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

Subject: WIRA Comments on CARB Second Notice of 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 latest proposed modifications to the pending Cap and Trade Regulation and Appendix A (Modifications). Through this process, WIRA and CARB staff have worked through various issues that accompany a program this complex, but we also believe that the program should not be considered a finished product.

As the trade association representing small and independent refiners on the West Coast, WIRA has been an active participant in CARB rulemakings for many years. The Board has 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 submits these comments knowing that the deadline for regulatory adoption is pending, and therefore any additional changes to the Cap and Trade Regulation will need to be addressed in a subsequent rulemaking. The comments presented below are provided in that spirit.

The topics covered in this comment letter are summarized below:

- Industrial Assistance Allocation methodology for the 1st Compliance Period
- Industrial Assistance Allocation methodology for the 2nd Compliance Period
- Additional Comments

1st Compliance Period Methodology

Among the various modifications made to the proposed regulation was a dramatic change in the methodology for distribution of allowances to individual facilities in the refining sector. This change in methodology provides a significant departure from the previously proposed “Simple Barrel” approach. WIRA believes that the Simple Barrel approach recognized those facilities which produced refined product with the lowest GHG per unit volume and that that approach should have been kept in the regulation. But WIRA also understands CARB’s staff’s view is that the diverse and individualized nature of the refining industry does not lend itself to a single, simple output-based benchmark. As such, the newly proposed allocation methodology for the first compliance period appropriately bifurcates the refining sector by the complexity level of the affected facilities. This two-tier approach prevents the smaller, less capitalized refiners from being disadvantaged through the use of an allocation methodology metric not based on GHG efficiency.

The new First Compliance Period methodology for smaller, less complex refiners is outlined in Section 95891(d)(1). These equations provide California’s smaller refiners with the basic assistance necessary to transition into this new program. WIRA supports the regulatory requirement for the Executive Officer to determine the representativeness of a facility’s baselines and/or EII prior to allowance allocation. This determination is a key component of the two-tier system.

Inclusion of WIRA members into an Energy Intensity Index (EII) approach sponsored by the Western States Petroleum Association (WSPA) would have been inappropriate and would have placed an artificial competitive disadvantage on them.

2nd Compliance Period Methodology

Though discussed in general terms, the specific methodology, performance benchmark, and calculation details for the second compliance period allowance allocation were not placed in proposed regulatory language prior to this second 15-day packet, from which changes to the regulation cannot be accommodated prior to its finalization. Additionally, the effect of this approach could not be viewed in totality with the first compliance period allocation methodology presented during the first 15-day comment period.

This new methodology is referred to as the Carbon Dioxide Weighted Tonne (CWT). The fact that the actual details of the CWT approach are not provided in this regulatory package, but are provided in the revised language for the Mandatory Reporting Regulation (MRR),

only adds to the procedural obstacles in providing robust comments that can be acted upon by the CARB Board.

CARB briefly outlines the rationale for choosing this CWT approach in Appendix A. One aspect of the proposal is to use a European Union benchmark as the performance standard for California refineries. This performance benchmark needs to be revised. WIRA agrees with Appendix A which states:

[CARB] Staff plans to conduct additional technical work on the CWT approach in 2012 and will recommend any appropriate changes to the Board resulting from this analysis in a future regulatory package.

As it is currently proposed this value will have a dramatic effect on WIRA, it will impact our members both directly and in terms of competitiveness relative to the state's larger, more complex refiners and therefore must be vetted in a more complete and robust public process. It is imperative that when this additional technical work is completed, that it be done in a timely manner such that all parties have sufficient understanding of its implications and have appropriate time to comment. When such additional technical work is initiated, WIRA will actively participate in the process. Even though the proposed CWT approach will not be in effect until 2015, for planning purposes, it is imperative that this work commence early in 2012.

Additional Comments

Definition of Primary Refinery Product

A key aspect in determining allocation levels for both the refining sector and individual non-EI refiners is the definition of a primary refinery product. This definition is used to establish the sector benchmark, and this benchmark has been adjusted in these revisions. CARB staff acknowledges in Appendix A (footnote #2) that the dataset for establishing the sector benchmark will be monitored and could be changed as needed. WIRA recommends that additional analysis be conducted regarding inclusion of bunker fuel for large oceangoing vessels into the definition of a Primary Refinery Product.

Regulatory Adoption Process

WIRA recognizes and appreciates the difficulty and obstacles that arose during this adoption process that CARB staff had to overcome, but in adopting such a complex and important regulation, public process is key. We have already noted that any additional changes to the Cap and Trade Regulation based on this open comment period cannot occur during this specific rulemaking. WIRA urges CARB not only to respond to these comments now, but also to use them as the basis and starting point for the inevitable first round of regulatory adjustments to the program.

Conclusion

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. If

additional regulatory proceedings are needed to get it right, then WIRA recommends that they be done as soon as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig Moyer", with a large, stylized loop at the end.

Craig Moyer
Executive Director and General Counsel

cc: Mary Nichols
ARB Board Members
James Goldstene
Bob Fletcher
Richard Corey
Edie Chang
Steve Cliff
Sam Wade