Western States Petroleum Association
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Michael D. Wang
Director, Legal, CA Climate Policy & State Air Issues

June 23, 2014

Submitted via weblink: http://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=mrr-2014-ws&comm_period=1

Dr. Steve Cliff
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Western States Petroleum Association (WSPA) Comments on the Proposed Changes to Mandatory Reporting and Cost of Implementation Regulations

Dear Dr. Cliff:

The Western States Petroleum Association (WSPA) is a trade association that represents 27 companies that explore for, develop, refine, market and transport petroleum and petroleum products and natural gas in the Western United States. Many of our members have significant operations in California.

As you are aware, WSPA has participated in ARB's stakeholder engagement process since the adoption of the 2008 Scoping Plan. We have worked diligently with the Air Resources Board (ARB) in defining key aspects of the Cap and Trade Rule (C/T), and the Mandatory Reporting Regulation (MRR) as well as other issues. We appreciate the opportunity to provide comments on ARB's proposed changes to the Mandatory Reporting and Cost of Implementation regulations ("MRR and COI").

The proposed changes raise concerns noted in the paragraphs below:

Schedule for Comment and Adoption

WSPA is concerned with the short timing between initial proposal, informal comment period, 45-day package and Board hearing. On June 4, 2014, ARB released presentation materials and an "Informal Discussion Draft" of potential amendments to the Regulation for Mandatory Reporting of Greenhouse Gas Emissions ("discussion draft"). The next day, ARB presented revised slides at a workshop, and originally requested comments by June 17, 2014. ARB

indicated at that time that the 45-day package would be issued in mid-August for a Board hearing in October.

While ARB has since extended the informal comment deadline to June 23, this schedule leaves very little time for affected parties to review and comment on the proposed changes, nor does it seem to leave ARB adequate time to address stakeholder concerns that may be received on the final days of the 45-day comment period. This is especially so because we understand that ARB expects to bring the amendments to the Board for adoption within a few days of the end of the comment period.

> Recommendation: WSPA recommends ARB plan on scheduling adoption in November to allow additional time to ensure the full spectrum of potential impacts from the changes are understood and regulated entities will be able to comply with the changes.

Applicability of Changes

ARB has informed stakeholders that the proposed regulatory changes are expected to be heard by the Board in late Fall, 2014. Upon adoption, operators will have to initiate changes in policies and procedures in order to implement required changes. This will require care and time to ensure quality and accuracy.

> Recommendation: WSPA strongly recommends ARB make clear in the MRR regulation that any changes made by the Board become effective in the next data collection year (i.e., starting January 1, 2015 or if after January 1, on the date the final MRR regulation is approved by the Office of Administrative Law). Any changes made to the regulation should not be made retroactive to 2014, but instead become effective on the legally appropriate date after OAL approves the revisions to the regulation.

Inconsistencies between the ARB workshop presentation and regulatory language within the discussion draft.

As noted previously, ARB issued two different sets of presentation materials. Some regulatory changes were mentioned in these materials, but were not reflected in the discussion draft language issued on June 5. While WSPA understands this document is a discussion draft only; it is important that Stakeholders must have sufficient time to review any proposed regulatory revisions language in order to adequately understand the potential impact. In that regard, if ARB is proposing revisions on the following listed issues, WSPA recommends ARB provide additional time to review and provide comments beyond the proposed comment and adoption schedule:

- Slide 10 of CARB's "GHG Mandatory Reporting" (MRR) slide deck indicates that there will be revisions to "flare emissions equations". These revisions are not indicated in Sections 95113(d) or (g).
- Slide 12 of the "AB 32 Cost of Implementation Fee Regulation" (COI) slide deck proposes to "remove small natural gas and transportation fuel suppliers subject to fees

(impacts 10 suppliers)" and "less than 0.03% increase in fees to the remaining fee payers", but this does not appear to be stated in the discussion draft.

Primary Refinery Product Clarification – 95113(l)(1)

Based on recent discussions with ARB staff, it is WSPA's understanding that the reason for the proposed revisions to Section 95113(l)(1), including the request for additional information, is to provide data useful in determining whether the adoption of the Complexity Weighted Barrel (CWB) benchmarking methodology may pose a differential impact to small refineries. Specifically, WSPA understands staff proposes to compare the CWB approach against a simple barrel approach based on products produced on-site. WSPA believes ARB's request for additional information places a significant reporting burden on all refineries, is not technically feasible, and will not provide the data ARB desires.

