WIRA WESTERN INDEPENDENT REFINERS ASSOCIATION

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Kevin Kennedy
California Air Resources Board
1001 I Street, P.O. Box 2815
Sacramento, CA 95812

Subject: CARB Proposed Regulation to Implement California Cap-and-Trade Program
Agenda Item 10-11-1
Comment List: capandtrade10

Dear Mr. Kennedy:

The Western Independent Refiners Association (WIRA) appreciates the opportunity to comment on the proposed Cap and Trade Regulation (Regulation). WIRA supports the use of cap and trade as a component of California's comprehensive plan to reduce greenhouse gas (GHG) emissions over direct command and control regulations that would otherwise be necessary. However, the Regulation, as proposed, does not make a distinction between large complex refineries and smaller simpler more efficient refining operations. These facilities are dramatically different and this difference needs to be acknowledged within the Regulation.

Throughout the staff report and backup documents, a unifying theme of the program is that promoting the efficient production of a given product is a key goal. WIRA concurs that having lower carbon intensity associated with bringing a product to market should be rewarded within the cap and trade program and thus incorporated into the Regulation. With some relatively minor changes, the Board has a golden opportunity to acknowledge and reward those facilities that produce transportation fuels with the lowest greenhouse gas profile available.

WIRA is a trade association representing small and independent refiners on the West Coast and has been an active participant in CARB rulemakings for many years. The Board's previous rulemakings have consistently acknowledged that small and independent refiners are an important pro competitive force in the market for refined petroleum products. 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 new regulatory scheme not disadvantage the smaller players in the refining sector. It is also important for the Regulation to specifically acknowledge and reward the inherent efficiency of simpler refining processes.

WIRA believes that in-state production of lower-carbon transportation fuels can be encouraged with the correct regulatory structure. It is with that general theme that we respectfully submit the following comments and recommendations:

More analysis of the refining sector is needed

Staff has acknowledged in the staff report and in recent meetings that many technical details still need to be analyzed with respect to the allocation distribution formula. It is currently unclear exactly how each of the benchmarking options proposed will affect WIRA members. A fuller understanding of CARB proposals is needed before a conclusion can be reached.

WIRA is committed to working with CARB staff to resolve these technical issues and requests that the Board direct staff to continue these discussions with industry. Choosing a specific benchmarking metric at this point, without further analysis, could put independent refiners at a disadvantage in the market.

Need to recognize the inherent efficiency of the smaller refiner

The larger and more complex the refinery, the greater the GHG emissions are per gallon of produced transportation fuel. This fact of the refining industry needs to be recognized specifically within the Regulation. Currently, small and large refiners are categorized the same throughout the Regulation. Staff should provide separate tiers within the Regulation. This disaggregation would allow for a more tailored approach on the various aspects of the program, including benchmarking and leakage analysis.

Clarifications and modifications are needed to the free allocation methodology

WIRA recommends clarifications and modifications to the free allocation methodology provided in Subsection 9 of the Regulation.

CARB needs to clarify how it would determine a facility "output" of a unit that is currently non-operational. The use of the term "unavailable data" is unclear. The Regulation should clarify that the calculation for annual average output not include time periods of non-operation.

As mentioned above, the criteria for determining which benchmark to use for the refining sector, is not specified. Nor is it fully understood how each of the options would impact WIRA members.

Placing large and small refiners within the same category for leakage assistance, may not be appropriate. Appendix K-Leakage Analysis specifically notes that the petroleum refining sector was aggregated for leakage analysis. WIRA requests that a separate leakage analysis be done for small refiners as they have unique circumstances.

Assumed cost pass through for allowance costs of transportation fuels is incorrect

The Regulation and staff report assert that the costs associated with allowance value of transportation fuels will be passed along to the consumer, and thereby relieving the obligated party from bearing the burden of those costs. This assertion is incorrect for the independent, non-vertically integrated refiners. Costs will be passed through with a degree of certainty only if a mandated mechanism is in place specifically for this purpose.

For consumers to see the additional carbon cost of the program and to adjust their behavior accordingly, a mechanism needs to be in place for those costs to be passed along directly. Relying on general market forces to adjust for the price of carbon is not sufficient when the marketplace includes such diverse players as importers, small refiners, large integrated exploration, refining and retail operations, speculators and others who have the ability to establish product price independent of actual production costs. WIRA recommends allowing for the cost of allowances to be specifically invoiced nearer the final point of sale.

Concern about third-party market participants and possible market manipulation

WIRA is concerned about the ability of non-obligated party's ability to participate in California's carbon market. Speculators in the oil and gas markets have historically affected price and reduced the efficiency of the open market. WIRA recommends CARB limit the eligibility or limit the participation, of non-obligated parties so that such influence on the carbon market can be minimized.

Treatment of Biodiesel emissions

WIRA supports the staff position that GHG emissions associated with Biodiesel not be subject to an allowance obligation. This policy will continue to promote the development of non-fossil fuel based alternative fuels.

Penalty for untimely surrender of allowances

The severity of the penalty for untimely surrender of allowances should be re-evaluated. Subjecting an entity to both a monetary penalty and the requirement to surrender additional allowances is a double penalty for the same violation. In addition, the calculation methodology for monetary penalties should be limited. The current method, based on a per ton, per day violation, could generate disproportionate penalty amounts.

Built-in review of the program's effectiveness is needed

As with all new programs, especially one this complicated, it is necessary for regular reviews of it effectiveness. WIRA recommends the Regulation, or adopting resolution contain language requiring periodic public reviews by the Board on the various elements of the programs to ensure that it is working as intended and to evaluate any unintended consequences.

Definition of Greenhouse Gas needs to be amended

The reference to "hydrocarbons" within the definition of Greenhouse Gases in Section 95802(a)(84) needs to be removed.

In conclusion, WIRA wishes to recognize all the work staff has put into this very large and complex regulation and commends them on such a difficult task. But it is imperative for the Board to "get this right". Not only does this regulation affect the entire California economy, but it has the potential to be the model for other regions and states.

WIRA appreciates the opportunity to comment on the Cap and Trade Regulation.

Respectfully Submitted,

C Moyer

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