CIOMA

CALIFORNIA INDEPENDENT OIL MARKETERS ASSOCIATION
3831 N. Freeway Blvd. Ste. 130 • Sacramento, CA 95834 • 916-646-5999 • 916-646-5985/fax
www.cioma.com

May 24, 2006

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Subject: CIOMA Comments on Revisions to Enhanced Vapor Recovery Regulations; heard by the Board on May 25, 2006

Clerk of the Board & Board Members:

On behalf of the California Independent Oil Marketers Association (CIOMA) we respectfully offer comments to regulation changes on the highly complex CARB Enhanced Vapor Recovery (EVR) requirements that affect many of our members directly, and many of our members' customers as well. CIOMA represents independent marketers who purchase gasoline and other petroleum products from refiners and sell the products to independent gasoline retailers, businesses, and government agencies, as well as representing branded "jobbers" who supply branded retail outlets, especially in rural areas. Our members are primarily small, family owned businesses who encounter unique difficulties in meeting California's complex and increasingly expensive environmental requirements. We represent approximately 400 members, about half of whom are actively engaged in the marketing and distribution of petroleum products and fuels.

CIOMA has been working with CARB staff for many years in the evolution of the state's unique and highly expensive gasoline vapor recovery requirements. We will continue to work with and comment upon these regulations as they are of significant importance to our members.

We provide specific comments on the regulations before you today and we also have some general comments on the EVR program in general:

- We fully support and commend CARB staff for including language that provides compliance with AB 2955 (McCarthy, 2004). CIOMA was the sponsor of this important legislation and we have monitored regulatory implementation of its directives closely. As a bit of background we discovered that a number of our members were running into a "Catch 22" situation between the State Water Resources Control Board (Water Board), CARB and local agencies regarding the installation and testing of equipment required by CARB and subject to testing requirements under Water Board governing law which was creating delay of service station completion and upgrades due to the inability of agencies to agree. AB 2955 contained a requirement that the Water Board and CARB perform early communication and analysis during their respective certification and testing processes to insure that equipment and tests under their separate jurisdictions were compared and cross-checked so that owners/operators were not caught in the middle of "dueling"

agencies.

We have reviewed the language developed by staff and agree that it meets the requirements of AB 2955. It is unfortunate that we had to sponsor legislation requiring agencies to effectively cooperate, but appreciate the appropriate codification of the Legislative intent by the proposed regulatory amendments before you today.

- The regulatory change package contains provisions relating the authority of the Executive Officer to make changes in implementation dates based upon lack of certified equipment being available. However, we have encountered a problem in previous adjustments by the Executive Officer where changes can be made on the front-end of a regulatory compliance period, but equivalent changes are *not* made at the back-end of the period. So while the beginning of an implementation requirement can slide, needed relief is not provided at the ultimate implementation deadline. We recommend that the Executive Office either be given the authority to make "back-end" adjustments, or exercise that authority if currently available.

  An example of the need for this authority is currently in play. At the present time more than half the service station pumps (GDF's) in the state are designed under a balance vapor recovery system, where fumes from the car's tank are drawn into the underground storage tank (UST) by the pressure created when fuel moves from the UST to the car tank. There is NO balance system currently under certification testing, and yet the 4 year clock is running because there is a vac-assist system certified. CARB has agreed to study the costs of converting a balance system to a vac-assist system (not covered in the CARB economic analysis) to analyze this unexpected situation, but at the same time a balance system may come under test. The problem is that more than half of the service station pumps may run into very high costs not originally anticipated in the EVR requirements, and may have a seriously shortened time in which to comply. We suggest that the Executive Officer have/exercise the authority to move both the front-end and the back-end compliance dates giving affected parties equal opportunity to meet these new, untested, technology-forcing requirements.

- Another concern we raise is the regulatory changes being made regarding the ability to decide when there is a "commercial availability" issue regarding the supply of certified equipment. Specifically, we have a concern that the "commercial availability" threshold of 3 weeks for replacement equipment is much too long. The problem with the three week lag-time is magnified under stations with ISD (in-station diagnostic) systems – these systems will shut down pumping systems until repairs are performed. Keeping pumps, or entire stations, out of service for 3 weeks is a huge business expense that is not identified in the cost analysis for this regulatory adjustment.

