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Air Resources Board

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Gray Davis
Governor

August 25, 2000

To All Interested Parties:

The purpose of this letter is to inform you of the deadline to submit compliance plans for California Phase 3 Reformulated Gasoline (CaRFG3) projects. As you may know, the California Air Resources Board (ARB/Board) approved the CaRFG3 regulations on December 9, 1999, and subsequently the California Office of Administrative Law approved those regulations on August 3, 2000.

Section 2269, Title 13, California Code of Regulations (CCR) requires gasoline producers or refiners to submit an initial compliance plan by September 1, 2000. Refiners are also required to submit updated compliance plans on September 1, 2001, and September 1, 2002. Section 2269 requires that each compliance plan include:

"the projected sequence and dates of all key events pertaining to planning, financing, and construction of necessary refinery modifications."

We are requesting that the gasoline distribution system proprietors (i.e., terminals and pipelines) expecting to make significant modifications comply with the section 2269 requirements as well. We believe it is in the best interest of all industry stakeholders and the public to monitor the progress of the entire gasoline distribution and production system in implementing the CaRFG3 regulations.

All information received by ARB and designated as confidential will be treated in accordance with ARB's confidentiality regulations. Attached for your information is a brief summary of the ARB's confidentiality regulations (see Attachment A).

For implementation of the California's Phase 2 Reformulated Gasoline (CaRFG2) program, most California refiners developed individual compliance plans based on ARB guidance developed for the CaRFG2 regulations. We have updated the CaRFG2 guidance for compliance plans to reflect the CaRFG3 regulation requirements. Attached for your convenience is a copy of the CaRFG3 ARB guidance (see Attachment B) for submittal of annual compliance plans. We suggest that a similar approach used for CaRFG2 projects be used in developing CaRFG3 compliance plans.

California Environmental Protection Agency

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As the CaRFG3 regulations were only recently approved by the California Office of Administrative Law on August 3, ARB will accept initial compliance plan submittals through September 30, 2000, after the September 1, 2000 deadline.

Should you have any questions, please contact me at (916) 445-4383 or Mr. Peter D. Venturini, Chief, Stationary Source Division at (916) 445-0650.

Sincerely,



Michael P. Kenny
Executive Officer

Attachments

cc: Peter D. Venturini, Chief
Stationary Source Division

Attachment A

**TREATMENT BY THE ARB OF INFORMATION DESIGNATED
CONFIDENTIAL BY A SUBMITTING PARTY**

TREATMENT BY THE ARB OF INFORMATION DESIGNATED CONFIDENTIAL BY A SUBMITTING PARTY

Following is a brief summary of how confidential information is handled under ARB regulations (i.e., how the ARB treats information designated as confidential by a submitting party). Following the summary is the text of ARB's confidentiality regulations.

In accordance with Title 17, California Code of Regulations (CCR), Sections 91000 to 91022, and the California Public Records Act (Government Code Sections 6250 et seq.), written materials that a company provides to the Air Resources Board (ARB) may be released (1) to the public upon request, except trade secrets which are not emissions data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, and (2) to the U.S. Environmental Protection Agency (U.S. EPA), which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 U.S.C. §7401 et seq.) and in federal regulations, and (3) to other public agencies provided that those agencies preserve the protections afforded information which is identified as a trade secret, or otherwise exempt from disclosure by law (Section 91000, Title 17, CCR and Health and Safety Code section 39660(e)).

Trade secrets as defined in Government Code Section 6254.7 are not public records and therefore will not be released to the public. However, the California Public Records Act provides that air pollution emission data are always public records, even if the data comes within the definition of trade secrets. On the other hand, the information used to calculate air pollution emissions may be withheld from the public if the information is a trade secret.

If a company believes that any written materials or other recorded information it may provide to the ARB constitute a trade secret or are otherwise exempt from disclosure under any provision of law, it must identify the materials as such at the time of submission to the ARB and must provide the name, address, and the telephone number of the individual to be consulted if the ARB receives a request for disclosure or seeks to disclose the data claimed to be confidential. The ARB may ask the company to provide documentation of its claim of trade secret or exemption at a later date. Data identified as confidential will not be disclosed unless the ARB determines, in accordance the above referenced regulations, that the data do not qualify for a legal exemption from disclosure. The regulations establish substantial safeguards before any such disclosure.

