Comments to the California Air Resources Board
From the California Independent Petroleum Association
Regarding Mandatory Reporting Requirement
Submitted August 11, 2011

The California Independent Petroleum Association respectfully submits the following comments on the Proposed changes to the Mandatory Reporting Requirement.

The mission of the California Independent Petroleum Association (CIPA) is to promote greater understanding and awareness of the unique nature of California's independent oil and natural gas producer and the market place in which he or she operates; highlight the economic contributions made by California independents to local, state and national economies; foster the efficient utilization of California's petroleum resources; promote a balanced approach to resource development and environmental protection and improve business conditions for members of our industry.

CIPA appreciates the opportunity to submit the following comments to the California Air Resources Board (CARB) for its consideration. The members of CIPA believe that domestic petroleum production already plays a meaningful role in helping the state meet its policy goals for reducing greenhouse gas emissions in California.

Moreover, CIPA and its members stand ready to do their part, to the extent practicable, to reach further reductions. But it is important to keep in mind that California oil and gas production already faces the most rigorous environmental regulation in the industry both nationally and internationally. As a result, California oil and gas production should be expanded to fully capture the environmental benefits of the regulatory regime in this state because until we have large scale alternative energy sources, California production is more environmentally sensitive than imports, and the transportation necessary to facilitate the imports, often produced with little or no environmental regulation.

I. Mandatory Reporting Requirement

Despite the Board's and staff's assertions that ongoing changes to the Mandatory Reporting Requirement are being made to simplify and harmonize with federal reporting requirements, from the perspective of the small, independent oil and gas operator the ongoing changes represent anything but simplicity and harmony.

We will detail below our concerns regarding reporting threshold, definition of facility, sector issues including conflicts that remain with federal requirements and penalties and enforcement issues. But before we get into these serious and persistent issues we would like to comment on the program itself and the role it plays in the cap and trade program and the view of CIPA relative to the two programs as a whole.

II. Cap and Trade

As CIPA commented on the Cap and Trade Program in comments submitted concurrently with these, in currently pending litigation, a California State trial court found that the analysis of the alternatives identified in the FED was not sufficient for informed decision-making and public review under CEQA. The *Association of Irritated Residents, et al, v. California Air Resources Board, et al.*, (San Francisco Superior Court, Case Number CPF-09-509562) challenged CARB's implementation of AB 32 as a *post hoc* rationalization of predetermined policy approaches. Under the abuse of discretion review taking place, a Supplement was prepared to provide an expanded analysis of the five project alternatives discussed in Section V of the 2008 Scoping Plan FED (CARB 2009).

CIPA argues that CARB has met all of these objectives ***and the emissions targets*** through Alternative 5 of the Supplement- Variation of the Combined Strategies or Measures[1]. One need only eliminate cap and trade from that mix because the emissions reduction yield from cap and trade was always a "plug[2]" number anyway, that is, a number to plug in to get to the evolving target, a catch all buffer in case actual reductions didn't materialize as projected. Cap and trade's inclusion was a sop to business and lip service to those who believe that credit trading was the foundation for a "green

[1] **Supplement to the AB 32 Scoping Plan Functional Equivalent Document;** §2.7 at pp. 102
[2] Legislative Analyst Office Letter to Legislative Leaders dated June 9, 2011

economy." More importantly, a Combined Strategies alternative that does not include cap and trade also does not constitute a No Project designation, which is a political non-starter.

But as the landscape has changed through other GHG reduction policy measures, executive orders, land-use decisions, adoption of complementary measures, federal action and economic circumstance, the plug number has been virtually reduced to a *de minimus* amount. It is time to recognize this fact, and in so doing ease the conscience of the environmental community who believes cap and trade to be an artifice as well as to let the business community during these very unsettled economic times instead focus on commercial recycling and large scale industrial efficiency investments instead of risky unproven market mechanisms that are ripe for fraud and abuse according to trusted government accountability sources.

In a perfect, apolitical policy approach ARB would recognize the achievements made to date and the policy glide path to the 1990 level emissions by 2020 set in place through the public policy actions since the passage of AB 32. Moreover, since MRR is really an accounting structure for the facilitation of cap and trade or alternatively a potential carbon tax, neither of which would move forward in a rational policy approach, it would be a reasonable commensurate outcome that the state MRR be set aside as a largely added cost, duplicative layer to the federal reporting requirement.

