



Executive Director: Craig A. Moyer, 11355 West Olympic Boulevard, Los Angeles, California 90064
Phone: (310) 312-4353 Fax: (310) 312-4224 E-mail: cmoyer@manatt.com

September 25, 2012

Client-Matter: 23292-030

VIA ELECTRONIC POSTING

Margaret Chu
ARB Staff Lead on Refinery Allocation
California Air Resources Board
1001 I Street,
Sacramento, CA 95814

Subject: WIRA Comments on Refinery Benchmark for the Second and Third Compliance Periods

Comment List: [aug-28-cwt-bm-ws](#)

Dear Ms. Chu:

The Western Independent Refiners Association (WIRA) appreciates the opportunity to provide follow up comments on the August 28, 2012 workshop focused on establishing a new refinery sector benchmark for the second and third compliance periods. WIRA supports the effort to rework and improve the existing Carbon Weighted Tonne (CWT) benchmark currently contained in the adopted Cap and Trade Regulation (CT Regulation). The CWT benchmark was adopted with little to no discussion last year as the focus of the industry was on the first compliance period, therefore it is completely appropriate to revisit this very important part of the Cap and Trade Program.

WIRA is a trade association representing small and independent refiners on the West Coast and has actively participated in CARB rulemakings for many years. The Board's previous rulemakings, including the adopted Regulation, have consistently acknowledged that small and independent refiners are an important pro-competitive force in the market for refined petroleum products and that CARB's regulations can play a significant role in the state's transportation fuel marketplace. With WIRA members not having the same access to capital or economies of scale as major oil companies, it is imperative that mechanisms within this regulatory scheme not disadvantage the smaller players in the refining sector. Losing even one small refiner would have significant impacts on the market dynamics of the state.

WIRA appreciates the Regulation's current acknowledgement of this difference and its distinct allocation distribution formula for the first compliance period. WIRA is committed to

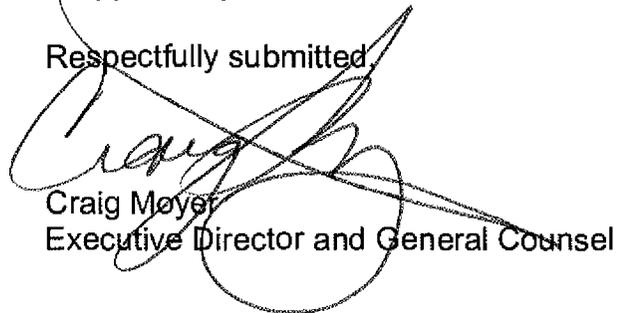
working with CARB through this second benchmarking process to ensure that a fundamental competitive disadvantage is not hard-wired into the Regulation. WIRA is currently trying to determine how the European-based Carbon Weighted Tonne (CWT) benchmark of 0.0295 will affect our members in general, and specifically when compared to the much larger companies in the state with whom we compete on a daily basis.

Included in the Ecofys presentation last month was an acknowledgement that "*the CWT approach is not suitable for atypical smaller refineries*" and that the definition of what an atypical refinery means for California is still to be determined. WIRA looks forward to actively working with CARB in a deliberate and public process to finalize a definition of "atypical refineries" and to determine what such an exclusion would mean for smaller refinery benchmarking in the upcoming compliance periods. As the current regulation does not contain such a definition or exclusion, WIRA believes that the Regulation, as adopted, needs to be amended prior to the distribution of second compliance period allowances.

The timing of this process is also critically important. Capital decisions are currently being made that are impacted by the outcome of this process, so the sooner it is complete the better. Additionally, it is important that this process play out such that neither CARB or the industry feel rushed to make a decision due to timeframes established by AB 32 or the adopted Regulation. WIRA members need a complete understanding of any proposed actions before they are finalized.

WIRA looks forward to an open and public process to revise this important aspect of the Cap and Trade Program, and appreciates the opportunity to comment at this time.

Respectfully submitted,



Craig Moyer
Executive Director and General Counsel

cc: Mary Nichols
ARB Board Members
James Goldstene
Richard Corey
Edie Chang
Steve Cliff
Mary Jane Coombs