Subchapter 4. Disclosure of Public Records

Article 1. General

§91000. Scope and Purpose.

This subchapter shall apply to all requests to the state board under the California Public Records Act (Government Code Sections 6250 et seq.) for the disclosure of public records or for maintaining the confidentiality of data received by the state board. Written guidelines shall govern the internal review of such requests.

NOTE: Authority cited: Sections 39600 and 39601(a), Health and Safety Code.

Reference: California Public Records Act, Chapter 3.5 (commencing with Section 6250), Division 7, Government Code.

§91001. Disclosure Policy.

It is the policy of the state board that all records not exempted from disclosure by state law shall be open for public inspection with the least possible delay and expense to the requesting party.

NOTE: Authority cited: Sections 39600 and 39601(a), Health and Safety Code.

Reference: Section 6253, Government Code; Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645.

Article 2. Board's Requests for Information

§91010. Request Procedure.

The state board shall give notice to any person from whom it requests information that the information provided may be released (1) to the public upon request, except trade secrets which are not emission data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, and (2) to the federal Environmental Protection Agency, which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 USC 7401 et seq.) and in federal regulations.

NOTE: Authority cited: Sections 39600, 39601 and 39602, Health and Safety Code.

Reference: Sections 39701, 41510, 41511, 41512 and 42705, Health and Safety Code; and Section 6253, Government Code.

§91011. Submissions of Confidential Data.

Any person submitting to the state board any records containing data claimed to be "trade secret" or otherwise exempt from disclosure under Government Code Section 6254 or 6254.7 or under other applicable provisions of law shall, at the time of submission, identify in writing the portions of the records containing such data as "confidential" and shall provide the name, address and telephone number of the individual to be contacted if the state board receives a request for disclosure of or seeks to disclose the data claimed to be confidential. Emission data shall not be identified as confidential. The state board shall not disclose data identified as confidential, except in accordance with the requirements of this subchapter or Section 39660(e) of the Health and Safety Code.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.

Reference: Sections 39660, 39701, 41500, 41511, 41512 and 42705, Health and Safety Code; Sections 6253, 6254 and 6254.7, Government Code; Natural Resources Defense Council v. EPA, 489 F.2d 390 (5th Cir. 1974) (6 ERC 1248); Northern California Police Practices Project v. Craig (1979) 90 Cal.App.3d 116; Uribe v. Howie (1971) 19 Cal.App.3d 194.

Article 3. Inspection of Public Records

§91020. Disclosure Policy.

§91021. Disclosure Procedure.

NOTE: Authority cited: Section 39601, Health and Safety Code.

Reference: Sections 6253-6257, Government Code.

§91022. Disclosure of Confidential Data.

(a) This section shall apply to all data in the custody of the state board

(1) designated "trade secret" prior to the adoption of this subchapter,

(2) considered by the state board or identified by the person who submitted the data as confidential pursuant to this subchapter, or

(3) received from a federal, state or local agency, including an air pollution control district, with a confidential designation, subject to the following exceptions:

(A) Except for the time limits specifically provided in subsection (b), only subsections (c) and (d) of this section shall apply to information submitted pursuant to Health and Safety Code section 39660(e).

(B) Appropriate portions of an application for approval, accreditation, or certification of a motor vehicle emission control device or system shall be kept confidential until such time as the approval, accreditation, or certification is granted, at which time the application (except for trade secret data) shall become a public record, except that estimates of sales volume of new model vehicles contained in an application shall be kept confidential for the model year, and then shall become public records. If an application is denied, it shall continue to be confidential but shall be subject to the provisions of this section.

(C) If disclosure of data obtained after August 9, 1984 from a state or local agency subject to the provisions of the Public Records Act is sought, the state board shall request that the agency which provided the data determine whether it is confidential. The state board shall request that it be notified of the agency's determination within ten days. The state board shall not release the data if the agency determines that it is confidential and so notifies the state board; provided, however, that the data may be released with the consent of the person who submitted it to the agency from which it was obtained by the state board.