Recommendation: WSPA recommends instead that ARB review the extensive data base compiled by Solomon Associates over the last few decades, which can be used to address any of the Board's concerns. For example, in Solomon's document titled "Answers to ECOFYS Questions (California Air Resources Board)", dated August 6, 2013, Solomon answers a question about how small refineries compare to large refineries under the CWB method. We provide Solomon's response below (emphasis added):

"The CO2 emissions equivalent of a refinery is determined by both the energy efficiency and the CO2 emission factor of fuels consumed (propensity to emit CO2). **Solomon has found that smaller and simpler (i.e., a lower complexity) refineries tend to have poorer energy efficiency, due to:**

- smaller/simpler refineries are disadvantaged in having fewer streams of feed and products and therefore less heat integration and exchange opportunities for energy saving and optimization;

- smaller refineries may be financially constrained for capital investments on energy improvement projects."

WSPA believes the CWB methodology levels the playing field for both large and small refineries better than any other methodology considered by ARB. We question whether ARB needs to gather more data to evaluate refinery energy efficiency when Solomon has already provided the analysis and informed ARB of its findings.[1]

In addition to being unnecessary, the data reporting requirements proposed by ARB in section 95113(l)(1) are impossible to comply with. Although it would be easy for a

[1] WSPA notes that a typical "simple barrel" approach (emissions per product) might not be accurate because refineries could calculate their production by including products purchased and not actually produced on site. The CWB method only takes into account what refineries process and produce onsite and does not include anything that a refinery purchases and directly blends into a product. The CWB method addresses any potential concerns about correlation of emissions allowances with actual production, rather than with "handled" volumes.

refinery to subtract out purchased CARBOB or other finished fuel from their total primary refinery products, a refinery that brings in blendstock or intermediate components (alkylate, butane, naphtha, etc.) can, depending upon its operational needs, directly blend that component into a fuel without going through a refinery unit onsite..

Following are some examples of this complexity:

Alkylate: A refinery purchases a batch of alkylate and puts it in a tank with alkylate that the refinery produced onsite. The tank now contains a mix of purchased and produced alkylate. Over the next week, the refinery blends 4 different finished products using the mixed alkylate from the tank, while continuously adding more produced alkylate to the tank from the refinery Alkylation unit so the tank level never falls below 50%. Has all the purchased alkylate been used? Which finished products did it go into? What percent of the finished products contain the purchased alkylate? These are all questions the refiner. likely cannot answer.

Butane: Butane can be used as a feedstock, fuel or blended into gasoline. It should be noted that for the purpose of Form 810 reporting DOE does not consider butane as a blendstock.

As an example consider a refinery that purchases a batch of butane in the winter and puts it in a LPG sphere with butane that the refinery produced onsite. The refiner is also continuously making normal butane onsite that feeds into the sphere. The refiner uses some of the mixed butane to blend into several different batches of gasoline. The refiner also feeds the mixed butane to the Butamer unit, which converts normal butane to isobutane. The isobutane is then used at the Alkylation unit to make alkylate. What percentage of the purchased butane went directly to blends? Which blends? What percentage of it went to be further processed at the refinery? These are also questions a refiner likely cannot answer.

A refiner may be able to make certain assumptions about what percentage of the purchased blendstocks end up in finished products, but there is no way to measure this with assured consistency and accuracy.

Recommendation: If ARB must have this data, WSPA recommends collecting the data by way of a voluntary survey of refiners individually instead of through the MRR that has very specific regulatory, compliance, and accuracy requirements.

ARB is also proposing that the products be adjusted for inventory changes during the year to account for inventory that was produced, but not yet sold, and inventory sold, but produced the previous year. A refinery typically can hold in storage less than 5% of their total yearly production at any given time. This proposal is simply another data reporting burden on refiners and will not significantly affect the calculation of total primary products produced by a refinery.

Recommendation. For all of the reasons listed above, WSPA urges ARB to reconsider asking refineries to subtract out purchased material from their primary refinery products.

