APPENDIX A

PROPOSED REGULATION
FOR CALIFORNIA WINTERTIME OXYGENATES PROGRAM

PROPOSED REGULATION ORDER

(California Wintertime Oxygenated Gasoline Program)

Adopt new section 2258, Title 13, California Code of Regulations, to read as follows:
[**NOTE:** The entire text of section 2258 is **NEW TEXT** to be added to the California Code of Regulations.]

Section 2258. Oxygen Content of Gasoline in the Wintertime

(a) Regulatory Standard.

(1) Starting September 1, 1992, within each of the air basins during the regulatory control period set forth in section (a)(2), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless it conforms to the following standards: (A) the gasoline has an oxygen content of not less than 1.8 percent by weight and not more than 2.2 percent by weight (applicable in regulatory control periods other than September and October), or (B) the gasoline has an oxygen content of not more than 2.2 percent by weight (applicable in September and October regulatory control periods only).

(2) Regulatory Control Periods.

(A) September 1 through February 29
South Coast Air Basin and Ventura County

(B) October 1 through January 31
Sacramento Valley Air Basin
San Joaquin Valley Air Basin
San Francisco Bay Area Air Basin
Lake Tahoe Air Basin
Great Basin Valley Air Basin
Mountain Counties Air Basin
North Coast Air Basin
Lake County Air Basin
Northeast Plateau Air Basin

North Central Coast Air Basin

(C) November 1 through February 29

San Diego Air Basin

South Central Coast Air Basin (Excluding Ventura County)

Southeast Desert Air Basin

(3) Section (a)(1) shall not apply to transactions involving gasoline not meeting the minimum oxygen content standard where the person selling, supplying, or offering the gasoline demonstrates by affirmative defense that: [i] the gasoline has not yet been supplied from the final distribution facility, and [ii] the documents accompanying such gasoline clearly state that it does not comply with the minimum oxygen content standard in subsection (a)(1), and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the gasoline within the standards in subsection (a)(1) before it is supplied from the final distribution facility, or [iv] at or before the time of the transaction the person has obtained a written statement from the purchaser, recipient, or offeree of the gasoline stating that the party will cause the gasoline to come within the standards of section (a)(1) before it is supplied from the final distribution facility.

(4) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that, prior to the transaction, he or she has taken reasonably prudent precautions to assure that the gasoline will be delivered to a retail service station or bulk purchaser-consumer's fueling facility when the station or facility is not subject to a basic regulatory control period.

(5) Section (a)(1) shall not apply to a transaction occurring in an air basin during the regulatory control period where the transaction involves the transfer of gasoline from a stationary storage tank to a motor vehicle fuel tank and the person selling, supplying, or offering the gasoline demonstrates as an affirmative defense that the last delivery of gasoline to the stationary storage tank occurred more than fourteen days before the start of the regulatory control period.

(6) For the purposes of section (a)(1), each sale of California gasoline at retail, and each dispensing of California gasoline into a motor

vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such gasoline in violation of section (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Bulk purchaser-consumer" means a person who purchases or otherwise obtains gasoline in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(2) "California gasoline" means gasoline sold or intended for sale as a motor vehicle fuel in California.

(3) "Final distribution facility" means the stationary gasoline transfer point from which gasoline is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the gasoline will be delivered to the facility at which the gasoline will be dispensed into motor vehicles.

(4) "Gasoline" means any fuel which is commonly or commercially known or sold as gasoline.

(5) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(6) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(c) Sampling and Test Methods.

(1) Compliance with the standards set forth in section (a)(1) shall be determined by use of American Society for Testing and Materials Method ASTM D 4815-88, which is incorporated herein by reference.

(d) Variances.

(1) Any person who cannot comply with the requirements set forth in section (a)(1) because of reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of section (a)(1) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in section (d)(1), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements in section (a)(1) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with section (a)(1) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) Any variance order shall specify a final compliance date by which the requirements in section (a)(1) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to

whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(8) The executive officer may, after holding a hearing without complying with the provisions of sections (d)(2) and (d)(3), issue an emergency variance to a person from the requirements of section (a)(1) upon a showing of reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of section (d)(6). No emergency variance may extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of section (a)(1) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in section (d)(4) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to this section (d)(8), and shall provide advance telephone notice to any such person.

(9) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(10) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of section (a)(1) after holding a hearing in accordance with the provisions of sections (d)(2) and (d)(3).

(e) **Sunset.** This section shall not apply to gasoline sold or supplied after December 31, 1995.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).