide a certificate of merit arguing the technical points of their private enforcement to prove that avgas is a source contaminant in California waterways. But rather than defend against such claims, organizations like this know that a friendly settlement is cheaper and easier. And given that they get a piece of that pie, they have a strong incentive toward a sure settlement rather than a more doubtful verdict. It would be unfortunate if any FBOs or airports decided that rather than pay legal fees or a settlement, that this is the last straw and they'd rather fold up shop. This is just one reason why it's critical to solve the 100LL issue via industry initiative and keep it out of the courts until the replacement fuel is in place. Courts can be unpredictable.

Oh, and as for the lead weights, one of CEH's listed accomplishments is eliminating the use of lead tire weights in California. Heretofore, I thought lead in avgas was the world's smallest environmental problem. I was obviously misinformed. (A handful of other states have also banned lead weights.)

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