



**Catherine Reheis-Boyd**  
President

October 22, 2018

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

sent to: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: WSPA Comments on Proposed Submission of California's Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities into the California State Implementation Plan

Dear Clerk of the Board,

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide comments on the California Air Resources Board's (CARB) Proposed Submission of California's Greenhouse Gas Emission Standards for Crude Oil and Natural Gas Facilities (Oil and Gas Methane Regulation) Into the California State Implementation Plan (Proposed Submission). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California and four other western states.

WSPA incorporates into this comment letter by reference our previous comments on the Oil and Gas Methane Regulation, and reserves the right to supplement and/or amend these comments should additional or new facts arise. As we have stated throughout the regulatory process for the Oil and Gas Methane Regulation, WSPA is committed to working closely with CARB to ensure that proposed regulations and SIP components affecting our industry be consistent with current local, state and federal air quality requirements. WSPA is concerned that the Proposed Submission appears to request that U.S. Environmental Protection Agency (USEPA) approve into the SIP regulatory requirements that are not required by, and are not necessary to meet the requirements of, the federal Clean Air Act (CAA). For that reason, WSPA respectfully requests that CARB withdraw the Proposed Submission for further consideration of which elements of the Oil and Gas Methane Regulation, if any, are appropriate for inclusion in the State Implementation Plan (SIP).

### **The Record Does Not Explain Why the Oil and Gas Methane Regulation – a GHG Reduction Measure – is “Necessary” for Ozone NAAQS Attainment**

Section 39602 of the California Health and Safety Code (HSC) provides that “notwithstanding any other provision of this division, the [SIP] shall only include those provisions necessary to meet the requirements of the [CAA].” HSC § 39602. The CAA similarly requires SIPs to contain provisions necessary to achieve compliance with the NAAQS and other CAA requirements. See 42 U.S.C. § 7410(a)(2). These provisions legally prohibit CARB from seeking to include in the federally-enforceable SIP any provision not needed to meet the federal NAAQS or other CAA provisions.

The administrative record makes clear that CARB adopted the Oil and Gas Methane Regulation to implement provisions of the California Global Warming Solutions Act of 2006 (AB 32), which

requires certain statewide reductions of greenhouse gas (GHG) emissions. For example, the CARB Final Statement of Reasons states on page 157: “[T]his is a greenhouse gas regulation pursuant to authority under AB 32.” AB 32 is a California state-level regulatory program that neither is required by nor is necessary for compliance with the CAA. The reductions of GHG emissions sought by the Oil and Gas Methane Regulation are solely to carry out the requirements of California’s AB 32. Those reductions are not required by the CAA.

CARB seeks to justify the Proposed Submission by claiming that the Oil and Gas Methane Regulation will require methane controls that may also happen to reduce volatile organic compounds (VOC) at regulated facilities as a claimed “co-benefit.” Under the CAA, states may adopt regulations controlling VOC as a means to achieve attainment with the federal ozone National Ambient Air Quality Standards (NAAQS) per 42 U.S.C. § 7410. However, as CARB acknowledges in the FSOR: “[m]ethane is not considered a VOC.” Thus, direct controls of methane in and of themselves cannot justify approval into the SIP as a means to achieve ozone attainment. Under California law, only VOC controls that are “necessary to meet the requirements of the [CAA]” may be submitted to USEPA for approval into the SIP.

CARB does not explain in the FSOR or elsewhere in its rulemaking materials on the Oil and Gas Methane Regulation why the Regulation is “necessary” to meet any applicable ozone NAAQS for California air districts. Indeed, these materials consistently justify the Oil and Gas Methane Regulation as necessary to implement AB 32 and achieve required GHG reductions. The Staff Report that accompanies the Proposed Submission also fails to justify why the Oil and Gas Methane Regulation is “necessary” for attainment of the ozone NAAQS in any California non-attainment area.