(b) Upon receipt of a request from a member of the public that the state board disclose data claimed to be confidential or if the state board itself seeks to disclose such data, the state board shall inform the individual designated pursuant to Section 91011 by telephone and by mail that disclosure of the data is sought. The person claiming confidentiality shall file with the state board documentation in support of the claim of confidentiality. The documentation must be received within five (5) days from the date of the telephone contact or of receipt of the mailed notice, whichever first occurs. In the case of information submitted pursuant to Health and Safety Code section 39660(e), the documentation must be received within 30 days of the date notice was mailed pursuant to that section. The deadlines for filing the documentation may be extended by the state board upon a showing of good cause made within the deadline specified for receipt of the documentation.

(c) The documentation submitted in support of the claim of confidentiality shall include the following information:

(1) the statutory provision(s) under which the claim of confidentiality is asserted;

(2) a specific description of the data claimed to be entitled to confidential treatment;

(3) the period of time for which confidential treatment is requested;

(4) the extent to which the data has been disclosed to others and whether its confidentiality has been maintained or its release restricted;

(5) confidentiality determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determinations, if available; and

(6) whether it is asserted that the data is used to fabricate, produce, or compound an article of trade or to provide a service and that the disclosure of the data would result in harmful effects on the person's competitive position, and, if so, the nature and extent of such anticipated harmful effects.

(d) Documentation, as specified in subsection (c), in support of a claim of confidentiality may be submitted to the state board prior to the time disclosure is sought.

(e) The state board shall, within ten (10) days of the date it sought to disclose the data or received the request for disclosure, or within 20 days of that date if the state board determines that there are unusual circumstances as defined in Government Code Section 6256.1, review the request, if any, and supporting documentation, if received within the time limits specified in subsection (b) above, including any extension granted, and determine whether the data is entitled to confidential treatment pursuant to Government Code Section 6254, 6255 or 6254.7 or other applicable provisions of law and shall either:

(1) decline to disclose the data and, if a request was received, provide to the person making the request and to the person claiming the data is confidential a justification for the determination pursuant to Government Code Section 6255; or

(2) provide written notice to the person claiming the data is confidential and, if a request was received, to the person requesting the data that it has determined that the data is subject to disclosure, that it proposes to disclose the data, and that the data shall be released 21 days after receipt of the notice by the person claiming confidentiality, unless the state board is restrained from so doing by a court of competent jurisdiction. The state board shall release the data in accordance with the terms of the notice unless so restrained.

(f) Should judicial review be sought of a determination issued in accordance with subsection (e), either the person requesting data or the person claiming confidentiality, as appropriate, may be made a party to the litigation to justify the determination.

NOTE: Authority cited: Section 39601, Health and Safety Code. **Reference:** Sections 6253, 6254, 6254.7, 6255, 6256, 6256.1, 6258 and 6259, Government Code.

Attachment B

**Guidance for Submittal of Annual Compliance Plans
for California Phase 3 Reformulated Gasoline**

Guidance for Submittal of Annual Compliance Plans for California Phase 3 Reformulated Gasoline

This guidance document provides gasoline producers and gasoline distribution system proprietors (i.e., responsible parties for gasoline terminals and pipelines that transport or mix ethanol in gasoline) with guidance on developing and submitting their annual compliance plans for producing California Phase 3 Reformulated Gasoline (CaRFG3). For brevity in this document, we will refer to gasoline producers and gasoline distribution system proprietors that will make CaRFG3 modifications together as the "industry stakeholders". This document provides answers to commonly asked questions concerning the compliance plans, including the information necessary for the Air Resources Board (ARB) to evaluate industry stakeholders plans and progress towards compliance.

Under section 2269, Title 13, California Code of Regulations, gasoline producers are required to submit annual compliance plans which list specific steps that are needed for them to comply with the CaRFG3 regulations by December 31, 2002. We are also requesting that gasoline distribution system proprietors participate in this process as well. The California Energy Commission in its report, entitled "Timetable for the Phaseout of MTBE from California's Gasoline Supply", released July 1, 1999, in a transmittal letter from Governor Gray Davis, found: "the modifications to the distribution infrastructure required for ethanol blending at all terminals will require up to two years". This finding was one of a number of key CEC findings that influenced the CEC's recommended phaseout schedule for MTBE in California gasoline by December 31, 2002. We believe the participation of those gasoline distribution facilities that will need to make CaRFG3 modifications in this process will be in the best interest of all parties that are effected by the CaRFG3 regulations and the general public.

