



Kern Oil & Refining Co.

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VIA ELECTRONIC POSTING

Comment List: CAPANDTRADE13

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

Dear Chairman Nichols and Board Members:

Kern Oil & Refining Co. (Kern) supports the adoption of the 45-day regulatory package and generally supports the proposed amendments related to refinery benchmarking. Kern is a small, privately owned petroleum refiner located in Bakersfield, California, in the southern San Joaquin Valley. Kern has operated for over 70 years and employs approximately 120 employees. Kern's refining capacity is 27,000 barrels per stream day.

The diversity of the refinery sector – ranging from 10,000 to 270,000 barrels per day capacity – makes applying a single benchmark problematic. ARB's proposal to separately benchmark "atypical" refineries appropriately acknowledges the structural constraints imposed by refinery size and complexity and that adoption of a single benchmark would codify an unfair competitive disadvantage for smaller, less-complex refineries. Equally important to setting an appropriate benchmark is ensuring an accurate and robust allocation methodology that accounts for all emissions generated at a refinery. ARB's proposal to utilize the Complexity Weighted Barrel (CWB) Methodology, inclusive of the off-sites adjustment and utilizing all of the process unit factors, strikes this important balance. Kern also supports ARB's proposal to extend the assistance factor levels from the first compliance period into the second and third compliance periods and to allow the limited borrowing of true-up allowances. Kern believes that ARB's current proposal largely addresses Kern's previous concerns regarding competitive disadvantages and inequalities in refinery allocations.

Refinery Sector Allocations

As a small, less-complex California refinery, Kern has been acutely aware of the uneven playing field of the California refinery sector. Kern is appreciative of the analysis performed by ARB Staff that underlies their proposal to separately benchmark atypical refineries and to adopt the full CWB methodology, inclusive of the off-site adjustment. The 45-day package simply includes verbiage in section 95891(a)(2) to allow the option of either Carbon Weighted Tonne

(CWT) or Complexity Weighted Barrel (CWB) as the refinery benchmarking methodology and strikes references to CWT and the associated benchmark value in Table 9-1. However, at a workshop on October 7, 2013, ARB Staff presented their refinery benchmarking proposal, which Kern understands will be presented at the October 25, 2013, Board meeting and adopted pursuant to a 15-day amendment package. Kern is providing comments in anticipation of Staff's presentation to the Board on October 25, 2013, and the 15-day amendment package to follow relative to Staff's proposal presented on October 7, 2013.

Underlying ARB's atypical benchmarking proposal is testimony provided by worldwide acknowledged refining expert Solomon Associates (Solomon) at an ARB workshop held August 13, 2013. Solomon pointed out that because of the efficiency limitations associated with a lack of heat integration opportunities and the inability to advantage themselves of economies of scale, smaller, less-complex refineries cannot be fairly compared to the major large complex refiners in California. ARB also has precedent in acknowledging the uneven playing field of the California refinery sector, for example: (1) in setting separate compliance targets for Non-EII versus EII refineries in the first compliance period for Cap and Trade; and (2) in Low Carbon Fuel Standard, the proposed low-energy-use low-complexity refinery provision, which will acknowledge the lower carbon intensity inherent to fuels produced by low-energy use refineries. The United States EPA Energy Star Program also groups refineries into size based peer groups for determining energy efficiency. The Energy Star Program acknowledges that it is inappropriate to judge smaller refineries by larger refineries' efficiency standards, which is being similarly acknowledged by ARB in this most recent proposal to discern atypical refineries from typical refineries for the purpose of benchmarking and allocation of allowances.

Solomon representatives stated that in every benchmarking they have conducted and/or studied worldwide, each region has had its own particular "atypical" refineries. Ecofys, ARB's expert, when advising ARB to consider and address the issue of atypical California refineries in an August 2012 report, cited to the European Union as an example of a region that dealt separately with atypical refineries. However, obviously, what may have represented an atypical refinery in Europe does not determine what may be an atypical refinery in California.

Kern appreciates Staff's analysis of California refineries to determine those "atypical" refineries whose structural constraints justify the proposed separate benchmark, which takes into consideration Solomon's testimony regarding the pertinent size and complexity limitations that are indicative of atypical refineries. Staff proposes to define "atypical" facilities as those having less than 12 process units and less than 20 million barrels crude through the atmospheric distiller per allocation year, which Staff stated was a natural size and complexity break for the refining sector. Although without the benefit of the actual regulatory language, Kern is supportive of the atypical definition proposed by Staff. Truly, one size does not fit all. Kern applauds Staff's proposal and eagerly awaits release of proposed regulatory language for further review and solidification of the proposal.

Kern is also supportive of Staff's proposal to adopt the CWB allocation methodology utilizing the Solomon Process Unit Factors and including Solomon's factors for "off-sites and non-energy

utilities” and “non-crude sensible heat.”¹ These factors can play a very significant role in the operation of smaller, less-complex facilities and their corresponding allocation determinations. At the October 7, 2013 workshop, ARB Staff presented a working document titled “Language to Support Complexity Weighted Barrel (CWB)” for stakeholder review, indicating regulatory text changes that will be necessary in the Mandatory Reporting Regulation (MRR) to support use of CWB. Kern notes that certain revisions and/or corrections to this working document will be required prior to incorporation into the MRR in order to accurately calculate the off-sites and non-crude sensible heat adjustments. Kern will comment further, as may be necessary, upon review of the 15-day amendment package addressing this supportive text within the MRR.

Assistance Factor Level Increase

ARB proposes to increase the assistance factor to 100% in the second compliance period and to 75% in the third compliance period by amending Table 8-1, section 95870. Kern appreciates the additional cushion that the increase will provide in terms of time and certainty and also believes the increase will help minimize leakage risk.

Limited Borrowing of True-Up Allowances

Kern supports the proposal to allow limited borrowing of true-up allowances. As proposed, this “borrowing” would allow facilities to use up to the amount of true-up allowances provided for compliance obligation up to two years prior to the vintage of the allowances provided by the true-up. For example, the if true-up allowances are granted for the 2015 true-up process, these would be 2015 vintage, but they can be used to satisfy the 2013 obligation since that is what was being “trued-up.” Staff’s proposed definition of “trueup_i” at Section 95891(b) is helpful in clarifying this ability to borrow true-up allowances within the hierarchal order of surrendering compliance instruments as described in Section 95856(h).

In conclusion, Kern appreciates CARB’s consideration of Kern’s comments. Any questions or follow-up comments can be directed to Melinda Hicks at 661-282-2646 or at mhicks@kernoil.com.

Sincerely,



Melinda L. Hicks
Manager, Environmental Health and Safety
Kern Oil & Refining Co.

¹ Note that although smaller, less complex refineries may be able to have an accurate CWB score, infrastructure limitations prevent those refineries from ever achieving a benchmark set by performance of much larger refineries. In other words, their CWB scores cannot be fairly compared, which is why the establishment of an atypical benchmark is critical.

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cc: CARB Board Chairman and Members
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Rajinder Sahota
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