  We suggest that the regulations be adjusted to allow determination of a commercial availability issue is replacement components are not available in <u>one week</u>. This issue is especially important to our membership since, in cases where there may be wide-ranging failures of equipment, our members can find themselves at the end of the supply list due to lack of multiple-station contracts and/or purchase agreements with parts vendors. We

also suggest this language apply to old and new equipment.

- A general concern we would like to bring the Board's attention, although it is not specifically a part of this regulatory package, is the protracted delay of an enforcement proposal from the California Air Pollution Control Officers' Association (CAPCOA). The Board may not be aware of this problem, and since it is relevant to the fair and equitable enforcement of EVR requirements and equipment performance we believe it is appropriate to raise this item for educational purposes.

  CIOMA sponsored legislation in 2003 that would have prohibited local air districts from using information derived by ISD systems. It was, and still is, our belief that ISD systems are management tools, not enforcement mechanisms. However, the very nature of having a historical, detailed printout of station pump operations at each site with ISD lends itself as an enforcement liability. To assure that the information was used constructively, not punitively, CIOMA sponsored SB 209 (Ackerman, 2003).

  However, we withdrew that measure after discussions with CAPCOA, and receipt of a draft letter from them, which indicated we might be able to secure the same results absent legislation. Unfortunately CAPCOA withdrew their draft letter (after the legislative introduction deadline) and supplied an alternative letter that was completely unacceptable. This lead to a very strained relationship between CAPCOA and CIOMA for several years.

  Last year we renewed our discussions with CAPCOA regarding the possibility of their development of an advisory letter to the state Air Districts recommending that ISD data not be used for enforcement purposes. To this date we have not yet received a draft proposal from that group. We are angry with the appearance of being dealt with in bad faith, again, while ISD systems are currently in place and service station operators are being held in a liability fog regarding the use of their ISD data.

  We urge CAPCOA to provide us with a draft letter immediately, and we urge the Board to exercise whatever pressure they can to have the local agencies use ISD data and system alarms for the purpose of fixing operation problems, not exposing service station operators and owners to unfair and punitive enforcement liability.

- Another general concern we have is the possibility that the new EVR equipment is potentially out-of-compliance for a significant of time its operation. WSPA has provided information to CARB staff suggesting that, based upon CARB certification data, new EVR systems may have substantial difficulty in keeping stations operating within permitted levels. If this is true, there is a high likelihood that local districts can come out, do a compliance test and find the system out of compliance, even though the recording and alarm systems are indicating no problem. This exposes the owner/operator to fines and penalties for operating a certified system in good faith.

  This problem points to a larger problem we have communicated with staff and the Board for several years. These "technology-forcing" requirements – the pride of CARB staff and leadership - have become so complex that people, who have successfully operated service

stations for years or even decades, cannot understand the operation of their systems and equipment. Further, the complexity of the regulations and certification processes is so great that even the major oil companies are having to hire expensive experts to understand the nuances and dense technical data prescribed in the regulations. Finally, the technology, which is many times more expensive than previous generations, may have difficulty operating at ever-tightening limits.

From the owner-operator's perspective they feel like lab rats who have to pay (a lot) for the "privilege" of field-testing new equipment and systems, pay for the repair and increased maintenance of the new equipment, be subject to more station down-time due to these problems, and (the icing on the cake) be held environmentally liable for its poor performance.

Clearly there is a major problem with this line of environmental regulation. And, it contributes directly to this state's much higher than average fuel costs.

We ask the Board to provide effective leadership to CARB staff by requiring them to:

- develop regulatory proposals that are based on real-world practicality,
- provide rulemaking processes that do not require hiring expensive technical assistance merely to understand how the requirements and certifications operate, and
- require technology that will perform effectively, or be willing to compensate owners and operators for excessive costs and maintenance.

We remain committed to helping improve air quality in our state. However, it appears we are reaching the limits of technology and system operation that will only drive businesses out of the market, creating less competition, less convenience, and less choice for California consumers. And it will have the opposite effect on air quality by motivating avoidance of compliance rather than good faith attempts to comply.

Sincerely,

Jay McKeeman,
Government Relations Director

cc: Assemblyman Kevin McCarthy
Catherine Witherspoon, CARB Executive Officer
Bill Luscutoff, CARB
Kathleen Tschogl, CARB Ombudsperson
Cindy Tuck, Assistant Secretary for Policy, Cal/EPA
Steve Arita, WSPA