

Coalition for Fair and Equitable Allocation

VIA ELECTRONIC POSTING
Comment List: CAPANDTRADE13

October 22, 2013

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento Ca, 95814

Dear Chairman Nichols and Board Members:

The Coalition for Fair and Equitable Allocation (Coalition) supports the adoption of the 45-day regulatory package and generally supports the proposed amendments specifically related to refinery benchmarking. The Coalition and CARB Staff have worked together almost daily for the past month or so to reach a position of mutual understanding. Amending the refinery benchmarking and associated industrial allocation methodology is a very significant policy and technical exercise because it establishes the foundation of the Cap and Trade Program (Program) and determines the baseline competitive position (both intrastate and interstate) for California refiners. It is under this umbrella of importance that the Coalition was formed to protect the interests of small refinery operations in California. Coalition members include Kern Oil & Refining Co., Alon USA, Inc., San Joaquin Refining Co. Inc., Lunday-Thagard Refining Co., and Phillips 66.

The Coalition supports CARB Staff's proposal to extend the assistance factor levels from the first compliance period into the second and third compliance periods. Specifically, Staff proposes to amend Table 8-1, section 95870, to increase the assistance factor to 100% in the second compliance period and to 75% in the third compliance period. The assistance factor adjustment will provide the industry additional certainty and time and, ultimately, will help minimize leakage risk.

Efforts to develop a fair and appropriate benchmarking approach in the first compliance period proved challenging when the Program was amended in 2011, and again have proven challenging for the second and third compliance periods.¹ Actual amendments proposed in the 45-day package simply include verbiage in section 95891(a)(2) to allow the option of either Carbon Weighted Tonne (CWT) or Complexity Weighted Barrel (CWB) as the methodology for refinery benchmarking and elimination of a previous reference to CWT and the associated benchmark value in Table 9-1.

¹ Board Resolution 11-32, dated October 20, 2011, directed staff "to continue to work with stakeholders to further develop the allowance allocation approach for the petroleum refining sector and associated activities in the second and third compliance periods."

Subsequent to the 45-day package release, Staff provided additional information and presented its proposals for refinery benchmarking at an October 7, 2013, workshop. Staff's proposals include adoption of the CWB methodology inclusive of "off-site" factors and to separately benchmark "atypical" refineries. The Coalition understands that a 15-day amendment package is needed to implement Staff's proposals provided at the October 7, 2013, refinery workshop.

Formal recognition and separate benchmarking of "atypical" refineries in the Program is a key policy recommendation that the Coalition is very supportive of implementing. Not all refineries in California are large and complex, the atypical category appropriately recognizes this reality. The concept of "atypical" is regional in nature, therefore it is entirely appropriate to establish criteria for an atypical California refinery based on the state's existing inventory of refineries. Each region of the world has a different distribution of refinery size, complexity, configuration and age, therefore a typical (or atypical) refinery is region-specific. The Coalition supports the chosen metrics of combined size and complexity. In addition, the Coalition generally supports the proposed California-specific atypical criteria metrics of less than 12 process units and 20 million barrels of crude throughput per year, but understands that the actual regulatory language still needs to be written and analyzed.

But one aspect of the staff proposal is still problematic—the potential language surrounding "jointly operated facilities" and the inappropriate attempt to combine an otherwise small refinery with another facility for purposes of allowance allocation. The definition of a stationary source has been established over the many decades of air pollution control, and is defined in both the Mandatory Reporting and Cap and Trade Regulations, as is the definition of a "Petroleum Refinery" or "Refinery." These two distinct definitions are complementary and consistent in that each location/operation is a separate and distinct compliance entity. Excluding a smaller less-complex refinery, that would otherwise meet the definition of "atypical", solely because it is associated with a separate (and equally specialized) facility is an application of inconsistent policy. This "carve out" is especially troublesome as it targets and may only impact a single facility in California. "Jointly-operated" is an undefined term that is unnecessary and inconsistent with existing regulatory treatment of facilities. The operations of this type of smaller, less-complex refinery that performs specific functions are equal in their susceptibility to emissions leakage as the other atypical refineries. The Coalition recommends that the Board remove the suggested requirement that an otherwise qualifying atypical refinery not be considered as such based on the concept of joint operations.

The Coalition strongly supports Staff's proposal to adopt the CWB allocation methodology utilizing the Solomon Process Unit Factors and including Solomon's factors for off-sites, non-energy utilities and "non-crude sensible heat." These factors can play a very significant role in the operation of smaller, less-complex facilities and accordingly their allocation determinations. Likewise, the Coalition supports Staff's proposal to not pursue additional CWB groupings.

Even with the inclusion of the off-site factor, the CWB methodology does not accurately reflect the emissions profile of a facility experiencing a prolonged curtailment. Such a situation creates emissions associated with keeping a facility in a condition ready to produce product when

market conditions demand, and to maintain and operate environmental system requirements to ensure air, water and waste regulatory compliance but is not recognized in the allocation system. This issue should be revisited within the regulatory framework and CARB Staff should work with any impacted facilities to account for just such a situation.

Lastly, we note that the administrative process associated with refinery benchmarking has been truncated at the end of this rulemaking. These amendments require in-depth analysis and subsequent significant decisions which affect the viability of entire facilities. The idea of a robust public process is defeated by having to make such critical business decisions in a relatively rushed manner. Because some important portions of the actual language of the proposals have yet to be provided to stakeholders, we request that the process leading up to a required 15-day regulatory amendment package be given the utmost of deference to the need of stakeholders to understand and analyze Staff's proposal and its underlying support data.

Thank you for your attention to this important matter. Any questions or follow-up comments can be directed to Jon Costantino at 916-552-2365 or at jcostantino@manatt.com.

Sincerely,



Jon M. Costantino
Coalition Director

cc: CARB Board Chairman and Members
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