Duplicative and vague requirements for fuel reporting

The difference between 95113(m)(1) and 95113 (m)(2) is not clear. Is (m)(2) finished gasoline and (m)(1) blendstock? This section could be improved by making an explicit distinction.

Reporting Requirements for Fuel Suppliers

Slide 8 of the MRR deck states that fuel suppliers should "report the import quantities of CARBOB, CA gasoline, and CA diesel designated for use in CA." However, the section covering this issue in the proposed MRR amendments (§ 95121(d)(7)) could be read very differently and in a manner that creates new compliance hurdles:

> (7) All fuel suppliers identified in this section must also report the fraction of fuel supplied in California that was imported from outside of California for each blendstock plus the designated amount of oxygenate, distillate fuel oil, or biomass-derived fuel listed in Table 2 of this section.
>
> This paragraph is preceded by instructions to report fuels delivered over the rack at terminals, through the bulk supply system, etc. One could easily read "report the fraction of fuel supplied" to mean that reporters must report the percentage of *each* fuel supplied that was imported. Considering that each batch of fuel supplied will come from a mix of sources, some of which were bought from others in the state, a reporter would have no way of knowing if they were imported by the seller. Hence, the information required by this interpretation is impossible to calculate. Furthermore, asking reporters to keep track of, and have verified, all the individual blendstock components that make up each batch of fuel is a significant burden.
>
> While it is not clear why ARB is interested in quantities of "fuel supplied" that were imported from outside the state, WSPA advises against requesting data that may be useful for research or that is requested in anticipation of as-yet undefined future need, and that does not meaningfully contribute to Cap & Trade implementation. Information that does not serve a valid purpose, imposes a significant burden on reporting facilities, and diverts resources from important regulatory compliance work and creates needless enforcement risks to reporting facilities.
>
> Recommendation: ARB should remove this proposed reporting requirement. If ARB insists on requiring data of this nature, WSPA suggests a different approach that is more manageable for reporting facilities. Instead of asking for the percentage of fuels that was imported, ARB could ask for the total volume of fuel that each reporter brought into the state. This information relies on knowledge available to each reporter and eliminates the need for assumptions or estimates.

Given ARB's intent, pursuant to Slide 8, is for reporting parties to report the total volume of fuel they imported, WSPA also recommends the following changes to the MRR language:

> (7) All fuel suppliers identified in this section must also report the total volume ~~fraction~~ of ~~fuel~~ CARBOB, California gasoline and California diesel ~~supplied in California that was~~ imported from outside of California by the reporter ~~for each Blendstock~~. For CARBOB imports by the reporter, ~~plus~~ the designated ~~amount~~ percentage of oxygenate must also be reported~~, Distillate Fuel Oil, or biomass-derived fuel listed in Table 2 of this section~~.

Suppliers of Transportation Fuels and Renewable Diesel

In section 95121(a), ARB is proposing a new requirement to report volumes of renewable diesel supplied. Note that renewable diesel can be blended to diesel product both at the refinery and at the terminal. Reporting (e-GGRT) forms should be modified to allow for reporting volumes from either but prevent the possibility of double-reporting of the volumes and double-obligation under Cap-and-Trade.

Additionally, it is very likely that significant renewable fuel blending may occur upstream of terminal rack locations, particularly for renewable diesel which will be much more likely to be blended at refineries. Because blend percentages will vary depending on operational circumstances and product availability, it will likely be difficult to accurately track the precise movement of those renewable fuel volumes from the refinery (or bulk blending facility) to the point where the blended product is dispensed into a truck at the terminal rack. It would therefore be beneficial to add a paragraph to the Section 95121 reporting procedures to clearly allow a reporting party to report the total renewable fuel blended upstream of the terminal rack and subtract it from the total blended product delivered to market.

> Recommendation. WSPA recommends the following paragraph be added to follow 95121(d)(1-4).
>
> > "(5) Refiners who blend renewable fuels at a refinery or bulk facility and displace blendstock or distillate fuel oil may report the total volume of renewable fuel blended at the refinery or bulk facility and subtract the displaced volume from the blendstock and distillate fuel oil totals reported under paragraphs (1) through (4), provided that it can be demonstrated that the renewable fuel volume was not reported under paragraphs (1) through (4) by the refiner or any other party."
>
> As an illustration of how this might work, a reporting party could blend renewable diesel at a refinery and report the total renewable diesel volume blended for the year. That party would then calculate the total CARB diesel volume delivered to market per 95121(d)(1-4) and subtract the renewable diesel volume. The remainder would be reported as CARB diesel delivered. Following this reporting, the reporting party's verification auditors would confirm that the reporting party ensured the credit for the

renewable diesel volume was not claimed elsewhere, either through clear product transfer documents or contractual agreements.