In addition to annual submittals, we are requesting that the industry stakeholders provide the ARB with interim updates as they are needed and possibly more often as we approach the December 31, 2002, compliance date. The interim updates are intended to be brief and would be submitted only when new information became available that could potentially effect industry stakeholder's ability to meet the December 31, 2002, compliance date.

Regarding the compliance plans and interim updates, it is our intent that these submittals not create significant additional burdens on the industry. Accordingly, we are requesting only information that should naturally flow from the industry stakeholders own documents and efforts to assure timely compliance. We expect all of the industry's stakeholders to comply on time and to exercise due diligence to assure compliance.

We believe that an orderly transition to CaRFG3 can be accomplished if industry stakeholders achieve clearly defined increments of progress on schedule. As we have agreed to assist the industry through the California Environmental Quality

Act (CEQA) and permit processes, we will provide assistance, when requested, in the development of compliance plans. We will closely monitor each industry stakeholder's efforts, we will maintain communication with the industry stakeholders, and we will assist in resolving major issues which could potentially impede the compliance schedule.

We also believe it is important to keep the public informed of the industry stakeholder's progress, and we intend to periodically provide the public with reports on industry stakeholder's progress toward meeting the demand for CaRFG3. We are also coordinating with the California Energy Commission to obtain, evaluate, and make available estimates of the supply-demand balance for CaRFG3.

The following questions and answers are intended to assist individuals in preparing their compliance plans and updates.

1. Who is required to submit annual compliance plans?

Under section 2269, Title 13, California Code of Regulations, all persons who own or operate gasoline production facilities in California must submit annual compliance plans to the ARB; this includes refineries and gasoline blending facilities. Compliance plans are also required from producers who also import gasoline into the state.

Importers who are engaged solely in importing finished gasoline are requested to submit the projected volumes of CaRFG3 that they plan to import into California. Importers are also encouraged to provide the steps they intend to take to secure these volumes of CaRFG3.

ARB staff is also requesting that gasoline distribution system proprietors or gasoline terminals participate in this process. We believe it is in the best interest of all of the effected industry stakeholders to participate in this process.

2. When are annual compliance plans due?

For all of the industry stakeholders, the first or initial compliance plans are due to the ARB on September 1, 2000. This date has been extended 30 days by ARB staff to September 30, 2000, because the CaRFG3 regulations were only recently approved by the California Office of Administrative Law on August 3, 2000, and the CaRFG3 regulations become fully operative on September 2, 2000.

Industry stakeholders are required submit annual updates on September 1, 2001, and September 1, 2002. In addition to the annual updates, we are also requesting that industry stakeholders submit interim updates as necessary. Interim updates will only be necessary when industry stakeholders have new information that could effect their ability to meet increments of progress and meet the December 31, 2002, compliance date. Interim reports may be needed more often as we approach the December 31, 2002 compliance date.

Since all small refiners have to comply with RVP, oxygen, sulfur, and olefin standards for CaRFG3 by December 31, 2002, they are required submit annual compliance plans on September 1, 2001, and September 1, 2002, and will need to address timely compliance with these standards. As with the other industry stakeholders, we are requesting that small refiners also provide interim updates as needed.

Small refiners will be required to meet all of the CaRFG3 requirements but with adjusted flat limits for aromatics at 35 vol. %, benzene at 1.0 vol %, T50 at 220°F, and T90 at 312°F. Small refiners are allowed to meet the adjusted flat limits as long as any increased hydrocarbons, NOx, and potency-weighted toxics emissions associated with these alternative specifications are fully mitigated through a mechanism to be added to the small refiner diesel regulations. The small refiner must also comply with applicable federal RFG standards and is subject to a CaRFG3 volume cap.

For those solely intending to import gasoline, plans are requested to be submitted annually beginning September 1, 2001. Also, interim updates should be provided as needed as well.

3. What should industry stakeholders include in their plans for complying with the CaRFG3 requirements?

Under section 2269, the compliance plans must include a schedule setting forth the projected sequence and respective dates of the key events pertaining to planning, financing, and major construction. The plan should be sufficiently detailed and contain sufficient increments of progress so that the industry stakeholder's compliance efforts can be monitored. We will use the increments of progress to measure progress in complying with the CaRFG3 regulations.