### **“Consistency” with the October 2016 CTG Under Reconsideration Does Not Justify Including the Oil and Gas Regulation in the SIP**

Instead of justifying why the Oil and Gas Methane Regulation is “necessary” for ozone attainment, the Staff Report provides a “comparison” of the Oil and Gas Methane Regulation to the Control Techniques Guidelines for the Oil and Natural Gas Industry (CTG), a non-binding guidance document issued by USEPA in October 2016 outlining what EPA believes may constitute reasonably available control technology (RACT) for control of VOCs in ozone nonattainment areas. The Staff Report argues that, because the proposed Oil and Gas Methane Regulation imposes GHG controls that are not inconsistent with the CTG’s non-binding RACT recommendations for VOC, the Regulation should be approved into the federally-enforceable SIP.

However, the CTG does not contain recommendations to control methane, since methane is unquestionably not a significant source of VOC. As USEPA has stated: “Where the sources affected by a particular measure contribute only negligibly to ambient concentrations that exceed the NAAQS, EPA’s policy is that it would be unreasonable and therefore would not constitute [RACT] to require controls on the source.” 57 Fed. Reg. 13498, 13540 (Apr. 16, 1992). For that reason, the CTG does not recommend reduction of methane as a significant way to control VOC.

In any event, the fact that a proposed state-level GHG regulation may not contradict a non-binding USEPA guidance on control of a separate criteria pollutant does not mean that the state-level regulation is “necessary” for achievement of a NAAQS. Indeed, as CARB has

acknowledged, USEPA has proposed withdrawal of the CTG altogether, as the CTG relied on underlying data and conclusions from USEPA's New Source Performance Standards (NSPS) regulation for the oil and natural gas sector adopted in June 2016. 83 Fed. Reg. 10478 (Mar. 9, 2018). "Consistency" with a VOC RACT guidance in the process of withdrawal is not a substitute for a supported finding that the Oil and Gas Methane Regulation is actually "necessary" for achievement of ozone NAAQS attainment.

### **Approving the Oil and Gas Methane Regulation into the SIP Would Contradict California Requirements Empowering Local Air Districts to Determine RACT for Stationary Sources**

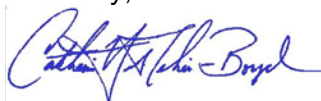
Approval of the Oil and Gas Methane Regulation into the SIP would result in the absurdity of imposing federally-enforceable requirements on California sources to reduce methane, even though methane is not an ozone precursor and not a significant source of VOC that would contribute to federal ozone nonattainment. Under California law, local air districts – not CARB – are vested with primary responsibility for control of air pollution from stationary sources, and with adopting stationary source regulations aimed at achieving the NAAQS in their districts. See HSC §§ 39002, 40000, 40001(a). Local air districts – not CARB – must determine in the first instance whether a control is necessary to achieve an applicable NAAQS. HSC § 40001(c).

Similarly, determination and imposition of whether any control measure is "reasonably available" must be made by the local air districts in the first instance. HSC § 41650. Local air districts make these determinations after opportunity for notice, comment and public hearing at the district level. HSC § 41651; HSC §§ 40725-40731. These local air districts are required to comply with numerous statutory requirements for the consideration of cost, feasibility, socioeconomic impact and other factors. HSC §§ 40703, 40725-40731, 40918, 40922. Determination of RACT for stationary source criteria pollutant emissions is not a proper undertaking for CARB to take in the first instance at the state level, and doing so frustrates the districts' authority to determine RACT, and the public's right to review and comment on the districts' proposed determinations.

WSPA looks forward to CARB's responses to our comments. We believe it is critical that CARB refrain from making any SIP submittal to USEPA until and unless it can confirm that the submittal contains only those measures necessary to achieve a NAAQS or other CAA requirements, and that those measures are being proposed only after adoption at the local air district level and only after proper notice and comment procedures have been followed. WSPA strongly recommends that CARB defer action on the Proposed Submission until CARB can ensure that any SIP submittal meets the requirements of federal and California law. A SIP submittal that fails to meet these requirements could lead to legal challenge that would only delay implementation of sound, workable air quality policy necessary to benefit all Californians.

If you have any questions, please contact me at this office, or Tom Umenhofer of my staff at (805) 701-9142 or via email at [tom@wspa.org](mailto:tom@wspa.org).

Sincerely,



cc: Tom Umenhofer - WSPA