Discrepancy between Mandatory Reporting and Cost of Implementation Regulations in proposed MRR Section 95113(m)(1)

This new section requires reporting CARBOB produced for use in CA plus the designated volume of oxygenate associated with the reported CARBOB under the COI Fee Regulation. This differs from section 95203(b) of the COI regulation which requires the **maximum** amount of oxygenate designated for each volume of CARBOB.

Recommendation. WSPA recommends ARB ensure these types of differences are addressed to avoid two different regulations having different interpretations.

Hydrogen Production – Section 95114

Section 95114(e) needs to be modified to clarify that both parts (1) and (2) apply to all facilities. As currently drafted, one may conclude that only part (2) applies to a refinery.

Section 95114(e) is not clear that it is not necessary to report the atomic hydrogen in steam. This exclusion of steam should be specifically stated.

Recommendation. WSPA recommends the following language:

"(e) *Sampling Frequencies.* When monitoring GHG emissions as specified at 40 CFR §98.163, and reporting data as specified at §98.166, the operator must report the following:

(1) Carbon, atomic hydrogen, and molecular hydrogen content for each feedstock, *excluding steam,* using engineering estimates based on measured data as specified below:

WSPA also recommends that ARB update the Cal e-GGRT tool so that the CH4/N2O data specified in Section 95114(k) can be reported with Hydrogen Plant emissions.

In addition, for the purpose of improving clarity, the definition of 'on-purpose hydrogen' should be placed with the definition of 'by-product hydrogen' (Section 95102, page 68).

Population count and emission factors – Section 95153(p)

The Informal Discussion Draft deletes Section 95152(c)(16) from this section of the regulation. Section 95152(c)(16) identifies the following source category under the MRR: "Equipment leaks from valves, connectors, open ended lines, pressure relief valves, pumps, flanges, and other equipment leak sources (such as instruments, loading arms, stuffing boxes, compressor seals, dump lever arms, and breather caps)". By deleting this source category from Section 95153(p),

the oil and gas production sector would no longer have the option to use Section 95153(p) population counts and emission factors to calculate fugitive emissions. Rather, MRR reporters would be required to undertake additional costly field monitoring programs pursuant to Section 95153(o).

Section 95153(p) was revised during the 2013 MRR amendment process to add Section 95153(c)(16) as an applicable source category for this section. This modification was the result of an extensive stakeholder outreach process that evaluated the need for an optional approach to estimating fugitive GHG emissions from oil and natural gas field operations. During that process, an analysis was completed by ARB staff which considered the cost implications of not providing the population count/emission factor option as well as the emissions impact. This analysis is documented in the ARB Staff Report to the Governing Board for the October 24-25, 2013 Board Meeting. [2]

It is noteworthy that in addition to the inclusion of Section 95153(c)(16) in the 2013 revised MRR Section 95153(p), which was released in February 2013, ARB published a Regulatory Advisory for the oil and natural gas production sectors on June 11, 2013 indicating that the provisions of the to-be-revised Section 9153(p) could be utilized for the GHG reporting during data year 2013.

> Recommendation: For the reasons described above, WSPA recommends ARB continue to allow oil and gas upstream reporters to utilize the USEPA emission factors for MRR reporting as an option to field monitoring. The ability to use this option would continue to provide a reasonable, conservative alternative for estimating fugitive GHG emissions that avoids unwarranted field monitoring costs.

WSPA appreciates the opportunity to submit these comments. Should you have questions, I would be happy to assist you at mike@wspa.org or (626) 590-4905.

Best regards,

cc: Mr. Richard Corey
Ms. Edie Chang
Ms. Rajinder Sahota

[2] The emissions associated with the additional monitoring would amount to less than 1% (i.e., below de-minimis levels) of the overall oil and gas production sector emission total. The alternative methodology in Section 95153(p), which relies on use of USEPA emission factors for oil and gas production and other source categories.