WIRA WESTERN INDEPENDENT REFINERS ASSOCIATION

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

Subject: WIRA Comments on CARB Modified Text for the Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation

Comment List: capandtrade10

Clerk of the Board:

The Western Independent Refiners Association (WIRA) appreciates the opportunity to comment on the proposed modifications to the pending Cap and Trade Regulation (Modifications). 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.

The modifications provide CARB's proposed methodology for distribution of free allowances to the refining sector. Throughout the entire public process, staff report and supporting documents, a unifying theme of the program is that of promoting the efficient production of a given product as a key goal. WIRA concurs that having lower carbon intensity products should be rewarded within the cap and trade program and thus incorporated into the Cap and Trade Regulation (Regulation). With these Modifications, the Board has taken the opportunity to acknowledge and reward those facilities that produce refined petroleum products with the lowest greenhouse gas profile available.

Accordingly, ***WIRA supports the use of the Simple Barrel approach for direct allocation of allowances described in Subarticle 9.*** However, the Modifications, as proposed, do not recognize an important product produced by WIRA members that should be considered a Primary Refinery Product - Residual Fuel Oil. Additional detailed comments are provided below.

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. WIRA appreciates the Regulation's acknowledgement of the inherent efficiency of simpler refining processes.

WIRA believes that in-state production of lower carbon-refined petroleum products is an important part of California's solution to achieve the AB 32 goals. It is with that general theme that we respectfully submit the following comments.

Free Allocation Methodology

WIRA **supports** the use of the Product Output-Based Allocation Calculation Methodology and the calculation modifications as described in Section 95891(b).

WIRA also supports the selection of the Simple Barrel Benchmarking approach contained in Table 9.1-Product Based Emissions Efficiency Benchmarks. No other approach to allocation distribution is as transparent and predictable, nor is any other approach as consistent with the stated regulatory goal of focusing on output of products from regulated facilities.

Definition of Primary Refinery Product

The Modifications include a new definition of "Primary Refinery Product". This definition is key to the amount of allocations provided to an individual facility because it is imbedded within the calculation details when determining free allocation amounts. **WIRA urges that Residual Fuel Oil ought to be included in the definition of a Primary Refinery Product.**

Quoting from Appendix J-Allowance Allocation (p. J-41), dated October 28, 2010:

> The simplest product output metric that can be conceived for the refining sector is the total product produced from each facility. Under such a "simple barrel" approach each refiner would report annual production of total barrels of major petroleum products such as gasoline, diesel, jet fuel and ***residual fuel oil*** to ARB. [emphasis added]

The inclusion of Residual Fuel Oil into the definition of Primary Refinery Product would be consistent with this original intent of the program. Additionally, its inclusion would not perceivably impact the program in aggregate due to the fact that only a very small quantity of Residual Fuel Oil is produced in California as a finished refinery product. The relative size of the allowances associated with Residual Fuel Oil production are on the order of 0.08% of the statewide cap.

But even though it is small in the aggregate, to one WIRA member, Residual Fuel Oil is a substantial percentage of their finished product percentage and not including it would have significant negative consequences to their allowance level. By its very nature, Residual Fuel Oil is a "primary" refinery product being derived from the most elementary of refining processes: distillation. Container ships and other large oceangoing vessels use Residual Fuel Oil as their transportation fuel. No valid distinction can be made between Residual Fuel Oil and gasoline and diesel. All are transportation fuels. While many larger, more complex refiners have opted to install additional equipment for further processing Residual Fuel Oil into other petroleum products, doing so is exactly that--an option. This option to further process Residual Fuel Oil is not one that all refineries have exercised or can even consider, given the economically prohibitive costs and capital expenditures involved with adding necessary refining units. Specifically, WIRA's affected member has chosen a business model that sells this product directly into the market rather than to perform additional, energy- and emissions-intense processing techniques. Quoting from Appendix J-Allowance Allocation (p. J-21), dated October 28, 2010:

> Basing free allocation to industrial covered entities on product benchmarks... provides entities the correct incentives to produce a given product in the cleanest (lowest GHG-emitting) way possible.

To omit Residual Fuel Oil from the definition of Primary Refinery Products is in contradiction to this statement and, in fact, penalizes such a refiner for not having additional greenhouse gas emitting processes.

In setting up this program CARB consistently pushed in the direction of a lower carbon economy without overtly picking winners and losers, but the exclusion of Residual Fuel Oil could easily be classified as such a decision. Therefore, for the reasons stated above, WIRA strenuously urges that Residual Fuel Oil be included in the definition of Primary Refinery Product.

Change to Definition of Greenhouse Gas

WIRA previously commented on this definition, therefore we appreciate and support the change to the definition of "Greenhouse Gas" in Section 95802(a)(115). The deletion of "hydrocarbons" from within the definition is appropriate.

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,

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