One of the biggest mistakes made by policymakers is to confuse activity with progress. We submit that the regulated community could make greater progress toward lowered emissions if they had to dedicate fewer resources to the compliance task. But because we understand that human nature is wont to cede power once granted, we have little faith that at this juncture a rational policy pathway will be pursued. Consequently, at this point we will return to the issues we have with the MRR and proposed changes under consideration.

III. Mandatory Reporting Issues

A. Threshold

Facilities and suppliers with emissions between 10,000 metric tons and 25,000 metric tons of CO_2E would be included in the mandatory reporting program, but would have abbreviated reporting requirements. These reporters would report their combustion emissions using default emission factors or any other method of their choosing from the U.S. EPA regulation (USEPA MRR 2009-2010). They would also report process emissions, although these are unlikely to occur at facilities of this size.

CIPA objects to these reporting requirements. Requiring reporting below 25, 000 tons from parties with no compliance obligations will be costly, create confusion, is in no way a "harmonization" with US EPA reporting requirements and only serves to align with the Western Climate Initiative at a time when CARB is adopting a cap and trade scheme that encompasses California only. The mandatory reporting requirement threshold should remain aligned with the US EPA standard of 25,000 MTCO2E.

B. Facility

In the case of onshore petroleum and natural gas production, the reporting footprint is defined as the geological basin. Reporters would be required to determine and report emissions from stationary combustion, and specified process and vented emissions. The reporting entity may be either a facility or operator. But in all of the effort to harmonize, there is still confusion relative to current and ongoing reporting framework for local air districts. Oil and gas operators in California with multiple locations conceivably could be required to comply with air district, CARB, WCI and federal reporting requirements which will be confusing and costly especially given the enforcement penalties at CARB's disposal for such things as "inaccurate information".

CIPA supports the traditional air district facility definition. The basin definition is not only confusing, but the practical effect will be to bring smaller operators in to the mix who really weren't intended to be included in the large emitters category targeted for reporting, at likely prohibitive cost.

We request ARB to delay the first reporting deadline to July 1, 2012 for Petroleum and Natural Gas reporters while we sort out a rational and harmonized definition of facility.

C. Sector

We have numerous concerns regarding details relating to the oil and gas production sector. But as we read through the comments filed by the Western States Petroleum Association August 10, 2011, we believe that they have captured the most salient issues in their **Attachment C: Issues Specific to Upstream Operations Oil and Gas (Petroleum and Natural Gas).** As a result, CIPA would like to associate ourselves with their comments contained in Attachment C of the WSPA 8/10/11 filing on Mandatory Reporting.

D. Enforcement Issues

95107 Enforcement and Penalty Provisions

CIPA requests that CARB revise Section 95107(b) to ensure that a penalty would not be imposed if the amount of emissions that were not reported were determined to be below the 5% accuracy verification requirement in the MRR, unless CARB determined the facility submitted false information. If CARB made such a determination, we recommend incorporating the same language CARB included in the C&T regulation, Section 96014 (c)(1-4) entitled "Violations", which states it is a violation if it is determined the facility falsified, concealed or covered up by "…any trick, scheme or device a material fact", including any false, fictitious or fraudulent statements or made or used any false writing or document knowing it contained false, fictitious or fraudulent statements. This reporting regime is new, comprehensive and complicated. Human error should not be met with overly punitive action, just as knowing behavior should not be excused.

CIPA recognizes and appreciates some of the proposed revisions CARB made relative to the enforcement penalty provisions in Section 95107 and Section 95858. The changes do not recognize important aspects of the AB32 verification program however, including the cost implications if CARB continues to maintain a per ton penalty provision. CIPA believes a per ton penalty is too severe considering the fact many facilities will be reporting hundreds of thousands if not millions of tons of GHG emissions, and therefore recommends the penalty structure be amended to move to a per 1000 ton penalty scheme.

Further, we believe that the MRR and C&T regulations must recognize the period when a facility is working in good faith with its verifier to obtain a positive or qualified positive emissions report prior to the verification deadline date, and should not be subject to penalties under Section 95107.

E. Reporting Tool and Verification Statement

Finally, two points on timing. First, a reporting toll should be released at least three months prior to its expected use so that reporters can become familiar with it and be ready to use it effectively given how much is at stake because of the tremendous color of authority CARB has in dealing with reporting. And, second, CIPA recommends that the verification statement due date in section 95103 be revised from September 1 to October 1 to allow facilities 30 extra days to deal with the complexities of getting the emission report verified.