Coalition for Fair and Equitable Allocation

VIA ELECTRONIC POSTING
Comment List: CAPANDTRADE13
re: October 7, 2013 Workshop

October 14, 2013

Dr. Steve Cliff
Assistant Division Chief
California Air Resources Board
1001 I Street
Sacramento Ca, 95814

Dear Dr. Cliff:

Amending the refinery benchmarking and associated industrial allocation methodology is a very significant policy and technical exercise, which establishes a foundation of the Cap and Trade Program (Program) for years to come and determines the baseline competitive position (both intrastate and interstate) for California refiners. It is under this umbrella of importance that the Coalition for Fair and Equitable Allocation (Coalition) was formed to protect the interests of small refinery operations in California. The Coalition includes Kern Oil & Refining Co., Alon USA, Inc., San Joaquin Refining Co. Inc., Lunday-Thagard Refining Co., and Phillips 66.

The Coalition appreciated the October 7, 2013, presentation and discussion opportunity provided by the California Air Resources Board (CARB or Board) to walk through the staff proposal related to refinery benchmarking, including the proposal to adopt the Complexity Weighted Barrel (CWB) methodology inclusive of "off-site" factors and to separately benchmark atypical refineries.. The ability to fully comment on the above is an important step in the regulatory process. These amendments have very significant business ramifications and having only one week to prepare comments has limited the Coalition's ability to conduct in-depth analysis on the proposals.

Formal recognition and separate benchmarking of "atypical" refineries in the Program is a key policy recommendation that the Coalition is very supportive of implementing. Not all refineries in California are large and complex, the atypical category appropriately recognizes this reality. In addition, the Coalition generally supports the criteria metrics of 12 process units and 20 million barrels of crude throughput per year as the dividing line, but understands that the actual regulatory language still needs to be written and analyzed.

But one aspect of the staff proposal is problematic – requiring "jointly operated facilities" to be considered as a single facility for purposes of an atypical determination. The definition of a stationary source has been established over the many decades of air pollution control, and is defined in both the Mandatory Reporting and Cap and Trade Regulations, as is the definition of a "Petroleum Refinery" or "Refinery". These two distinct definitions are complementary and consistent in that each location/operation is a separate and distinct compliance entity. Excluding

a smaller less-complex refinery, that would otherwise meet the definition of "atypical", solely because it is associated with a separate (and equally specialized) facility is an application of inconsistent policy. This "carve out" is especially troublesome as it targets and would only impact a single facility in California. "Jointly-operated" is a term not defined, not needed and inconsistent with existing definitions. The operations of this type of smaller less-complex refinery that performs specific functions are equal in their susceptibility to emissions leakage as the other atypical refineries. The Coalition recommends that the Board remove the suggested requirement that an atypical refinery be defined such that it is not "jointly-operated" with another facility.

The Coalition supports staff's proposal to adopt the CWB allocation methodology utilizing the Solomon Process Unit Factors and including Solomon's factors for off-sites, non-energy utilities and "non-crude sensible heat." These factors can play a very significant role in the operation of smaller, less-complex facilities and accordingly their allocation determinations. Likewise, the Coalition supports the staff proposal to not pursue additional CWB groupings.

Even with the inclusion of the off-site factor, the CWB methodology does not accurately reflect the emissions profile of a facility experiencing a prolonged shutdown or period of non-operation. These emissions are necessary to keep a facility in a condition ready to produce product when market conditions demand, and to maintain and operate environmental system requirements to ensure air, water and waste regulatory compliance. Requiring an existing facility to pay for allocations under such a circumstance is a significant new and unfair cost pressure introduced as a direct result of the Program. It is a cost that could permanently shut down a facility and contribute to emissions leakage. Because the Coalition has not had sufficient time to fully work through this issue, we do not have a specific recommendation at this time. But we do request that CARB revisit this issue within the regulatory framework and work with any impacted facilities to account for just such a situation.

Lastly, it is noted that this is the second time the administrative process associated with refinery benchmarking has been truncated at the end of a rulemaking. In both the 2010 rulemaking and in these 2013 amendments, significant decisions that affect the viability of entire facilities have had to be made in a rushed manner and without the benefit of a fully transparent set of data or robust public process. Because the actual language of the proposals has yet to been provided to stakeholders, we request that the process leading up to a required 15-day regulatory amendment package be given the utmost of deference to the need of stakeholders to understand and analyze staff's proposal and its underlying support data.

Thank you for your attention to this important matter. Any questions or follow-up comments can be directed to Jon Costantino at 916-552-2365 or at jcostantino@manatt.com.

Sincerely,

Jon M. Costantino
Coalition Director

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