The increments of progress should represent key milestones and critical steps that will realistically measure the industry stakeholder's steps to comply with the regulations. For all phases of the compliance plans, key events must be accompanied by projected completion dates. The increments of progress need to be detailed enough to demonstrate that the industry stakeholder exercised due diligence towards meeting the final compliance date.

The compliance plan updates should focus mainly on information that is necessary to accurately assess the status towards meeting compliance. Meeting major milestones should be identified in the updates. The updates should identify any events that would significantly impact the project's scheduled completion date. Any revisions to major milestones should be contained in the updates. The updates should provide new information and not repeat already submitted information.

For those solely intending to import gasoline, the plans should provide the information necessary to determine and track diligence in complying with the CaRFG 3 regulations.

The following information should be included in the compliance plan:

A. Status of CEQA Process

The compliance plan should include the actual and projected date for the approval of the environmental impact report (EIR).

B. What key permits will be required?

The compliance plan should list all key permits and approvals which will be required by government agencies to modify or expand, or both, refining facility or gasoline terminal to comply with the regulations. This includes land use permits, permits to operate, authority to construct permits, etc. Also, compliance plans should include the projected dates or actual dates for receiving key permits and approvals.

C. When will financing be secured?

The compliance plan should include the date(s) when financing is secured. If financing has not been secured, refiners need to indicate the projected dates when financing will be secured.

D. How much CaRFG3 will be produced and/or supplied?

To assess if sufficient production capacity and supplies of complying gasoline will be available to meet demand, we request that each gasoline producer/blender/importer provide the estimated production capability and estimated volumes of CaRFG3 that they expect to produce or obtain from other sources. The following information should be provided:

- The projected maximum production capacity for CaRFG3;
- The projected (minimum, maximum, and best estimate) amount of gasoline that is anticipated to be produced in California and where if from multiple facilities;
- The projected (minimum, maximum, and best estimate) amount of gasoline that will be imported into California;
- Plans and timeframes for introducing the gasoline into the marketplace; and
- Any anticipated changes to historical distribution practices with respect to how much and where gasoline will be supplied.

E. What new or modified equipment will be required to process CaRFG3 reformulated gasoline?

All industry stakeholders should list the major new equipment and major modified equipment that are required to produce CaRFG3 or to add ethanol to CaRFG3 finished gasoline or blendstock. In addition, this information should include units located outside California that will be used to produce gasoline to be imported in California. The following should be provided:

- Simple process flow diagram (block diagram)
- Brief descriptions of new and modified equipment
- Projected dates for major equipment delivery

F. When will construction take place?

All industry stakeholders should provide a simplified construction schedule (installation and completion dates) for the project. The schedule should include major equipment milestones on the critical path (e.g., installation of major processing and refining equipment, storage tanks, splash-blending equipment).

4. Will we keep information confidential if requested?

Yes, we expect that the industry stakeholders will designate as confidential some the information presented in their compliance plans. Confidential information should be clearly identified and appropriate justification provided for treating the information as confidential (see Attachment A). Information that is not deemed to be confidential will be made available to the general public upon request. Please contact the ARB's legal office at (916) 322-2884 if you have any questions regarding confidentiality.

5. How will the ARB use the compliance plans to monitor the industry's progress toward timely compliance with the CaRFG3 regulations?

A. ARB staff evaluation

We will use the compliance plans as a basis for monitoring the industry stakeholder's progress for timely compliance with the CaRFG3 regulations. Upon receipt of a compliance plan, we will evaluate the compliance plan and increments of progress to determine the likelihood of industry stakeholders complying on time. If the compliance plan is vague or appears to be ineffective in reaching the goal of compliance, then we may request additional information or details.

B. Site visits

We may conduct initial site visits of all gasoline producers and gasoline terminals to better understand the planned modifications or new construction, or both, that are needed for a producer to supply CaRFG3. Additional site visits may be conducted as appropriate.

C. Periodic reports

The information provided in the compliance plans will be used to generate timely periodic reports that summarize all industry stakeholders progress in complying with the CaRFG3 requirements. As appropriate, the information contained in these summaries will be reported in an aggregate format to ensure confidentiality. These report summaries will be distributed to all interested parties. We also will be providing the Air Resources Board with periodic reports on all industry stakeholders progress toward compliance.